

CRIMINAL COURTS BAR ASSOCIATION NEWSLETTER

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SEPTEMBER 2015



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

“HOW TO PREPARE YOUR CLIENT FOR STATE PRISON”

presented by

**ROBERT SCHWARTZ,
ANTHONY BROOKLIER AND
Former State Prison Inmate
TERRY AMOS**



TUESDAY, SEPTEMBER 8, 2015

Cocktails & Reception - 6:30 p.m.

Dinner Meeting begins promptly at 7:00 p.m.

\$40.00 per person

*LES FRERES TAI X RESTAURANT
1911 Sunset Blvd., Los Angeles, CA 90026*

1 Hour MCLE

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

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25TH (AND LAST!) ANNUAL CRIMINAL BAR ASSOCIATION AND PASADENA BAR ASSOCIATION GOLF TOURNAMENT

*The Criminal Courts Bar Association
and the Pasadena Bar Association*

*is pleased to invite you to the
25th (and LAST!) Annual Golf Tournament.*

*The tournament will be held at
La Cañada Country Club on
Monday, October 12, 2015.*



For the last fifteen years this event has raised a substantial amount of money for local charities. Thank you for all of the support you have given to our associations over the last many years. It is time to rally one last time to make this the best tournament/fundraiser yet.

A save the date fact sheet is enclosed. There are many ways to support the tournament including playing in the golf tournament, donating items for the auction following the tournament, attending the auction/dinner and selecting a sponsorship opportunity.

☞ 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.

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Garcia	Anthony	Song	Joohan
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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.

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CCBA NEWSLETTER CASE DIGEST

By Gary Mandinach

People v. Cowart (2015) __Cal.App.4th__, reported on July 21, 2015, in 2015 Los Angeles Daily Journal 8264, the First Appellate District, Division 2 held that where the defendant was charged with hit and run, a violation of Vehicle Code section 20001, subdivision (a), and where there is no proof, in the absence of allegations or evidence that the victim's death resulted from the defendant's flight from the accident scene, (see *People v. Wood* (2000) 83 Cal.App.4th 862, 866), for purposes of section 1601, subdivision (a), which requires a minimum period of confinement before outpatient medical treatment will be provided for a defendant "charged with and found incompetent on a charge of... any felony involving death," leaving the scene of a car accident did not establish that, and as a result, section 1601 is inapplicable event though the trial court found this 68-year old incompetent to stand trial due to his cascular dementia.

People v. Borynack (2015) __Cal.App.4th__, reported on July 21, 2015, in 2015 Los Angeles Daily Journal 8269, the Fourth Appellate District, Division 2 held that where the defendant was convicted of a crime under the Destructive Devices and Explosives act, section 18710, here possession an IED, may be sentenced to local custody confinement if otherwise eligible under the Criminal Justice Realignment Act (see § 1170, subdivision (h)(5)), but section 18780, which prohibits suspending execution of sentence when a defendant is convicted of any such crime, would still apply and the defendant was not eligible for the split sentence and probation as the trial court had imposed; it was an unlawful sentence.

People v. Lopes (2015) __Cal.App.4th__, reported on July 22, 2015, in 2015 Los Angeles Daily Journal 8342, the First Appellate District, Division 3, held that a juvenile adjudication, here a violation of Vehicle Code section 23153, subdivision (a) when appellant was 17 years old, does not qualify as a "prior violation...that was punished as a felony" so as to elevate a misdemeanor driving under the influence offense to a felony under Vehicle Code section 23550.5. Welfare and Institutions Code section 203 provides that an order adjudging a minor to be a ward of the juvenile court "shall not be deemed a conviction of a crime for any purpose, nor shall the proceeding in the juvenile court be deemed a criminal proceeding. Where as here, the statutory language is obscure and the prosecution's interpretation is no more reasonable than any other, the rule of lenity counsels against their construction. (E.g., *People v. Avery* (2002) 27 Cal.4th 49, 58.)

People v. Rivas (2015) __Cal.App.4th__, reported on July 22, 2015, in 2015 Los Angeles Daily Journal 8345, the Third Appellate District held that expert fingerprint evidence is not subject to a foundational Kelly hearing, (see *People v. Kelly* (1976) 17 Cal.3d 24) because fingerprint evidence is not a novel scientific technique, and does not have a misleading aura of certainty, (see *In re O.D.* (2013) 221 Cal.App.4th 1001), nor is fingerprint evidence, in general, so unreliable that it must be excluded. (See *United States v. Herrera* (7th Cir. 2013) 704 F.3d 480.) A contrary holding is found in *Sargon Enterprises, Inc. v. University of Southern California* (2012) 55 Cal.4th 747, 769-772 [trial courts play a vital gatekeeping role to insure reliability of underlying conceptual or methodological basis for testimony.]

People v. Riley (2015) __Cal.App.4th__, reported on July 22, 2015, in 2015 Los Angeles Daily Journal 8359, the Fourth Appellate District, Division 2 held that the defendants, an insurance broker who allegedly paid bribes to obtain business from a casino, and the casino's chief financial officer, who allegedly received the bribes, could not have been guilty of commercial bribery, in violation of Penal Code section 641.3, subdivision (a), where the evidence established that the CFO was no longer employed by the company on the date the payments

were made. With respect to payments made by the broker to the CFO while the CFO remained employed by the company, the evidence that they acted "corruptly," i.e., with the specific intent to injure or defraud the CFO's employer, as required by the statute, was sufficient. The CFO allowed the broker to set his own fees in return for numerous payments he received from the broker, as exemplified by instances in which the broker obtained a lower premium on a policy than he had originally quoted to the casino, but instead of giving the casino the benefit of the reduction, merely added the difference to his own fee, even though the additional fee was not justified by any additional work performed by the broker to obtain the lower premium, and by at least one instance in which the broker charged an apparently unconscionable fee.

In re K.B. (2015) __Cal.App.4th__, reported on July 22, 2015, in 2015 Los Angeles Daily Journal 8335, the First Appellate District, Division 4 held that the police department's "Instagram officer", whose duties involved monitoring social media for evidence of crimes, and another police officer sufficiently authenticated photographs seized from another person's cellphone that were introduced to prove the minor possessed firearms that he was seen holding in the photos. (See *People v. Goldsmith* (2014) 59 Cal.4th 258 [pertaining to the authentication of electronic evidence. The purpose for which the evidence is being offered will determine what must be shown for authentication, which vary from case to case. The facts conflicting inferences can be drawn regarding authenticity goes to the weight, not the admissibility.]) Other cases pertaining to authentication of social media such as Facebook, MySpace, or Instagram include, with conflicting results, are found in *People v. Beckley* (2010) 185 Cal.App.4th 509, and *People v. Valdez* (2011) 201 Cal.App.4th 1429, 1435. The prosecution's expert testified that the photographs were taken approximately five hours before the arrest, that the witness had seen the seized photographs on social media prior to the arrest, that the juvenile was wearing the same clothes and was in the same location depicted in the photographs, and that he was arrested along with several of the same individuals who appeared with him in the photographs.

People v. Murillo (2015) __Cal.App.4th__, reported on July 23, 2015, in 2015 Los Angeles Daily Journal 8401, the Second Appellate District, Division 6 held that dismissal of criminal-threats charges within the meaning of section 140, which were premised on the content of a "rap" song, based on magistrate's determination that the lyrics were protected speech, was error, and as a result the complaint was reinstated. Under section 140, it was up to the trier of fact to determine whether the lyrics, which were directed at specific persons, constituted a true threat. (See *People v. Lowery* (2011) 52 Cal.4th 419.) The threat does not have to be communicated to the victim. (*People v. McLaughlin* (1996) 46 Cal.App.4th 836, 842.)

In re Christian H. (2015) __Cal.App.4th__, reported on July 23, 2015, in 2015 Los Angeles Daily Journal 8382, the First Appellate District, Division 3 held that the juvenile court abused its discretion in finding that returning the minor to Honduras, from which he had come to the United States unaccompanied, was not in minor's best interests for the purpose of petitioning for relief from deportation under 8 U.S.C. Sec. 1101 as a "special immigrant juvenile," but that returning to Honduras was in his best interests for the purpose of selecting a disposition. Under Welfare and Institution Code section 738 a court is authorized to order a nonresident juvenile offender returned to his or her parents who reside in a foreign country. (See *In re Manuel P.* (1989) 215 Cal.App.3d 48, 63; see also *In re Jose C.* (2009) 45 Cal.4th 534, 549, fn.9.) The juvenile court was not compelled to turn the minor over to the federal authorities.



CRIMINAL COURTS BAR ASSOCIATION

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Los Angeles Project Director

714.865.1769 mobile
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SAVE THE DATE

*25th Annual Criminal Courts
Bar Association and Pasadena Bar
Association Golf Tournament to be held
at La Canada Country Club on
Monday, October 12, 2015.*