

**FIRST DISTRICT APPELLATE PROJECT
TRAINING SEMINAR
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WINNING TRENDS IN SEARCH AND SEIZURE

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INTRODUCTION

These materials include summaries of 53 Fourth Amendment victories – cases in which defense attorneys successfully challenged illegal searches and seizures on appeal. Included are decisions from the California Court of Appeal, the California Supreme Court, the United States Supreme Court, and the Ninth Circuit Court of Appeals. In most of these cases, the appellate courts reversed the trial courts’ denial of the defendants’ suppression motions, and overturned the defendants’ convictions.

Included are both published and unpublished decisions. In each section, the published decisions are listed first, designated with a [P]. The unpublished decisions, listed second, are designated with a [UP]. **Of course, the unpublished decisions cannot be cited as authority. However, we have included them here as the courts’ analysis may be helpful to attorneys drafting future Fourth Amendment arguments.**

Most of the decisions listed here were filed in 2006 and 2007. We’ve included one decision from January 2008, and a few from 2004 and 2005. For each subject area, the most recent published decisions are listed first.¹

These materials are a tribute to California criminal defense attorneys who have persevered against the odds and enforced their clients’ Fourth Amendment rights. In the summary of each case, we have designated the attorney who successfully represented the defendant or juvenile ward on appeal. However, for each of these cases, there was also a trial attorney who deserves credit for raising the suppression issue in the superior court and preserving the claim for appeal.

All criminal defense attorneys, at both the trial and appellate level, need to remain vigilant. We need to keep up with the latest Fourth Amendment decisions. We need to carefully review police reports and trial court records for questionable detentions, arrests and searches. We need to challenge police abuse of authority at trial and on appeal. And we need to argue persuasively, constantly reminding the courts of the importance of key constitutional principles and the role of the exclusionary rule in deterring future police misconduct. We hope you will find these materials inspiring.

¹ We compiled these materials by reviewing “recent victories” listed on the appellate project websites. We also reviewed Bells Compendium on Search and Seizure. We do not claim to have captured every Fourth Amendment victory from the last three years. If you know of a recent victory not listed here, please e-mail Kathryn Seligman (kseligman@fdap.org)

I. ARRESTS

A. DETENTION OR ARREST

Legal rule: The distinction between a detention, which may be justified by a reasonable suspicion of criminal activity, and an arrest which requires probable cause “may in some instances create difficult line-drawing problems”. (*United States v. Sharpe* (1985) 470 U.S. 675, 685.) There is no bright line rule for determining when an investigatory stop becomes a de facto arrest. In making this determination, the duration, scope and purpose of the stop are important considerations. (*Wilson v. Superior Court* (1983) 34 Cal. 3d 777, 784.) No single factor (e.g. the officer’s use of a gun or handcuffs) is dispositive.

[P] *People v. Celis* (2004) 33 Cal. 4th 667 (California Supreme Court)

Filed: 7/26/2004

Attorney: Nicholas DePento

The Supreme Court reversed judgments of the trial court and the Court of Appeal denying the defendant’s motion to suppress evidence. **The Supreme Court held: 1)that the defendant was detained and not arrested when he was seized by police officers in the backyard of his house; and 2)that the facts known to the officers did not justify the officers’ entry into the defendant’s home to conduct a protective sweep.** Police officers suspected that the defendant was involved in a major state-wide drug trafficking operation. After two days of surveillance, the officers confronted the defendant in the backyard of his home. An officer pulled his gun on the defendant and ordered him to stop. The defendant was handcuffed and made to sit against the wall. Officers then entered the defendant’s home to determine if there was anyone inside who might endanger their safety. They did not find any people inside, but they did notice a large wooden box which was filled with wrapped packages. They obtained the defendant’s consent to open the packages, which contained cocaine. On the first issue, the Court held that appellant was detained and not arrested in his backyard: “Stopping a suspect at gunpoint, handcuffing him, and making him sit on the ground for a short period, as occurred here, do not convert a detention into an arrest.”

B. PROBABLE CAUSE TO ARREST

Legal rule: A police officer may arrest an individual without a warrant whenever the officer has reasonable cause to believe that the particular individual has committed a felony. Probable cause to arrest exists when the facts known to the arresting officer would persuade someone of ordinary care and prudence to entertain an honest and strong suspicion that the individual is guilty of a crime. (*People v. Turner* (1994) 8 Cal. 4th 137, 185.)

[UP] *People v. Murray*, A114127 (First District, Division Three)

Westlaw citation: 2007 WL 1114098

Filed 4/16/2007

Attorney: David Wilton

The Court of Appeal reversed the trial court's denial of the defendant's motion to suppress evidence seized from him during a post-arrest booking search. **The Court of Appeal held that the search was illegal because the police officer lacked probable cause to arrest the defendant for alleged involvement in a fraudulent transaction.** Three women had attempted to purchase jewelry at a Target store using a suspicious credit card and driver's license. The defendant arrived at the check-out stand simultaneously with the three women, and they all left the store at the same time. He then accompanied one of the women who requested return of the credit card and driver's license used in the attempted transaction. The Court held that the defendant's mere association with the woman who requested return of the license and credit card, did not provide probable cause for his arrest. It is well settled that "a person's mere propinquity to others independently suspected of criminal activity does not, without more, give rise to probable cause to arrest that person". (*Ybarra v. Illinois* (1979) 444 U.S. 85, 91.)

II. DETENTIONS

A. DETENTION V. CONSENSUAL ENCOUNTER

Legal rule: An individual is detained when a police officer restrains his liberty by means of physical force or show of authority. (*United States v. Mendenhall* (1988) 466 U.S. 544, 553; *In re Manuel G.* (1997) 16 Cal. 4th 805, 821.) A detention may be accomplished by a show of authority, but only if the individual submits. (*California v. Hodari D.* (1991) 499 U.S. 621, 625-626.) Officers have detained an individual when, in view of all the circumstances, a reasonable person would not believe that he was free to ignore the police, leave the scene, or otherwise terminate the encounter. (*United States v. Mendenhall, supra.*, at 554; *Michigan v. Chesternut* (1988) 486 U.S. 567, 573.)

[P] *People v. Garry* (2007) 156 Cal. App. 4th 1100 (First Dist., Div. Two)

Filed: 11/29/2007

Attorney: Jennifer Mannix

The Court of Appeal reversed the trial court's denial of the defendant's motion to suppress. **The Court held that the officer detained the defendant as he rapidly approached him on the street, even though the officer issued no verbal commands. Because the prosecution conceded the lack of reasonable suspicion, the detention was illegal.** The Court held that the combination of circumstances reasonably communicated to the defendant that he was not free to leave or disregard the police: After observing the defendant standing next to a parked car at 11:30 p.m., the officer shined his patrol car's bright spotlight on the defendant, exited from his marked patrol vehicle, and walked briskly towards the defendant. As he rapidly approached the defendant, the armed and uniformed officer asked the defendant if he was on probation or parole, disregarding the defendant's indication that he was standing outside his own home. As soon as the defendant admitted he was on parole, the officer grabbed him to initiate a parole search. The Court held that the officer had detained the defendant before learning that he was on parole.

[UP] *People v. Hutcherson*, H030270 (Sixth District)

Westlaw citation: 2007 WL 2482134

Filed 8/31/2007

Attorney: Robert Derham

The Court of Appeal reversed the trial court's denial of the defendant's pre-trial motion to suppress evidence. **The Court held that: 1) the officer detained the defendant when he repeatedly demanded that the defendant open his right hand; and 2) the officer lacked a reasonable suspicion that the defendant was engaged in criminal activity.** The officer observed the defendant cross the street at 1:30 a.m.. The officer approached the defendant, asked to talk to him, asked the defendant to identify himself, and ran a warrant check while waiting for a back-up officer. The officer asked the defendant to show his hands. The defendant raised both hands and opened his left hand, but his right hand remained clenched. The defendant repeatedly refused the officer's request to unclench his right hand. The officer then told the defendant that he would pat-search him for weapons. Both officers grabbed him to commence the frisk and he ran away. When the officers restrained the defendant, a rock of cocaine fell from his right hand.

On the first issue, the Court held that the initial interaction between the defendant and the officer was a consensual encounter, as the officer had the right to approach him on the street and ask questions. However, when the officer repeatedly demanded that the defendant unclench his right hand to reveal its contents, the encounter became a detention.

[UP] *People v. Hammond*, H028901 (Sixth District)

Westlaw citation: 2006 WL 3491727

Filed: 12/5/2006

Attorney: Stacy Saetta

The Court of Appeal reversed the trial court's denial of the defendant's motion to suppress evidence. **The Court held that: 1) the officer detained the defendant when he followed him for several minutes, and then began questioning him; and 2) the officer lacked legal justification to detain the defendant after he saw him engage in innocent activity in a high crime area.** At 6:30 p.m., a narcotics officer was patrolling an area of downtown San Jose, known for illegal drug activity. The officer was in uniform, driving a marked patrol car. He saw the defendant, an African-American male, "loitering" at a bus stop. Several buses went by, and the defendant did not board them. He also engaged three people in conversation. Within 15 minutes, the officer saw the defendant at another bus stop.

Again, he failed to board any buses and talked to people. About 10 to 15 minutes later, the officer saw the defendant at a third bus stop. This time, the officer parked his patrol car right next to the bench where the defendant was sitting. The defendant then boarded a bus, but got off four blocks from where he'd boarded. When the defendant saw the officer, he "averted his eyes" and darted into a Western Union store. The officer then exited from his patrol car, followed the defendant into the store, and stood in line right behind him. The defendant repeatedly looked at the officer. After the defendant finished his transaction, the officer started talking to him, immediately asking if he was on probation. The defendant admitted he was on probation for prior drug sales. The officer believed that the defendant had narcotics secreted in his mouth. He arrested the defendant and forced him to spit out six rocks of cocaine.

On the first issue, the Court held that the defendant was detained when the officer began talking to him. He was aware the officer had been following him, at least from the time he parked right next to him at the third bus stop. By the time the officer asked the defendant if he was on probation, no reasonable person would have felt free to refuse to answer or leave the scene.

[UP] *People v. Cassity*, G036291 (Fourth District, Division Three)

Westlaw citation: 2006 WL 3335192

Filed 11/17/2006

Attorney: Michael McPartland

The Court of Appeal reversed the trial court's denial of a motion to suppress. **The Court held that under the totality of circumstances, a reasonable person in the defendant's position would not have felt free to leave; he was therefore detained. The prosecution conceded that the officers lacked reasonable suspicion.** Three armed police officers encircled the defendant at 4:00 a.m. after he emerged from a motel room. They asked him questions implying suspicion (e.g. about his arrest record, what he was doing in the area). They took his identification and did not return it. They did not advise the defendant that he had the right to leave or refuse cooperation.

[UP] *People v. Colton*, G035237 (Fourth District, Division Three)

Westlaw citation: 2006 WL 1280913

Filed 5/8/2006

Attorney: Laura Kelly

The Court of Appeal reversed the trial court's denial of the defendant's pre-trial motion to suppress. **The Court held that the defendant consented to a search of his car – in which drugs were found – during an unlawful detention. Thus, the consent was invalid.** The defendant was detained outside of a 7-11 store, and not merely subject to a consensual encounter, considering the circumstances: He was confronted by three armed officers. The officers requested his driver's license and retained it while conducting a records check. The officers' questions to the defendant implied suspicion. He was never told he was free to leave or refuse consent. The Court also found that evidence seized from the defendant's motel room, after his arrest, should be suppressed as the fruit of the illicit detention.

[UP] *People v. Foster*, A109083 (First District, Division One)

Westlaw citation: 2005 WL 2643315

Filed 10/17/2005

Attorney: Richard Such

In this People's appeal, the Court of Appeal upheld the trial court's grant of the defendant's suppression motion. **The Court held that substantial evidence supported the lower court's factual findings, and that those findings supported the legal conclusions that: 1) the officer detained the defendant, and 2) the detention was not justified by the requisite reasonable suspicion.**

On the first issue, the Court of Appeal held that Officer Beard had detained the defendant before he ran away. The defendant was detained when the officer pulled up behind him, got out of the patrol car, and ordered him to stop. The defendant complied with this request, thus submitting to the officer's show of authority. The officer then asked the defendant to identify himself which he did. When the defendant asked if he could leave, Officer Beard told him that he had to stay. Only then did the defendant walk, and then run, away.

B. RIGHT TO INITIATE A DETENTION

Legal rule: A detention is justified when the totality of circumstances known to the officers cause them to reasonably suspect: 1)that a crime has occurred or is about to occur; and 2)that the particular person they intend to detain is involved in that activity. (*People v. Souza* (1994) 9 Cal. 4th 224, 230.)

[P] *People v. Perrusquia* (2007) 150 Cal. App. 4th 228 (Fourth District, Division Three) Review denied: 7/25/07

Filed: 4/25/07

Attorney: Randi Covin

In this People’s appeal, the Court of Appeal upheld the trial court’s grant of the defendant’s suppression motion and subsequent dismissal of the case. **The appellate court agreed with the trial court that the officer lacked a reasonable suspicion that the defendant was engaged in criminal activity at the moment when he stopped him. The defendant was improperly detained for attempting to avoid contact with the officers.** At 11:30 p.m., patrol officers spotted the defendant sitting in the driver’s seat of a parked car in the lot of an open 7-Eleven store. The surrounding area was known for drugs and weapons offenses, and there had been recent armed robberies at local 7-Eleven stores. The officer noticed the defendant because he was parked near the lot’s exit, and he was crouched low in his seat with the engine idling. As the officer approached the defendant, he heard a thud as though something had dropped to the car floor. The defendant looked at the officer, turned off the engine, exited the car and walked quickly towards the store entrance. The officer believed he was trying to avoid police contact. As he passed, the officer said “hang on a second.” The officer then performed a pat-down search after the defendant refused consent, finding guns and drugs.

The defendant was detained when the officer told him to “hang on a second”. The factors known to the officer at this moment did not provide reasonable suspicion. The Court gave little weight to factors unrelated to the defendant (e.g. recent crimes in the area), and noted that the defendant did not match the description of the suspects in the recent 7-Eleven robberies. The Court focused on the factors specific to the defendant (e.g. that he was crouched low in the seat, and that he abruptly left the car after noticing the officer). The Court stated that the defendant had the right to avoid contact with the officer, and that his apparent attempt to do so could not support a detention.

[P] *People v. Krohn* (2007) 149 Cal. App. 4th 1294 [Fourth District]

Filed: 3/28/2007

Attorney: Correen Ferrentino

The Court of Appeal reversed the trial court's denial of the motion to suppress. **The Court held that officer lacked a reasonable suspicion that the defendant was drinking alcohol in a public place, in violation of a city ordinance, because he observed him with an open beer can in a private place, inside the defendant's gated apartment complex.** The interior of the fenced and gated apartment complex was not readily accessible to members of the public. Because the officer did not suspect any other crime, he had no right to detain the defendant.

[UP] *In re D.M.*, A115877 (First District, Division One)

Westlaw citation: 2007 WL 3037928

Filed 10/18/2007

Attorney: Jennifer Mannix

Based on a Fourth Amendment violation, the Court of Appeal reversed the juvenile court's finding that the minor had resisted an officer engaged in the lawful performance of his duties. **The Court held that the minor ran away from an illegal attempted detention, unsupported by reasonable suspicion.** Three officers were on routine patrol in an unmarked car when they spotted the minor and two other men standing close together. One of the men moved his arms and might possibly have passed something to the minor. The minor then began to walk away. Two officers exited from their vehicle and walked toward the minor. When one officer yelled, "Stop, police," the minor ran away. The Court held that the officer attempted a detention when he gave the order, "Stop, police." At this critical moment, the officer lacked a reasonable suspicion that the minor had committed any crime merely because he might have passed something and started to walk away. There was no evidence this was a high crime area. The minor had the right to refuse to cooperate, by running away, from this attempted unlawful detention. "His refusal to cooperate did not furnish the minimal level of objective justification needed for a detention." (See *Illinois v. Wardlow* (2000) 528 U.S. 119, 123, 125.) Moreover, this case was distinguishable from *Wardlow*, as the minor did not flee from the police in a high crime area.

[UP] *People v. Hutcherson*, H030270 (Sixth District)

Westlaw citation: 2007 WL 2482134

Filed 8/31/2007

Attorney: Robert Derham

The Court of Appeal reversed the trial court's denial of the defendant's pre-trial motion to suppress evidence. **The Court held: 1)that the officers detained the defendant when they repeatedly demanded that he open his right hand during the initially consensual encounter; and 2)that the officers lacked a reasonable suspicion that the defendant was engaged in criminality.** The officer observed the defendant cross the street at about 1:30 a.m.. The officer approached the defendant, asked to talk to him, requested identification, and ran a warrant check while waiting for a back-up officer. The officer asked the defendant to show his hands. The defendant opened his left hand, but his right hand remained clenched. The defendant repeatedly refused the officer's request that he unclench his right hand. The officers then told the defendant that they would pat-search him for weapons. They grabbed him to commence the frisk and he ran away. When the officers restrained the defendant, a rock of cocaine fell from his right hand.

On the second issue, the Court of Appeal held that the officers lacked a reasonable suspicion that appellant was engaged in criminal behavior. The officer had merely observed him walking down the street. During their conversation, he did not appear to be under the influence. The officer's stated suspicion that the defendant might be concealing a weapon in his partially clenched right hand was not reasonable under the circumstances.

[UP] *In re Desiree F.*, A113778 (First District, Division Five)

Westlaw citation: 2007 WL 1556581

Filed 5/30/2007

Attorney: Trina Chatterjee

Based on a Fourth Amendment violation, the Court of Appeal reversed the juvenile court's findings that the minor had committed a battery on a police officer and had resisted an officer. **The Court found there was insufficient evidence that the officer was engaged in the lawful performance of his duties when the minor committed the alleged offenses. Specifically, the officer had no legal right to detain the minor.** The officer was dispatched to a designated intersection to respond to a fight involving 30 African American males and females. When he arrived, the officer saw no fighting or evidence of recent fighting. He observed 10 to 15 people standing outside of parked vehicles. The minor was not outside; she

was one of four people sitting inside a legally parked car. The officer detained the minor by ordering her to exit from the car and sit on the curb. As the officer pushed her towards the curb, the minor pulled away and struck the officer. The Court held that she resisted an unlawful detention, and thus committed only a simple battery. The facts did not support a reasonable suspicion that the minor had been involved in the reported fight or any other illegal activity.

[UP] *People v. Hosking*, A111878 (First District, Division Three)

Westlaw citation: 2007 WL 772600

Filed 3/15/2007

Attorney: Roberta Simon

The Court of Appeal reversed the trial court's denial of a motion to suppress evidence. The prosecution conceded that the officer detained the defendant when he ordered him to sit on the curb after he saw the defendant walk between two parked cars. **The Court of Appeal held that this detention was not supported by the requisite reasonable suspicion.** The officer stopped the defendant because he was on foot, late at night, near an area where car burglaries had been reported. The defendant did not flee, exhibit evasive conduct, or loiter in the area.

[UP] *People v. Hammond*, H028901 (Sixth District)

Westlaw citation: 2006 WL 3491727

Filed: 12/5/2006

Attorney: Stacy Saetta

The Court of Appeal reversed the trial court's denial of the defendant's motion to suppress evidence. **The Court held that: 1)the officer detained the defendant when he followed him for several minutes, and then began questioning him; and 2)the officer lacked legal justification to detain the defendant after he saw him engage in innocent activity in a high crime area.** At 6:30 p.m., a narcotics officer was patrolling an area of downtown San Jose, known for illegal drug activity. He saw the defendant, an African-American male, "loitering" at a bus stop. Several buses went by, and the defendant did not board them. He also engaged three people in conversation. Within 15 minutes, the officer saw the defendant at another bus stop. Again, he failed to board any buses and talked to people. About 10 to 15 minutes later, the officer saw the defendant at a third bus stop. This time, the officer parked his patrol car right next to the bench where the defendant was sitting. The defendant then boarded a bus, but got off four blocks from where he'd boarded. When the defendant saw the officer, he "averted his eyes" and darted into a Western Union store. The officer then exited from his

patrol car, followed the defendant into the store, and stood in line right behind him. The defendant repeatedly looked at the officer. After the defendant finished his transaction, the officer started talking to him, immediately asking if he was on probation. The defendant admitted that he was on probation for prior drugs sales. The officer believed that the defendant had narcotics secreted in his mouth. He arrested the defendant, and forced him to spit out six rocks of cocaine.

After finding that the defendant was detained, the Court of Appeal concluded that the detention was unlawful – unsupported by a reasonable suspicion that the defendant was loitering with the intent to commit a narcotics offense or engaged in any other criminal activity. The Court believed that the officer had placed undue emphasis on the defendant’s presence in a high crime area known for narcotics activity. The Court emphasized that the behavior observed by the officer was totally innocent; the defendant was merely standing at bus stops during rush hour, talking to people. The officer made “no observations of any conduct that even remotely resembled the overture to a drug transaction.” He did not see the defendant engage in hand-to-hand contact with anyone or make furtive gestures. The Court concluded: “If the defendant’s acts here – failing to board a bus, talking to strangers – justify a detention simply because he performed them in a so-called high crime area, then, in effect, police could properly detain every person in such areas who linger too long at bus stops, chatting up transit riders, but not detain people for similar conduct in more reputable areas.” If the police were granted a license to detain individuals engaged in innocent activities in high crime areas, the “police might be tempted to select their detainees arbitrarily ... on the basis of improper considerations” such as race, ethnicity or age.” (See *United States v. Montero-Camargo* (9th Cir. 2000) 208 F.3d 1122, 1129.)

[UP] *People v. Sherman*, H028702 (Sixth District)

Westlaw citation: 2006 WL 2425504

Filed 8/22/2006

Attorney: Rudy Kraft

The Court of Appeal reversed the trial court’s denial of the defendant’s motion to suppress evidence. **The Court held that police officers lacked a reasonable suspicion that appellant was engaged in criminal behavior, as necessary to detain him as he sat in his van in a parking lot.** The officers observed the defendant sitting inside his van, in a busy drug store parking lot in the late afternoon. The van was parked so as to face the store’s entrance. The defendant seemed to be looking at women who were entering and leaving the store. Although they could only see the upper part of the defendant’s body, the officers thought he

might be holding something in his lap. The officers believed that he might be masturbating and thus committing indecent exposure. The officer's suspicion turned out to be wrong. However, after contacting the defendant and ordering him out of the car, the officers discovered an illegal knife and drug paraphernalia. The Court held that the officers lacked reasonable suspicion to detain the defendant for indecent exposure or any other crime. The defendant's behavior, as observed by the officers – sitting in a parked vehicle, looking at women, and possibly holding something in his lap – was common and typically innocent. It did not justify a detention because it might have been consistent with criminal activity.

[UP] *People v. Foster*, A109083 (First District, Division One)

Westlaw citation: 2005 WL 2643315

Filed 10/17/2005

Attorney: Richard Such

In this People's appeal, the Court of Appeal upheld the trial court's grant of the defendant's suppression motion. **The Court held that 1) the police officer detained the defendant, and 2) the detention was not justified by the requisite reasonable suspicion. On the second issue, the prosecution had failed to establish that Officer Beard had a reasonable suspicion that the defendant was engaged in criminal activity, before ordering him to stop.** The Court acknowledged that the defendant matched the description of the alleged thief that had been broadcast by Sergeant Orozco on the police radio. However, the prosecution did not present credible evidence showing that Officer Beard actually heard this broadcast before he detained the defendant.

[UP] *In re Joshua H.*, A107498 (First District, Division Five)

Westlaw citation: 2005 WL 826977

Filed 4/8/2005

Attorney: Alex Green

The Court of Appeal reversed the juvenile court's denial of a motion to suppress a stun gun seized from the minor during a pat search. **The Court held that police officers had no legal right to detain the minor based on a vague report.** The police responded to a report stating that there had been a "physical disturbance with possible weapons" at a convenience store. The store was located in a high crime area known for drug dealing. When they arrived at the store, the officers saw "six to eight subjects hanging out" in the parking lot; one of them was appellant. Officers detained appellant and the other subjects while one officer went into the store to question the clerk who had reported the disturbance. The Court concluded

that the officers lacked a reasonable and particularized suspicion that appellant had committed a crime, and thus the detention was illegal. The store clerk's report of a "physical disturbance" did not report the number of persons involved or describe the perpetrators. Nor did the clerk indicate when the alleged crime had occurred. Finally, the officers did not observe appellant do anything unusual or suspicious.

III. PAT SEARCHES

A. RIGHT TO INITIATE A PAT SEARCH

Legal rule: A patdown search is justified only when the officer reasonably believes, based on the totality of the circumstances, that the particular person she is questioning or detaining is armed and dangerous. (*Terry v. Ohio* (1968) 392 U.S. 1, 24; *Minnesota v. Dickerson* (1993) 508 U.S. 366, 373.) The officer must point to specific facts, available at the commencement of the search, which reasonably suggest she is dealing with an armed individual. (*Terry v. Ohio, supra.*, at 24.)

[P] *People v. Garcia* (2006) 145 Cal. App. 4th 782 (Second District, Division Five)

Filed: 12/14/2006

Attorney: Kenneth I. Clayman (Public Defender)

The Court of Appeal reversed the trial court's denial of the defendant's motion to suppress. **The Court held that the officer lacked reasonable suspicion for weapons frisk and had no authority to search the defendant for identification.** An officer lawfully stopped the defendant for riding his bicycle without an operative headlamp, a violation of Vehicle Code section 21201(d). He asked the defendant for identification. The defendant, who spoke Spanish and limited English, replied that he had no identification. The officer then grabbed the defendant to conduct a pat search for identification. He wanted to locate the defendant's identification before citing him for the headlamp violation. The defendant pulled away, and the officer restrained him in a control hold, handcuffed him, and then patted him down, ultimately finding a bag of methamphetamine in the defendant's pocket. The law does not authorize a search solely for evidence of identification. And the circumstances did not support a weapons frisk..²

² The Court did not address the California Supreme Court's decision in *People v. McKay* (2002) 27 Cal. 4th 601, which upheld a similar search of a bicyclist stopped for a minor Vehicle Code violation.

[P] *United States v. Flatter* (9th Cir. 2006) 456 F. 3d 1154

Filed: 8/9/2006

Attorney: Jeffrey K. Finer

The Ninth Circuit Court of Appeals reversed the district court's ruling denying the defendant's motion to suppress evidence. **The Court held that the officers had no right to pat search the defendant merely because they were concerned that their questioning might turn confrontational; the officers lacked a reasonable belief that the defendant was actually armed.** The defendant was a postal service employee, and the officers suspected that he was stealing mail. The officers placed decoy packages into the boxes holding sorted mail, hoping to catch the defendant in the act. When the officers discovered that one of the decoy packages was missing, they summoned the defendant for questioning. Because the defendant gave evasive answers, the officers moved the interrogation from the hallway to a small office. When they arrived in the office, an officer immediately pat searched the defendant for weapons. While checking for weapons, he found the decoy package in the defendant's pocket. The officer who searched the defendant testified that he conducted the frisk out of concerns for officer safety. The interrogation room was small, and he feared the questioning was likely to become confrontational. He wanted to assure that the defendant did not have any weapons, although he had no objective reason to believe the defendant was armed. In holding that the officer lacked reasonable suspicion for the pat search, the court noted the absence of several factors: The officer did not see any visible bulges in the defendant's clothing. The defendant did not make any sudden movements or attempt to reach into his pockets. He did not act in a threatening manner or have any known history of violence. Mail theft is not usually committed with a weapon.

[P] *People v. Jordan* (2004) 121 Cal. App. 4th 544 (Fifth District)

Filed: 8/10/2004

Attorney: Larry Dixon

The Court of Appeal reversed the trial court's denial of the defendant's suppression motion. **The Court held that the officer had no right to stop and frisk the defendant merely because he matched the description of a person alleged to be carrying a gun.** An anonymous tipster called 911 and reported that a man at a designated location had a handgun concealed in his right jacket pocket. The suspect was described as a Black male in his late thirties wearing specific clothing. An officer received this description and went to the designated location, where he saw a man (the defendant) who matched this physical description. The defendant was sitting on a park bench with his hands in his lap. He was wearing

“cumbersome” clothing and a jacket that concealed his waistband. However, the officer did not see any bulges in the defendant’s pockets, and he did not see a gun. The defendant did not reach for his pocket, and he did not make any threatening or unusual movements. Nevertheless, the officer detained the defendant and frisked him, discovering a gun in his jacket pocket.

Relying on *Florida v. J.L.* (2000) 529 U.S. 266, the Court of Appeal, held that the officer lacked reasonable suspicion to stop and frisk the defendant based solely on the anonymous tip alleging gun possession and the fact that the defendant was wearing concealing clothing. The Court emphasized that the anonymous tipster’s allegation was not corroborated by police observations of suspicious activity or predicted conduct. The officer had corroborated only innocent details – the suspect’s location and physical description.³

[UP] *In re James T.*, A114936 (First District, Division Three)

Westlaw citation: 2007 WL 853843

Filed 3/22/2007

Attorney: William Mount

The Court of Appeal reversed the juvenile court’s denial of the minor’s motion to suppress. A gun was removed from the minor’s pocket during a pat search. **The Court held that the officer had no right to initiate the pat search because he lacked a particularized suspicion that the minor was armed based on the circumstances:** 1)the minor was present in a high crime and gang area where two homicides had been committed the previous evening; 2)he was dressed in baggy clothing that could have conceivably concealed a weapon; and 3) the minor was in a group of eight young men who were being questioned by two officers.

³ We believe that the holding of *People v. Jordan* is still good law after the California Supreme Court’s recent decisions in *People v. Wells* (2006) 38 Cal. 4th 1078 and *People v. Dolly* (2007) 40 Cal. 4th, and the Court of Appeal’s recent decision in *People v. Lindsay* (2007) 148 Cal. App. 4th 1390 (First District, Division Four). In these three cases, the appellate courts approved detentions based on anonymous tips that alleged conduct posing serious and immediate threats to public safety (drunk driving, brandishing a gun, firing a gun). Also, in these three cases, the tips were not truly anonymous; the officers were able to identify the callers or trace the calls. All three cases acknowledged and distinguished the facts of *People v. Jordan*. (See the materials posted on the FDAP website: WHEN DOES AN ANONYMOUS TIP PROVIDE REASONABLE SUSPICION FOR A STOP AND FRISK, May 2007.)

[UP] *In re James M.*, H030160 (Sixth District)

Westlaw citation: 2006 WL 3760030

Filed: 12/22/2006

Attorney: Mikol Benjacob

The Court of Appeal reversed the juvenile court's denial of the minor's motion to suppress. **The Court held that: 1) the officers had no right to pat search the minor merely because he was dressed in baggy clothing and out late at night with a documented gang member; and 2) the minor's admission that he had a knife did not purge the taint of the illegal police conduct.** Sometime after 1:00 a.m., the officer observed the minor walking down the street with Jonathan. Because both appeared young, the officers contacted them about a possible curfew violation. Both boys gave the officer their names and birth dates, indicating that they were 17. The officers told both boys to sit on the sidewalk. A second officer arrived and informed the initial officer that Jonathan was a "documented Norteno gang member." Because of this information, the time of night, and their baggy clothing, the officer decided to frisk both boys for weapons. The officer asked the minor to stand up and then asked him if he had a weapon or anything sharp on his person. The minor admitted he had a knife. The officer then proceeded with the pat search and removed the knife (an illegal dirk or dagger) from the minor's waistband. The Court of Appeal determined that the circumstances known to the officer did not support a reasonable belief that the minor was armed. Moreover, the minor's admission that he was carrying a knife did not justify the search as it was the fruit of the unlawful conduct.

[UP] *People v. Cha*, C049441 (Third Appellate District)

Westlaw citation: 2006 WL 893628

Filed: 4/7/2006

Attorney: Derek Kowata

The Court of Appeal reversed the trial court's denial of the defendant's motion to suppress. **The Court held that the officers lacked a reasonable belief that the defendant was presently armed, as necessary to justify a pat search.** Officers Brown and Gin were responding to a 911 call reporting unsupervised children at a residence. The defendant rode up on his bicycle and approached Officer Brown. Officer Gin told Brown to immediately pat search the defendant. Brown frisked the defendant, and reached into his pocket to retrieve a hard object. As he pulled out the object (a flashlight) a bag of methamphetamine fell to the ground. According to Brown, the defendant did not do anything suggesting that he possessed a weapon. Gin believed the defendant might be armed based on "prior

dealings”: 1) During a prior arrest, the defendant had made a veiled threat toward Gin. 2) Gin remembered that an unknown citizen had alleged that the defendant was possibly armed, but he could not recall this informant’s identity. Nor could he recall when he’d heard this allegation. 3) Gin suspected the defendant might be involved in narcotics activity. The Court held that the combination of these circumstances did not support a reasonable belief that the defendant was armed during his contact with Gin and Brown. Nothing about the veiled threat reasonably suggested that the defendant was armed when he made it or at any other time. The allegation that the defendant was possibly armed was made by an anonymous informant, and it was neither detailed nor corroborated. Finally, Gin provided no factual basis for believing that the defendant was involved in narcotics activity. “To believe that a suspect carries a weapon because he is a drug dealer, an officer must first have reason to believe that the suspect does in fact deal drugs.”

B. RIGHT TO PAT SEARCH VEHICLE OCCUPANTS DURING A TRAFFIC STOP

Legal rule: During a legal traffic stop, an officer may order the driver and passengers to exit from the vehicle. (See *Pennsylvania v. Mimms* (1977) 436 U.S. 106, 110-111; *Maryland v. Wilson* (1997) 519 U.S. 408, 417. However, this does not give the officer the automatic right to pat search the driver or passenger for weapons. A police officer is not entitled to pat search every person whom he contacts, questions, or orders out of a vehicle, even in the course of a legitimate traffic detention. (See *People v. Medina* (2003) 110 Cal. App. 4th 171, 176-177; *United States v. Brown* (7th Cir. 1999) 188 F.3d 860, 864; *Pennsylvania v. Mimms*, *supra.*, 436 U.S. at 110, fn. 5.)

[UP] *In re James J.*, A112762 (First District, Division Four)

Westlaw citation: 2006 WL 3088661

Filed: 11/1/06

Attorney: Kathryn Seligman

The Court of Appeal reversed the juvenile court’s denial of the minor’s motion to suppress. Drugs were seized from the minor during a pat search. The minor was the passenger in a car stopped for reckless driving. During the legal traffic stop, he was ordered out of the car and immediately pat searched. **The Court of Appeal held that the circumstances known to the police officer did not support a reasonable belief that the minor was armed. The officer had no right to frisk the minor merely because he was dressed in baggy clothing that concealed his**

waistband, a fashion shared by a majority of American male teenagers.

The officer observed no bulges resembling weapons and the minor made no threatening gestures. Moreover, an anonymous tip alleging that the minor and the other car occupants were “smoking dope” did not justify the pat search. The officer’s personal observations did not corroborate this tip. There is no presumption that drug users, as opposed to drug dealers, are frequently armed. And there was no evidence that the vehicle occupants were selling drugs.

[UP] *People v. Randle*, A108581 (First District, Division Three)

Westlaw citation: 2005 WL 3549481

Filed 12/29/2005

Attorney: Kathryn Seligman

The Court of Appeal reversed the trial court’s denial of the defendant’s motion to suppress drugs found during a pat search. During a legal traffic stop, the officer ordered the defendant-driver out of the car and then immediately pat searched him as a “basic officer safety measure” because he was stopped in an area known for high narcotics activity. **The Court of Appeal held that the defendant’s mere presence in a high crime area at 7:30 in the evening did not support a reasonable belief that he was personally armed.** (See *People v. Medina* (2003) 110 Cal. App. 4th 171, 177-178.) Moreover, the fact that the defendant’s passenger may have been a drug user did not justify the pat-search. The connection between narcotics and weapons recognized in the case law concerns drug sellers rather than drug users. Reasonable suspicion may not be based on mere association.

C. SCOPE OF THE PAT SEARCH

Legal rule: The officer may pat-down the suspect's outer clothing. (*Sibron v. New York* (1968) 392 U.S. 40, 65.) If he feels an object which he reasonably believes is a weapon or instrument for assault, he can then reach into the suspect's pockets to remove the object and verify its character. (*Ibid.*) Additionally, if the officer feels an object whose contour or mass makes its identity as contraband "immediately apparent," he can also retrieve that object. (*Minnesota v. Dickerson*, (1993) 508 U.S.366, 375-76; *People v. Dickey* (1994) 21 Cal. App. 4th 952, 957.)

[UP] *People v. Melnyk*, G035517 (Fourth District, Division Three)

Westlaw citation: 2006 WL 1725611

Filed 6/23/2006

Attorney: Richard Schwartzberg

The Court of Appeal reversed the trial court's denial of the defendant's motion to suppress. **The Court held that the officer exceeded the permissible scope of a lawful pat search when she removed all the items from the defendant's pocket, including a credit card which turned out to be stolen.** Late one night, the officer was patrolling a YMCA parking lot, in response to complaints about transients. She was also aware of recent burglaries and vehicle thefts in the area around the YMCA. The officer lawfully detained and pat searched the defendant after she encountered him sleeping in the parking lot and noticed suspicious bulges in his pants pockets. As the officer patted down one of the bulges, she felt a hard object which she believed might be a folding knife or other weapon. She asked the defendant if she could "take it out", and he said "sure." However, the officer did not just retrieve the hard object, an Allen wrench set; she took everything out, including a wallet and a credit card. The credit card bore a woman's name and was later found to be stolen. The Court held that the officer had no right to empty the defendant's pocket during the pat search; she could only retrieve the hard object which she reasonably believed might be a weapon. Moreover, the defendant did not consent to the removal of all these items; he only consented to the removal of the hard object.

IV. VEHICLE STOPS AND SEARCHES

A. STOP OF VEHICLE AND OCCUPANTS FOR VEHICLE CODE VIOLATION OR CRIMINAL INVESTIGATION

Legal rule: In order to stop a vehicle and detain its occupants, a police officer must reasonably suspect that: 1) the driver has committed a Vehicle Code violation (*Whren v. United States* (1996) 517 U.S. 806, 812-813); or 2) an occupant of the vehicle is engaged in other criminal behavior. (*United States v. Arvizu* (2002) U.S. 266.) Reasonable suspicion is also required to stop a pedestrian or a bicyclist for a Vehicle Code violation.

[P] *People v. Dean* (2007) __ Cal. App. 4th __ (First District, Division Two)

Westlaw citation: 2007 WL 4465368

Filed 12/21/2007

Attorney: Elizabeth Grayson

The Court of Appeal reversed the trial court's denial of the defendant's motion to suppress evidence obtained during a traffic stop. **The Court held that: 1) the prosecution failed to establish reasonable suspicion for the traffic stop – i.e. that the defendant's registration was expired; and 2) the subsequent arrest and search of the defendant were not justified by the fact that the defendant did not have a driver's license as the officer learned this during the illegal stop.** Officer Hall, a member of the narcotics suppression unit, started following the defendant's minivan after he noticed there were expired registration tags on the rear license plate. Officer Hall followed the van for some time. He had a good view of the rear window and could see through that window to the interior. He clearly saw there was only one person, the driver, in the van. The officer did not notice whether there was a temporary operating permit attached to the van's rear window. He testified that it was possible; he did not recall one way or another. Although he understood the legal effect of a temporary operating permit (that it gave the owner until the end of the designated month to complete registration), Officer Hall testified that he would have pulled the car over even if he'd seen the sticker; it would not have affected his determination to stop the minivan. Hall stopped the van. When he got to the driver's side, he recognized the defendant from a prior contact. He discovered that the defendant did not have his license or registration. The officer asked to search the defendant, and he consented. Hall found cocaine and marijuana. The defendant's car was impounded and stored at a tow lot. It appears that a temporary permit was displayed on the rear window of the

defendant's van, as it was still affixed to that window when a defense investigator photographed the van at the tow lot. There was a dispute over whether the permit was placed in the correct location on the rear window; the prosecution argued that the permit was hard to see due to fading and window tinting.

In holding that Officer Hall did not have reasonable suspicion to stop the defendant's van, the Court focused on Hall's admission that he was completely indifferent regarding the temporary operating permit. He did not look for it, although he admitted he had a very clear view of the rear window and could see into the van's interior. Moreover, Hall indicated that the presence of the permit would have made no difference; he would have stopped the car anyway. The Court relied on *People v. Nabong* (2004) 115 Cal. App. 4th Supp 1. In *Nabong*, the appellate court held that the officer improperly stopped the defendant's car for expired registration tags even though he'd seen a temporary operating permit in the rear window. The officer initiated the stop because about half the temporary stickers on vehicles he'd stopped had proved invalid. The officer had made no effort to verify the validity of the defendant's permit by checking with dispatch. Similarly, in the present case, Officer Hall did not even bother to look for a permit on the rear window, even though he had the opportunity to do so.

[P] *People v. Rodriguez* (2006) 143 Cal. App. 4th 1137 (Second District, Division Seven)

Filed: 10/10/2006

Attorneys: Richard L. Fitzer

The Court of Appeal reversed the trial court's denial of the defendant's motion to suppress and remanded the case to the trial court for a new evidentiary hearing on the question of whether the officers had reasonable suspicion for the traffic stop – i.e. did they actually see a burnt out brake light on the defendant's car. Two police detectives assigned to the gang and narcotics unit stopped a car driven by the defendant because of an alleged "burnt out" brake light. The officers did not issue a citation for this equipment violation, and there was some evidence suggesting that the officers fabricated the justification for the stop – e.g. the brake lights were operational when the defendant's car was picked up from the police impound lot three days after the stop. After pulling the car over, the officers ran a computer check and discovered that the defendant had an outstanding arrest warrant. They arrested the defendant, searched his car, and discovered methamphetamine.

The trial court had declined to rule on whether the officers had reasonable suspicion for the traffic stop. The court believed that this issue was irrelevant because any taint arising from the alleged unlawful stop was dissipated by the discovery of the defendant's arrest warrant. Thereafter, he was lawfully arrested and the car was searched incident to that arrest. The Court of Appeal disagreed. Applying the three-part analysis of *Brown v. Illinois* (1975) 422 U.S. 590, The Court held that discovery of the arrest warrant did not purge the taint of the illegal stop. Although the discovery of the warrant was a significant "intervening circumstance," only moments passed between the stop and the warrant check. Most significantly, if the officers fabricated the reason for the traffic stop, this would qualify as flagrant misconduct: "The subsequent discovery of lawful grounds to arrest and search the defendant does not dissipate the taint of such a flagrant violation of the defendant's constitutional rights and society's necessary trust in its law enforcement officers." Finally, the Court of Appeal rejected the prosecution's contention that the exclusionary rule should not apply here even if the initial traffic stop was unlawful. On the contrary, suppression of the evidence would be the appropriate remedy if the trial court found that the officers fabricated the reason for the traffic stop.

[P] *People v. Ramirez* (2006) 140 Cal. App. 4th 849 (Second District, Division One)

Filed: 6/21/2006

Attorney: Derek K. Kowata

The Court of Appeal reversed the trial court's denial of the defendant's motion to suppress. **The Court held that the officers lacked a reasonable suspicion to stop the defendant, a pedestrian, for jaywalking.** From his patrol car, the officer saw the defendant cross diagonally at an intersection and then walk toward the patrol car which was stopped at a stop sign. The officer drove up to the defendant, who he knew from prior contacts. He told him to put his hands on his head. The defendant turned to run, but the officer restrained him, searched him, and retrieved a gun. The Court held that the detention was illegal. The officer lacked a reasonable suspicion that the defendant had violated Vehicle Code section 21954. That section requires pedestrians who cross outside the crosswalk to yield the right-of-way to vehicles that are near enough to constitute an immediate hazard. It does not prohibit simply crossing outside of a crosswalk. In this case, there was no indication that the defendant had failed to yield the right-of-way. The Court commented that the officer reliance on section 21954 appeared to be "an impermissible ruse to stop and search" the defendant. "We see only a subterfuge, and no legal basis for the stop."

**[P/UP] *People v. Hernandez* (2006) 146 Cal. App. 4th 773 (Third District)
NOTE: ON 3/21/2007, THE CALIFORNIA SUPREME COURT
GRANTED REVIEW AND DEPUBLISHED THIS CASE (S150038)⁴**

Filed: 12/18/2006

Attorney: Robert Derham

The Court of Appeal reversed the trial court's denial of the defendant's motion to suppress, and also reversed the defendant's conviction for resisting an officer in the lawful performance of his duties. **The Court held the officer lacked reasonable suspicion for a traffic stop. The officer had no reasonable grounds to stop the defendant's car for having no license plates when a temporary operating permit was lawfully placed, valid on its face, and seen by the officer.** An officer stopped the defendant's truck because it had no license plates. Before stopping the truck, the officer had observed a temporary operating permit in the truck's rear window. (These permits are provided pending the issuance of license plates to show all fees have been paid to the DMV.) The permit displayed on the defendant's truck appeared valid on its face, but the officer stopped the defendant because in his experience, temporary operating permits are "very often" forged. The officer had no reason to believe that the permit on the defendant's truck was forged. After the defendant was pulled over, he resisted the officer's order that he exit from the truck.

Relying on *People v. Nabong* (2004) 115 Cal. App. 4th Supp. 1, the Court of Appeal held that the officer's personal experience that temporary operating permits are "very often forged" did not provide reasonable suspicion for the traffic stop. The officer did not specify how many times he had stopped cars with temporary permits, and then learned they were forged. The officer did not state any reasons for concluding that the specific permit on the defendant's car was forged. The Court noted that the officer's reasoning would support a traffic stop in every case where the vehicle has no plates but displays a temporary operating permit.

⁴ On March 21, 2007, the Supreme Court granted review on its own motion after the San Joaquin County District Attorney's Officer filed a request for depublication. Review was granted on the following issue: If a police officer sees a motor vehicle lacks a rear or both license plates, may the officer make a traffic stop to determine if the vehicle has a temporary permit or if a displayed permit is valid? On the same day, the Court granted a minor's petition for review, In *In re Raymond C* (S149728), on the same issue. Both cases have now been fully briefed.

[UP] *In re Orlando V.*, A113382 (First District, Division One)

Westlaw citation: 2007 WL 81792

Filed 1/12/2007

Attorney: Jeremy Price

The Court of Appeal reversed the juvenile court's denial of the minor's motion to suppress. **The officer stopped a car and detained the occupants to investigate a crime, not a Vehicle Code violation. The Court of Appeal held that the officer lacked a reasonable suspicion that the car's occupants were criminally involved, as necessary to justify the detention.** The minor was a passenger in a green Honda Civic. The officer stopped the Honda because it matched the description of a vehicle allegedly used in a crime two days earlier. The Court held that the mere fact that the car was of the same color and model as the vehicle used in the crime did not provide reasonable suspicion. There are lots of green Honda Civics. The witness had provided no further identifying characteristics (e.g. a license plate number), and 48 hours had elapsed since the crime. The officer did not observe the occupants prior to stopping the car. During the illicit detention, the officer learned that the minor was on probation with a search condition. This discovery was the tainted fruit of the illegal stop and did not justify the subsequent search of the vehicle.

[UP] *People v. Lowery*, G035845 (Fourth District, Division Three)

Westlaw citation: 2006 WL 1816937

Filed 6/30/2006

Attorney: Maureen Shanahan

The Court of Appeal reversed the trial court's denial of the defendant's motion to suppress. The defendant had consented to a search during a traffic stop. **The Court held that this consent was invalid as it was obtained during an illegal traffic stop. The officer who stopped the defendant's van had lacked a reasonable suspicion that she violated the Vehicle Code.** The defendant was stopped for failing to signal a right turn, an alleged violation of Vehicle Code section 22107. However, that section only requires the driver to signal a turn if "any other vehicle may be affected by the movement." (See *People v. Cartwright* (1999) 72 Cal. App. 4th 1362, 1366, fn. 6; *People v. Miranda* (1993) 17 Cal. App. 4th 917, 930.) In this case, the prosecution did not present evidence showing that any vehicles might have been affected by the defendant's turn.

B. WHO IS DETAINED DURING A TRAFFIC STOP

[P] *Brendlin v. California* (2007) 127 S.Ct. 2400 (U.S. Supreme Court)

Filed: 6/18/2007

Attorney: Elizabeth Campbell

Vacating a contrary decision by the California Supreme Court (*People v. Brendlin* (2006) 38 Cal. 4th 1107), the United States Supreme Court held, in a unanimous decision, that passengers as well as drivers are detained during an illegal traffic stop. Thus, all occupants of the vehicle can challenge the stop and seek to suppress any evidence seized as a result of the stop. Applying the well-established rules distinguishing a detention from a consensual encounter, the court held that when a vehicle is pulled over by the police, a reasonable passenger would not feel free to disregard the police or depart the scene without police permission. Moreover, the passenger submits to the officers show of authority by remaining in the car, or by exiting from the vehicle if the officer orders him to do so. The Court noted that a traffic stop necessarily curtails the actual physical movement of both the driver and the passenger. Both are subject to intrusions on their privacy and personal security.

C. ILLEGAL SEARCH OF VEHICLE DURING OR AFTER A LEGITIMATE TRAFFIC STOP

Legal rule: After initiating a traffic stop for an observed or suspected Vehicle Code violation, the officer can briefly detain the driver (and passengers) while she investigates the violation and expeditiously performs the duties incident to the citation process (e.g. examining the driver's license, running any computer checks, writing a citation or issuing a warning). (See *People v. McGaughran* (1979) 25 Cal. 3d 577, 584; *United States v. Bloomfield* (8th Cir. 1994) 40 F.3d 910, 915.) During the legal traffic detention, the officer can ask questions about drugs, weapons and crimes, and even ask for consent to search, so long as her conduct and questions "do not prolong the stop beyond the time it would otherwise take." (*People v. Brown* (1998) 62 Cal. 4th 493, 498-499; *People v. Gallardo* (2005) 130 Cal. App. 4th 234, 238-239.) An initially legitimate traffic stop can become illegally prolonged if the officer takes more time than reasonably necessary to perform the duties incident to the citation/warning process. (*People v. McGaughran*, supra., at 584-567; *Illinois v. Caballes* (2005) 543 U.S. 405, 407.)

If the officer discovers that there is no Vehicle Code violation, or if she completes the traffic stop by issuing a warning or citation, she must send the motorist on his way. She can continue the driver's detention only if she reasonably suspects that the driver is involved in criminal activity additional to the Vehicle Code violation. (*People v. McGaughran, supra.*, at 586, 588, 591; *United States v. Wood* (10th Cir. 1997) 106 F.3d 942, 945-948.) A driver can argue that his consent was invalid, if the officer requested consent during an unlawfully prolonged traffic detention, or during an illegal continued detention after the traffic stop.

[UP] *People v. DeLeon*, H029563 (Sixth District)

Westlaw citation: 2007 WL 963329

Filed 4/2/2007

Attorney: Silas Geneson

The Court of Appeal reversed the trial court's denial of a motion to suppress. **The Court held that the officer illegally searched the defendant and his car after pulling him over for a minor equipment violation. The defendant's consent was obtained during an unlawful continued detention, after the officer had completed the duties associated with the equipment violation.** The officer lawfully initiated a traffic stop because the license plate on the defendant's vehicle was obstructed by a trailer hitch. The officer intended to warn the defendant about the license plate obstruction. After stopping the defendant, the officer told the defendant the reason for the stop, asked for the defendant's license and then ran a license/warrant check. The officer acknowledged that he completed the discussion of the equipment violation before the warrant check was finished. Nevertheless, he ordered the defendant out of the car, and kept questioning him for several minutes even after dispatch confirmed that the defendant's license was valid and that he had no warrants. About five to ten minutes into the detention, the officer obtained the defendant's consent to search the vehicle; nothing was found. The officer then asked for consent to search the defendant's person, finding a small amount of methamphetamine. The Court held that the officer obtained the defendant's consent to search during an "unconstitutionally prolonged detention," but its analysis suggests that the consent was obtained during a detention illicitly continued after the traffic stop. The Court noted that the officer had expeditiously completed the duties associated with the equipment violation before the warrant check was completed. He should have sent the defendant on his way, because he lacked a reasonable suspicion that the defendant had committed any other crime. However, he improperly kept questioning him for several more minutes.

[UP] *People v. Garcia*, H029473 (Sixth District)

Westlaw citation: 2006 WL 1892822

Filed 7/11/2006

Attorney: Michael Thermion

The Court of Appeal reversed the trial court's denial of a motion to suppress. About one-half hour into a traffic stop, the officer asked the defendant-driver if he was on probation. The defendant answered that he was on probation with a search condition. Before dispatch could confirm the defendant's probation status, the officer searched the car, finding two billy clubs in the trunk. **The Court of Appeal held that this evidence should have been suppressed because the car search occurred during an unlawfully prolonged detention.** The police officer saw three men, including the defendant running toward a car in a market parking lot. Because the defendant was wearing blue clothing and shoes, the officer suspected possible Sureno gang affiliation, although he had received no specific report of criminal or gang activity. The officer followed the car and observed the driver commit three Vehicle Code violations (e.g. speeding, improper turn). The officer stopped the car, ordered the defendant out and questioned him about the running in the parking lot and a cut on his hand. It was only after questioning the defendant on these topics for several minutes, that the officer brought up the traffic violations; he threatened to cite the defendant or impound his car for "reckless driving" if he did not tell him what had happened to his hand. Fifteen to 20 minutes passed until the officer asked for identification and probation status. The Court held that the length of the detention in this case far exceeded the amount of time necessary to write a traffic citation for the observed Vehicle Code violations. The officer's observations did not support a reasonable suspicion that the defendant had committed any other crime.

[UP] *People v. Magnate*, A106221 (First District, Division Two)

Westlaw citation: 2005 WL 3366956

Filed 12/12/2005

Attorney: Fran Ternus

The Court of Appeal reversed the trial court's denial of a motion to suppress. **The Court held that the officer illegally searched appellant's car, after pulling him over for a Vehicle Code violation; the defendant's consent was obtained during an unlawfully prolonged detention, and the officer did not know whether the defendant was subject to a probation search condition prior to the search.** The officer had the right to stop the defendant's car for a Vehicle Code violation – playing loud music while driving. However, after requesting

documentation from the defendant-driver and his two passengers, running warrant checks, and pat-searching all three occupants, the officer unlawfully prolonged the detention by asking the defendant for consent to search the car. Thus, his consent was invalid. The request for consent was made 10-15 minutes after the officer had initiated the stop. During the traffic detention, the officer learned that the defendant was on probation. However, he was not able to ascertain whether he was subject to a search condition, as would be necessary to conduct a probation search.

V. WARRANTLESS RESIDENTIAL SEARCHES

Legal rule: A warrantless entry into the home, and warrantless searches inside the residence, are presumptively unreasonable. Even if the officer has probable cause that a crime is being committed inside a home, she needs a warrant to enter. However, the warrant requirement can be overcome by showing one of the well-delineated exceptions to the warrant requirement – e.g. exigent circumstances including pursuit of a fleeing felon, the need to prevent the imminent destruction of evidence, or the risk of danger to the police or persons inside the home. Entry into the home based on exigent circumstances requires probable cause to believe that the entry is justified by one of these factors. (See *Welsh v. Wisconsin* (1984) 466 U.S. 740, 748-749; *Minnesota v. Olson* (1990) 495 U.S. 91, 100.)

[P] *People v. Celis* (2004) 33 Cal. 4th 667 (California Supreme Court)

Filed: 7/26/2004

Attorney: Nicholas DePento

The Supreme Court reversed judgments of the trial court and the Court of Appeal denying the defendant's motion to suppress evidence. **The Supreme Court held: 1) that the defendant was detained and not arrested when he was seized by police officers in the backyard of his house; and 2) that the facts known to the officers did not justify the officers' entry into the defendant's home to conduct a protective sweep.** Police officers suspected that the defendant was involved in a major state-wide drug trafficking operation. After two days of surveillance, the officers confronted the defendant in the backyard of his home. An officer pulled his gun on the defendant and ordered him to stop. The defendant was handcuffed and made to sit down against the wall. Officers then entered the defendant's home to determine if there was anyone inside who might endanger their safety. They did not find any people inside but they did notice a large wooden box which was filled with wrapped packages. They obtained the defendant's consent to open the packages, which contained cocaine.

On the second issue, the Supreme Court held that the facts known to the officers, when they entered the defendant's home did not support a reasonable suspicion that the area to be swept harbored a dangerous individual, as necessary to justify a protective sweep. The Court reviewed the rules governing a protective sweep of an arrestee's residence, as set forth by the United States Supreme Court in *Maryland v. Buie* (1990) 494 U.S. 325. When officers arrest a suspect inside a home, they can look in spaces immediately adjoining the place of arrest without probable cause or reasonable suspicion. However, to inspect areas of the home beyond the immediate area of arrest, the officers must reasonably suspect that the areas to be swept harbor individuals posing a danger to those on the scene. In contrast, when officers enter a home based on exigent circumstances – e.g. that persons inside the home may pose a danger to the police – they need probable cause to believe dangerous persons will be found inside. Appellate courts are divided on whether the police can conduct a protective sweep of a residence, based on reasonable suspicion rather than probable cause, when they arrest or detain a suspect immediately outside of his residence. The California Supreme Court declined to decide this issue, as they found that the officers lacked reasonable suspicion to conduct a protective sweep in this particular case.

[P] *People v. Hua* (2008) __ Cal. App. 4th __ (First District, Division Five)

Westlaw citation: 2008 WL 108955

Filed: 1/11/2008

Attorney: Gordon Brownell

The Court of Appeal reversed the trial court's denial of the defendant's motion to suppress evidence. **The Court held that exigent circumstances did not justify the officers' warrantless entry into the defendant's home because the suspected crime was possession of less than one ounce of marijuana – a non-jailable offense.** Two police officers responded to a "noise disturbance" complaint at a designated apartment at 11:00 p.m. As the officers approached, they noticed the "distinct odor" of burnt marijuana coming from inside the apartment, and one officer saw someone in the apartment smoking a suspected marijuana cigarette. The defendant, who lived at the apartment, responded to the officer's knocks by opening the door. He denied personally smoking marijuana, but eventually acquiesced to the officer's repeated requests to enter. After the officers entered, they searched the various rooms and found several marijuana plants growing in the defendant's bedroom. The Court of Appeal rejected the prosecution's contention that the officer's warrantless entry was justified by exigent circumstances, as that exception to the warrant requirement does not apply

when the officers have probable cause to believe the residents have committed a minor, non-jailable offense (as opposed to a jailable offense). Possession of less than one ounce of marijuana is punishable by a fine of no more than \$100.

[P] *People v. Ormonde* (2006) 143 Cal. App. 4th 282 (Sixth District)

Filed: 10/23/2006

Attorney: Philip A. Schnayerson

The Court of Appeal reversed the trial court's denial of the defendant's motion to suppress evidence. **The Court held that the officers' warrantless entry into the defendant's premises was not justified by exigent circumstances or as a protective sweep.** The police arrested a domestic violence suspect outside the open door to the defendant's apartment. They then entered the defendant's apartment, without a warrant, out of general concerns for officer safety. The Court held that the circumstances known to the officers did not provide probable cause to believe there were exigent circumstances – i.e. an emergency situation requiring immediate entry to prevent imminent danger to life or serious damage to property. Moreover, the known facts did not provide reasonable suspicion for a protective sweep of the apartment. It was not sufficient that the police were apprehensive of danger based on past experience with domestic battery situations.

[UP] *People v. Davids*, C051008 (Third District)

Westlaw citation: 2007 WL 1930253

Filed: 7/3/2007

Attorney: Robert Angres

The Court of Appeal reversed the trial court's denial of the defendant's motion to suppress evidence. **The Court of Appeal held that: 1)the officers had no legal right to conduct a protective sweep inside and outside of the defendant's residence, after they arrested him outside of his front door; 2)the marijuana garden in the side yard of the defendant's home was not in plain view, as it was observed by officers during the illegal protective sweep, from a vantage point where they had no right to be.** Several officers went to the defendant's remote rural residence to arrest him for an assault upon his stepson which had occurred the previous evening. The officers parked in the driveway which was on the west side of the residence. As soon as they approached the house with guns drawn, the defendant walked out the front door, confirmed his identity, and was taken into custody. While one officer remained with the defendant, the others conducted a protective sweep of the residence. Two officers walked around the outside of the house to monitor any additional exits, while three officers entered

the house. From inside the house, while looking through a window on the east side, one officer saw a marijuana garden partially covered by a tarp. One of the officers who walked around the outside of the house also saw the marijuana plants. The officers could not see the plants from the location where they arrested the defendant, outside the front door. The trial court found that the officers lacked reasonable suspicion for a protective sweep, but that the marijuana garden was lawfully observed in plain view.

The Court of Appeal agreed with the trial court that there was no legal basis for a protective sweep. The officers admittedly conducted the sweep as a matter of routine in making a felony arrest. They knew that people arrested for felonies sometimes associate with “unfriendlies”. There were no facts supporting a reasonable suspicion that individuals posing a danger to those on the arrest scene were actually inside the house. A protective sweep may not be justified by a “mere abstract” and theoretical “possibility.” (See *People v. Ledesma* (2003) 106 Cal. App. 4th 857, 866.) Unlike the trial court, the Court of Appeal held that the defendant had a reasonable expectation of privacy in the area on the east side of his house where the marijuana garden was located. The officers only observed the garden when they were conducting the unlawful protective sweep, both inside and outside the home. Consequently, they viewed the garden from an illegal vantage point – a place they had no right to be.

[UP] *People v. Cato*, C053350 (Third District)

Westlaw citation: 2007 WL 1822412

Filed 6/26/2007

Attorney: Tami Buscho

The Court of Appeal reversed the trial court’s denial of a motion to suppress evidence. The police entered the defendant’s home without a warrant, in order to arrest him, and then conducted a protective sweep, during which they found an assault rifle in an open closet. **The Court held that: 1)the warrantless entry was justified by exigent circumstances; but 2)the officers lacked reasonable suspicion to conduct a protective sweep.** A police officer driving an unmarked vehicle observed the defendant speeding. He followed the car, and then activated his flashing lights in an attempt to pull the car over. The defendant did not stop, but led the officers on a high speed chase through a residential neighborhood. Eventually, the defendant pulled into a residential driveway and got out of his car. The officer pulled in behind the defendant and ordered him to stop. The defendant ignored the officers repeated requests and ran inside the house. When back-up officers arrived, they knocked on the door and announced their presence. The

defendant's father opened the door, with the defendant standing behind them. Police entered the house, placed the defendant in handcuffs and brought him outside. The defendant's father was also brought outside and handcuffed. When asked, the defendant said his girlfriend was the only other person in the house. An officer then announced that anyone in the house should come out. The defendant's girlfriend emerged from a bedroom and was escorted outside. Officers then performed a protective sweep of the entire house.

The Court held that exigent circumstances justified the warrantless entry into the house. The officers had probable cause to arrest the defendant after he sped away from a lawfully attempted traffic detention and refused to heed the officer's requests to stop. The officers could enter the house, in hot pursuit, to prevent the defendant from frustrating an arrest that had commenced in a public place. However, once inside the house, that the officers had no right to conduct a protective sweep. Based on the known facts, the officers lacked a reasonable suspicion that areas of the house harbored individuals posing a danger to the officers or others.

[UP] *People v. Prescott*, C046164 (Third District)

Westlaw citation: 2005 WL 2562647

Filed 10/13/2005

Attorney: Linda Zachritz

The Court of Appeal reversed the trial court's denial of the defendant's suppression motion. **The Court held that the officer's protective sweep of a probationer's residence, conducted as a matter of routine before the probation search, was not justified by reasonable suspicion.** The Court noted that officers may conduct a protective sweep of a residence for officer safety when they arrest a suspect inside of a home. A protective sweep can also precede a probation search. However, in each case, the officers must reasonably believe that the area to be swept harbors an individual posing a danger to those on the scene. In this case, the officers lacked such a reasonable suspicion. On the contrary, the officers testified that they conducted the protective sweep as a matter of course every time they did a residential probation search.

[UP] *People v. Smith*, D048625 (Fourth District, Division One)

Westlaw citation: 2007 WL 2405255

Filed: 8/24/2007

Attorney: Neil Auwater

The Court of Appeal reversed the trial court's denial of a motion to suppress evidence discovered during a warrantless search of the defendant's house. **The Court held that the entry and search of the residence was not justified by either the "protective sweep" or "community caretaker" exceptions to the warrant requirement.** Responding to a report of domestic violence involving a man and a woman, the police encountered the defendant and his girlfriend in the front yard of the defendant's house. They both had cuts and abrasions, and the defendant told officers that the girlfriend had cut him with scissors. He told the officers that the scissors were inside the house, but he did not want the police to go inside. Nevertheless, the police entered the house, searched inside a closet, and found narcotics on a shelf. The Court held this was not a valid "protective sweep" because the officers lacked a reasonable suspicion that there were additional persons present in the house who might pose a danger to the police or others. The Court also held that the "community caretaker exception" did not justify the officers' warrantless intrusion because the circumstances did not support a reasonable belief that entry was necessary to protect innocent persons or property inside. (*See People v. Ray* (1999) 21 Cal. 4th 464.)

VI. SEARCHES CONDUCTED PURSUANT TO A WARRANT

[UP] *People v. Leija*, F047546 (Fifth District)

Westlaw citation: 2006 WL 3525375

Filed: 12/7/2006

Attorney: Elisa Brandes

The Court of Appeal reversed the trial court's denial of the defendant's motion to suppress evidence and quash the search warrant. **The Court held that: 1)the affidavit in support of the warrant did not establish probable cause because the confidential informant did not tell the officer when he saw the defendant in possession of marijuana; and 2)the *Leon* good faith exception did not apply in this case.** A police officer executed an affidavit in support of a search warrant. The officer claimed that "during the last ten days", a confidential reliable informant had told him that he/she had seen the defendant in possession of a quantity of marijuana, possessed for sale, while inside the defendant's feed store.

That same day, the officer presented the affidavit to a magistrate and the magistrate issued a warrant authorizing the officer to search the feed store for marijuana and sales paraphernalia. The officer immediately executed the warrant at the feed store, finding approximately one pound of marijuana. The Court of Appeal noted that the affidavit failed to include a critical fact – i.e. when the confidential informant had observed the defendant in possession of the marijuana. The affidavit contained neither a specific averment as to the date the CRI observed the marijuana in the store nor any information from which that fact could be inferred. Without this material fact, the affidavit failed to establish probable cause – a fair probability that the marijuana would still be on the premises at the time of the search. Moreover, the *Leon* good faith exception did not apply here. (See *United States v. Leon* (1984) 468 U.S. 897.) “Because the affidavit was totally lacking on this key point, we conclude the indicia of probable cause were so lacking that law enforcement reliance on [the warrant] was entirely unreasonable.”

VII. SCHOOL SEARCHES

Legal rule: School resources officers, like school officials, are government agents within the purview of the Fourth Amendment. (*In re William V.* (2003) 111 Cal. App. 4th 1464.) To search a student or his personal belongings, a school official must have reasonable grounds for suspecting that the search will turn up evidence that the particular student has violated either the law or school rules. (*New Jersey v. T.L.O.* (1985) 469 U.S. 325, 341-42.)

[UP] *In re I.G.*, D046974 (Fourth District, Division One)

Westlaw citation: 2006 WL 1752103

Filed 6/28/2006

Attorney: Richard Siref

The Court of Appeal reversed the juvenile court’s denial of the minor’s motion to suppress evidence. **The Court held that a high school resource officer lacked the reasonable suspicion necessary to search the minor’s backpack and pockets.** The school resource officer was investigating a fist fight that had occurred at a bus stop, near campus, on the previous afternoon. No weapons were brandished or used in the fight. After obtaining a list of persons who had been involved in or witnessed the fight, the officer called them into his campus office for questioning. The minor had been identified as a witness to the fight, someone who had “stood around doing nothing.” When he arrived at the office for questioning, the resource officer immediately searched his backpack for “officer safety.” The officer found no weapons, but then reached into the minor’s pockets,

retrieving a small bundle of cocaine. The Court held that the officer had no legal right to search the minor's backpack or pockets because he was looking for weapons, and he lacked a reasonable suspicion that any weapons would be found in the minor's possession. Moreover, even if he was justified in searching the backpack and in patting down the minor for weapons, the officer had no right to reach into the minor's pocket.

VIII. CONSENT SEARCHES/SCOPE OF CONSENT

[P] *People v. Cantor*, 149 Cal. App. 4th 961 (Fourth Dist., Div. Three)

Filed: 4/13/2007

Attorney: Jean Ballantine

The Court of Appeal reversed the trial court's denial of the defendant's suppression motion. **The Court held that the officer exceeded the scope of the defendant's consent to a "real quick" search of his car, when he unscrewed the back of a wooden box after thoroughly searching all areas of the car for more than 15 minutes.** The officer pulled the defendant's car over after he'd observed the defendant commit a number of traffic violations. As soon as the officer ordered the defendant out of the car, he detected the odor of marijuana. After the defendant denied smoking "weed", the officer asked: "Nothing illegal in the car or anything like that? Mind if I check real quick and get you on your way?" The defendant answered "yeah." Over the next 15 minutes, the officer searched the passenger compartment several times, and also searched the trunk and under the hood of the car. The officer did not find any drugs or contraband. He then removed a wooden box from the trunk, and the defendant said the box was a record cleaner. Looking through the mesh screen on the side of the box, the officer saw a paper bag. He used a screwdriver to pry open the box, and found that the bag contained cocaine. The Court noted that the scope of a suspect's consent is determined by assessing what a reasonable person in the suspect's circumstances would have understood from his exchange with the officer. (See *Florida v. Jimeno* (1991) 500 U.S. 248, 251.) In this case, the defendant consented only to a "real quick" look in his car. The officer exceeded the scope of this consent by searching every corner of the car, some areas more than once, and by prying open a closed container.

[UP] *People v. Crouch*, A108915 (First District, Division Three)

Westlaw citation: 2006 WL 308095

Filed: 2/10/2006

Attorney: Donn Ginoza

The Court of Appeal reversed the defendant's drug-related convictions upon finding that the trial court erred in denying the defendant's pre-trial motion to suppress. **The Court held that the police officer exceeded the scope of the defendant's consent to enter the room for the sole purpose of talking.** The officer entered the defendant's motel room, after receiving his express consent, and subsequently searched the room, discovering methamphetamine and a pipe. According to the testimony at the suppression hearing, the officer had asked the defendant if he could enter the motel room "to talk", and the defendant agreed to that request. There was no evidence that the defendant consented to a request "to search" the room. The Court held that the "defendant's express consent to the officer's entry for the purpose of talking cannot be construed to include implied consent to search his room."

IX. PROBATION AND PAROLE SEARCHES

Legal rule: If a defendant is on parole or on probation with a search condition, the defendant may be detained or arrested without a warrant, reasonable suspicion or probable cause. Also, an officer may search the defendant or his property without a warrant, reasonable suspicion or probable cause. (See *Samson v. California* (2006)126 S.Ct. 2193; *People v. Bravo* (1987) 43 Cal. 3d 600; *People v. Woods* (1999) 21 Cal. 4th 668; *People v. Robles* (2000) 23 Cal. 4th 789.) However, the officer must know of the defendant's parole status or probation search condition prior to the search or seizure. In *People v. Sanders* (2003) 31 Cal. 4th 318, the California Supreme Court held that an otherwise illegal search of an adult parolee's residence may not be justified by the parolee's search condition if the officer was unaware of the defendant's parole status when the search was conducted. Appellate courts extended the rule and reasoning of *Sanders* to searches of adult probationers. (*People v. Bowers* (2004) 117 Cal. App. 4th 1261; *People v. Lazalde* (2004) 120 Cal. App. 4th 858; *People v. Hoeninghaus* (2004) 120 Cal. App. 4th 1180; *Myers v. Superior Court* (2004) 124 Cal. App. 4th 1247.)

[P] *In re Jaime P.* (2006) 40 Cal. 4th 128 (California Supreme Court)

Filed: 11/30/2006

Attorney: Diana Teran

The California Supreme Court reversed the trial court and the Court of Appeal's rulings denying the minor's motion to suppress evidence. **The Supreme Court overruled its previous decision in *In re Tyrell J.* (1994) 8 Cal. 4th 68, and held that an illegal search and seizure cannot be justified after-the-fact by the state's subsequent discovery that the person searched is on juvenile probation with a search condition. The law enforcement officer must know of the probation search clause before he stops and searches the juvenile, or his property, without reasonable suspicion.** The Court applied its previous decision in *People v. Sanders* to juvenile probationers, and reiterated the cardinal Fourth Amendment principle previously acknowledged in *Sanders*: The reasonableness of a search must be determined based on the circumstances known to the officer when the search is conducted. When the officer has neither reasonable suspicion of any criminal activity, nor advance knowledge of the individual's probation search condition, he searches without perceived justification, and his conduct can aptly be characterized as arbitrary. Rejecting the three rationales previously relied on in *Tyrell J.*, the Court held: 1) Parolees and probationers, juvenile and adult, have diminished but residual expectations of privacy. 2) Requiring officer awareness of the juvenile's search condition prior to the search will not erode the condition's deterrent effects. Theoretically, the existence of the search condition, and the juvenile probationer's own knowledge that he can be searched without suspicion at any time, deters him from criminal acts. 3) There are no "special needs" of the juvenile probation system that justify permitting the police to conduct illegal searches of juveniles without knowing that they have the right to do so.

[P] *People v. Miller* (2007) 146 Cal. App. 4th 545 (Fourth Dist, Div Three)

Filed: 1/4/2007

Attorney: David Rankin

The Court of Appeal reversed the trial court's denial of the defendant's suppression motion in light of *People v. Sanders* (2003) 31 Cal. 4th 318 and *Myers v. Superior Court* (2004) 124 Cal. App. 4th 1247. **Because the officer did not learn that the defendant was on probation with a search clause, before he detained him, the otherwise illegal detention could not be justified by the probation search condition. In this case, the prosecution had conceded that the defendant was detained without a warrant, probable cause or reasonable suspicion. Consequently, there was no need to remand this case to the trial**

court for further hearing on the suppression motion. The Court reversed the defendant's convictions which were based entirely on evidence seized during the illicit detention. The Court distinguished this case from *People v. Moore* (2006) 39 Cal. 4th 168.

In *Moore*, the prosecutor and the trial court had relied on the defendant's parole search condition to justify the officer's search of the defendant. While the case was pending on appeal, The Supreme Court decided *Sanders*. The Court of Appeal then reversed the lower court's denial of the suppression motion, noting the lack of evidence establishing the officer's knowledge of the defendant's parole status prior to the search. The Supreme Court granted review in *Moore* to determine the appropriate remedy – outright reversal or remand to the trial court for further proceedings on the suppression motion. The Supreme Court held that under the facts of *Moore*, a remand was appropriate. Because the suppression motion had been litigated before *Sanders*, the prosecutor had not understood its obligation to establish the officer's prior knowledge of the defendant's parole status or to put on evidence justifying the search on alternative grounds. (See *People v. Moore, supra.*, at 173-174.) In *Miller*, unlike *Moore*, it was clear from the record that the officer was unaware of the defendant's probation search condition prior to the detention, and the prosecution had conceded that the officer lacked reasonable cause to stop the defendant.

[P] *People v. Jordan* (2004) 121 Cal. App. 4th 544 (Fifth District)

Filed: 8/10/2004

Attorney: Larry Dixon

The Court of Appeal reversed the trial court's denial of the defendant's suppression motion. **The Court held that the officer had no right to stop and frisk the defendant merely because he matched the description of a person alleged to be carrying a gun by an anonymous tipster. Moreover, the defendant's parole status did not justify the otherwise illegal search because the officer did not know that the defendant was on parole prior to the stop and search.** While this case was pending before the Court of Appeal, the California Supreme Court had decided *People v. Sanders*. The Court of Appeal determined that the holding of *Sanders*, requiring prior knowledge of parole status, was not limited to residential searches.

[UP] *People v. Freiberg*, G032564 (Fourth District, Division Three)

Westlaw citation: 2005 WL 1523709

Filed: 6/29/2005

Attorney: Donna L. Harris

The Court of Appeal reversed the trial court's denial of the defendant's motion to suppress. **The Court held that the government could not rely on the defendant's probation search condition to justify the detention and pat search of the defendant because the officer was unaware, at that time, that the defendant was on probation with a search clause.** The Court of Appeal applied the *Sanders* rule to adult probationers and to patdown searches on public streets. Because the prosecution had offered no other justifications for the search, the Court reversed the judgment.

[UP] *People v. Steward*, A104726 (First District, Division Four)

Westlaw citation: 2005 WL 705236

Filed 3/29/2005

Attorney: Kathryn Seligman

The Court of Appeal reversed the trial court's denial of the defendant's motion to suppress evidence, holding that the police officer illegally detained and searched the defendant. **Along with other appellate divisions, Division Four applied the ruling of *People v. Sanders* to the detention and search of an adult probationer.** In this case, the officer did not know that the defendant was on probation with a search clause at the time of the detention and search. In the trial court, the prosecution had stipulated that the officer lacked reasonable suspicion or probable cause. Consequently, the detention and search were illegal.

X. INVENTORY SEARCHES AFTER IMPOUNDING VEHICLES

[P] *People v. Williams* (2006) 145 Cal. App. 4th 756 (Second District)

Filed: 12/13/2006

Attorney: Rodney Jones

The Court of Appeal reversed the trial court's denial of the defendant's suppression motion. **The Court held that impounding the defendant's vehicle, which was legally parked in front of his residence, was unconstitutional, as it served no community caretaking purpose. The Court emphasized that the officer impounded the car as a matter of routine, rather than considering the individual circumstances of this case.** The officer saw the defendant driving his car without a seatbelt. He followed the car and initiated a traffic stop. The defendant pulled over in front of his own residence. The defendant provided the officer with a valid driver's license, but did not provide registration as the car was a rental. Recognizing the defendant from prior contacts, the officer ran a computer check and discovered an outstanding arrest warrant. He also learned that the car was validly registered to a rental company and not reported stolen. The officer arrested the defendant on the warrant, impounded the car, conducted an inventory search, and found a gun in the back seat. The parties stipulated that the police officer's department did not have a written policy addressing when a vehicle should be impounded; the decision was left to the individual officer's discretion. The officer testified that he impounded the car because he was arresting the defendant and he "almost always" impounds a vehicle when he arrests the driver.

The Court stated that officers may constitutionally impound vehicles pursuant to their community caretaking responsibilities when the vehicle could jeopardize the efficient movement of vehicle traffic or become a target for theft or vandalism. In this case, the impoundment was unreasonable because the defendant's car was legally parked in front of his own home in a residential neighborhood, and it was not blocking a driveway, a crosswalk, or traffic. Because the impound was illegal, the inventory search was also unconstitutional.

[UP] *People v. Davis*, G036942 (Fourth District, Division 3)

Westlaw citation: 2007 WL 603987

Filed 2/28/2007

Attorney: James Crawford

The Court of Appeal reversed the trial court's denial of the defendant's motion to suppress after the Attorney General conceded that the police lacked authority to impound the defendant's car; thus, the inventory search of the entire vehicle was illegal. The defendant was detained for shoplifting as he left a Target store. He was then arrested on warrants for traffic offenses. The officer then seized the defendant's keys and conducted an "inventory search" of his car which was legally parked in the Target lot, finding drugs in the trunk. **The Court of Appeal held that the police lacked authority to impound the defendant's car, parked on private property, as the vehicle had not been involved in a crime, an accident, or reported stolen. Because the police could not legally impound the car, they were not authorized to conduct an inventory search.**

XI. ADMINISTRATIVE SEARCHES

[UP] *In re Deshawn E.*, A114043 (First District, Division Five)

Westlaw citation: 2007 WL 2137472

Filed 7/25/2007

Attorney: Jeremy Price

The Court of Appeal reversed the juvenile court's denial of the minor's motion to suppress. The minor was pat searched as he entered a high school football field to watch a varsity game. **The Court held that the pat down of the minor's pants pockets did not qualify as a reasonable administrative search for alcohol, and thus the marijuana cigarette seized from the minor's pocket must be suppressed.** The minor was searched pursuant to a policy adopted by the police and local school officials. To reduce alcohol-related incidents at night football games, the officials permitted random searches of spectators entering the field. A small sign at the gate stated "Persons entering subject to search." (The minor who re-entered the field after playing in a JV game did not see this sign). Looking for alcohol, police officers searched some, but not all, of the people entering for the game. Assuming that these qualified as "administrative searches," which can be conducted without individualized suspicion, the Court held, nevertheless, that the searches had to be reasonable – the least intrusive means of achieving the administrative purpose. In this case, the purpose was to detect and intercept bottles

and cans of alcohol. The people did not show that the pat-down search of the minor's pants pockets was reasonably necessary to discover any bottles or cans. The officer had not seen a bottle or a bulge in the minor's pockets; nor did he testify that the minor was wearing baggy pants which could conceal a bottle.

XII. ABANDONMENT OF PROPERTY

[P] *People v. Pereira* (2007) 150 Cal. App. 4th 1106 (First District, Division Three) Review denied 8/15/2007

Filed: 5/15/2007

Attorney: Mark Shenfield

In this People's appeal, the Court of Appeal upheld the trial court's grant of the defendant's suppression motion and its dismissal of the charges. The defendant left a sealed package with a private shipping business for mailing. The defendant used a false name and return address. The owner of the shipping business opened the package because he thought it was suspicious. He found a stuffed teddy bear inside with some "abnormal stitching." The owner called the police, and they picked up the package, cut open the bear and found a half-pound of marijuana. Sealed packages, sent through the mail, are protected by the Fourth Amendment. Both senders and receivers have legitimate expectations of privacy in their mail, and the police generally cannot open mail or packages without a warrant. **The Court of Appeal rejected the prosecution's contention that the defendant forfeited any legitimate expectation of privacy in the mailed package, and thus abandoned it, when he used a false name and address. The question of whether a person abandons property is a question of fact, and – in this case – substantial evidence supports the trial court's finding that the defendant did not abandon the package.** The Court emphasized that the defendant gave the shipping company his correct phone number, obtained a tracking number for the package so he could monitor its progress, and called frequently to track the package's whereabouts.

[UP] *People v. Dennis*, G036945 (Fourth District, Division Three)

Westlaw citation: 2007 WL 283057

Filed 2/1/2007

Attorney: Christian Buckley

The Court of Appeal reversed the trial court's denial of the defendant's motion to suppress, and remanded the matter to the trial court to conduct a hearing on the merits of the suppression motion. If the motion to suppress was denied on remand,

the trial court was directed to reinstate the defendant's convictions. **The Court of Appeal held that the trial court had erred in denying the suppression motion upon finding that the defendant lacked standing, due to having voluntarily abandoned his property, without first determining if the defendant's detention and arrest were legally justified.** Officers detained and then arrested the defendant because they believed he was under the influence of drugs. The defendant was placed in the back of a patrol car, and an officer later found a baggie of methamphetamine in the defendant's seatbelt buckle. The trial court held that the defendant had voluntarily abandoned the drugs and thus lacked standing to challenge the legality of the detention and arrest. The Court of Appeal noted that when evidence is left in a police car after an illegal detention of arrest, it cannot be deemed voluntarily abandoned for purposes of the exclusionary rule. (See *United States v. Maryland* (5th Cir. 1973) 479 F.2d 566, 568.) The trial court must first determine the legality of the officers' seizure of the defendant before it can decide if he voluntarily abandoned the evidence and thus, lacks standing.

XIII. FRUIT OF THE POISONOUS TREE

[P] *People v. Dean* (2007) __ Cal. App. 4th __ (First District, Division Two)

Westlaw citation: 2007 WL 4465368

Filed 12/21/2007

Attorney: Elizabeth Grayson

The Court of Appeal reversed the trial court's denial of the defendant's motion to suppress evidence obtained during a traffic stop. **The Court held: 1)that the prosecution failed to establish reasonable suspicion for the traffic stop – i.e. that the defendant's registration was expired; and 2)that the subsequent arrest and search of the defendant were not justified by the fact that the defendant did not have a driver's license as the officer learned this during the illegal stop.** Officer Hall, a member of the narcotics suppression unit, started following the defendant's minivan after he noticed there were expired registration tags on the rear license plate. Officer Hall followed the van for some time. He had a good view of the rear window, and he could see through that window to the interior. He clearly saw there was only one person, the driver, in the van. The officer did not notice whether there was a temporary operating permit attached to the van's rear window. He stated that it was possible; he did not recall one way or another. Although he understood the legal effect of a temporary operating permit (that it gave the owner until the end of the designated month to complete registration), Officer Hall testified that he would have pulled the car over even if he'd seen the sticker; it would not have affected his determination to stop the

minivan. Hall stopped the minivan. As soon as he got to the driver's side, he recognized the defendant from a prior contact. He discovered that the defendant did not have his license or registration. The officer asked to search the defendant, and he consented. Hall searched the defendant and found cocaine and marijuana.

Upon finding that Officer Hall lacked justification for the traffic stop, the Court of Appeal also rejected the prosecution's alternative argument – that the search of defendant was justified as a search incident to arrest (for failure to have a driver's license). The Court noted that the officer learned about the license during the illegal traffic stop. Thus it was the fruit of the poisonous tree. “The People fail to point to any attenuation sufficient to dissipate the resulting taint, and we conclude that none exists based upon the record before us.”

[P] *People v. Rodriguez* (2006) 143 Cal. App. 4th 1137 (Second District, Division Seven)

Filed: 10/10/2006

Attorneys: Richard L. Fitzer

The Court of Appeal reversed the trial court's denial of the defendant's motion to suppress and remanded the case to the trial court for a new evidentiary hearing on the question of whether the officers had reasonable suspicion for the traffic stop. Two police detectives assigned to the gang and narcotics unit stopped a car driven by the defendant because of an alleged “burnt out” brake light. There was no evidence that the officers issued the defendant a traffic violation for this equipment violation, and there was some evidence suggesting that the officers fabricated the justification for the stop – e.g. the brake lights were operational when the defendant's car was picked up from the police impound lot three days after the stop. After pulling the car over, the officers ran a warrant check and discovered that the defendant had an outstanding arrest warrant. They arrested the defendant, searched his car, and discovered methamphetamine.

The trial court had declined to rule on whether the officers had reasonable suspicion for the traffic stop. The court believed that this issue was irrelevant because any taint arising from the alleged unlawful stop was dissipated by the discovery of the defendant's arrest warrant. Thereafter, he was lawfully arrested and the car was searched incident to that arrest. The Court of Appeal disagreed. Applying the three-part analysis of *Brown v. Illinois* (1975) 422 U.S. 590, The Court held that discovery of the arrest warrant did not purge the taint of the illegal stop. Although the discovery of the warrant was a significant intervening circumstance, only moments passed between the stop and the warrant check. Most

significantly, if the officers fabricated the reason for the traffic stop, this would qualify as flagrant misconduct: “The subsequent discovery of lawful grounds to arrest and search the defendant does not dissipate the taint of such a flagrant violation of the defendant’s constitutional rights and society’s necessary trust in its law enforcement officers.” Finally, the Court of Appeal rejected the prosecution’s contention that the exclusionary rule should not apply here even if the initial traffic stop was unlawful. On the contrary, suppression of the evidence would be the appropriate remedy if the trial court found that the officers fabricated the reason for the traffic stop.

[UP] *In re Orlando V.*, A113382 (First District, Division One)

Westlaw citation: 2007 WL 81792

Filed 1/12/2007

Attorney: Jeremy Price

The Court of Appeal reversed the juvenile court’s denial of the minor’s motion to suppress evidence – a firearm discovered during a vehicle search. The police officer stopped a car and detained the three occupants to investigate a crime, not a Vehicle Code violation. **The Court of Appeal held that the officer lacked a reasonable suspicion that the car’s occupants were criminally involved, as necessary to justify the detention.** The minor was a passenger in the car, a green Honda Civic. The officer stopped the Honda because it matched the description of a vehicle allegedly used in a crime two days earlier. The Court held that the mere fact that the car occupied by the minor was of the same color and model as the vehicle used in the crime did not provide reasonable suspicion. There are lots of green Honda Civics. The witness had provided no further identifying characteristics (e.g. a license number), and 48 hours had elapsed since the crime. The officer did not observe the occupants prior to stopping the car. Thus, the stop of the car and the detention of the minor were illegal. **During the illicit detention, the officer learned that the minor was on probation with a search condition. This discovery was the tainted fruit of the illegal stop, and it did not justify the subsequent search of the vehicle.**

[UP] *In re James M.*, H030160 (Sixth District)

Westlaw citation: 2006 WL 3760030

Filed: 12/22/2006

Attorney: Mikol Benjacob

The Court of Appeal reversed the juvenile court's denial of the minor's motion to suppress. **The Court held that: 1)the officers had no right to initiate a pat search of the minor merely because he was dressed in baggy clothing and out late at night with a known gang member; and 2)the minor's admission that he had a knife did not purge the taint of the illegal police conduct.** Sometime after 1:00 a.m., the officer observed the minor walking down the sidewalk with Jonathan. Because both boys looked young, the officers contacted them about a possible curfew violation. Both boys gave the officer their names and birth dates, indicating that they were 17. The officers told both boys to sit on the sidewalk. A second officer arrived and informed the initial officer that Jonathan was a "documented Norteno gang member." Because of this information, the time of night, and the minors' baggy clothes, the officer decided to frisk both boys for weapons. The officer asked the minor to stand up and then asked him if he had a weapon or anything sharp on his person. The minor admitted that he had a knife. The officer then proceeded with the pat search and removed the knife (an illegal dirk or dagger) from the minor's waistband. The Court determined that the circumstances known to the officer did not support a reasonable belief that the minor was armed, as necessary to conduct a pat search. **Moreover, the Court held that the minor's admission he was carrying a knife did not justify the search; it was the fruit of the unlawful conduct.** First, the minor made his admission after the officer had decided to initiate the pat-down. The officer had commenced the pat search by having the minor stand up and by asking him if he possessed any weapons or sharp objects. Second, the admission was compelled by the officer's illegal action and did not purge the taint of officer's constitutional violation.

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**FIRST DISTRICT APPELLATE PROJECT
TRAINING SEMINAR
January 26, 2008**

**WINNING TRENDS IN
SEARCH AND SEIZURE LAW**

**Kathryn Seligman
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