CRIMINAL COURTS BAR ASSOCIATION

NEWSLETTER

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LACCBA.ORG

The
Criminal Courts Bar Association
cordially invites you to the
MARCH DINNER MEETING
with guest speaker

KENDRA CARMAN

Deputy District Attorney IV - Hardcore Gang Division
Compton Branch

"Vicarious Trauma Among Prosecutors and Criminal Defense Attorneys as a Result of Repetitive Exposure to Violent Images and Events"

TUESDAY, MARCH 8, 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 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*

CCBA Welcomes Kendra Carman Deputy District Attorney
as our featured dinner speaker

Kendra Carman joined the Los Angeles County District Attorney's Office in 1995, directly after graduation from UCLA Law School. She has served in the office for over twenty years. The majority of her career involved specialization in cases involving domestic violence, sexual assault and child abuse. In 2010, she was awarded the Deputy District Attorney of the month for her successful prosecution of the sexual assault and murder of a two-year-old, a case involving complicated medical and scientific evidence. The next phase of her career was spent in the District Attorney's Training Division, where she was part of a team that trained one hundred and forty-two new deputy district attorneys. In 2014, she was awarded the LAPD's Excellence in Instruction Award for her training of law enforcement. She has tried over fifty felony jury trials, and in 2015 was awarded the Los Angeles District Attorney's Office Ken Lam Distinguished Achievement Award. She is currently assigned as a trial deputy to the Hardcore Gang Division in Compton.

2016 Criminal Courts Bar Association Award Winners

The Criminal Courts Bar Association is pleased to announce that the 63rd Annual Awards Dinner will be held on Saturday, April 23, 2016 at the Millennium Biltmore Hotel, Los Angeles. Cocktails at 6:00p.m., Dinner at 7:30p.m. Criminal Defense Attorney Gilbert Rodriguez and his 10-piece Westside Crew band will take the stage directly after the program. Limited seating is available for this event.

The Criminal Courts Bar Association is pleased to announce the award winners for 2016:

JERRY GIESLER MEMORIAL AWARD
Steffeny Holtz

JOSEPH M. ROSEN JUSTICE AWARD
Michael Adelson

ROBERT M. TAKASUGI JUDICIAL EXCELLENCE AWARD
The Honorable Gregory Dohi

MORT HERBERT SERVICE AWARD
Carey Caruso

JOHNNIE COCHRAN AWARD
Marilyn Bednarski
Ron Kaye
Kevin Lahue

PRESIDENT'S AWARD
Governor Jerry Brown

CCBA Newsletter Case Digest

By Gary Mandinach

People v. Vargas (2016)__Cal.App.4th__, reported on January 21, 2016, in 2016 Los Angeles Daily Journal 588, the Second Appellate District, Division 8 held that the definition of "shoplifting" in Proposition 47, section 1170.18, goes beyond the commonly understood lay definition. The defendant's commercial burglary offense, which consisted of entering a commercial establishment with the intent to use a forged check for less than Proposition 47's $950 threshold, had to be reduced to a misdemeanor absent a finding of unreasonable risk to public safety. This case comes out with a contrary opinion from that taken in *People v. Gonzales* (2015) 242 Cal.App.4th 35. Certainly, the lay person might understand "shoplifting" to mean entering a retail store during regular business hours with the intent to steal displayed merchandise. But that is not how the voters defined "shoplifting" in section 459.5; instead, they defined it as entering a commercial establishment during business hours with the "intent to commit larceny." Accepting Gonzales' narrow interpretation would require us to rewrite the statute, which we cannot do. Section 459.5 redefined certain second degree burglaries, and the California Supreme Court has held an intent to commit theft by false pretense or a false promise without the intent to perform will support a burglary conviction. (People v. Parson (2008) 44 Cal.4th 332, 354.)

People v. Orozco (2016)__Cal.App.4th__, reported on January 22, 2016, in 2016 Los Angeles Daily Journal 717, the Fourth Appellate District, Division 1 held that Proposition 47 does not apply to crimes that are not specifically enumerated in the law itself, and that includes unlawfully driving a vehicle of another without permission, Vehicle Code section 10851, subdivision (a), and receiving a stolen vehicle within the meaning of section 496d. The holding here is consistent with People v. Page (2015) 241 Cal.App.4th 714, but for a different rationale, but is contra to People v. Gomez (2015)__Cal.App.4th__, reported on December 24, 2015, in 2015 Los Angeles Daily Journal 13665.

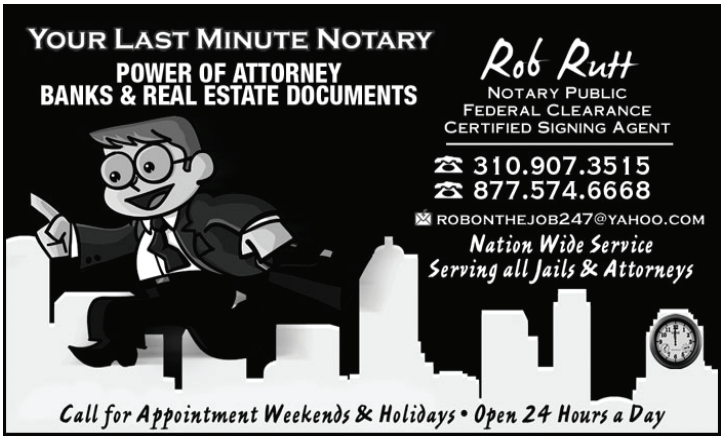
Dinner Menu

The main entrees will be:

Roast Top Sirloin
Sliced medium rare with mirepoix and roasted scallions.

Fresh Boneless Trout Almandine

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 Newsletter Case Digest

By Gary Mandinach

People v. Cornejo (2016)__Cal.App.4th__, reported on January 21, 2016, in 2016 Los Angeles Daily Journal 635, the Third Appellate District held, consistent with *People v. Prunty* (2015) 62 Cal.4th 59, wherein the high court held that when a defendant is part of a gang "subset" such as "Norte" of the large gang of Norteno, and when the prosecution attempts to prove a violation of section 186.22, subdivision (b), the street gang enhancement, by showing the defendant committed a felony to benefit a given gang, but establishes the commission of the required predicate offenses with evidence of crimes committed by members of the gang's alleged subsets, "other than the subset to which defendant belongs," it must prove a connection between the defendant's gang and the other subsets. Prunty requires reversal of the gang enhancement findings (§ 186.22, subd. (b)) as to all defendants. Also, because each defendant was found to qualify for vicarious firearm enhancements under section 12022.53, subdivision (e)(1), which requires violation of section 186.22, subdivision (b), as an element of that enhancement, we must reverse these vicarious firearm enhancements as to all defendants as well. resentencing was required where the defendants committed murder while below the age of 18. Record was unclear as to whether the trial court properly took into consideration all mitigating circumstances attendant in each defendant's life, including but not limited to his chronological age at the time of the crime and his physical and mental development, before imposing a functionally equivalent LWOP sentence, (120 to life plus a determinate term.) In Miller v. Alabama (2012) 567 U.S. ___, ___ [132 S.Ct. 2455, 2458, 183 L.Ed.2d 407], the United States Supreme Court held the Eighth Amendment forbids a state from mandating the imposition of an LWOP sentence on a juvenile homicide offender. (Id. at p. 2469.) The court explained: "Mandatory life without parole for a juvenile precludes consideration of his [or her] chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences. It prevents taking into account the family and home environment that surrounds him [or her]—and from which he [or she] cannot usually extricate himself [or herself]—no matter how brutal or dysfunctional. It neglects the circumstances of the homicide offense, including the extent of his [or her] participation in the conduct and the way familial and peer pressures may have affected him [or her]. Indeed, it ignores that he [or she] might have been charged and convicted of a lesser offense if not for incompetencies associated with youth—for example, his [or her] inability to deal with police officers or prosecutors (including on a plea agreement) or his [or her] incapacity to assist his [or her] own attorneys. [Citations.] And finally, this mandatory punishment disregards the possibility of rehabilitation even when the circumstances most suggest it." (Id. at p. 2468.) The court concluded: "Although we do not foreclose a sentencer's ability to [impose an LWOP sentence on a juvenile] in homicide cases, we require it to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." (Id. at p. 2469.) Subsequently SB 260, was passed, (see § 3051) wherein it is required to give the young defendant parole hearing after a certain number of years. Despite this safety net, the legislation does not substitute for the sentencing court's consideration of all individual characteristics of the offender as proscribed by Miller. In short, our Supreme Court has recognized a statutory promise of future correction of a presently unconstitutional sentence does not alleviate the need to remand for resentencing that comports with the Eighth Amendment. Accordingly, with respect to both minors, we conclude the matter must be remanded to the trial court for a new sentencing hearing that meet constitutional requirements.

Montgomery v. Louisiana (2016__U.S.__, reported on January 26, 2016, in 2016 Los Angeles Daily Journal 778, the United States Supreme Court held that Miller v. Alabama's (2012) 567 U.S. ___, ___ [132 S.Ct. 2455, 2458, 183 L.Ed.2d 407] ban on life-without-parole sentences for juvenile offenders is a new substantive rule of constitutional law that must be given retroactive effect on state collateral review. Therefore, the petitioner, who has been in custody for over 50 years, should now have the opportunity to have either a new sentencing or possibly a parole hearing.

People v. Trujillo (2016)__Cal.App.4th__, reported on January 26, 2016, in 2016 Los Angeles Daily Journal 765, the Fourth Appellate District, Division 1 found that the complaint alleged that the defendants submitted payroll documents that underreported employee wages over a period of years to, among others, two insurance companies, the State Compensation Insurance Fund and the Employment Development Department, for purposes of reducing insurance premiums and taxes. The complaint further alleged that the defendants thereby violated statutes proscribing workers' compensation insurance fraud, withholding tax fraud, wage fraud, and uttering a false or forged instrument. The complaint was not "vague and uncertain" within the meaning of section 952, and the prosecutors were not required to identify specific dates for all counts because the defendants did not establish that time was a material element.

People v. Ramos (2016)__Cal.App.4th__, reported on January 26, 2016, in 2016 Los Angeles Daily Journal 794, the Fourth Appellate District, Division 3 held that since Health and Safety Code section 11352 was amended to make "transportation for sale," for non-personal use, and is now an element of the charge (U.S. v. Gaudin (1995) 515 U.S. 506-510; People v. Flood (1998) 18 Cal.4th 470, 481), the defendant's transportation of heroin conviction had to be reversed. The amendment applies retroactively, (see People v. Brown (2012) 54 Cal.4th 314, 319-320; People v. Wright (2006) 40 Cal.4th 81, 90), but does not bar retrial under double jeopardy principles. (People v. Figueroa (1993) 20 Cal.App.4th 65, 72, fn.2.) There was sufficient evidence to convict the defendant of possession for sale of methamphetamine, where she admitted ownership and control over her purse, and the discovery of large quantities of heroin and methamphetamine, a digital scale, and packaging materials within it, were sufficient to prove defendant's intent to personally sell the methamphetamine. The defendant needs to either (1) possess the specific intent to sell the controlled substance personally, or (2) possess the specific intent that someone else will sell the controlled substance. (People v. Parra (1999) 70 Cal.App.4th 222, 227.)

In re Bianca S. (2015)__Cal.App.4th__, reported on November 4, 2015, in 2015 Los Angeles Daily Journal 12059, the Fourth Appellate District, Division 1 held that the Juvenile court erred when it committed dependent children (Welf. & Inst. Code § 300), age 13, who had never been in trouble before, who was accused of 2 misdemeanor property offenses, to be detained in juvenile hall. The court ordered such commitment on the recommendation of the probation officer, who offered no explanation for overriding applicable risk assessments, and the court made no findings as to why it ordered detention for minors. The Juvenile Court Law protects the minor's right to an individualized detention hearing, in which the court may not dispose of cases by mechanical rules on a categorical basis. (In re William M. (1970) 3 Cal.3d 16, 19.) The intendments are all against detention, and may not be ordered unless there is clear proof of the "urgent necessity" which Welfare and Institutions Code sections 635 and 636 require. (In re Dennis H. (1971) 19 Cal.App.3d 350, 354.)

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Save The Date

- *CCBA DARK IN APRIL.*
- *63rd Annual Awards Dinner will be held on Saturday, April 23, 2016 at the Millennium Biltmore Hotel, Los Angeles. Cocktails at 6:00 p.m. - Dinner at 7:30 p.m.*