THE YEAR'S CASES: 2025
PRESUMED GUILTY

by Al Menaster
Los Angeles County Public Defender's Office, Appellate Branch
March, 2025

HEARSAY, IMPEACHMENT, AND SPONTANEOUS STATEMENTS

The 16-year old complaining witness told her mother that the defendant had been molesting her for five years. The trial judge admitted this into evidence in reliance on the spontaneous statement (also called the excited utterance) exception to the hearsay rule. Evidence Code section 1240 requires there to be an exciting event. "But evidence that a declarant is under stress or in a state of high emotion while recounting a traumatic event is not enough–without the requisite link to a recent startling event–to establish a statement's admissibility." "[A] spontaneous statement is one made without deliberation or reflection." The hearsay declarant here was very upset, but she had years to think about these events. Admission of the statement here was prejudicial error, since it "did not fall within the hearsay exception for spontaneous statements because she made it after considerable opportunity for deliberation and reflection."

People v. Lozano (2024) 101 Cal.App.5th 366
People v. Raley (1992) 2 Cal.4th 870
People v. Poggi (1988) 45 Cal.3d 306

"'[F]reshness' is no longer one of the 'essential' prerequisites to admission under the fresh complaint doctrine." The fresh complaint doctrine should be renamed to the "prior disclosure doctrine." The fact that a complaint was made, when it was made, and the circumstances under which it was made–but not the details of the complaint itself–are admissible under general rules of evidence, because they are relevant to whether a crime happened or not. The "fresh complaint doctrine allows evidence to be admitted for the limited purpose of showing that a complaint was made by the victim, and not for the truth of the matter stated." A child victim's delay in reporting sexual assault goes to the weight of the evidence, not its admissibility: "When offered for the limited nonhearsay purpose identified in *Brown*, the victim's disclosure should not be excluded solely because it is not 'fresh' enough.'"

People v. Flores (2024) 101 Cal.App.5th 438
People v. Brown (1994) 8 Cal.4th 746
People v. Ramirez (2006) 143 Cal.App.4th 1512
In re Cheryl H. (1984) 153 Cal.App.3d 1098

The defense sought to impeach the non-testifying victim with prior felony convictions and inconsistent statements that the victim made after the 911 call. The judge excluded the prior convictions on the basis that the victim did not testify. That was error. Excluding the subsequent inconsistent statements was error: "under [Evidence Code] section 1202, when a hearsay statement by a declarant who is not a witness is admitted into evidence by the prosecution, an inconsistent hearsay statement by the same person offered by the defense is admissible to attack the declarant's credibility." "Under Evidence Code section 1202, Tracy's subsequent inconsistent statements and her prior convictions were admissible for impeachment."

People v. Bingham (2023) 95 Cal.App.5th 1072

SPEEDY TRIALS, SPEEDY PRELIMINARY HEARINGS

The defendant was charged with contracting without a license and related charges. There was a delay of nearly 4 years between the filing of the complaint and the defendant's arraignment. A delay longer than a year in a misdemeanor is presumptively prejudicial. There are four factors: length of delay, justification for the delay, prejudice, and demand for trial. The judge here granted dismissal without discussing the factors. The state constitutional speedy trial analysis requires a showing of prejudice; if prejudice is shown, that is weighed against any justification for the delay. The claims of prejudice were insufficient here. Dismissal reversed.

People v. Martinez (2025) __ Cal.App.5th __; E082657

Three co-defendants waived time for prelim. to August 16, 2019, as zero of 90. On day 90, November 14, 2019, the court continued the prelim. again without any additional time waivers. There is no good cause exception to the 60-day time limit to maintain joinder of the codefendants or to enable a hearing on a motion to disqualify the DA's office prior to the prelim. "We conclude section 859b permits a defendant to enter a limited waiver of time beyond the initial 60-day time period by agreeing the preliminary hearing be held by a date certain. Absent a further time waiver by the defendant, the court may not continue the preliminary hearing beyond the agreed-upon date based on a finding of good cause." Dismissal ordered.

People v. Superior Court (Arnold) (2021) 59 Cal.App.5th 923

None of the extension of time orders from the Governor or the Chief Justice made any reference to the 60-day time limit in Penal Code section 859b. That section permits delay past day 60 only with the personal consent on the defendant. Custody is irrelevant and good cause is irrelevant. The pandemic notwithstanding, the delay here past day 60 requires dismissal.

Lacayo v. Superior Court (2020) 56 Cal.App.5th 396

The pandemic is good cause to delay trials: "the severity of the COVID-19 pandemic and the impact it has had within this state independently support the trial court's finding of good cause to continue defendant's trial under Penal Code section 1382."

Stanley v. Superior Court (2020) 50 Cal.App.5th 164

As a result of covid-19, the 10-day preliminary hearing time limit was extended to 15 days. When a preliminary hearing is continued past day 15, the case must be dismissed absent a showing of good cause. "In order to show good cause to continue Petitioner's preliminary hearing past March 25, 2020, some showing was required of a nexus between the conditions created by the pandemic and the purported need to delay the hearing." No such showing was made. "In the absence of a particularized showing of a nexus between the pandemic and the Superior Court's purported inability to conduct Petitioner's preliminary hearing in a timely fashion, the Superior Court abused its discretion in finding no violation of section 859b."

Bullock v. Superior Court (2020) 51 Cal.App.5th 134

If the courts were totally closed, that might make a prelim. impossible and thus delay permissible, but preliminary hearings were ongoing.

Favor v. Superior Court (2021) 59 Cal.App.5th 984

One of these defendants had his case continued five months past the statutory last day for trial, and the other had his case delayed eight months past that day. There was good cause for those delays. "[T] the critical inquiry is whether the congestion or backlog is attributable to chronic conditions as opposed to exceptional circumstances considering all of the relevant circumstances." Covid establishes that there were exceptional circumstances.

Hernandez-Valenzuela v. Superior Court (2022) 75 Cal.App.5th 1108

The defendant was in trial on March 16, 2020, and five of seven days of trial testimony had been completed when covid hit. The court refused to declare a mistrial and continued the case, eventually resuming 73 days later, fully 10 weeks later. This the delay was long, but covid was good cause for the delay. There there was no prejudice, and because the delay was before jury deliberations had begun, this weighs against presuming prejudice. The case was not complex; the trial judge properly admonished the jurors and ensured that they complied with the court's orders when they returned. "[T]here was no alternative to delaying the trial."

People v. Breceda (2022) 76 Cal.App.5th 71

Cf. People v. Santamaria (1991) 229 Cal.App.3d 269

People v. Englemann (1981) 116 Cal.App.3d Supp. 14

These defendants were arrested and then cited out and released with a court date a month later. The prosecutor did not file then, but instead waited almost a year to file. The defendants were arraigned 90 days after the cases were filed, nearly 15 months after their arrest. The trial court added in the time between the cite-in date to the filing date in ruling that the one year had been exceeded. The requirement that the defendants appear in court on the date set in the citation meant that the defendants were actually restrained, so that time period counts as part of the year. When the prosecutor did not file initially, this was equivalent to a dismissal and terminated any legal restraints, so time after that before filing doesn't count. Dismissal reversed.

People v. Buchanan (2022) 85 Cal.App.5th 186

A prosecution investigator did a lot to try to find this witness, without success, but he only began to search for her two weeks before trial. "Under these circumstances, we conclude the prosecution failed to demonstrate reasonable diligence in securing Breanna's presence at trial." "[W]hether the prosecutor has shown reasonable diligence includes the timeliness of the search, the importance of the witness's testimony, and whether leads to the witness's possible location were reasonably explored." " If a witness is critical, the search must be started sooner and pursued with more energy than if the witness is less significant."

People v. Ayala (2024) 101 Cal.App.5th 62

An appeal from denial of a statutory speedy trial claim requires reversal only if prejudice is shown. Prejudice is established when refiling of the case is barred, as it is in most misdemeanors. There are exceptions, but the court says that the exceptions can't apply because both sides announced ready.

People v. Davisbragdon (2023) 94 Cal.App.5th Supp. 1; Orange County App. Div.

LIMITATION ON LENGTH OF MISDEMEANOR/FELONY PROBATION

"[W]e conclude the two-year limitation applies retroactively to all cases not reduced to final judgment as of the new law's effective date."
People v. Sims (2021) 59 Cal.App.5th 943

A case in which the defendant is still on probation is not "final on appeal,"
People v. McKenzie (2020) 9 Cal.5th 40, 45

"[W]e hold that [Penal Code] section 1203. 2(a)'s tolling provision preserves the trial court's authority to adjudicate, in a subsequent formal probation violation hearing, whether the probationer violated probation during, but not after, the court-imposed probationary period." "Nothing in the legislative history suggests the Legislature intended to permit the trial court to find a violation of probation based on conduct that occurred after the probationary period had expired. Instead, the legislative history reveals that the tolling provision was enacted to preserve the trial court's authority to hold a formal probation violation hearing at a time after probation would have expired with regard to a violation that was alleged to have occurred during the probationary period." (Emphasis omitted.)
People v. Leiva (2013) 56 Cal.4th 498, 502

Shortening the length of probation pursuant to AB 1950 (enacting Pen. Code sec. 1203.1, subd. (a)), does not "substantially deprive" the prosecution of the benefit of their plea agreement, because all of the other conditions of the plea deal remain in effect. Thus, "the proper remedy is to modify the probationary term to conform with the new law while maintaining the remainder of the plea agreement."
People v. Prudholme (2023) 14 Cal.5th 961

AB 1950 limits felony probation to two years. (Pen. Code § 1203.1.) There is an exception for offenses that include "specific probation lengths within [their] provisions." In this case, the defendant was convicted of stalking (Pen. Code § 646.9(b)), an offense which is not inherently a domestic violence offense. But the defendant did not dispute that it was a domestic violence case. Because Penal Code section 1203.097 includes specific probation lengths, it permits a longer probationary period. Since the defendant agrees that he is guilty of violating Penal Code section 1203.097, there is no dispute about this qualifying for Penal Code section 1203.097: "Thus, we have no occasion to determine the showing that must be made to establish that a person is a victim of domestic violence under section 1203.097."
People v. Forester (2022) 78 Cal.App.5th 447
Apprendi v. New Jersey (2000) 530 U.S. 466
Alleyne v. U.S. (2013) 133 S.Ct. 2151

The defendant was convicted of a non-exception felony (2-year probation max) and a misdemeanor DUI (an exception offense with a 3-year probation minimum). While the defendant can be placed on felony probation for three years, he cannot be sentenced on his felony for a violation that occurs after two years of probation.
People v. Saxton (2021) 68 Cal.App.5th 428

"When probation has been summarily revoked and then reinstated within the initial probationary term, the trial court has discretion to extend probation to account for the time when probation was summarily revoked so long as the total period of probationary supervision does not exceed the statutory maximum."

People v. Ornelas (2023) 87 Cal.App.5th 1305

The provision mandating a minimum of three years probation for a DUI precludes application of AB 1950 to DUI convictions.

People v. Shulz (2021) 66 Cal.App.5th 887

"Arreguin had already served more than two years of probation for the human trafficking case when AB 1950 became effective on January 1, 2021. Because there was no outstanding order summarily revoking his probation as of that date, the conclusion is inescapable that AB 1950 operated to terminate his probation for the human trafficking case." "Consequently, the trial court had no jurisdiction to summarily revoke probation based on the January 27, 2021 VOP filed in the human trafficking case, and therefore Arreguin's motion to dismiss that VOP should have been granted."

People v. Arreguin (2022) 79 Cal.App.5th 787

In November of 2016, the court placed the defendant on probation for three years. After more than a year, but before AB 1950 took effect, the court revoked probation. Probation remained revoked until June, 2021, at which time the defense raised AB 1950, which had become effective Jan. 1, 2021. The ongoing revocation of probation gives the court jurisdiction over the case. The actual violation occurred within the 1-year period.

Kuhnel v. Superior Court (2022) 75 Cal.App.5th 726

On Nov. 6, 2017, the defendant pled and got five years felony probation. More than two years later, on Feb. 6, 2020, the court summarily revoked the defendant's probation. AB 1950 became effective Jan. 1, 2021. On April 30, 2021, the defendant admitted the probation violation and was sentenced to prison. AB 1950 applies retroactively to all cases not final on 1/1/21, and therefore "the trial court lacked jurisdiction to revoke his probationary term." This means that AB 1950 requires the termination of probation where the defendant has been on probation for two years (12 months for misdemeanors), even if the court revoked probation after the two years, but before AB 1950 took effect.

People v. Butler (2022) 75 Cal.App.5th 216

AB 1950 means that courts retroactively lose jurisdiction if they did not revoke probation until after the two- year limit imposed by AB 1950 and the alleged violation in question did not occur until after the two-year limit. "Because Assembly Bill No. 1950 applies retroactively to Canedos's case, the maximum duration of his probation was two years, expiring in January 2018. Thus, by the time Canedos committed assault with a deadly weapon in 2019, the court no longer had jurisdiction to revoke his probation."

People v. Canedos (2022) 77 Cal.App.5th 469

LIMITATION ON LENGTH OF MISDEMEANOR/FELONY PROBATION (Con't)

In 2017, the defendant pled and was sentenced to 12 years in prison, but execution of the sentence was suspended and he was placed on 4 years of probation. More than 2 years later, in 2019, the court found the defendant in violation of probation and sent him to prison. AB 1950 became effective Jan. 1, 2021. "[W]e are not persuaded that Assembly Bill 1950 invalidates a trial court's revocation and termination of a defendant's probation where, as here, such actions were properly taken before Assembly Bill 1950's effective date."

People v. Faial (2022) 75 Cal.App.5th 738

The defendant's probation to a one-year term is "discounted by the time on probation he has already served."

People v. Burton (2020) 58 Cal.App.5th Supp. 1

AB 1950, limiting felony probation to two years, has an exception for various theft and financial crimes if the value of the property taken exceeds $25,000, in which case felony probation is limited to 3 years. (Pen. Code sec. 1203.1, subd. (l)(2).)

People v. Shelly (2022) 81 Cal.App.5th 181

People v. Flores (2022) 77 Cal.App.5th 420

AB 1950 limits felony probation to two years. (Pen. Code § 1203.1.) There is an exception for offenses that include "specific probation lengths within [their] provisions." Where a court finds that there was a "domestic violence nexus," and sentences the defendant pursuant to Penal Code section 1203.097, the domestic violence enhancement, the AB limitation does not apply.

People v. Rodriguez (2022) 79 Cal.App.5th 637

People v. Qualkinbush (2022) 79 Cal.App.5th 879

People v. Forester (2022) 78 Cal.App.5th 447

AB 1950 limits felony probation to 2 years, with an exceptions for "an offense that includes specific probation lengths within its provisions." (PC 1203.1(l)(1).) The exception says that the court "may direct that the suspension may continue for a period of time not exceeding the maximum possible term of the sentence." This "refers to the maximum possible term of imprisonment that could be imposed for the offenses, rather than the maximum probationary period allowable under any other law specifying a specific probation length." This means that the maximum probationary period is not the period specified in the statute itself; instead, the probationary period is the maximum prison term possible. If any count qualifies as an exception, all charges are to be treated as exceptions. The probationary term for DUI is 3 to 5 years. (Veh. Code sec. 23600.) But the charges here only expose this defendant to a total possible prison term of 3 years, 8 months; thus the period of probation is 3 years, 8 months.

People v. Kite (2023) 87 Cal.App.5th 986

MIRANDA

The defendant spoke only Punjabi. The translating officer, instead of advising the defendant that anything he said could be used "against" him in court, told the defendant that the police could "use" his statement in court. "[W]e conclude the given advisements adequately conveyed to defendant his rights as required by Miranda. Said differently, though Officer Singh's translation did not include the term 'against,' the given warning sufficiently captured the meaning of the warning."

People v. Singh (2024) 103 Cal.App.5th 76

"In Perkins, the Supreme Court held that an undercover law enforcement officer posing as a fellow inmate need not give Miranda warnings to an incarcerated suspect before asking questions that may elicit an incriminating response."

Conc. opn. of Justice Stratton:

"Using a Perkins agent here was a law enforcement procedure calculated to deceive appellant, so that he would not know to whom he was incriminating himself. He was not given an opportunity to knowingly and intelligently waive his previously asserted right to have counsel present during questioning. Admission of the statements without a valid waiver was error under Edwards." "Edwards applies even if the subsequent interrogation after invocation of the right to counsel is not coercive. Under Edwards, no police-initiated interrogation whatsoever is to occur unless the accused has given a valid waiver of the right to counsel they previously invoked."

People v. Felix (2024) 100 Cal.App.5th 439

Illinois v. Perkins (1990) 496 U.S. 292

Edwards v. Arizona (1981) 451 U.S. 477

To invoke Miranda, the defendant "must make a 'clear assertion' of the right to silence or counsel before officers are required to cease questioning." We conclude here that Villegas's statements during the second interrogation—'I won't say anything else,' 'I won't say more things anymore,' 'I will tell you that it was a mistake and that's it,' and 'that's the only thing I'll say' —were neither unambiguous nor unequivocal invocations of his right to remain silent."

People v. Villegas (2023) 97 Cal.App.5th 253

A confession is "involuntary and therefore inadmissible if it was elicited by any promise of benefit or leniency whether express or implied." (People v. Holloway (2004) 33 Cal.4th 96, 115.) First, the officer says, "[T]here is a very critical time where you can earn possibly some consideration." This is too vague to trigger exclusion, especially in light of the use of the word "possibly." Second statement: "[W]e can't make any guarantees but sometimes being honest and up front, admitting your involvement and—and what you did can go aways to showing your remorse and"... "[s]ometimes that works in your favor. Sometimes it doesn't." A statement is not rendered involuntary if the police merely point out a benefit that "flows naturally from a truthful and honest course of conduct," and that applies here.

People v. Zabelle (2022) 80 Cal.App.5th 1098

SEARCH AND SEIZURE

The police see three young men standing on a sidewalk after dark. The police engaged the three in conversation: where did they live, what were they doing, etc. There had been an unrelated arrest in the same area. One of the three was a gang member. The minor named in this case did not speak. The police specifically asked the minor some questions, but he didn't reply, seemed nervous, and looked away. The police got out of their car and one of the two officers said, "Step out to the street! Get your hands up!" The minor ran, was caught, and was found with a gun. This is a detention. The detention was unlawful. Nervousness and lack of eye contact are not enough to create a reasonable suspicion that the suspect has a gun or narcotics. Deliberately avoiding police contact is not enough.

In re L.G. (2025) __ Cal.App.5th __; B331298; 2025 WL 455479

Presence in a high crime area, "standing alone, is not enough to support a reasonable, particularized suspicion that the person is committing a crime." "It is settled that a person may decline to engage in a consensual encounter with police." "Flores's mere refusal to cooperate d[id] not furnish the minimal level of objective justification needed for a detention or seizure." "An articulable and reasonable suspicion that a person is engaging in criminal activity is required to escalate a consensual encounter to a coercive detention." "The record, considered in its totality, fails to support a reasonable suspicion that Flores was loitering for the purpose of committing a narcotics offense (as the officer suspected) or was otherwise engaged in criminal activity." "The particular conduct relied upon must, when considered in the totality of circumstances, support a reasonable suspicion that the person to be detained is, or is about to be, engaged in activity relating to crime."

People v. Flores (2024) 15 Cal.5th 1032

When the officers positioned themselves on either side of the car, no reasonable person would have felt free to leave, since trying to drive away would have endangered the officers. The use of flashlights also triggered a detention, again no reasonable person would feel free to leave. Finally, the defendant was on his phone when the officers approached; obviously he would have to get off the phone and interact with the officers, and that qualifies as a detention.

People v. Paul (2024) 99 Cal.App.5th 832

Cf. People v. Tacardon (2023) 14 Cal.5th 235

"By boxing in and surrounding Jackson, the officers' actions meant a reasonable person in his position would not feel free to leave." "Officers may conduct an investigatory detention if they have an objectively reasonable suspicion of criminal activity. Their suspicions must be supported by specific and articulable facts that are reasonably consistent with criminal activity." The police relied on the defendant hearing a heavy jacket on a humid night, his being seated "kind of awkwardly in the driver's seat," and when the police shone their flashlights on him, he looked "uncomfortable and kind of nervous," "like he was surprised to see us." "Collectively, these justifications did not create a reasonable suspicion of criminal activity. The detention was invalid."

People v. Jackson (2024) 100 Cal.App.5th 730

SEARCH AND SEIZURE (Con't)

"We hold that a police stop exceeding the time needed to handle the matter for which the stop was made violates the Constitution's shield against unreasonable seizures. A seizure justified only by a police-observed traffic violation, therefore, become[s] unlawful if it is prolonged beyond the time reasonably required to complete th[e] mission of issuing a ticket for the violation."

Rodriguez v. U.S. (2015) 575 U.S. 348; 135 S.Ct. 1609

"Because the traffic violation is the purpose of the stop, the stop may last no longer than is necessary to effectuate th[at] purpose. [T]he tolerable duration of police inquiries in the traffic-stop context is determined by the seizure's mission—to address the traffic violation that warranted the stop, and attend to related safety concerns. A police stop exceeding the time needed to handle the matter for which the stop was made violates the Constitution's shield against unreasonable seizures." Since the videos showed that there was no basis to investigate the defendant being being under the influence of drugs, detaining the defendant while bringing in the narcotics dog illegally prolonged the detention.

People v. Ayon (2022) 80 Cal.App.5th 926

The officer saw the defendant driving car with only paper plates. The officer stopped the car because no registration or recent purchase documents were displayed. When the officer walked up to the driver's side of the car, he saw temporary registration documents attached to the rear window. The officer admitted that this was sufficient. But the officer did not walk away; he asked for and obtained the driver's and the passengers identification, ran these, and found the passenger was on probation and conducted a probation search, resulting in finding a firearm, ammunition and drugs. This was an illegally prolonged detention: "We agree the detention became unlawful when (1) the purpose of the stop completely dissipated (when the officer saw the documents in the window and thus realized that defendant had not committed the Vehicle Code violation that was the purpose of the stop), and (2) the officer then made inquiries aimed at finding evidence of ordinary criminal wrongdoing." The officer "was not permitted to prolong the stop by conducting inquiries aimed at finding evidence of criminal wrongdoing separate and apart from the perceived violation."

People v. Suggs (2023) 93 Cal.App.5th 1360

The officer stopped the defendant's truck for an unsafe lane change. The officer asked the defendant various questions for 4 to 5 minutes, then ordered him out of the truck. The officer patted the defendant down, finding nothing. At the 7 ½ minute mark, the officer asked the defendant to consent to search of the truck with a police dog. The defendant refused. The officer conducted the canine search anyway. The dog alerted, the police found meth, a handgun, and ammunition. "What began as a lawful traffic stop violated the Fourth Amendment's shield against unreasonable seizures when the officers detoured from the traffic stop's mission by conducting the dog sniff and inquiring into matters unrelated to the traffic violation and these detours prolonged the stop beyond the time reasonably required to complete the mission of issuing a ticket for the [traffic] violation."

People v. Gyorgy (2023) 93 Cal.App.5th 659

The search warrant here was quite explicit in specifying the date and time parameters for searching the defendant's cell phone for evidence of a sexual assault. The police searched exceeded these limits and found child porn, which the defendant was charged. The evidence obtained outside the specific scope in the search warrant is suppressed: "Because Acevedo, Gonzalez, and Hoskins did not act within the scope of the search warrant in conducting their search of DiMaggio's cellphone, but, rather, intentionally disregarded and substantially exceeded the limitations in the warrant's scope, the good faith exception does not apply."

DiMaggio v. Superior Court (2024) 104 Cal.App.5th 875

A federal civil tort for malicious prosecution requires a violation of the 4th Amendment. "Under that Amendment, a pretrial detention (like the one Chiaverini suffered) must be based on probable cause. Otherwise, such a detention counts as an unreasonable seizure. And even when a detention is justified at the outset, it may become unreasonably prolonged if the reason for it lapses. See Rodriguez v. United States, 575 U. S. 348, 354–357 (2015)."

Chiaverini v. City of Napoleon (2024) __ U.S. __; 144 S.Ct. 1745

"A pretextual stop only ripens into an unlawful detention if it deviates too far from the proper legal justification, which is to address the traffic violation that warranted the stop and attend to related safety concerns." "But that does not mean that each action an officer takes during a traffic stop must be directly related to the mission or to evaluating safety."

People v. Esparza (2023) 95 Cal.App.5th 1084

The brief time period (four minutes) between the vehicle stop and the observation of a gun in the car was reasonable.

People v. Ramirez (2024) 104 Cal.App.5th 315

People v. Hoyos (2007) 41 Cal.4th 872

The first few minutes of this detention involved asking for license and registration, telling the defendant why he was being pulled over, and asking where the defendant was headed. The officer ran a records check and asked for a Spanish-speaking officer to be sent to the scene. During this time, the officer asked questions to clarify the defendant's supposedly confusing answers for why he was in Utah and where he was headed, and the officer asked the defendant if he was transporting anything illegal. These questions were not directly related to the supposed traffic violation. Unrelated questioning is permissible if it does not "measurably extend the duration of the stop." Detention upheld.

People v. Felix (2024) 100 Cal.App.5th 439

The trial judge ruled that the length of the detention should be measured from when the police saw the absence of the license plate, which would make the detention illegally prolonged. This not a prolonged detention, "A traffic stop begins for purposes of the Fourth Amendment when an officer pulls a vehicle over for a traffic infraction.

People v. Valle (2024) 105 Cal.App.5th 195

The police stopped the defendant for a Vehicle Code violation. Several minutes later, a police gang "expert" arrived and recognized the defendant and two of his passengers as members of a gang. The car was being driven in an area contested by two gangs, both known for violent activity. The gang expert thought that one of the passengers was likely to be armed, so that passenger was patted down and a loaded ghost gun was found. The police then searched the defendant and found another loaded weapon. Adding all these facts together justified the search of the defendant. Gang membership alone does not justify a stop and frisk. The finding of the gun on the passenger "surely gave rise to a reasonable inference that the other gang members in the car might be armed and dangerous."

People v. Esparza (2023) 95 Cal.App.5th 1084

The defendant parked his car in downtown San Diego, got out, entered a store, committed robbery and killed the owner. The San Diego Police Department obtained video footage from street cameras installed all over downtown San Diego, identified the car, and traced it back to the defendant, who was arrested and convicted. "Cartwright had no objectively reasonable expectation of privacy when he used the public streets and sidewalks downtown in a manner readily observable to passersby. We therefore conclude the police did not conduct a 'search' when they accessed footage from City's streetlight cameras and, accordingly, there was no violation of the Fourth Amendment."

People v. Cartwright (2024) 99 Cal.App.5th 98

The odor of freshly burnt marijuana meant that there was a "fair probability" that a search might yield additional contraband. And this conduct was not lawful; the defendant might have been driving under the influence of marijuana and at least he had an open container of marijuana (a half-burnt cigar with marijuana).

People v. Fews (2018) 27 Cal.App.5th 553

"The recent legalization of marijuana in California means we can now attach fairly minimal significance to the presence of a legal amount of the drug on Lee's person, and the remaining facts cited by the People do not provide any reasonable basis to believe contraband would be found in the car."

People v. Lee (2019) 40 Cal.App.5th 853

The police smelled burnt marijuana when making a legal stop. The defendant said he had "bud" in the center console. The officer searched the console, finding slightly over one gram of marijuana in a closed container. The court says that this is not legal. So the loaded pistol that was found during the ensuing search was not justified by any reasonable suspicion and is suppressed.

People v. Shumake (2020) 45 Cal.App.5th Supp. 1

SEARCH AND SEIZURE (Con't)

In this case the police made a traffic stop. They smelled marijuana. They saw an unsealed bag of marijuana in the passenger's cleavage. The mere presence of a lawful amount of marijuana is not probable cause to search for more. The observation of the unsealed bag of marijuana on the passenger did establish probable case to search the passenger's purse.

People v. McGee (2020) 53 Cal.App.5th 796

The law bars driving with an "open package of cannabis." A baggie knotted closed at the top is not "open." Just because the baggie can be opened does not mean that it is open. "[T]he odor of marijuana alone no longer provides an inference that a car contains contraband because individuals over the age of 21 can now lawfully possess and transport up to 28.5 grams of marijuana."

People v. Johnson (2020) 50 Cal.App.5th 620

"Based on the 'strong odor' of 'burnt marijuana' emanating from Castro's car, Castro's admission he had smoked marijuana, and the fact all occupants of the car were under 21 years of age, the officers had probable cause to believe they would find contraband or evidence of a crime (e.g., marijuana possessed by someone under 21) in the car."

People v. Castro (2022) 86 Cal.App.5th 314

"The marijuana open container statute provides that no one is permitted to [p]ossess an open container or open package of cannabis or cannabis products while driving, operating, or riding in the passenger seat or compartment of a motor vehicle." "The plain and commonsense meaning of an 'open container' is one in which there is no barrier to accessing the marijuana contained inside." "In this case, the paper wrapping enclosing the marijuana presented no barrier to accessing the marijuana. On the contrary, as Officer Dugonjic explained, paper wrapping holds the marijuana so that it can be smoked, thereby facilitating its consumption." "[W]e conclude Officer Dugonjic had probable cause to search the BMW that the minor was driving based on the officer's observation of the unburned marijuana blunt – usable amount of marijuana in an open container in violation of section 11362.3, subdivision (a)(4) – in his passenger's possession. This open container of marijuana was contraband that, along with the smell of unburnt marijuana emanating from the vehicle, provided probable cause to believe minor or his passenger may also have possessed additional marijuana in violation of section 11357 and/or section 11362.3, subdivision (a)(4)."

In re Randy C. (2024) 101 Cal.App.5th 933

The police conducted a searched based on a probation condition. The database showed that the defendant was on probation but in fact probation had been terminated by AB 1950. The issue is "whether a reasonably well-trained officer in his position would have known that the search was illegal." This is an objective standard, not a subjective one. The detective had no reason to think that the information was wrong. Even if the officer knew about AB 1950, "we do not expect a reasonable officer to know that AB 1950 may have terminated existing probation sentences automatically without a judicial determination." "[W]e conclude Vlahandreas acted in objectively reasonably good faith," and upholds the search.

People v. Pritchett (2024) 102 Cal.App.5th 355

The minors who claimed that the defendant sexually abused them alleged that the defendant took pictures of the abuse with his cell phone. The police obtained electronic communications search warrants to search the contents of the defendant's phone. The warrants authorizing the search of the phone required unlocking the phone, and thus the warrants "authorized law enforcement officials to require defendant to produce his fingerprint to unlock the phone." Even if that were not true, good faith would save the search. Compelling a suspect to place his finger on a phone does not violate his privilege against self incrimination, such an act is not testimonial. Forcing the defendant to use his fingerprint to unlock his phone did not violate due process. In conducting a search, the police "may not use unreasonable force to perform a search or seizure of a person." The force used here was not unreasonable.

People v. Ramirez (2023) 98 Cal.App.5th 175
Thompson v. Superior Court (1977) 70 Cal.App.3d 101, 109
People v. Rossetti (2014) 230 Cal.App.4th 1070, 1078
Carleton v. Superior Court (1985) 170 Cal.App.3d 1182, 1187–1188

The warrant affidavit recited that there was a 1980 rape, the DNA was tested in 2021, and Investigative Genealogy was used identify the defendant as a person of interest. The affidavit does not explain in detail how this was done. The affidavit says that two FBI agents used "digitized genetic data" that had been uploaded to a genealogy website to identify the defendant as a person of interest. This was a sufficient explanation of Investigative Genealogy. An affidavit in a search warrant application justifies issuance of the warrant only if the affidavit shows that "there is a fair probability that contraband or evidence of a crime will be found in a particular place." The warrant is to be quashed "only if the affidavit fails as a matter of law to set forth sufficient competent evidence supporting the finding of probable cause." Even if the warrant affidavit was insufficient, the good faith exception applies.

People v. Lepere (2023) 91 Cal.App.5th 727

"[T]he existence of an inventory policy or practice is not itself sufficient to justify applying the inventory-search exception." "A proper policy or practice governing inventory searches should be designed to produce an inventory, and if the policy or practice gives officers the ability to exercise discretion, the Fourth Amendment requires that the exercise of such discretion be based on concerns related to the purposes of an inventory search." "The bottom line is simple: the deputies' recording of a single item used as evidence, despite [the sheriff's] procedure requiring that they inventory any personal property contained within the vehicle was not mere minor or slipshod noncompliance." . "This is the rare context where the Fourth Amendment analysis is not purely objective – subjective motivations are material." "Officers relying on a standard procedure to justify a search must not act in bad faith or for the sole purpose of investigation."

U.S. v. Anderson (2024; 9th Cir.) 101 F.4th 586
Colorado v.Bertine (1987) 479 U.S. 367
Brigham City, Utah v. Stuart (2006) 547 U.S. 398
Whren v. United States (1996) 517 U.S. 806,
Blakes v. Superior Court (2021) 72 Cal.App.5th 904

SEARCH AND SEIZURE (Con't)

Some federal cases have articulated the principle of "total suppression." (See, e.g. Foster, 100 F.3d 846, 852.) The doctrine provides that when police act with flagrant disregard of the terms of a search warrant, the trial court should suppress all evidence seized pursuant to these warrants, as well as evidence subsequently obtained as 'fruits' of these seizures. Even if "total suppression may be appropriate in extreme circumstances of flagrant government misconduct," the defense did not show that here, claiming that the defense has failed to demonstrate "that the executing officers grossly exceeded or flagrantly disregarded the terms of the warrants at issue."

People v. Helzer (2024) 15 Cal.App.5th 622

MCCOY IS NOT VIOLATED BY COUNSEL'S PRESENTATION OF MITIGATION OVER CLIENT'S OBJECTION

"[U]nder McCoy, when a defendant expressly asserts and makes plain to counsel that the objective of his defense is to maintain innocence of the charged offenses and pursue an acquittal, counsel must abide by that objective and may not override it by conceding guilt." In this capital case, the defendant specifically directed his counsel not to present any evidence of mitigation in the penalty phase, preferring to be sentenced to death. Counsel presented mitigation evidence anyway. "Here, counsel did not do what McCoy prohibits – concede guilt over Maury's express objection." "Absent an express concession of guilt by defense counsel or any other conduct or statement(s) tantamount to such a concession, McCoy is not implicated."

In re Maury (2024) 105 Cal.App.5th 645
People v. Bloom (2022) 12 Cal.5th 1008
People v. Palmer (2020) 49 Cal.App.5th 268
In re Smith (2020) 49 Cal.App.5th 377

DENIAL OF AN INDIVIDUAL INTERPRETER AT PRELIM REQUIRES DISMISSAL UNDER PC SECTION 995

A Penal Code section motion can be granted on either of two grounds: insufficiency of the evidence at the prelim, or when the defendant was not "legally committed by a magistrate." The quoted phrase means that the defendant was "denied a substantial right" at the prelim. Does this require a showing of prejudice? Denial of some rights, such as denial of counsel, always amounts to denial of a substantial right. Denial of other rights requires a showing of prejudice: a defendant must "show that an error 'reasonably might have affected the outcome.'" "[A] defendant has the right to an individual interpreter at the preliminary hearing as well as at trial." The right to an individual interpreter is a constitutional right to ensure that the defendant is mentally present during the proceeding. This error was prejudicial so that either way the 995 has to be granted.

Molina v. Superior Court (2024) 103 Cal.App.5th 291
Avita v. Superior Court (2018) 6 Cal.5th 486

BAIL

The trial judge here presumed guilt. Wrong, the court has to evaluate the sufficiency of the evidence of guilt. The court is not limited to evidence admissible at trial; hearsay and "reliable proffers" may also be considered. The conditions for a no-bail order require: a) that the court satisfy itself that the record contains evidence of a felony offense involving an act of violence or sexual assault sufficient to sustain a hypothetical verdict of guilt on appeal; and b) that there is clear and convincing evidence establishing a substantial likelihood that the defendant's release would result in great bodily harm to others.

In re Harris (2024) 16 Cal.5th 292

The trial judge's finding that other children (in this aggravated child abuse case) would "probably" not be safe if the defendant were released "falls short of the standard set out in section 12(b). As we've seen, that provision requires a finding that the person's release would pose a substantial likelihood of great bodily harm, not, as the judge found here, a probability of a general threat to safety."

Yedinak v. Superior Court (2023) 92 Cal.App.5th 876

The California Constitution (art. I, sec. 12(b)) permits a no-bail (not $0 bail, but no bail at all) order, but to deny bail a court must: a) satisfy itself that the record contains evidence of a felony offense involving an act of violence or sexual assault sufficient to sustain a hypothetical verdict of guilt on appeal; and b) clear and convincing evidence establishing a substantial likelihood that the defendant's release would result in great bodily harm to others.

In re White (2020) 9 Cal.5th 455

Judges should not impose bail, but when the court does, it must consider the defendant's ability to post bail "and may not effectively detain the arrestee 'solely because' the arrestee 'lacked the resources' to post bail."

In re Humphrey (2021) 11 Cal.5th 135

The filing of a notice of appeal divests a trial judge of jurisdiction over many things, but not all. One area where the judge retains jurisdiction is bail. "The plain language of the statutory scheme gives trial courts jurisdiction to hear a motion for release pending appeal even after a sentence of imprisonment and the filing of a notice of appeal."

Stubblefield v. Superior Court (2025) __ Cal.App.5th __; H052893

Penal Code section 1270.2 says that a defendant "is entitled to an automatic review" of the bail order. "The plain language of the statute entitles petitioner to a section 1270.2 hearing within five days without requiring a showing of 'change in circumstances.'"

Bunker v. Superior Court (2025) __ Cal.App.5th __; E085394

CRAWFORD AND HEARSAY

"When an expert conveys an absent analyst's statements in support of his opinion, and the statements provide that support only if true, then the statements come into evidence for their truth."

Smith v. Arizona (2024) 144 S.Ct. 1785
Williams v. Illinois (2012) 567 U.S. 50

"Any expert may still rely on hearsay in forming an opinion, and may tell the jury in general terms that he did so." Evidence Code section 802 "properly allows an expert to relate generally the kind and source of the 'matter' upon which his opinion rests." "These opinions were Dr. Rogers's own; they are not contained in the autopsy report. Although they may have been based, to varying extents, on hearsay statements in the report, it was permissible for Dr. Rogers to rely on this material in forming his own opinions." "A hearsay problem arises when an expert simply recites portions of a report prepared by someone else, or when such a report is itself admitted into evidence. In that case, out-of-court statements in the report are being offered for their truth." "[I]t is evident from Dr. Rogers's testimony that, in response to some questions, he referred to the autopsy report, and he may have relayed some details from the report in giving his answers. To the extent Dr. Rogers was simply relaying the contents of the report to the jury, his testimony constituted hearsay."

People v. Nadey (2024) 16 Cal.5th 102
People v. Sanchez (2016) 63 Cal.4th 665

Statements are testimonial (and thus inadmissable under Crawford) if they are "made with some formality, which, viewed objectively, are for the primary purpose of establishing or proving facts for possible use in a criminal trial." In Clark, the Supreme Court "found that statements from a three–year–old child to his teachers, who suspected the child had been abused, were not testimonial and did not violate the confrontation clause." Here, the police responded to a 911 call, separated the parents, and interviewed the children, an 11-year old and an 8-year old. This is claimed to involved an emergency, thus the statements were nontestimonial and therefore admissible.

The statements are also admissible based on the forfeiture by wrongdoing exception to Crawford. "[A] criminal defendant also forfeits any Sixth Amendment confrontation rights when, by his or her wrongful acts, the defendant makes a witness unavailable to testify at trial."

People v. Hall (2024) 107 Cal.App.5th 222
People v. Cage (2007) 40 Cal.4th 965
Ohio v. Clark (2015) 576 U.S. 237; 135 S.Ct. 2173
Giles v. California (2008) 554 U.S. 353; 128 S.Ct. 2678

POLICE RECORDS PRODUCED IN RESPONSE TO PRA: NO PROTECTIVE ORDER

The prosecutor told defense counsel that an investigating officer had been disciplined for dishonesty, information that would be published under Penal Code section 832.7, subdivision (b)(1)(C), making the records nonconfidential. The defense filed a Brady/Pitchess motion for the officer's personnel file, and filed a Public Records Act (PRA) request for the nonconfidential records. (Gov't Code 7920.000 et seq.) The judge reviewed the personnel file, determined that only the nonconfidential records already being produced in response to the PRA were relevant, and ordered them disclosed. But the judge also issued a protective order under Evidence Code section 1045, barring the defense from disclosing the records to anyone else. "Because the court did not order the Department to disclose any confidential information from Officer Rush's personnel records, it should not have issued a protective order precluding defense counsel from sharing the records of Officer Rush's sustained finding of dishonesty with anyone outside of the team working on Banuelos's defense."

Banuelos v. Superior Court (2024) 106 Cal.App.5th 542

PENAL CODE SECTION 290 REGISTRATION RELIEF

Effective January 1, 2021, SB 384 created 3 tiers for relief from the previously lifetime duty to register as a sex offender: 10 years, 20 years, life, depending on the nature of the underlying conviction. The judge denied relief, concluding that "community safety would be significantly enhanced by requiring continued registration." The judge relied on the severity of the lewd act on a 12-year old. Evidence of the danger to the community was insufficient: "Assuming for purposes of argument the 1997 offense was egregious, those facts alone do not demonstrate Thai was a risk to the community over 24 years later."

People v. Thai (2023) 90 Cal.App.5th 427

"May a trial court deny a petition seeking removal from the sex offender registry on the ground that the offender's underlying sex crime also constitutes a different, later-enacted sex crime for which lifetime registration is required (and hence removal is not authorized)? We conclude that the answer is 'no.'"

People v. Franco (2024) 99 Cal.App.5th 184

JUDGES CANNOT CREATE INFORMAL DIVERSION BY CONTINUING SENTENCING

The judge here continued sentencing for a year, with an indication that he would dismiss if the defendant remained law abiding. The Appellate Division is bound by Gelardi, barring informal judicial diversion post-plea.

People v. Robinson (2024) 104 Cal.App.Supp.5th 1

People v. Gelardi (1978) 84 Cal.App.3d 692

EVIDENCE

Sargon requires that the judge "determine whether, as a matter of logic, the studies and other information cited by experts adequately support the conclusion that the expert's general theory or technique is valid." The "expert" here had "training and experience" in the method he used. But, "The People introduced no studies to support the assumptions on which his forensic technique relies, and no evidence that Swanepoel's admittedly subjective assessment was in any way reliable." "Swanepoel admitted he had no 'statistics or probabilities' to support his opinion or to quantify an appropriate level of certainty for it, and he offered no studies or competency test results to back it up." Admission of this expert testimony was an abuse of discretion.

People v. Tidd (2024) 104 Cal.App.5th 772; depublished

Sargon v. USC (2012) 55 Cal.4th 747

The defendant's blood alcohol level (BAC) tested at .083 and .078. The prosecution's toxicology expert testified that at or above .05 BAC everyone is under the influence of alcohol for the purposes of driving. The defense made an in limine objection to this testimony. The San Diego Appellate Division rules that the failure of the defense to renew this objection when the expert actually testified waived the issue. "This section (Veh. Code sec. 23610, subd. (a)(2)) merely prohibits presuming that a BAC between .05 and .08 proves the driver was impaired. It does not preclude, as in the case at bar, expert testimony about the effect of alcohol on drivers." The Legislature was just legislating presumptions, and it is not inconsistent to allow an expert to make up any old number.

People v. Turntine (2024) 104 Cal.App.5th Supp. 11

The lead detective in the case (Jankowski) was permitted to testify that Rouston fired the gun. The detective admitted that this testimony was based on a statement made by a witness to another officer. This testimony "required no expertise, and Jankowski brought no expertise to bear on the issue. The jury heard the other witness testimony and was equally competent to weigh the evidence and determine what the facts were." The detective's testimony "usurped" and "supplanted the jury's role." Footnote 9 expresses "concerns" about having Jankowski testify both as a percipient witness and as an expert.

People v. Rouston (2024) 99 Cal.App.4th 997

The gang evidence here was offered as relevant to prove the intent to rob the victim. But there was no explanation of how the gang evidence proved this intent. Moreover, gang evidence was not necessary to prove intent. The gang evidence was improperly admitted to show a conspiracy, since there was considerable evidence of the conspiracy without the gang evidence. The gang evidence had minimal relevance, was cumulative, and was substantially outweighed by prejudice.

People v. Garcia (2025) 107 Cal.App.5th 1040

The police found homemade CDs in the defendant's bedroom, one of which had a rap song called "Bang Bang." The song's lyrics included extensive descriptions of violence. The song was played for the jury. The police gang expert testified that the defendant's possession of the CD showed that he was a gang member, and the lyrics describing acts of violence were descriptions of what happens to the gang's enemies. Even under the previous Evidence Code section 352, admission of the song was error. Since there was no evidence of any foundation that the defendant authored the lyrics or even listened to the song, admission of the lyrics was error, though harmless.

People v. Hin (2025) __ Cal.5th __; S141519

"Thus, we hold that a trial court does not abuse its discretion when it permits the prosecution to introduce evidence of a prior domestic violence conviction under [Evidence Code] section 1109 through a certified record of conviction, rather than through live testimony by the alleged victim." "Thus, we find the trial court did not abuse its discretion when it admitted Robinson's 2017 misdemeanor domestic violence conviction into evidence under the provisions of section 1109.

People v. Robinson (2024) 99 Cal.App.4th 1345

People v. Chatman (2006) 38 Cal.4th 344, 373

In a delinquency proceeding, defense counsel declared a doubt about the minor's competency to stand trial. When this doubt is declared, Contra Costa County protocol requires the probation officer to collect all of the minor's records and send those to the mental health evaluator appointed by the judge. The protocol also requires that any mental health treatment providers send all their records to the evaluator. The psychotherapist-patient privilege (Evid. Code sec. 1014) is inapplicable "in any juvenile competency proceeding initiated after a minor's counsel declares a doubt as to the minor's competency," and Evidence Code section 1016 says there is no privilege for any "communication relevant to an issue concerning the mental or emotional condition of the patient if such issue has been tendered by the patient." That exception applies here.

T.M. v. Superior Court (2024) 104 Cal.App.5th 664

In a state trial, the defendant was convicted of murdering her husband. The prosecution introduced extensive evidence about the defendant's sex life and her failure as a mother and a wife, which even the prosecution admits was irrelevant. "[W]hen evidence is introduced that is so unduly prejudicial that it renders the trial fundamentally unfair, the Due Process Clause of the Fourteenth Amendment provides a mechanism for relief." "[T]he Due Process Clause forbids the introduction of evidence so unduly prejudicial as to render a criminal trial fundamentally unfair."

Andrew v. White (2025) __ U.S. __; 23-6573

EVIDENCE (Con't)

The officer here identified substances using a presumptive test, "a handheld laser device called a TruNarc identifier." To admit such evidence the prosecutor had to show all three prongs of this test: "1) the reliability of the laser light technique used in the TruNarc device is generally accepted in the relevant scientific community; 2) the Irvine police officer who testified about the laser light technique was properly qualified as a witness on the subject; and 3) the officer used correct scientific procedures when administering the TruNarc test." The officer could not and did not testify that this device was accepted as reliable within the relevant scientific community, and he was not qualified to testify about the underlying scientific principles, which involved laser technology.

People v. Rios (2024) 99 Cal.App.4th 1128
People v. Leahy (1994) 8 Cal.4th 587

SENTENCING

The 3-Strikes law requires doubling of determinate prison terms when the defendant has one prior strike. "We hold that section 667, subdivision (e)(1) did not allow the trial court to double a sentence of LWOP." Life without parole (LWOP) "is an indeterminate sentence without a minimum term." "A sentence of life imprisonment without parole does not have . . . a minimum term because it does not allow for parole." As a result, the statutory mandate to double sentences does not apply to LWOP. But, "If a defendant has one prior serious or violent felony conviction that has been pled and proved, the determinate term or minimum term for an indeterminate term shall be twice the term otherwise provided as punishment for the current felony conviction." (Pen. Code § 667, subd. (e)(1).) So terms of 25 years to life get doubled, but indeteminate life terms with no minimum term do not get doubled.

People v. Mason (2024) 105 Cal.App.5th 411

"In Tirado, we affirmed the general rule that when an adjudicated enhancement has been dismissed, imposition of an uncharged enhancement is permitted so long as the facts supporting its imposition are alleged and found true." "The question here is whether the same statutory framework permits a court, after striking a section 12022.53 enhancement, to impose a lesser included, uncharged enhancement authorized elsewhere in the Penal Code – that is, outside of section 12022.53. We hold that it does." "The court thus has discretion to impose such an enhancement if it is supported by facts that have been alleged and found true."

People v. McDavid (2024) 15 Cal.5th 1015
People v. Tirado (2022) 12 Cal.5th 688

The defendant was charged with misdemeanor offenses relating to unlicensed marijuana dispensary sales on property the defendant owned. There was no evidence that the defendant knew about the criminal activity. The trial judge dismissed the case under Penal Code section 1385, relying in part on the defendant's lack of knowledge. "[T]he trial court had discretion to consider Wheeler's lack of knowledge under section 1385," even in the context of strict liability offenses. "[A] defendant may invite the court to exercise its power by an application."

Wheeler v. Appellate Division (2024) 15 Cal.5th 1193
Rockwell v. Superior Court (1976) 18 Cal.3d 420

When a murder conviction is vacated as a result of an SB 1437 petition, the judge resentences the defendant. (Pen. Code sec. 1172.6, subd. (e).) If the defendant was also convicted of a target felony, the judge resentences on that offense. But when no target offense was charged, the target offense is "the offense or felony that was the predicate for relief in the first place – i.e., the offense or felony that supported the prosecution's theory of . . . murder." (Arrellano.) "Whatever flexibility and discretion the trial court has in redesignating an offense to its target offense or underlying felony, it does not confer the separate authority to search out and impose convictions for additional offenses that are not the target offense or underlying felony of the vacated murder conviction." "[T]he target offense or underlying felony for purposes of section 1172.6, subdivision (e) is not any felony that could have been established by the evidence; it is the offense or felony that was the basis of the prosecution's theory of murder in the trial court."

People v. Lara (2025) __ Cal.App.5th __; B330473
People v. Arrellano (2024) 16 Cal.5th 457

AB 333 made many changes to the gang enhancement. "Thus, a criminal case in which the sentence is not yet final, including one in which an appellate court has affirmed the conviction and remanded for reconsideration of sentencing related issues, is not final for purposes of Estrada, and the benefits of supervening ameliorative legislation apply retroactively." The judgment here was not final when AB 333 became effective, and thus this defendant was entitled to its retroactive application.

People v. Lopez (2025) 17 Cal.5th 388

Effective 1/1/24, AB 600 amended Penal Code section 1172.1 to allow a trial court, on its own motion, to recall a sentence and resentence a defendant when "applicable sentencing laws at the time of the original sentencing are subsequently changed by new statutory authority or case law." Can a defendant file a petition seeking relief from the court under this section? Is a denial of such a petition appealable?

People v. Chatman (2025) __ Cal.App.5th __; F087868; yes and yes
People v. Hodge (2025) 107 Cal.App.5th 985__; no and no

SB 483, effective 1/1/22, made the elimination of 1-year prison priors (Pen. Code sec. 667.5, subd. (b)) fully retroactive. (Pen. Code sec. 1172.75.) Penal Code section 1172.75, subdivision (d)(2), provides that when the judge resentences the defendant, the judge is required to "apply any other changes in law that reduce sentences or provide for judicial discretion." Does the SB 483 sentencing judge have power to dismiss strike priors under the authority of Penal Code section 1385 and Romero? "We decide a trial court has the authority to strike prior strikes under section 1385(a) and Romero at a section 1172.75 resentencing."

People v. Rogers (2025) 108 Cal.App.5th 340
People v. Superior Court (Romero) (1996) 13 Cal.4th 497

"We hold that the limited resentencing procedure under section 1172.6, subdivision (e) does not permit a court to impose a sentencing enhancement or allegation unless the enhancement or allegation was pled and either proven to the trier of fact or by the defendant's admission in open court."

People v. Arrellano (2024) 16 Cal.5th 457

SB 483 made the elimination of 1-year prison priors (Pen. Code sec. 667.5(b)) fully retroactive. When an individual is serving a judgment that includes a now-invalid prior, that sentence must be recalled, the invalid prior(s) must be stricken, and the defendant must be resentenced. (Pen. Code sec. 1171.1, now renumbered 1172.75.) This judge invalidated 3 1-year priors and also struck a great bodily injury (GBI) enhancement. "We conclude that the trial court was required to conduct a resentencing under the express provisions of section 1172.75, even in plea bargain cases; the court had the authority to strike the term for the GBI enhancement under those express provisions; and the People were not entitled to withdraw from the plea agreement as a result of the reduction in Hernandez's sentence."

People v. Hernandez (2024) 103 Cal.App.5th 981

Cal. Rules of Court, Rule 4.421(c), says that circumstances in aggravation may also include "[a]ny other factors . . . that reasonably relate to the defendant or the circumstances under which the crime was committed." The prosecutor filed this clause in the Information as a ground in aggravation under SB 567. The Judicial Council's authority to adopt court rules requires those rules to "promote uniformity in sentencing," which this clause "so vacuous as to be devoid of meaning," does not. This aggravating circumstance grants prosecutors, and ultimately juries, an open-ended power to define sentencing criteria on an ad hoc basis, which exceeds the Judicial Council's authority

Lovelace v. Superior Court (2025) __ Cal.App.5th __; A168924

Effective 1/1/22, SB 81 amended Penal Code section 1385, which now grants judges discretionary authority to strike or dismiss enhancements if doing so is in the interests of justice. The amended Penal Code section 1385 lists 9 "mitigating circumstances." The presence of any of these circumstances "weighs greatly in favor of dismissing the enhancement unless the court finds that dismissal of the enhancement would endanger public safety." "[A]bsent a finding that dismissal would endanger public safety, a court retains the discretion to impose or dismiss enhancements provided that it assigns significant value to the enumerated mitigating circumstances when they are present. In other words, if the court does not find that dismissal would endanger public safety, the presence of an enumerated mitigating circumstance will generally result in the dismissal of an enhancement unless the sentencing court finds substantial, credible evidence of countervailing factors that may nonetheless neutralize even the great weight of the mitigating circumstance, such that dismissal of the enhancement is not in furtherance of justice."

People v. Walker (2024) 16 Cal.5th 1024

SENTENCING (Con't)

California Rules of Court, Rule 4.421(c), says that circumstances in aggravation may also include "[a]ny other factors . . . that reasonably relate to the defendant or the circumstances under which the crime was committed." The prosecutor filed this clause in the Information as a ground in aggravation under SB 567. The Judicial Council's authority to adopt court rules requires those rules to "promote uniformity in sentencing," which this clause "so vacuous as to be devoid of meaning," does not.

Lovelace v. Superior Court (2025) __ Cal.App.5th __; A168924

The defendant was placed on probation with various conditions. He asked that his probation be transferred to another county. In that county the court imposed additional conditions of probation. A court cannot modify probation in the absence of facts not known when probation was granted. A change in circumstances is required before a court has jurisdiction to modify probation. In this context, a change in circumstance requires a fact not available at the time of the original order. There were no new facts here. The transfer of probation to a different county is not a "fact" that permits modification of probation.

People v. Rogers (2024) 106 Cal.App.5th 88

Penal Code section 1170, subdivision (d)(1), allows juveniles sentenced to life without parole (LWOP) to petition for resentencing. In Heard, the court held that to deny juvenile offenders sentenced to the functional equivalent of LWOP the same opportunity violates equal protection. If a defendant was entitled to youth offender parole at the time of his sentencing, that sentence did not actually constitute the functional equivalent of life without parole and therefore Heard relief does not apply.

People v. Superior Court (Valdez) (2025) __ Cal.App.5th __; E084222

People v. Heard (2022) 83 Cal.App.5th 608

RESTITUTION

The prosecutor opposed the Penal Code section 1203.4 dismissal motion on the basis that the defendant never paid restitution. Penal Code section 1203.4 permits dismissal only if the defendant "has fulfilled the conditions of probation" during the probationary period. "Respondent argues that, because the victim had submitted a restitution claim to the prosecutor before Daffeh's no-contest plea and because the trial court 'reserved' restitution under section 1202.4, subdivision (f) at the plea and sentencing hearing, Daffeh did not satisfy the conditions of his probation because he failed to pay an amount of which he had no notice before his probation expired and was never ordered to pay." This did not create a condition of probation.

People v. Daffeh (2024) 104 Cal.App.5th 790

The defendant was placed on mental health diversion (Pen. Code sec.1001.35 et seq.) and successfully completed that diversion, resulting in dismissal of the criminal case. After the dismissal, the judge ordered restitution to the victim and the Cal. Victim Compensation Board. Penal Code section 1001.36, subdivision (f)(1)(D), permits trial judges to order restitution "during the period of diversion." This bars a restitution order made after the case is dismissed.

People v. Berlin (2024) 101 Cal.App.5th 757

SENTENCING (Con't)

RESTITUTION

The defendant was convicted in 2018 of hit and run with injury. (Veh. Code sec. 20000, subd. (a).) The court placed the defendant on five years of probation. The court ordered restitution, the amount to be determined later. When AB 1950 went into effect, the probation was shortened to two years. (Pen. Code sec.1203.1, subd. (a).) In 2021 the court terminated probation, then a week later ordered $21,000 in restitution. Penal Code section 1202.46, which says that the court "shall retain jurisdiction over a person subject to a restitution order for purposes of imposing or modifying restitution until such time as the losses may be determined."

"In both Hilton and Waters, the Courts of Appeal held that a court lacks jurisdiction to impose new restitution orders once the period of probation has lapsed. Neither case considered the scope of a court's jurisdiction in the scenario we confront here, in which a sentencing court has timely ordered victim restitution and later fixes the amount of restitution after the amount of the victim's losses become ascertainable."

There's a concurring opinion by Liu (Evans joining), saying they concur on the understanding that "restitution must be fixed when the information becomes available to ascertain the amount of loss," so jurisdiction is doubtful if restitution is ordered "beyond the time it became available or reasonably discoverable."

People v. McCune (2024) 16 Cal.5th 980

Hilton v. Superior Court (2014) 239 Cal.App.4th 766

People v. Waters (2015) 241 Cal.App.4th 822

CREDITS

The defendant was charged with assault with an automatic firearm, Penal Code section 245(b). He spent 6 years in custody. The maximum sentence for 245(b) is 9 years. The defendant moved for release pending trial, arguing that with credits he could not be sentenced to any more time. "We conclude petitioner's pretrial detention in excess of his maximum potential sentence on a charge of assault with a semiautomatic firearm under section 245, subdivision (b), was excessive in relation to the government's public safety goals and thus constituted impermissible punishment in violation of petitioner's due process rights."

Nunez-Dosangos v. Superior Court (2024) 107 Cal.App.5th 283

The defendant was convicted of felony driving under the influence because he had three prior DUI convictions. The statute requires the judge to impose 180 days in county jail as a condition of probation. (Veh. Code sec. 23552, subd. (b).) The defendant had voluntarily checked himself into a residential treatment program for 180 days prior to his plea. The key fact here is that the defendant's stay in the rehabilitation program was voluntary, so the judge cannot give the defendant credit for that time.

People v. Billy (2024) 107 Cal.App.5th 246

People v. Sylvestry (1980) 112 Cal.App.3d Supp. 1

People v. Mobley (1983) 139 Cal.App.3d 320

People v. Rodgers (1978) 79 Cal.App.3d 26

In re Wolfenbarger (1977) 76 Cal.App.3d 201

People v. Municipal Court (Hinton) (1983) 149 Cal.App.3d 951

People v. Darnell (1990) 224 Cal.App.3d 806

CRIMES

Penal Code section 288.5 can be violated by three or more acts of "substantial sexual conduct" over a period of more than 3 months. "Substantial sexual conduct" is defined: it "means penetration of the vagina or rectum of either the victim or the offender by the penis of the other or by any foreign object, oral copulation, or masturbation of either the victim or the offender." (Pen. Code sec. 1203.066, subd. (b).) "This mental state—requiring only proof that Canales voluntarily inserted his finger or penis into his stepdaughter's vagina, without any further level of mental culpability—satisfies the presumption of mandatory culpability."

People v. Canales (2024) 106 Cal.App.5th 1230

Penal Code sections 261(a)(2) and (b)(1) criminalize rape by duress. Duress can be "purely psychological." There was sufficient evidence of duress based on years of indoctrination. The defendant was the son of God, obeying a parent was a Biblical commandment, disobeying it would anger God, and having sex with a parent was permitted by the Bible. The defendant had psychologically manipulated the victim into believing that God would inflict suffering on her if she refused sex. "The threat—direct and implied—of divine retribution if Jane Doe 1 did not have sexual intercourse with Defendant constituted duress sufficient to uphold the convictions for forcible rape."

People v. Townes (2025) __ Cal.App.5th __; G064319

Contra, People v. Espinza (2002) 95 Cal.App.4th 1287

"[A]n intentional act that causes a fire is arson when malice is shown." Malice can be shown by "an intent to injure, annoy, or defraud." Malice can also be shown by "an intent to do a wrongful act." A wrongful act is established "by an act that is either inherently wrongful because it violates the law or wrongful because it is done under circumstances that create an obvious fire hazard and is done without justification." The defendant here was manufacturing concentrated cannabis. This is a wrongful act that establishes malice for arson because the statute was enacted to address the dangerous use of chemicals in the production of drugs.

People v. Royal (2024) 105 Cal.App.5th 1242

Penal Code section 646.9, subdivision (a), defines stalking as when a defendant "makes a credible threat with the intent to place that person in reasonable fear." "The prosecution must prove a stalking defendant recklessly made a threat that put the victim in fear." "We thus interpret subdivision (a) of section 646.9 to be satisfied by proof that defendants consciously disregarded a substantial risk that their communications would be viewed as threatening harm." "The statute has no requirement of direct contact with a victim."

People v. Obermueller (2024) 104 Cal.App.5th 207

Kidnapping (Pen. Code sec. 207) requires moving the victim a substantial distance. Factors relating to the substantial distance element include the actual distance the victim was moved, "whether that movement increased the risk of harm above that which existed prior to the asportation, decreased the likelihood of detection, and increased both the danger inherent in a victim's foreseeable attempts to escape and the attacker's enhanced opportunity to commit additional crimes." Here the defendant moved the victim from the sidewalk to the street. There was no evidence that the middle of street was more concealed or secluded than the sidewalk, and no evidence that this movement increased the defendant's opportunity to commit additional crimes. Kidnapping conviction reversed.

People v. Ellis (2025) __ Cal.App.5th __; B331474

Vehicle Code section 10802 applies to knowingly tampering with "vehicle identification numbers" (VINs) "with the intent to misrepresent the identity or prevent the identification of motor vehicles or motor vehicle parts, for the purpose of sale, transfer, import, or export." This crime "includes tampering with a single VIN while harboring the requisite mental states." The phrase "for the purpose of sale [or] transfer" means "facilitating a conveyance of the motor vehicle regardless of whether the defendant intended to act as a seller, buyer, transferor, or transferee in the conveyance."

People v. Killian (2024) 100 Cal.App.5th 191

Penal Code section 136.1, subdivision (b)(2), makes it a crime to attempt to dissuade a victim or witness from "[c]ausing a complaint . . . to be sought and prosecuted, and assisting in the prosecution thereof." "Section 136.1(b)(2) is to be read conjunctively such that the language 'assisting in the prosecution thereof' provides no independent basis for a conviction under the statute. Where criminal charges have already been filed, postcharging dissuasion alone does not constitute an offense under section 136.1(b)(2)."

People v. Reynoza (2024) 15 Cal.5th 982

People v. Avery (2002) 27 Cal.4th 49

The domestic violence tort requires abuse by a defendant having a relationship (as defined in Pen. Code sec.13700(b)) with the plaintiff. Penal Code section 13700, subdivision (b), refers to a "dating relationship," not defined. Family Code section 6210 does define "dating relationship": "frequent, intimate associations primarily characterized by the expectation of affection or sexual involvement independent of financial considerations." The parties here knew each other for 19 months. For the first six to seven weeks, they had three in-person encounters involving kissing "or sexual activity." This failed to establish a "dating relationship:" "a reasonable trier of fact could find that three physical encounters over a six to seven-week period did not amount to frequent and intimate associations for purposes of Family Code section 6210. We cannot conclude as a matter of law that three such interactions in such a time period amount to frequent and intimate associations within the meaning of the statute."

M.A. v. B.F. (2024) 99 Cal.App.5th 559

MURDER

"To support a finding of second degree murder based on implied malice, the evidence must establish that the defendant deliberately committed an act, the natural consequences of which were dangerous to life, with knowledge of its danger to life and a conscious disregard of that danger." "Implied malice requires that the defendant actually appreciated the risk involved." The actual act the defendant engaged in that resulted in the accident causing death was staying in her car. To establish implied malice, the prosecution had to show that the defendant intentionally remained in her car and knew that this action would endanger the life of others. But there was no such evidence. The evidence was that the defendant was so impaired she had no idea what was going on: "Chagolla exhibited little awareness of what she was doing and the consequences of her failure to exit her vehicle."

People v. Superior Court (Chagolla) (2024) 102 Cal.App.5th 499

People v. Watson (1981) 30 Cal.3d 290

"[A]ctual killer" means the person actually himself killing the victim, not just the person who proximately caused the death: "We conclude that the term 'actual killer' was intended to limit liability for felony murder ... to the actual perpetrator of the killing, i.e., the person (or persons) who personally committed the homicidal act." "[C]riminal culpability is restricted to deaths directly caused by the defendant or an accomplice, as distinguished from the 'proximate cause' theory of felony murder, under which a defendant is responsible for any death that proximately results from the unlawful activity."

People v. Vang (2022) 82 Cal.App.5th 64

The jury was instructed on first-degree murder and lying in wait. The defendant was alleged to have aided and abetted the perpetrator, who acted with implied malice. The instructions failed to properly inform the jury of the elements, so the jury could have construed the instructions such to mean that "to be guilty as an aider and abettor of [lying in wait first degree] murder, appellant need only have intended to encourage the perpetrator's intentional act -- in this case, [a surprise attack on the victim] -- whether or not appellant intended to aid or encourage [the victim's] killing, and whether or not he personally knew of and disregarded the risk of such a killing." So the jurors could have found that in order to convict they only had to find that the defendant intended to encourage the perpetrator's intentional act, a surprise attack on the victim, whether or not he personally knew of and disregarded the risk of a killing. But if that is what the jury did find, the malice for a murder conviction was being imputed. That is barred. The judge's denial of SB 1437 relief is reversed.

People v. Maldonado (2022) 87 Cal.App.5th 1257

The statute (Pen. Code sec. 1172.6, subd. (d)(3)) provides for admission of former testimony presented against a party to the action. The Ocobachi court reversed, saying that at a grand jury proceeding the defendant has no right to appear and as such is not a "party" but is instead a "target" of an investigation. The Robinson court affirmed, saying that the "procedural protections" at a grand jury proceeding suffice to permit of grand jury testimony at an SB 1437 hearing.

People v. Ocobachi (2024) 105 Cal.App.5th 1174

People v. Robinson (2024) 106 Cal.App.5th 854

"[A] parent has a legal duty to his or her minor child to take every step reasonably necessary under the circumstances in a given situation to exercise reasonable care for the child, to protect the child from harm, and to obtain reasonable medical attention for the child." Parents "must be aware that their duty to protect has arisen, and aren't required to place themselves in danger of death or great bodily harm to protect their children." "[L]iability for murder on a failure-to-protect theory is appropriately reserved for individuals who actually know to a substantial degree of certainty that a life-endangering act is occurring or is about to occur and failed to act in conscious disregard for life." For a parent to be an aider based on failure to protect, "the parent must knowingly fail to protect their child from the life-endangering act for the purpose of facilitating that life-endangering act and such failure to act must in fact assist in the commission of the life-endangering act." The prosecutor "must prove that any steps the parent failed to take carry a high probability of preventing or stopping the life-endangering act." For a direct perpetrator theory of liability "there must be sufficient evidence that Collins's failure to protect Abel involved a high degree of probability that it will result in death, that Collins knew her failure to act endangered human life and acted with conscious disregard for life, and that her failure to act proximately caused Abel's death. For malice to be implied, a defendant must be subjectively aware that their acts or omissions endangered the life of their child."

People v. Collins (2025) 17 Cal.5th 293

"First, for the provocative act doctrine to apply, the defendant or a surviving accomplice must commit a life-endangering provocative act, and a third party must kill in response to that act. Second, the defendant, whether the provocateur or not, must have acted with a mens rea sufficient to support a conviction for murder." "To find petitioner guilty of implied malice murder based on a provocative shooting initiated by Richardson, the court was required to find that petitioner knew Richardson intended to shoot at Kendall and/or his associates, intended to aid Richardson in the shooting, knew that the shooting was dangerous to life, and acted in conscious disregard for life."

People v. Taylor (2025) __ Cal.App.5th __; F087652

People v. Reyes (2023) 14 Cal.5th 981

The question presented is "whether a defendant under a death sentence is eligible to seek resentencing relief pursuant to section 1172.6, or if death sentences may only be challenged by a collateral attack by way of a habeas corpus petition." "[A] capital defendant is entitled to seek resentencing relief under section 1172.6, absent an expression of legislative intent to limit resentencing relief to noncapital defendants, but that the requested relief must be presented in a petition for writ of habeas corpus pursuant to [Penal Code] section 1509, to comply with the mandate of Proposition 66."

People v. Thompson (2024) 106 Cal.App.5th 101

MURDER (Con't)

SB 1437

These inmates filed petitions to initiate an SB 1437 proceeding. The judges issued an Order to Show Cause (OSC) and conducted an evidentiary hearing, then denied relief based on testimony included in a grand jury transcript. The statute (Pen. Code sec. 1172.6, subd. (d)(3)) provides for admission of former testimony presented against a party to the action. The Ocobachi court reversed, saying that at a grand jury proceeding the defendant has no right to appear and as such is not a "party" but is instead a "target" of an investigation. The Robinson court affirmed, saying that the "procedural protections" at a grand jury proceeding suffice to permit of grand jury testimony at an SB 1437 hearing.

People v. Ocobachi (2024) 105 Cal.App.5th 1174

People v. Robinson (2024) 106 Cal.App.5th 854

SB 1437 (codified in Pen. Code sec. 1170.95, now renumbered 1172.6) allows a defendant to challenge a prior murder conviction when the defendant wasn't the actual killer, didn't aid in the killing, and wasn't a "major participant" in the underlying felony, who acted with "reckless indifference to human life." The question presented is "whether a defendant under a death sentence is eligible to seek resentencing relief pursuant to section 1172.6, or if death sentences may only be challenged by a collateral attack by way of a habeas corpus petition." "[A] capital defendant is entitled to seek resentencing relief under section 1172.6, absent an expression of legislative intent to limit resentencing relief to noncapital defendants, but that the requested relief must be presented in a petition for writ of habeas corpus pursuant to [Penal Code] section 1509, to comply with the mandate of Proposition 66."

People v. Thompson (2024) 106 Cal.App.5th 101

SB 1437 bars liability for felony murder where the defendant did not aid in the killing, and was not a "major participant" in the underlying felony who acted with "reckless indifference to human life." So long as the jury found that the defendant aided the underlying felony, that is enough to deny relief: "assisting a qualifying felony in which a death occurs is the same as assisting the actual killer in committing first degree murder, and vice versa."

People v. Lopez (2023) 88 Cal.App.5th 566

"The admission of evidence in the [SB 1437] hearing shall be governed by the Evidence Code, except that the court may consider evidence previously admitted at any prior hearing or trial that is admissible under current law, including witness testimony, ... However, hearsay evidence ... admitted in a preliminary hearing pursuant to subdivision (b) of Section 872 shall be excluded from the hearing as hearsay, unless the evidence is admissible pursuant to another exception to the hearsay rule." (Pen. Code sec. 1172.6, subd. (d)(3).) The Prop. 115 hearsay presented at the preliminary hearing from the officer should have been excluded, but that the preliminary hearing testimony of the victim was properly admitted.

People v. Davenport (2023) 95 Cal.App.5th 1150

IMMIGRATION

Penal Code section 1473.7 permits a court to vacate a plea on a finding that "the conviction or sentence is legally invalid due to a prejudicial error damaging the moving party's ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of a conviction or sentence." This defendant pled to two misdemeanor marijuana offenses and received judicial diversion, under Penal Code section 1001.94, now repealed. A year later the judge dismissed the case. The defendant filed a Penal Code section 1473.7 motion to vacate his plea several years later. "Defendant's successful completion of the Sentence Deferral Program nullified his plea well before he brought his [Penal Code] section 1473.7 motion." Until the judge dismissed the case, a Penal Code section 1473.7 motion was available, but 1473.7 itself only permits a "conviction or sentence" to be vacated, so once the case was dismissed, there was no sentence or conviction to be vacated.

People v. Kuzmichey (2024) 106 Cal.App.5th Supp. 18

Penal Code section 1473.7 permits a court to vacate a plea on a finding that the "conviction or sentence is legally invalid due to a prejudicial error damaging the moving party's ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of a conviction or sentence." The judge granted the defendant's motion to vacate his conviction and permitted him to withdraw from his plea. Vacatur of a conviction after a 1473.7 motion does not preclude reinstatement of the charges. Successful completion of probation and obtaining a Penal Code section 1203.4 dismissal of his case, relieving him of all "penalties and disabilities" resulting from the conviction, does not preclude reinstatement of the charges. Reduction of the felonies to misdemeanors at the Penal Code section 1203.4 proceedings does not preclude reinstatement of the charges. Double jeopardy also does not bar reinstatement of the charges.

Martinez v. Superior Court (2024) 106 Cal.App.5th 461

COUNSEL CAN ASSERT THE 5TH AMENDMENT FOR A CLIENT

In Ford, the Supreme Court stated: "(1) the privilege against self-incrimination is personal and may be asserted only by the holder, and (2) to assert it, a witness must not only be called but must also be sworn." "There can be no doubt [R.J.'s] attorney was authorized to make the[se] statement[s], having been appointed for the express purpose of protecting R.J.'s Fifth Amendment interests. In these circumstances, we see no reason why the representations of an officer of the court should be given less credence than a sworn witness's. To make R.J. take the stand to repeat the same assertions would have wasted judicial time and resources. The trial court had no independent duty to do so when it had the information necessary to assess the validity of the privilege."

People v. Brooks (2024) 99 Cal.App.5th 323

Cf. People v. Ford (1988) 45 Cal.3d 431

People v. Lucas (1995) 12 Cal.4th 415

AN INMATE ALLEGED TO BE A SEXUALLY VIOLENT PREDATOR HAS THE RIGHT TO A SPEEDY TRIAL

An inmate alleged to be a Sexually Violent Predator (SVP) has a due process right to "a timely trial." The Barker (407 U.S. 514) test controls. The Barker test balances: the length of the delay, the reason for the delay, the defendant's assertion of his rights, and prejudice. Only the first factor was in the defendant's favor. The delays in this case were either requested by or agreed to by the defense.

Camacho v. Superior Court (2023) 15 Cal.5th 354

DISCHARGING THE JURY PRECLUDES RECONVENING THEM

The trial on the prior in this case was bifurcated. The jury returned a verdict of guilty on the underlying charges. At 10:10 a.m. the judge discharged the jurors and told them that they could talk about the case. The prosecutor noticed that there had been no trial on the prior. The bailiff rounded up the excused jurors, who were still in the courthouse. The jurors returned at 2:05 p.m. "Once a 'complete' verdict has been rendered per [Penal Code] section 1164 and the jurors discharged, the trial court has no jurisdiction to reconvene the jury regardless of whether or not the jury is still under the court's control." There are exceptions, if the verdict is "irregular" or a complete verdict has not been entered. If either exception applies, "jurisdiction to reconvene the jury depends on whether the jury has left the court's control. If it has, there is no jurisdiction; if it hasn't, the jury may be reconvened." Given the lack of information about what the jurors were doing during the 3-hour gap, Court of Appeal "cannot conclude that the jury remained within the court's control." The finding that the prior was true is reversed, and the case is remanded for resentencing without the prior.

People v. Jones (2023) 89 Cal.App.5th 1344

People v. Thornton (1984) 155 Cal.App.3d 845

IF DISMISSAL WOULD RESULT IF DENIED, D.A. HAS THE RIGHT TO CONTINUANCE

When the prosecutor moves to continue a Penal Code section 1538.5 motion but they do not have good cause, "If the challenged evidence is so critical that its suppression would require dismissal of the case, the court must generally grant a continuance unless dismissal would be in furtherance of justice." These continuances are permitted only if no speedy trial right of our clients is violated, this "continuance can be granted without violating the defendant's speedy trial rights." Dismissals are disfavored, but the judge may consider whether the prosecution acted abusively or in bad faith, whether the defendant has suffered prejudice, society's interest in the prosecution of the crime, and "other relevant factors." "[W]e hold that it is an abuse of discretion for the court to deny continuance of a suppression hearing when it is reasonably foreseeable that dismissal of the case will result, unless dismissal would be in furtherance of justice." The prosecutor has the burden to show "an inability to go forward without the evidence in dispute," but the court has to make the final decision.

People v. Brown (2023) 14 Cal.5th 530

SECOND AMENDMENT

New York state law permitted handguns to be carried in public only if the person had a permit. To get the permit, the person has to "demonstrate a special need for self-protection distinguishable from that of the general community." Thus, a general statement that the person wants to carry a handgun for self defense would result in the permit being denied in New York. "Because the State of New York issues public-carry licenses only when an applicant demonstrates a special need for self-defense, we conclude that the State's licensing regime violates the Constitution." Why? "[T]he Second and Fourteenth Amendments protect an individual's right to carry a handgun for self-defense outside the home."

NY State Rifle & Pistol Assoc. v. Bruen (2022) 142 S.Ct. 2111
District of Columbia v. Heller (2008) 554 U.S. 570

"[W]e easily conclude that Duarte's weapon, a handgun, is an 'arm' within the meaning of the Second Amendment's text." The court conducts an exhaustive discussion of the history of firearm laws, and concludes that the government "has failed to prove that [the statute's] categorical prohibition, as applied to Duarte, is part of the historical tradition that delimits the outer bounds of the Second Amendment right." This panel of the 9th Circuit strikes down the federal statute which makes it illegal to possess a firearm if the defendant has been convicted of an offense punishable by more than a year in prison.

U.S. v. Duarte (2024; 9th Cir.) 108 F.4th 786; en banc rehearing granted
District of Columbia v. Heller (2008) 554 U.S. 570
NY State Rifle & Pistol Assoc. v. Bruen (2022) 142 S.Ct. 2111

A federal statute prohibits an individual subject to a domestic violence restraining order from possessing a firearm if that order includes a finding that he "represents a credible threat to the physical safety of [an] intimate partner," or a child of the partner or individual. (18 U. S. C. §922(g)(8).) "Since the founding, our Nation's firearm laws have included provisions preventing individuals who threaten physical harm to others from misusing firearms." "An individual found by a court to pose a credible threat to the physical safety of another may be temporarily disarmed consistent with the Second Amendment."

U.S. v. Rahimi (2024) 602 U.S. 680
NY State Rifle & Pistol Assoc. v. Bruen (2022) 597 U.S. 1
District of Columbia v. Heller (2008) 554 U.S. 570

"Assault weapons like the AR-15 style rifle police found in defendant's car, are, ... weapons not typically possessed by law-abiding citizens for lawful purposes," thus Heller does not bar this conviction. "Bruen did not analyze whether a particular type of firearm is protected under the Second Amendment. Rather, Bruen focused on whether New York's statutory public-carry licensing scheme violated the Second Amendment right to carry handguns publicly for self-defense."

People v. Bocanegra (2023) 90 Cal.App.5th 1236

SECOND AMENDMENT (Con't)

"In sum, Heller and Bruen both held that the Second Amendment protects the individual right of 'law-abiding, responsible citizens' to possess firearms. Convicted felons, by definition, are not law-abiding. Felons thus are not among 'the people' who have an individual right to possess firearms under the Second Amendment."

People v. Alexander (2023) 91 Cal.App.5th 469

People v. Bey (2025) 108 Cal.App.5th 144

Even if the California firearms licensing scheme is unconstitutional, that does not make carrying a concealed firearm in a vehicle (Veh. Code sec. 25400) unconstitutional. Post-Heller cases in California have ruled that "prohibitions on concealed firearms have historically been permitted by the Second Amendment." "Bruen addressed only the constitutionality of New York's licensing regime—not its impact on any potential criminal charges for carrying a firearm without a license."

People v. Miller (2023) 94 Cal.App.5th 935

"[T]he butterfly knife comprises a handle and a folding blade, the cutting edge of which becomes covered by the handle when closed." "[A]n experienced user can open a butterfly knife with one hand." The Ninth Circuit strikes down the Hawaii butterfly knife statute, which bars possessing, transporting, or selling such knives, on Heller and Bruen grounds. This court rules that "arms" includes "weapons of offense," and these knives qualify as weapons of offense. "Like firearms, bladed weapons fit the general definition of 'arms' as '[w]eapons of offence' that may be 'use[d] in wrath to cast at or strike another.'" Thus the Second Amendment protects them from being banned.

Teter v. Lopez (2023; 9th cir.) 76 Fed.3d 938; 20-15948; 2023 WL 5008203

Penal Code section 30305, subdivision (a)(1), makes it a wobbler for anyone barred from owning or possessing a firearm to possess ammunition. Heller and Bruen apply only to "law-abiding cititzens"; felons are not law abiding citizens.

People v. Ceja (2023) 94 Cal.App.5th 1296

People v. Allen (2023) 96 Cal.App.5th 573

People v. Gonzalez (2023) 75 Cal.App.5th 907

The defendants were charged with carrying a concealed firearm in a vehicle. (PC 25400(a)(1).) The trial court sustained a demurrer on Heller and Bruen grounds, ruling that the Second Amendment rendered the statute unconstitutional. The California requirement that an applicant show good cause for issuance of a firearm permit is unconstitutional, but nothing in Bruen justifies invalidating the permit requirement in its entirety. The "good cause" requirement is severable from the permit requirement, so annulling the good cause requirement doesn't render the entire permit requirement invalid. The provision in California's permit law requiring that the permits be issued only to those showing a "good moral character" does not render the firearm statute unconstitutional; the "good moral character" provision is also severable.

People v. Mosqueda (2023) 97 Cal.App.5th 399

CHALLENGING JURORS

CCP 231.7, applicable to all trials starting on or after 1/1/22, says, "Certain demeanor-based reasons for excusing jurors are . . . now presumptively invalid unless independently confirmed by the trial court and the demeanor 'matters to the case to be tried.' " (Uriostegui, 101 CA5th 271, 279; citing CCP 231.7(g)(2).) Those demeanors are, "(A) The prospective juror was inattentive, or staring or failing to make eye contact. [¶] (B) The prospective juror exhibited either a lack of rapport or problematic attitude, body language, or demeanor. [¶] (C) The prospective juror provided unintelligent or confused answers." (CCP 231.7(g)(1).) "[T]he reasons identified in section 231.7, subdivision (g)(1) start out as presumptively invalid and that the only way to rebut the presumption of invalidity is by applying the statutorily prescribed two-step process of (1) confirmation of the behavior by the trial court, and (2) explanation by counsel of why the behavior matters to the case." (CCP 231.7(g)(2).) "If the trial court determines that the requirements of subdivision (g)(2) of section 231.7 are not satisfied, the proffered reason becomes conclusively invalid at that point." "[A]n objection to a peremptory challenge must be sustained whenever any reason identified for the challenge becomes conclusively invalid under section 231.7, subdivision (g), regardless of whether the party exercising the peremptory challenge also identifies facially neutral reasons that do not fall within the scope of subdivision (g)."

People v. Caparrotta (2024) 103 Cal.App.5th 874
People v. Uriostegui (2024) 101 Cal.App.5th 271

Code of Civil Procedure section 231.7 is applicable to all trials starting on or after 1/1/22. It eliminates the requirement that you make a prima facie showing of racial bias when the prosecutor uses a peremptory challenge on a juror. Once you object, the prosecutor has to state reasons for the challenge. Certain reasons for a challenge are presumptively invalid, such as a prospective juror having had a negative experience with law enforcement or having a close relationship with someone convicted of a crime. If a party relies on a juror's "demeanor, behavior, or manner," that is presumptively invalid "unless the trial court is able to confirm that the asserted behavior occurred, based on the court's own observations or the observations of counsel for the objecting party." Even so, counsel has to explain why the behavior "matters to the case to be tried." These presumptions of invalidity can only be overcome by clear and convincing evidence that the reasons are unrelated to the juror's perceived membership in a protected group and that the reasons bear on the juror's ability to be fair. The court may only consider the reasons stated by the party using the peremptory challenge. (CCP 231.7(d)(1).) These rules apply to both parties.

People v. Ortiz (2023) 96 Cal.App.5th 768

"In view of his multiple uncertain and noncommittal responses regarding impartiality, the trial court properly found it highly probable the prosecutor's challenge was unrelated to conscious or unconscious bias and was instead specific to Juror No. 1589 and bore on his ability to be fair and impartial. In other words, the clear and convincing standard was satisfied."

People v. Gonzalez (2024) 104 Cal.App.5th 1

Code of Civil Procedure section CCP 231.7, applicable to all trials starting on or after 1/1/22, provides that "Certain demeanor-based reasons for excusing jurors are . . . now presumptively invalid unless independently confirmed by the trial court and the demeanor matters to the case to be tried." Those demeanors are: "(A) The prospective juror was inattentive, or staring or failing to make eye contact. (B) The prospective juror exhibited either a lack of rapport or problematic attitude, body language, or demeanor. (C) The prospective juror provided unintelligent or confused answers." (Code of Civ. Proc. sec. 231.7(g)(1).) "[T]he reasons identified in section 231.7, subdivision (g)(1) start out as presumptively invalid and that the only way to rebut the presumption of invalidity is by applying the statutorily prescribed two-step process of (1) confirmation of the behavior by the trial court, and (2) explanation by counsel of why the behavior matters to the case."

People v. SanMiguel (2024) 105 Cal.App.5th 880

People v. Uriostegui (2024) 101 Cal.App.5th 271, 279

The prosecutor used peremptory challenges to excuse an African-American juror, giving two reasons. The first was that the juror's prior felony convictions were negative experiences that prevented her from being impartial. Jurors with prior felony convictions may now serve as jurors. "[T]here was no evidence in the record to support the trial court's finding that the juror's conviction clouded her ability to serve." The second reason was that a juror was too opinionated and so purportedly could not work with the other jurors. Code of Civil Procedure section 237.1, inapplicable to this case but instructive, makes demeanor-based peremptory juror challenges problematic. Moreover, "[T]here is no evidence of this character trait in the record." The case is reversed for Batson (476 U.S. 79) and Wheeler (22 Cal.3d 258) error.

People v. Hicks (2024) 103 Cal.App.5th 1229

To overcome the presumptive invalidity of an exercise of a peremptory challenge, the challenged party must show by clear and convincing evidence "that an objectively reasonable person would view the rationale as unrelated to a prospective juror's [actual or perceived membership in a cognizable group], and that the reasons articulated bear on the prospective juror's ability to be fair and impartial in the case." (CCP 231.7(e).) The court has to "determine that it is highly probable that the reasons given for the exercise of a peremptory challenge are unrelated to conscious or unconscious bias and are instead specific to the juror and bear on that juror's ability to be fair and impartial in the case." (CCP 231.7(f).) The presumptive invalidity was overcome here based on the juror's "repeated acknowledgement that she would have difficulty setting aside her bias against law enforcement officers to fairly consider their testimony, despite her initial statements she could be fair."

People v. Jimenez (2024) 99 Cal.App.5th 534

Batson v. Kentucky (1986) 476 U.S. 79

People v. Wheeler (1978) 22 Cal.3d 258

MENTAL HEALTH DIVERSION

The judge found that the defendant was prima facie eligible and suitable for mental health diversion (MHD). But she then denied MHD. The judge focused on the defendant's failure to bring his medications to the evaluating mental health expert, claiming that this indicated that the defendant was not really interested in dealing with his mental health disorder. The prosecutor referenced certain aspects of the expert's report, such as exaggerations, denials then recanted, etc. In spite of these things, the expert concluded that the defendant was eligible and suitable for diversion. The judge disagreed, finding that the defendant was not suitable because he "lacked sufficient seriousness to participate in diversion." "But it did not examine Vaughn's behaviors that motivated its decision (e.g., forgetting his medicine bottles, inability to recognize the seriousness of the situation in which he finds himself, and the failure to provid[e] information[ ] beneficial to that evaluation) in the context of his mental health diagnoses or the broader statutory purposes." The trial judge's comments reflected a reluctance to grant MHD, "which contradicts the legislative intent to apply the statute broadly when the statutory requirements are met." Denial of MHD is reversed.

Vaughn v. Superior Court (2024) 105 Cal.App.5th 124

When a judge declares a doubt about a defendant's competency to stand trial, Penal Code section 1368, subdivision (c), provides that all proceedings are suspended until the issue of whether the defendant is competent is resolved. Not all actions are suspended, and Penal Code section 1368 refers to suspension of "criminal proceedings." Thus, the court retains jurisdiction when the issue "involves disposition of the matter prior to the competency proceeding without proceeding to trial, which is similar to diversion." Mental health diversion is one of those exceptions. "Based on the foregoing, the trial court did not lack jurisdiction to consider diversion while the proceedings on criminal prosecution were suspended under section 1368."

People v. Velador (2024) 103 Cal.App.5th 687

The mental health diversion statute to "pretrial diversion," which it describes as, "postponement of prosecution . . . at any point in the judicial process from the point at which the accused is charged until adjudication." (Pen. Code § 1001.36, subd. (f)(1).) The term "until adjudication" means, "the request must be made before attachment of jeopardy at trial or the entry of a guilty or no contest plea, whichever occurs first."

People v. Braden (2023) 14 Cal.5th 791

Originally, to obtain pre-plea mental health diversion, the defendant was required to prove that the disorder "played a significant role in the commission of the charged offense." The Legislature amended the statute. (Pen. Code § 1001.36, subd. (b)(2); effective 1/1/23.) Under the modified diversion statute, if the defendant has a qualifying disorder, the court must find that the nexus prong has been satisfied, absent clear and convincing evidence to the contrary: "the court shall find that the defendant's mental disorder was a significant factor in the commission of the offense unless there is clear and convincing evidence that it was not a motivating factor, causal factor, or contributing factor to the defendant's involvement in the alleged offense." This amendment is fully retroactive.

People v. Doron (2023) 95 Cal.App.5th 1

DRIVING UNDER THE INFLUENCE

"[M]otorists cannot be deemed to have consented to submit to a blood test on pain of committing a criminal offense." "In our view, the Birchfield rule against criminalizing blood test refusals does not mean the imposition of lesser consequences is constitutionally unreasonable." "[W]e decline to extend Birchfield to prohibit the imposition of an evidentiary consequence for Bolourchi's refusal to submit to a blood test."

People v. Bolourchi (2024) 103 Cal.App.5th 243
Birchfield v. North Dakota (2016) 579 U.S. 438
People v. Lucious (1984) 153 Cal.App.3d 416
People v Bracey (1994) 21 Cal.App.4th 1532

When a DUI defendant is unconscious and therefore cannot give a breath test, exigent circumstances permit a blood test without a warrant. "[T]he Mitchell court did not reverse McNeely's rule that officers need a blood-draw warrant if one is practical to obtain." An officer can obtain an electronic search warrant in 30 to 45 minutes, so the police had plenty of time to get a warrant here, where the defendant became unconscious 90 minutes after the accident. "The good-faith exception to the exclusionary rule asks whether a reasonably well-trained officer would have known the search was illegal in light of all the circumstances." McNeely, requiring a warrant absent exigent circumstances, has been the law for over a decade: "Any reasonably well-trained officer would have known this in 2018, when the events at issue here took place." The officer could not rely on the implied consent law to draw blood: "the implied consent law applies only if the person has been lawfully arrested for one of the listed offenses." The defendant was not under arrest when he became unconscious. A a fatal accident plus some odor of alcohol is not probable cause to arrest for DUI.

People v. Alvarez (2023) 98 Cal.App.5th 531
Missouri v. McNeely (2013) 569 U.S. 141; 133 S.Ct. 1552
Mitchell v. Wisconsin (2019) 139 U.S. 915; 139 S.Ct. 2525

SB 1437 REVERSAL DOES NOT PERMIT A NEW CCP 170.6 CHALLENGE

The Code of Civil Procedure1 provides that on remand "following reversal on appeal of a trial court's final judgment," a party is entitled to a peremptory challenge "if the trial judge in the prior proceeding is assigned to conduct a new trial on the matter." (Code of Civ. Proc. § 170.6, subd. (a)(2).) In this case, the defendant obtained a reversal of an order denying relief under SB 1437 (codified in Pen. Code sec. 1170.95, now renumbered 1172.6). The case was sent back to the same judge to again hear the SB 1437 petition so the defense filed a CCP 170.6 challenge against that judge. This is a "resentencing procedure, not a new prosecution." "[A] resentencing hearing is not a 'new trial' within the meaning of section 170.6, subdivision (a)(2)" so the defense cannot file a second 170.6.

Estrada v. Superior Court (2023) 93 Cal.App.5th 915
Torres v. Superior Court (2023) 94 Cal.App.5th 497

BAN ON CAMPING DOES NOT CRUEL AND UNUSUAL PUNISHMENT

In Robinson, the U.S. Supreme Court held that making it a crime to be "addicted" to narcotics violated the ban on the 8th Amendment ban on cruel and unusual punishment, saying that, "a State may not criminalize the status of being an addict." A Grants Pass, Oregon, ordinance barring camping in public does not violate the cruel and unusual punishment ban: "laws like these do not criminalize mere status, Robinson is not implicated." The ordinance is not criminalizing mere status, it bars camping, and housed people can't camp on public streets either. There are many other challenges, the court says that it is only ruling that laws banning camping don't violate the cruel and unusual punishment ban.

City of Grants Pass v. Johnson (2024) __ U.S. __; 144 S.Ct. 2202

Robinson v. California (1962) 370 U.S. 660

JUDGES MUST ADVISE DEFENDANTS OF THE POSSIBILITY OF SVP COMMITMENTS

"[W]e exercise our supervisory powers to require trial courts to explicitly advise criminal defendants of potential SVPA consequences of a guilty or nolo contendere (no contest) plea." This applies prospectively.

In re Tellez (2024) 17 Cal.5th 77

DUE PROCESS IS VIOLATED WHEN THE D.A. ALLOWS PERJURY

"[A] conviction obtained through use of false evidence, known to be such by representatives of the State violates due process," and "[t]he same result obtains when the State, although not soliciting false evidence, allows it to go uncorrected when it appears." In this case, McCray testified against the defendant at the preliminary hearing, saying that he had received no leniency for his testimony. He then asserted his 5th Amendment right not to testify at trial, allowing the prelim. testimony to be presented. Twenty years later it was discovered that in fact the prosecutor had promised not to prosecute McCray for the events he testified about. This is a Brady violation.

In re Hill (2024) 104 Cal.App.5th 804

Brady v. Maryland (1963) 373 U.S. 83

Napue v. Illinois (1959) 360 U.S. 246

THE RACIAL JUSTICE ACT

In Montgomery, the Court of Appeal ruled that denial of a discovery motion filed as part of a Racial Justice Act (RJA) challenge is not separately appealable. Such a denial is not appealable. The Montgomery Court of Appeal also ruled that the trial court lacks jurisdiction to even consider a discovery motion before the judge issues an Order to Show Cause (OSC) on the RJA challenge. This court disagrees, saying that "the Act permits a defendant to file a stand-alone postjudgment discovery motion before filing a habeas corpus petition."

People v. Serrano (2024) 106 Cal.App.5th 276

People v. Montgomery (2024) 104 Cal.App.5th 1062

The white Deputy Public Defender (DPD) approached the Hispanic prosecutor to negotiate this case. The DPD became frustrated and said, "I really don't care. [R]ead between the lines . . . . I am a white man. What do I care? It's not my people we are incarcerating." The DPD then said that he expected the DA to show more leniency because the DA and the defendant appeared to be the same race, saying, "[Y]ou are part of the problem. Look around you, all the people being incarcerated are your people. I will just look like a mean defense attorney. You should be part of the solution." The judge ordered the Public Defender's office to remove the DPD as counsel and assign a new DPD to handle petitioner's case. The majority says that when defense counsel becomes aware of a potential RJA violation, counsel has a duty to investigation, and "because the nature of any investigation in this case necessarily includes an assessment of whether a specific deputy public defender may harbor an unintentional or unconscious implicit bias, it is simply not an inquiry which that specific deputy public defender is equipped to conduct." The majority also says that removing counsel to prevent a potential violation of the RJA was with the court's discretion.

Sanchez v. Superior Court (2024) 106 Cal.App.5th 617

Just claiming the officer was not lying about not knowing the race of the driver "ignored the possibility that the officer's actions were a product of an implicit bias that associated things the officer did know–the location of the stop and the clothing Bonds was wearing–with race." Use of "high crime area" can be code for an area disproportionately populated by people of a particular race. The occupants of the car were wearing hoodies; an officer might assume that certain clothing is associated with criminality if worn by people of color.

Bonds v. Superior Court (2024) 99 Cal.App.5th 821

"We conclude the rulings challenged by defendant were ordinary evidentiary rulings based on relevance and do not demonstrate implicit racial bias under the Racial Justice Act's preponderance-of-the-evidence standard."

People v. Lawson (2025) __ Cal.App.5th __; B332399

During final argument the prosecutor used the terms "monsters" and "predators" to describe the defendants. "Nothing in the record suggests the terms were used to explicitly or implicitly appeal to racial bias." Prosecutors "should refrain from describing defendants as 'monsters,'" since that term "may be suggestive of an animal or beast," but "the term itself is race-neutral."

People v. Quintero (2025) 107 Cal.App.5th 1060

The judge denied discovery on the basis that the defense failed to show a plausible factual foundation for a Racial Justice Act (RJA) violation. The defense had established that plausible factual foundation, a "low showing [is] required." The prosecutor argued that to obtain an order of discovery for an RJA challenge, case-specific data is required. "But we view the local, county-level data and statistics offered here in totality as sufficient to meet the specificity requirement for a plausible factual foundation."

Gonzalez v. Sup. Ct. (2024) __ Cal.App.5th Supp.; __; 23AP002906; 2024 WL 5364723

"[T]he prosecution explicitly asserted Stubblefield's race was a factor in law enforcement's decision not to search his house. The statement implied the house might have been searched and a gun found had Stubblefield not been Black, and that Stubblefield therefore gained an undeserved advantage at trial because he was a Black man. Second, the claim that a search would 'open up a storm of controversy' implicitly referenced the events that followed George Floyd's then-recent killing, appealing to racially biased perceptions of those events and associating Stubblefield with them based on his race." "We find the prosecution's statements constituted 'racially discriminatory language about' Stubblefield's race within the meaning of Penal Code section 745, subdivision (a)(2), and we conclude his conviction was sought or obtained in violation of subdivision (a)." The Racial Justice Act (RJA) precludes any harmless error analysis and mandates the remedy of reversal. "To be clear, we neither infer nor imply that the prosecutor intentionally tried to exploit jurors' racial biases; again, consistent with the language of statute, our analysis is focused on the language, not whether the speaker had a discriminatory purpose."

Stubblefield v. Superior Court (2025) 107 Cal.App.5th 896

Penal Code section 987.2, which governs appointment of counsel and requires appointment of the Public Defender, applies to postconviction proceedings in general and Racial Justice Act (RJA) habeas corpus proceedings in particular. "Section 987.2 continues to govern the selection of counsel to represent petitioners in postconviction habeas proceedings, including those that raise RJA claims." Defendants have the right to appointment of private counsel of their choice on a showing of an extensive previous relationship with that counsel. The relationship of the two lawyers here was so extensive that the court abused its discretion in failing to appoint them. It is an abuse of discretion for the court to refuse to appoint private counsel on a showing of an extensive previous relationship with that counsel and no countervailing factors. The relationship of the two lawyers here was so extensive that the court abused its discretion in failing to appoint them. Penal Code ssection 987.2 generally requires appointment of the PD when that office is "available." The burden to prove unavailability is upon the court, not the defendant. The Public Defender was not "available" to handle the habeas petition because filing briefs opposing the appointment of the two lawyers created a conflict, since that was contrary to the wishes of the client.

Bemore v. Superior Court (2025) __ Cal.App.5th __; D084579

Harris v. Superior Court (1977) 19 Cal.3d 786

While discussing motive during jury selection, the prosecutor started to tell the fable of the scorpion and the frog. The defense objected, arguing that this is essentially a claim that it is in the Black defendant's nature to kill, which clearly has racial overtones. The majority agrees that a story making insinuations about character is improper. But the majority assures us that it is speculation that jurors might have viewed the fable as racist, particularly since the trial judge stopped the fable before the punch line could be said. There's a notable concurrence from Justice Lie, expressing concern about implicit bias. The majority says, "We strongly encourage judicial officers and counsel to be vigilant in their efforts to ensure compliance with the Racial Justice Act (RJA) and the provision of fair trials."

People v. Thompson (2022) 83 Cal.App.5th 69

THE RACIAL JUSTICE ACT (Con't)

The judge did not abuse his discretion by failing to impose a remedy. The Racial Justice Act (RJA) provides that a remedy "shall" be imposed if there's a finding of a violation of the RJA: "Notwithstanding any other law, . . . if the court finds . . . a violation of subdivision (a), the court shall impose a remedy specific to the violation found from the following list." (Pen. Code sec. 745, subd. (e).) The RJA lists various remedies, including, "The remedies available under this section do not foreclose any other remedies available under the United States Constitution, the California Constitution, or any other law." (Pen. Code sec. 745, subd. (e)(4).) The claim that the RJA provides for dismissal as a remedy "contradicts the plain language of the statute." Dismissal is permitted, but not based on the RJA. "Rather, subdivision (e)(4) clarifies that the remedies provided for by the RJA do not preclude the minor from seeking relief under other statutes or constitutional provisions." "[T]he appearance of the word 'shall' in section 745, subdivision (e) does not compel imposition of a remedy in this case," it only means "that any remedy imposed be specific to the violation."

R.D. v. Superior Court (2025) __ Cal.App.5th __; C100422

The defense made a motion claiming that the prosecutor's action in seeking the death penalty violates the Racial Justice Act (RJA) because of the disparate treatment of Black defendants. "Petitioner was required to present not only statistical evidence of racial disparity in the charging of the death penalty by the District Attorney but also evidence of nonminority defendants who were engaged in similar conduct and were similarly situated but charged with lesser offenses, to establish a prima facie case." The defense met this burden: "However, as we explain post, based on the evidence presented in this case, which included (1) factual examples of nonminority defendants who committed murder but were not charged with the death penalty in cases involving similar conduct and who were similarly situated, e.g. had prior records or committed multiple murders, and (2) statistical evidence that there was a history of racial disparity in charging the death penalty by the District Attorney, [the defendant] met his burden of establishing a prima facie case under section 745, subdivision (a)(3)."

Mosby v. Superior Court (2024) 99 Cal.App.5th 106

SOCIAL MEDIA COMPANIES ARE NOT SHIELDED FROM DISCOVERY

There's a seven-part test governing discovery of third parties like Facebook, summarized in the Facebook case citing the Alhambra case. The social media companies assert protection under the Stored Communications Act (SCA), which creates a federal limitation on compelled disclosures from Internet sites. The SCA does not protect disclosures from Internet providers. "[T[the companies' ability to access and use their customers' information takes them outside the strictures of the Act." "[U]nder the plain language of section [18 USC] 2702(a)(2), because Snap and Meta are not maintaining communications 'solely for the purpose of providing storage or computer processing services' to their users, the SCA does not preclude them from disclosing the material sought by Pina's subpoenas."

Snap v. Superior Court (2024) 103 Cal.App.5th 1031; rev. granted

Facebook v. Superior Court (2020) 10 Cal.5th 329

City of Alhambra v. Superior Court (1988) 205 Cal.App.3d 1118