25-03 - 2025 Case Law

Los Angeles County Sheriff's Department

NEWSLETTER

Field Operations Support Services

VOLUME 25 NUMBER 03 DATE: JULY 04, 2025

2025 CASE LAW

The following is a summary of selected law enforcement-related case law from 2023 and 2024, procured and written by the California Peace Officer's Association. This summary is intended as a quick reference source and is, therefore, limited to major changes. It does not include every case law affecting law enforcement. **The text of the statute and the Department Manual of Policy and Procedures should be reviewed prior to initiating law enforcement activity based on the information in this newsletter.**

The California Peace Officer's Legislative and Legal Digest can be found at 2025 Legislative Legal Digest.

For further information, the complete text of statutes and California Codes can be found on the California Legislative Information website at http://leginfo.legislature.ca.gov.

FOURTH AMENDMENT

DETENTION - REASONABLE SUSPICION, HIGH CRIME AREA, AND EVASIVENESS

People v. Flores **(2024) 15 Cal.5th 1032:** Does evasiveness in a high crime or "known narcotics area" supply reasonable suspicion to detain?

RULE: *Officers may detain individuals whom they have reasonable suspicion are engaged in criminal activity. Whether the individual is in a high crime area or behaving evasively may be relevant considerations in evaluating the totality of circumstances. But presence in a high crime area and refusal to cooperate with the police alone do not provide sufficient justification for a stop.*

FACTS: Officers were in a patrol vehicle stopped in a "known narcotics area" and "gang hangout." An individual saw them and then walked behind a car and ducked down. The individual peeked out a few times and made an apparently unconvincing show of tying his shoelaces. The officers stepped out of the car and shined a flashlight on the individual, but he did not react. The officers detained the individual. In searches that followed, officers located methamphetamine and a firearm.

HELD: The officers did not have reasonable suspicion for a detention, as this behavior, along with the individual's presence in a high crime area at night, did not provide a particularized and objective basis for suspecting that the individual was doing something illegal. The court reasoned that people are free to avoid consensual encounters with others—including the police—by doing things like walking in another direction or pretending to talk on a cell phone. Those types of behaviors are possibly relevant but are not in themselves a sufficient basis for reasonable suspicion. The fact that this occurred in a high crime area was relevant but did not add enough to justify the stop.

NOTE: Had the individual exhibited more dramatic nervous and evasive behavior, such as immediately running in the opposite direction, or clearly attempting to hide or discard an item, the court's conclusion would likely have been different. Continued observation of Flores without detaining him, or initiating a consensual contact, would also have been appropriate.

DETENTION - SEARCH INCIDENT TO ARREST

In Re: T.F.-G. **(2023) 94 Cal.App.5th 893:** Did a subject's flight after being asked by an investigating officer to "just come over here" provide probable cause that the subject had violated Penal Code (PC) section 148 (resisting or obstructing a peace officer) so as to justify an arrest, and search incident to that arrest?

RULE: *If a person takes actions to flee, resist, or obstruct officers in circumstances where a reasonable person would feel they were not free to leave (i.e. detained), that person is subject to arrest based on probable cause of violating PC section 148(a)(1). Therefore, they would potentially be subject to a search incident to arrest.*

FACTS: Two officers came across a group of young people hanging out in and around a red Mustang and

smoking marijuana. Officers asked the group if they were "just hanging out smoking weed." Some said they were. The officers began systematically having members of the group step out of the car, subjecting them to pat-downs, and having them sit on a curb. When they came to T.F.-G and asked him to come over to them, he asked why. In the middle of one officer responding, "because I asked you to. Don't make this…," T.F.-G. took off running down the street. An officer caught T.F.-G. and stopped him. A later search incident to arrest revealed an unregistered handgun in his pocket.

HELD: T.F.-G. claimed the encounter with law enforcement was purely consensual and his flight was an exercise in his freedom to terminate the consensual encounter. Thus, he could not have been arrested for resisting or obstructing a peace officer in violation of PC section 148(a)(1). However, the court held that a reasonable person would have believed they were *not* free to leave after officers stopped to speak to the group, asked about marijuana use, began patting down and securing the other members of the group, and then "asked" that person to come over to them. Thus, T.F.-G. was being detained and his flight provided probable cause to arrest him for resisting and obstructing. The search incident to that arrest was valid.

PENAL CODE SECTION 69: The Court of Appeal has also given additional guidance this year relating to violations of PC section 69 (resisting an officer by force or violence). In *People v. Morgan* (2024) 103 Cal.App.5th 488, the court concluded that a suspect does not necessarily need to have "actual physical contact" to violate PC section 69. A defendant who pointed a gun at an officer that—though unknown to the officer—was unloaded, and pulled the trigger, was guilty of violating PC section 69. Note, however, that the California Supreme Court granted a petition for review of this decision in October 2024.

DETENTION - APPROACHING A VEHICLE FROM BOTH SIDES WITH FLASHLIGHTS

***People v. Paul* (2024) 99 Cal.App.5th 832:** When two police officers approach opposite sides of a vehicle and shine their flashlights into it at close range, is the driver detained?

RULE: *Multiple officers approaching a vehicle from opposite sides and shining flashlights at the car windows at close range will likely effect a detention.*

FACTS: Patrol officers pulled up next to a car parked in a residential neighborhood that had its lights on. One of the officers knew a parolee lived across the street. The officer in the passenger seat shined his flashlight into the car and saw Paul, who moved lower in his seat when the officer shined the flashlight. The officers backed up the patrol car and parked it in the middle of the street with the headlights on. One officer approached from the driver's side of the car, and the other from the passenger's side. The driver's side window of the car was rolled up. Next, either the defendant or the officer opened the driver's side door. The other officer shined his flashlight to illuminate the passenger's side of the car. In response to the officers' questions, Paul said that he lived on the street and that he was on parole. After confirming defendant's active parole status, the officers searched the car and seized a firearm.

HELD: The officers effected a detention because they (a) positioned themselves close to the car and on opposite sides, preventing defendant from driving or walking away; (b) shined their flashlights into the car at close range—directly at the car windows— effectively illuminating the defendant on all sides; and (c) approached the defendant while he was talking on the phone in a legally parked vehicle, meaning he could not decline the interaction without suspending or ending his phone call. As the detention was not supported by reasonable suspicion, it was unlawful.

PRACTICE NOTE: The court said that if the officers wished to signal that Paul was free to go, the officers could have approached the Prius from the same side of the vehicle and engaged Paul in casual conversation. The court emphasized that the "flanking" of the individual from both sides by multiple officers while shining flashlights was an important factor regarding detention.

NOTE: *People v. Tacardon* (2022) 14 Cal.5th 235: The court held that shining a spotlight on a parked car for illumination does not in itself constitute a detention.

***People v. Jackson* (2024) 100 Cal.App.5th 730**: When two police officers approach opposite sides of a vehicle and shine their flashlights into it at close range, is the driver detained?

***RULE**: Multiple officers approaching a vehicle from opposite sides and shining flashlights at the car windows at close range will likely effect a detention. If an officer's physical force or show of authority restrains someone's liberty in some way, then the officer has seized that person and must justify this detention.*

FACTS: Two officers pulled up alongside Jackson's car after seeing him alone in the car after midnight. Jackson was wearing a bulky jacket on a hot night and was seated awkwardly in the driver's seat. The patrol car was parked close to Jackson's open driver's side door so that Jackson could not have easily exited. The officers got out of the patrol car; one officer went to the driver's side of the car, and the other went to the passenger's side. Both shined flashlights on defendant. As they did so, Jackson appeared uncomfortable, surprised, and nervous. After speaking to Jackson for about 10 seconds, one of the officers saw a firearm in the car and Jackson was arrested.

HELD: The officers effected an unlawful detention when, without reasonable suspicion, they (a) pulled their patrol car within a few feet of defendant's driver's side door; (b) surrounded his car in the dark; and (c) aimed two flashlights at him at close range.

NOTE: The Court also addressed purported justifications for a detention—that defendant wore a bulky jacket on a hot night, was surprised upon seeing the officers, and was seated awkwardly in the driver's seat—and found them inadequate. The Court rejected the prosecution's interpretation of officer testimony that the area was known for criminal activity.

ARREST - PROBABLE CAUSE

***People v. Diaz* (2023) 97 Cal.App.5th 1172:** Does probable cause to arrest exist when the police observed a person with a distinctive tattoo matching a murder suspect in a place connected to the murder, not long after the murder?

***RULE:** Probable cause is required to make an arrest. The essence of probable cause is a reasonable belief of criminal guilt that is particular to the arrested person, based on the totality of the circumstances.*

FACTS: A man with a distinctive neck tattoo shot and killed a street vendor over apparent displeasure at the location of the vendor's operation. The shooter was linked to a company that ran taco stands in the area. Police promptly began surveillance of the company's warehouse, and almost immediately observed a man

with a matching distinctive tattoo arrive and speak with workers there. Police arrested him. A witness later identified him as the shooter.

HELD: Probable cause to arrest existed when police observed a person with the "highly distinctive" appearance of the perpetrator appearing in a location connected to the murder ("the right place") close in time to the murder ("the right time"). Because the tattoo was highly distinctive, some minor discrepancies between witness descriptions of the tattoo and the suspect's tattoo were less significant that they would have been regarding a less distinctive feature.

TRAFFIC STOP - REMOVING DRIVER FROM VEHICLE

People v. Ramirez **(2024) 104 Cal.App.5th 315:** May an officer who has lawfully detained a motorist order the motorist out of their vehicle without a particular safety concern or justification?

RULE: *Yes. Once a vehicle has been lawfully detained for a traffic violation, a police officer may order the driver to exit the vehicle without any articulable justification.*

FACTS: An officer lawfully stopped a car for a Vehicle Code violation. After speaking to the driver, obtaining his license, and running a record check at his patrol vehicle, the officer returned to find the driver on the phone. The officer ordered the driver to put the phone down and step out of the car. After a brief argument the driver complied. While the driver was out of the car, another officer was able to see a firearm in the vehicle. At trial, the driver moved to suppress the firearm, claiming that he had been inappropriately removed from the car and the stop had been inappropriately extended. The trial court granted the motion, holding that there were no facts supporting a change in officer safety related circumstances between the start of the stop and when the driver was ordered to exit the vehicle.

HELD: The law has long permitted the police to order the driver of a lawfully stopped vehicle to exit the vehicle without any articulable or particular justification. The trial court was wrong to require there be a change in circumstances, or, for that matter, any articulated officer safety concern. Further, there were additional tasks to complete during the traffic stop when the driver was ordered out of the car. Thus, ordering the driver out of the car was lawful and did not impermissibly extend the traffic stop, and the firearm was properly obtained in plain view.

TRAFFIC STOP - PROLONGING THE STOP

People v. Felix **(2024) 100 Cal.App.5th 439:** Was a traffic stop unreasonably prolonged beyond its valid purposes when an officer received additional information from a dispatcher and asked additional questions of the driver based on that information?

RULE: *Questioning during a routine traffic stop is not itself a Fourth Amendment violation if the questioning is related to the purpose of the stop and/or the questioning does not unreasonably prolong the stop.*

FACTS: An officer lawfully stopped a car. The officer conducted a records check, spoke with a dispatcher

about the driver's foreign documentation and the registered owner of the car (who was not the driver), and asked the driver questions about his trip in light of justified suspicions. Further time passed while the officer waited for dispatch and a Spanish-speaking officer arrived and verified information previously provided. The driver was arrested after a consensual search revealed drugs and a gun in the car.

HELD: The traffic stop was not unreasonably prolonged. The first six minutes consisted of ordinary traffic stop inquiries such as checking a driver's license, registration, proof of insurance, and running a records check. While the records check was in progress, it was appropriate to ask inquiries about the registered owner, whether the defendant was transporting anything illegal and otherwise attempt to dispel any suspicions. This did not measurably or unreasonably extend the traffic stop. It was also reasonable to spend several minutes confirming information already given with the help of the Spanish-speaking officer.

NOTE: *Felix* also involved a separate 5th Amendment interrogation issue. It is summarized in a separate section.

TRAFFIC STOP - PROLONGING THE STOP; CONSENT SEARCH OF VEHICLE

United States v. Taylor **(9th Cir. 2023) 60 F.4th 1233:** Under what circumstances is a traffic stop unlawfully prolonged, and what constitutes voluntary consent to a vehicle search?

RULES*: Following a traffic stop, an officer may make brief inquiries about weapons, ask the driver to exit the vehicle for officer safety, perform a pat down search (if reasonable suspicion – a low threshold – exists), and conduct a criminal history check without unlawfully prolonging the stop. Consent to search is voluntary if the person hasn't been pressured or forced into agreeing, and they are able to make their own decision freely.*

FACTS: Officers lawfully stopped a car. They obtained the driver's information, asked him about weapons, and learned that he was on parole for being a felon in possession of a firearm. The car did not have registration tags or license plates and the driver lacked identification. About 90 seconds into the stop, the officers asked the driver to exit the car. He was wearing an unzipped fanny pack. One officer frisked him while the other ran a criminal history check. While they waited, the officer with the driver asked if it was "cool if we check" the car for guns. The driver responded, "It don't matter, I just got it, I just got [the car], it don't matter to me." A handgun was found under the front seat.

HELD: (1) The stop was not unlawfully prolonged because the officers' inquiries about weapons and records checks, and a pat down search for weapons appropriately related to the traffic violation and officer safety concerns, while being no longer than was necessary to complete the traffic stop safely; (2) Reasonable suspicion for the pat down search existed because the car had no plates and the driver had no identification, admitted being a firearm offender, and was wearing a fanny pack where a weapon could be hidden (the reasonable suspicion standard for such a pat down search is not a high threshold and is less than probable cause or a preponderance of the evidence). (3) The driver's consent to search was voluntary because the driver was not in custody (so no *Miranda* warning was required), there were no threats, coercion, or show of force, and the interaction was calm and friendly. In context, the driver's consent to a request to search was unequivocal and specific.

TRAFFIC STOP - PAT DOWN SEARCH DURING STOP; EXTENDED DETENTION

***People v. Esparza* (2023) 95 Cal.App.5th 1084:** Is an investigatory detention and pat down search for weapons justified when an officer patrolling in contested gang territory lawfully stops a car occupied by known gang members, including one who was known to always carry a weapon?

RULES: *An investigatory detention and pat down search for weapons is permissible under the Fourth Amendment when an officer has reasonable suspicion that criminal activity may be afoot and/or that the persons he is dealing with may be armed and presently dangerous. A traffic stop may involve unrelated inquiries as long as those investigations do not measurably extend the duration of the stop.*

FACTS: Officers lawfully stopped a car for a tinted windows violation in territory known to be contested by violent gangs. There were four occupants. As the driver produced his license, a passenger disclosed he had been arrested in Nevada. A gang detective arrived and identified the driver and another of the car's occupants as gang members. The occupant was known to carry a gun/be "always strapped." More officers arrived and conducted a pat down search of that occupant They found a loaded ghost gun in his waistband. The other occupants were patted down, and another loaded gun was found. Officers arrested the two who had been armed. About seven minutes had elapsed between the traffic stop and pat down searches, during which the officers "proceeded expeditiously."

HELD:(1) The detentions and pat searches were lawful under the totality of the circumstances. Namely, the car was in an area known to be claimed by violent gangs, and a veteran gang detective identified the driver and a passenger as gang members. Once a gun was found on one passenger, it was reasonable to infer that others in the car could also be armed and dangerous. (2) The detentions were not unreasonably extended. The stop was initiated lawfully and remained lawful throughout. The officers coordinated with each other and took actions consistent with legitimate safety concerns attendant to the mission of the traffic stop. The relatively short period of time of the detention and no evidence of delay during that time period were important factors in the court's decision.

TRAFFIC STOP - PRETEXT STOP - EXTENDING THE STOP

***People v. Valle* (2024) 105 Cal.App.5th 195:** (1) Can a delay in making a traffic stop—because an officer is waiting for backup and for a canine officer to be available—result in an unlawfully extended stop? (2) Has the legislature made pretext stops invalid in California?

RULES: *(1) Because a traffic stop does not begin until a vehicle is actually stopped, a pre-stop delay is irrelevant to the whether the stop is extended. (2) New Vehicle Code (VC) section 2806.5 requires officers to inform drivers of the objective reason for a stop in most circumstances, but it does not make subjectively pretextual stops illegal.*

FACTS: An officer saw Valle, who he recognized as an active gang member, getting gas at a station. The officer noticed Valle did not have a front license plate. The officer was also suspicious that Valle may have a gun on him, as he was driving in or near contested gang territory. Rather than immediately stopping Valle, the

officer called for backup from a canine unit to assist with the stop. After three minutes, the officer made the stop. He told Valle he had stopped him due to not having a front license plate. The canine officer arrived and, while a citation was being written, that officer conducted a dog sniff. The dog alerted on the vehicle. A vehicle search resulted in the discovery of a loaded handgun in the center console. The trial court suppressed that evidence, concluding that the legislature had made pretext stops illegal by passing the soon-to-be enacted VC section 2806.5, and also that the time delay before initiating the stop had unlawfully extended the stop.

HELD: (1) A traffic stop does not begin for purposes of the Fourth Amendment until the vehicle is pulled over. Thus, the fact that the officer chose not to stop Valle at the gas station where he noticed the VC violation is constitutionally irrelevant; (2) VC section 2806.5 (requiring an officer to inform driver of reason for the stop before questioning) was not in effect at the time of the stop. Even if it had been, that section only requires officers to inform drivers of the objective reasons for the stop. It does not impact the legality of pretextual stops or the admissibility of evidence obtained during such stop.

TRAFFIC STOP - ASKING ABOUT PAROLE STATUS DURING TRAFFIC STOP

United States v. Ramirez **(9th Cir. 2024) 98 F.4th 1141:** Did an officer's inquiries about a driver's probation or parole status violate the Fourth Amendment?

RULE*: Besides investigating the traffic violation that warranted a stop, a police officer can make ordinary inquiries incident to the traffic stop and attend to related safety concerns—even if they prolong the stop.*

FACTS: Officers pulled a car over for multiple VC violations. The officers recognized the driver as a gang member. On initial contact with the driver, one officer said, "What's up my man? You on probation or parole?" The driver answered, "Parole." The officer then asked, "For what?" and the driver responded, "For a firearm." Several more questions followed, and the driver admitted he had a gun in the glove compartment. The driver was arrested, but claimed at trial that the officers unreasonably prolonged the stop by fishing for hypothetical criminal activity rather than addressing the business of the traffic stop.

HELD: Asking about the driver's parole status at a traffic stop did not violate the Fourth Amendment because it was a negligibly burdensome measure that reasonably related to officer safety. The question was substantially similar to permissibly running a criminal history check. Once the driver revealed he was on parole, additional safety precautions were justified.

SEARCH OF AREA IN A VEHICLE NOT ACCESSIBLE TO A PAROLEE

Claypool v. Superior Court **(2022) 85 Cal.App.5th 1092:** Does the scope of a vehicle search based on the backseat passenger's parole status extend to a locked glove box?

RULE*: A search of a car based on a passenger's status as a parolee requires a nexus between the area or item searched and the parolee.*

FACTS: Officers stopped a car in an area known for gang activity. When officers contacted the driver, the

vehicle's keys were in his lap. A backseat passenger said he was on parole, so they conducted a parole search of the passenger compartment. Police used a key on the driver's keychain—which also held the ignition key—to open the glove box. They found a loaded firearm. The driver, charged with various firearm offenses, brought a motion to suppress claiming that the parole search exceeded its legitimate scope.

HELD: The glove box search was unlawful. The reasonableness of a parole search must take into account all attendant circumstances, such as the driver's legitimate expectation of privacy in closed compartments, the parolee's proximity to them, and whether they were locked or otherwise secured. Here, it was not objectively reasonable to believe that the parolee, a backseat passenger, might have hidden a gun in the glove box after he saw police. Nor was there evidence of furtive movements in the car after the occupants saw they were under police scrutiny that could have suggested the parolee passed the gun to a front seat occupant who hid it in the glove box.

PROBABLE CAUSE TO SEARCH A CAR TRUNK

***People v. Leal* (2023) 93 Cal.App.5th 1143:** Did probable cause exist to search a Honda Civic trunk when a juvenile got into the passenger compartment with a gun in his waistband, walking stiffly, and got out walking normally, but no gun was found during a search of the passenger compartment?

***RULE**: Probable cause does not exist to search a car's trunk when there are no facts suggesting that the gun could have been transferred to the trunk from the passenger compartment.*

FACTS: A detective surveilling a gang funeral saw a minor with a handgun tucked into his pants. The minor twice lingered at the closed trunk of defendant's Honda Civic. He walked to the rear driver's side door and sat down stiffly. He lay down on the back seat, reached toward his waist, and turned toward the front seat while moving his hand up to his chest. He got out—no longer moving stiffly or holding his waistband. Based on these observations, he detective informed officers over the radio that he believed the minor hid a firearm under the front passenger seat. Officers searched the passenger compartment; no gun was found. An officer knew that the trunk of a Civic could be accessed from the passenger compartment by folding down the rear seat, if its levers are unlocked. The officer found a loaded Glock in the trunk.

HELD: There was no probable cause to search the trunk because there was nothing in the record to indicate that the minor accessed the trunk or that the rear seat levers were unlocked, and no contraband was found in the passenger compartment that generated further probable cause to search the trunk.

VEHICLE INVENTORY SEARCH

***People v. Banks* (2023) 97 Cal.App.5th 376:** Was a decision to impound and inventory search a vehicle supported by community caretaking?

***RULES**: When departmental policy requires inventory searches of vehicles to be towed and impounded, deciding whether to tow and impound is a matter of officer discretion. That discretion, however, must be exercised according to standard criteria related to community caretaking, and on the basis of something*

other than suspicion of evidence of criminal activity.

FACTS: An officer made a valid traffic stop. The driver admitted he did not have a valid driver's license. The officer suspected the car was stolen because it was an older vehicle with paper plates and no temporary registration sticker. The driver could not produce proof of ownership. The driver had a suspended license and misdemeanor traffic warrant for his arrest. There was a female minor in the car whom the officer suspected was a sex trafficking victim. The officer searched the car and found evidence supporting that suspicion. The officer arrested the driver, took custody of the minor, and arranged to have the car towed and impounded. The police department had a policy to conduct inventory searches of impounded vehicles.

HELD: The court did not think the officer impounded the vehicle for an investigatory purpose. But, under these facts, even if he did, a vehicle inventory was valid, and inevitable, as it served a community caretaking function and there was a policy for vehicle inventories to protect the department, owner, and tow company by checking for valuable property in the vehicle and documenting any damage to the car. The defendant had no license, was parked in a private parking lot, the vehicle was older but had paper plates, there was no vehicle registration in the window, and defendant could not produce proof of ownership. Some of these facts supported an inference that the car may have been stolen. Under these circumstances, having the car towed and inventoried was a reasonable exercise in discretion and based on something besides suspicion that evidence of criminal activity would be located inside. Evidence found pursuant to that inventory was admissible pursuant to the inevitable discovery doctrine.

NOTE: Though not explicitly stated in this case, there appears to be a distinction between impermissibly towing the car *in order to* search for evidence of crime inside the car, versus towing the car and completing an inventory search because the officer had reasonable suspicion that the car *itself* was evidence of crime - i.e. of auto theft. See *People v. Williams* (2006) 145 Cal.App.4th 756 [no community caretaking justification for tow in part because there was no reasonable suspicion that the car was stolen].

AUTOMOBILE SEARCH – CONSENT

***Boitez v. Superior Court*(2023) 96 Cal.App.5th 1213:** Did an officer's false promise of leniency about towing a car render the driver's consent to search involuntary? Does it matter whether the false promise was caused by an honest mistake?

RULE: *An officer making a false promise of leniency is an important and relevant factor in determining whether consent to search was voluntary. The officer's subjective motivations or beliefs are irrelevant.*

FACTS: Officers stopped a vehicle for a minor traffic infraction and learned the driver had a suspended driver's license. There was a licensed individual (the driver's sister) near the scene who could take the car. The officers had a hunch that the people in the car were gang members. One officer told the driver they had the legal authority to tow the car, which he mistakenly believed was true. The officer indicated that they would give the driver a break and not tow the car or issue tickets for the Vehicle Code infractions if the driver would consent to a search. After demonstrating some reluctance, the driver consented to the search. The officers found unlawfully possessed firearms and ammunition in the car.

HELD: Because there was a licensed driver nearby, the car was validly parked, and there was not a

community caretaking function for the tow, the officer would not actually have been legally permitted to tow the vehicle. The officer mistakenly believed he could. But, because as the test for Fourth Amendment violations is typically objective, and because officers are presumed to know the laws relating to the performance of their duties, the officer's subjective/mistaken belief was irrelevant. Because the car could not be legally towed, the offer not to tow it constituted a false promise of leniency. False promises of leniency are highly relevant to the question of whether consent to search was coerced. Based on the totality of all the factors in this case, including the false promise, consent was coerced and involuntary. The fruits of the search were suppressed.

AUTOMOBILE SEARCH - MARIJUANA

***Sellers v. Superior Court*(2024) 104 Cal.App.5th 468:** Does the presence of a usable amount of loose marijuana in a vehicle, coupled with other factors, provide probable cause to search that vehicle under the automobile exception to the warrant requirement?

***RULE**: . Loose marijuana in a vehicle, although lawful in amount, is "contraband" as it violates statutory laws prohibiting driving with an open container or package of marijuana.*

FACTS: Officers stopped a vehicle for a traffic infraction. The driver was sweating and appeared slightly nervous. He reported there was no marijuana or anything illegal in his vehicle. However, the officers saw, in plain view, a rolling tray with marijuana residue in the back seat, and crumbs of loose-leaf marijuana scattered on the rear floorboards. The crumbs were a usable amount. The officers searched the car based on 1) the loose marijuana, 2) the driver lying about the presence of marijuana, and 3) the driver's nervous demeanor. An unlawfully possessed firearm was found during the search.

HELD: Because the open container law (VC § 23222(a)) was intended to ensure marijuana is only transported in a sealed container, possession of a usable amount of free or loose marijuana violates that law, even if the amount is otherwise lawful. Thus, the loose marijuana was "contraband" that provided probable cause to search the vehicle. Alternatively, even if the open container law did not apply to the loose marijuana, the lawful possession of marijuana, combined with other suspicious circumstances may provide probable cause to believe a marijuana regulation is being violated. Here, the loose marijuana, nervousness, and the driver's lying about the marijuana did provide probable cause for the search.

CAUTION: Anticipate review by the California Supreme Court on the "open container" aspect of this ruling. Reversal is possible and it may be tenuous to rely on this case for its loose marijuana/open container holding at this time.

NOTE: The Court of Appeals listed several marijuana regulations that could have been violated, including: Health & Safety § 11362.1, subd. (a)(1) (possession or transportation of a large quantity of marijuana); § 11362.3, subds. (a)(7) & (a)(8) (smoking or ingesting cannabis while driving or riding in the passenger seat of a vehicle); § 11362.3, subd. (a)(4) (possession of an open container or package of cannabis while driving or riding in the passenger seat of a vehicle; and Vehicle Code, § 23152, subd. (f) (driving under the influence of any drug).

AUTOMOBILE SEARCH - MARIJUANA

***In Re: Randy C.*(2024) 101 Cal.App.5th 933:** Does the presence of an unsmoked marijuana blunt in a vehicle provide probable cause to search that vehicle under the Automobile Exception to the warrant requirement?

RULE: *A marijuana blunt, open at one end, qualifies as an "open container." The possession of marijuana in an open container in a vehicle provides probable cause to search that vehicle under the Automobile Exception.*

FACTS: An officer stopped a vehicle for driving with illegally tinted windows. The driver of the vehicle was a minor. An adult passenger had a marijuana blunt consisting of a usable amount of marijuana, wrapped in paper, with a little bit of marijuana sticking out of the end of the blunt. The officer searched the vehicle and found various firearms.

HELD: The lawful possession of marijuana does not provide probable cause to search a vehicle, but the unlawful possession of marijuana may. Here, because the marijuana was wrapped in paper that was open at one end and presented "no barrier to accessing the marijuana contained inside," it met the definition of an open container of marijuana that is illegal to possess in the vehicle. The officer also testified that it appeared to be a usable amount of marijuana. This unlawfully possessed "open container" of marijuana provided probable cause to search the vehicle.

NOTE: ***People v. Castro*** **(2022) 86 Cal.App.5th 314**: Court held when an officer smells burnt marijuana coming from a car and knows the occupants are under 21 and therefore cannot legally possess any amount of recreational marijuana, it constitutes probable cause that a crime has been committed and justifies a warrantless search.

AUTOMOBILE SEARCH - DETENTION OF THIRD PARTY

Mosley v. Superior Court **(2024) 101 Cal.App.5th 243**: (1) Can officers search the vehicle of a person that does not match the description of a suspect but is apprehended with the suspect? (2) Can officers detain a defendant found with a suspect beyond the time necessary to dispel the defendant's involvement in the offense?

RULES: *(1) No, absent independent probable cause. (2) No, absent independent reasonable suspicion or probable cause.*

FACTS: Detectives responded to a call concerning a group of men in the parking lot of an apartment complex in "gang territory," one of whom was holding a handgun while apparently making a music video. When detectives arrived, they saw six men standing around in the parking lot. One of the men (not Mosley) matched the description of the suspect. Detectives also recognized Mosley, a member of East Side Piru, with a history of firearm arrests and convictions.

The apparent suspect ran, was detained, and a firearm was recovered on his person and another was found in his car. Law enforcement detained the remainder of the group for 41 minutes while running records checks

and similar tasks. During the detention, detectives asked Mosley if he would consent to a search of his car, which was parked 20 feet away. He declined, but they searched it anyway and found a loaded firearm. The detectives testified they searched the car based on four factors: (1) that vast majority of gang members carry weapons, (2) defendant was a known gang member, (3) gang members typically create music videos, meant to threaten rival gangs, which feature firearms, and (4) gang members frequently hide firearms in their cars.

HELD: (1) As to the search of the vehicle, the detectives lacked probable cause under the automobile exception. The stated reasons officers gave did not contain objective facts that supported an inference that evidence of a crime would be found in Mosley's car. For example, there was no evidence that anyone saw Mosley place anything in his car, or stand by, move towards, or move away from his car. The fact that defendant was standing within 20 feet of a parked car that he had recently driven, without more, does not raise an inference that evidence of a crime might be found in the car. (2) Detectives detained Mosley for an unreasonable amount of time. The original justification for the investigative detention "completely dissipated" once the detectives found the guns on the individual matching the suspect description from the reporting party. Independent reasonable suspicion or probable cause was required to further detain Mosley. An investigative detention must be temporary and last no longer than necessary to effectuate its purpose, which in this case was the arrest of the identified suspect.

EXIGENT CIRCUMSTANCES - WARRANTLESS BLOOD DRAW

***People v. Alvarez* (2023) 98 Cal.App.5th 531**: Is a warrantless blood draw permissible under the exigent circumstances rule where a person's unconsciousness occurs in the hospital about 90 minutes after a car accident?

***RULE**: There is no exigent circumstance permitting a warrantless blood draw where the unconsciousness and unresponsiveness occurs 90 minutes after the incident and alternative options are readily available.*

FACTS: At about 11:30 p.m., officers arrived at the scene of a fatal car accident. One officer spoke to defendant driver, who seemed uninjured and admitted driving a car that had flipped over. The officer administered a horizontal gaze nystagmus field sobriety test. The driver was taken to the hospital. At about 1:00 a.m., the same officer administered another field sobriety test at the hospital, this time using a preliminary alcohol screening device. Five minutes later, the officer informed the driver that he wanted to get a blood sample. At this point, the driver stopped responding and his eyes were closed as he lay in a hospital bed. A phlebotomist arrived approximately 30 minutes later and took defendant's blood; defendant did not react to the needle being stuck in his arm. The blood test revealed a .05 blood alcohol level with the presence of cocaine and THC.

HELD: There was no emergency situation permitting the warrantless blood draw, where the defendant was responsive at the scene and for about 45 minutes in the hospital. Additionally, given that it would have only taken 30 to 45 minutes to get a telephonic warrant (approximately the same time as it took for the phlebotomist to arrive), the record did not support that a delay in getting a warrant would have diverted from the investigation.

NOTE: The Court of Appeal also rejected the argument that the officer acted in good faith, as the implied consent law (Penal Code section 23612)—upon which the officer relied—did not apply (it only applies to individuals arrested for listed offenses and here there had been no arrest made, nor a decision to arrest).

Even if it had, the law itself was insufficient to justify a warrantless blood draw under the Fourth Amendment.

CO-HABITANT CONSENT TO SEARCH

United States v. Parkins **(9th Cir. 2024) 92 F.4th 882**: Was consent to search an apartment valid when one co-habitant gave consent, but another co-habitant—some distance away but in the apartment complex and within earshot—objected?

RULE*: Officers cannot rely on one co-habitant's consent to search when another co-habitant is "physically present" and "expressly objects" to the search. Physical presence does not require the objector to be right at the home's doorway, and the express objection need not be directed to the police.*

FACTS: Parkins pointed a laser at a police aircraft from his apartment complex. While investigating, officers encountered Parkins and his girlfriend at their apartment. Parkins was resistant to a pat down. Officers escorted Parkins to a nearby bench and then to the complex mailboxes for a discussion. Parkins and the officers had a basic and intermittent discussion during which he denied owning a laser pointer.

Meanwhile, another officer asked Parkins' girlfriend for consent to search the apartment. From the mailboxes a short distance away Parkins shouted, "don't let the cops in, and don't talk to them." His girlfriend consented to a search. Officers found the laser pointer in the apartment.

Parkins was arrested. At jail, Parkins waived his *Miranda* rights and admitted to owning a laser pointer. The police never told him they had found a laser pointer in his home.

HELD: (1) Consent to search by one coi-habitant/co-tenant is not sufficient when another co-habitant is "physically present" and "expressly objects" to the search. (2) Here, Parkins was sufficiently "physically present" even though he was located downstairs and a short walk away from the apartment. His objection to the search was clear and express, and it did not matter that it was directed at his girlfriend. (3) Evidence from the search was suppressed, but because the officers never told Parkins they had found the pointer, his statements during the interview were *not* "fruit of the poisonous tree" and were not suppressed.

GOOD FAITH EXCEPTION AND RECENT LAW CHANGES

People v. Pritchett **(2024) 102 Cal.App.5th 355**: Does an officer's ignorance of recent law changes affecting the length of probationary terms, render his warrantless search of a hotel room unlawful and evidence suppressible?

RULE*: No. The good faith exception applies—notwithstanding recent law changes the officer was unaware of — when, objectively, a well-trained officer would not have known the search was illegal.*

FACTS: A narcotics detective conducted a search of a defendant's hotel room. Prior to the search, the detective checked a database which derived information "straight from the courts." This database listed a person's pending court cases, prior arrests, probation status, etc. The database revealed that Pritchett was on

active probation with a condition that she submit to warrantless searches. The detective found fentanyl in Pritchett's hotel room.

9 months prior to this arrest, AB1950 passed reducing all grants of misdemeanor probation to one year. This applied retroactively. The narcotics detective was unaware of this law change, and despite the law change, the database still showed Pritchett was on probation.

Pritchett argued that because her probation had expired per AB1950, the search was unlawful.

HELD:

The good faith exception applies. The court could not conclude that the detective would, or should, have known that the information in the database was incorrect or reliance on it was unreasonable, as the database contained information directly from the judicial system. The detective had always found the database to be accurate and could not recall an instance where he had incorrectly noted someone in the system was on probation. Based on these facts, the detective was acting in an objectively reasonable manner.

With respect to recent changes in the law, police officers are not expected to be legal experts. "[W]hat would be reasonable for a well-trained officer is not necessarily the same as what would be reasonable for a jurist." The law had been in effect for just over nine months at the time of the search and there was little case law interpreting the changes. Information from a historically reliable database supported the search. Most importantly, no affirmative judicial action had been taken by the defendant to terminate her own probation. In light of this, exclusion of the evidence was inappropriate.

NOTE: Application of the good faith exception for changes in the law has been more limited in some cases. For example, in *People v. Rossetti* (2014) 230 Cal.App.4th 1070, and *People v. Harris* (2015) 234 Cal.App.4th 671, the courts only authorized good faith exceptions up to the day that the new and contrary Fourth Amendment caselaw was published. Here, the information from a historically reliable database indicating the defendant was still on probation was likely a significant factor. Keeping up to date on changes to the law is the best practice.

WARRANTLESS SECRET RECORDING AFTER RECEIVING CONSENT TO ENTER

***United States v. Esqueda* (9th Cir. 2023) 88 F.4th 818**: Can undercover law enforcement agents, without a warrant, secretly record an interaction between themselves and a defendant inside the defendant's motel room after they obtain consent to enter the premises, and they record only what they can see and hear in plain view?

***RULE**: An undercover officer who physically enters a premises with express consent and secretly records only what he can see and hear by virtue of his consented entry does not trespass, physically intrude, or otherwise engage in an unlawful search.*

FACTS: An informant and federal and local undercover officers conducted a controlled purchase of a firearm from defendant in his motel room. The undercover officers entered the motel room with the consent of defendant and his codefendant. The agents surreptitiously recorded the encounter using audio and video

recording devices on their persons. The recording captured what they could plainly see and hear: the interior of the motel room and defendant handing a firearm to an undercover officer.

HELD: The recording equipment captured what the officer could see and hear by virtue of his consented entry; thus, there was no Fourth Amendment search in violation of any reasonable expectation of privacy..

NOTE: The court expressly stated that this was a limited ruling. It noted a different result could have occurred if law enforcement took further steps to gain information—beyond what they could personally observe as a result of the consented entry (e.g., if they attached a recording device to the inside of the property or they secretly entered any other part of the motel room without consent.

"STREETLIGHT CAMERA" PUBLIC SURVEILLANCE PROGRAM

***People v. Cartwright* (2024) 99 Cal.App.5th 98**: Does police review of surveillance video from a public "streetlight camera" system with limited capabilities violate the Fourth Amendment's prohibition on unreasonable searches and seizures?

***RULE**: Police review of a public surveillance camera system with limited capabilities that captures short term movements in the public right-of-way does not violate the Fourth Amendment.*

FACTS: Cartwright robbed a flooring store in downtown San Diego, shooting and killing the owner/operator in the process. San Diego has a streetlight camera system installed in the downtown area that records video in "only the public right of way," does not record sound, does not interface with other sensors (such as automated license plate readers), and only stores video footage for five days. The devices capture "environmental data, like temperature, humidity, pressure, ... traffic data, like car speeds, car counts, pedestrian data, bicycle data, and even video data." Detectives used the video captured by this system to identify Cartwright as the robber.

HELD: Recordings of the public areas of a downtown by security cameras with limited capabilities, showing what any member of the public could see had they been present, do not violate the Fourth Amendment as there is no reasonable expectation of privacy in such public areas. Such cameras and recordings only "modestly supplement and enhance, to a permissible degree" ordinary "capabilities the police had even before the technology."

NOTE: The *Cartwright* Court contrasted the San Diego program with the warrantless collection of cellular site location records (*Carpenter v. US* (2018) 138 S.Ct. 2206), and with a Baltimore aerial surveillance program (which, combined with license plate sensors and other surveillance systems, could effectively track the movements of any person in the city over the past 45 days) (*Leaders of a Beautiful Struggle v. Balt. Police Dept* (2021) 2 F.4th 330.) Warrantless collection of cell site records and the Baltimore system have been found to be constitutionally problematic.

SCOPE OF WARRANT - GENERAL WARRANTS

***People v. Helzer* (2024) 15 Cal.5th 622:** (1) Did officers exceed the scope of warrants, seizing property not

expressly stated in the warrants, such that blanket suppression of evidence was required? (2) Did relatively broad warrants—obtained during a complex investigation—constitute prohibited general warrants?

***RULES**: (1) Officers are allowed to collect items that are not expressly stated in the warrant when (a) they do not act in bad faith, and (b) the objects are in plain view and their incriminatory nature is immediately apparent. (2) Blanket suppression of evidence may be appropriate in extreme circumstances of flagrant government misconduct. Here, the warrants were reasonable given the complex and evolving nature of the investigation.*

FACTS: Defendant believed himself to be a religious prophet or god-like entity. He and two followers/co-participants engage in schemes to make money. The schemes ultimately culminated in a series of murders. Defendant was convicted of multiple murders and sentenced to death. Part of the evidence presented against him was obtained by three search warrants for his residence.

The first warrant was obtained pursuant to information detectives learned about the most recent two murders. In the warrant, detectives sought evidence related to a firearm used in the homicides. Once they entered the house, however, detectives noticed blood on the carpet. Detectives immediately stopped the search and obtained a second warrant. Prior to resuming the search, the lead detective had a briefing with all the officers and detectives from the separate police departments. During this briefing, they discussed the items that could be seized and those which were outside the parameters of the warrant. The officers commenced the search again. As the search continued, detectives were made aware of the discovery of additional victims. At this point, they believed that the crimes were connected. They obtained a third search warrant of the house.

The search lasted a total of eight days and resulted in a large amount of evidence being collected.

The defense argued that both the sheer amount of evidence collected and some specific items—which the defense claimed were not explicitly covered by any of the warrants, i.e., reading glasses belonging to defendant, a day planner, and receipts—were obtained in violation of the parameters of the warrant. Defense argued that the warrants became de facto prohibited “general warrants.” The defense maintained that the entirety of the evidence collected should be excluded.

HELD: “General warrants,” which involve general exploratory rummaging through a person’s belongings, are prohibited by the Fourth Amendment. However, in complex cases, resting upon the piecing together of many bits of circumstantial evidence, the warrant may be more generalized than a simpler case resting upon more direct evidence. In order to justify the extreme measure of a blanket suppression of evidence obtained by a warrant, police conduct must be “extreme:” for example, if the police used the warrant as a pretext to search for evidence of unrelated crimes, were motivated by a desire to engage in a fishing expedition, or exceeded the scope of the warrant in the places they searched.

Here, the officers did not convert the search into a “general, exploratory rummaging,” or exhibit any blatant disregard of Fourth Amendment protections that would justify blanket suppression. Upon lawfully entering the house and finding additional incriminating evidence, they immediately stopped and obtained another warrant. They held a briefing to update all the officers involved in the search. When they learned of new information, possibly related to additional murders, they obtained a third warrant. This was not an example of law enforcement engaging in a pretext or careless search of a location. Seizure of many of the challenged items was appropriate as they could be relevant to identity, a warrant category. Further, the plain view doctrine allows officers to collect evidence that is immediately apparent to be evidence of a crime when they are lawfully executing a search warrant.

SEARCH WARRANT – SCOPE OF WARRANT

People v. DiMaggio **(2024) 104 Cal.App.5th 875:** Did the good faith exception to the exclusionary rule apply when law enforcement received a search warrant to review cell phone data generated during specific period of time, but the law enforcement forensic report that was generated also included material with no date or time metadata associated with it?

RULE: *A search pursuant to a valid warrant may be unreasonable if the officers conducting the search exceed the scope of the warrant. Evidence was suppressed and the good faith exception does not apply when the search warrant specified the dates and times from which data could be reviewed, but the searching officers knowingly chose to include material with no date/time metadata in the forensic report.*

FACTS: DiMaggio was accused of sexual assault. Officers sought and obtained a search warrant to review data on DiMaggio's phone from "4.8.2022 at 0001 hours to 5.9.2022 at 2359 hours" in order to corroborate the accusation. A digital forensic investigator used Cellebrite software to review material from that date range. He also checked a box in the software to include all material that did not have a metadata timestamp in the report. He later testified that the Cellebrite representative had trained him to check that box in all investigations to ensure the forensic report included all items where metadata had been scrubbed. The Cellebrite representatives also told him that "attorneys and detectives" would sort out what the warrant permitted down the line. However, he had also been trained by his law enforcement agency to respect the scope of search warrants. The undated material in the report included child pornography.

HELD: Law enforcement went beyond the scope of the search warrant by including undated material. Under the circumstances, the good faith exception to the exclusionary rule did not apply. Notwithstanding the Cellebrite training, an objectively reasonable investigator would recognize that including all material without a time stamp was beyond the scope of the search warrant. The court also found the officers "intentionally disregarded and substantially exceeded the limitations on the warrant's scope," as part of a deliberate "standard practice of disregarding temporal parameters[.]"

NOTE: In the search warrant affidavit, the affiant explained why it may be necessary to search material with no time stamp metadata and requested that authority. However, the search warrant itself did not authorize the search of material without time stamps. The court stated it was confined to review "the four corners of the warrant."

SEARCH WARRANT - DIGITAL FINGERPRINT LOCK

People v. Ramirez **(2023) 98 Cal.App.5th 175:** Did an officer forcing appellant's finger onto a cell phone screen to unlock a fingerprint lock, after receiving a search warrant to search the phone, violate the Fourth Amendment prohibition on unreasonable search and seizure.

RULES: *Use of reasonable force to unlock a fingerprint lock on an electronic device may be permitted by search warrant. While best practice would be to put that authorization on the face of the warrant itself, where a request for authorization is instead in the search warrant affidavit, and the face of the warrant has*

language incorporating the affidavit, the same may be authorized.

FACTS: An underage Jane Doe victim reported that Ramirez had sexually molested her and recorded the abuse on his cell phone. Law enforcement requested a series of warrants to seize and search electronic devices. While the affidavit included language requesting authorization to use Ramirez' fingerprint to unlock the phone, that authorization did not appear on the face of the warrant. The warrant had language that incorporated the affidavit. The police executed the warrant by placing appellant's fingers on the device until it unlocked. They found child sexual abuse material. Appellant claimed that the use of his fingerprints to unlock his device constituted a violation of his Fourth and Fifth Amendment rights.

HELD: Because the search warrants incorporated affidavits that requested authorization to unlock the phone using Ramirez' fingerprints, they authorized law enforcement to use reasonable force to unlock the phone with the fingerprints. Even if the warrant had not incorporated the affidavits, the good faith exception to the exclusionary rule would apply because the executing officers acted in reasonable good faith in the validity of the issued warrants.

NOTE: Ramirez also made Fifth Amendment claims relating to this issue, which are summarized in another section.

DIGITAL - ELECTRONIC INFORMATION OBTAINED WITHOUT PROPER NOTICE

***People v. Campos* (2024) 98 Cal.App.5th 1281**: Should electronic information/digital evidence be suppressed where a defendant is not properly notified of its acquisition by the government pursuant to the California Electronic Communications Privacy Act (CalECPA)?

***RULE**: Suppression is unwarranted where CalECPA's purpose was achieved despite the notice error.*

FACTS: Detective sought four warrants as part of a murder investigation, which targeted Facebook account information and cellular phone records. Detective sought and obtained a 90-day extension of the notice period required pursuant to CalECPA to avoid tipping off any potential suspects. However, defendant was arrested prior to the expiration of the 90-day period and was not notified of the acquisition of the electronic information by law enforcement or by the service providers (in this case, Facebook and T-Mobile/Metro PCS) when the 90-day period expired. The detective wrongly assumed the service provider's notice would be sufficient under CalECPA.

HELD: (1) Notice was insufficient under the CalECPA, as (a) notice must be given by the government, not service providers; and (b) notice must include a copy of all electronic information obtained, or a summary of that information, including, at a minimum, "the number and types of records disclosed, the date and time when the earliest and latest records were created, and a statement of the grounds for the court's determination to grant a delay in notifying the individual." (2) Suppression of the evidence was not warranted, as CalECPA's purpose of post-disclosure notice was ultimately fulfilled when law enforcement's efforts to seek electronic information were made available to a defendant prior to trial through discovery and the unsealing of warrants.

NOTE: Although the Court in this case rejected categorical exclusion of evidence solely because CalECPA's notice requirements are not met, it left the door open for suppression of evidence under other circumstances. In cases where law enforcement seeks electronic information, it should ensure a defendant receives notice

during the required notice period.

SEIZURE OF/USE OF FORCE AGAINST NON-SUSPECT WITNESS

***Bernal v. Sacramento County Sheriff's Department*(9th Cir. 2023) 73 F.4th 678:** Can law enforcement detain people who are not suspected of engaging in criminal activity but who have information essential to preventing a threatened school shooting? If so, under what circumstances, and how much force can be used to effectuate the detention?

RULE: *Detaining a non-suspect witness can be permissible under the Fourth Amendment, but only where there are exigencies requiring immediate action, the gravity of the public interest is great, and the detention is minimally intrusive, both in duration and amount of force used.*

FACTS: On a Monday morning, deputies responded to a request for help in finding a high school student who had sent a text to a friend saying he intended to "shoot up the school, and today was the day," and had been reported absent from the school that day. The officers first called the student's mother and informed her of the threat her son had made. The mother responded that her son was not at home, he was at his grandmother's house, but she refused to give officers the grandmother's address. The officers drove to the student's home, and as they arrived, both the mother and father were walking out of the house and toward their car. Two officers approached the mother and asked to speak with her. The mother appeared agitated and was talking very loudly. She told the officers she did not want to speak to them and got into her car. When the officers ordered her to exit the vehicle, she refused. When the officers ordered her not to start the car or drive, she put the keys in the ignition and started the engine. One officer attempted to take the keys out of the ignition, but the mother blocked his arm. The mother yelled to the father to record the incident. Ultimately, an officer on either side of the car had to physically hold each of her arms for a short period of time to prevent her from leaving.

Meanwhile, the father, who had also exited the house as officers were arriving, had placed a black duffle bag on the hood of the car. While the confrontation with the mother was unfolding, at least one officer testified that the father reached into the duffle bag to retrieve something. Worried that the father could be retrieving a weapon, that officer aimed his firearm at the father and ordered him to put his hands up. The father did not comply and instead continued yelling, pulled out his cell phone from the bag, and raised it with both hands. The officer recognized the cell phone was not a weapon, holstered his firearm, and helped another deputy get the father's hands behind his back, which required them to push the father's head into the hood of the car. The father testified that the deputies also kicked his legs apart and forced his knees to buckle, putting the full force of his torso on the hood of the car and forcing his head to turn past its natural range of motion. The deputies disputed this and testified that they did not touch his legs or knees. As they were attempting to handcuff the father, one deputy testified that the father elbowed him in the chest, which the officer interpreted as resistance, so he pushed the father forward onto the hood of the car to gain leverage and utilized a rear twist-lock to overcome the resistance.

HELD:(1) In light of the unique exigencies inherent in preventing a school shooting, the detention of the parents for approximately 20 minutes was reasonable and did not violate the Fourth Amendment. (2) While the right to detain necessarily carries with it the right to use some degree of physical force or threat thereof to effect the detention, it must be reasonable under the circumstances. Here, the force used against the mother was reasonable, but the force used against the father was excessive as the harm caused was significant and the officers were aware the father was not armed.

FIFTH AMENDMENT

MIRANDA - RIGHT TO REMAIN SILENT

***People v. Villegas* (2023) 97 Cal.App.5th 253:** After a defendant waives *Miranda,* does the statement "I won't say anything else," made in the course of an interview amount to an unequivocal invocation of his right to remain silent?

***RULE**: The right to remain silent must be articulated in a clear and unambiguous way such that a reasonable officer in the circumstances would understand the statement to be an invocation of that right.*

FACTS: The defendant molested three young victims. Initially, detectives had identified only two victims. Detectives interviewed the defendant about those victims. He waived *Miranda,* admitted his involvement in the molestations, and was arrested. After his arrest, the third victim, his biological daughter, came forward. Detectives interviewed defendant again and defendant once again waived *Miranda*.

Defendant was reluctant to admit to abuse of his daughter. Towards the end of the second interview, he had an exchange with detectives that he later argued was an invocation of his right to remain silent. He began by stating, "Well that was just one mistake, I won't say anything else. It was a mistake and—whatever she says, I won't say more things anymore." He continued, "I will tell you that it was a mistake and that's it," and "that's the only thing I'll say." Detectives continued to speak to him and recounted his daughter's allegations. Defendant stated she was "telling the truth."

HELD: Defendant's statements were neither unambiguous nor unequivocal invocations of his right to remain silent. A reasonable officer in this situation would conclude that defendant's comments reflected frustration with the continued questioning because he did not want to admit to things his biological daughter had disclosed and was simply sticking with his story that he made a "mistake."

Other helpful examples:

People v. Martinez (2010) 47 Cal.4th 911, 944 – defendant's statement "that's all I can tell you," after being confronted with inconsistencies in his story and being asked why the victim would make false accusations, was not a clear and unambiguous invocation of the right to remain silent.

In re Joe (1980) 27 Ca.3d 496, 515-516 – statement "that's all I have got to say" was not invocation of right to silence where the defendant made the comment immediately after the officer confronted him with adverse evidence and challenged his veracity.

MIRANDA - OBTAINING NON-MIRANDIZED STATEMENTS BY UNDERCOVER OFFICER IN JAIL

***People v. Felix* (2024) 100 Cal.App.5th 439:** Are non-Mirandized statements admissible when they are

elicited by an undercover officer posing as a fellow jail detainee, despite the suspect previously invoking his right to counsel during a prior interrogation?

RULE: *Statements obtained by an undercover officer need not be preceded by Miranda warnings in certain circumstances.*

FACTS: An officer lawfully stopped a car. The officer conducted a records check, spoke with a dispatcher about the driver's foreign documentation, and asked the driver questions about his trip in light of justified suspicions. Further time passed while a Spanish-speaking officer arrived and verified information previously provided. The driver was arrested after a consent search revealed drugs and a gun in the car. Later, while in jail after being implicated in a murder, he made incriminating statements to an undercover officer posing as a fellow detainee. The suspect had previously invoked his *Miranda* rights.

HELD: The suspect's jail cell conversation with the undercover detective was not the type of coercive interrogation with which *Miranda* was concerned. His incriminating statements, made freely to someone he believed to be a fellow inmate, were properly admitted into evidence at trial even though he previously invoked his right to counsel during a prior interrogation.

NOTE: If the *Sixth* Amendment right to counsel has already attached — because, for example, defendant has already been charged with the crime and arraigned for a matter about which the undercover officer is questioning the defendant—then the statement will be inadmissible despite the lack of a *Miranda* violation.

NOTE: *Felix* also involved a separate 4th Amendment search and seizure issue. It is summarized in a separate section.

MIRANDA - REINITIATION OF QUESTIONING AFTER A *MIRANDA* VIOLATION

People v. Wilson **(2024) 16 Cal.5th 874:** Could a suspect's statements made after the voluntarily reinitiated questioning of a suspect, one day after law enforcement interviewed him in violation of *Miranda*, be admitted at trial?

RULE: *A Miranda violation is not a categorical bar on any future interrogation of a suspect. When the suspect voluntarily reinitiates further questioning about the crime, a voluntary confession obtained during a subsequent interrogation is admissible, even when lawenforcement fails to honor a Miranda invocation.*

FACTS: Wilson was arrested in Ohio for his involvement in multiple robberies and murders in California. In Ohio, detectives advised him of his *Miranda* rights. He initially agreed to speak to detectives but later invoked *Miranda*. Detectives continued questioning him.

A day later, on a flight to California, Wilson expressed that he might be willing to talk about his case, if the statement remained confidential. The detectives told him to wait until they arrived in California but advised him that his statement would not remain confidential.

In California, he learned that he was also being detained for unrelated crimes. Wilson asked detectives to "put those things aside" and asked questions about the murder/robbery charges. Wilson demanded assurances

that his statement remain confidential. When detectives did not make those assurances, he accused them of playing games and said he would remain silent. Wilson immediately challenged detectives, arguing that they did not have forensic evidence to connect him to the crimes. When detectives refused to share information, Wilson said, “I’m not discussing it any further until I talk to the DA, man.” The detective responded by encouraging him to talk before his co-defendant received a deal from the prosecutor. Detectives began to leave the interrogation room. Just before they left, Wilson asked for a cigarette. While on break, Wilson again expressed interest in speaking to investigators.

The interview resumed. Wilson provided information relevant to his involvement. It was clear that he understood his statements could be used against him. The detective reminded him that he could have an attorney present. Wilson said he wanted one “right now.” Detectives told him they did not have one but that they would stop talking about the case. Wilson responded by saying “is that what you want?” He then asked for some food, “so [they] could continue [the] interrogation.” Detectives went out to get food. Wilson continued to speak to detectives. Wilson suggested coffee would be important because they would be talking into the night.

HELD: The court categorically held that the questioning in Ohio after Wilson’s invocation of his *Miranda* rights was in violation of *Miranda* and that law enforcement there did not honor Wilson’s unequivocal right to remain silent or to have an attorney present.

As to the questioning in California, Wilson challenged the admissibility of his statements before and after his cigarette break. The Court held that prior to the cigarette break, the evidence was clear that Wilson had voluntarily reinitiated communication with the detectives. Once in California, Wilson approached the detective about making a statement and repeated his interest in discussing the facts. Thus, regardless of the earlier violation, the reinitiation of communication by the Wilson was voluntary. Regarding the statements after the cigarette break, the court found that the circumstances surrounding this portion of the interrogation were not coercive. Wilson displayed a willingness to speak to investigators. The court highlighted that the length of the questioning, Wilson’s goading of detectives to continue speaking about the case, and Wilson’s request for food and coffee to continue the interview, all demonstrated his intent to voluntarily reinitiate questioning.

SELF-INCRIMINATION - FINGERPRINT LOCKS

People v. Ramirez **(2023) 98 Cal.App.5th 175:** Did an officer forcing a suspect’s finger onto a cell phone screen to unlock a fingerprint lock (after getting a search warrant) violate the Fifth Amendment prohibition on self-incrimination?

RULE: *While the Fifth Amendment protects against compulsory testimonial communication, the act of placing a suspect’s finger on his phone’s fingerprint reader, when the phone has already been identified as the suspect’s is not a testimonial communication. Unlike requiring a suspect to provide a password or passcode, or to admit his ownership of a phone (though use of a fingerprint lock or otherwise), the physical act here communicated nothing of appellant’s thoughts and only confirmed what police already knew– that the phone belonged to appellant.*

FACTS: An underage Jane Doe victim reported that Ramirez had sexually molested her. Ramirez recorded the abuse on his cell phone. Law enforcement requested a series of warrants to seize and search electronic devices. While the affidavit included language requesting authorization to use Ramirez’ fingerprint to unlock the phone, that authorization did not appear on the face of the warrant. However, the warrant specifically

incorporated the affidavit. The police executed the warrant by placing appellant's fingers on the device until it unlocked and found child sexual abuse material. Appellant claimed that the use of his fingerprints to unlock his device constituted a violation of his Fourth and Fifth Amendment rights.

HELD: Defendant could be compelled to place his finger on the phone fingerprint reader because, under the circumstances here, it did not involve testimonial communication. The court held that this action was the functional equivalent of taking blood or DNA samples. The court emphasized that the communication was not testimonial because the search warrant had already established that defendant owned the phone before his fingerprint was used to open the phone. Thus, the use of his fingerprint to open the phone was not used to establish that the phone belonged to him. The court also held the act of placing the defendant's finger on the phone had been accomplished in a reasonable manner and did not result in a due process violation under the Fifth or Fourteenth Amendments.

NOTE: The Ninth Circuit Court of Appeals recently reached a similar conclusion in a case where the ownership of the phone was not in question, but held, in dicta, that the use of suspect's finger on an unidentified phone for the purpose of identifying the phone as belonging to the suspect would likely be testimonial because it communicates information about the existence, control, or authenticity of the phone. *United States v. Payne* (9th Cir. 2024) 99 F.4th 495, 512.

NOTE: *Ramirez* also made Fourth Amendment claims relating to this issue, which are summarized in another section.

REFERENCES

California Legislative Information - https://leginfo.legislature.ca.gov/faces/home.xhtml

California Peace Officer's Association - https://cpoa.org/

California District Attorney's Association - https://www.cdaa.org/