CRIMINAL COURTS BAR ASSOCIATION

NEWSLETTER

PUBLISHED BY THE CRIMINAL COURTS BAR ASSOCIATION OCTOBER, 2014

OCTOBER MEETING

The Criminal Courts Bar Association

cordially invites you to the October Dinner Meeting

"A Panel Discussion on Mental Health & The Criminal Justice System"

Guest Speakers

JACKIE LACEY, *Los Angeles County District Attorney*

JOANNE ROTSTEIN, *Head Deputy, Public Defender's Office*

MICHELLE HALL, *Alternate Public Defender's Office*

FLORA GIL KRISILOFF, *Deputy on Mental Health & Homelessness, Office of Los Angeles County Supervisor Zev Yaroslavsky*

KEITH VALONE, Ph.D., Psy.D., M.S.C.P.
The Arroyos Psychological Associates, Clinical Director and Clinical Psychologist

TUESDAY, OCTOBER 14, 2014

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 Hour MCLE Credit

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

CCBA Newsletter Case Digest

By Gary Mandinach

People v. Adair (2014)__Cal.App.4t__ , reported on August 21, 2014, in 2014 Los Angeles Daily Journal 11352, the Fourth Appellate District, Division 2 held that the trial court did not abuse its discretion in denying, at this time, a certificate of rehabilitation and pardon within the meaning of section 4852.01, where the legislation requiring persons convicted of certain sex offenses, including annoying or molesting a child under section 647, subdivision (a), to wait 10 years before petitioning for a certificate of rehabilitation and pardon, while defendants convicted of other sexual offenses need only wait seven years, (see § 4852.03 [setting time periods for the certificate), does not violate equal protection clauses. The Legislature could have rationally determined that offenses in the first group, all of which involve offenses against children, require a longer period of rehabilitation, even when they carry lesser punishment than the other offenses. (See People v. Schoop (2012) 212 Cal.App.4th 457, 453, 468-469 [issue of whether the defendant was subject to the 7 or 10 year waiting period].)

People v. Baniani (2014)__Cal.App.4th__, reported on August 25, 2014, in 2014 Los Angeles Daily Journal 11585, the Fourth Appellate District, Division 3 held that the trial court prejudicially erred in not permitting the defendant from putting on a Medical Marijuana Program Act Defense (MMPA) in defense of being charged with sale of marijuana, and possession for sale of marijuana. Health and Safety Code section 11362.775, which is a section of the MMPA, which allows the cultivation of marijuana for medical purposes, subject to various restrictions, does not bar a qualified medical marijuana patient who grows marijuana as part of a collective from receiving payment to cover cultivation costs. Instructive are People v. Urziceanu (2005) 132 Cal.App.4th 747, 772-723 [the defendant's assertion of a good faith mistake of law in believing that the formation of a users' cooperative was legal, while not a defense to the crime of selling marijuana, was a defense to the conspiracy charge]; and People v. Jackson (2012) 210 Cal.App.4th 525, 533 [trial court prejudicially erred by granting the prosecution Evidence Code section 402 motion to deny the defense from using the Proposition 215 and the MMPA].

United States v. Fowlkes (2014)__ F.3d__, reported on August 26, 2014, in 2014 Los Angeles Daily Journal 11643, the Ninth Circuit Court of Appeal held that the forcible removal of drugs from the defendant's rectum during a body cavity search at a jail, without medical training or a warrant, violated the defendant's Fourth Amendment rights, requiring that the evidence obtained from the search to be suppressed. Where the police, pursuant to a lawful wiretap, intercepted a voicemail suggesting that the defendant paid rent for an apartment, and also intercepted calls in which the defendant mentioned undercover officers and referenced "get[ting] everything out of" the premises and "trash[ing]" his phone to avoid problems with law enforcement, it was reasonable for the officers to conclude that drugs were present at the apartment and to seek a warrant to search it. Where officers ordered a traffic stop after observing what they believed, based on previous surveillance of defendant and their own experiences, to be a narcotics transaction between the defendant and another individual, a warrant was not required, and the officers were entitled to seize evidence in plain view within the vehicle following the stop.

People v. Lujano (2014)__Cal.App.4th__, reported on August 28, 2014, in 2014 Los Angeles Daily Journal 11845, the Fourth Appellate District, Division 2 held that the trial court erred in denying appellant's motion to suppress, where the police saw a man, not the defendant, stripping wire away from an air conditioning unit while the officer was standing in a residential driveway, it was reasonable for officers to approach the man, passing through unlocked gates (United States v. Perea-Rey (9th Cir. 2012) 680 F.3d 1179, 1188). However, there was no cause for their warrantless entry into the home and to detain the defendant, who lived there. (See United States v. Struckman (9th Cir. 2010) 603 F.3d 731, 738-741 [investigative detention does not apply to in-home searches].) The officers' good faith suspicion that the defendant was engaged in criminal activity was not supported by objective facts rising to the level of probable cause, as required to justify the warrantless detention of the resident inside a dwelling. (Id.) As a result, the defendant's subsequent consent to search the residence was invalid as the fruit of the illegal detention. (See People v. Lieb (1976) 16 Cal.3d 869, 877.) The erroneous denial of the defendant's motion to suppress required reversal of his convictions on those counts as to which the illegally seized evidence was critical, but the defendant forfeited his right of appeal as to the remaining counts by pleading guilty and failing to obtain a certificate of probable cause. (See People v. Mashburn (2013) 222 Cal.App.4th 937, 940.) Finally, the trial court erred in failing to stay count 5, ex-felon in possession, as it was the same gun he pleaded guilty to possessing in count 4. The defendant harbored only a single intent for a single physical act. (People v. Jones (2012) 54 Cal.4th 350, 358.)

People v. Chandler (2014)__Cal.4th__, reported on August 29, 2014, in 2014 Los Angeles Daily Journal 11983, the California Supreme Court held that, for there to be sufficient evidence of attempted criminal threats, within the meaning of sections 664/422, it requires not only proof of a subjective intent to threaten but also proof that the intended threat under the circumstances was sufficient to cause a reasonable person to be in sustained fear.

People v. Kent (2014)__Cal.App.4th__, reported on August 29, 2014, in 2014 Los Angeles Daily Journal 11973, the Fourth Appellate District, Division 3, a separate panel that decided People v. Hernandez (2014) 228 Cal.App.4th 539, held that for appointed appellate counsel of indigent defendants on appeal, they should file briefs identifying possible appellate issues in what ultimately turns out to be a Wende brief.

CRIMINAL COURTS BAR ASSOCIATION

Attn: Christopher C. Chaney
1055 E. Colorado Blvd., Suite 310
Pasadena, CA 91106
Telephone: (626) 577-5005

□ New Member **□2014 Renewal**

( )	**Sustaining Member.....**	**$ 250.00**
( )	**Attorneys admitted to practice over 5 years.....**	**$ 100.00**
( )	**Attorneys admitted to practice 5 years or less.....**	**$ 50.00**
( )	**Investigators.....**	**$ 50.00**
( )	**Affiliated Members.....**	**$ 50.00**
( )	**Judges.....**	**$ 35.00**
( )	**Law Student or not yet admitted.....**	**$ 25.00**
( )	**First year member, discounted dues.....**	**$ 35.00**

← *CUT*

NAME: _____

STATE BAR NO.: _____

ADDRESS: _____

_____

PHONE NUMBER: _____

FAX NUMBER: _____

***E-MAIL:** _____

Make your check payable to "CCBA" and mail to:
Criminal Courts Bar Association
Attn: Christopher C. Chaney
1055 E. Colorado Blvd., Suite 310
Pasadena, CA 91106

Criminal Courts Bar Association
c/o Law Offices of Hutton & Wilson
1055 E. Colorado Blvd.
Suite 310
Pasadena, CA 91106

Save The Date

NOVEMBER DINNER MEETING
To Be Announced