

CRIMINAL COURTS BAR ASSOCIATION NEWSLETTER

PUBLISHED BY THE CRIMINAL COURTS BAR ASSOCIATION

January 2016

The Criminal Courts Bar Association
cordially invites you to the
**JANUARY DINNER
MEETING**
with Guest Speaker



RICHARD A. HUTTON
"DUI: Case Law Update"



Tuesday, January 12, 2016

Cocktails/Reception
6:30 p.m.

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

Les Freres Taix Restaurant
1911 Sunset Blvd.
Los Angeles, CA 90026
(Near Alvarado)

1.0 MCLE Credit Approved

Reservations advised.
Call Elizabeth Ferrat at
(626) 577-5005 or email at
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CCBA WELCOMES

RICHARD A. HUTTON **AS OUR FEATURED DINNER SPEAKER**

Richard A. Hutton graduated from the University of California at Los Angeles in 1967 with a Bachelor's Degree, and with his law degree from the same university in 1970.

Mr Hutton is a past President of the Board of Governors of the California Attorneys for Criminal Justice (CACJ), past President of the Los Angeles County Criminal Courts Bar Association, and past President of California DUI Lawyers Association (formerly California Deuce Defenders).

Mr. Hutton is presently a partner in the Pasadena law firm of Hutton & Wilson. During his career, dedicated almost exclusively to criminal law, he has tried over five hundred jury trials. He has been designated as a Certified Criminal Law Specialist by the California State Bar Board of Legal Specialization. Additionally, he has represented various organizations appearing before the California Assembly Legislative Committee in Sacramento, testifying regarding proposed legislation.

In 1991 and 2010, Mr. Hutton received the Jerry Giesler Memorial Award from the Criminal Courts Bar Association. This award recognizes outstanding courtroom abilities.

Mr. Hutton has lectured extensively in the field of criminal law, with emphasis in driving under the influence cases. He has previously taught classes for the U.S.C. Advanced Professionalism Program on the subject of driving under the influence. He has lectured to various bar association groups, including California Attorneys for Criminal Justice, San Diego Trial Lawyers Association, Criminal Courts Bar Association, and Orange County Trial Lawyers. He has authored numerous articles on driving under the influence which have been published in numerous periodicals including Scientific and Expert Evidence, Second Edition.

IN THE TRENCHES

Congratulations to Mr. Anthony Willoughby for his many successes in 2015.

In People vs. Diaz, tried before the Honorable Michael Camacho in Pomona, the defendant was charged with three counts of attempted murder along with various gang allegations and other enhancements. One of the victim's was the ex-girlfriend of the co-defendant. The ex-girlfriend solicited her ex-boyfriend to rob her present boyfriend. A shooting occurred. The defendant was ultimately arrested and confessed. The defense argued that the defendant was coerced into his confession.

After a three week trial the co-defendant was convicted in one day and Mr. Willoughby's defendant hung after four days of deliberations.

(Continued on pg. 2)

IN THE TRENCHES *continued*

Interesting Issue: the District Attorney also brought a motion to shave the defendants head during trial to show his tattoos.

The defense argued that it was a first amendment violation and argued that the defendant growing out his hair is "a poor mans laser tattoo removal."

The court allowed the forced shaving of the defendant's hair.

In People vs. Leah Hawkins tried before the Honorable Ricardo Ocampo in Department J in Compton the District Attorney alleged that the defendant planned to rob, torture, and murder a high roller from Sam's Hofbran in downtown Los Angeles. Sam's, once a great sandwich restaurant, is now a strip bar.

The victim was found in his car. Phone analysis put the victim at the defendant's location. One drop of blood was found but not photographed. The defense argued that the blood was planted because the victim bled out and there would have been trace evidence of more blood than just that single drop.

The trial lasted one month and after three to four days of deliberations the jury returned a verdict of not guilty.

The defense experts were David Sugiyama on blood spatter and Ernest Koeberline on cell phone information.

In People vs. Ryan Roth the defendant was charged in connection with the October 2013 shooting death of Rene Balbuena, forty-one years old. After parts of four days of deliberations the verdict was reached finding Mr. Roth not guilty of murder, attempted murder and four robbery counts. The jury was deadlocked and could not reach verdicts on two other robbery counts.

The victim was with his 15 year old son when he drove to 90th Second Street in Gramercy Place in an effort to purchase a cell phone that had been advertised on Craigslist. Roth and defendant Thomas allegedly approached the car in which the father and son arrived and demanded money. The victim was shot when he got out of his car.

Co-defendant Thomas had previously pled guilty to one count of voluntary manslaughter and two counts of second degree robbery. Mr. Thomas testified against Mr. Roth.

In USA vs. Chafino, trial started on the same day as the Craigslist case went to the jury.

The case was tried in front of the Honorable Fernando Olguin.

The defendant was charged with selling guns and obliterating the registration numbers.

The jury returned a verdict of not guilty on both counts.

The defense argued that the situation was set up by the government. The defendant was used as a go between and the defense used a duress argument. After a one week trial and one and a half hours of deliberations the defendant was found not guilty.

Mr. Willoughby was also successful on several other trials in 2015.

CCBA MEMBERSHIP

You are hereby cordially invited to join or renew your membership in the Criminal Courts Bar Association.

The first meeting of the Criminal Courts Bar Association took place in 1954 at the old Levy's Restaurant located on Spring Street in downtown Los Angeles. Among the founders and active practitioners who helped form our organization were Al Matthews, Abbot Bernay, Max Solomon, John Marshall, Forrest Appell, Dick Erwin, Harold Ackerman, Joe Rosen, Maury Lavine, and Al Garber. Jerry Giesler actively participated in the organization in its initial stages and he was the only president to serve two terms.

The Articles of Incorporation state that "the specific and primary purpose of this corporation is to form a professional association of attorneys actively engaged in the practice of law who are dedicated to upholding and improving the standards for the administration of justice."

Quoting our revered past president, James G. Cooney, "since the beginning that statement of purpose has been and is the reason for our existence. Our association will grow in size, strength, and respect only to the extent permitted by the force, vigor, and diligence generated by the membership."

These are among the many reasons to join the Criminal Courts Bar Association:

- Networking opportunities through our monthly dinner meeting and social events.
- MCLE credits.
- Newsletter: Keeping you up-to-date with current case law and events of importance.
- Charitable opportunities through our fundraising, golf tournament, and annual clothing drive.
- Annual Awards Dinner where the best and brightest of our profession are honored.
- Lend your voice to the other professionals who make a difference in the criminal justice system.
- Be a part of the history and tradition of the Criminal Courts Bar Association.



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☞ DINNER MENU ☞

The main entrees will be:

Short Ribs Provencal

Braised with carrots, tomatoes and celery. A house favorite.

Filet of Sole

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.

CCBA GIVES

The Criminal Courts Bar Association is pleased to announce that as a result of a successful 25th and last annual golf tournament we raised enough funds to make charitable donations in the amount of \$1,500 each to the Grandview Foundation and to Pasadena Recovery Center. Thank you to everyone who contributed, played, donated, and supported our efforts.

CCBA THANKS JOHN TYRE

The Criminal Courts Bar Association thanks past president John Tyre for all of his many donations of hockey equipment, hockey tickets, and his generosity in making the Criminal Courts Bar Association Golf Tournament a success these many years.

Thank you John!

CCBA NEWSLETTER CASE DIGEST

By Gary Mandinach

In re Amanda A. (2015) __Cal.App.4th__, reported on November 24, 2015, in 2015 Los Angeles Daily Journal 12595, the First Appellate District, Division 2 held that the minor did not obstruct a peace officer, in violation of section 148, subdivision (a)(1), by telling her probation officer that she “would refuse” to accompany the social workers who were on the way to juvenile hall to transfer her to a group home. There are 3 elements to a violation of section 148, subdivision (a), and they are set for in *In re Muhammed C.* (2002) 95 Cal.App.4th 1325, 1329. While one need not commit a bodily obstruction to violate the statute, a mere statement of “future” intention to defy the officer’s command will not suffice. (See *People v. Quiroga* (1993) 16 Cal.App.4th 961, 966 [upheld a violation of section 148 for refusal to provide his name “during” booking.])

People v. Acosta (2015) __Cal.App.4th__, reported on November 24, 2015, in 2015 Los Angeles Daily Journal 12578, the Second Appellate District, Division 5 held that attempted car burglary is not among the offenses which are eligible to be reduced to a misdemeanors under section 1170.18. Proposition 47 does not, by reducing theft of property valued at no more than \$950 to a misdemeanor while attempted burglary of a vehicle of the same value remains a “wobler,” violate equal protection. The electorate could rationally have concluded that the breaking-and-entering aspect of burglary merits greater punishment, or could have concluded that allowing prosecutors to decide whether to charge attempted burglary as a felony or a misdemeanor was a valid policy.

People v. Lynn (2015) __Cal.App.4th__, reported on November 25, 2015, in 2015 Los Angeles Daily Journal 12625, the Second Appellate District, Division 3 held that pursuant to *People v. Johnson* (2015) 61 Cal.4th 674, 688, the trial court erred in denying petitioner’s petition for resentencing under Proposition 36, section 1170.126. The trial court erred in ruling that defendant’s conviction of robbery, a serious or violent felony, made him ineligible for Proposition 36 resentencing on his conviction of attempted grand theft, which was not a serious or violent felony.

People v. Peacock (2015) __Cal.App.4th__, reported on November 27, 2015, in 2015 Los Angeles Daily Journal 12682, the Fourth Appellate District, Division 2, held that the trial court erred when it granted petitioner’s petition to reclassify his receiving stolen property offense, within the meaning of section 496d, a misdemeanor under Proposition 47, section 1170.18, subdivision (a). The Court of Appeal found that the receipt of a stolen vehicle in violation of section 496d is not one of the crimes that have been reduced to misdemeanors by Proposition 47, regardless of the value of the vehicle. Proposition 47, by reducing other theft-related offenses to misdemeanors when the value of the stolen property does not exceed \$950, without granting similar treatment to violations of section 496d, does not violate Equal Protection Clause. There are rational distinctions between section 496d and other offenses, including the potential for increasing the value of the stolen vehicle by selling off parts and the particular inconvenience of such crime to the victims.

People v. Esparza (2015) __Cal.App.4th__, reported on November 30, 2015, in 2015 Los Angeles Daily Journal 12695, the Sixth Appellate District held that the trial court erred in using the wrong standard or definition for “an unreasonable risk of danger to public safety,” when it denied petitioner’s Proposition 36, section 1170.126, petition by placing the burden of proof upon the defendant pertaining to his dangerousness. Denial of Proposition 36 resentencing had to be reversed where the trial court based its ruling in part on the defendant’s extensive record of convictions, which were largely alcohol-related, and on a finding that the defendant did not attend prison AA meetings until the law changed to make him eligible for resentencing, which finding was not supported by the record. In determining whether the prosecution has carried its burden of proving dangerousness, in order to support denial of resentencing to an eligible defendant, the primary focus must be on current rather than past dangerousness.

In re J.L. (2015) __Cal.App.4th__, reported on December 8, 2015, in 2015 Los Angeles Daily Journal 12995, the Second Appellate District, Division 5 held that a theft from a school locker was not a theft from a “commercial establishment,” and as a result the defendant was not eligible for a reduction of the offense from burglary to shoplifting under Proposition 47, section 1170.18, subdivision (a). The opinion goes into what a common and realistic definition is of a “commercial establishment.”


People v. Dealba (2015) __Cal.App.4th__, reported on December 9, 2015, in 2015 Los Angeles Daily Journal 13064, the Second Appellate District, Division 3 held that there was sufficient evidence to convict he defendant of an assault with a deadly weapon, to wit a car, where the defendant intentionally caused an auto collision, with the car of his estranged wife, where the collision almost made the victim lose control of her car, and as a result, she had to wrestle with the steering wheel to keep her car on the road and avoid hitting other vehicles parked along the curb. There was also evidence of spousal battery even though the former spouse was not touched herself.



CRIMINAL COURTS BAR ASSOCIATION

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SAVE THE DATE

*CCBA Dinner Meeting will be held on
January 13, 2015, at Taix Restaurant.*

*The featured dinner speaker will
be Richard A. Hutton, "DUI: Case
Law Update."*