CRIMINAL COURTS BAR ASSOCIATION

NEWSLETTER

PUBLISHED BY THE CRIMINAL COURTS BAR ASSOCIATION — DECEMBER 2015

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The
Criminal Courts Bar Association
cordially invites you to the
DECEMBER DINNER MEETING

"JUDGES NIGHT"

with guest speakers

The Honorable
JAMES R. BRANDLIN

The Honorable
SCOTT M. GORDON

TUESDAY, DECEMBER 8, 2015

Cocktails & Reception - 6:30 p.m.

Dinner Meeting begins promptly at 7:00 p.m.
$40.00 per person

TAIX FRENCH RESTAURANT
1911 Sunset Blvd., Los Angeles, CA 90026
(Near Alvarado)

1 Hour MCLE

Reservations advised. Call Elizabeth Ferrat at (626) 577-5005
or email at: *criminalcourtsbarassociation@gmail.com*

PAY BY CREDIT CARD/ONLINE REGISTRATION IS AVAILABLE!
GO TO "SEE EVENTS." *http://www.laccba.org*

25th and LAST Golf Tournament A Big Success

The 25th and last CCBA / PBA Golf Tournament was held on Monday, October 12, 2015, at La Canada Country Club. On a hot but beautiful day members of these two great associations ate, drank, golfed, and raised money for our charitable organizations.

Thank you to everyone who participated and supported our efforts.

Thank you to all of our sponsors listed below. Without your help we could not have put on such a splendid event:

Joey Hernandez Insurance, Law Office of Louis Sepe, Law Office of Michael Norris, Law Office of Carey Caruso (In Memory of Paul Caruso CCBA President 1967), Bad Boys Bail Bonds, Narver Insurance, Rob Rutt Traveling Notary, Law Office of Ellen Driscoll, Law Office of Jeffrey Alpert & Bruce Richland, Christa Hohmann, Christie Parker & Hale, LLP, Palermo, Barbaro, Chinen & Pitzer, LLP, Law Office of Alison Triessl, Whittier Trust, Law Office of Leonard Levine, Law Office of Hutton & Wilson, Michael Suzuki, Wild About Trial, Court Call, Pasadena Recovery Center and Thon Beck Vanni Callahan & Powell.

Hahn and Hahn, Breakfast sponsor; Whittier Trust, Dinner Sponsor; Victoria Caro, Closest to Pin; Jack Trimarco, Longest Drive; Joey Hernandez Insurance, Lunch Sponsor; Christie Parker & Hale, LLP, Putting Contest.

Congratulations to the Low Gross Winners: Robert Wilson, Hon. Pat Hegarty, Steve Steponovich, and Tom Ortiz.

Congratulations to the Low Net Winners: Eric Barter, Paul Geller and John Tyre.

Congratulations to the Low Net Runner Up: Spenser Vodnoy, Andrew Leventhal, Ross Jacinto, and Mark Davis.

The winner of the Men's Long Drive was Tom Ortiz. The winner of the Ladies Long Drive was Heidi Bitterman.

The winner of the Men's Closest to the Pin was Stephen Locke and the winner of the Ladies Closest to the Pin was Ellen Driscoll.

Thanks to everyone who donated for the auction and raffle: Brandon Carroll, Eric Barter, Z Parking Pasadena, Christa Hohmann, Maria & Don Schweitzer, Oliver Bajracharya, Stefani Washburn, Michael Goldstein, Terry Dedeaux, Patrick McLaughlin, Law Offices of Hutton & Wilson, Jack Trimarco and Christopher Chaney.

Dinner Menu

The main entrees will be:

Roast Top Sirloin

Sliced medium rare with mirepoix and roasted scallions.

Fresh Filet of Salmon

Grilled and served with a champagne sauce.

Entrees include relish trays, soup du jour, fresh sourdough bread, garden salad with house vinaigrette dressing, fresh vegetable, rice or potato, sherbet and coffee or tea.

Complimentary appetizers will also be served.

Jumbo Chilled Shrimp

Meat Platter

Home Made Potato Chips

CCBA 2015 Paid Membership

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Braun	Harland
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Suzuki	Michael
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Tulekyan	Agavni
Tyre	Samuel
Uribe	John
Valone	Keith
Vodnoy	Spencer
White	Debra
Williams	Timothy
Yamamoto	Mia
Zlotnik	Arna

CCBA 2015 Sustaining Members

The Criminal Courts Bar Association thanks each of its Sustaining Members. Your contributions help support our programs for the 2014 year.

Artan	Michael
Bezonsky	Brian
Chacon	Richard
Chaney	Christopher
Chaney	Michael
Forbes	Lawrence
Hohmann	Christa
Hutton	Richard
Lake	Patrick
Levine	Leonard
Loren	Bruce
Marshall	Sharon Beth
Norris	Michael
Passanante	John
Re	Donald
Richland	Bruce
Sadowsky	Stephen
Schwartz	Robert
Wilson	Robert

CCBA Newsletter Case Digest

By Gary Mandinach

People v. Buycks (2015)__Cal.App.4th__, reported on October 21, 2015, in 2015 Los Angeles Daily Journal 11577, the Second Appellate District, Division 8 held that where the defendant committed a possession drug offense in the first case, and then while out on bail committed two additional felonies, subjecting himself to a violation of section 12022.1, but after the passage of Proposition 47,the first drug offense was reduced to a misdemeanor, and it "shall be considered a misdemeanor for all purposes," with exceptions not applicable to defendant's case, the trial court was precluded from reimposing the on-bail enhancement in a new case after felony in first case had been reduced to a misdemeanor. Because defendant was subject to a full resentencing in his second case, the court was required to evaluate the circumstances as they existed then, and by that time defendant's prior felony had been reduced to a misdemeanor. Therefore the 2-year on-bail enhancement pursuant to section 12022.1, is stricken.

People v. Woods (2015)__Cal.App.4th__, reported on October 21, 2015, in 2015 Los Angeles Daily Journal 11553, the Fourth Appellate District, Division 1 held that the trial court erred in failing to instruct the jury with lesser included offenses of nonforcible oral copulation with a minor, section 288a, subdivision (b)(1), with respect to charges of forcible oral copulation of a minor over the age of 14, section 288a, subdivision (c)(2)(A), and forcible oral copulation in concert of a minor over the age of 14. The ca found that the error was prejudicial where there was a reasonable probability that jury would have found the defendant guilty of the lesser offenses, based on evidence that the victim considered the defendant her boyfriend. Unlawful intercourse with a minor (statutory rape), section 261.5, subdivision (a), is not a lesser included offense of the substantive offense of forcible rape, even if the accusatory pleading alleges, for purposes of the One Strike Law, that the victim was a minor. Additionally, there is sufficient evidence in this case of great bodily injury under section 12022.7, subdivision (a) as a result of the minor, who had an abortion. (See People v. Cross (2008) 45 Cal.4th 58, 63, 65-66; People v. Menses (2011) 193 Cal.App.4th 1087, 1091.)

People v. Page (2015)__Cal.App.4th__ , reported on October 26, 2015, in 2015 Los Angeles Daily Journal 11718, the Fourth Appellate District, Division 2 held that the trial court did not err in denying appellant's resentencing under Proposition 47, section 1170.18, for a violation of Vehicle Code section 10851, subdivision (a). The court found that since said section remained a "wobbler" following enactment of Proposition 47, a defendant who suffered a felony conviction under Vehicle Code section 10851, subdivision (a), is not entitled to resentencing under that initiative.

In re Ricardo P. (2015)__Cal.App.4th__, reported on October 26, 2015, in 2015 Los Angeles Daily Journal 11663, the First Appellate District, Division 1 held that a probation condition requiring, without limitation, a juvenile to submit to warrantless searches of his electronic devices and accounts was overbroad, because it infringed on his rights to privacy and expression without being sufficiently tailored. However, the Court of Appeal did find that the provision, if properly tailored, is valid within the meaning of People v. Lent (1975) 15 Cal.3d 481. Two of the 3 prongs of the Lent analysis required to invalidate this type of electronic search condition are not met, but the third prong is, so therefore, it is a valid condition. (See In re Erica R. (2015) 240 Cal.App.4th 907, 910-911.) Additionally, the Court of Appeal found that appellant lacked standing to challenge the condition under section 632, regarding the confidentiality of the communication since it does not affect appellant's rights, (see B.C. Cotton Inc. v. Voss (1995) 33 Cal.App.4th 929, 947-948), but the right of the listeners.

People v. Waters (2015)__Cal.App.4th__, reported on October 28, 2015, in 2015 Los Angeles Daily Journal 11832, the First Appellate District, Division 1 held that the trial court erred in ordering victim restitution, 2 years after the defendant completed probation on an embezzlement plea. The Court of Appeal found that the trial court acted in excess of its jurisdiction since the defendant successfully completed her probation over two years before the court ordered restitution. (See Hilton v. Superior Court (2014) 239 Cal.App.4th 766; § 1203.3, subd. (a); In re Griffin (1967) 67 Cal.2d 343, 347.)

People v. Etheridge (2015)__Cal.App.4th__, reported on October 28, 2015, in 2015 Los Angeles Daily Journal 11821, the Second Appellate District, Division 1 held that a defendant is entitled to a finding of actual innocence under section 1485.55, subdivision (b) only if he or she can demonstrate by a preponderance of the evidence that he or she was "innocent" in the sense that he or she did not perform the acts "that characterize the crime" or are elements of the crime, and was therefore "wrongfully convicted and unlawfully imprisoned." The statute does not apply where a conviction is modified on appeal to reflect conviction of another offense.

People v. White (2015)__Cal.App.4th__, reported on October 28, 2015, in 2015 Los Angeles Daily Journal 11840, the Second Appellate District, Division 6 held that there was sufficient evidence to sustain a conviction of section 245, subdivision (c), where the evidence established that the defendant, who was being housed in CYA, intentionally threw a metal showerhead at a correctional counselor seated behind a glass window that had wire mesh in it. The prosecution was not required to prove the defendant's awareness of the fact that reinforced glass can break. A defendant who honestly believes that his act was not likely to result in a battery is still guilty of assault if a reasonable person, viewing the facts know to the defendant, would find that the act would directly, and naturally and probably result in a battery. To sustain the assault, specific intent to injure or a substantial certainty that an application of physical force will result. (People v. Williams (2001) 26 Cal.4th 779, 788.) Here, the glass broke and struck the officer on the other side of the glass.

Steven R. v. Superior Court (2015)__Cal.App.4th__, reported on October 28, 2015, in 2015 Los Angeles Daily Journal 11817, the Third Appellate District held that the disposition court, Sacramento, exceeded it jurisdiction when it dismissed a petition found true in San Francisco. The prosecution moved to dismiss that petition, a violation of section 25400, subdivision (a)(2) (possession of a concealed weapon), being the most recently adjudicated offense, for a previous offense for which the juvenile could be committed to the Division of Juvenile Facilities (DJF). (See Welf. & Inst. Code § 733, subd. (c).) Welfare and Institutions Code Sec. 782 provides in relevant part that only "[a] judge of the juvenile court in which a petition was filed may dismiss the petition." Therefore, the Sacramento court was without jurisdiction to dismiss the possession of a weapon offense, for which the minor could not be sent to DJF.

People v. Bridgeford (2015)__Cal.App.4th__, reported on October 29, 2015, in 2015 Los Angeles Daily Journal 11857, the Fifth Appellate District held that the trial court prejudicially erred when it failed to apply Maryland v. Shatzer (2010) 559 U.S. 98, which requires law enforcement to wait 14 days before resuming questioning (absent initiation by the suspect or with the presence of counsel) after a suspect has invoked his or her right to counsel and is released from custody, to a case where the interrogations occurred before Shatzer was decided, but the suppression hearing took place afterward.

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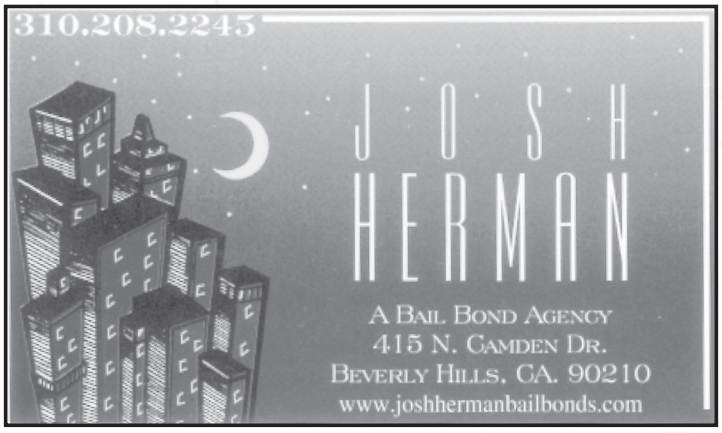

Save The Date

- *December dinner meeting, "Judges Night," will be held on Tuesday, December 8, 2015, at Taix Restaurant. Guest speakers will be the Hon. James Brandlin and the Hon. Scott Gordon.*
- *January dinner meeting will be held on Tuesday, January 12, 2016, at Taix Restaurant. Guest speaker will be Richard Hutton, "DUI: Case Law Update."*

In The Trenches

Congratulations to attorneys **RON KAYE** and **MARILYN BEDNARSKI** of Kaye, McLane, Bednarski & Litt, LLP for their continued success in the case involving Gabriel Carrillo.

After almost four years, the saga of Gabriel Carrillo – a visitor to Men's Central Jail in Los Angeles who was brutally beaten, falsely charged, and who ultimately played a pivotal role in prosecuting the corrupt deputy sheriffs, is over. In October of 2011, a week before trial, his criminal charges were dismissed; in the spring of 2014, he settled his federal civil rights case against the Los Angeles County Sheriff's Department for $1,175,000; in July of 2015, he testified against three deputy sheriffs and secured their convictions in federal court; and now, on November 6, 2015, his petition for factual innocence will be heard by the Los Angeles Superior Court. The District Attorney has conceded the issue. This nightmare of a conspiracy of corrupt law enforcement officers and his ultimate vindication have now come to a close.

A summary of the case is as follows:

On February 26, 2011, Mr. Carrillo and his fiancé, Grace Torres, violated the Los Angeles County Men's Central Jail's internal regulations by bringing cellular telephones to the visiting room. They were arrested and taken into a small "break room" outside the visiting lobby of Men's Central Jail. Inside the break room while handcuffed, Mr. Carrillo complained that he and his fiancé were being treated too roughly.

In response, after Mr. Carrillo's fiancé, Ms. Torres, was removed from the "break room" where they were both initially held, the deputies threw Mr. Carrillo to the floor and began punching and kicking his body and face. Mr. Carrillo's hands were still handcuffed behind his back while he was beaten on the floor. At times the deputies pulled Mr. Carrillo's handcuffs in order to move his body throughout the room.

As Mr. Carrillo squirmed to try to avoid the blows, one of the deputies kneeled down placing his knee on Mr. Carrillo's back, stopping him from moving. For most of the beating, one deputy was at Mr. Carrillo's feet, holding them with one hand and punching his thighs with the other. Another deputy kept his knee pressed against Mr. Carrillo's back and was punching his ribs. A third deputy punched his head and face. They cursed at him as they kicked and punched him.

Defendant Luviano sprayed Mr. Carrillo's face with a 3-5 second burst of Freeze + P (pepper spray). Since Mr. Carrillo was immobilized, the transparent purpose was to inflict greater pain on Mr. Carrillo's open wounds. When Mr. Carrillo complained that he couldn't breathe, Defendant Luviano said "if you can talk, you can breathe...I don't give a fuck if you choke, if you die." A deputy ultimately entered the room after the beating with a towel to clean up Mr. Carrillo's blood.

Mr. Carillos feared for his life during the beating. He was unable to breathe because of a combination of pain in his chest from being kicked, mucous and blood in his mouth from being punched and slammed face first into a refrigerator, and pepper spray that was directed at his face. The deputies mocked him during the beating. He was convinced he would die.

Mr. Carrilllo subsequently was booked at Men's Central Jail, where he spent three days prior to posting bail. There, besides feeling intense pain, he was terrified that the officers would return, beat him more and likely kill him. He suffered immensely for a couple of months, both from the severe pain to his face, chest, back (he is plagued to this day by a resulting back pain) and thigh where he had been beaten, and from a partial paralysis of one eyelid which he feared would be permanently damaged.

Then the nightmare of this assault was amplified when he faced very serious, albeit false, charges of resisting arrest and assaulting an officer. Mr. Carrillo was looking at up to 14 years in prison. In the discovery, six deputies wrote false reports describing Mr. Carrillo as the aggressor, and that he had attacked the deputies in this break room while one handcuff was removed for fingerprinting – all fabricated charges. As a result, he was terrified for nine months going to court and watching the deputies commit perjury against him through their testimony. He worried that no one on the jury would believe his word against six deputy sheriffs. Mr. Carrillo believed that he would be unfairly convicted and sent to prison for many years for a crime he did not commit leaving his fiancé alone – who was going to have a baby.

One week prior to trial, the criminal charges were dropped after attorneys Kaye and Bednarski met with the supervising DA and demonstrated the exculpatory evidence. Nevertheless, Mr. Carrillo's fear continued after the charges were dropped because the District Attorney reserved the right to re-file against him. The filing of false charges and the fact that he and the jury would have to listen to the falsified version of events provided by the six deputies involved in his beating caused tremendous anxiety for Mr. Carrillo.

The criminal case was dropped by the District Attorney's Office primarily because Mr. Carrillo's attorneys presented evidence that he had circumferential scarring on both of his wrists. This evidence rebutted the deputies fabricated justification for the brutal use of force based on the deputies erroneous allegation that at one point inside the "break room" Mr. Carrillo was only handcuffed around his left wrist and swung the loose cuffs like a weapon striking a deputy. This contention was squarely refuted by the objective evidence from the medical records and the post-arrest photographs clearly show deep circumferential markings on both of Mr. Carrillo's wrists consistent with struggling against the handcuffs while being beaten and dragged around by the cuffed hands within the "break room." In addition, Carrillo's attorneys developed evidence demonstrating that the deputies had planned to fabricate their own injuries, and had been laughing after he was sent to the hospital.

After the criminal case was dismissed against Mr. Carrillo by the District Attorney's Office, Mr. Carrillo filed a civil rights case against the County and the deputy defendants. In discovery, evidence was produced that Sergeant Eric Gonzalez, the supervisor present during the beating who approved the fabricated reports, sent a text message attached to the booking photo of Mr. Carrillo's beaten face to a fellow deputy who beat Mr. Carrillo's brother which read: "Looks like we did a better job," and "[w] here's my beer big homie."

Mr. Carrillo's attorneys also worked with the United States Attorney's Office to push for a federal criminal investigation against the deputies. As a result of this investigation, the FBI

(Continued)

found four other cases where these deputies had abused visitors to the Men's Central Jail.

Subsequent to the filing of Mr. Carrillo's lawsuit, the United States Attorney's Office filed criminal charges against the deputies involved in Mr. Carrillo's beating. After federal trial, three deputies involved in the beating of Mr. Carrillo were found guilty, and two pled. United States v. Eric Gonzalez, et. al, CR 13-574-GHK. In that case, the defendant deputies were convicted of violating the civil rights, including beatings, false arrest and the filing of false charges, of Mr. Carrillo at the Men's Central Jail in February of 2011.

This case epitomizes what the Los Angeles County Citizen's Commission on Jail Violence identified was as a long-standing pattern of conduct in the Sheriff's Department: deputies engaged in acts of brutality, then covered them up with false reports, and ultimately, the Sheriff's Department gave its rubber stamp of approval.

Gabriel Carrillo and Grace Torres have two children – a 2 ½ year old and a 6 month old – and are buying a home in Los Angeles, County with the proceeds from the settlement.

Congratulations to attorney **MARK KHALAF** for his recent success in San Bernardino, Department S21, the Honorable Michael Smith.

In a case entitled People vs. Gina Ortiz Mr. Khalaf participated in four day preliminary hearing with a charge of PC 187, murder; and PC 32, accessory after the fact to murder. At the conclusion of the hearing and upon argument by Mr. Khalaf the judge dismissed the murder charge and held the defendant to answer on PC 32.

Mr. Khalaf's defendant was at a party when a fight broke out. The victim was attacked by several individuals who took the fight too far, and killed him with too many punches and kicks to the head.

The defendant was interviewed by the police several months later and she said she did not see who hit him, because when the fight started she ran and got into her car for safety reasons - this was not the truth, she in fact saw the entire fight.

The victim's wife, during her fourth interview in 4 months, and for the first time, stated she heard and saw the defendant say to her (to the victim's wife) "oh hell no she's taking off her shoes" during the fight. After several attempts by the DA to have the defendant make another statement to her detective, and the defendant refusing, the DA filed P.C. 32 charges. Later, after further attempts to have her make another statement, which the defendant still refused to do, they then filed 187 charges against her with the theory of natural and probable consequences - i.e. her saying "oh hell no she's taking off her shoes" incited the fight and caused the individuals to attack the victim.

After a four day preliminary hearing, the murder charge was dismissed, and the judge held the defendant to answer only on the p.c. 32 charge.

Congratulations to attorney **STEFFENY HOLTZ** on her successful results in a 19 count information alleging PC 288(a) and other molestation charges committed by an El Segundo school teacher against his students.

The allegations that initiated the investigation involved the teacher calling up one of his students to his desk, in front of other students, and in front of teacher aides, and reportedly sexually touching that student.

After the District Attorney's Office sent out a press release other children reported in their complaints of molestation.

The case was tried before the Honorable Curtis Rappe and after one and a half months of trial Ms. Holtz heard "not guilty" on all charges.

In an interesting development, after being in trial for three weeks Ms. Holtz was told that there were 32 audio tapes that had not been turned over. One of the audio tapes was of a witness who had previously been called and testified. Upon motion Judge Rappe struck the testimony of that witness.

Ms. Holtz and her client decided not to make a mistrial motion and continued with trial.

Ms. Holtz sings the praises of her investigators, Armando Lopez and William Jackson. She was also very impressed with her expert, who is on the panel, Bradley McAuliff. He testified on cross contamination and witness suggestibility. The prosecution called as their expert Carroll Shakeshaft who initially identified as "Educator Sexual Misconduct Expert" and later testified as to Child Sexual Abuse Accommodation Syndrome.

Congratulations to past president **RICHARD HUTTON** on his recent success on a Watson murder tried before the Honorable Stan Blumenfeld in Pasadena.

It was alleged that the defendant was driving 90 miles an hour per the "black box" northbound on Garfield Ave in Monterey Park towards Alhambra. The driver of a vehicle in the number 2 lane changed to the number 1 lane where the defendant collided with the victim vehicle. The rear seat passenger died immediately and both the driver and front seat passenger were injured. The blood alcohol was .10 four hours after the accident. The case went to trial as a Watson murder with other charges of gross vehicular manslaughter and DUI with multiple injuries. After three weeks of trial and one and a half day of deliberations the jury returned a verdict of not guilty on the Watson murder and guilty on the lesser charges. The prosecutions offer before trial was 13 years and 8 months which then went up to 16 years and 8 months. At the probation and sentencing hearing the District Attorney asked for 9 years and 8 months. Judge Blumenfeld sentenced the defendant to low term plus enhancements for a total of 5 years and 8 months.

The defense experts were Dewayne Beckner and Herb Summers, accident reconstruction expert.

Congratulations to all for their successful work.