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In re K.J. (2018) 18 Cal.App.5th 1123

Holding: The search was reasonable and consistent with the Fourth Amendment.

Facts: A 602 petition was filed against K.J. after he was found in possession of a gun and ammunition on school grounds. The principal of Fairfield High School received a text from another student who stated that someone on school grounds had a gun. The principal alerted the campus resource officer, who called for back-up pursuant to protocol, and then called the student who provided the tip. That student stated that she knew who the student was but didn't know his name. She said she received a snap chat video of the student showing off a gun and described the student's appearance. She further stated that the student with the gun went to the credit recovery school, which was on the campus of Fairfield High School. Based on the description provided, the school was able to narrow it to two students, one of whom the student tipster identified as the person with the gun.

The vice principal of the credit recovery school escorted K.J. out of class to the waiting police officers. The police officers removed K.J.'s backpack and immediately handcuffed him. A search of K.J. and his backpack revealed the gun and ammunition. K.J. filed a motion to suppress in juvenile court and appealed court's ruling denying the motion.

Students on a public school campus are protected, under the Fourth Amendment, from unreasonable searches and seizures. Likewise, school official's are held to the same constitutional standard as any other government official, unless special needs make those constitutional requirements "impracticable." Practically speaking, a public school student's expectation of privacy must be balanced against the school's need to have discipline and a safe school environment.

Here, K.J. argues that the appellate court cannot apply the "arbitrary and capricious standard" to determine whether his detention was constitutional because he was detained by two police officers, only one of whom was a campus resource officer. The Court of Appeal rejects this argument, and relies on a similar situation in *In re William V.*, (2003) 111 Cal.App.4th 1464. In that case, the defendant argued that the probable cause standard, not the reasonable suspicion standard applied because one of the police officers was not a school officer. The *William V.* court noted that regardless of who paid the officer's salary, the key factors were the officer's function at the school and the "special nature of a public school." Whether the officer is a campus resource officer does not dictate the standard to be applied. Both officers who are considered back-up and those who are campus resources officers, are considered school officials for the purposes of the Fourth Amendment analysis.

Here, substantial evidence supports the lawfulness of K.J.'s detention of K.J. The detention occurred on school property, was carried out by someone acting as a school official, and was carried out after it was reported that the student had a gun.

Appellant next argues that his detention was more intrusive than detentions where the arbitrary and capricious standard was applied because he was handcuffed. While handcuffing does increase the intrusiveness of a stop, it does not necessarily turn a detention into an arrest requiring probable cause. An officer is permitted to take steps to protect his or her safety during a detention. Here, the officer removed K.J.'s backpack and handcuffed him for safety, so that if he did have a gun he couldn't grab it. Balancing K.J.'s Fourth Amendment rights against the threat posed, the appellate court holds that the officers acted reasonably.

Finally, K.J. argues that the search was not justified because the officers didn't have reason to suspect that he was carrying a gun. A search is justified if, under ordinary circumstances, the information provides "reasonable grounds for suspecting that the search will" reveal evidence that the law or school rules are being violated. Here, the principal received a text from another student warning him that someone had a gun on campus. The student described the person with the gun by gender, race, hair style, and his status as having previously attended a different high school. Information that a student had a gun presented an "extreme danger" and the description provided more than a moderate indicia of reliability. Under these circumstances, failure to watch the video before detaining K.J. did not diminish the realizability of the information provided. As such, the juvenile court correctly found that the search was reasonable.

In re Jonathan V. (2018) 19 Cal.App.5th 236

Holding: A two year restraining order is overruled because it was issued at the same hearing in which the defendant was first informed of it. The defendant was not provided sufficient notice or a meaningful opportunity to be heard.

Facts: Fifteen-year-old Jonathan V. came before the juvenile court due to his involvement in a gang related incident in which he and five friends stopped two victims and held them at gun point. He was detained in custody but released after two months due to positive reports from his high school and community. At the same hearing, the People requested a juvenile restraining order precluding Jonathan from contacting the victims of the crime. Defense counsel objected and asked for a hearing. The People responded that rule 5.630 authorized them to make their request orally and without notice. The court agreed with the People, reasoning that the allegations were serious violations

with multiple victims. The restraining order went into effect on February 10, 2016 lasting until February 10, 2018. The minor appealed.

Jonathan did not receive adequate notice or an adequate opportunity to be heard to contest the issuance of the order. Section 213.5 permits the juvenile court to issue a temporary restraining order without notice or a hearing, or a restraining order upon notice and a hearing. The latter must be issued on form JV-255. The order in this case was a restraining order; Jonathan however received neither notice or a hearing. The People's reliance on rule 5.630 is misplaced. The rule states that a *temporary* order may be issued without notice and a hearing. While the specific amount of time necessary to satisfy the "notice" requirement is not delineated in section 213.5, more than courtroom notice is required.

In re D.N. (2018) 19 Cal.app.5th 898

Holding: The adjudication for felony theft of a vehicle is reduced to a misdemeanor because the People did not establish the value of the car. People's request to remand the matter to determine the value of the car would violate double jeopardy and is denied.

Facts: The juvenile court found allegation of theft to a vehicle to be true and used its discretion to find it a felony. The People presented no proof of the value of the stolen vehicle. The minor appealed.

To constitute a felony, the value of the stolen vehicle must be shown to exceed $950 pursuant to Proposition 47 – the Safe Neighborhoods and Schools Act approved by voters in 2014 – and Penal Code 490.2. The People contend they must be permitted to prove the value of the stolen car. Yet the People were on notice of the changes in the law and the requirements of Proposition 47 and Penal Code section 490.2. To permit retrial would violate double jeopardy. The adjudication for felony theft is a reduced to misdemeanor.

In re Carlos C. (2018) 19 Cal.App.5th 997

Holding: The probation condition prohibiting the using, owning or possessing of any material which depicts partial or complete nudity is unconstitutionally overbroad. In the unpublished portion of the opinion, the court found substantial evidence supported the minor committed sexually battery and the minor's challenge to an electronics search condition is forfeited.

Facts: The juvenile court found the minor had committed simple battery in connection with touching the thigh of a classmate, misdemeanor sexual batter in connection with touching the breast of his classmate, and a violation of probation. The incident happened at the minor's school and was captured on camera. The minor made unwanted advances to his female classmate, by

reaching out with his hand under the desk towards the classmate's groin area while they were working; the classmate pushed his hand away. The minor then pulled his chair closer to the classmate and reached his arm sideways toward her at chest height and touched her breast with his palm.

The minor challenges a probation condition which prohibits the owning, using, or possessing of any material which depicts partial or complete nudity as unconstitutionally overbroad in violation of his First Amendment rights. A probation condition that imposes limitations on a minor's constitutional rights, while subject to less scrutiny than adults because of a minor's greater need for guidance and supervision, must still be closely tailored to the purpose of the condition to avoid being invalidated as unconstitutionally overbroad.

In a case of first impression for California courts, the court found the nudity condition unconstitutionally overbroad. By its terms, violations would include looking at a biology textbook, the viewing of classical art, a family picture of a baby's buttocks, the nude picture of a war victim, or scenes from a culture in which nudity is indigenous. The people argue that the context of the prohibition requires the nudity to be sexually arousing. However, the language of the court's order contradicts this, as it prohibits any form of sexually arousing material as including "any material which depicts partial or complete nudity."

The condition is stricken, and as modified the court's disposition order will be affirmed.

People v. Superior Court (Lara) 4 Cal.5th 299

Facts: Lara was charged with committing sex offenses, which – at the time – made him eligible to be charged directly in adult court. In 2016, the voters passed Proposition 57, which changed the process for trying children as adults. Under Proposition 57, the prosecutor may no longer file criminal charges in adult court against a person under 18 years of age. Lara had not yet been tried by the time Proposition 57 became law. After Proposition 57, Lara filed a motion to have his case transferred back to juvenile court for a fitness hearing. The court, over the prosecution's object, granted the motion to transfer but stayed the order to allow the prosecution to file a writ. The prosecution filed the writ that is the subject of this opinion and requested an additional stay. The appellate court held that the rational of retroactivity set forth in *In re Estrada* did not apply but held that even applied prospectively, Proposition 57 entitled Lara to a fitness hearing. The question presented in this case is whether that provision of Proposition 57 applies retroactively to cases filed in adult court before Proposition 57 took effect.

It is presumed that laws apply prospectively, rather than retroactively; however, that presumption is one of statutory interpretation and not a constitutional mandate. If the legislature does not explicitly state whether the law is to apply retroactively, the court seeks to determine the intent of the legislature or electorate. In *In re Estrada* (1965) 63 Cal.2d 740, the Court held that a statue that mitigated the punishment for a certain offense was applicable to the defendant who had not yet been sentenced for that crime. The Court reasoned that the "inevitable inference" was that the new lighter sentence should apply retroactively, since the legislature had determined that previous punishment was too severe. "The *Estrada* rule rests on an inference that in the absence of contrary indications, a legislative body ordinarily intends for ameliorative changes to the criminal law to extend as broadly as possible, distinguishing only as necessary between sentences that are final and sentences that are not." *People v. Conley* (2016) 63 Cal.4th 646, 657.

While *Estrada* dealt with statutory changes that ameliorated punishment for a crime, this case deals with a Proposition that ameliorates the punishment for a whole class of people – juveniles. However, the rationale of *Estrada* is equally applicable. Under the reasoning of *Estrada*, Proposition 57 shows that the voters have determined that the previous process of direct filing was too severe and thus, must have intended the benefits of rehabilitation (which is available in juvenile court and not in adult court) to apply whenever constitutionally possible.

The Court distinguishes *People v. Brown*, which held that a change to how custody credits are earned did not apply retroactively. *Brown* (2012) 54 Cal.4th 314. *Brown*, because it did not alter the penalty for a crime but rather dealt with future conduct, is not analogous to the case at bar or to *Estrada.*

The Court also rejects the argument made by *amicus curae* that the continued existence of Penal Code section 1170.17 suggests that Proposition 57 does not apply retroactively. Penal Code section 1170.17 sets forth a procedure to be followed when a juvenile whose case was direct filed in adult court is convicted of a charge that would not have allowed for direct filing. Noting that Penal Code section 1170.17 is not a good fit both "textually and practically" and pointing out that is less favorable to juveniles than Proposition 57, the Court finds that it does not rebut *Estrada's* inference of retroactivity.

The Court affirms the judgement of the court of appeal but rejects the reasoning on which it was based.

In re I.F. (2018) 20 Cal.App.5th 735

Holding: The lower court erred when it admitted statements made by I.F. that were provided during a custodial interrogation without the benefit of the

Miranda waiver. The error in admitting the statements was not harmless beyond a reasonable doubt.

Facts: I.F., at the time aged 12, was home alone with his sister, aged 8, who was stabbed to death. I.F. claimed that an intruder came in and stabbed his sister. He was interviewed by police four times: at the hospital the day his sister was stabbed, then again that same day but at the district attorney's office, two days later at the district attorney's office, and about 12 days later at the district attorney's office. Based, in part, on those statements, I.F. was charged with his sister's murder. He was found to have committed the crime and the disposition was to DJJ. I.F. timely appealed on the basis that his statements were obtained in violation of *Miranda.*

Police officers are only required to five *Miranda* warnings when the person being questioned is in custody. Whether someone is in custody is determined under an objective standard that seeks to determine whether a reasonable person would have felt like he/she was free to end the questioning and leave. There is a long line of cases that have considered what can be considered "custodial." The factors discussed in these cases apply equally to juveniles, but with additional consideration for the child's age. In *J.D.B. v. North Carolina* the United States Supreme Court recognized that a reasonable child may not feel free to leave in a situation where an adult would feel free to leave. It is the prosecution's burden to prove the person was not in custody when he/she was questioned.

Here I.F. first argues that his father had a conflict of interest because he was grieving the murder of I.F.'s sister and thus could not protect I.F.'s rights. The court engages in a lengthy discussion of situations where the parents, often with good intentions, have coerced children into speaking with the police, causing the court to observe that "the mere presence of a parent may be insufficient to protect a child's legal interests, as presence alone does not guarantee that the parent will act with the child's interests in mind." As such, the court concludes that the effect of the parent's conflict of interest on the child's perception of his ability to leave the interrogation must be considered as part of the totality of the circumstances. However, there is no legal support or basis for a rule that would require exclusion of statements made by a minor whose parent has a conflict of interest.

The court holds that the first interview, which took place in the vestibule of the hospital, was not custodial. There were many people passing through the vestibule during the investigator's interview with I.F., the interview only lasted 15 minutes, the tone of the interview was conversational, and the father's role in the interview was neutral.

The court also finds that the second interview, which took place the same day as the first interview, but at the district attorney's office, was non-custodial. Though I.F. was separated from his father, he was told that he was free to leave at any time. The court finds that a reasonable 12 year old in the same circumstances would have felt free to leave.

The court holds that the third interview was custodial. I.F. was told, not asked, that he was to be interviewed, he was interviewed by uniformed officers, and was never informed that he was free to leave. Similarly, the court holds that the fourth interview was custodial. I.F. was separated from his parents, without their consent, and interviewed for over an hour and a half. His mother attempted to end the interview several times, to no avail. The officers told I.F. he could but, initially, in terms that he likely would not have understood. The fourth interview continued, after a brief interruption, for nearly an hour. During the second half of the fourth interview, I.F.'s father urged him repeatedly to cooperate and tell the truth. There was nothing about the fourth interview, the court found, that would make a reasonable 12 year old feel he was free to leave. The lower court erred when it failed to suppress statements made in the third and fourth interviews.

The error in allowing statements from the third and fourth interviews was not harmless. Consequently, the jurisdiction and disposition orders are reversed and the matter is remanded for a new adjudication hearing.

People v. Contreras (2018) 4 Cal.5th 349

Holding: Yes. The California Supreme Court holds that the trial court sentence violates the 8th amendment and the principles set out in *People v. Graham*.

Facts: The issue presented is whether a sentence that is the functional equivalent of an LWOP sentence (i.e. a lengthy sentence that will result in the young person being released in their late 60s or 70s) is a violation of the 8th amendment for juvenile nonhomicide offenders?

Rodriguez and Contreras were convicted of raping two teenaged girls in 2011. At the time of the crime, Rodriguez and Contreras were 16 years old. The boys were convicted and sentenced to 50 and 58 years, respectively, in prison under the One Strike law. This wide ranging opinion discusses everything from custody credits to recently enacted bills that authorize parole hearings for certain elderly inmates and mandate parole hearings after 25 years for young people serving life without parole sentences.

The Supreme Court ultimately rejects the "actuarial" rule proposed by the attorney general and the Chief Justice, where a sentence would not be considered the functional equivalent of LWOP as long as there was an opportunity for parole within the young person's natural life. Such a rule fails

to acknowledge that "A lawful sentence must recognize "a juvenile nonhomicide offender's capacity for change and limited moral culpability….A lawful sentence must offer 'hope of restoration'… 'a chance to demonstrate maturity and reform'…a 'chance for fulfillment outside prison walls,' and a 'chance for reconciliation with society'…A lawful sentence must offer 'the opportunity to achieve maturity of judgment and self-recognition of human worth and potential'…A lawful sentence must offer the juvenile offender an 'incentive to become a responsible individual.'"

As to the arguments that recently enacted legislation may resolve the constitutionality of the sentences at issue, the Court leaves those novel issues for the lower court to consider on remand. The lower court is also ordered to consider any mitigating circumstances of the defendants' crimes and live and must also impose a time by which the defendants may seek parole.

Note that the Chief Justice wrote a lengthy dissenting opinion, which the majority references throughout its opinion.

In re D.P., (2018) 21 Cal.App.5th 154

Holding: The five-day time limit of section 635.5(b), requiring the prosecuting attorney in all matters where a minor is not in custody and already a ward of the court under section 602 to institute proceedings within five days of receipt of the probation officer's affidavit, is directory, not mandatory.

Facts: The minor D.P. was a ward of the court and not in custody when the prosecuting attorney received the affidavit from the probation officer. A subsequent 602 petition was filed not 5 days after, but 39 days. The juvenile court dismissed the petition as untimely under section 653.5(d). The People appeal.

The People first argue that section 653.5(b) only applies to section 601 petitions. A petition under section 602 is a prosecution for a public offense, within the meaning of Government Code section 26500 and section 650, both referenced by section 653.5(b).

The People also contend that the five-day time is directory not mandatory. Here the Court of Appeals agrees. The "directory" or "mandatory" designation simply denotes whether the failure to comply with a particular procedural step will or will not have the effect of invalidating the governmental action to which the procedural requirement relates. Unless the legislature clearly expresses a contrary intent, time limits are typically deemed directory.

The use of the word "shall" in section 653.5(b) is not dispositive, so the court erred when it dismissed the petition on this basis. The fact that the statute does not provide any penalty or other consequence for failure to comply with

the five-day limit is a strong indication that it is merely directory. Even more important, the five-day limit provides for an exception when the prosecuting attorney believes that the offense requires additional substantiating information. In that case, there is no statutory time limit at all. The Court of Appeals therefore concludes that the five-day time limit is directory. An aggrieved party may ask the court to enforce the five day time limit or by writ of mandate, but it is not a shield against a section 602 petition.

The People v. Vela (2018) 21 Cal.App.5th 1099

Holding: In published portion of the opinion, the murder conviction for 16-year-old is conditionally reversed because the case was a direct file in adult court following the recent approval of Proposition 57, which prohibits direct file and requires a juvenile court judge to rule that a minor can be tried as an adult. The minor is retroactively entitled to a transfer hearing.

Facts: Vela, the minor, and an adult friend, were members of a relatively small criminal street gang in Santa Ana. They decided to go cruising to look for rival gang members who were tagging their turf. They confronted two males whom they suspected to be rival gang members, and Vela's friend shot both of them killing them. A jury found Vela guilty of the charges and found true the allegations of murder, attempted murder and being an active participant in a criminal street gang.

The district attorney filed the case directly in adult court, which at the time was permissible. Prop. 57 however became effective while the appeal was pending. The court holds that Prop. 57 applies retroactively. The intent of Prop. 57 was to increase the number of minors who would remain in the juvenile justice system with a greater emphasis on rehabilitation. Just as the Supreme Court in *Estrada* and *Francis*, the court inferred that the electorate intended the possible ameliorating benefits of Prop. 57 to apply to every minor whom it may constitutionally apply, including Vela.

The minor urges that his conviction should be reversed. However, nothing is to be gained by having a second trial in juvenile court after a jury found him guilty beyond a reasonable doubt. Nor is the lack of a transfer hearing harmless error, as the DA urges. The court of appeal is not in a position to evaluate the various factors to be considered at a juvenile transfer hearing such as Vela's "physical, mental, and emotional health at the time of the alleged offenses." The case is therefore remanded for the limited purpose of holding a transfer hearing. If after conducting a hearing, the juvenile court determines that the case should be transferred to adult court, then his conviction will be reinstated. However, if the juvenile court finds that he amenable to rehabilitation, his conviction will be considered a juvenile

adjudication and the juvenile court will have to impose an appropriate disposition order.

In re Carlos J. (2018) 22 Cal.App.5th 1

Holding: Substantial evidence did not support the juvenile court's finding that placement at the Department of Juvenile Facilities would provide a probable benefit to the child.

Facts: The child was made a ward of the court based on allegations of attempted murder, assault with a firearm, and gang enhancements. After a contested dispositional hearing, the juvenile court ordered that the child be placed at the Department of Juvenile Facilities (DJF). The child timely appealed.

Pursuant to Welf. and Inst. Code section 734, for a child to be placed at DJF it must be shown that such a placement would provide a probable benefit to the child. Here, the evidence provided to the juvenile court did not contain any information about the programs or services at DJF that would provide the child with the intensive treatment the probation department opined he needed. The probation officer asserted that the DJF placement would benefit the child but did not support that assertion with evidence about why DJF would provide a probable benefit.

The court notes that with the proper record, the juvenile court could have made the finding that placement at DJF was appropriate – just not on this record. The appellate court takes the opportunity to identify what probation should include in its report when it initially recommends DJF. Specifically, the appellate court expects the probation department to identify the programs that are likely to benefit the specific child and, if the child has specific needs, the report should include a brief description of the programs at DJF that will address those needs. The Court of Appeal notes that the probation department is not excepted to preemptively address arguments likely to be raised. The attorney for the child has the burden to raise specific arguments about the appropriateness of a DJF placement, which then triggers the prosecution's burden to respond with additional evidence.

The placement order is reversed and a new disposition hearing is ordered.

In re W.R. (2018) 22 Cal.App.5th 284

Facts: This case has a somewhat complicated procedural posture. This appellate court originally reviewed the lower court's order denying W.R.'s motion to seal certain records under Welf. and Inst. Code section 786 and held that: a) the lower court should have sealed records in a case that was dismissed as part of a plea; b) the lower court had the discretion to seal records

related to another petition where the allegations were not sustained; and c) the lower court did not have discretion to seal the records related to a petition that was filed after the last petition on which minor had a grant of probation. W.R. sought review by the Supreme Court and the Supreme Court remanded the case back to this appellate court with instructions to reconsider the issues in light of Assembly Bill 529.

The facts of the lower court case are also rather complicated. In short, the minor's delinquency history began in San Mateo county. Two petitions were filed in San Mateo county and then a petition was filed in San Francisco county. Subsequent to the San Francisco county filing, three more petitions were filed in San Mateo county and all six petitions were transferred to San Francisco County. After the petitions was transferred to San Mateo county, a seventh petition alleging a felony assault, was filed in San Francisco County. W.R. was declared incompetent to stand trial on this final petition and proceedings were suspended on December 4, 2015.

The court again found W.R. incompetent to stand trial on November 17, 2016. On that same day, W.R. filed a motion to seal his juvenile records and at the hearing on that request, minor's counsel made an oral motion to dismiss the petition that had been suspended to allow the minor to be restored to competence. The court granted the motion to dismiss the petition that had been suspended. As to the request to seal W.R.'s records, the court sealed all the records related to petitions wherein allegations had been sustained. However, the court did not seal records of petitions where the allegations were not sustained or where the petition was dismissed as part of a plea deal. Consequently, the lower court did not seal the records related to the petition that had been suspended. W.R. timely appealed. This appellate court rendered the decision related above.

AB 529 added a new subdivision to Welf. and Inst. Code section 786, which explicitly states that records shall be sealed whether the petition has been dismissed by the court, on the prosecutor's motion, or has not been sustained after a contested hearing. In the case at bar, section 786(e) requires that the records related to all of W.R.'s petitions be sealed, including the petition that was suspended. As stated in the new statutory language, that petition was dismissed, in the interest of justice, by the court; thus, the records associated with it are eligible for sealing.

The appellate court next considers whether W.R. is eligible for the relief contained in AB 529. While the court declines to decide whether AB 529 applies retroactively, it holds that W.R. is entitled to take advantage of the new statutory language because his case is still pending. The lower court is ordered

to apply current section 786(e) and seal the records that the court previously declined to seal.

In re R.M. (2018) 22 Cal.App.5th 582

Holding: The lower court order adjudicating R.M. a ward based on truancy behaviors that led to an arrest for violation of Penal Code section 148(a)(1) is reversed.

Facts: R.M. is a perpetual truant. Prior to the case at bar, R.M. was the subject of a truancy proceeding under Welf. and Inst. Code section 601. That proceeding was dismissed about six months prior to the arrest that led to this case. One morning, R.M. refused to get out of bed and told her mother she was not going to school. After mother's attempts to convince her to go to school failed, mother called the school resource officer who had helped mother with R.M. in the past. The resource office and the sheriff's deputy assigned to R.M.'s school arrived at the home and drove R.M. to school. Throughout the drive, R.M. told the resource officer and the deputy that she was not going to school. The principal met the car at school. R.M. got out of the car but told all the adults that she was not going to class and began to walk off campus. The deputy ordered the minor to turn around and go to class. When she continued to walk away, the deputy grabbed the minor's arm and arrested her. The minor spent two days in juvenile hall and the district attorney filed a petition alleging that minor resisted arrest in violation of Penal Code section 148. After a contested hearing, the juvenile court sustained the petition and adjudged the minor a ward of the court with various terms and conditions of probation, including 15 days in juvenile hall. Minor timely appealed.

It is worth noting that the tone of the appellate court opinion is strongly worded and makes clear the Court's concern with the lower court holding. R.M. argues and the appellate court agrees that the deputy did not have a legal duty to insure that R.M. went to class and therefore R.M. was not obstructing the deputy in performing his duty when she walked away from him. The legislature has created a carefully crafted process that is to be followed in dealing with truant children. That process includes incarceration only as a very last resort and only to be ordered by the court as a contempt sanction. When a truant is ordered detained, he or she is to be kept separated from the general juvenile population. Here, the court and district attorney did an end run around the truancy system to turn a status offense into a criminal offense. That was inappropriate and the order adjudging R.M. a ward is ordered reversed.

In re J.R. (2018) 22 Cal.App.5th 805

Holding: Jurisdiction and disposition are reversed and the case is remanded to provide the prosecution the opportunity to prove that the Vehicle Code 10851

violation was a felony, under the legal standard that went into effect after Proposition 47.

Facts: The Santa Clara District Attorney's office filed a petition alleging that J.R. committed burglary, theft, and a violation of Vehicle Code section 10851. After a contested jurisdiction hearing, the juvenile court found that the prosecution proved that the minor possessed burglary tools and violated Vehicle Code section 10851. The juvenile court used its discretion to determine that the Vehicle Code violation was a felony. J.R. appealed the jurisdiction and disposition orders, specifically arguing that the pursuant to Proposition 47, the Vehicle Code violation should have been a misdemeanor and not a felony. The Court of Appeal initially affirmed the juvenile court's rulings but the Supreme Court returned the case to the appellate court to review its ruling as to the Vehicle Code section violation in light of its holding in *People v. Page.*

In addition to his argument about the classification of the Vehicle Code section offense, J.R. claims that: 1) there was insufficient evidence to the support the juvenile court's finding that he committed a violation of Vehicle Code section 10851; 2) admission of a police officer's testimony about J.R.'s veracity was a due process violation; and 3) his counsel was ineffective. The appellate court rejects these three contentions.

Turning to the issue of the appropriate classification of the Vehicle Code section 10851 offense, the Court of Appeal notes Proposition 47, which reduced certain theft and drug related offenses to misdemeanors, did not clearly indicate whether Vehicle Code section 10851 offenses would be classified as misdemeanor only offenses. There was disagreement among the appellate courts about whether Proposition 47 applied to Vehicle Code section 10851, which was resolved by the Supreme Court in *People v. Page.* In that case, the Supreme Court held that a Vehicle Code Section 10851 violation can only be a felony if it is based on nontheft driving or the vehicle is worth more than $950.

Because *Page* was decided after J.R.'s case, the lower court did not have the opportunity to consider the value of the car or whether J.R. committed nontheft driving. J.R. argues that it would violate double jeopardy to remand the case to the lower court to make those determinations. The Court of Appeal disagrees and reverses the jurisdiction and disposition orders to give the prosecution the opportunity to prove the value of the car and/or nontheft driving.

J.N. v. Superior Court (2018) 23 Cal.App.5th 706

Holding: Substantial evidence does not support the juvenile court's order that the minor was not suitable for treatment in the juvenile court at a transfer hearing under section 707.

Facts: J.N. was charged with murder, but he did not kill anyone. On September 7, 2014, J.N. (17 years old at the time) and two of his friends were tagging a rival gang's territory. One of the friends, S.C., was carrying a gun. Suddenly, the three minors were aggressively approached by a rival gang member. S.C. pulled out his gun to scare the man. The rival gang member did not retreat, but instead attempted to take the gun from S.C. A scuffle ensued which resulted in S.C. killing the man. J.N. and the other minor stood by frozen. The three minors were all charged with murder and a special circumstance of murder for the benefit of a criminal street gang. On April 29, 2016, J.N. entered a not guilty plea and denied the special allegations.

The juvenile court began the section 707 hearing on May 16, 2017 and concluded it on June 1, 2017. The court considered the five factors that section 707 requires the juvenile court to consider when it is determining the suitability for treatment in the juvenile court system. The court found that three of the factors supported a finding of suitability, including criminal sophistication, prior delinquent history and success of previous attempts to rehabilitate the minor. The court noted that the crime was not particularly sophisticated and considered the minors tumultuous upbringing, which included physical abuse by his father, exposure to domestic violence and social isolation among others. The court however found that because the minor was twenty years old at the time, there was not enough time to rehabilitate him, because juvenile court jurisdiction can only last until the age of 23. J.N. filed a writ of mandate/prohibition.

Substantial evidence does not support the juvenile court's finding. The court erred in its determination of the other two factors the court must consider at a section 707 hearing, the possibility of rehabilitation and the circumstances and gravity of the charged offense. There was no evidence that demonstrated existing programs were unlikely to result in J.N.'s rehabilitation, why they were unlikely to work in this case, or that they would take more than three years to accomplish the task of rehabilitating J.N. The probation report included a conclusory statement without any supporting evidence and no expert testimony concerning available programs was presented. This lack of evidence rendered any opinion based on the report without evidentiary value. The court's finding as to the gravity of the offense also is not supported by substantial evidence. While J.N. is charged with murder, he was not the killer. The court appeared to assume that juveniles charged with murder were excluded from consideration for treatment in the juvenile court. That assumption was erroneous and was not supported by substantial evidence given the facts of this case.

The order transferring J.N. to the criminal courts was an abuse of discretion. Respondent court's order transferring J.N. to the criminal courts must be

rescinded and a new order denying the request to transfer J.N. must be entered.

In re R.W. (2018) 24 Cal.App 5th 145

Holding: The juvenile court's finding that minor violated Penal Code 148(a)(1) by resisting a peace officer is affirmed. While the minor was not under arrest when the incident occurred, the police officer was lawfully exercising her duties when she restrained the minor when the minor tried to leave the police station before her mother arrived to pick her up.

Facts: The minor was at a police station because she was detained in relation to stolen vehicle investigation. The minor was no longer under investigation and no charges were being filed against her. She was escorted to a waiting room to wait until her mother arrived to pick her up. She eventually tried to leave and a police officer watching her prevented her from leaving. The minor resisted her attempts to keep her there. Three officers eventually became involved and the minor was subdued and handcuffed. The mother arrived twenty minutes later. A citation was issued to minor for resisting a peace officer, and the juvenile court subsequently found true the allegation that the minor violated Penal Code section 148(a)(1).

The minor argues that there is insufficient evidence to support the juvenile court's finding because her custody was unlawful at the time she was restrained. The Barstow Sheriff's Department has a policy which required minors in sheriff's custody to be kept at the station for their safety until they could be released to their parent or an authorized adult. To sustain a finding under PC 148(a)(1), there must be proof beyond a reasonable doubt that the officer was acting pursuant to her lawful duties at the time the resistance occurred. Substantial evidence supports a finding that the officer was acting within her lawful duty.

Minors temporarily detained may be taken to a curfew center or other facility to await pickup by their parents. In this situation, the minor was in custody under the officer's supervision solely for her safety until her mother arrived. This type of protective temporary detention is permitted by statute. Having the minor wait at the station for her mother served her best interest while limiting the impact on law enforcement resources. At 16 years old, minor was presumably afforded a certain level of independence, but the fact remains she was still a minor subject to the control of a parent or legal guardian until she reached 18.

Minor escalated the situation to the extent other deputies had to intervene, and she continued to resist until deputies were forced to handcuff her. For these

reasons, there is substantial evidence that the police officer was acting within her lawful duties when the minor violated Penal Code section 148(a)(1).

In re D.B. (2018) 24 Cal.App.5th 252

Holding: In the published portion of this opinion, the court found that the juvenile court's dispositional orders that the parent pay a specified sum of money to the county was the initial step in the financial evaluation process, and therefore not a final order. Because the financial evaluation process required by section 903.45 never occurred, the parents are not required to pay the amount specified by the juvenile court. In the unpublished portion of the opinion, the court found the electronic search condition imposed as constitutionally overbroad.

Facts: The fifteen-year-old minor was arrested at his school after he was found in possession of a three-inch blade knife, rolling papers, and lighters. A petition was sustained under Penal Code section 626.10(a) and probation conditions were imposed with the minor remaining in the mother's home. There were following several probation violations in which the court made dispositional orders that required the parents to pay for a specified amount of legal fees for the minor in an amount and manner to be determined. The order was made on a written "ORDER AFTER HEARING" order signed by the judge. The juvenile court did not include these orders in its oral pronouncements.

The minor contends that the juvenile court erred by including in the written version of the court's order the legal fees, because they were not orally ordered by the court. Yet the entry of a written order cannot be dismissed as a clerical error, because the entry of a written order signed by a judge is not a ministerial act. The court has the authority to modify its orders imposing probation conditions.

The minor however also contends that juvenile court made no binding ruling regarding the parents' reimbursement obligations, and here the court agrees. Section 903.45(b) requires compliance with specified procedures before a juvenile court can order a parent to pay for legal fees for their child. This process includes appearing for a financial evaluation of his or her ability to pay these costs by a county financial evaluation officer. If the county financial evaluation officer determines that a person has the ability to pay some or all of the costs, the county financial evaluation officer shall petition the court for an order requiring the person to pay that sum to the county. The parent is entitled to appointed counsel and a full hearing on this determination. There was no indication that the juvenile court complied with this requirement. As such, the juvenile court's disposition orders are more appropriately framed as preliminary findings that the county incurred $850 in legal services to the minor, and not a final order.

In addition, the legislature recently enacted SB 190, which repealed the provision of section 903.1 requiring a parent to reimburse the county for the costs of legal services provided to a minor who is subject to the juvenile delinquency system. Because no final order was entered in this case, the case must be resolved under the current law. The parents may not be held liable for costs of the legal services incurred during the minor's delinquency.

In re G.B. (2018) 24 Cal.App.5th 464

Holding: The probation condition requiring that the minor have only peaceful contact with all law enforcement is unconstitutionally vague and is stricken. The juvenile court's orders are otherwise affirmed, including sustaining the petition and imposing various probation conditions.

Facts: The minor was observed with four other individuals at the Pittsburgh Marina waving a silver gun in the air. He was seen by a maintenance supervisor (V.D.) from about 30 feet away on a very bright day. The police were contacted and V.D. identified the minor as the one waving the gun. At the jurisdictional hearing, V.D. again identified the minor and the court sustained the allegations of the petition that the minor possessed a concealable firearm. The court imposed various probation conditions.

The minor challenges juvenile court's finding and orders on multiple grounds. He contends that substantial evidence does not support the finding beyond a reasonable doubt that he was the person who had the gun. In an unpublished portion of the opinion, viewing the evidence in the light most favorable to the judgment, the court found there was substantial evidence to support the juvenile's court's finding. There was ample evidence that the minor was the one in possession of the gun, including V.D. very clearly seeing the minor from thirty feet away. The minor also challenges four of the probation conditions as either unconstitutionally vague, overbroad, or both. The court affirmed the probation conditions requiring that the minor not change residence without the prior approval from the probation officer, that he not be present on any school campus unless enrolled (although modified by the court to allow for the minor to be accompanied by an adult), and to stay out of Riverview Park (the park near the marina).

The court however finds that the probation condition requiring the minor to have only "peaceful" contact with and not act "aggressively" toward any law enforcement is unconstitutionally vague. The underpinning of a vagueness challenge is the due process concept of "fair warning". The condition requiring peaceful contact does not give fair warning to the minor of what conduct is prohibited or what would constitute a violation. Dictionary definitions of peaceful and aggressive have a variety of meanings and connotations. People of ordinary intelligence differ on what constitutes peaceful conduct and aggressive

behavior. In the context of contact with law enforcement, determining what is to be expected becomes even more difficult. The probation condition is therefore unconstitutionally vague and is stricken.

In re D.A., (2018) 24 Cal.App.5th 768

Holding: Independent proof to establish the corpus delicti of a misdemeanor battery is present when the evidence shows a reasonable inference that a crime was committed.

Facts: A police officer responded to a disturbance call. In the driveway was D.A., who reported she and her boyfriend, C.H., had an argument and she slapped and pushed him. C.H. went to his bedroom and locked himself inside. The police officer spoke to him and he appeared upset and had a visible scratch on his forehead and redness on the upper part of his left eye. D.A. was charged with battery. At the trial C.H. could not be located to testify. The court sustained the petition on the officer's testimony alone.

The minor contends that there was insufficient evidence to establish the corpus delicti of misdemeanor battery independently of her statements to the officer. To sustain the conviction, there must be sufficient proof that the crime actually occurred and that D.A. was the perpetrator. The corpus delicti must be established independent of extrajudicial statements, confessions, or admissions. The amount of independent proof required is only enough to show there is a reasonable inference that a crime has been committed. The facts support such an inference. C.H. was in his room, acted upset when questioned, and had injuries to his face. The judgment is affirmed.

K.C. v. Superior Court, (2108) 24 Cal.App.5th 1001

Holding: The juvenile court had the authority under section 208.5(a) to house an 18-year-old in an adult county facility while his juvenile delinquency proceeding was pending.

Facts: A petition was filed when K.C. was seventeen years old, alleging attempted murder as well as firearm, gang, and great bodily injury enhancements. When K.C. turned 18, the probation department recommended K.C. be transferred to county jail pursuant to section 208.5. After hearing testimony about K.C.'s conduct in juvenile detention, the juvenile court granted the request, finding it had transfer authority under section 208.5. K.C. filed a writ of mandate.

Section 208.5(a) requires that when a ward turns 19, he or she shall be delivered to the custody of the sheriff for the remainder of the time he or she remains in custody, unless the juvenile court orders continued detention in a juvenile facility. The person shall be advised of his or her ability to petition the

court for continued detention in a juvenile facility at the time of his or her attainment of 19 years of age. A minor who attains 18 years of age may be allowed to come or remain in contact with those juveniles until 19 years of age.

The question is whether section 208.5 permits an 18-year-old, who has not been adjudged a ward, be transferred to county jail upon a recommendation of the probation department and order of the juvenile court?

Because the plain language of the statute is somewhat ambiguous, the court turns to the legislative history. The history of section 208.5 suggests the Legislature deliberately drafted the phrase, "may be allowed to come or remain in contact with those juveniles until 19 years of age," to clarify that counties could keep 18-year-olds housed with other juvenile detainees. It does not mandate 18-year-olds be housed with juveniles, nor does it require 18-year-olds to be transferred to adult facilities. Throughout the legislative history, the bill's authors emphasized the new law would lead to increased flexibility in how 18-yearolds are housed. This emphasis on flexibility supports the probation department's position that section 208.5 permits, but not does require, transfer of 18-year-olds to county jail. That transfer is "permissive" necessarily means the juvenile court has transfer authority.

As a matter of policy, the court further found it wiser to allow the probation department and juvenile court to address such risks on a case-by-case basis by recommending and ordering transfer of 18-year-olds to county jail as they deem necessary. K.C.'s behavior while in custody created some risk to other juvenile inmates and he was a disruptive influence on other juvenile detainees. It was therefore reasonable in this particular case for the probation to recommend that K.C. be transferred to an adult county facility.

The petition for writ of mandate is denied.

In re A.R. (2018) 24 Cal.App.5th 1076

Holding: There was abuse of discretion for the juvenile court's commitment order to DJJ. The evidence showed that the A.R.'s lengthy criminal history and various delinquency placements rendered placement in a less restrictive placement ineffective and demonstrated a probable benefit from a DJJ commitment. The court also properly calculated A.R.'s custody time under section 731 by considering the facts and circumstances of the case and applying credit for time served to the maximum sentence

Facts: A.R., an eighteen-year-old ward, was committed to California Department of Corrections and Rehabilitation, Division of Juvenile Justice (DJJ) after being involved in the juvenile justice system since he was thirteen years old. Over the course of these years, A.R. committed several robberies and numerous placement options were tried. His most recent petition involved

another robbery after his mother told him and his friends to leave the home due to drinking and smoking marijuana. At the disposition hearing, probation and minor's counsel argued that A.R. should be placed at the Youth Offender Program (YOU). The DA however argued for commitment to DJJ, noting that there was no indication from his history that he would benefit from placement at YOU, a facility he had consistently been in and out of. The court agreed, given A.R.'s continued level of criminality, and ordered a commitment to DJJ. When ordering the custody time, the court exercised its discretion to deviate from the maximum confinement time of 12 years, and imposed a maximum term of 7 years. The court also ordered that the credit for time served would count against the maximum of 12 years.

A.R. argues that the court abused its discretion in committing him to DJJ on two grounds: (1) that there was no substantial evidence that a less restrictive placement would be inappropriate or ineffective, and (2) that there is no substantial evidence of a probable benefit from the DJJ commitment. A DJJ commitment is not an abuse of discretion where the evidence demonstrates a probable benefit to the minor from the commitment and less restrictive alternatives would be ineffective or inappropriate. Since age 13, The minor had engaged in numerous criminal activities including multiple felonies and the court had already tried a slew of placement options without any effect on the minor's criminality. There was no abuse of discretion.

A.R. also argues the court erred by applying his custody credits to the overall maximum term of confinement, instead of the lower maximum term of 7 years set by the court. Section 731 provides that a ward committed to DJJ cannot be held longer than the maximum period of imprisonment applicable to an adult. Based on the fact and circumstances, the court may impose a period of confinement that is less than the maximum. A minor is entitled to credit against his or her maximum term of confinement for the time spent in custody before the disposition hearing. The court applied A.R.'s credits to the overall maximum term of 12 years, and the 7-year maximum term remained lower than the maximum that could have been imposed upon an adult. No authority supports the minor's assumption that the court must apply the credits to the lower maximum term set under section 731.

The judgment is affirmed.

In re S.O. (2018) 24 Cal.App.5th 1094

Holding: The juvenile court had the authority to impose restitution related to uncharged conduct because substantial evidence supports the finding that the minor was involved in the uncharged conduct and it was a properly imposed condition of probation aimed at achieving the goals of rehabilitation and reformation.

Facts: Two thefts of the same vehicle occurred within two days. The victim located her vehicle after the first theft within a day. After the second theft, law enforcement pulled over the vehicle and the minor was the sole occupant of the car. The minor was only charged for the second theft. Rather than declare the minor a ward, the court placed the minor on probation for six months under section 725(a). A restitution hearing was held and the court held the minor responsible for both thefts because it could be reasonably inferred that the minor stole the car in the first theft because he was found to have the keys that were taken during the first theft. On appeal, the minor argues that the court erred in imposing a restitution obligation related to the uncharged initial theft.

A court that declares a minor a ward, or places on probation under section 725(a), may impose and require any and all reasonable conditions that it may determine fitting and proper to the end that justice may be done and the reformation and rehabilitation or the minor enhanced. Section 730.6 obligates a court, unless it finds compelling and extraordinary reasons for not doing so, to impose restitution in an "amount sufficient to fully reimburse the victim for all determined economic losses incurred as the result of the minor's conduct for which the minor was found to be a person described in Section 602." The statute however sets a ceiling for restitution when the minor is incarcerated, but only sets the floor when the minor is placed on probation.

By analogy, when the court imposes probation on an adult, as opposed to incarceration, the court may impose restitution as long as the restitution condition is reasonably related either to the crime of which the defendant is convicted or to the goal of deterring future criminality. Because requiring a defendant to repay his victims for their economic losses serves to deter future criminality, courts may require an adult probationer to pay restitution on amounts caused by related conduct not resulting in a conviction, by conduct underlying dismissed and uncharged counts, and by conduct resulting in an acquittal.

This same approach can be applied to juveniles. Probation in juvenile court is not identical to probation in adult court because adults can refuse probation (and instead serve time in custody) while minors cannot. But probation is not optional for minors for a reason—namely, because a minor's rehabilitation and reformation is paramount. If the minor's rehabilitation and reformation is so important that it justifies denying the minor the right to refuse probation, it is important enough to empower the juvenile court to impose a restitutionary obligation aimed at achieving those same goals. The imposition of such restitution was appropriate in this case as there were sufficient grounds to support a finding by the preponderance of the evidence that the minor was involved in the first theft.

The judgment is affirmed.

In re C.B. (2018) 6 Cal.5th 118

Holding: The relief granted by Proposition 47 does not include removal of DNA samples and profiles from the DNA databank.

Facts: In this consolidated appeal, both C.B. and C.H. were convicted of separate theft related crimes, which were reduced to misdemeanors after passage of Proposition 47. After their crimes were reduced to misdemeanors, appellants sought to have their DNA removed from the DNA databank. The trial and appellate courts denied appellants' requests, stating that Proposition 47 did not authorize removal of the DNA from the databank.

Penal Code section 299 sets for the standards regarding retention of DNA samples. According to Penal Code section 299, DNA may only be removed from the databank if charges were not filed, the subject of the charges was acquitted, the conviction was reversed, or the subject of the charges was found factually innocent. None of these four circumstances apply to C.B. or C.H. Moreover, Penal Code section 296, which governs who must submit a DNA sample, states that the duty to submit "hinges on the classification of the offense at the time of adjudication." In this case, when C.B. and C.H. were adjudicated wards based on felony theft charges, they were required to submit DNA samples. Finally, if the drafters of Proposition 47 wanted the relief to include removal of DNA from the databank, that language could have been included in the legislation. The court of appeal orders denying the appellants' requests to remove their DNA from the databank are affirmed.

People v. Carter (2018) 26 Cal.App.5th 985

Holding: The trial court violated the Eight Amendment ban on cruel and unusual punishment when it imposed a sentence of life without the possibility of parole (LWOP) on a juvenile offender.

Facts: At the age of 17, defendant was arrested in connection to a shooting. The jury found him guilty of second degree murder. The trial court found true that defendant had a prior strike conviction for robbery for purposes of three-strikes sentencing. Defendant had a history of delinquent behavior and was gang involved, in addition to dependency history and truancy history. Educational and psychoeducational evaluations showed an apparent learning disability and deficits in processing information. He was also described in one evaluation as extremely unlearned and immature, and that his brain is yet to fully mature on a biological level. The trial court conducted an analysis under *People v. Superior Court* (1996) 13 Cal.4th 497 *(Romero)* to consider striking a prior strike. The court determined that the defendant did not demonstrate a willingness to change and declined to strike the prior robbery conviction and sentenced defendant to an aggregate term of 55 years to life. The defendant on appeal asserts the court's sentence violates the Eighth Amendment.

An Eight Amendment challenge presents a question of law and the trial court's decision not to strike a prior conviction under Penal Code section 1385 or *Romero* is reviewed for abuse of discretion. The People concede that the sentence of 55 years to life in prison was a de facto sentence of LWOP. The US Supreme Court in *Graham v. Florida* (2010) 560 U.S. 48 held that the Eighth Amendment prohibits a state from imposing LWOP sentence on a juvenile nonhomicide offender, and *Miller v. Alabama* (2012) 567 U.S. 460 held the Eighth Amendment prohibits a mandatory LWOP sentence for a juvenile offender who commits homicide. Even if a court considers a child's age before sentencing, a LWOP will still violate the Eighth Amendment if the crime reflects unfortunate yet transient immaturity.

The trial court here had the discretion to reduce the sentence by dismissing the prior strike conviction under section 1385 and *Romero*. The trial court was therefore required to select a sentence with no presumption in favor of LWOP while considering the factors on the distinctive attributes of youth as discussed in *Miller*. A presumption in favor of the three strikes sentencing creates problems of constitutionality as applied to juvenile offenders. *Miller* requires that sentencing a child to LWOP is excessive for all but the rare juvenile offender whose crime reflects irreparable corruption. The California Supreme Court currently has under review the question whether the record must show an express determination of irreparable corruption before imposing LWOP, or whether it suffices simply to show the trial court gave due consideration to the defendant's youth and attendant characteristics. Here, the record is unclear whether the trial court properly weighed the *Miller* factors in deciding not to strike the prior conviction under section 1385. The court weighed heavily on the defendant's unwillingness to change, without considering whether that unwillingness was a result of transient immaturity. It is reasonable to expect the trial court to have felt bound by the presumption in favor of three-strikes sentencing and against the granting of *Romero* requests.

Because the trial court did not have the benefit of recent case law that has clarified the proper approach to three strikes sentencing for juvenile offenders, and because the trial court necessarily considered the presumption in favor of three-strikes sentencing, remand is appropriate for the trial court to reconsider sentencing under Eighth Amendment principles without any presumption in favor of three-strike sentencing.

The sentence is vacated and conditionally reversed. The trial court is also to hold a transfer hearing under WIC section 707, as Proposition 57 applies retroactively.

In re G.C. (2018) 27 Cal.App.5th 110

Holding: The appeal is dismissed because it was not timely filed.

Facts: The lower court proceedings are rather complicated. G.C. was initially adjuged a ward in Santa Clara County in October of 2014 when she admitted three Vehicle Code section 10851 violations. The violations were charged as felonies; however, the court did not make a declaration about whether the violations G.C. admitted to were felonies or misdemeanors. G.C. picked up several more petitions in Santa Clara County for theft and vandalism. Her case, which consisted of four pre-disposition petitions, was transferred to Alameda County. In Alameda, it was not clear to the court or attorneys whether disposition had been taken. Ultimately, the juvenile court in Alameda County made dispositional findings as to the fourth petition and not the first three petitions. G.C. contined to violate probation. Her case was transferred back to Santa Clara County in November of 2015. The lower court in Santa Clara County adjudged G.C. a ward and incorporated Alameda County's probation orders as orders of the Santa Clara Court. At a contested disposition hearing in January of 2016 on a Welf. and Inst. Code section 777(a) hearing, the court imposed gang conditions and electronic search conditions. In February of 2016 G.C. filed a notice of appeal that stated she was challenging the January 2016 dispositional order. Her only contention on appeal is that the court erred when it failed to declare that the Vehicle Code 10851 offenses were either felonies or misdemeanors.

An appeal from a dispositional order must be filed within 60 days of the order. Here, the dispositional order on the Vehicle Code section 10851 counts was made in November of 2015; far more than 60 days elapsed between the order and G.C.'s notice of appeal. The appellate court declines to follow *In re Ramon* (2009) 178 Cal.App.4th 665, which held that Ramon's untimely appeal was not time-barred because failure to state whether an offense is a felony or misdemeanor results in an unauthorized sentence. In *Ramon*, the 4th District Court of Appeal relied on *In re Ricky H.* (1981) 30 Cal.3d 176, which held that an unauthorized sentence may be corrected whenever the error comes to the attention of the court. In the case at bar, the appellate court notes that the unauthorized sentence rule is an exception to the waiver doctrine, not the jurisdictional requirement that appeals be timely filed. Moreover, the Californai Supreme Court has established that timely notice of appeal is a requirement to the exercise of appellate jurisdiction. Because the appeal was not timely filed, it is dismissed.

Justice Greenwood dissents, arguing that the appeal is timely because the juvenile court has an ongoing duty to determine whether the prior offenses were misdemeanors or felonies.

People v. Baldiva (2018) 28 Cal.App.5th 1071

Holding: Proposition 57 applies retroactively to a plea agreement entered prior to the passage of Proposition 57.

Facts: Defendant entered a plea agreement with prosecutors in a case that was a direct file in adult court for crimes defendant committed when he was 17 years old. Under the plea agreement, he pleaded no contest to four counts and admitted various enhancement allegations, including Penal Code section 12022.53 1 firearm enhancement allegations. His pleas and admissions were entered in exchange for an agreed prison sentence of 17 years and 4 months and the dismissal of other counts and enhancement allegations. The defendant timely appealed but did not receive a certificate of probable cause.

Proposition 57, which took effect during the pendency of this appeal, bars the direct filing of a juvenile's case in adult criminal court without first holding a juvenile fitness hearing.

The appeal was stayed after the enactment of Proposition 57 and remanded for the court to hold any and all proceedings necessary to address the Proposition 57 issues raised by appellant's case. The request for a transfer hearing however was denied by the criminal court. Defendant filed a notice of appeal of this decision and the court granted a certificate of probable cause. The court of appeals lifted the stay and reinstated the case to active status. The appeals were heard together, the first without a certificate of probable cause and the second with one. The attorney general conceded that defendant was entitled to a transfer hearing.

The general rule in California is that the plea agreement will be "'deemed to incorporate and contemplate not only the existing law but the reserve power of the state to amend the law or enact additional laws for the public good and in pursuance of public policy. The parties to a plea agreement—an agreement unquestionably infused with a substantial public interest and subject to the plenary control of the state—are deemed to know and understand that the state, again subject to the limitations imposed by the federal and state Constitutions, may enact laws that will affect the consequences attending the conviction entered upon the plea. A plea agreement is deemed to incorporate subsequent changes in the law so long as those changes were intended by the Legislature or the electorate to apply to such a plea agreement. The California Supreme Court has concluded that Proposition 57 implicitly incorporated the established inference of retroactivity because it did not state otherwise.

If the electorate or the Legislature expressly or implicitly contemplated that a change in the law related to the consequences of criminal offenses would apply retroactively to all nonfinal cases, those changes logically must apply to preexisting plea agreements, since most criminal cases are resolved by plea agreements. It follows that defendant's appellate contentions were not an

attack on the validity of his plea and did not require a certificate of probable cause.

The matter is remanded for a fitness hearing.

C.S. v. Superior Court (2018) 29 Cal.App.5th 1009

Holding: The appellate court holds that in its transfer order, the court must "clearly and explicitly 'articulate its evaluative process' by detailing 'how it weighed the evidence' and by 'identify[ing] the specific facts which persuaded the court' to reach its decision." The transfer order is vacated and the case is remanded back to juvenile court so it can more clearly explain how it evaluated the transfer factors, weighed the evidence, and identify the facts that caused the court to order transfer.

Facts: In 2012, C.S. participated in a gang assault that led to the death of the 14-year-old victim. He was tried and convicted in adult court. Prior to his sentencing hearing, Proposition 57 passed and C.S.'s case was sent back to juvenile court for the court to conduct a transfer hearing under the legal standards implemented by Proposition 57. After the transfer hearing, the juvenile court concluded that the district attorney had met its burden of proof and ordered C.S.'s case transferred back to adult criminal court. C.S. filed a timely writ challenging the juvenile court's transfer order.

While the juvenile court did consider all five transfer criteria set forth in Welf. and Inst. Code section 707(a)(2), it did not state with criteria weighed in favor of transfer, against transfer, or was neutral. Such an explanation would greatly assist the appellate court in conducting a meaningful review. After reviewing the juvenile court's discussion of the five criterion, the appellate court is able to infer how the juvenile court weighed some factors but is not able to infer how the juvenile court thought C.S.'s prior juvenile history and efforts at rehabilitation impacted the transfer decision. The appellate court also notes that the recent legal change allowing wards to remain at DJF until the age of 25 might impact the juvenile court's decision to transfer the case to adult court because there was evidence that C.S. could be sufficiently rehabilitated at DJF in four years time. Overall, the Court of Appeal finds that the juvenile court's order did not allow for meaningful appellate review. Moreover, because there was not overwhelming evidence supporting the transfer decision, the failure to "articulate its evaluative process" was not harmless error.

There is also a brief discussion of SB1391, which prohibits transferring a case to adult court when the young person was 14 or 15 years old at the time of commission of the crime. The appellate court did not reach the merits of the argument presented on this issue, noting that the law has not yet taken effect.

The AG states its belief that SB1391 is an unconstitutional amendment of Prop 57 and is waiting for the appropriate vehicle to argue such!

In re E.P. (2019) 35 Cal.App.5th 792

Holding: The appellate court holds that there was insufficient evidence to support the finding that E.P. committed burglary, rather than shoplifting. The order finding that E.P. committed burglary is reversed.

Facts: A Welf. and Inst. Code section 602 petition was filed against E.P. charging him with burglary and receiving stolen property based on allegations that he stole items from a locker room at a public ice skating rink. When E.P. was arrested and searched, he was found in possession of the stolen items, along with a spray paint can, and an alcoholic beverage. After a contested hearing E.P. moved to dismiss the burglary charge, arguing that the prosecution had "failed to prove he had not committed shoplifting." He also moved to dismiss the receipt of stolen property charges because you cannot be convicted of both shoplifting and receiving that same property. The juvenile court denied the motion and found the allegations alleged in the petition to be true. E.P. timely appealed and the appellate court reversed the burglary and receipt of stolen property charges. The Attorney General then filed a petition for rehearing, which the appellate court granted.

Proposition 47 amended the Penal Code to clarify that nonserious, nonviolent crimes like petty theft should be charged as misdemeanors, not felonies. To accomplish this, the Penal Code was amended to include the crime of shoplifting. Penal Code section 459.5, which defines shoplifting, states that a person who is charged with shoplifting cannot also be charged with burglary. The attorney general acknowledges this but argues that a person who commits shoplifting may simultaneously commit burglary. In other words, the Attorney General argues the prosecution, in proving burglary, did not have a burden to disprove the elements unique to shoplifting; namely, that the property stolen was valued at less than $950.

The appellate court rejects the Attorney General's argument. Section 459.5 replaced the prior felony of second degree burglary. Consequently, E.P. could not simultaneously commit both shoplifting and second degree burglary. Put another way, under current law a person cannot commit burglary if he actually committed shoplifting. If the prosecutor wanted to prove that E.P. committed burglary, rather than shoplifting, the prosecutor was required to disprove the elements of shoplifting.

Here, the juvenile court concluded that E.P. committed a burglary because he stole property from private citizens, rather than a commercial establishment. Further, the juvenile court held that the locker room in the ice rink was not a

"commercial establishment." The appellate court notes section 459.5 does not distinguish between properly of commercial establishments or that of private citizens. As such, the juvenile court erred when it held that theft of property from private citizens could never be shoplifting. The appellate court also finds that, contrary to the juvenile court's ruling, the locker room was part of a commercial establishment. The locker room was open to the public and was not intended for employee use only; it was an amenity provided to its customers and therefore, was part of the commercial space. The order declaring E.P.'s offense a burglary is reversed.

The appellate court affirms the receipt of stolen property charges. In reversing the burglary order, the appellate court is not finding that E.P. actually committed shoplifting and E.P. argued that he could not be convicted of both shoplifting and receipt of stolen property, not that there was insufficient evidence to support the receipt of stolen property charge.

In re A.A. (2018) 30 Cal.App.5th 596

Holding: The probation condition prohibiting the minor from posting to social media about his case is not overboard and does not violate the minor's First Amendment rights.

Facts: The minor began playing basketball at the YMCA on a court that was being used by a YMCA employee to teach a group of kids. The minor refused to leave the court and when the employee made a move to take his basketball from him, the minor punched the employee in the face and knocked him unconscious. The minor posted a picture of the subpoena he received and included a sarcastic caption. The judge admonished the minor to discontinue posting to social media about his case. The minor did not listen and posted a video of himself dancing on the courthouse steps. At disposition, the juvenile court ordered, as a condition of probation, that the minor cease posting to social media about his case and take down any postings that were already up. The minor agreed to the condition and then timely appealed.

The minor argues that the probation condition is overbroad and violates the First Amendment. The appellate court notes that the minor waived this issue because he did not object to the condition at disposition. Even if the issue had not been waived, minor's appeal would fail because the restriction on social media posting was precise, narrow, and reasonably tailored to curtail the minor's inappropriate posts and further his rehabilitation. The minor is not prevented from using the internet, owning a mobile device, or posting other content on social media. The probation condition was necessary to protect the victim and rehabilitate the minor.

The minor's argument that his attorney was ineffective for not objecting to the probation condition also fails. Failing to raise a meritless objection does not constitute ineffective assistance of counsel. The lower court ruling is affirmed.

In re B.M. (2018) 6 Cal.5th 528

Holding: Substantial evidence does not support the juvenile court's finding that a butter knife was used as a deadly weapon in violation of Penal Code section 245(a)(1). The Court of Appeal judgment affirming the juvenile court's finding is reversed.

Facts: Seventeen-year-old defendant B.M. entered her family's house through a window after knocking on the door with no answer. Upset that she wasn't let in the house, B.M. confronted her sister in her room. She threw a phone at her and then went downstairs to the kitchen and grabbed a butter knife off the counter. The knife was six inches long, with a three-inch blade that was not sharp and had small ridges on one side. B.M. returned to the bedroom and made several downward slicing motions with the knife in the area of Sophia's legs, which were bent and under a blanket. Sophia testified that she was not hurt. The juvenile court sustained a juvenile wardship petition alleging that B.M.'s use of the butter knife against Sophia was an assault with a deadly weapon under Penal Code section 245(a)(1). B.M. appealed and the Court of Appeals affirmed the juvenile court's findings. The Court of Appeal reasoned that B.M. could have easily inflicted great bodily injury with butter knife and just as easily could have committed mayhem upon the victim's face. In addition, the Court of Appeal found that though just a butter knife, it was used in a manner capable of producing great bodily injury. The Court of Appeal also held that *In re Brandon T.* (2011) 191 Cal.App.4th 1491 was wrongly decided because it placed too much emphasis on the fact that that the use of a similar butter knife broke during the alleged assault. The Supreme Court granted review.

Substantial evidence does not support the juvenile court's finding. To determine whether an object which is not inherently deadly or dangerous is used in manner as to be capable of producing and likely to produce, death or great bodily injury under PC section 245(a)(1), requires the trier of fact to consider the nature of the object, the manner in which it is used, and all other facts relevant to the issue. It must be used in a manner that is not only capable of producing but also likely to produce death or great bodily injury. The Court of Appeal misstated the standard by omitting the "likely" requirement when it said an assault with a deadly weapon is complete when the defendant, with the requisite intent, uses an object in a manner which is capable of producing great bodily injury upon the victim.

In addition, the Court of Appeal erred by speculating that B.M. could have easily committed mayhem upon the victim's face. This is impermissible conjecture as to how the knife could have been used and not a reasonable inference of potential injury based on evidence of how B.M. actually used the butter knife, which is the correct standard. In addition, contrary to what the Court of Appeal said, *Brandon T.* properly considered the knife's inability to cause more than a small scratch in evaluating whether the deadly weapon finding was supported by substantial evidence.

The knife used in this case was one you would use to butter a piece of toast. It was not sharp on its edge or at its point. The knife was not applied to any vulnerable part of Sophia's body, B.M. only directed the knife at Sophia's legs, which were under a blanket. The amount of force used also was insufficient to pierce the blanket or cause serious bodily injury to Sophia. Also relevant was B.M.'s awareness that she was slashing at legs covered by blankets, as it shows that she did not use the object in a manner likely to cause to serious injury. While the use of the butter knife could have caused greater injury if used in a different manner, the injury must focus on the evidence of how B.M. actually used the knife.

In a concurring opinion, Justice Chin noted that the court is not resolving the meaning of the term "likely" in the phrase "capable of producing and *likely* to produce, death or great bodily injury." The meaning of likely in this context requires its own careful analysis like the case *People v. Superior Court (Ghilotti)* (2002) 27 Cal.4th 888, which addressed the meaning of the word "likely" in the Sexually Violent Predators Act (Welf. & Inst. Code § 6600 et seq.), which refers to persons "*likely* to engage in acts of sexual violence." Under any definition of "likely" however, the act at issue in this case was not likely to produce great bodily injury.

In re J.G. (2019) 6 Cal.5th 867

Holding: The lower court did not err when it converted J.G.'s outstanding restitution to a civil judgment and considered his social security income when determining his ability to pay restitution. The lower court did err, however, when it based it's ability to pay determination on J.G.'s receipt of social security income. The Court of Appeal's judgement is reversed and the case is remanded.

Facts: J.G. was granted deferred entry of judgment (DEJ) after he admitted to vandalizing property at a public park. Restitution for the damages was alleged to be in excess of $30,000. J.G. requested a hearing on the restitution amount, which was held in abeyance until successful completion of the terms of DEJ. After J.G. completed the terms of DEJ, the court held a hearing to determine

restitution and the amount that J.G. could pay each month. During the hearing, the court considered the fact that J.G. received $700 a month in social security income related to his ADHD diagnosis. Based on that, the court determined that J.G. could pay $25 a month toward the restitution amount, which had yet to be determined. J.G.'s attorney objected to the payment amount, arguing that the court could not consider the social security income when making a determination about ability to pay. The court and parties agreed to continue the hearing on the restitution amount and agreed to a provisional restitution amount, which at some point became the final restitution amount. J.G.'s attorney timely appealed, raising four arguments: 1) it was error to convert the unpaid restitution to a civil judgment; 2) it was error to consider J.G.'s social security income in his ability to pay the restitution; 3) it was error to find that J.G. had the ability to pay based on his social security income; and, 4) the total amount of restitution exceeded statutory limits imposed on restitution amounts. The appellate court rejected all of J.G.'s arguments and affirmed the lower court. Here, the California Supreme Court affirms the lower court on the first two issues, overturns the third, and does not reach the fourth.

It was not error to convert the unpaid balance to a civil judgment. Welfare and Institutions Code section 794 states that a child granted DEJ can be required to pay restitution as set forth in the Welf. and Inst. Code. Section 730.6 directs that restitution orders "shall be enforceable as a civil judgment." J.G.'s argument that restitution goes against the intent of DEJ fails because part of the rehabilitative intent of DEJ is to hold children accountable for their offenses. Restitution serves a rehabilitative purpose in that it helps children understand the impact of their actions. The Court rejects J.G.'s argument that the lower court erred when it converted the restitution order to a civil judgment.

Nor did the court err when it considered J.G.'s social security income in its determination about whether J.G. had the ability to pay. In support of his argument, J.G. relies on 42 U.S.C. section 407(a), which states that social security income may not be levied or attached. The People dispute J.G.'s reading of 42 U.S.C. section 407(a), noting that while a court may not order a person to use social security income to pay restitution, it may consider that income when deciding whether the person has the ability to pay restitution. Case law, the Court finds, supports the People's position. However, the People acknowledged during oral argument that the record indicates that the lower court did "contemplat[e] the social security money as the source of the restitution payments," which requires reversal of the lower court's order on J.G.'s ability to pay. As such, the Court of Appeal's judgment is reversed and the case is remanded.

In re M.S. (2019) 32 Cal.App.5th 1177

Holding: The minor is not eligible for the mental health diversion program pursuant to newly enacted Penal Code section 1001.35 and 1001.36, because the new law does not apply to juveniles. The juvenile court's findings of second-degree murder and the admission of multiple statements from M.S. during the investigation are affirmed.

Facts: The minor M.S. appeared at a hospital after complaining of abdominal pain and reported giving birth at the home of her family. After consenting to a search of the apartment by the father, the baby's body was found. The coroner's examination and evidence at the apartment revealed that the baby died because of a homicide. Following a lengthy and contested jurisdictional hearing, the juvenile court found the minor had committed second degree murder. The court declared M.S. a ward and placed her at a Short-Term Residential Treatment Program. M.S. appeals.

The nature of the injury to the infant and M.S.'s false statements given at the hospital all allow for an inference of M.S.'s consciousness of guilt, supporting the juvenile court's finding of second-degree murder. M.S.'s fourth and fifth amendment rights were not violated when officers interviewed her in her hospital room and searched her cellular telephone, because M.S. consented to the searches and sufficient evidence supports the express finding of consent. M.S. also forfeited her fifth amendment claim by not raising it in the juvenile court. Sufficient evidence also supports the court's ruling that the minor was not in custody when she provided police with a reenactment of the birth at her family's apartment. The reenactment occurred in the family's apartment and the police officers informed her repeatedly that she could stop the reenactment if she did not want to continue. M.S.'s statements to police during an interview were also likewise supported by valid Miranda waivers. And any error in admitting statements to a psychologist used during the investigation are harmless beyond a reasonable doubt.

M.S. also contends that she is entitled to remand to have the court make an eligibility determination regarding mental health pretrial diversion according to newly enacted sections 1001.35 and 1001.36 of the Penal Code. The mental health diversion program is intended to increase diversion from adult criminal justice system of individuals with mental disorders while protecting public safety. Effective January 1, 2019, section 1001.36 was amended, however, to eliminate application of the diversion program to certain enumerated violent crimes, including murder. The diversion program therefore does not apply to M.S. In addition, the juvenile court is a separate civil division of the superior court, and not an adult criminal court. The juvenile court's rehabilitation program imposed at disposition distinguishes the adult criminal system from

the juvenile justice system, and section 1001.35 and 1001.36 do not apply in the juvenile court.

In re H.W. (2019) 6 Cal.5th 1068

Holding: The judgment of the Court of Appeals is reversed as the minor lacked the intent required to establish criminal liability for possession of a physical tool with the intent to feloniously break or enter into a building or vehicle under Penal Code section 466.

Facts: H.W. was a minor who entered a Sears department store in Yuba City, California, with the intent to steal a pair of jeans. When he was apprehended, he was in possession not only of the stolen jeans but a pair of pliers approximately ten inches in length, with a half-inch blade. The juvenile court sustained the burglary tool possession allegation filed against H.W., whom the court then designated a ward and placed on juvenile probation. He contends the pliers are not an "other instrument or tool" under section 466. The Court of Appeal concluded the pliers were an "other instrument or tool" for purposes of section 466 and the possession of a burglary tool allegation was properly sustained.

Section 466 includes an intent requirement focused specifically on commission of a felonious breaking or entry. Coupled with the statute's list of tools that seem primarily capable of facilitating entry despite someone's effort to secure or limit access to a structure or other location referenced in the statute, the mention of breaking or entering in the context of section 466 seems most consistent with a reading that conditions criminal liability on a particular state of mind — intent to use an "instrument or tool" to break or otherwise effectuate physical entry into a structure in order to commit theft or some other felony within the structure.

There is insufficient evidence here to support the section 466 allegation that H.W. possessed the pliers with "intent feloniously to break or enter into any building, railroad car, aircraft, or vessel, trailer coach, or vehicle." (§ 466). Even if we assume the pliers in H.W.'s possession indeed qualify as an "other instrument or tool," the record does not support the conclusion that H.W. intended to use the pliers to do anything other than remove the anti-theft tag from the jeans. Criminal liability for possession of prohibited tools "with intent feloniously to break or enter" requires a showing that the defendant intended to use the instrument or tool possessed to break or effectuate physical entry into a structure in order to commit theft or a felony within the structure. The record here does not support the conclusion that H.W. possessed the pliers with an intent to use them for any purpose other than to remove the anti-security tag from the jeans. The judgment of the Court of Appeal is reversed.

P. v. Castillero (2019) 33 Cal.App.5th 393

Holding: The criminal court erred in not transferring the case back to juvenile court for a post-Proposition 57 transfer hearing. The minor's age at the time of the commission of the crime determines whether the count would be eligible to be before the juvenile or adult criminal court.

Facts: The minor plead guilty to four counts of Penal Code section 288, subdivision (b)(1), crimes he committed when he was 14, 15 and 16 years old. After a transfer hearing in juvenile court prior to the passage of Prop. 57, the case was transferred to the criminal court. Casterillo entered into a plea agreement. At the time of his sentencing hearing, Prop. 57 had been approved by voters. He made a motion at his sentencing hearing to transfer the case back to juvenile court for a transfer hearing under Prop. 57. The DA opposed the request arguing that Prop. 57 was not retroactive. The judge denied the motion without explanation and sentenced Castillero to a term of 40 years in prison. Castillero timely appealed.

The court erred by not transferring the case to juvenile court for a transfer hearing. The California Supreme Court has concluded that Prop. 57 effected an ameliorative change to the criminal law that must be applied to cases whose sentences were not yet final at the time it was enacted. This includes juveniles who had a fitness hearing in juvenile court prior to Prop. 57, such as Casterillo. But the treatment of Castillero's various offenses depends on his age at the time of the offense. Senate Bill 1391, which took effect on January 1, 2019, prohibits transfer to criminal court for crimes that occurred when the defendant was under 16. Crimes that Castillero committed when he was 14 and 15 years old should be treated as juvenile adjudications with an appropriate juvenile disposition after a disposition hearing.

For the crimes Castillero committed when he was 16 years old, the juvenile court must hold a transfer hearing consistent with Welf. & Inst. Code section 707. If any of Castillero's counts are transferred to criminal court, the convictions for those counts should be reinstated, and the criminal court will not have the authority to vacate the plea agreement, even if it cannot sentence Castillero to the agreed-upon term of 40 years. On the other hand, if the juvenile court finds in accordance with current law that it would not have transferred the case to criminal court, then it should treat this conviction as a juvenile adjudication and impose an appropriate juvenile disposition after a dispositional hearing.

For those crimes in which the record does not clearly indicate whether the crimes occurred when Castillero was 15 or 16, the matter is remanded to the juvenile court to determine the date which Castillero committed these crimes. If the juvenile court finds beyond a reasonable doubt that Castillero committed

the crime for count 2 when he was over 16 years old, then the juvenile court must hold a transfer hearing to determine if this case would have been transferred to criminal court had it originally been filed in juvenile court in accordance with current law and follow the same treatment as the other counts that occurred when he was 16 years or older. If the court finds the crimes occurred under 16, the court must impose an appropriate juvenile disposition after a dispositional hearing.

In re J.C. (2019) 33 Cal.App. 5th 741

Holding: The juvenile court's disposition order committing the minor juvenile hall until age 21 with a release prior to his 21st birthday if he successfully completes the program was not an improper delegation of authority to the probation officer to determine the length of his commitment, because the court retained the ultimate supervisory authority to determine whether and when Minor successfully completes the program.

Facts: Following a Welfare and Institutions Code section 602 petition, Minor admitted to carjacking with a personal firearm use enhancement. At disposition, the juvenile court followed the probation officer's recommendation to place the minor at the Youthful Offender Treatment Program (YOTP), a program located in the juvenile hall, and declined to order a fixed term of commitment. The court required the minor to complete the program satisfactorily before discharge. The court set a date to review the minor's progress in seven months.

The minor appeals arguing that the juvenile court inappropriately delegated to the probation officer the authority to determine the length of minor's commitment. The logical extension of Minor's argument is that any decision impacting a minor's progress through YOTP cannot be made by probation in the first instance, even if the court will hold review hearings and retains the authority to overrule the decision. The Court of Appeal sees no legal basis for such a conclusion. When a minor is committed to a county facility and ordered to complete a treatment program, juvenile courts can and do delegate the day-to-day supervision of the minor, while retaining the ultimate authority to determine whether the minor has successfully completed the program. The fact that the juvenile court set a review hearing in seven months demonstrates the court was exercising this retained authority. The minor can challenge the probation officer's assessment at the scheduled review hearing, or at any time through a section 778 petition.

The juvenile court's order is affirmed.

People v. Superior Court (Alexander C.) (2019) 34 Cal.App.5th 994

Holding: Senate Bill 1391, prohibiting the transfer of 14 and 15-year olds to adult court in almost all circumstances, is not inconsistent with Proposition 57. The Solano County District Attorney's writ of mandate is denied.

Facts: In 2011, Alex was tried in adult for crimes he committed when he was 14 years of age. He was convicted on all counts and sentenced to life in prison. Alex appealed and that appeal was pending when Proposition 57 passed in November 2016. As a result, this court ordered that Alex receive a transfer hearing in juvenile court. The People filed a writ petition regarding that order, which was dismissed when the Supreme Court held that Proposition 57 applies retroactively. While Alex waited for his transfer hearing, SB 1391, which stated that 14 and 15 year olds could not be tried in adult court, was signed into law. Alex moved to dismiss the motion to transfer and argued that because he was 14 when he committed the underlying offense, SB 1391 precluded him from being tried in adult court. The District Attorney disagreed but the judge rejected those arguments and terminated the transfer proceeding. This writ of mandate followed. In it, the District Attorney argues that SB 1391 is inconsistent with Proposition 57. Interestingly, the Attorney General submitted a brief defending SB 1391.

After reviewing the intent of Proposition 57, the appellate court holds that SB 1391 is consistent with Proposition 57. Consequently, the Court of Appeal declines to strike down SB 1931, as requested by the District Attorney, and, instead, denies the writ of mandate.

In re R.G. (2019) 35 Cal.App.5th 141

Holding: A sustained murder allegation in juvenile court based on a natural and probable consequences theory may be vacated through a Penal Code section 1170.95 petition.

Facts: The minor and two co-defendants went for a drive to "slide through" a rival gang's territory; in the course of the drive, a murder was committed. Being driven by one member of the group of three, the minor did not get out of the car when another member of the group got out of the car and murdered an individual he identified as a rival gang member. The juvenile court found the minor liable for the murder because the shooting was a reasonably foreseeable consequence of the gang assault.

On appeal, the minor argues that the true finding on the murder allegation must be reversed because Senate Bill 1437 applies retroactively to his case. Enacted in 2018, SB 1437 eliminated the natural and probable consequence theory of murder that provided the basis for the court's finding. Recent case law however demonstrated that SB 1437 does not apply retroactively, but that

instead, a defendant must file a Penal Code section 1170.95 petition to obtain relief. Added by SB 1437, section 1170.95 permits those convicted of murder under a natural and probable consequences theory to file a petition with the sentencing court to vacate the conviction and be resentenced.

The minor argues that the plain language of section 1170.95 prevents it from being applied in juvenile court. While section 1170.95 uses terminology not generally applicable in juvenile proceedings, since 1961, Welf. & Inst. § 602 premises a juvenile court's jurisdiction over a juvenile offender based on the violation of a criminal law. The legislature is presumed to have been aware of this premise. It would be absurd if statutory changes on the same subject matter were not equally applicable to juvenile offenders. Likewise, Welf. & Inst. § 726 makes clear the maximum duration of a juvenile offender's term of confinement may not be in excess of the maximum term of imprisonment that could be imposed upon an adult convicted of the offense that brought the juvenile under juvenile court jurisdiction. Deeming section 1170.95 inapplicable to juvenile offenders would undermine Welf. & Inst. § 726. And permitting juvenile offenders to benefit from section 1170.95 enhances the primary purpose of juvenile commitment proceedings, which is rehabilitation.

The juvenile court's order sustaining the allegation that the minor committed second degree murder is affirmed. The court expresses no opinion on whether the minor should be granted relief if he files a section 1170.95 petition.

In re Cook (2019) 7 Cal. 5th 439

Holding: Offenders with final convictions can seek to preserve evidence regarding youth-related factors for purposes of a future Parole Board hearing by filing a motion in trial court under the authority of Penal Code section 1203.01.

Facts: The minor was convicted of two counts of first-degree murder and one count of premeditated attempted murder, including findings that he personally and intentionally discharged a firearm, causing great bodily injury or death. The minor was 17 years old when he committed the offense, and he was sentenced to life without parole for the attempted murder and five consecutive terms of 25 years to life for the murders and enhancements. In response to Cook's Writ of Habeas Corpus challenging his sentence as cruel and unusual punishment under the Eighth Amendment and *Miller v. Alabama* (2012) 567 U.S. 460, the Court of Appeal held that his sentence was constitutional because the newly enacted Penal Code sections 3051 and 4801 entitled him to a parole hearing during his 25th year of incarceration.

While Cook's petition for review regarding the denial of his writ petition was pending, the Supreme Court of California decided *People v. Franklin* (2016) 63

Cal.4th 261. Because of that decision, Cook's petition for review was granted and transferred to the Court of Appeal to consider whether *Franklin* applied. In *Franklin*, the court held that a 50 years to life sentence is not a violation of the Eighth Amendment when a juvenile is eligible for a parole hearing during the 25th year of incarceration pursuant to Penal Code sections 3051 and 4801. The court added that those sections effectively reform the parole eligibility date of a juvenile offender's original sentence so that the longest possible term of incarceration before parole eligibility is 25 years. Additionally*, Franklin* held that those sections contemplate that information regarding the juvenile offender's characteristics and circumstances at the time of the offense will be available for the Parole Board. The trial court is therefore authorized to receive any information of that nature including documents, evaluations or testimony that may be relevant under sections 3051 and 4801. The structure for this "*Franklin* hearing" is outlined in *Franklin* at page 284.

Here, the Court of Appeal, granted Cook's habeas petition when it held that he was entitled to a hearing under *Franklin*. The Attorney General petitioned for review, arguing that habeas relief is not available because the remand under *Franklin* is not based on an underlying illegality or unlawful restraint. The Supreme Court granted the Attorney General's petition for review and reversed the judgment of the Court of Appeal granting Cook's petition.

The Court indicated that Penal Code section 1203.01 allows the trial court to receive additional statements after final judgments, which is therefore the proper remedy for juvenile offenders seeking to supplement the record with information relevant under sections 3051 and 4801. Additionally, the Court stated that a trial court has inherent authority pursuant to Code of Civil Procedure section 187 to carry out its duties under *Franklin*, which combined with section 1203.01 provides an adequate remedy. To seek a Franklin hearing, offenders should file a motion in the trial court under the original caption and case number, citing the authority of section 1203.01 and the *Cook* opinion. The motion should establish the offender's entitlement to a youth offender parole hearing, and indicate when that hearing will take place, or if it already has. The trial court has discretion to conduct the *Franklin* hearing in a way that it sees fit, which could include consideration of whether such a hearing is likely to produce fruitful evidence considering factors such as the passage of time since the offense. It is important to note that an offender need only be given "an opportunity" for a *Franklin* hearing.

A Concurring and Dissenting opinion was filed in which Justice Kruger stated her disagreement with the scope authorized under section 1203.01, including her disbelief that the trial court has inherent authority to expand that code section to meet its needs when the authority to do so has not come from the Legislature.

People v. Superior Court (K.L.) (2019) 36 Cal.App.5th 529

Holding: SB 1391 (an amendment to WIC section 707), which does not allow minors who were under 16 years old when they committed an offense, to be transferred to criminal (adult) court, is not unconstitutional.

Facts: This case stems from two petitions for writ of mandate filed by The People of the State of California after the Sacramento Superior Court dismissed The People's motions requesting transfer of minors K.L. and R.Z. from juvenile to criminal (adult) court for prosecution, and refused to transfer the minors. The trial court asserted that it could not transfer the minors pursuant to Welfare & Institutions Code ("WIC") section 707, as modified by the recent enactment of Senate Bill ("SB") 1391.

In its opinion, the Court goes into a lengthy discussion of the history of the enactment of WIC 707 and the various amendments that follow. Here, it is useful to explain only the recent amendments made by Proposition 57 and SB 1391.

SB 1391, enacted by the Legislature in 2018, amended WIC 707 by removing the ability of the prosecutor to seek a transfer to criminal court of a minor who was 14 or 15 years old at the time of the commission of the offense. This code section had already been amended in 2016 by Proposition 57, which allowed 14 and 15-year-old offenders to be transferred to criminal court ONLY IF they committed certain offenses, AND if a court found the minors unfit for treatment under juvenile court law. This meant that prosecutors were no longer permitted to file charges against minors directly in criminal court, which prosecutors could do before the passage of Proposition 57. Courts noted that these amendments reflect changing sentiment "regarding the relative culpability and rehabilitation possibilities for juvenile offenders."

Here, The People argued that SB 1391 is unconstitutional because barring the transfer of minors under age 16 to criminal court does not further the intent and purpose of Proposition 57. The Court stated that even though the plain language of Proposition 57 is not decisive in resolving this issue, when taken as a whole, and in the appropriate context, "the intent of Proposition 57 was to reduce the number of youths who would be prosecuted as adults." Therefore, the court held that SB 1391 actually advances the intent of Proposition 57, rather than contravening it, and as such is not unconstitutional.

Offenders under age 16 when they committed an offense cannot be transferred to criminal court to be charged. The People's writ petitions were therefore denied.

In re A.C. (2019) 37 Cal.App.5th 262

Holding: The juvenile court's finding that the minor's statements made to a counselor are admissible is affirmed because the statements demonstrated the minor was a danger to others. The admissible statements however do not support the court's finding that the minor violated conditions of his probation.

Facts: The People filed a notice of violation of probation related to statements the minor ward made to a counselor. The minor told the counselor that he was being bullied at school and that he was going to react and stab them with whatever he had available. Minor's counsel objected to the admissibility of the statements and asserted the psychotherapist-patient privilege. The juvenile court overruled the objection because the counselor was not acting as a therapist and found based on his statements that the minor had violated conditions of his probation.

On appeal, the minor contends the statements made to the counselor were confidential and inadmissible under the psychotherapist-patient privilege. The juvenile court did not err however in admitting the statements. The record supports the juvenile court's finding that the counselor was not acting as a therapist. She testified she was not providing one-on-one therapy, did not work for the Department of Mental Health, and was involved with the family to assist them in obtaining mental health services if needed. Even if the statements were made to a therapist, they would still be admissible. A therapist has a duty to provide a warning to others when he or she reasonably believes a patient "is dangerous to another person." The counselor reasonably believed the minor posed a threat based on his statements.

However, while those statements are admissible, the evidence is insufficient to support the juvenile court's finding that the minor violated his probation based on those statements. The court found the minor violated the probation condition that requires he "must not unlawfully threaten" any person. An unlawful threat made to a third party requires that it be shown that the individual intended the threatening remarks to be communicated to the victim. This would not be possible here because the minor did not communicate the name of the two students who bullied him at school. Mere angry utterances or ranting soliloquies, however violent, do not, by themselves, constitute criminal threats. Here, the record shows the minor's statements were made not as a threat, but to convince the counselor that he should not go to school, and they had the intended outcome. The juvenile court also found the minor violated his probation condition that he "not possess or act like you possess an object you know is a dangerous or deadly weapon." At best, the minor's statement indicates a possible future event, not a present possession or actual use of a weapon.

The orders finding the minor violated his probation conditions are reversed.

In re A.M. (2019) 38 Cal.App.5th 440

Holding: The dispositional order committing the minor to the Department of Juvenile Facilities is affirmed.

Facts: In October 2017, the minor was alleged to have committed murder by acting as an accomplice to his brother. The minor admitted the allegations and the probation department recommended that the minor be committed to DJF, based on his previous record of juvenile justice involvement. At the disposition hearing, the prosecution presented testimony from Jocelyn Montano, an employee of DJF. Ms. Montano presented evidence about the procedure after a youth is committed to the DJF and discussed how individualized treatment programs are created for youth. The prosecution also presented testimony from an employee of the Youthful Offender Treatment Program, a program run within the juvenile hall, that minor would not be suitable for that program. Minor presented evidence from a forensic social worker that suggested DJF would not be an appropriate placement for minor because he had done so well in the juvenile hall and he would be exposed to minors with more serious behavioral issues. Based on the gravity of the offense, the court ordered the minor be committed to DJF.

The appellate court reviews the juvenile court's placement decisions for abuse of discretion and the findings are reviewed for substantial evidence. The goal of the juvenile court is rehabilitation and, as such, placements should go from less restrictive to most restrictive; however, there is no requirement that DJF cannot be ordered unless a less restrictive alternative has been tried. To establish that a DJF placement is necessary, there must be evidence that a less restrictive placement would be ineffective or inappropriate and that the youth would benefit from education and treatment provided at DJF.

This court recently reversed a DJF commitment because there was no specific evidence in the record showing that the programs at DJF would benefit the youth. *See, In re Carlos J.* (2018) 22 Cal.App.5th 1. In that case, this court noted that it is impossible to provide a meaningful review of the record for substantial evidence when there is no concrete evidence in the record about the specific programming at DJF that will benefit the youth. In the case at bar, unlike in *Carlos J.*, the people presented extensive testimony about the programming at DJF that would benefit the A.M.

The appellate court also rejects A.M.'s argument that the juvenile court erred when it found that less restrictive alternatives would not be appropriate. Minor's argument that the YOTP programming was substantially similar to the programming at DJF is proven inaccurate by the record, which shows that the

juvenile court was concerned about the length of the YOTP program and the intensiveness of that program. The appellate court also rejects A.M.'s additional arguments, noting that the record supports that the crime was sophisticated and that the text messages to A.M.'s girlfriend were properly construed as threatening. The disposition is affirmed.

People v. Superior Court (T.D.) (2019) 38 Cal.App.5th 360

Holding: SB 1391, which provides that 14 and 15 year olds cannot be transfer to adult court, is not an unconstitutional amendment of Prop 57.

Facts: The issue presented in the case at bar is whether Senate Bill 1391, which prohibits transfer to adult court of 14 and 15 year olds accused of crimes, unconstitutionally amends Prop 57. T.D. was 14 years old in 2010 when he was accused of a murder that occurred during an attempted carjacking. T.D. was tried as an adult and was convicted of first-degree murder. T.D. appealed and while that appeal was pending, Prop 57 passed and was held to apply retroactively to nonfinal cases. In response, this court conditionally reversed T.D.'s conviction and remanded the case to juvenile court with instructions. The district attorney filed a motion to transfer the case to adult court and the transfer hearing was scheduled to take place on January 9, 2019. On January 1, 2019, SB 1391 went into effect at which point T.D. asserted his right to a speedy trial and requested that an appropriate juvenile disposition be imposed. The district attorney argued that SB 1391 was unconstitutional, and the transfer hearing should go forward. The juvenile court concluded that Prop 57 was intended to limit the class of juveniles who could be tried as adults; likewise, SB 1391 limits the type of juveniles who can be tried as adults and emphasizes rehabilitation. As such, the juvenile judge found it was constitutional and applied to T.D.'s case. The district attorney filed a writ of mandate.

The California Constitution limits the legislature's ability to amend an initiative passed by voters. Essentially, the legislature may not amend an initiative without voter approval, unless the initiative permits an amendment. Prop 57 states that it may be amended if the amendments are "consistent with and further the intent of th[e] act" and the bill is approved by a majority in each house and signed by the governor.

The California Constitution defines an amendment as a "legislative act that changes an existing initiative statute by taking away from it." SB 1391 constitutes an amendment to Prop 57 because it limits the ability of the prosecutor to transfer 14 and 15 year olds to adult court. As such, the court must determine whether the statute is consistent with the intent of Prop 57.

In SB 1391 the legislature specifically stated that it is consistent with and furthers the purpose of Prop 57. Legislative findings are not binding on the court and while they are given great weight, the appellate court is quick to note that they are not subject to deferential review. To determine if SB 1391 is consistent with Prop 57, the Court begins with *People v. Lara*, where the California Supreme Court determined that Prop 57 applied retroactively to nonfinal cases. In that case, the Supreme Court found that Prop 57 was intended to "extend as broadly as possible." As such, it must be read to allow amendments that are consistent with the *intent* of the act and further the *intent* of the act, rather than limiting it to amendments are consistent with the *express* language of the act. The intent of Prop 57 was to promote rehabilitation in an effort to minimize the risk that youthful offenders will recidivate. SB 1391 cites research showing that keeping 14 and 15 year olds in the juvenile justice system and providing them with age appropriate services lessens the likelihood of recidivism. As such, SB 1391 furthers the intent of Prop 57. The appellate court also notes that Prop 57 did not set an age at which juveniles could be transferred to adult court. In other words, Prop 57 did not mandate that 14 and 15 year olds could be transferred to adult court. Consequently, precluding 14 and 15 year olds from being transferred to adult court is not inconsistent with Prop 57. The appellate court concludes that SB 1391 is constitutional.

People v. Superior Court (I.R.) (2019) 38 Cal.App.5th 383

Holding: SB 1391 is not unconstitutionally vague and it applies retroactively.

Facts: This case has a similar procedural posture as *People v. Superior Court (T.D.)* in that I.R. was direct filed to adult court for a crime he committed when he was 15. His case was not final when SB 1391 was enacted and the court granted his motion to dismiss the case for lack of jurisdiction and denied the DA's motion to transfer the juvenile case to adult court. The prosecution filed a writ of mandate.

The prosecution argues that SB 1391 unconstitutionally amends Prop 21, which was passed by voters in 2000. The appellate court disagrees with this argument, noting that Prop 57 repealed provisions of Prop 21, not SB 1391.

The prosecution next argues that SB 1391 is unconstitutionally vague because it makes it unclear when a 14 or 15 year old can be tried in adult court. The appellate court first notes that the prosecution requests that the court opine on the constitutionality of a hypothetical situation, whereas it is well-established that the courts do not consider hypothetical questions. The appellate court also rejects the prosecution's claim on the merits, noting that the implementing statutes clearly state that 14 and 15 year olds who are apprehended when they are over 18 face prosecution as an adult; it is no less clear because there is

reference to more than one statute. Nor is SB 1391 rendered unconstitutional because punishment may be based on age of apprehension.

The appellate court also rejects the prosecution's argument that SB 1391 does not apply retroactively. The California Supreme Court addressed retroactivity in People v. Lara and the legislature is deemed to be aware of previous judicial decisions.

Finally, the prosecutor argues that I.R. should have been transferred to adult court because he committed a felony assault when he was 16 years old and, therefore, both the murder he committed at 15 and the assault should be transferred to adult court. The appellate court disagrees with this argument based on the language of SB 1391 and its intent, which was clearly stated as having 14 and 15 year olds adjudicated in juvenile court, regardless of the offense.

The petition for writ of mandate is denied.

In re Ricardo P. (2019) 7 Cal.5th 1113

Holding: The electronics search condition imposed by the juvenile court is not reasonably related to future criminality and is therefore an invalid condition of probation.

Facts: Ricardo and his brother were arrested and charged with burglary. Ricardo told the probation officer that he'd been using marijuana before the burglaries; consequently, the judge imposed drug testing and electronic search as conditions of probation. Ricardo appealed the electronics search condition and the appellate court held that the condition satisfied the test set forth in *People v. Lent* but was overbroad. The appellate court remanded for the lower court to consider imposing a more narrow condition. The Supreme Court granted review but limited to the question of whether the electronic search condition satisfied the third prong of the test set forth in *Lent*.

The Court agrees that the three prong test set forth in *Lent* governs probation conditions in juvenile cases, as well as adult cases. The appellate court concluded, and this Court agrees, that the first two prongs of the *Lent* test do not apply, so the issue in this case is whether the electronic search condition is reasonably related to future criminality. The third prong of the *Lent* test "contemplates a degree of proportionality between the burden imposed by a probation condition and the legitimate interests served by the condition;" however, the Court rejects Ricardo's argument that the third prong requires "a nexus" between the underlying offense and the probation condition. Here, there is no proportionality between the electronic search condition and preventing future criminality by Ricardo. Nothing in the record suggests that Ricardo ever

used social media or an electronic device to commit crimes or boast about committing crimes.

The Court emphasizes that the electronic search condition significantly impacts privacy interests and notes that upholding the condition in this case would open the door to imposing electronic search conditions in nearly every case because the argument could always be made that monitoring devices and social media could deter or prevent future criminality.

The Court goes on to distinguish this case from *People v. Olguin*, where it held that a pet notification probation condition was valid. Acknowledging that *Olguin* contained some expansive language, the Court declines to find that *Olguin* "categorically permit[s] any probation conditions reasonably related to enhancing the effective supervision of a probationer." Unlike *Olguin*, which involved a traditional property search, this case and others involving electronic search conditions are far more invasive and burdensome. As such, they require a more substantial and specific justification.

The Court holds that the electronic search condition imposed in the case at bar is invalid because it is not reasonably related to future criminality and therefore fails the *Lent* test. The Court's holding is not a categorical invalidation of all electronic search conditions. There may be cases where the offense or history of the offender indicate that an electronic search condition is a proportional means of deterring future criminality.

The Chief Justice dissents, arguing that the court of appeal was correct that the condition satisfied *Lent* but was overbroad. In her dissent, the Chief Justice also notes her concern that the majority's ruling creates an unduly burdensome proportionality test into *Lent*.

In re N.C. (2019) 39 Cal.App.5th 81

Holding: The juvenile court did not err when it committed N.C. to DJJ because the record shows that a DJJ commitment would be a substantial benefit to minor and that less restrictive alternatives were not appropriate.

Facts: N.C. was made a delinquent ward after he admitted to one count of forcible oral copulation and one count of felony sexual battery. After a contested dispositional hearing, the juvenile court committed N.C. to DJJ with a maximum confinement time of nine years. N.C. timely appealed, arguing that the juvenile court erred when it found that he would obtain a probable benefit from commitment at DJJ and that less restrictive alternatives would be ineffective.

The appellate court reviews the record to determine whether substantial evidence supports the juvenile court's order. One of the primary goals of the

juvenile justice system is rehabilitation; however, public safety is also a primary concern. Consequently, DJJ need not be a placement of last resort but placement there must be supported by evidence that a less restrictive alternative is ineffective or inappropriate. There must also be evidence that a commitment to DJJ would be of a probable benefit to the young person.

Here the evidence showed that DJJ has a "rigorous, well-thought out" sex offender program that takes a wholistic approach to treating youth in the program. N.C.'s own expert agreed that DJJ has a really good program and that he should be placed in a program that had a structure comparable to the DJJ program. There is evidence in the record to support the juvenile court's finding that a DJJ commitment would be a probable benefit to N.C.

The appellate court also rejects N.C.'s argument that the juvenile court erred when it found less restrictive placements were not sufficient. The record shows that the court was concerned with the gravity of the offense and with ensuring that N.C. had sufficient time to complete the treatment that he needed. The juvenile court's order was not an abuse of discretion. The juvenile court order is affirmed.

In re R.C. (2019) 39 Cal.App.5th 302

Facts: R.C. surreptitiously recorded himself having sex with K.V. When K.V. realized she was being recorded she ended her encounter with R.C. and asked him to delete the video. He refused and after several requests, said he would delete it if K.V. had sex with his friend. K.V. refused and continued to ask R.C. to delete the video. R.C. finally agreed but months later, K.V. began to overhear conversation about the video at school. At that point, K.V. reported the incident.

The juvenile court found that true the allegation that R.C. had committed an unauthorized invasion of privacy and put him on six months probation under Welf. and Inst. Code section 725(a) and did not declare R.C. a ward. R.C. timely appealed arguing that there was insufficient evidence to support the finding that his phone, which he used to take the video, was concealed. The court reviews the statutory interpretation de novo, while the juvenile court findings are reviewed for sufficient evidence. Penal Code section 647 does not define "concealed" and neither does case law. The appellate court holds that "concealed," as used in Penal Code section 647, means "to keep from sight" and to "withdraw from observation." It is not necessary that the recording device actually be hidden or covered. The evidence supports that R.C. concealed his phone within the meaning of Penal Code section 647. He did not tell K.V. that he was going to record them having sex. K.V. did not see the phone, which R.C. had positioned behind her, until after he had begun recording and then

announced he was recording. As such, the camera was concealed and R.C. was secretly recording. The lower court order is affirmed.

Interestingly, at the end of the case the appellate court reiterates its concern about this case, the impact it had on K.V., and R.C.'s lack of recognition of the gravity of his actions. The Court expresses concern about the availability of programs to help R.C. understand the severity of his actions and encourages the Legislature and LA County to consider creating such programs.

In re A.W. (2018) 39 Cal.App.5th 941

Holding: The juvenile court order finding the cost of the minor's multiple vandalism counts exceeded $400 each is reversed.

Facts: Minor admitted to 22 tagging incidents in the city of Palmdale. The remediation costs for each incident was calculated to $545 based on Palmdale's graffiti restitution cost calculation. The cost calculation was made using the hourly rate of the various city employees involved in graffiti remediation, as well as the hourly rate of the supplies involved. The minor's attorney argued that the evidence was insufficient to show that the minor had inflicted $400 worth of damage for each incident, required to be counted a felony. The court found the charges true beyond a reasonable doubt. Minor appealed.

The court's ruling is reviewed for substantial evidence. The court's finding is not supported by substantial evidence for three reasons. First, the People improperly relied on Palmdale's average cost estimate under the Graffiti Program to substitute as proof of the element of actual damages. The calculation was not tailored to the minor's case in any way but was an average cost for a graffiti incident. The court's finding beyond a reasonable doubt is therefore not supported by substantial evidence.

Second, the calculation included the cost of law enforcement. As in a restitution case, public agencies are not directly victimized for purposes of restitution under Penal Code section 1202.4 merely because they spend money to investigate crimes or apprehend criminals. Excluding these costs from the calculation results in the total being under $400.

Third, the methodology used by Palmdale is flawed. It calculated an hourly rate of every cost at once. This assumed that every resource was being used during the hour. The calculation therefore made calculations for resources that were not used, resulting in the average cost being less than $400.

The judgment is reversed and remanded with directions to reduce the felony vandalism adjudications to misdemeanors and to enter a new disposition consistent with the reduction of the felony counts to misdemeanors.

In re A.J. (2019) 39 Cal.App.5th 1112

Holding: The juvenile court's declaration of wardship in lieu of an order of informal supervision under Welfare and Institutions Code section 654.2 is affirmed.

Facts: The minor admitted to allegations of vehicular manslaughter. The juvenile denied his request for informal supervision, although it was also recommended by probation. The court denied the minor's request citing to section 654.3(g) that the minor was ineligible because restitution could be over $1,000, given the likely expense to the victim's family of burial costs and other economic losses. The court adjudged minor a ward of the court, placed him on formal probation and ordered him to pay restitution in an amount to be determined by the probation department.

After the minor appealed the court's ruling, the prosecution moved to dismiss the appeal for mootness. The prosecution argued that there was no remedy for the minor because during the pendency of the appeal, the minor had completed probation and the court dismissed the petition and sealed his records. However, the record does not support that the petition was dismissed and the minor's records sealed, therefore the request was denied. Similarly, the prosecutions forfeiture argument was also rejected and the appeal proceeded on its merits.

The juvenile court's order denying the minor's request for informal supervision is affirmed. The minor makes much of the fact that there was not sufficient evidence or information about restitution by the time of the section 654.2 hearing. However the law does not require the victim or the victim's family to submit claims or the prosecution to present evidence of restitution in excess of $1,000 before the juvenile court may apply the presumption of ineligibility. The facts before the court when it made its section 654.2 clearly indicated that restitution could be well over $1,000. The presumption of section 654.2 applies if the section 602 petition alleges the minor has violated an offense in which the restitution owed to the victim exceeds $1,000. The petition in this case meets this standard, as it alleges an offense, vehicular manslaughter resulting in the death of a human being, that by its very nature carries the potential for property and other economic loss likely to exceed $1,000, including funeral and burial expenses.

The juvenile court's orders are affirmed.

The People v. Superior Court (2019) 40 Cal.App.5th 114

Holding: SB 1391 does not unconstitutionally amend Proposition 57.

Facts: 15-year-old S.L. was charged with one count of murder and three counts of attempted murder. The prosecution filed a brief arguing that SB 1391

impermissibly amended Proposition 57 by eliminating the court's ability to transfer jurisdiction over a 15-year-old charged with murder to adult criminal court. The juvenile court found SB 1391 constitutional. The District Attorney filed a writ of mandate.

The District Attorney contends that Article II, section 8 of the California Constitution prohibits the Legislature from amending Proposition 57 in the manner that SB 1391 did. Proposition 57, passed in 2016, eliminated prosecutors' power to charge a minor directly in criminal court. SB 1391 was enacted in 2018 and eliminates prosecutors' ability to seek transfer of 14- and 15-year-olds from juvenile court to criminal court unless the minor is not apprehended prior to the end of juvenile court jurisdiction. The California Constitution allows that "The Legislature may amend or repeal an initiative statute by another statute that becomes effective only when approved by the electors unless the initiative statute permits amendment or repeal without the electors' approval." (Cal. Const., art. II, § 10, subd. (c).) Proposition 57 expressly allowed for amendments by the Legislature provided "such amendments are consistent with and further the intent" of the proposition. Writ review is the appropriate vehicle for relief in this situation.

Proposition 57 set forth the following purposes: "1. Protect and enhance public safety. 2. Save money by reducing wasteful spending on prisons. 3. Prevent federal courts from indiscriminately releasing prisoners. 4. Stop the revolving door of crime by emphasizing rehabilitation, especially for juveniles. 5. Require a judge, not a prosecutor, to decide whether juveniles should be tried in adult court." SB 1391 is consistent with these purposes. The intent of the electorate in approving Proposition 57 was to broaden the number of minors who could potentially stay within the juvenile justice system, with its primary emphasis on rehabilitation rather than punishment. SB 1391 does this by preventing 14 and 15-year olds from entering the adult criminal system. Public safety is promoted because minors who remain under juvenile court jurisdiction are less likely to commit new crimes.

The petition for writ of mandate is denied.

In a dissenting opinion, the issue was framed not as a matter of constitutional interpretation, but statutory. The validity of Senate Bill 1391 hinges on whether its provisions are within the scope of the amending authority granted to the Legislature under Proposition 57. Proposition 57 permitted amendment when it was "consistent with and further the intent of this act." The intent of the proposition was not furthered by SB 1391 because it removed the judge's authority to send a matter such as this to criminal court. Prop. 57 included this option to protect and enhance public safety; to emphasize rehabilitation for juveniles; and to allow a judge to decide whether an eligible juvenile should be

tried in adult court. SB 1391 therefore was not consistent with and did not further the intent of the act.

In re Alonzo M. (2019) 40 Cal.App.5th 156

Holding: The electronic search condition burdened the minor's privacy disproportionately to the probation department's interest in monitoring his compliance with a stay-away order.

Facts: The minor participating in a string of car robberies in San Pablo and Oakland. Alonzo admitted an amended allegation that he committed misdemeanor burglary, grand theft of a person, taking property valued at more than $950 (Pen. Code § 487(c)). Minor attributed his involvement to negative peer influences he had with individuals in Oakland. He also admitted to smoking marijuana daily to help him with his migraines. The family lived in Antioch but was moving to Oakland, which concerned the court given Alonzo's susceptibility to the negative peer influences there. At disposition, the court imposed an electronic search condition of communication reasonably likely to reveal whether he was complying with the terms of his probation, including text messages, voicemail messages, photographs, e-mail accounts and other social media accounts and applications.

Alonzo appealed are argued that the electronic search condition must be stricken because any such condition is unreasonable under the standards announced in *People v. Lent*. The search condition fails to meet the first two prongs of *Lent*, as the condition has no relationship to the automobile burglaries or purse snatch robberies described above. Second, there is nothing inherently illegal about using electronic devices. The issue the case addresses is the third prong, whether the condition requires or forbids conduct which is not reasonably related to future criminality.

The California Supreme Court recently addressed this issue in *In re Ricardo P.* Under *Ricardo P.*, a search condition survives the third prong of *Lent* in a juvenile delinquency case if information in the record establishing a connection between the search condition and the probationer's criminal conduct or personal history—an actual connection apparent in the evidence, not one that is just abstract or hypothetical. A nexus to the underlying offense is not required if it is based on concerns about future criminality. The burden imposed by the probation condition must be proportionate to the legitimate interests served by the condition.

The search condition imposed by the court is too broad because it is not limited to the limiting Alonzo's susceptibility to negative social influences, but to reveal whether Alonzo is complying with the terms of his probation generally. The wide-ranging search would therefore authorize searches in a way that burdens Alonzo's privacy in a manner substantially disproportionate to the

probation department's legitimate interest in monitoring Alonzo's compliance with the stay-away orders.

The matter is remanded for the juvenile court to consider imposing an electronic search condition that is more narrowly tailored to allowing search of any medium of communication reasonably likely to reveal whether Alonzo is associating with prohibited persons.

People v. Francis A. (2019) 40 Cal.App.5th 399

Holding: Substantial evidence does not support the charges of misdemeanor battery and resisting a peace officer related to a disciplinary matter at that the minor's school.

Facts: Towards the end of his senior year, Frank had an encounter with his school's resource officer, Officer Stahler. Frank was escorted to the vice principle's office by a school aide for skipping class. Stahler appeared on the scene after he was called by the aide because Frank initially declined to go to the office. Stahler testified to what followed. He encouraged Frank to get off his phone, and that he was a police officer and if a police officer asks you to do something you should do it. When Frank ignored him, Stahler said he physically encouraged Frank to go to the office by putting his left hand on his back. Frank then moved his arm back and away to get his hand off his back. In so doing, Stahler said he "kind of brushed me, turned his shoulder, brushed my hand off of him . . . just lightly coming in contact with me, but to me that was, you know, basically a form of battery on me." Believing Frank to be becoming disruptive, he escalated force and grabbed Frank's right wrist with his right hand in order to take Frank to the office. Frank tried to pull his arm away and Strahler forced him to the ground and handcuffed him. Based on Stahler's testimony, the juvenile court found beyond a reasonable doubt that Frank had committed a battery and had willfully resisted a peace officer.

Substantial evidence does not support the juvenile court's findings. Battery is any willful and unlawful use of force or violence upon the person of another. It requires (1) a use of force or violence that is (2) willful and unlawful. Even a slight touching may constitute a battery, if it is done in a rude or angry way.

Stahler's testimony did not demonstrate that Frank acted willfully or unlawfully when he touched him. Stahler initiated physical contact from which Frank tried to get away, and Frank's brushing of Stahler's hand was incidental to his attempt to move away from Stahler's hand. There was no substantial evidence that Frank acted willfully to touch Stahler at all. Stahler's testimony established that Frank's arm brushed his hand but not that he did so intentionally. For this reason alone, there is insufficient evidence to support the juvenile court's finding that Frank committed battery against Stahler. As to

the second requirement for a battery, Stahler's testimony did not indicate that Frank's touch was harmful or offensive. Stahler's testimony was that Frank was trying to get away from him.

There is also insufficient evidence that Frank resisted officer Stahler. The legal elements for resisting a peace officer include that (1) the defendant willfully resisted, delayed, or obstructed a peace officer, (2) when the officer was engaged in the performance of his or her duties, and (3) the defendant knew or reasonably should have known that the other person was a peace officer engaged in the performance of his or her duties. There is no indication in Stahler's testimony that he was enforcing any disciplinary rules when he encountered Frank. Stahler testified that he encouraged Frank to follow the aide's instructions, which indicates Frank was given a choice. And when Frank pulled his arm away, there was still no indication that Stahler said or did anything to inform Frank that he had disobeyed an order.

The juvenile court's orders are reversed.

O.G. v. Superior Court (2019) 40 Cal.App.5th 626

Holding: In a 3-0 opinion, Division 6 of the Second District finds that SB 1391 unconstitutionally amended Proposition 57.

Facts: Fifteen-year-old O.G. was deeply immersed in gang culture. He was alleged to have murdered two individuals in a company of gang cohorts. The DA of Ventura County sought to try him as an adult. The trial court agreed and found that SB 1391 prohibition against a 14 or 15-year-old being tried as an adult in any circumstance to have unconstitutionally amended Prop 57.

The Court of Appeals agrees. Although four court of appeal opinions have ruled the SB 1391 lawfully amended Prop 57, this higher court finds it is not consistent with the intent of what voters approved as a matter of law. The key issue is framed by our Supreme Court in *People v. Superior Court (Pearson) (2010) 48 Cal.4th 564, 571 (Pearson)*, whether a provision amends a proposition you ask whether it prohibits what the initiative authorizes or authorizes what the initiative prohibits. Three of the four opinions approving Prop. 57 didn't even cite *Pearson*.

The language of Prop 57 permits adult prosecution after a determination by the juvenile court; SB 1391 does not. Whether 15-year-old alleged murderers have better outcomes in juvenile court is besides the point. As a matter of law, the California Constitution requires that changing Prop. 57 the way SB 1391 does to be decided by the electorate, not the legislature. In addition, SB 1391 contravenes Prop 57's express purpose to protect and enhance public safety because it mandates juvenile treatment for a person who commits murder, or in this case, multiple murders. Prop. 57 did not preclude a case such as this

from being kept in the juvenile court, but it was a decision that a juvenile court makes after a transfer hearing.

The concurring opinion finds that ignoring the separation of powers ignores a guiding principle of democracy. However reasonable the views of other districts concerning the voter's intent in Proposition 57, the words of Proposition 57 contradict their view. Unforeseen consequences result when ignoring this analysis of legislation, and when the shoe is on the other foot, one is liable to end up with a bunion.

In re Bolton (2019) 40 Cal.App.5th 611

Holding: A prisoner serving a sentence for crimes committed as a juvenile who was later convicted of an offense which disqualified him for the youth offender parole provisions of Penal Code section 3051, required a resentencing of his juvenile offense consistent with the Eighth Amendment, but not of his adult convictions.

Facts: In 1993, when petitioner was 16 years old, he was convicted of five counts of rape, two counts of unlawful penetration with a foreign object, two counts of forcible lewd and lascivious conduct on a child, two counts of false imprisonment, one count of attempted rape, and one count of assault with a deadly weapon, along with multiple enhancements for being armed with and using a knife and pellet pistol. He was sentenced to 92 years in state prison, which was modified to 91 years on appeal.

Thirteen years later, petitioner was convicted of possession of a sharp instrument in prison. He admitted 11 strike allegations and was sentenced to 25 years to life under the three strikes law. Petitioner filed a writ of habeas corpus with the California Supreme Court after a denial by the court of appeal. The Supreme Court issued an order to show cause returnable to this court.

The possibility of youth offender parole under section 3051 moots any Eighth Amendment challenge to a lengthy noncapital sentence for a juvenile offense. A person who is sentenced under the three strikes law, or is subsequently sentenced to life for a crime committed after turning 26 years old is disqualified from section 3051 parole. Petitioner's Eighth Amendment claims are not mooted since the 25-year-to-life term under the three strikes law for a crime committed when he was 30 renders petitioner ineligible for section 3051 parole.

The court concludes the 91-year term for petitioner's juvenile crimes violates the Eighth Amendment and requires remand for resentencing. Petitioner's charges as an adult however remain undisturbed, as the Eighth Amendment proportionality guarantee applies very differently to prison terms for adult offenders and three strikes sentences for less serious felonies have been routinely upheld against Eighth Amendment attack. On remand, the trial court

may take into account the three-strike sentence for petitioner when considering the proper term for his juvenile crimes.

Thus, while the trial court must take the 25-year-to-life term for petitioner's adult conviction into account when resentencing on the juvenile offenses, the court takes no position on whether the total sentence for both the adult and juvenile convictions must include a meaningful opportunity for parole as defined in *Miller*, *Graham*, *Caballero*, or *Contreras*.

B.M. v. Superior Court (2019) 40 Cal.App.5th 742

Holding: SB 1391 is not an unconstitutional amendment of Prop 57 because it furthers each of Prop 57's express purposes.

Facts: The Riverside County District Attorney filed a wardship petition against B.M. when she was 15 years old, alleging that she committed murder. The DA requested a transfer hearing so that B.M. could be tried in adult court. The hearing was continued for several months and, in the meantime, the SB 1391 was signed into law. SB 1391 established that children under the age of 16 could not have their case transferred to adult court. In light of SB 1391, B.M.'s attorney moved to dismiss the transfer motion. After a contested hearing, the juvenile court found that SB 1391 is inconsistent with Prop 57 because Prop 57 explicitly states that 14 and 15 year olds can be transferred to adult court. B.M. timely appealed.

The appellate court reviews the lower court's interpretation of Prop 57 and AB 1391 de novo. The legislature has limited power to change voter initiatives. However, when the court reviews legislative amendments to determine if they further legislative intent, it applies "a strong presumption of constitutionality to the legislatures acts." Thus, a legislative amendment will be upheld if "by any reasonable construction" it can be found to advance the goals of the initiative. To determine the goals/purpose of the initiative, the court looks to the provisions of the proposition and the ballot materials. Proposition 57 sets forth five goals, which include a focus on rehabilitation as a way to end recidivism, reduced prison spending, promote public safety and reduce crime, and requiring a judge, not prosecutor, to decide if children should be tried in adult court. The purpose of SB 1391 is aligned with Proposition 57 because the intent of keeping 14 and 15 year olds out of court is to ensure that they receive age appropriate treatment and counseling.

SB 1391 also furthers Prop 5's goal of reduced prison spending because fewer children will be tried in the adult criminal justice system. In addition, public safety and crime reduction will be promoted by SB 1391 because recent scientific studies show that providing youthful offenders with age appropriate

services reduces their likelihood of becoming violent offenders. In short, the appellate court finds that SB 1391 advances all five of Prop 57's goals.

Both the dissent and the respondent argue that SB 1391 does not further Prop 57's intent because it limits the prosecutor's ability to transfer 14 and 15 year old's to adult court. The majority opinion disagrees with the dissent's, and respondent's, attempt to confine the purpose of Prop 57 to the creation of the transfer hearing process. Prop 57's plain language clearly show that the intent was to effect "rehabilitation-based reform." As such, "the transfer hearing requirement is the mechanism by which Proposition 57 limits prosecutorial charging discretion, it is not the purpose of the juvenile offender provisions." The appellate court holds that SB 1391 is valid and directs the lower court to vacate its order declaring it invalid. The lower court is further directed to deny the motion to transfer B.M. to adult criminal court.

There is a dissent which is similar to *O.G. v. Superior Court of Ventura County*, B295555

In re O.C. (2019) 40 Cal.App.5th 1196

Holding: O.C. was not eligible to have her records sealed under Welfare and Institutions Code section 786 because that section is not retroactive. Moreover, O.C. did not meet the requirements to have her record sealed under Welf. and Inst. Code section 781.

Facts: In 2009, then 16-year-old O.C. admitted to driving under the influence. She was placed on probation and ordered to complete certain probation conditions. O.C.'s probation was dismissed successfully in 2011. In 2014, then 21-year-old O.C. drove the wrong way on the freeway and struck another vehicle. The collision resulted in the death of six people. O.C. was found to be under the influence of alcohol and was charged with murder.

The Los Angeles County District Attorney's office's (LACDA) request to obtain O.C.'s juvenile file was granted in February of 2014. In May of 2018 O.C.'s motion have her juvenile record sealed pursuant to Welf. and Inst. Code section 786 was denied. The lower court also held that her record was not eligible for sealing under Welf. and Inst. Code section 781. O.C. timely appealed.

The appellate court finds that section 786 is not retroactive; it only applies to those who satisfactorily completed probation after January 1, 2015. Both the plain language of the statute and the its legislative history indicate that the legislature intended for section 786 to apply prospectively. In addition, a finding that section 786 is retroactive would nullify section 781, as it would allow people who cannot meet section 781's sealing requirements to "escape those requirements." Here, O.C. completed probation in 2011. Consequently, her request for sealing was governed by section 781.

The appellate court notes that its decision is at odds with the holding of *In re I.F.* (2017) 3 Cal.App.5th 679. The court in *I.F.* found that because the request for sealing was made in October 2015, even though I.F. completed probation in December 2014, section 786 applied. The *I.F.* court reasoned that because the request to seal was made after section 786 was implemented, application of the section was prospective. This appellate court disagrees with that interpretation, stating that "it sweeps too broadly." Section 786, this court reasons, is intended to deal with those young people who have only recently completed their juvenile court probation because it will not be necessary to investigate whether they also meet section 781's sealing requirements.

O.C. also argues that if section 786 does not apply retroactively, it is a violation of the equal protection clause of the Constitution. The appellate court disagrees. First, the two groups – people to whom section 786 applies and those to whom it does not – are not similarly situated because of the amount of time that may have passed between dismissal of juvenile probation and the request for sealing. Second, there is a legitimate state purpose for treating the two groups unequally; that is to ensure that a person's record will be sealed only if they have recently obeyed the law and complied with their obligations.

In re Jeremiah S. (2019) 54 Cal.Rptr.3d 88

Holding: A pat search for weapons is an inadmissible intrusion when there are no specific and articulable facts showing that the suspect may be armed and dangerous.

Facts: The San Francisco District Attorney filed a wardship petition alleging that Jeremiah and another young man robbed a woman of her purse. Jeremiah filed a motion to suppress evidence discovered during a pat search of Jeremiah for weapons. At the hearing on the motion to suppress, the officers testified that dispatch made no mention of weapons, Jeremiah was compliant during the police contact, and nothing about Jeremiah's appearance or behavior caused them to suspect he had a weapon. The officer testified that he did a pat search because typically robbers are carrying a weapon. The juvenile court found this to be a sufficient basis for the pat search and denied the motion to suppress.

The appellate court reviews express and implied findings of fact for substantial evidence but uses independent judgement to determine whether the seizure was reasonable. The law on pat searches is well settled. Pat searches are considered a "serious intrusion" on liberty and are therefore subject to Fourth Amendment restrictions. Whether a pat search is reasonable depends on whether, viewing the totality of the circumstances, a reasonably prudent person would be justified in fearing for his safety. The police officer must be able to provide specific and articulable facts that warrant the pat search.

Here, the only evidence the officer could articulate to support the pat search was the notion that robbers often carry weapons. Such a justification does not amount to specific and articulable facts that Jeremiah was armed and dangerous and, therefore, does not meet Fourth Amendment standards.

The People argue that an immediate pat search of a lawfully detained robbery subject should always be permissible. The appellate court refuses to adopt such a per se type of rule because it would undermine "the fact-driven and initialized nature of the test for patsearches…."

The order denying the emotion to suppress was made in error; consequently, jurisdiction and disposition are reversed and the case is remanded.

In re R.C. (2019) 254 Cal.Rptr.3d 99

Holding: The juvenile court's order adjudging R.C. a ward for assault with force likely to cause great bodily injury after he participated in an armed robbery is affirmed.

Facts: Appellant and two other minors robbed a 7-11 at 4 a.m. One of the minors stood look-out, while appellant and the other minor entered the story with BB guns. The cashier resisted and attempted to take appellant's BB gun, at which point the other minor "pistol whipped" the cashier. All the minors fled the scene.

At the adjudication hearing, appellant's attorney argued that aiding and abetting in the juvenile context should be revised to acknowledge the developmental difference between juvenile and adult brains. Essentially, the appellant's attorney argued that appellant did not have the capacity to foresee the consequences of his actions; therefore, the conduct of his co-participant should not be attributed to him. The juvenile court found that brain science argument goes to the proper disposition, not to legal liability. Appellant timely appealed.

Under the aiding and abetting theory, co-participants are guilty not only of the intended offense but also of those offenses that are a natural and probable consequence of the intended crime. Here, the minors disguised themselves, had a look-out, and brought toy weapons to the crime. The appellate court finds that it "was foreseeable that E.B. would use the pistol as a weapon."

The appellant urges the Court to find that "non-developed brain" and impulsivity should be considered in determining aider and abettor liability. The appellate court notes that appellant's theory would require a re-write of juvenile law and is better directed to the legislature. The appellate court affirms the lower court's ruling.