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Point of View

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Probable Cause to Arrest

"[P]robable cause is the sum total of layers of information and the synthesis of what the police have heard, what they know, and what they observed as trained officers."[1]

Sometimes it's easy to determine whether there is probable cause to arrest a suspect, as when officers find his notarized confession, or there is so much incriminating evidence in his house that it has to be hauled off in an eighteen wheeler. But in most cases, probable cause is based on just a few bits and pieces of information or physical evidence, each of which is only mildly to moderately incriminating. In these cases, officers can frequently be observed scratching their heads as they ponder the question: Is it enough?

To answer that question, officers must first understand the principles of probable cause, and how to determine whether the evidence at hand is sufficiently reliable to be taken into account. We covered both of those subjects in the Spring 2008 edition. Now we are ready to classify and examine the various circumstances that officers typically rely on in establishing probable cause to arrest and reasonable suspicion to detain.

Altlhough the primary objective of this article is to explain how these circumstances are assessed by the courts, it may also be useful in situations where officers are required to disclose all of the circumstances they considered in deciding to arrest or detain a particular suspect. Because those decisions must usually be made quickly and on-the-spot, it can be difficult for officers to recall every circumstance that was included in the mix. So, if and when it becomes necessary to do so, officers may find that the information in this article will help jog their memory.

But before we start, we want call attention to a couple of points from the Spring edition that should be kept in mind. First, in determining whether probable cause exists, officers and judges must consider the totality of circumstances; i.e., the convincing force of the information as a whole.[2] As the Tenth Circuit explained in *United States* v. *Cantu*, "[W]e do not view each supporting fact or episode in isolation. While one fact alone may not support a finding of probable cause, a cumulative assessment may indeed lead to that conclusion."[3]

Second, because most arrests and detentions are based on multiple circumstances, each additional piece of incriminating evidence—each "coincidence of information"[4]—will result in an exponential increase in the odds of having probable cause or reasonable suspicion.

Description Similarities

If victims or witnesses saw the perpetrator, and if he was a stranger to them, probable cause and reasonable suspicion will often be based on similarities between the physical, clothing, and/or vehicle descriptions they gave to officers, and the appearance of the suspect or his vehicle. This circumstance is particularly important when the crime had just occurred, especially when the crime was robbery or burglary. But, as we will now discuss, something more than a "mere resemblance" will ordinarily be required to arrest, or even detain.[5]

PHYSICAL APPEARANCE: The relevance of a similarity between the physical appearance of the perpetrator and the suspect depends mainly on, (1) the number of corresponding characteristics (e.g., height,

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* **NOTE**: Because of space limitations, some case citations were omitted from the footnotes. For complete citations, see the article in POINT OF VIEW ONLINE or the chapters on probable cause in *California Criminal Investigation*.

[1] *U.S.* v. *Edwards* (5th Cir. 1978) 577 F.2d 883, 895.

[2] See *Illinois* v. *Gates* (1983) 462 U.S. 213, 230-1; *United States* v. *Sokolow* (1989) 490 U.S. 1, 9.

[3] (10th Cir. 2005) 405 F.3d 1173, 1177. ALSO SEE *People* v. *Pranke* (1970) 12 Cal.App.3d 935.

[4] *Ker* v. *California* (1963) 374 U.S. 23, 36.

[5] See *Grant* v. *Long Beach* (9th Cir. 2002) 315 F.3d 1081, 1088 ["[M]ere resemblance to a general description is not enough to establish probable cause."]; *People* v. *Carlos M.* (1990) 220 Cal.App.3d 372, 381-2 ["A vague description does not, standing alone, provide reasonable grounds to detain all persons falling within that description."].

weight, build, age, race, hair color and style, facial hair), and (2) whether any of these characteristics were distinctive (e.g., a tattoo of Albert Einstein).[6] As the court explained in *United States* v. *Jackson*, "[W]hen the points of similarity are less unique or distinctive, more similarities are required before the probability of identity between the two becomes convincing."[7]

CLOTHING: Similar or matching attire is often significant, especially if the crime occurred so recently that it was unlikely the perpetrator had time to change. Again, a similarity is much more significant if it was distinctive; e.g., a jacket with shiny red hood,[8] a red 49er baseball cap worn backwards,[9] a bright orange shirt,[10] a soccer-style bag with double handles.[11]

VEHICLE SIMILARITIES: The relevance of a corresponding vehicle description also depends on the number of shared characteristics, and whether any were distinctive; e.g., mag wheel on the right side,[12] "unique" paint job,[13] corresponding partial license number.[14] But even a fairly general match becomes noteworthy if the car was spotted near the crime scene, or if one of the occupants resembled the perpetrator, or if there was some other reason to connect the vehicle to the crime.[15]

For example, in *People* v. *Taylor*[16] LAPD officers received a report of a cat burglary that had just occurred. The time was 4:45 A.M. Within five minutes, officers were at an intersection about three blocks from the house when they saw a man in a yellow van driving in a direction away from the scene. They knew that a yellow van had been used in other cat burglaries in the area, and that the race of the driver of the van was the same as the race of the perpetrator. So they detained him, and the court ruled it was justified, saying, "An objective perception of events should have indicated to reasonable men that the detention and questioning of defendant was not only appropriate, but necessary to the proper discharge of their duties."

Similarly, in *Chambers* v. *Maroney*[17] four men robbed a gas station in Pennsylvania. One of them wore a green sweater, another wore a trench coat. They all fled in a vehicle described only as a "blue compact station wagon." About an hour later, officers spotted four men in such a vehicle approximately two miles from the crime scene. So they stopped them and noticed that one was wearing a green sweater and another wore a trench coat. Consequently, they arrested all four and searched the car. Although there was nothing distinctive about the perpetrators' car, the Supreme Court noted that it and the suspects' car shared three characteristics: color, size, and style. In addition, the car was near the crime scene and there were four men inside. And when the officers saw the green sweater and trench coat, they obviously had probable cause.

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[6] See *People* v. *Fields* (1984) 159 Cal.App.3d 555, 564 ["The description [included] several unique distinguishing features—sex, height, race, age, and attire."]; *People* v. *Brian A.* (1985) 173 Cal.App.3d 1168, 1174 ["The descriptions significantly matched as to age, height, weight, sex, race, and the bag being carried."]; *People* v. *Marquez* (1992) 1 Cal.4th 553, 578 [suspect "resembled the composite drawing"]; *People* v. *Morgan* (1989) 207 Cal.App.3d 1384, 1389 [composite sketch]; *People* v. *Guillebeau* (1980) 107 Cal.App.3d 531, 553-4 [similar shoe soles]; *People* v. *Carpenter* (1997) 15 Cal.4th 312, 364 [similar shoe soles]; *People* v. *Hill* (2001) 89 Cal.App.4th 48, 55 [similar medallion and scar]; *People* v. *Joines* (1970) 11 Cal.App.3d 259, 264 [bandage on left hand].

[7] (2nd Cir. 2004) 368 F.3d 59, 64.

[8] *People* v. *Brian A.* (1985) 173 Cal.App.3d 1168, 1174. ALSO SEE *People* v. *Anthony* (1970) 7 Cal.App.3d 751, 763 ["bluish" jacket].

[9] *People* v. *Soun* (1995) 34 Cal.App.4th 1499, 1524-5. ALSO SEE *People* v. *Flores* (1974) 12 Cal.3d 85, 92 ["distinctive" hat].

[10] *U.S.* v. *Thompson* (D.C. Cir. 2000) 234 F.3d 725.

[11] *People* v. *Brian A.* (1985) 173 Cal.App.3d 1168, 1174.

[12] *People* v. *Brooks* (1975) 51 Cal.App.3d 602, 605. ALSO SEE *People* v. *Orozco* (1981) 114 Cal.App.3d 435, 440 ["a cream, vinyl top over a cream colored vehicle"]; *People* v. *Amick* (1973) 36 Cal.App.3d 140, 145 [both were dark stake-bed trucks].

[13] *People* v. *Flores* (1974) 12 Cal.3d 85, 92. *People* v. *Hillery* (1967) 65 Cal.2d 795, 804 [black and turquoise 1952 Plymouth].

[14] See *People* v. *Soun* (1995) 34 Cal.App.4th 1499, 1522; *People* v. *Watson* (1970) 12 Cal.App.3d 130, 134-5.

[15] See *People* v. *Chandler* (1968) 262 Cal.App.2d 350 354 [both vehicles were blue compact station wagons; plus the car was stopped on a logical escape route]; *People* v. *Huff* (1978) 83 Cal.App.3d 549, 557 [armed robbers described as two male blacks in older model blue pickup truck]; *People* v. *Weston* (1981) 114 Cal.App.3d 764, 774-5 [defendant who matched the description of the robbery getaway driver—about 20 years old, 6'2", thin build—was spotted in the getaway car four days later].

[16] (1975) 46 Cal.App.3d 513, 520.

[17] (1970) 399 U.S. 42.

CORRESPONDING NUMBER: As illustrated in *Chambers*, if there were two or more perpetrators, and if the crime had occurred recently, the odds of having reasonable suspicion or probable cause increase significantly if, in addition to a general physical resemblance, the number of detained suspects matched the number of perpetrators.[18] As the court explained in *People* v. *Brian A.,*

> Where there were two perpetrators and an officer stops two suspects who match the descriptions he has been given, there is much greater basis to find sufficient probable cause for arrest. The probability of there being other groups of persons with the same combination of physical characteristics, clothing, and trappings is very slight.[19]

For example, in *People* v. *Craig* the court ruled that officers had grounds to detain three robbery suspects minutes after the crime occurred because, even though they "did not perfectly match the general description given," their descriptions were "substantially the same, and coincided in the discernible factors (race, sex, build, number)."[20]

Similarly, in *People* v. *Lynette G.* the court ruled that the detentions of four teenage girls were lawful mainly because "[f]our girls had been at the scene of the robbery; four girls ran away together; four girls were seen together, shortly after the robbery and in its immediate vicinity; three of the girls admittedly fitted the description of three [perpetrators]."[21]

DISCREPANCIES: The courts understand that witnesses may inadvertently provide officers and 911 operators with inaccurate descriptions of suspects and their cars.[22] As the Court of Appeal observed, "Crime victims often have limited opportunity for observation; their reports may be hurried, perhaps garbled by fright or shock. More garbling may occur as the information is relayed to the police broadcaster and from the broadcaster to the field."[23]

The courts also know that some discrepancies in the colors of cars and clothing will occur naturally, especially at night. As the D.C. Circuit pointed out:

> [I]t is easy to imagine confusing a dark blue-and-white car for a black-and-white car after night has fallen. This much will be obvious to anyone who has dressed before daybreak and arrived at the office wearing mismatched socks.[24]

For these reasons, officers may allow room for the types of discrepancies they have come to expect. "It is enough," said the Court of Appeal, "if there is an adequate conformity between the description and fact to indicate to *reasonable* officers that detention and questioning are necessary to the proper discharge of their duties."[25] Here are some examples of discrepancies that were deemed insignificant:

- 1970 Oldsmobile ith license 276AFB was described as a 1965 Oldsmobile or Pontiac with license 276ABA[26]
- Cadillac with license 127AOQ was described as a Cadillac with license 107AOQ[27]
- 1959 Cadillac with license XQC335 described as a 1958 or 1959 Cadillac with a partial plate OCX[28]
- two-door car was described as a four-door[29]
- green car was described as gray[30]
- silver van was described as light blue[31]
- white 1961 Chevy with four occupants described as a white 1962 Chevy with three occupants[32]
- black-over-gold Cadillac was described as a light brown vehicle, maybe a Chevy[33]

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[18] See *People* v. *Joines* (1970) 11 Cal.App.3d 259, 263 [two perpetrators and two suspects "narrowed the chance of coincidence."]; *People* v. *Soun* (1995) 34 Cal.App.4th 1499, 1518 [six perpetrators, six suspects in car].
[19] (1985) 173 Cal.App.3d 1168, 1174.
[20] (1978) 86 Cal.App.3d 906, 911.
[21] (1976) 54 Cal.App.3d 1087, 1092.
[22] See *U.S.* v. *Abdus-Price* (D.C. Cir. 2008) 518 F.3d 926, 930.
[23] *People* v. *Smith* (1970) 4 Cal.App.3d 41, 48.
[24] *U.S.* v. *Abdus-Price* (D.C. Cir. 2008) 518 F.3d 926, 930.
[25] *People* v. *Smith* (1970) 4 Cal.App.3d 41, 48-9.
[26] *People* v. *Jones* (1981) 126 Cal.App.3d 308, 313-4.
[27] *People* v. *Weston* (1981) 114 Cal.App.3d 764, 775, fn.5.
[28] *People* v. *Watson* (1970) 12 Cal.App.3d 130, 134-5.
[29] *People* v. *Brooks* (1975) 51 Cal.App.3d 602, 605.
[30] *People* v. *Adams* (1985) 175 Cal.App.3d 855, 861.
[31] *People* v. *Bittaker* (1989) 48 Cal.3d 1046, 1076.
[32] *People* v. *Smith* (1970) 4 Cal.App.3d 41, 48.
[33] *People* v. *Rico* (1979) 97 Cal.App.3d 124, 132.

Still, some disparities may be too substantial to ignore. For example, in *Williams* v. *Superior Court*[34] the court ruled the detention of a robbery suspect was plainly unlawful because he was 20 years older and five inches taller than the perpetrator.

It should also be noted that the courts will not uphold a detention or arrest that resulted from an officer's failure to remember significant descriptive details that were disseminated over the police radio or during briefing. Thus, the California Court of Appeal observed:

> While officers should not be held to absolute accuracy of detail in remembering the numerous crime dispatches broadcast over police radio, [a]n investigative detention premised upon an officer's materially distorted recollection of the true suspect description is [unlawful].[35]

As for detentions that occur just after the crime was committed, two other things should be noted about discrepancies. First, even though no one saw a getaway car, officers may usually infer that the perpetrators used one. Thus, if the suspect was inside a vehicle when he was detained or arrested, the fact that the perpetrator was last seen on foot is not necessarily a discrepancy.[36]

Second, because victims and witnesses might not have seen all the perpetrators, a variation between the number of perpetrators and suspects is not considered significant.[37]

Suspect's Location

The courts have consistently ruled that officers may not detain or arrest a person merely because he was at or near a public place in which criminal activity is prevalent.[38] Still, the suspect's location can become highly relevant when considered in light of other circumstances. In the words of the U.S. Supreme Court, "[O]fficers are not required to ignore the relevant characteristics of a location in determining whether the circumstances are sufficiently suspicious to warrant further investigation."[39]

NEAR THE CRIME SCENE: A person's presence at or near the scene of a crime—whether shortly before, during, or just after the crime occurred—becomes highly relevant if there was some independent reason to suspect him. Here are some examples:

- The suspect was the only pedestrian in the vicinity of the burglary that occurred ten minutes earlier, and his explanation of why he was in the area was unbelievable.[40]
- A burglary in progress call at 3 A.M. Although no suspect or vehicle description was given, an officer stopped a car leaving the area less than two minutes later because there were no other cars or pedestrians in the area.[41]
- Officers who had just heard gunshots from less than a block away stopped a car leaving the area at a "relatively fast pace."[42]

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[34] (1985) 168 Cal.App.3d 349, 360. ALSO SEE *People* v. *Johnson* (1990) 220 Cal.App.3d 742, 750 [six inch height discrepancy].
[35] *Williams* v. *Superior Court* (1985) 168 Cal.App.3d 349, 361.
[36] See *People* v. *Anthony* (1970) 7 Cal.App.3d 751, 761 ["It is a well-known fact that automobiles are frequently a facility for the perpetration of crime and an aid in the escape of criminals."]; *People* v. *Overten* (1994) 28 Cal.App.4th 1497, 1505 ["Law enforcement can reasonably anticipate that a car will be employed to facilitate escape from a crime scene regardless whether one was reported."]; *People* v. *Joines* (1970) 11 Cal.App.3d 259, 263 ["That there was an automobile with an apparent 'get-away' driver was to be expected even though it had been reported that the [robbery] suspects had fled the crime scene on foot."].
[37] See *People* v. *Coffee* (1980) 107 Cal.App.3d 28, 33-4 ["[I]t is a matter of common knowledge that holdup gangs often operate in varying numbers and combinations, and the victim of a robbery does not always see all of the participants."]; *People* v. *Chandler* (1968) 262 Cal.App.2d 350, 354 ["It is common knowledge that frequently, perhaps more often than not, where an automobile is used as a robbery getaway car, one or more persons remain in the vehicle."].
[38] See *Brown* v. *Texas* (1979) 443 U.S. 47, 52 ["[T]hat appellant was in a neighborhood frequented by drug users, standing alone, is not a basis for concluding that appellant himself was engaged in criminal conduct."]; *Ybarra* v. *Illinois* (1979) 444 U.S. 85, 91.
[39] *Illinois* v. *Wardlow* (2000) 528 U.S. 119, 124. ALSO SEE *United States* v. *Brignoni-Ponce* (1975) 422 U.S. 873, 884 ["Officers may consider the characteristics of the area in which they encounter a vehicle."]; *People* v. *Souza* (1994) 9 Cal.4th 224, 240 ["An area's reputation for criminal activity is an appropriate consideration in assessing whether an investigative detention is reasonable under the Fourth Amendment."]; *U.S.* v. *Diaz-Juarez* (9th Cir. 2002) 299 F.3d 1138, 1142 ["While Diaz's presence in a high-crime area cannot alone provide reasonable suspicion [the officer] could consider this fact in forming reasonable suspicion."].
[40] *People* v. *Juarez* (1973) 35 Cal.App.3d 631, 635 ["Presence in the general area of a recent burglary accompanied by an explanation of doubtful veracity constitutes cause to [detain]."].
[41] *People* v. *Conway* (1994) 25 Cal.App.4th 385, 390.
[42] *U.S.* v. *Bolden* (5th Cir. 2007) 508 F.3d 204, 206.

- At about 12:45 A.M., officers detained a man two blocks from the scene of a murder that had just occurred; the man's description matched that of the killer by age, race, height, build, and jacket.[43]

ON A LOGICAL ESCAPE ROUTE: Officers may be able to predict a perpetrator's escape route based on their training, experience, and knowledge of traffic patterns in the area. If so, it would be significant that the suspect was traveling along that route if his distance from the crime scene and the elapsed time were consistent with flight by the perpetrator.[44] Some examples:

- At about 4 A.M. two men robbed a gas station in Long Beach. Two officers "proceeded to a nearby intersection, a vantage point which permitted them to survey the street leading from the crime scene to a freeway entrance, a logical escape route." A few minutes later they saw a car traveling on the street and it was occupied by two men who fit the description of the robbers.[45]
- At about 3 A.M., within a few minutes after a gas station was robbed in Santa Ana, an officer spotted a car "in the immediate vicinity"; it was the only car he saw, and it was "traveling away from the scene of the crime on a likely escape route."[46]
- At about 8 P.M. two men robbed a motel in Coronado, which is an island in San Diego Bay with only two bridges. The police radio transmitted a very general description of the suspects, but no vehicle description. Within minutes, an officer who was watching one of the bridges saw a car occupied by two men, and they matched the general description.[47]
- Just after a gang-related drive-by shooting, LAPD officers found the perpetrators' vehicle abandoned. They had reason to believe that the occupants fled on foot. A gang officer figured the shooters would return to their neighborhood "by a route which avoided the territories of rival and hostile gangs," and he knew their "most logical route." Along that route, he detained several young men who were wearing the colors of the perpetrators' gang.[48]

WITHIN PERIMETER: A suspect's presence within a police perimeter is relevant, especially if the perimeter was fairly tight, and it was set up quickly after the crime occurred. Thus, in *People* v. *Rivera* the court ruled that officers had probable cause to arrest two men suspected of having just broken into an ATM machine because, among other things, the officers "had given chase and kept the suspects under almost continuous observation. [The arresting officer] knew that 10 surveillance units and at least 10 other patrol cars, with their lights flashing, had formed a perimeter to contain the suspects."[49]

HIGH CRIME AREA: The term "high crime area" is commonly used to describe a neighborhood or beat in which criminal activity is prevalent. But because most of the people who live in these areas are law-abiding citizens, a person's presence there does not qualify as a significant circumstance. Said the Court of Appeal, "It is true, unfortunately, that today it may be fairly said that our entire nation is a high crime area where narcotic activity is prevalent. Therefore, such factors, standing alone, are not sufficient to justify interference with an otherwise innocent-appearing citizen."[50]

Still, a suspect's presence in a such a place will become highly relevant if he was engaging in conduct that is associated with the particular type of criminal activity that is prevalent there.[51] As the court explained in *People* v. *Limon,* "While a person cannot be detained for mere presence in a high crime area without more, this setting is a factor that can lend meaning to the person's behavior."[52] Or, to

[43] *People* v. *Atmore* (1970) 13 Cal.App.3d 244, 246.
[44] See *People* v. *Jones* (1981) 126 Cal.App.3d 308, 314 [suspect was "traveling in a direction consistent with escape from the scene"]; *People* v. *McCluskey* (1981) 125 Cal.App.3d 220, 226-7 ["the suspect's car was traveling in a direction consistent with the suspect's involvement in the robbery"]; *People* v. *Chandler* (1968) 262 Cal.App.3d 350, 354 [suspect's car "was traveling away from the robbery on one of the nearest available exits from [the crime scene]."]; *U.S.* v. *Burhoe* (1st Cir. 2005) 409 F.3d 5, 10.
[45] *People* v. *Joines* (1970) 11 Cal.App.3d 259, 262-5.
[46] *People* v. *Anthony* (1970) 7 Cal.App.3d 751, 761.
[47] *People* v. *Overten* (1994) 28 Cal.App.4th 1497, 1505.
[48] *People* v. *Superior Court (Price)* (1982) 137 Cal.App.3d 90, 96.
[49] (1992) 8 Cal.App.4th 1000, 1009.
[50] *People* v. *Holloway* (1985) 176 Cal.App.3d 150, 155. ALSO SEE *Maryland* v. *Buie* (1990) 494 U.S. 325, 334, fn.2.
[51] See *U.S.* v. *Cortez* (1981) 449 U.S. 411, 419; *U.S.* v. *Arvizu* (2002) 534 U.S. 266, 277.
[52] (1993) 17 Cal.App.4th 524, 532.

put it another way, "[T]he character of the area in terms of the officer's familiarity with activities there and the right time factor combine to provide the environment in which conduct of the defendant must be judged."[53]

For example, if drugs are commonly sold on the street in the area, it would be highly relevant that officers saw the suspect engaging in hand-to-hand transactions, or flagging down cars, or doing any of the other things that drug sellers in the area commonly do.[54] Thus, in *People* v. *Michael S.*, the court upheld the detention of a suspected auto burglar mainly because he was in an area in which officers had received "many complaints" of vehicle tampering, and the officers saw him "secreted or standing between two parked cars, looking first into one and then into the other as if examining them."[55]

Reaction to Seeing Officers

Criminals tend to get jumpy when they see an officer or a patrol car. So when officers spot someone reacting in such a manner, they view it as a suspicious circumstance. The courts do, too—but with one reservation: there must have been reason to believe the reaction was, in fact, a response to seeing the officer (and not everyday jumpiness). As the court explained in *People* v. *Huntsman*, "Absent a showing the citizen should reasonably know that those who are approaching are law enforcement officers, no reasonable inference of criminal conduct may be drawn."[56]

In most cases, this requirement can be satisfied if, (1) the reaction occurred immediately after the suspect looked in the officers' direction; and (2) the officers were in a patrol car,[57] or they were wearing a standard uniform,[58] or nonstandard but clearly identifiable departmental attire.[59]

If, however, the officers were in plainclothes or in an unmarked car, the relevance of the suspect's reaction will depend on whether there was sufficient reason to believe he had recognized them.[60] For example, in *People* v. *Huntsman* the court ruled that the defendant's flight from officers was not significant because the officers "were in plain clothes and were driving an unmarked car at night." It appeared, said the court, that "the unmarked car served its intended purpose of disguising the law enforcement identities of its occupants."[61]

In addition to marked and unmarked cars, there are semi-marked cars. These are vehicles with some exposed equipment or other markings that most people—especially crooks—can spot in an instant. In fact, the Court of Appeal has pointed out that some of these cars are "about as inconspicuous as three bull elephants in a backyard swimming pool."[62]

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[53] (1981) 121 Cal.App.3d 239, 245.
[54] See *People* v. *Frederick B.* (1987) 192 Cal.App.3d 79, 86 ["The crucial circumstances were the passing of money and the area in which it occurred. The abstract innocence of the former was transformed by the latter"]; *People* v. *Mims* (1992) 9 Cal.App.4th 1244, 1250 [officer saw "an attempted exchange of money for a plastic bag in an area known to him for street drug transactions"]; *U.S.* v. *Lane* (6th Cir. 1990) 909 F.2d 895, 898 ["The officers were aware that the specific apartment building they were entering had been a problem location for unauthorized persons and drug trafficking."]; *People* v. *Ramirez* (1996) 41 Cal.App.4th 1608, 1619 ["the location of the detention was one of the known high-volume narcotics dealing areas of the city"]; *U.S.* v. *Brown* (7th Cir. 1999) 188 F.3d 860, 865 ["[T]he exchange took place in a high crime area where there had been drug activity, shootings, and gang violence."]; *U.S.* v. *McCoy* (4th Cir. 2008) 513 F.3d 405, 413 [the conduct was consistent with "typical drug transactions" in grocery store parking lot].
[55] *People* v. *Michael S.* (1983) 141 Cal.App.3d 814, 816.
[56] (1984) 152 Cal.App.3d 1073, 1091. ALSO SEE *People* v. *Conley* (1971) 21 Cal.App.3d 894, 899 ["[T]he rationale of the furtive gesture doctrine applies only where the gesture is made in response to seeing an approaching police officer"]; *U.S.* v. *Johnson* (D.C. Cir. 2000) 212 F.3d 1313, 1316 [furtive gestures "are significant only if they were undertaken in response to police presence"].
[57] See *People* v. *Huntsman* (1984) 152 Cal.App.3d 1073, 1091 ["A crucial ingredient of the inferential chain is that the citizen knows that those who are approaching are, in fact, police officers, either because they are driving marked cars or are wearing uniforms."].
[58] See *U.S.* v. *Miller* (1st Cir. 1978) 589 F.2d 1117, 1123, fn.1 [suspect "accelerated rapidly" when he saw the unmarked car which had a "flashing light," and the deputy was in uniform].
[59] See *U.S.* v. *Dykes* (D.C. Cir 2005) 406 F.3d 717, 718 [officers wore "multiple items of identification"].
[60] See *U.S.* v. *Johnson* (D.C. Cir. 2000) 212 F.3d 1313, 1316 ["[I]t is not clear that Johnson was aware that Fulton was a police officer; Fulton was after all in an unmarked car."].
[61] (1984) 152 Cal.App.3d 1073, 1091. ALSO SEE *Wong Sun* v. *United States* (1963) 371 U.S. 471, 482.
[62] *Flores* v. *Superior Court* (1971) 17 Cal.App.3d 219, 224.

Still, when officers are testifying at a hearing on a motion to suppress evidence they must be able to prove that they reasonably believed the defendant had identified their car. This might be accomplished by describing in detail the various police markings and equipment that were readily visible, such as the car's make (e.g., the conspicuous Ford Crown Victoria), coloring (e.g., basic black or white), "exempt" license plates, and equipment (e.g., push bar, spotlights, LED dash light, antennas, exposed shotgun, exposed computer monitor, back seat cage). Thus, in *U.S.* v. *Nash* the court ruled that an officer's semi-marked car "clearly was identifiable as a police car. It was a dark blue Dodge equipped with several antennae and police lights on the rear shelf."[63]

Another indication that the suspect recognized the officers or their car is that he immediately fled or otherwise responded in a manner consistent with that of a criminal who had just seen something ominous. (Thus, the reactions we discuss in the rest of this section are not only suspicious, they help prove that the suspect had identified the officers.)

An example is found in *Florida* v. *Rodriguez*[64] where two Dade County plainclothes officers spotted three suspected drug traffickers at the Miami International Airport. According to the Supreme Court, when the officers started following them, one of the suspects "looked back and saw the detectives," after which he "spoke in a lower voice" to the others who quickly "turned around and looked directly at the detectives." Then, as if there was any remaining doubt, one of the suspects said, "Let's get out of here," and another "uttered a vulgar exclamation."

Similarly, in *Flores* v. *Superior Court*[65] three officers in an "undercover" car saw Flores walking away from a public restroom, and they noticed he was holding something that looked like a "narcotics kit." Just then, he looked at the car, at which point he "abruptly changed direction" and, in a "very clandestine" manner, moved the object from one hand to the other. "By this time" said the court, "there is obviously no question in the defendant's mind as to who the three gentlemen in the car were."

Assuming that it reasonably appeared that the suspect recognized the officers, the question arises: What types of responses are considered significant?

Running from officers

To run from officers is one of the strongest nonverbal admissions of guilt a suspect can make. As the United States Supreme Court observed, "Headlong flight—wherever it occurs—is the consummate act of evasion; it is not necessarily indicative of wrongdoing, but it is certainly suggestive of such."[66] Or, in the words of the Court of Appeal:

> An inference that an individual is engaging or has just engaged in criminal conduct may be drawn where that individual, knowing that police are approaching, flees or engages in other activity indicative of an effort to avoid apprehension or police contact.[67]

Still, a person's flight will not justify a stop—something more is required. In fact, the courts have coined the term "flight *plus*" to express this requirement.[68] How much more is required? Not much, as some of the following examples illustrate:

- The suspect had been standing next to a building in a high drug area when he ran.[69]
- When District of Columbia officers in unmarked cars entered a parking lot in an area "known for heavy narcotics trafficking," the suspect began to walk off. Then, when he saw the officers get out of their cars, he ran away "at a fast pace."[70]
- Two men walking down a street in Modesto at 3:30 A.M. were carrying backpacks "stuffed with objects." When they saw the officers, they ran.[71]
- At 4 A.M., an officer on a prowler call in Signal Hill saw a man emerge from a dark area between a home and a plastics company. When the man saw the officer, he ran.[72]

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[63] (7th Cir. 1989) 876 F.2d 1359, 1360.
[64] (1984) 469 U.S. 1.
[65] (1971) 17 Cal.App.3d 219.
[66] *Illinois* v. *Wardlow* (2000) 528 U.S. 119, 124. ALSO SEE *California* v. *Hodari* (1991) 499 U.S. 621, 623, fn.1.
[67] *People* v. *Mims* (1992) 9 Cal.App.4th 1244, 1249.
[68] See *People* v. *Souza* (1994) 9 Cal.4th 224, 235-6; *People* v. *Britton* (2001) 91 Cal.App.4th 1112, 1118.
[69] *Illinois* v. *Wardlow* (2000) 528 U.S. 119, 124.
[70] *U.S.* v. *Dykes* (D.C. Cir. 2005) 406 F.3d 717.
[71] *Crofoot* v. *Superior Court* (1981) 121 Cal.App.3d 717, 724.
[72] *People* v. *Superior Court (Johnson)* (1971) 15 Cal.App.3d 146.

- An officer in Hawthorne responded to a report of a residential burglary in which the perpetrator had fled three to five minutes earlier. About a block from the house, he saw a man who matched the general description of the burglar. The man ran when the officer called to him.[73]
- At 3 A.M., an officer on patrol in a "high crime" area in Watsonville saw a man talking to the occupants of a car that was parked in an area of "almost complete darkness." When the officer shined his spotlight at the vehicle, the two occupants "bent down toward the floorboard" and the man "took off running."[74]

Also note that if officers already have grounds to detain the suspect, his flight may convert reasonable suspicion into probable cause.[75] As the court noted in *People* v. *Mendoza*, "An individual who chooses to run from an officer under suspicious circumstances may by that act provide probable cause to detain or arrest."[76] Furthermore, if there are grounds to detain a suspect, his flight may provide officers with probable cause to arrest him for obstructing an officer in the discharge of his duties.[77]

Attempting to hide from officers

Like flight, a person's attempt to hide from officers is a highly suspicious circumstance, even if the attempt was inept.[78] In the words of the U.S. Court of Appeals, "[S]louching, crouching, or any other arguably evasive movement, when combined with other factors particular to the defendant or his vehicle, can add up to reasonable suspicion."[79] Some examples:

- When the suspect saw LAPD officers driving by, he "stepped behind a large dumpster" and then "continued to move around it in such a fashion that he blocked himself from the officers' view."[80]
- When their car was spotlighted, "two people in the front seat immediately bent down toward the floorboard."[81]
- When officers spotlighted a car full of teenagers at 3:30 A.M., one of them "ducked down in the front seat and put his arm up over his head bringing his jacket with it trying to shield himself from the view of the officers."[82]
- The suspect "was crouched down right at the door of a darkened residence" at 2 A.M.[83]

Attempting to avoid officers

Although not as suspicious as an obvious attempt to hide from officers, it is relevant that a suspect attempted to avoid them by, for example, suddenly changing direction or ducking into a store or other building. In the words of the Third Circuit, "Walking away from the police hardly amounts to the headlong flight considered [highly suspicious by the United States Supreme Court] and of course would not give rise to reasonable suspicion by itself, even in a high-crime area, but it is a factor that can be considered in the totality of the circumstances."[84] For example, the following reactions were considered noteworthy:

- When two suspected drug dealers looked at a Riverside County sheriff's patrol car that was approaching, they "started walking away in different directions."[85]

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[73] *People* v. *Rafael V.* (1982) 132 Cal.App.3d 977, 982-3.
[74] *People* v. *Souza* (1994) 9 Cal.4th 224, 240.
[75] See *Sibron* v. *New York* (1968) 392 U.S. 40, 66-7; *People* v. *Messervy* (1985) 175 Cal.App.3d 243, 247; *People* v. *DeCosse* (1986) 183 Cal.App.3d 404, 411; *People* v. *Hill* (1974) 12 Cal.3d 731, 749; *People* v. *Guy* (1980) 107 Cal.App.3d 593, 598.
[76] (1986) 176 Cal.App.3d 1127, 1131.
[77] See Pen. Code § 148; *People* v. *Allen* (1980) 109 Cal.App.3d 981, 987 ["[Running and hiding] caused a delay in the performance of Officer Barron's duty."]; *People* v. *Johnson* (1991) 231 Cal.App.3d 1, 13, fn. 2 ["Given their right to forcibly detain, California precedent arguably would have allowed the officers to *arrest* for flight which unlawfully delayed the performance of their duties."].
[78] See *Illinois* v. *Wardlow* (2000) 528 U.S. 119, 124; *United States* v. *Brignoni-Ponce* (1975) 422 U.S. 873, 885.
[79] *U.S.* v. *Woodrum* (1st Cir. 2000) 202 F.3d 1, 7.
[80] *People* v. *Michael S.* (1983) 141 Cal.App.3d 814, 816.
[81] *People* v. *Souza* (1994) 9 Cal.4th 224, 240.
[82] *People* v. *Jonathan M.* (1981) 117 Cal.App.3d 530, 535. ALSO SEE *People* v. *Overten* (1994) 28 Cal.App.4th 1497, 1504.
[83] *U.S.* v. *Holmes* (D.C. Cir. 2004) 360 F.3d 1339, 1345.
[84] *U.S.* v. *Valentine* (3rd Cir. 2000) 232 F.3d 350, 357 [referring to *Illinois* v. *Wardlow* (2000) 528 U.S. 119].
[85] *People* v. *Boissard* (1992) 5 Cal.App.4th 972, 975. ALSO SEE *Florida* v. *Rodriguez* (1984) 469 U.S. 1, 6.

- As a murder suspect drove up to his girlfriend's house and started to pull into the driveway, he apparently saw that Contra Costa County sheriff's deputies were there, at which point he backed up into the street and took off.[86]
- At 4 A.M. a man was standing next to a business in which a silent alarm had been triggered; when officers arrived, he walked away.[87]
- After engaging in an apparent hand-to-hand drug transaction in San Bernardino, the suspect looked at the approaching police car, changed his course of travel, and walked away.[88]
- The suspect was walking toward a pawnshop in downtown Los Angeles, "but on the visible interest of the police in his movements he reversed direction and went into a park."[89]
- When a DEA agent approached three suspected drug traffickers at LAX, one of them attempted to disassociate himself from the group; i.e., he "dropped back behind [the others] and changed his direction of movement."[90]

Sudden movement

Any sudden—almost instinctive—movement by a person upon spotting an officer might indicate that he views the officer as a threat, which is both ominous and suspicious. Said the Ninth Circuit, "We have considered sudden movements by defendants, or repeated attempts to reach for an object that was not immediately visible, as actions that can give rise to a reasonable suspicion that a defendant is armed."[91] Some examples:

- When Fremont officers approached the suspect, he "lunged forward" and thrust his hand into the pocket of a canvas bag at his feet.[92]
- As sheriff's deputies in Los Angeles County approached the suspect, he "reached into his right rear pocket and appeared to be trying to get something out, and it was a jerking motion as though he were trying desperately to get something out of his pocket."[93]
- When a suspected drug dealer turned toward an Oakland patrol car, he suddenly put his hand inside his jacket.[94]
- As LAPD officers made a traffic stop, the three men in the car simultaneously stepped out. Said one of the officers, "they all got out on us."[95]
- When a Sacramento County sheriff's deputy made a car stop on a suspected burglar, the suspect "got out of his car swiftly and walked quickly toward the squad car before the officer had the chance to get out of his car."[96]
- As District of Columbia police officers pulled up to a car in which a suspected drug dealer was sitting, the suspect "looked shocked, fumbled with the [vehicle's] door, and attempted to dart out of the car.[97]

Trying to hide or discard something

When a suspect tries to hide or discard something when he sees officers, it may be reasonable to believe that the object is a weapon, drugs, or other incriminating evidence.[98] Although this is not the type of response that will automatically establish probable cause or even reasonable suspicion, it is highly suspicious. As the court observed in *People* v. *Holloway,* "The appearance of a police officer, even when unexpected, would not lead an innocent citizen to attempt to hurl his personal property into the night."[99] Here are some examples:

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[86] *People* v. *Turnage* (1975) 45 Cal.App.3d 201, 205.
[87] *People* v. *Lloyd* (1992) 4 Cal.App.4th 724, 734; *People* v. *Smith* (1981) 120 Cal.App.3d 282, 288 ["hurried exit" from car].
[88] *Flores* v. *Superior Court* (1971) 17 Cal.App.3d 219, 224.
[89] *People* v. *Manis* (1969) 268 Cal.App.2d 653, 660.
[90] *People* v. *Profit* (1986) 183 Cal.App.3d 849, 882.
[91] *U.S.* v. *Flatter* (9th Cir. 2006) 456 F.3d 1154, 1158.
[92] *People* v. *Flores* (1979) 100 Cal.App.3d 221, 226.
[93] *People* v. *Superior Court (Holmes)* (1971) 15 Cal.App.3d 806, 808-9.
[94] *People* v. *Lee* (1987) 194 Cal.App.3d 975, 983.
[95] *People* v. *Hubbard* (1970) 9 Cal.App.3d 827, 830.
[96] *U.S.* v. *Mattarolo* (9th Cir. 1999) 191 F.3d 1082, 1087.
[97] *U.S.* v. *Johnson* (D.C. Cir. 2008) 519 F.3d 478.
[98] See *People* v. *Stokes* (1990) 224 Cal.App.3d 715, 720; *People* v. *Banks* (1990) 217 Cal.App.3d 1358; *People* v. *Allen* (2000) 78 Cal.App.4th 445, 450; *People* v. *Limon* (1993) 17 Cal.App.4th 524, 533.
[99] (1985) 176 Cal.App.3d 150, 156. Edited.

- Officers saw several men looking at a TV set inside the trunk of a car. When the men looked at the officers, one of them slammed the trunk shut and they started to walk away.[100]
- As the suspect was looking for vehicle registration in the glove box, he "shielded the interior with his left hand."[101]
- A suspected drug dealer who had been detained kept his left hand hidden from the officer.[102]
- The suspect held his hands "clasped together in front of a bulge in the waistband in the middle of his waist."[103]
- The suspect "was keeping his right side turned from the officer's view and appeared to have his right hand in his jacket pocket."[104]

Furtive gestures

A "furtive gesture" is similar to an attempt to hide or discard an object except it is not quite as obvious, which means it is not quite as suspicious. Still, it is a relevant circumstance that is frequently noted by the courts.[105] Some examples:

- When a known drug user spotted an officer, he "moved his hand down to his right front pants pocket," like a "kid with his hand caught in the cookie jar."[106]
- When a suspected drug seller saw the officers, he quickly made a "hand-to-mouth movement, as though secreting drugs."[107]
- When officers initiated a traffic stop, the driver "appeared to shuffle the upper portion of his body abnormally, as though he were grabbing something on the front seat."[108]
- As an officer approached a car he had stopped for a traffic violation, he saw the driver reach under the driver's seat, at which point he heard the sound of "metal on metal."[109]
- A passenger in a car stopped for a traffic violation "lifted himself up from the seat with both arms in his rear portion of his body behind his back, both arms went up and down rapidly."[110]
- When officers ordered a detainee to put his hands outside the car window, he "reached back inside the car toward his waistband."[111]
- The suspect turned away from officers when they said they had a search warrant.[112]

Nervousness

Criminals tend to become nervous when an officer is nearby, even if they're not doing anything illegal at the moment. Consequently, a suspect's nervousness is a circumstance that the courts will take into account.[113]

But the courts also know that law-abiding people sometimes get nervous when an officer approaches. As the Eighth Circuit observed, "[B]ecoming nervous when one is confronted by officers of the law is not an uncommon reaction."[114] As a result, the

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[100] *People* v. *Gravatt* (1971) 22 Cal.App.3d 133, 137.
[101] *People* v. *Joines* (1970) 11 Cal.App.3d 259, 264. ALSO SEE *U.S.* v. *Burnette* (9th Cir. 1983) 698 F.2d 1038, 1048 [as the suspect was looking in her purse for ID, she "attempted to obstruct [the officer's] view"].
[102] *People* v. *Butler* (2003) 111 Cal.App.4th 150.
[103] *People* v. *Superior Court (Brown)* (1980) 111 Cal.App.3d 948, 956.
[104] *People v. Glenn R.* (1970) 7 Cal.App.3d 558.
[105] See *People* v. *Guy* (1980) 107 Cal.App.3d 593, 598; *People* v. *Guajardo* (1994) 23 Cal.App.4th 1738, 1742.
[106] *People* v. *Gonzales* (1989) 216 Cal.App.3d 1185, 1189.
[107] *People* v. *Johnson* (1991) 231 Cal.App.3d 1, 12.
[108] *People* v. *Superior Court (Vega)* (1969) 272 Cal.App.2d 383, 387.
[109] *People* v. *King* (1989) 216 Cal.App.3d 1237, 1240.
[110] *People* v. *Clayton* (1970) 13 Cal.App.3d 335.
[111] *U.S.* v. *Price* (D.C. Cir. 2005) 409 F.3d 436, 442.
[112] *People* v. *Valdez* (1987) 196 Cal.App.3d 799, 806.
[113] See *Illinois* v. *Wardlow* (2000) 528 U.S. 119, 124 ["Our cases have recognized that nervous, evasive behavior is a pertinent factor in determining reasonable suspicion."]; *People* v. *Russell* (2000) 81 Cal.App.4th 96, 103.
[114] *U.S.* v. *White* (8th Cir. 1989) 890 F.2d 1413, 1418. ALSO SEE *People* v. *Lawler* (1973) 9 Cal.3d 156, 162 ["Defendant's nervousness could understandably result from extended police questioning because of a traffic violation"]; *U.S.* v. *Wood* (10th Cir. 1997) 106 F.3d 942, 948 ["It is certainly not uncommon for most citizens—whether innocent or guilty—to exhibit signs of nervousness when confronted by a law enforcement officer."]; *U.S.* v. *Walker* (10th Cir. 1991) 933 F.2d 812, 817, fn.3 ["The general term 'nervousness' encompasses an almost infinite variety of behaviors."].

courts do not consider nervousness a significant circumstance unless it was extreme or unusual.[115] For instance:

- his hands "were shaking, his voice was cracking, he could not sit still, and his heart was beating so fast that [the officer] was able to see his chest jerk"[116]
- "visibly trembling"[117]
- the officer "noticed that [the suspect] appeared to be startled by him, had a 'look of fear in his eyes' and then quickly looked away"[118]
- "extreme nervousness, profuse shaking"[119]
- "perspiring, swallowing and breathing heavily, and constantly moving his feet or fingers"[120]
- "his face started to turn pale, his hands began to shake, and he did not take his eyes off of [the officer]"[121]
- "he kept looking around as he approached the patrol car, appearing nervous and anxious to leave the area"[122]

"Let's get out of here!"

When two or more people are committing a crime and one of them spots an officer, it is considered an appropriate time to panic. For that reason, the courts have ruled that panicky reactions such as the following were highly relevant: "Jesus Christ, the cops,"[123] "Let's get out of here,"[124] "Run, it's the narcs,"[125] "Police!"[126] "Rollers!"[127] "Oh shit. Don't say anything,"[128] "The man is across the street."[129]

These types of warnings are even more suspicious when they are immediately followed by some physical response; e.g., group disperses,[130] two men involved in a hand-to-hand exchange suddenly put their hands in their pockets.[131]

Extreme attention to officers

Merely looking at an officer or patrol car hardly qualifies as a suspicious circumstance. Thus, in *United States* v. *Moreno-Chaparro* the court pointed out that "in the ordinary case, whether a driver looks at an officer or fails to look at an officer, taken alone or in combination with other factors, should be accorded little weight."[132] But extreme or unusual attention to officers, such as the following, may be noteworthy:

- "The defendant upon seeing the [police] car did not give it the passing glance of the upright, law abiding citizen. His eyes were glued on that car. To him, it represented danger."[133]
- After officers red-lighted a car, the backseat passenger looked back several times at the patrol car and kept moving around.[134]
- Six suspects inside a moving vehicle all turned to look at the officer as they drove past him.[135]
- The suspects "stared intently at the officers." An officer said "it was just about 'eyeball contact' and explained that in his experience people who had shown that much attention to him . . . turned out to have been up to something."[136]

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[115] See *U.S.* v. *Chavez-Valenzuela* (9th Cir. 2001) 268 F.3d 719, 726; *U.S.* v. *Brown* (7th Cir. 1999) 188 F.3d 860, 865.
[116] *U.S.* v. *Williams* (10th Cir. 2005) 403 F.3d 1203, 1205.
[117] *U.S.* v. *Holzman* (9th Cir. 1989) 871 F.2d 1496, 1504.
[118] *People* v. *Fields* (1984) 159 Cal.App.3d 555, 564.
[119] *U.S.* v. *Hanlon* (8th Cir. 2005) 401 F.3d 926, 929.
[120] *U.S.* v. *Bloomfield* (8th Cir. 1994) 40 F.3d 910, 913.
[121] *People* v. *Brown* (1985) 169 Cal.App.3d 159, 162.
[122] *People* v. *Guajardo* (1994) 23 Cal.App.4th 1738, 1743.
[123] *People* v. *Bigham* (1975) 49 Cal.App.3d 73, 78.
[124] *Florida* v. *Rodriguez* (1984) 469 U.S. 1, 3.
[125] *Pierson* v. *Superior Court* (1970) 8 Cal.App.3d 510, 516.
[126] *People* v. *Mims* (1992) 9 Cal.App.4th 1244, 1250. ALSO SEE *Sanderson* v. *Superior Court* (1980) 105 Cal.App.3d 264, 271 ["Cops!"].
[127] *People* v. *Lee* (1987) 194 Cal.App.3d 975, 980.
[128] *People* v. *Vasquez* (1983) 138 Cal.App.3d 995, 999.
[129] *People* v. *Wigginton* (1973) 35 Cal.App.3d 732, 736.
[130] See *Florida* v. *Rodriguez* (1984) 469 U.S. 1, 3; *People* v. *Brown* (1990) 216 Cal.App.3d 1442, 1450.
[131] See *People* v. *Mims* (1992) 9 Cal.App.4th 1244, 1250.
[132] (5th Cir. 1999) 180 F.3d 629, 632.
[133] *Flores* v. *Superior Court* (1971) 17 Cal.App.3d 219, 224. ALSO SEE *People* v. *Harris* (1980) 105 Cal.App.3d 204, 212.
[134] *People* v. *Hunter* (2005) 133 Cal.App.4th 371, 379, fn.5.
[135] *People* v. *Soun* (1995) 34 Cal.App.4th 1499, 1513.
[136] *People* v. *Joines* (1970) 11 Cal.App.3d 259, 263.

A suspect's obvious attempt to ignore officers or pretend that he did not see them may also be somewhat suspicious.[137] The fact that the suspect reacted by making, or failing to make, eye contact with an officer is, if anything, only marginally relevant.[138]

"Suspicious" Activity

Officers sometimes see people doing things that, although not illegal, are suspicious. As the Court of Appeal observed, "Experienced police officers naturally develop an ability to perceive the unusual and suspicious which is of enormous value in the difficult task of protecting the security and safety of law-abiding citizens."[139]

The courts will not, however, uphold a detention merely because an officer testified that the defendant's actions were "unusual" or "suspicious." Instead, they need to know exactly what he did and why it appeared significant.[140]

EXCESSIVE LOOKING AROUND: People who are committing a crime, or who are about to, tend to look around a lot to see if anyone is watching. This is especially true of drug dealers. As the court noted in *Flores* v. *Superior Court*, "Those involved in the narcotics trade are a skittish group—literally hunted animals to whom everyone is an enemy until proven to the contrary."[141] Consequently, activities such as the following have been considered noteworthy:

- A suspected drug dealer "scouted the area before entering the apartment."[142]
- The suspect "loitered about" and "looked furtively in all directions."[143]
- The suspect "alighted from the vehicle and looked around apprehensively for quite some period of time."[144]
- Two men who had just left a jewelry store (after robbing it) kept looking back at the store.[145]

Note, however, that because many innocent people are "skittish," or at least vigilant, a suspect's watchfulness ordinarily becomes a factor only in light of the surrounding circumstances.

COUNTERSURVEILLANCE: Another common activity of vigilant criminals is countersurveillance, which generally consists of tactics that make it difficult for officers to follow them, or that force the officers to engage in detectable surveillance.[146]

For example, the Court of Appeal has noted that countersurveillance driving tactics "typically include driving slowly at less than the flow of traffic, making sudden and unsignaled changes in velocity and direction, as well as 'running' red traffic lights. Each of these tactics is designed to make unobserved surveillance very difficult."[147] Some examples:

- "The Lexus went to two addresses which the officers associated with drugs, and drove in and out of the parking lots of those buildings several times."[148]

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[137] See *United States* v. *Arvizu* (2002) 534 U.S. 266, 270 [driver, as he passed a patrol car, "appeared stiff and his posture very rigid. He did not look at [the officer] and seemed to be trying to pretend that [the officer] was not there."].

[138] See *U.S.* v. *Montero-Camargo* (9th Cir. 2000) 208 F.3d 1122, 1136 ["The skepticism with which [the eye-contact] factor is treated is in large part due to the fact that reliance upon 'suspicious' looks can so easily devolve into a case of damned if you do, equally damned if you don't."].

[139] *People* v. *Elisabeth H.* (1971) 20 Cal.App.3d 323, 327.

[140] See *Brown* v. *Texas* (1979) 443 U.S. 47, 52 ["[The officer] testified at appellant's trial that the situation in the alley 'looked suspicious,' but he was unable to point to any facts supporting that conclusion."].

[141] (1971) 17 Cal.App.3d 219, 223.

[142] *People* v. *Avalos* (1996) 47 Cal.App.4th 1569, 1577.

[143] *People* v. *Carrillo* (1995) 37 Cal.App.4th 1662, 1668.

[144] *People* v. *Moore* (1970) 13 Cal.App.3d 424, 431.

[145] *People* v. *Dolliver* (1986) 181 Cal.App.3d 49.

[146] See *People* v. *McNabb* (1991) 228 Cal.App.3d 462, 466 ["the conduct of suspect 3 was consistent with countersurveillance to make sure the police were not watching"]; *U.S.* v. *Del Vizo* (9th Cir. 1990) 918 F.2d 821, 826 [the suspects "frequently appeared to check whether they were being followed . . . all the while traveling in a counter-surveillance fashion"]; *U.S.* v. *Chavez-Miranda* (9th Cir. 2002) 306 F.3d 973, 978 ["[The suspect] employed counter-surveillance driving techniques, which we have recognized as being indicative of narcotics distribution."]; *U.S.* v. *Ocampo* (9th Cir. 1991) 927 F.2d 485, 490 ["[C]ounter-surveillance driving [is] indicative of narcotics distribution."]; *People* v. *Carvajal* (1988) 202 Cal.App.3d 487, 496 [the suspect "drove his truck in a highly unusual, apparently evasive manner immediately following the retrieval of several large, heavy boxes from a storage facility"].

[147] *People* v. *$497,590* (1997) 58 Cal.App.4th 145, 148.

[148] *U.S.* v. *Johnson* (8th Cir. 1995) 64 F.3d 1120, 1125.

- The suspect "pulled to the curb, allowing a surveillance unit to pass her vehicle. She drove to a residence after first going past it and making a U-turn."[149]
- The suspect "drove about the town, up and down side streets, making numerous U-turns, stopping, backing up, and finally arriving at the Ganesha Street property."[150]
- "[B]oth vehicles took evasive actions and started speeding as soon as [the officer] began following them in his marked car."[151]

CASING: It is highly relevant that the suspect was engaged in conduct that was consistent with casing a location for a robbery or burglary.[152]

"UNUSUAL" ACTIVITY: A detention may be based, at least in part, on activity that is "so unusual, so far removed from everyday experience that it cries out for investigation," even if "there is no specific crime to which it seems to relate;"[153] e.g., a man riding around on a bicycle, carrying an ax.[154]

HAND-TO-HAND EXCHANGES: A hand-to-hand exchange is not inherently suspicious. But it can become so in light of the surrounding circumstances and whether the officers could see the object that was exchanged. For example, probable cause will likely exist if officers were in an area where street sales of drugs were prevalent and they saw a suspect exchange money for an object that appeared to be drugs or a common container for drugs.[155]

If officers could not identify the object that was exchanged, the transaction may nevertheless be deemed suspicious if there were other circumstances that were indicative of a drug sale; e.g., just before the exchange, the seller retrieved the item from an apparent hiding place; or the suspects ran when they saw the officers.[156]

LATE NIGHT ACTIVITY: The fact that a suspect was on the street at a late hour is not, in and of itself, suspicious. But because certain crimes are often committed late at night—such as convenience store robberies and commercial burglaries—it would be suspicious that a person was hanging out in the vicinity of such a location. Some examples:

- 2:35 A.M.: An officer saw a man "exiting from darkened private property where valuable merchandise was located."[157]
- 11:40 P.M.: Officers saw three people inside a car that was parked "in front of a darkened home" in a neighborhood in which, over the past two months, two to three burglaries had occurred each week.[158]
- Midnight: An officer driving along a "dark" and "secluded" road saw an occupied pickup truck "nosed into the driveway of a fenced construction storage area," and there was a big box in the back of the truck.[159]
- 12:15 A.M.: Officers saw two men "peering" into the front window of a closed radio shop"; when they saw the officers, they started to walk away.[160]
- 3:20 A.M.: Officers were driving past a closed Wendy's restaurant when they saw a man "concealing himself behind the fence and peering out toward the street."[161]

Another crime that often occurs late at night is auto theft. According to the United States Department of Justice, more than 70% of car thefts take place between 6 P.M. and 6 A.M., and the majority of these occur after midnight. Taking note of these statistics, the California Supreme Court said in *People* v. *Souza*, "The time of night is another pertinent factor in assessing the validity of a detention. Here, the incident occurred at 3 A.M. At that late hour defendant

[149] *People* v. *Rodriguez-Fernandez* (1991) 235 Cal.App.3d 543, 546.
[150] *People* v. *Campbell* (1981) 118 Cal.App.3d 588, 592.
[151] *United States* v. *Sharpe* (1985) 470 U.S. 675, 682, fn.3.
[152] See *Terry* v. *Ohio* (1968) 392 U.S. 1, 23; *People* v. *Remiro* (1979) 89 Cal.App.3d 809, 828 [circumstances indicated "casing"].
[153] *People* v. *Foranyic* (1998) 64 Cal.App.4th 186, 190.
[154] *People* v. *Foranyic* (1998) 64 Cal.App.4th 186.
[155] See *People* v. *Garrett* (1972) 29 Cal.App.3d 535; *People* v. *Stanfill* (1985) 170 Cal.App.3d 420.
[156] See *People* v. *Limon* (1993) 17 Cal.App.4th 524, 532; *People* v. *Butler* (2003) 111 Cal.App.4th 150, 162.
[157] *People* v. *Allen* (1975) 50 Cal.App.3d 896, 901. ALSO SEE *People* v. *Holloway* (1985) 176 Cal.App.3d 150, 154-5 ["Three A.M. is both a late and unusual hour for anyone to be in attendance at an outdoor social gathering, particularly in a residential neighborhood where he does not reside."].
[158] *People* v. *Schoennauer* (1980) 103 Cal.App.3d 398, 407.
[159] *U.S.* v. *Mattarolo* (9th Cir. 1999) 191 F.3d 1982.
[160] *People* v. *Koelzer* (1963) 222 Cal.App.2d 20.
[161] *U.S.* v. *Thompson* (D.C. Cir. 2000) 234 F.3d 725, 729.

and his companion were standing in almost total darkness on a sidewalk next to a car parked in a residential area. These facts led Officer Stackhouse to suspect that an auto burglary might be progress. That suspicion was reasonable."[162]

Lies and Evasions

When a suspect lies, evades a question, gives conflicting statements, or tells unbelievable stories it is only natural to assume that the truth would land him in jail. As the Court of Appeal noted:

> Consciousness of guilt is shown by fabrications which, like devious alibis, are apparently motivated by fear of detection, or which, like devious explanations of the possession of stolen goods, suggest that there is no honest explanation for the incriminating circumstances.[163]

OUTRIGHT LIES: All lies are significant, but especially if they pertained to a material issue of guilt. Said the Court of Appeal, "Deliberately false statements to the police about matters that are within a suspect's knowledge and materially relate to his or her guilt or innocence have long been considered cogent evidence of consciousness of guilt."[164]

Although somewhat less incriminating, lies pertaining to peripheral or secondary issues are also inherently suspicious. The following are examples:

- suspect lied about his name, address, or DOB[165]
- suspect lied about where he was coming from[166]
- suspect lied about not having a car trunk key[167]
- suspect lied that he owned a certain car[168]
- suspect lied that the murder victim was his wife[169]
- suspect lied that he didn't know his accomplice[170]

SUSPECT GIVES CONFLICTING STATEMENTS: A suspect who is making up a story while being questioned will frequently give conflicting statements because he forgot what he said earlier. Again, this is especially incriminating if the conflict pertained to a material issue.[171] For example, in *People* v. *Memro* the California Supreme Court pointed out that "patently inconsistent statements on such a vital matter as the whereabouts of [the murder victim] near the time he vanished had no discernible innocent meaning and strongly indicated consciousness of guilt."[172]

Similarly, in *People* v. *Gravatt* the court ruled that officers had probable cause to arrest the defendant for possession of a stolen TV in the trunk of his car mainly because he initially claimed that the set belonged to his brother-in-law, but then said he won it in a crap game.[173]

TWO SUSPECTS, TWO STORIES: When two or more suspects are questioned separately, they will often give conflicting statements because they don't know what the other said. For example, in another stolen-TV-in-the-trunk case, the defendant said the TV belonged to a guy who wanted him to sell it, but his accomplice said it belonged to the defendant.[174] The court said the whole thing sounded fishy.

Inconsistencies often crop up when officers stop a car and question the occupants separately about where they were going and why.[175] Although these inconsistencies will not necessarily establish grounds to arrest or prolong the detention, they naturally raise a suspicion that the trip involved something shady. For example, in *U.S.* v. *Guerrero*[176] one of two suspected drug couriers said they were headed to Kansas City "to work construction," while the other

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[162] (1994) 9 Cal.4th 224, 241.
[163] *People* v. *Carrillo* (1995) 37 Cal.App.4th 1662, 1670.
[164] *People* v. *Williams* (2000) 79 Cal.App.4th 1157, 1167.
[165] *People* v. *Superior Court (Price)* (1982) 137 Cal.App.3d 90, 97; *People* v. *Huerta* (1990) 218 Cal.App.3d 744, 750.
[166] *People* v. *Suennen* (1980) 114 Cal.App.3d 192, 199.
[167] See *People* v. *Hunter* (2005) 133 Cal.App.4th 371, 379, fn5.
[168] *People* v. *Carrillo* (1995) 37 Cal.App.4th 1662, 1668-71.
[169] *U.S.* v. *Wong* (9th Cir. 2003) 334 F.3d 831.
[170] See *U.S.* v. *Holzman* (9th Cir. 1989) 871 F.2d 1496, 1503; *U.S.* v. *Ayon-Meza* (9th Cir. 1999) 177 F.3d 1130, 1133.
[171] *U.S.* v. *$109,179* (9th Cir. 2000) 228 F.3d 1080, 1085; *U.S.* v. *Boyce* (11th Cir. 2003) 351 F.3d 1102, 1109.
[172] (1995) 11 Cal.4th 786, 843.
[173] (1971) 22 Cal.App.3d 133, 137.
[174] *People* v. *Garcia* (1981) 121 Cal.App.3d 239, 246.
[175] See *U.S.* v. *Guerrero* (10th Cir. 2007) 472 F.3d 784, 788; *U.S.* v. *Williams* (10th Cir. 2005) 403 F.3d 1203.
[176] (10th Cir. 2007) 472 F.3d 784, 788. ALSO SEE *U.S.* v. *Gill* (8th Cir. 2008) 513 F.3d 836, 844-5.

said they were just visiting for the day. In ruling that the officers had grounds to detain the pair further, the court said the suspects' "differing renditions of their travel plans" was "most important to the overall evaluation."

INDEPENDENT WITNESS GIVES CONFLICTING STATEMENT: Officers might reasonably believe that a suspect was lying if his statement was in material conflict with that of an independent witness. This occurred in *People* v. *Davis* where several witnesses told officers they had seen Davis arguing with a woman shortly before she was raped and killed, while Davis claimed they had gone on a friendly walk.[177] Similarly, in *People* v. *Spears*[178] a murder suspect told officers that he left home at 8 A.M., which was after his employer had been murdered, but his mother said he left well before then.

UNBELIEVABLE TALES (or "That's my story and I'm gonna to stick with it"): Although not a provable lie, the suspect's story may be suspicious because it didn't make sense, it was implausible, or it didn't fit with the known facts. Some examples:

- A fleeing rape suspect claimed he had been jogging, but he wasn't perspiring or breathing hard, and he didn't have a rapid pulse.[179]
- A burglary suspect told El Cerrito police that she was waiting for a friend, but she didn't know her friend's name. In addition, she said that her friend would be arriving on BART from San Jose, but BART doesn't run to San Jose.[180]
- A burglary suspect told a Monterey Park officer that he was walking to his home, but he was walking in the wrong direction.[181]
- A suspected car thief told Huntington Beach officers that he borrowed the car from the owner, but he didn't know the owner's name.[182]
- When an officer asked a suspected car thief how he had obtained the truck he was driving, he said he bought it from "a guy in Coon Rapids."[183]
- When questioned by DEA agents at San Diego International Airport, a woman who was carrying $42,500 in cash inside a bag claimed she had been given the bag by a man named "Samuel" (she didn't know his last name), and that she met the kind gentleman just a few minutes earlier.[184]
- A man suspected of being under the influence of drugs told a CHP officer that the odor coming from his car was from a cough drop. But the odor was so "overwhelming" that it could only have been produced by a massive cough drop.[185]
- An officer suspected that the fishing poles and equipment a man was carrying were stolen, so he asked if they were expensive; "no," he replied, "they're just cheap old things, I think I paid $25 or $30 for them." The officer, an avid fisherman, knew that the equipment was not "cheap."[186]

VAGUE OR EVASIVE ANSWERS: Even though a suspect technically answered the officer's questions, his answers may be suspicious because they were ambiguous or elusive; e.g., he "gave vague and evasive answers" to questions about his identity,[187] neither suspect responded when asked what they were doing sitting in a parked car at 1:30 A.M.[188]

ADMISSIONS: Suspects may say something that is incriminating but does not amount to a confession. These are known in the law as "admissions" and, as the following examples demonstrate, they are highly suspicious:

- When an officer went to the home of a suspected graffiti vandal to discuss the matter, the suspect said, "Take me to jail."[189]

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[177] (1981) 29 Cal.3d 814, 823.
[178] (1991) 228 Cal.App.3d 1.
[179] *People* v. *Fields* (1984) 159 Cal.App.3d 555, 564.
[180] *People* v. *Harris* (1980) 105 Cal.App.3d 204, 212-3.
[181] *People* v. *Juarez* (1973) 35 Cal.App.3d 631, 635.
[182] *People* v. *Cartwright* (1999) 72 Cal.App.4th 1362, 1364.
[183] *U.S.* v. *Hanlon* (8th Cir. 2005) 401 F.3d 926, 929.
[184] *U.S.* v. *$42,500* (9th Cir. 2002) 283 F.3d 977
[185] *People* v. *Russell* (2000) 81 Cal.App.4th 96, 102-3.
[186] *People* v. *Warren* (1984) 152 Cal.App.3d 991, 997.
[187] *People* v. *Adams* (1985) 175 Cal.App.3d 855, 861; *U.S.* v. *Holzman* (9th Cir. 1989) 871 F.2d 1496, 1504.
[188] *People* v. *Hart* (1999) 74 Cal.App.4th 479, 493.
[189] *People* v. *Trinidad V.* (1989) 212 Cal.App.3d 1077, 1080 ["The minor's statement 'take me to jail' could reasonably be interpreted as an admission of guilt."].

- As an officer approached two burglary suspects, one of them said to the other, "I told you not to do it."[190]
- When an undercover officer phoned a suspected bookmaker, he heard two men in the background talking about NFL point spreads.[191]
- Officers overheard a suspected drug dealer talking about "money counters, kilos, thousands of dollars," and something arriving tomorrow that needed to be "broken down."[192]
- When an officer detained a suspected prowler, the suspect blurted out, "I'm not prowling. I'm just lost, I've been in trouble in Arizona for burglary, and I just got out of jail in Long Beach for prowling . . . "[193]

KNOWING TOO MUCH: This is a favorite of mystery writers: the suspect volunteers some information that only the killer would have known. But sometimes it happens in real life. Take *People* v. *Spears* for example.[194] In this case, the defendant, an employee of a Chili's restaurant in San Jose, shot and killed the manager in the manager's office shortly before the restaurant was to open for the day. When other employees arrived for work and the defendant "discovered" the manager's body, he exclaimed, "He's been shot!" The manager had, in fact, been shot—three times in the head—but the damage to his skull was so extensive that only the killer would have known he had been shot, not bludgeoned.

Possessing Evidence

In many cases, probable cause is based, at least partly, on the discovery of items in the suspect's possession that were used in the commission of the crime under investigation, or which are commonly used in such crimes. Some examples:

- Inside the van of a suspected burglar, officers found a furniture dolly, a knife, screwdriver, flashlight, and gloves.[195]
- A burglary suspect possessed a bolt cutter; a bolt cutter had been used to gain entry into the home he was suspected of burglarizing.[196]
- Suspected burglars possessed pillow cases filled with "large, bulky" items.[197]
- A suspected drug dealer possessed a "bundle of small, plastic baggies."[198]
- A man suspected of possessing drugs for sale was carrying a "big wad of bills."[199]
- Inside a car occupied by two suspects in a shooting, officers found a .22 rifle, a box of ammunition, and expended shell casings.[200]
- A man who had solicited the murder of his estranged wife possessed a hand-drawn diagram of his wife's home and lighting system.[201]
- A murder suspect possessed bailing wire; bailing wire had been used to bind the murder victims.[202]
- A robbery suspect possessed clothes that matched those worn by the perpetrator.[203]

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[190] *People* v. *Stokes* (1990) 224 Cal.App.3d 715, 721.
[191] *People* v. *Rooney* (1985) 175 Cal.App.3d 634, 648.
[192] *U.S.* v. *Garcia* (6th Cir. 2007) 496 F.3d 495.
[193] *People* v. *Superior Court (Johnson)* (1971) 15 Cal.App.3d 146, 150-2. Quote edited.
[194] (1991) 228 Cal.App.3d 1.
[195] *People* v. *Taylor* (1975) 46 Cal.App.3d 513, 518.
[196] *People* v. *Mack* (1977) 66 Cal.App.3d 839, 859.
[197] *People* v. *Vasquez* (1983) 138 Cal.App.3d 995, 999-1000. ALSO SEE *People* v. *Suennen* (1980) 114 Cal.App.3d 192, 199 [half-filled pillowcases observed in car of suspected pillowcase burglar].
[198] *People* v. *Nonnette* (1990) 221 Cal.App.3d 659, 666.
[199] *People* v. *Brueckner* (1990) 223 Cal.App.3d 1500, 1505. ALSO SEE *People* v. *Huerta* (1990) 218 Cal.App.3d 744, 751; *U.S.* v. *Bustos-Torres* (8th Cir. 2005) 396 F.3d 935, 943 [suspect possessed $10,000 in currency following a suspected drug transaction].
[200] *People* v. *Rico* (1979) 97 Cal.App.3d 124, 133. ALSO SEE *People* v. *Superior Court (Orozco)* (1981) 121 Cal.App.3d 395, 404; *People* v. *Anthony* (1970) 7 Cal.App.3d 751, 763.
[201] *People* v. *Miley* (1984) 158 Cal.App.3d 25, 35-6. ALSO SEE *People* v. *Memro* (1995) 11 Cal.4th 786, 843 [man suspected of sexually assaulting and murdering a young boy possessed materials "showing a morbid sexual interest in young boys"]; *People* v. *Guillebeau* (1980) 107 Cal.App.3d 531, 554 [officer seized a newspaper in the suspect's house because it contained an article about the crime under investigation, and the officer knew that "suspects commonly harbor newspaper accounts of their offenses."]; *People* v. *Duncan* (1981) 115 Cal.App.3d 418, 426 [officer seized a poetry book from a rape suspect's home because the rapist read poetry to the victim].
[202] *People* v. *Easley* (1983) 34 Cal.3d 858, 872.
[203] *Warden* v. *Hayden* (1967) 387 U.S. 294.

- A murder suspect possessed "cut-off panty hose"; officers knew that the murderers had worn masks, and that cut-off panty hose are sometimes used as masks.[204]
- A robbery suspect possessed a handcuff key; the victim had been handcuffed.[205]

Other Circumstances

The following circumstances are also frequently relevant in establishing probable cause and reasonable suspicion:

SUSPECT'S PHYSICAL CONDITION: The fact that the suspect was injured, bleeding, dirty, out-of-breath, sweating, or wearing torn clothing is highly suspicious if officers reasonably believed that the perpetrator would have been in such a condition.[206]

SUSPECT'S RAP SHEET: While it is relevant that the suspect had been arrested or convicted of a crime in the past, it is especially significant that the crime was similar to the one under investigation.[207]

KNOWN ASSOCIATES: Officers learned that the suspect was associating with people who had previously been arrested for, or convicted of, the type of crime under investigation.[208]

PERPETRATOR'S COMPANION: If there were two or more perpetrators, a positive ID of one suspect made shortly after the crime was committed may help establish probable cause to arrest his companions.[209]

TANDEM OR ERRATIC DRIVING: Driving erratically or in tandem with another vehicle "may be indicative of criminal goings-on."[210]

METHOD OF OPERATION (modus operandi): If officers reasonably believed that the suspect engages in criminal activity in a certain manner, it is quite relevant that the crime under investigation was committed in such a fashion.[211]

FINGERPRINT MATCH: Definitive evidence.[212]

DNA MATCH: Definitive evidence.[213]

MOTIVE: Frequently relevant.[214]

OPPORTUNITY: That the suspect had the opportunity to commit the crime is only mildly suspicious.[215]

HANDWRITING, GRAFFITI ANALYSIS: Both are reliable methods of determining the identity of the writer of a document or graffiti.[216]

ARREST WARRANT LINK TO CAR: Reasonable suspicion to stop a car and detain the occupants will likely exist if the car was registered to, or linked to, a person for whom an arrest warrant was outstanding. The purpose of the stop is to determine whether the fugitive is inside the car, or if the occupants know his whereabouts.[217]

PROFILES: Combinations of circumstances that officers know from experience are consistent with a certain type of criminal activity may be considered. But these circumstances do not gain added significance merely because they have been incorporated into a "profile."[218]

PEN REGISTERS, CONNECTION TRAPS, TELEPHONE RECORDS: Reasonable suspicion and probable cause may be based in part on information that telephone calls were placed or received on a certain phone, or that such calls were placed or received on a certain date or at a certain time.[219]

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[204] *People* v. *Hill* (1974) 12 Cal.3d. 731, 763.
[205] *Horton* v. *California* (1990) 496 U.S. 128, 130-1, 142.
[206] See *People* v. *Manis* (1969) 268 Cal.App.2d 653, 661; *People* v. *Superior Court (Wells)* (1980) 27 Cal.3d 670.
[207] See *Brinegar* v. *United States* (1949) 338 U.S. 160, 172; *People* v. *Lim* (2000) 85 Cal.App.4th 1289, 1298.
[208] See *Maryland* v. *Pringle* (2003) 540 U.S. 366, 373; *People* v. *Hunter* (2005) 133 Cal.App.4th 371, 379.
[209] See *People* v. *Craig* (1978) 86 Cal.App.3d 905; *People* v. *Bowen* (1987) 195 Cal.App.3d 269.
[210] *U.S*. v. *Del Vizo* (9th Cir. 1990) 918 F.2d 821, 826. ALSO SEE *United States* v. *Sharpe* (1985) 470 U.S. 675, 682, fn.3.
[211] See *People* v. *Maier* (1991) 226 Cal.App.3d 1670, 1675; *U.S.* v. *Bustos-Torres* (8th Cir. 2005) 396 F.3d 935, 945.
[212] See *People* v. *Anderson* (1983) 149 Cal.App.3d 1161, 1165; *People* v. *Wright* (1990) 52 Cal.3d 367, 392.
[213] See *People* v. *Wilson* (2006) 38 Cal.4th 1237; *People* v. *Travis* (2006) 139 Cal.App.4th 1271; *People* v. *Johnson* (2006) 139 Cal.App.4th 1135.
[214] See *People* v. *Superior Court (Wells)* (1980) 27 Cal.3d 670, 674; *People* v. *Spears* (1991) 228 Cal.App.3d 1, 20.
[215] See *People* v. *Spears* (1991) 228 Cal.App.3d 1, 20.
[216] See *People* v. *Barnum* (1980) 113 Cal.App.3d 340, 346; *People* v. *Trinidad V.* (1989) 212 Cal.App.3d 1077, 1080.
[217] See *People* v. *Dominguez* (1987) 194 Cal.App.3d 1315; *People* v. *William J.* (1985) 171 Cal.App.3d 72, 77.
[218] See *United States* v. *Sokolow* (1989) 490 U.S. 1, 10; *Reid* v. *Georgia* (1980) 448 U.S. 438.
[219] See *People* v. *Andrino* (1989) 210 Cal.App.3d 1395, 1401.

Crime-Specific Circumstances

While the circumstances discussed so far are often relevant in proving that a certain person committed a crime, the following are often cited in proving that a certain crime was committed.

CAR THEFT: Failure to produce registration or driver's license, missing or improperly attached license plate, indications of VIN plate tampering, switched plates, broken windwing, evasive driving, failure to stop promptly when lit up, evidence of ignition tampering, makeshift ignition key, driver gave false or inconsistent statements about his possession of the vehicle; driver cannot name the registered owner.[220]

UNDER THE INFLUENCE: Pinpointed, constricted, or dilated pupils; droopy eyelids; bloodshot eyes; eyes not reactive to light; dry mouth; slow, lethargic, or deliberate actions; slow, deliberate, or slurred speech; extreme nervousness; profuse sweating; suspect was in a place where drugs are commonly sold or used; suspect was emaciated; injection marks.[221]

POSSESSION CRIMES: Proof that a suspect possessed drugs or other contraband can be based on actual or constructive possession. Constructive possession of an item exists if there was a fair probability that the suspect knowingly had sole or joint control over it.[222] Relevant circumstances:

INDICIA: Inside a residence in which contraband was found, officers also found documents or other indicia linking the owner to the location; e.g., rent receipts, utility bills, driver's license.[223]

CONTRABAND IN RESIDENCE: It is usually reasonable to infer that a suspect possessed things in the common areas of his home, and in rooms over which he had joint or exclusive control.[224]

CONTRABAND INSIDE A VEHICLE: The driver and all passengers in a vehicle are usually deemed in possession of items to which they have immediate access or which are in plain view.[225]

ACCESS AND PROXIMITY: While access does not establish possession,[226] it is a relevant circumstance.[227] But probable cause will not exist merely because the suspect was present in a public place where the contraband was discovered.[228]

POSSESSION WITH INTENT TO SELL: Probable cause may be based on such things as the quantity of contraband, scales, packaging, lack of paraphernalia for personal use, large amount of cash.[229]

POSSESSION OF STOLEN PROPERTY: The following circumstances are relevant in establishing probable cause to believe that property was stolen:

CONDITION OF PROPERTY: The property showed signs of obliterated serial numbers, clipped wires, pry marks or other signs of forced removal, the presence of store tags or anti-shoplifting devices that are usually removed when goods are sold.[230]

LARGE QUANTITY OF PROPERTY: The amount of property in the suspect's possession was inconsistent with personal use. This is especially significant if the property was of a type that is commonly stolen; e.g., TVs, CDs, cell phones, jewelry.[231]

SUSPICIOUS EXPLANATIONS: The suspect's story as to how he obtained the property was dubious.[232]

FOOT TRAFFIC: There was heavy foot traffic in and out of the suspect's home, and many of the visitors were carrying property.

LOW PRICE: Suspect said he bought the property for a certain price; the price was much too low.[233]

NO LEGITIMATE INCOME: Suspect had no legitimate source of income.[234] POV

[220] See *People* v. *James* (1969) 1 Cal.App.3d 645, 648-9; *People* v. *Cartwright* (1999) 72 Cal.App.4th 1362, 1364.
[221] See *People* v. *Sanchez* (1987) 195 Cal.App.3d 42; *People* v. *Layne* (1965) 235 Cal.App.2d 188, 190.
[222] See *Maryland* v. *Pringle* (2003) 540 U.S. 366; *People* v. *Daniel G.* (2004) 120 Cal.App.4th 824, 831.
[223] See *People* v. *Nicolaus* (1991) 54 Cal.3d 551, 575; *People* v. *Rushing* (1989) 209 Cal.App.3d 618, 622.
[224] See *Ker* v. *California* (1963) 374 U.S. 23,36-7; *People* v. *Gabriel* (1986) 188 Cal.App.3d 1261, 1265-6.
[225] See *Maryland* v. *Pringle* (2003) 540 U.S. 366, 372-3; *New York* v. *Belton* (1981) 453 U.S. 454, 462.
[226] See *People* v. *Maese* (1980) 105 Cal.App.3d 710, 716.
[227] See *People* v. *Fisher* (1995) 38 Cal.App.4th 338, 345.
[228] See *Ybarra* v. *Illinois* (1979) 444 U.S. 85, 91.
[229] See *People* v. *Hunter* (2005) 133 Cal.App.4th 371, 378; *People* v. *Parra* (1999) 70 Cal.App.4th 222, 227.
[230] See *People* v. *Gorak* (1987) 196 Cal.App.3d 1032, 1039; *People* v. *Curtis T.* (1989) 214 Cal.App.3d 1391, 1398.
[231] See *People* v. *Martin* (1973) 9 Cal.3d 687, 696; *People* v. *Wolder* (1970) 4 Cal.App.3d 984, 994.
[232] See *People* v. *Memro* (1995) 11 Cal.4th 786, 843; *People* v. *Richard T.* (1978) 79 Cal.App.3d 382, 388.
[233] See *People* v. *Deutschman* (1972) 23 Cal.App.3d 559, 562.
[234] See *People* v. *Williams* (1988) 198 Cal.App.3d 873, 890.

Recent Cases

Mora v. Gaithersburg City Police

(4th Cir. 2008) 519 F.3d 216

Issue

Is a warrant required to search for weapons in the home of a person who has threatened mass murder?

Facts

At about 1:00 P.M., a hotline operator notified the police in Gaithersburg, Maryland that she had just spoken with a caller named Anthony Mora who said that he was suicidal, that he had weapons in his apartment, that he could "understand shooting people at work," and that "I might as well die at work." After officers were dispatched to the apartment, an officer phoned Mora's employer who advised that his threats "should be taken seriously."

When officers arrived they saw Mora outside his apartment loading suitcases and gym bags into a van. They handcuffed him and, after finding a handgun in the luggage, they entered his apartment. The first thing they noticed was that every interior door had been locked, including closet and bathroom doors. They then searched the apartment and found 41 firearms, 5,000 rounds of ammunition, and "survivalist literature."

Pursuant to a Maryland law that authorizes emergency psychiatric evaluations (essentially the same as California Welfare & Institutions Code § 5150), officers took Mora to mental health facility. They also seized his weapons and ammunition.

Mora was not charged with a crime, so after he was released he demanded the return of his guns and ammunition. The police refused and he filed suit, claiming the officers had obtained them in violation of the Fourth Amendment.

Discussion

A credible threat to commit mass murder must, of course, be taken seriously, especially in light of tragic events that have shocked the country. As the court in *Mora* observed, "At Columbine High School in Littleton, in Blacksburg, Omaha, and Oklahoma City, America has had to learn how many victims the violence of just one or two outcasts can claim."

With these events in mind, the court had to answer the question: If a person has made such a threat, under what circumstances can officers enter and search his home without a warrant for the purpose of seizing any deadly weapons?

Because *Mora* was the first case in which a court has had to address this issue, it looked for guidance in other areas of Fourth Amendment law in which searches and seizures are based on the need to prevent anticipated harm, as opposed to the need to obtain evidence to be used in court. And it found it in the principles pertaining to exigent circumstances and pat searches. Citing these principles, the court ruled that officers may conduct such a search if they were aware of "specific and articulable facts" that demonstrated a sufficient likelihood that the person could have carried out the threat before they could have obtained a warrant. Said the court:

> As the likelihood, urgency, and magnitude of a threat increase, so does the justification for and scope of police preventive action. In circumstances that suggest a grave threat and true emergency, law enforcement is entitled to take whatever preventive action is needed to defuse it.

Because it was obvious that a threat of mass murder constitutes an urgent and serious danger to the public, the main issue was whether the officers' action were reasonably necessary.

Mora argued that it wasn't because he had already been arrested and handcuffed, and was therefore unable to grab any weapons. Although this was technically true, the court pointed out that the officers could have reasonably believed that he had already set a nefarious plan into motion or had otherwise created a dangerous situation inside his home. For example, said the court, "Mora might have had a bomb—not an unprecedented thing for men in his state of mind"; or he "might have taken hostage the girlfriend who, police knew, had recently broken up with him."

Thus, the court ruled the search was justified because "[t]he authority to defuse a threat in an emergency necessarily includes the authority to conduct searches aimed at uncovering the threat's scope."

Finally, Mora claimed the subsequent seizure of his guns was unlawful because, like the search, it occurred after he no longer posed a threat to anyone. This was his strongest argument because the officers could have—*and probably should have*—secured the apartment while they sought a warrant to seize the weapons.

But for three reasons, the court refused to rule that a warrant was required in this case. First, the situation remained sufficiently confusing and bizarre that the officers could not rule out the possibility that the weapons continued to pose a threat. As the court pointed out, Mora's apartment was "locked up from the inside like a fortress [and] the officers found weapons everywhere."

Second, judges must not breezily second-guess the life-and-death decisions by officers. As the California Supreme Court observed, "People could well die in emergencies if the police tried to act with the calm deliberation associated with the judicial process."[1]

Third, under circumstances such as these, the public would have expected the officers to seize the weapons. Said the court:

> A psychological evaluation would not change what the officers already knew: that Mora was unstable and heavily armed, and a risk to himself and others. Indeed, had they not taken the weapons, and had Mora used those weapons to cause harm, the officers would have been subject to endless second-guessing and doubtless litigation as well, just as the officers and teachers at Columbine were challenged for red flags they had overlooked before the tragedy.

Accordingly, the court ruled the officers' search and seizure were justified under the circumstances.

U.S. v. Mir

(4th Cir. 2008) __ F.3d __ [2008 WL 1947829]

Issue

Did federal agents violate Mir's Sixth Amendment rights when, after he was indicted on immigration fraud charges, they arranged to have two witnesses elicit statements from him about his efforts to get them to lie about his illegal immigration activities?

Facts

Federal agents were investigating allegations that Mir, an attorney, had been falsely certifying that certain clients had been offered jobs in the United States. In the course of the investigation, they received a letter from an attorney who said that he would be representing Mir on the matter. Three months later, Mir was indicted on several counts of immigration fraud.

Sometime after that, agents learned that Mir had been asking some of his immigration clients to lie to investigators and the grand jury about the false certificates. So the agents launched an investigation into witness tampering and, in the process, spoke with two of the clients who agreed to assist them. The clients subsequently had conversations with Mir who made incriminating statements about witness tampering and immigration fraud.

During Mir's trial on both charges the judge ruled that prosecutors could use his statements to prove witness tampering but not fraud. Consequently, prosecutors deleted from the transcripts and recordings everything that Mir said pertaining to the fraud counts. He was found guilty of fraud, but acquitted of witness tampering.

Discussion

The issue in this case arises when officers are investigating the activities of someone who is already facing criminal charges, and there is a connection between those charges and the crime under investigation. That problem results from the case of *Massiah* v. *U.S.* in which the Supreme Court ruled that officers may not themselves, or through police agents, deliberately elicit incriminating statements from suspects about crimes with which they have been charged.[2]

It would therefore appear there was no *Massiah* violation as to Mir's statements about witness tampering because he had not been charged with that crime. And although he made incriminating statements about immigration fraud, those statements were not used against him.

Nevertheless, he argued that the questions about witness tampering violated *Massiah* because there was a direct connection between the two crimes.This

[1] *Tamborino* v. *Superior Court* (1986) 41 Cal.3d 919, 924.
[2] See *Massiah* v. *United States* (1964) 377 U.S. 201; *Moran* v. *Burbine* (1986) 475 U.S. 412, 428.

argument was based on several cases in which the courts ruled that the Sixth Amendment prohibits questioning about uncharged crimes that were inextricably intertwined or even just closely related to charged crimes.

But these rulings were nullified in 2001 when the United States Supreme Court ruled in *Texas* v. *Cobb* that a Sixth Amendment violation does not result merely because the charged and uncharged crimes were closely related.[3] Accordingly, the court ruled that the "evidence of witness tampering was properly obtained and introduced against Mir."

People v. Lessie

(2008) 161 Cal.App.4th 1085

Issue

Did a 16-year old murder suspect invoke his *Miranda* rights when he said he wanted to talk to his father?

Facts

During a gang fight in Oceanside, someone fired a shot that killed one of the participants. About three months later, Oceanside detectives learned that the shooter might have been 16-year old Tony Lessie. They also learned that Lessie was living with his aunt and uncle in Hemet, and that he was arrestable on a probation violation warrant. So they went to Hemet and arrested him.

While driving him back to Oceanside, a detective asked if there was anyone, in addition to his aunt and uncle, who should be notified about his arrest. Lessie said that his father should be informed, but that he didn't know his father's phone number.

When they arrived in Oceanside, Lessie was confined in an interview room and was told by the detective that she had found his father's phone number. She asked if he wanted her to notify him or whether he wanted to make the call himself. Lessie said he'd like to call.

The detective then advised him of his *Miranda* rights and, after determining that he understood them, started asking questions about a man named Turner who was also a suspect in the murder. Lessie said that he had lived with Turner in Oceanside, but that he decided to go live with his aunt and uncle because Turner was a gang member and was involved in "some fraudulent dealings."

The detective then asked him about the gang fight and murder. Lessie denied that he was even present. So the detective asked if he would be surprised to learn that "some people in your family have said you told them [about your involvement]?" Lessie replied, "Well to just scratch everything, to just come clean with it: I was there, I was, I was there and I was the shooter." He then said that Turner had "ordered" him to shoot as part of a gang "initiation thing."

During a break that occurred shortly afterwards, Lessie was permitted to make several phone calls, although he was apparently unable to reach his father until later that day.

Lessie was tried as an adult, and his statement to the detective was used against him. He was convicted of second-degree murder.

Discussion

Although Lessie waived his *Miranda* rights, and although he did not expressly say he was invoking, he argued that he had effectively invoked his right to remain silent when he told the detective that he wanted to talk with his father. This argument was based on the 1971 case of *People* v. *Burton* in which the California Supreme Court ruled that, because of the close relationship between parents and their children, a juvenile's request to speak with a parent is a strong indication that he intended to invoke.[4]

While the court in *Burton* did not technically rule that such a request constitutes a per se invocation, that was its practical affect. And if there was any doubt, the court eliminated it in 1978 when it ruled in *People* v. *Michael C.* that an invocation resulted when a minor asked to see his probation officer.[5]

If *Burton* and *Michael C.* were the law today, Lessie's admission would certainly have been suppressed. But they're not. In 1979, the United States Supreme Court reversed *Michael C.* and, in the process, gutted *Burton*. The case was *Fare* v. *Michael C.*[6] and the Court made it clear that a minor who freely

[3] See *Texas* v. *Cobb* (2001) 532 U.S. 162; *People* v. *Slayton* (2001) 26 Cal.4th 1076, 1081.
[4] (1971) 6 Cal.3d 375, 383-4.
[5] (1978) 21 Cal.3d 471, 474.
[6] (1979) 442 U.S. 707.

waives his *Miranda* rights does not later invoke them by saying he wants to talk with someone, unless it's an attorney. Instead, said the Court, an invocation can result only if the request, when considered in light of the surrounding circumstances and the minor's age and experience, demonstrated an intention to terminate the interview.

Applying this standard to the facts in *Lessie*, the court ruled that it was apparent that Lessie had not intended to invoke because he had been given "full and adequate admonitions," he confirmed that he understood his rights, he freely answered the detective's questions, and he said nothing to indicate he wanted to postpone the interview until he could talk with his father.

The court also noted that, because of Lessie's age and experience with the police and courts, "we may presume that Lessie was not naïve or inexperienced with respect to police procedures." Thus, the court ruled that Lessie's request to speak with his father was not an invocation. His conviction was affirmed.

U.S. v. Rodriguez

(9th Cir. 2008) 518 F.3d 1072

Issue

Did a suspect invoke his *Miranda* rights when he responded as follows when asked if he was willing to speak with officers: "I'm good for tonight"?

Facts

A National Park ranger spotted Rodriguez driving erratically in the Lake Mead National Recreation Area near Las Vegas, so he stopped him. When Rodriguez stepped from his pickup truck to take a field sobriety test, the ranger saw a silencer-equipped handgun in the bed of the truck.

After arresting and *Mirandizing* Rodriguez, the ranger asked if he wished to speak to him. Rodriguez responded, "I'm good for tonight." The ranger interpreted this remark to mean that Rodriguez was willing to talk later, so he waited a "short time" then started questioning him about the weapon. Rodriguez admitted that he owned it, and he was charged with possession of a firearm by a felon and possession of an unlicensed silencer. When his motion to suppress the evidence was denied, he pled guilty.

Discussion

Rodriguez contended that his statement should have been suppressed because he had effectively invoked his right to remain silent when he said, "I'm good for tonight." Although the court disagreed, as we will discuss it ruled that his statement should have been suppressed because the ranger failed to obtain a *Miranda* waiver.

AN INVOCATION? In *Davis* v. *United States*, the Supreme Court ruled that a suspect invokes his *Miranda* rights only if he said something that clearly and unambiguously demonstrated an intention to do so.[7] Consequently, the court ruled that Rodriguez's statement—"I'm good for tonight"—was not an invocation because it was unclear whether he meant "I'm good to talk for tonight," or "No thanks," or something else altogether.

A WAIVER? While *Davis* permits officers to ignore ambiguous "invocations," it did not change the rule that officers may not interrogate a suspect in custody unless he says he understands his rights and waives them. But according to the ranger's testimony at the hearing on the motion to suppress, Rodriguez did neither—he merely said, "I'm good for tonight."

The government responded that, while these words did not constitute an express waiver, an intent to waive can be implied. As we have discussed before, a waiver will ordinarily be implied if, (1) the suspect was correctly advised of his rights, (2) he expressly said that he understood those rights, and (3) he freely responded to questioning.[8]

Not only was Rodriguez not asked if he understood his rights, the court ruled that a waiver cannot be implied if the suspect said something—even something ambiguous—that indicated he might not have intended to waive.[9] And according to the court, Rodriguez's statement—"I'm good for tonight"—fell into this category. Thus, the court ruled that Rodriguez had not impliedly waived his rights, and that his statement to the ranger should have been suppressed.

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[7] *Davis* v. *United States* (1994) 512 U.S. 452, 459.

[8] See *North Carolina* v. *Butler* (1979) 441 U.S. 369, 374; *People* v. *Johnson* (1969) 70 Cal.2d 541, 558; *U.S.* v. *Labrada-Bustamante* (9th Cir. 2005) 428 F.3d 1252, 1262; *U.S.* v. *Nichols* (6th Cir. 2008) __ F.3d __ [2008 WL 123815].

[9] **NOTE**: The court did not address the ranger's failure to determine whether Rodriguez understood his rights.

U.S. v. Hudspeth

(8th Cir. en banc 2008) 518 F.3d 954

Issue

Could the wife of a child pornography suspect consent to a search of the family computer if her husband had been arrested earlier at his workplace and had refused to consent?

Facts

Missouri narcotics officers executed a warrant to search a business which had been selling large quantities of pseudoephedrine tablets. The CEO of the company was Hudspeth. During the search, officers found child pornography on Hudspeth's business computer; and he admitted to having downloaded the images from the internet. He was then arrested. Figuring that he had also stored child pornography at his residence, an officer asked if he would consent to search his home computer. He refused.

After Hudspeth was taken to jail, officers went to his home and, after explaining the situation to his wife, obtained her consent to search the home computer which, as expected, contained child pornography. When Hudspeth's motion to suppress the images was denied, he pled guilty.

Discussion

Hudspeth argued that the computer images should have been suppressed because his wife could not effectively consent over his objection. This argument was based on the case of *Georgia* v. *Randolph*[10] in which the Supreme Court ruled that, under certain circumstances, officers may not search a residence pursuant to consent given by one co-tenant if the other had objected. Specifically, the court ruled that the consent is ineffective if, (1) the objecting co-tenant was physically present when officers sought consent, and (2) he made an express objection when officers sought consent from the co-tenant. In the words of the Court, "[A] warrantless search of a shared dwelling for evidence over the express refusal of consent by a physically present resident" is invalid.

Significantly, the Court in *Randolph* made it clear that it was limiting its ruling to the particular facts of the case. As the court in *Hudspeth* observed, "The *Randolph* opinion repeatedly referred to an 'express refusal of consent by a *physically present* resident.'" Accordingly, the court ruled that Ms. Hudspeth's consent was valid because Hudspeth was not present when she consented.[11] Said the court, "[The] rationale for the narrow holding of *Randolph*, which repeatedly referenced the defendant's physical presence *and* immediate objection, is inapplicable here." Hudspeth's conviction was affirmed.

Comment

There are two other recent cases in which courts applied *Randolph*. In *U.S.* v. *Caldwell*,[12] the suspect was asked if he would consent to a search of the hotel room he shared with Kelly Meyer. Caldwell responded, "You'll have to ask [Meyer]. It's her room." Meyer consented, and the search turned up a large quantity of drugs. Caldwell urged the Sixth Circuit to rule that a co-tenant who stands mute when asked for consent should be deemed to have objected. But the court refused for the same reason that the court in *Hudspeth* upheld Ms. Hudspeth's consent; viz., that *Randolph* must be limited to its unique facts. And since Caldwell did not expressly object, *Randolph* did not apply.

The second case, *United States* v. *Murphy*, is covered next.

U.S. v. Murphy

(9th Cir. 2008) 516 F.3d 1117

Issue

Can a person consent to a search of his public storage unit over the objection of a friend who was temporarily living inside and secretly using it to process methamphetamine?

Facts

Narcotics officers in Jackson County, Oregon followed two men who had just purchased methamphetamine precursors. When the men arrived at a

[10] (2006) 547 U.S. 103.

[11] **NOTE**: In *Randolph*, the Court indicated that a co-tenant's consent would be invalid if "the police have removed the potentially objecting tenant from the entrance for the sake of avoiding possible objection." This was not an issue in *Hudspeth* because, although Hudspeth had been removed from his business and was not present when the officers sought consent from his wife, there was a legitimate reason for his removal; i.e., he had been lawfully arrested and was at, or en route to, jail.

[12] (6th Cir. 2008) __ F.3d __ [2008 WL 495326].

public storage facility, they went inside. The officers staked out the premises until one of the men drove off. They then detained him and learned that he and the second man had gone into unit 17. A little later, the second man left, at which point the officers went to unit 17 and knocked.

The door was opened by Stephen Murphy who was known to the officers as a person who was temporarily living in a storage unit that had been rented by Dennis Roper. As the officers spoke with Murphy, they could see an "operating methamphetamine lab" in the unit, so they arrested him. They then sought his consent to search the unit but he refused. One of the officers then conducted a protective sweep of the unit but apparently found nothing.

After Murphy had been taken to jail, the officers continued their surveillance. About two hours later, Roper arrived and was arrested on outstanding warrants. Roper said he didn't know anything about Murphy's meth lab, and he consented to a search of the unit. At the conclusion of the search, the officers seized the lab. When the trial court denied Murphy's motion to suppress the meth lab, he pled guilty.

Discussion

Murphy contended that his methamphetamine lab should have been suppressed because, (1) the protective sweep was unlawful, and (2) Roper's consent was ineffective. The court quickly disposed of his first contention, pointing out that protective sweeps are permitted if officers reasonably believe there is someone on the premises who poses an immediate threat to them.[13] And here, said the court, the officers' belief was reasonable because they knew that Roper had rented the unit, that he was a wanted on warrants, and that the officers reasonably believed that he might be somewhere on the premises.

As for the consent search, Murphy contended it was illegal because the Supreme Court ruled in *Georgia* v. *Randolph*[14] that officers may not search a residence pursuant to consent given by one spouse or other co-tenant if, (1) the other co-tenant objected to the search, (2) the objecting co-tenant was present when officers sought consent, and (3) he made the objection at the time the officers sought consent.

Although Murphy and Roper were not co-tenants, and although Murphy paid no rent, and although a public storage unit is not a residence, a panel of the Ninth Circuit ruled that the restrictions imposed by *Randolph* applied nevertheless because the storage unit was "the closest thing [Murphy] had to a residence," and he had a key to the unit and he kept his personal belongings there. These circumstances, said the court, were "sufficient to create an expectation of privacy and thus the authority to refuse a search."

Consequently, the court reversed the district court's denial of Murphy's motion to suppress the lab.

Comment

There were essentially two issues in *Murphy*: (1) Does *Randolph* apply if the structure that was searched was a public storage unit instead of a residence? (2) If so, does it matter that the person who objected to the search was in jail and, unbeknownst to the renter, had been using it to process methamphetamine? At first glance, these questions might seem silly. But upon closer inspection, they are preposterous.

Randolph was based on the Supreme Court's determination that spouses and other people who live together have "commonly held understandings" pertaining to privacy rights in the home; and that neither party should be permitted to sabotage these understandings under certain limited circumstances. Because there has not been a recent groundswell of support for expanding society's "commonly held understandings" to cover public storage units that are being used to conceal meth labs, *Randolph* would not have permitted the court to suppress Murphy's meth lab. So it decided to modify *Randolph*.

Specifically, it ruled that, regardless of what the Supreme Court said, "commonly held understandings" are not the determining factor. Instead, anyone can prevent a search authorized by someone else if he merely had a reasonable expectation of privacy in the structure. Said the court, staying temporarily in a storage unit "is sufficient to create an expectation of privacy and *thus* the authority to refuse a search."[15] It then ruled that because Murphy had such an expectation of privacy in the unit, his refusal to permit a search trumped Roper's consent.

[13] See *Maryland* v. *Buie* (1990) 494 U.S. 325, 333.
[14] (2006) 547 U.S. 103.
[15] Emphasis added.

We must stop here momentarily to fully experience the unmitigated arrogance of this opinion. Here we have a panel of the Ninth Circuit that is purporting to overrule an opinion of the United States Supreme Court. And it did this despite the Supreme Court's explicit instructions that its ruling was limited to the unique facts of the case. "[W]e have to admit," said the Supreme Court, "that we are drawing a fine line; if a potential defendant with self-interest in objecting is in fact at the door and objects, the co-tenant's permission does not suffice for a reasonable search." Taking note of this passage, the Eight Circuit recently noted that *Randolph* was a "narrow holding."[16]

Not only did the court in *Murphy* try to subvert a decision of the Supreme Court, it ignored several facts that would have demonstrated the idiocy of its conclusion that Roper did not have a right to permit the officers to remove the meth lab:

(1) Murphy had no legal right to occupy the unit.
(2) Roper told the officers that he did not know that Murphy was using it to process meth.
(3) Using a storage unit as a place to live and chemically process illegal drugs undoubtedly constitutes a violation of the applicable zoning laws and Roper's rental contract.
(4) Meth labs are illegal.
(5) Meth labs tend to explode, causing death and destruction.[17]

But there's more. When Roper consented, Murphy was in jail, having been lawfully arrested on a felony. And it appeared unlikely that he would be posting bail anytime soon because his financial situation was so desperate that he was forced to live inside a public storage unit. But even if Murphy bailed out, Roper had told the officers that he didn't know anything about Murphy's meth lab, from which they could reasonably infer that Roper was not going to allow Murphy to return to the storage unit and resume his meth lab operation. Thus, at the time Roper consented, the officers were fully justified in believing that Murphy had absolutely no remaining legal rights in the storage unit and, therefore, his previous refusal to consent had become a nullity.[18]

It should be noted that the judge who wrote this opinion was Stephen Reinhardt, who is reputed to be the most overruled judge in the history of the United States. We hope the Ninth Circuit en banc or, if necessary, the Supreme Court sees fit to add *Murphy* to the pile of the judge's other misguided decisions.

People v. Gemmill

(2008) __ Cal.App.4th __ [2008 WL 1952038]

Issues

Did an officer conduct a "search" when he looked through the side window of the defendant's home? If so, was the search justified?

Facts

At about 10:30 A.M., a Shasta County sheriff's deputy was dispatched to a report of an unattended two-year old wandering around a residential area. He located the child and, based on information from a neighbor, determined that he lived in a nearby house. So he went there and knocked on the front door, but no one responded. At that point he did not think there was sufficient justification for a forcible entry, so he took the child to the sheriff's station and notified Child Protective Services.

But as he thought about the matter, he realized he had a "gut feeling" that something "didn't seem right," and he began to worry that there might have been another unattended child in the house. Although he still didn't think he had grounds for a forcible entry, he thought that he "should have checked the entire perimeter" of the house. So he returned.

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[16] *U.S.* v. *Hudspeth* (8th Cir. 2008) __ F.3d __ [2008 WL 637638].

[17] See *People* v. *Duncan* (1986) 42 Cal.3d 91, 105 [production of meth "creates a dangerous environment"]; *People* v. *Messina* (1985) 165 Cal.App.3d 937, 943 ["the types of chemicals used to manufacture methamphetamines are extremely hazardous to health."].

[18] **NOTE**: When *Randolph* was announced we wrote that it was a fundamentally unsound decision because it was based on unsubstantiated sociological findings, not the law. Specifically, the justices reported that they had discovered a previously undetected cultural shift pertaining to privacy rights. We pointed out that, by basing their decision on such a nebulous concept, they faced an impossible serious challenge: "How could they write an opinion based on a subtle cultural shift without sounding flaky? They couldn't. Which explains why their decision—a document representing the refined judgment of the highest court in the United States of America—was based on such shadowy abstractions as 'commonly held understandings,' 'shared social expectations,' 'voluntary accommodation, 'social practice,' 'social custom,' 'customary social understanding, the 'comfort' level of visitors, and the 'multiplicity of living arrangements.'" And so it was not entirely surprising that a lower court, such as the one in *Murphy*, would announce that it, too, had detected a cultural shift that needed to be incorporated into the law.

At first, he "banged loudly on the front door," and yelled "sheriff's office" several times. Still no response. He then tried to look through the front window but couldn't see inside because the blinds were shut. So he walked around to the side of the house where he saw a window. Although the blinds were closed, he could see inside through a five to six inch gap—and he saw a six-month old infant playing with a plastic bag near his face. He also saw a man who was "nonresponsive."

Based on these observations, the deputy entered the home, tended to the infant and the adult, and looked for other unattended children. Although there was no one else in the house, he saw in plain view over 550 grams of marijuana within the child's reach. He also observed "the clutter, dirtiness, and general disarray of the home."

As a result, the mother of the children, Dawn Gemmill, was convicted of child endangerment and possession of marijuana.

Discussion

Gemmill argued that the deputy's act of looking through her side window constituted a search, and that it was an illegal search because the deputy had not obtained a warrant. The court disagreed.

Visitors to a home—including officers—can usually infer that they have permission to walk on any pathways or driveways in the front. As the California Supreme Court explained, "A sidewalk, pathway, common entrance or similar passageway offers an implied permission to the public to enter which necessarily negates any reasonable expectation of privacy in regard to observations made there."[19]

Implied permission does not, however, usually extend to sides or back yards because these areas are seldom used to access the premises.[20] Thus, the court ruled that the deputy's act of walking along the side of the house and looking through the window was a search. Said the court, "[N]o substantial evidence in the record supports the conclusion that the [side] of defendant's home was impliedly accessible to the public." The question, then, was whether the deputy's actions were justified.

Under the "emergency aid" exception to the warrant requirement, officers may search a residence if both of the following circumstances existed:

(1) **Objective basis**: They reasonably believed that someone inside needed emergency assistance.[21]

(2) **Need outweighed intrusiveness**: They reasonably believed that the need for the assistance outweighed the intrusiveness of the search.[22]

Applying this test, the court noted that if the deputy had forced his way inside before looking through the window, the entry would probably have been unlawful because, at that point, he had no reason to believe there was another child in the house. But because he merely looked through the window, the court ruled the need for the search outweighed its intrusiveness and, therefore, the search was lawful. Said the court, "[T]he presence of the unattended child, combined with the lack of information regarding whether there were siblings or others in the house, was sufficient to justify [the deputy's] less intrusive look through defendant's side window to determine if an emergency existed inside."

Finally, the court ruled that the deputy was justified in forcibly entering the house when he saw "a child inside threatened with suffocation next to a nonresponsive adult."

U.S. v. Turvin

(9th Cir. 2008) 517 F.3d 1097

Issue

While conducting traffic stops, may officers ask the driver questions that do not pertain to the violation?

Facts

A state trooper in Alaska made a traffic stop on a pickup truck driven by Turvin. The trooper, whose name was Christensen, had observed several infractions including an "unusually loud exhaust, rapid acceleration around a turn involving minor skidding, and driving six miles over the speed limit in snowy conditions." When Christensen approached the pickup, he also noticed that neither Turvin nor his passenger were wearing seatbelts.

[19] *Lorenzana* v. *Superior Court* (1973) 9 Cal.3d 626, 629. ALSO SEE *People* v. *Chavez* (2008) __ Cal.App.4th __ [2008 WL 802633].
[20] See *People* v. *Camacho* (2000) 23 Cal.4th 824, 836.
[21] See *Brigham City* v. *Stuart* (2006) 547 U.S. 398, 406.
[22] See *Illinois* v. *Lidster* (2004) 540 U.S. 419, 426; *Maryland* v. *Buie* (1990) 494 U.S. 325, 331.

After discussing the violations with them for three to four minutes, Christensen walked back to his patrol car and asked his dispatcher to run a warrant and license check on Turvin. He then started writing citations for the violations. A trooper named Powell overheard Turvin's name on the radio and remembered that, during a traffic stop earlier that year, officers had discovered a "rolling methamphetamine laboratory" in his vehicle. When Powell arrived at the scene he conveyed this information to Christensen who then stopped writing the citation, turned on his tape recorder, and walked back to Turvin's pickup.

As Christensen was telling Turvin that he knew about the prior incident, he noticed a speaker box behind Turvin's seat, and he noted that the box was large enough to hold the equipment necessary for a methamphetamine lab. So he sought and obtained Turvin's consent to search the vehicle. In the course of the search, Christensen found a sawed-off shotgun and methamphetamine.

Discussion

Turvin argued that the evidence should have been suppressed because Christensen prolonged the traffic stop when he asked questions about a criminal matter for which he lacked reasonable suspicion. Thus, the issue was whether traffic stops become unlawful detentions if officers ask investigatory questions about unrelated matters.

When officers ask such questions, they will usually cause the stop to be prolonged (at least for a short while) because it takes time to ask questions and listen to answers. This is true even if the officer asks the questions while writing the citation. As the court in *Turvin* pointed out, "An officer who asks questions while physically writing a ticket will likely be slowed down just as an officer who briefly pauses to do so."

Nevertheless, most courts have rejected arguments that such questioning is improper. Some have ruled it is permissible if it did not prolong the stop; e.g., the officer asked the questions while awaiting DMV or warrant information, or if one officer asked the questions while another wrote the citation.

Other courts have permitted such questioning if it did not extend the length of the stop beyond that which is "normal." For example, if typical traffic stops take ten minutes, it wouldn't matter that officers asked unrelated questions, so long as the stop did not go beyond ten minutes.[23] Of course, the clock would stop running at the point officers developed reasonable suspicion or probable cause, or if the driver freely consented to answer additional questions.[24]

Although the court in *Turvin* could have resolved the issue by employing either one of these approaches, it applied a different (and we think better) method. It ruled that officers may ask questions unrelated to the purpose of the stop if, (1) their questions do not extend the stop appreciably; and (2) the officers had a legitimate reason for asking the questions, meaning essentially that the officers were not on a "fishing expedition." Said the court, "We will not accept a bright-line rule that questions are unreasonable if the officer pauses in the ticket-writing process in order to ask them." Elaborating on this principle, the court in *U.S.* v. *Hernandez* aptly observed:

> For the police to be vigilant about crimes is, at least broadly speaking, a good thing. And at a traffic stop, the police can occasionally pause for a moment to take a breath, to think about what they have seen and heard, and to ask a question or so.[25]

Similarly, the Seventh Circuit pointed out, "It is not necessary to determine whether the officers' conduct added a minute or so to the minimum time in which these steps could have been accomplished. . . . What the Constitution requires is that the entire process remain reasonable. Questions that hold potential for detecting crime, yet create little or no inconvenience, do not turn reasonable detention into unreasonable detention."[26]

Thus, the court in *Turvin* ruled the trooper's questions did not convert the traffic stop into an unlawful detention because his questions were brief, and they were prompted by "Powell's arrival and information about a rolling methamphetamine laboratory involving the same vehicle and the same person."

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[23] See *U.S.* v. *Mendez* (9th Cir. 2007) 476 F.3d 1077, 1080 ["The arrest occurred only eight minutes after the stop."].

[24] See *U.S.* v. *Gill* (8th Cir. 2008) __ F.3d __ [2008 WL 190789] ["If an officer develops reasonable suspicion regarding unrelated criminal conduct during the course of a lawful traffic stop, an officer may broaden his inquiry and satisfy those suspicions without running afoul of the Fourth Amendment."].

[25] (11th Cir. 2005) 418 F.3d 1206, 1212, fn.7.

[26] *U.S.* v. *Childs* (7th Cir. en banc 2002) 277 F.3d 947, 953-4.

Virginia v. Moore

(2008) __ U.S. __ [2008 WL 1805745]

Issue

Can officers search a suspect incident to his arrest if, per state law, they should have cited and released him?

Facts

Two officers in Portsmouth, Virginia made a traffic stop on Moore because they knew that his driver's license had been suspended. Although Virginia law requires that officers cite and release people arrested for this offense, the officers decided to make a custodial arrest. So they searched him incident to the arrest and, in the process, found crack cocaine.

Moore claimed the cocaine should have been suppressed because the search violated the Fourth Amendment. The trial court disagreed, and Moore was convicted of possession with intent to distribute.

Discussion

Officers may search a suspect incident to his arrest if, (1) there was probable cause to arrest; (2) officers would be transporting him to jail, a police station, or detox facility; and (3) the search was contemporaneous with the arrest, which essentially means it occurred near the time of arrest.[27]

It was the second requirement that was at issue in *Moore* because, as noted, Virginia law states that officers may not transport a suspect who is arrested only for driving on a suspended license.[28] For this reason, Moore argued that the search violated the Fourth Amendment and that his cocaine should have been suppressed.

The United States Supreme Court pointed out, however, that searches do not violate the Fourth Amendment merely because they were unlawful under state law. Instead, what matters is whether the officers' actions were "reasonable," as that term is interpreted in cases applying the Fourth Amendment. And because all three requirements for a "reasonable" search incident to arrest were met, the evidence was admissible.

Comment

There is nothing new here. The Court essentially addressed the same issue in 2001 in the case of *Atwater* v. *City of Lago Vista*.[29] The only difference being that in *Atwater* the applicable state law expressly permitted custodial arrests for violations of the statute in question, while in *Moore* the law expressly prohibited them. But it didn't matter because, as the California Supreme Court pointed out in discussing *Atwater*, "[S]o long as the officer has probable cause to believe that an individual has committed a criminal offense, a custodial arrest—even one effected in violation of state arrest procedures—does not violate the Fourth Amendment."[30]

It should be noted, however, that in both cases the officers' actions were imprudent. The Court in *Atwater* mentioned it, saying "the physical incidents of arrest were merely gratuitous humiliations imposed by a police officer who was (at best) exercising extremely poor judgment." And the California Supreme Court noted that violations of state statutes can result in civil suits and departmental discipline.[31]

Case Updates

There is some news to report on two cases. First, the United States Supreme Court agreed to decide whether evidence obtained during a search incident to arrest must be suppressed if the arrest was based on a warrant that had been recalled five months earlier. The case is *Herring* v. *United States*.

The second case is *Fisher* v. *City of San Jose*, which we discussed in the Spring 2007 edition. In *Fisher*, a panel of the Ninth Circuit ruled that San Jose police officers unlawfully arrested an armed and barricaded suspect when they surrounded his house. But on March 14, 2008, the Circuit decided to rehear the case en banc, which means the decision has been nullified. As we reported in the Spring 2007 edition, *Fisher* was an irrational—virtually unintelligible—decision which was based on a complete misunderstanding of the facts and the law. For a complete report on the case, see Point of View Online. POV

[27] See *United States* v. *Robinson* (1973) 414 U.S. 218; *Gustafson* v. *Florida* (1973) 414 U.S. 260.
[28] **NOTE**: There are certain exceptions to this statute, but they are not relevant here.
[29] (2001) 532 U.S. 318.
[30] *People* v. *McKay* (2002) 27 Cal.4th 601, 618.
[31] *People* v. *McKay* (2002) 27 Cal.4th 601, 618-9.

The Changing Times

Alameda County District Attorney's Office

Assistant DA **Colton Carmine** retired after 32 years of service. Colton joined the office in 1976 as a clerk in the Courthouse file room. He was a law student at the time and, when he passed the Bar Exam in 1979, he became a deputy DA.

Inspector **Dale Jue** retired after nine years of service. Before joining the DA's Office, Dale was with the Alameda County Probation Department, the California Department of Justice, and the California Department of Corrections.

Barbara Klatt, Administrative Assistant to DA **Tom Orloff**, will retire in July. Barb joined the office in 1967 as a legal secretary in the Family Support Division. She was appointed Administrative Assistant to the DA in 1997.

Former law clerks **Amanda Chavez** and **Luis Marin** joined the office after passing the State Bar Exam. **Rafael Vazquez** has rejoined the office after a stint in private practice.

Alameda County Narcotics Task Force

Transferring out: **Greg Velasquez** (Hayward PD), and **Chuck Torres** (East Bay Regional Parks PD).

Alameda Police Department

Sgt. **Ron Miller** retired after 28 years of service. Officer **Jeff Reusche** retired after 27 years of service. Officer **Tim Ramsey** medically retired after 18 years of service. New officers: **Brian Foster** and **Louise Kuaea**.

Albany Police Department

Retired Police Chief **Ralph M. Jensen** passed away on March 12, 2008. Chief Jensen joined the department in 1948, was elected Chief of Police in 1954, and was repeatedly reelected to office for nearly 20 years until his retirement in 1973. Chief Jensen was 84.

Transfers: Sgt. **Tom Dolter** from Investigations to Patrol, and Sgt. **Dave Bettencourt** from Patrol to Investigations.

BART Police Department

The following officers retired: **David Armacost** (12 years) and **Raymond Fields** (20 years, including seven with OPD). Officers **Edgardo Alvarez** and **Gilbert Lopez** were promoted to sergeant and assigned to Patrol. Transfers: Sgt. **Alan Fueng** from Patrol to Criminal Investigations, Sgt. **Seth Jamel** to the Special Patrol Team, and Sgt. **John Sandoval** from Patrol to Personnel & Training. Lateral appointment: **Heherson Enerio** (Irvine PD).

Berkeley Police Department

The following officers have retired: Capt. **Bruce Agnew** (34 years), Sgt. **Joseph Sanchez** (38 years), and Officer **Robert Rollins** (28 years). Lt. **Dennis Ahearn** was promoted to captain. Sgt. **Randolph Files** was promoted to lieutenant. Officer **Benjamin Cardoza** was promoted to sergeant.

California Highway Patrol

Castro Valley Area: Lt. **Ed Whitby** was promoted to captain and transferred in from the Amador Area. Officer **Stephen Perea** was promoted to sergeant and transferred in from the San Jose Area. **Larry McAllister** retired after 25 years of service. Transferring out: Capt. **Paul Fontana** (to San Francisco), **Matt Hammonds** (to Napa), **Jon Bacon** (to Napa), and **Anthony Rossi** (to Tracy). Transferring in from the CHP Academy: **Ryan Humerickhouse**, **Evan May**, **John Ridad**, and **Derrick Roderick**.

Hayward Area: Sgt. **Christopher Sherry** was promoted to lieutenant and transferred in from Redwood City. Officer **David Corona** was promoted to sergeant and transferred in from East Los Angeles. Transferring out: Capt. **Esmeralda Falat** (to San Bernardino), **Carlos Garcia** (to Dublin), **Jose Gonzalez** (to Dublin), **Shaun Simmons** (to San Jose), **John Darling** (to San Jose), **Jason Ballard** (to San Diego), and **William Splettstoesser** (to Modesto). Transferring in from the CHP Academy: **Justin Morejohn**, **Jose Felix**, **David Cavett**, **Ronald Simmons**, **James Burch**, and **Kevin Lauppe**.

EAST BAY REGIONAL PARKS POLICE DEPARTMENT

Sgt. **Franklin Dickey** resigned after 19 years of service with the department and over 24 years in law enforcement. Transfers: **Charles Torres** from ACNTF to Patrol, **William Granados** from SAFE Tast Force to Patrol. New officers: **Giorgio Chevez**, **Giulia Colbacchini**, **Daniel Thomas**, and **Barret Lindsey**.

FREMONT POLICE DEPARTMENT

Sergeants **Greg Gerhard** and **John Liu** were promoted to lieutenant. Officer **Mark Dang** and Det. **Fred Bobbitt** were promoted to sergeant. The following officers have retired: **Jeffrey Farmer**, **Dennis Madsen**, and **Kerry Wooldridge**.

HAYWARD POLICE DEPARTMENT

Chief of Police **Lloyd Lowe** retired after 25 years of service. He was appointed Chief in 2004. Retired Concord Police Chief **Ron Ace** was appointed Acting Chief. **Greg Velasquez** was promoted to inspector and assigned to Investigations. Insp. **Alex Cardes** retired after 28 years of service. Officer **Joe Riva** took a disability retirement after 13 years of service. New officers: **Ryan Marion**, **Manuel Troche**, and **Jose Najera**. Retired officer **Bob Whitaker** passed away on May 9, 2008, after a valiant 15-month battle with brain cancer. Bob retired on a disability in 1982.

NEWARK POLICE DEPARTMENT

Transfers: Sgt. **Renny Lawson** from Investigations to Administration, Sgt. **Bob Douglas** from Patrol to Investigations, and Officer **David Lee** from Patrol to SACNET. Officer **Dave Higbee** was selected as Officer of the Year.

OAKLAND POLICE DEPARTMENT

The following officers have retired: Capt. **Cyril Vierra**, Lt. **Patrick Garrahan**, and Officer **Dale Burnell**. Disability retirements: **Robert Stewart** and **Kevin Hall**. Lateral appointments: **Michael Land**, **Harold Castro**, and **Christina Tiletile**. Resignations: **Shannon Silva**, **Gary Weeck**, **Justin Vidal**, **Kurt Schneider**, **Norman DelRosario**, **Roberto Gutierrez**, **Jason Gieser**.

New Officers: **Scott Bezner**, **Matthew Campbell**, **David Chapman**, **Jamin Creed**, **Erich Cumby**, **Lester Cummings**, **Katherine Evans**, **Dometrius Fowler**, **Jeffrey Galaviz**, **Jorge Garcia**, **Andres Garza**, **Melissa Geraci**, **Robert Jaime**, **Bobby Ko**, **John Littrell**, **Ryan Low**, **Russell Medeiros**, **James Moore**, **Kyle Petersen**, **Paul Phillips**, **Jerome Pollard**, **Kevin Rucker**, **Rafek Saleh**, **Benjamin Sarno**, **Jewel Smith**, **Yanicka Taylor**, **Kito Yslava**, and **Antonio Zaldivar**.

PLEASANTON POLICE DEPARTMENT

The following officers have retired: Sgt. **Kris Phelps** (21 years), Sgt. **Suzanne Soberanes** (24 years), and Officer **Harry McIntosh** (24 years). Officer **Paul Phillips** medically retired after 25 years of service. Officer **Cassie Pickett** resigned to accept a position with the Walnut Creek PD. Dispatcher **Jackie Simon** was promoted to Police Dispatch Supervisor.

SAN LEANDRO POLICE DEPARTMENT

The following new officers graduated from the Alameda County Sheriff's Office Academy: **Paul Chin**, **Suzanne Huckaby**, and **Paul Jocowitz**.

UNION CITY POLICE DEPARTMENT

New officers currently in the field training program: **Jon Persinger** and **Matthew Harden**.

UNIVERSITY OF CALIFORNIA, BERKELEY POLICE DEPARTMENT

Officers **Isaac Koh** and **Emily Trevino** were transferred to the Southside Patrol. POV

War Stories

The dangers of secondhand smoking

One morning, a 16-year old boy decided to rob a convenience store near his home in San Leandro. So he armed himself with a toy handgun, walked into the store and told the clerk, "Give me all your money." It was apparent to the clerk that the gun was plastic, so he said "Get outta here," and the kid ran. The clerk then called San Leandro PD and gave the dispatcher the robber's phone number.

How did he know the number? Well, the boy had been in the store a few days earlier with a note from his mother that said, *"Please allow my son to buy one pack of Newport shorts. If there's any problem, call me at [phone number]."* The clerk had kept the note and, thus, an arrest was made within minutes.

Another robbery fizzles

In New Orleans, a juvenile walked into a Circle-K store, put a $20 bill on the counter and asked for change. When the clerk opened the cash register, the boy pulled a gun, grabbed all the money, and fled. But he forgot to take his $20 bill. And because there was only $15 in the till (it was a slow day), he suffered a net loss of $5. According to the local newspaper, the officer who took the report wasn't sure how to classify the crime. "Is it a robbery," he wonered, "if the suspect points a gun at the victim and then *gives* him money?"

A twist on Weekend at Bernie's

In New York City, two men wheeled an elderly man in a wheelchair into a bank and asked the teller to cash his Social Security check. The teller recognized the man as a regular customer and she was about to hand over the money when she realized something: the man was dead. The two men were arrested for attempted theft but prosecutors wouldn't charge them because they couldn't prove the men knew their friend had died before they entered the bank. An NYPD detective was critical of the decision, saying, "They didn't know? He was stiff! He'd probably been dead a week!"

Not guilty of narcissism

A CHP sergeant in Dublin was interviewing a juvenile who was a suspect in a hit and run. The juvenile confessed, then lamented, "I'm always doing the wrong thing." The sergeant responded, "Well, at least you're not a narcissist." The juvenile looked startled and then protested, "I didn't start any fires!"

Can't help flashing

A man who had been charged with indecent exposure was being interviewed by a probation officer at the Santa Rita jail when he jumped up, pulled down his pants, and yelled, "Hey, look at this!"

Another kind of flasher

After running a stop sign in Los Angeles, Luis Margarejo led LAPD officers on a chase. Although the officers knew that Luis was a proud member of the Highland Park street gang, they were surprised when he started flashing his gang sign to them, and to pedestrians, and to other motorists. As one of the officers testified, "He flashed the sign at almost every single car that he passed." Luis was eventually arrested and convicted, and he was given a state prison enhancement for engaging in a pursuit for a gang-related purpose.

On appeal, his attorney argued that the pursuit was not gang-related, but the Court of Appeal disagreed. In a published opinion, the court said, "It is remarkable for a person in a high speed chase to make gang signs to pedestrians and to the police. Marjarejo was serving the criminal purposes of the Highland Park gang by turning his flight into a public display of taunting defiance."

Higher education in Oakland

A new college has sprouted up in downtown Oakland. It's called Oaksterdam University, and its mission is to prepare students for careers in the ever-growing fields of medical marijuana production and marketing. The dean says the classes are so popular that he has just added a graduate seminar.

Hip but clueless

A lawyer for a convicted murderer in Miami faxed a motion to the DA which started out, "Dig dis . . . ." He then claimed that a case favorable to the prosecution "wuz rejected by de Flo'ida Supreme Court, Man!" The DA tipped off the judge who appointed a new attorney.

Thinking big

A man named Charles Fuller was arrested for forgery at a bank in Forth Worth when he tried to cash a check for $360 billion dollars. The bank manager said the teller was "kinda suspicious" when she saw all those zeros, to wit: "$360,000,000,000."

Good hitmen are hard to find

In Michigan, a woman pleaded guilty to placing an ad on Craigslist in which she sought a hitman to murder her boyfriend's wife.

An officer's revenge

One day before a police officer in Middletown, New Jersey retired, he wrote fix-it tickets for each of the town's 14 patrol cars. He said they were unsafe.

Busted, but mighty happy

A man robbed a Bank of America branch in downtown Oakland and put the money—including the bait money—down the front of his pants. As he left the bank, a concealed packet of red dye burst open. Naturally, he looked down and, when he saw his pants covered in red he figured that a bank guard must have shot off his manhood. So he jumped in his car and raced to Highland Hospital's emergency department. Although he was arrested after doctors figured out what had happened, the arresting officer said that, all things considered, he appeared to be quite relieved.

The Colonel would have been proud

A man walked into a Kentucky Fried Chicken outlet in Berkeley and told the clerk, "I'll have the all-white three piece dinner meal with mashed potatoes and cornbread, please. Oh, and one more thing—this is a holdup! Give me all your money." The clerk replied, "All right, sir, but how do you want your chicken? Original or extra crispy?"

If you can't trust a prostitute . . .

A man in San Leandro wanted to party, so he drove over to Oakland where he bought some cocaine from a street dealer, and then picked up a hooker who was working the same street corner. An Oakland officer happened to be watching the corner and he saw the whole thing. So he stopped the man and said "I've got two pieces of news for you. First, that lovely hooker is actually a man. Second, the dude who sold you the cocaine only sells bunk." The man thought for a second and then said, "Well, I guess you can't trust anybody these days." The officer responded, "Yeah, times have changed. It makes you wonder whatever happened to all those trustworthly prostitutes and drug dealers."

Got a War Story?

The War Story Archives

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