

POINT of VIEW



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Point of View

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Vehicle Searches

“The law of search and seizure with respect to automobiles is intolerably confusing.”¹

Back in the 1960s and 1970s, the law pertaining to vehicle searches was not only “intolerably confusing,” it was virtually incomprehensible. One writer aptly described it as “a highly sophisticated set of rules, qualified by all sorts of ifs, ands, and buts, literally impossible of application by the officer in the field.”² The cause of this turmoil was the courts’ inability to resolve the recurring conflict between the privacy rights of vehicle occupants and the needs of law enforcement. So, instead of devising rules that could be easily understood and applied, they contrived a hodgepodge of fact-specific regulations that succeeded only in providing bewildering questions for police promotional exams.

But that changed in the early 1980s thanks to a pair of decisions by the United States Supreme Court. The first was *New York v. Belton*,³ a 1981 case in which the Court simplified the rules pertaining to vehicle searches incident to an arrest. Having learned that officers were having trouble determining what places and things they could search when they arrested an occupant, the Court concluded that they needed a straightforward rule. So it provided one: Officers would be permitted to search everything in the passenger compartment.

One year later in *U.S. v. Ross*,⁴ the Court overhauled the rules covering vehicle searches based on probable cause, ruling that officers who have probable cause to search a vehicle may search it without a warrant, even if they had time to obtain one.

Thanks to *Belton* and *Ross*, things ran smoothly for almost 30 years. But then, out of the blue on the morning of April 21, 2009, a bare majority of the United States Supreme Court announced it had decided to abandon *Belton*’s “bright line” rule and replace it with one of the most inane edicts in the

history of American jurisprudence. The case was *Arizona v. Gant*,⁵ and the five justices in the majority convinced themselves that the *Belton* Court “really” meant to say that officers may search vehicles incident to the arrest of an occupant only if, (1) the officers had not handcuffed the arrestee, and (2) they had placed him in a position from which he could have freely attacked them from behind if he was so inclined. But because officers do not ordinarily set themselves up to be blindsided by arrestees, the number of cases in which these requirements will be met is expected to be zero. And so, although the justices lacked the veracity to overturn *Belton*, as a practical matter that is what they did.

The situation is not, however, as bleak as some have predicted. That’s because there are several other legal grounds for conducting warrantless vehicle searches, none of which was eroded by *Gant*. Furthermore, these other searches should, in most cases, provide officers with the legal authority to conduct searches that are just as broad as those permitted under *Belton*. But because officers and prosecutors relied so heavily on *Belton* in the past, they may need to become reacquainted with these other searches, especially their requirements and scope. So let’s get started.

Probable Cause Searches

We begin with the brightest of all the bright-line rules in police work: Pursuant to the “automobile exception” to the warrant requirement, officers who have probable cause to believe that evidence of a crime is currently inside a certain vehicle may search for it without a warrant.⁶ This means they may conduct the search even if they had plenty of time to obtain a warrant, and even if the vehicle had already been towed and was sitting securely in a police garage or impound yard.⁷

¹ *Robbins v. California* (1981) 453 U.S. 420, 430 [conc. opn. of Powell, J.]. Edited.

² LaFave, “Case-By-Case Adjudication versus Standardized Procedures: The Robinson Dilemma,” 1974 S.Ct.Rev. 127, 141.

³ (1981) 453 U.S. 454.

⁴ (1982) 456 U.S. 798.

⁵ (2009) __ U.S. __ [2009 WL 1045962].

⁶ See *United States v. Ross* (1982) 456 U.S. 798, 809; *People v. Carpenter* (1997) 15 Cal.4th 312, 365.

⁷ See *Pennsylvania v. Labron* (1996) 518 U.S. 938, 940 [“unforeseen circumstances” are not required]; *Maryland v. Dyson* (1999) 527 U.S. 465, 467 [“[T]he automobile exception does not have a separate exigency requirement.”].

Before going further, it should be noted that, because of *Belton*'s demise, probable cause searches will undoubtedly become much more important to officers and prosecutors. For one thing, while probable cause to arrest no longer automatically justifies a vehicle search, it often provides officers with probable cause to look in the vehicle for the fruits and instrumentalities of the crime. In addition, probable cause searches are permitted regardless of where the suspect happened to be when the search began.

What, then, are the requirements for conducting probable cause searches? There are four:

- (1) **Vehicle:** The thing that was searched must have been a "vehicle." As used here, the term is defined broadly to include cars, vans, SUVs, boats, motorcycles, even bicycles.⁸ It also includes motor homes unless they were being used as residences and were not mobile; e.g., on blocks.⁹ Note that a vehicle may be searched even though, at the time of the search, it was not readily mobile because of a traffic collision, mechanical failure, fire; or because it was in police custody.¹⁰
- (2) **Public place:** The vehicle must have been located in a public place or on private property that officers could access without violating the suspect's reasonable expectation of privacy. For example, officers may ordinarily search a vehicle that is parked in the suspect's driveway because people can seldom expect privacy in driveways.¹¹ On the other hand, they would

need a warrant to enter the suspect's enclosed garage to conduct the search.

- (3) **Probable cause:** Officers must have had probable cause to believe there was evidence in the vehicle. This subject is discussed next.
- (4) **Scope:** Officers must have restricted the search to places and things in which the evidence may reasonably have been found. This subject is discussed after probable cause.

Probable cause

Probable cause to search a vehicle exists if there is a "fair probability" that evidence is located inside.¹² In many cases, probable cause develops suddenly when officers, after stopping the vehicle, see the evidence in plain view.

DRUGS IN PLAIN VIEW: The most common justification for searching vehicles is that officers saw drugs or drug paraphernalia in the passenger compartment. When this happens, officers may enter the vehicle and seize the evidence.¹³ As discussed later, in most cases they may also search for more.

DRUG CONTAINER IN PLAIN VIEW: Probable cause to search a container in the passenger compartment commonly exists if the container was something that is used almost exclusively for storing drugs, such as bindles and tied balloons.¹⁴ As noted in *People v. Holt*, "Courts have recognized certain containers as distinctive drug carrying devices which may be seized upon observation: heroin balloons, paper bindles and marijuana smelling brick-shaped packages."¹⁵

⁸ See *California v. Carney* (1985) 471 U.S. 386 [motor home]; *People v. Block* (1985) 173 Cal.App.3d 506, 510 [Winnebago]; *People v. Allen* (2000) 78 Cal.App.4th 445 [bicycle]; *U.S. v. Albers* (9th Cir. 1998) 136 F.3d 670 [houseboat].

⁹ See *California v. Carney* (1985) 471 U.S. 386, 394, fn3.

¹⁰ See *Michigan v. Thomas* (1982) 458 U.S. 259, 261 ["[T]he justification to conduct such a warrantless search does not vanish once the car has been immobilized; nor does it depend upon a reviewing court's assessment of the likelihood in each particular case that the car would have been driven away"]; *People v. Overland* (1988) 203 Cal.App.3d 1114, 1118 ["Application of [the automobile exception] is not contingent upon whether the particular automobile could actually be moved at the time of the search."].

¹¹ See *Cardwell v. Lewis* (1974) 417 U.S. 583, 591 [vehicle located in public parking lot]; *People v. Robinson* (1989) 209 Cal.App.3d 1047, 1052 [car parked on the street]; *People v. Zichwic* (2001) 94 Cal.App.4th 944, 953 [vehicle in apartment carport]; *U.S. v. Humphries* (9th Cir. 1980) 636 F.2d 1172, 1179 [driveway]; *U.S. v. Hatfield* (10th Cir. 2003) 333 F.3d 1189, 1194 [driveway].

¹² See *Illinois v. Gates* (1983) 462 U.S. 213, 238.

¹³ See *Wyoming v. Houghton* (1999) 526 U.S. 295, 300 [because officers saw a hypodermic syringe in the driver's shirt pocket, they reasonably believed there were drugs in the vehicle].

¹⁴ See *Texas v. Brown* (1983) 460 U.S. 730, 743 ["[T]he distinctive character of the balloon itself spoke volumes as to its contents"]; *People v. Chapman* (1990) 224 Cal.App.3d 253, 257 ["Probable cause to believe a container holds contraband may be adequately afforded by its shape, design, and the manner in which it is carried."]; *People v. Nonnette* (1990) 221 Cal.App.3d 659, 666 [bundle of tiny baggies of the type used for drugs].

¹⁵ (1989) 212 Cal.App.3d 1200, 1205.

DRUG ODOR (Plain smell): Probable cause to search a vehicle for drugs may be based on a distinctive odor that is commonly associated with certain drugs such as marijuana, PCP, and methamphetamine.¹⁶ Thus, the Court of Appeal noted that “[o]dors may constitute probable cause” if the officer is “qualified to know the odor, and it is one sufficiently distinctive to identify a forbidden substance.”¹⁷

Such probable cause may also be based on an alert by a trained police dog.¹⁸ Thus, in *United States v. Vasquez* the court noted, “Once [the dog] alerted to the vehicle’s front and rear bumpers, the officers had probable cause to search the car and its contents.”¹⁹

DRUG SALES: Probable cause to arrest an occupant for drug sales will ordinarily provide officers with probable cause to search the vehicle for things that are closely associated with trafficking, such as drugs, pay and owe records, packaging paraphernalia, and weapons.²⁰

FIREARMS IN PLAIN VIEW: The presence of a firearm in plain view would constitute probable cause to enter the vehicle to determine if it was loaded and thus constituted a violation of Penal Code § 12031. (As we will discuss later, there is also a special exception to the warrant requirement for the seizure of any weapon in a detainee’s vehicle.)

OPEN CONTAINER IN PLAIN VIEW: Officers who see an open container of an alcoholic beverage in a vehicle

may enter the vehicle and seize it.²¹ Similarly, an odor of alcohol will ordinarily provide officers with probable cause to believe there are open containers in the passenger compartment.²²

DRIVER UNDER THE INFLUENCE: If officers have probable cause to believe that an occupant is under the influence of alcohol or drugs, they will ordinarily have probable cause to believe there is alcohol or drugs in the vehicle.²³

BURGLAR TOOLS IN PLAIN VIEW: The presence of burglar tools may establish probable cause to search for more tools or loot, especially if officers were aware of other circumstances that indicated the occupant was a burglar.²⁴

STOLEN PROPERTY IN PLAIN VIEW: Grounds to search a vehicle may be based on probable cause to believe that property in plain view was stolen. Such probable cause may be based on circumstantial evidence such as obliterated serial numbers; clipped wires, pry marks or other signs of forced removal; the presence of store tags or antishoplifting devices that are usually removed when goods are sold;²⁵ a large number of items that was inconsistent with personal use, especially if the property was of a type that is commonly stolen (e.g., TVs, CDs, cell phones, jewelry);²⁶ the suspect made conflicting or dubious explanations concerning his possession of the property;²⁷ the claimed purchase price was suspiciously low.²⁸

¹⁶ See *United States v. Johns* (1985) 469 U.S. 478, 482 [“After the officers came closer and detected the distinct odor of marijuana, they had probable cause to believe that the vehicles contained contraband.”]; *People v. Weaver* (1983) 143 Cal.App.3d 926, 931 [“[The odor of PCP was] quite sufficient to justify the warrantless search of the package area”]; *U.S. v. Lopez* (10th Cir. 1985) 777 F.2d 543, 551 [“ether-like substance” which the officers associated with the transport of “bulk cocaine”].

¹⁷ *People v. Benjamin* (1999) 77 Cal.App.4th 264, 273.

¹⁸ See *Florida v. Royer* (1983) 460 U.S. 491, 505-6 [“The courts are not strangers to the use of trained dogs to detect the presence of controlled substances in luggage”]; *U.S. v. \$404,905* (8th Cir. 1999) 182 F.3d 643, 647 [“Once Fanta alerted on the exterior of Alexander’s trailer, [the officer] had probable cause to search the trailer’s interior without a warrant.”]; *U.S. v. Garcia* (9th Cir. 2000) 205 F.3d 1182, 1187 [“Because the dog alerted to both the trunk area and the glove box, probable cause existed”].

¹⁹ (10th Cir. 2009) 555 F.3d 923, 927.

²⁰ *People v. Glaser* (1995) 11 Cal.4th 354, 367 [“In the narcotics business, firearms are as much ‘tools of the trade’ as are most commonly recognized articles of narcotics paraphernalia”].

²¹ See Veh. Code §§ 23222-23226; *People v. Suennen* (1980) 114 Cal.App.3d 192, 202 [open beer can in passenger compartment].

²² See *People v. Molina* (1994) 25 Cal.App.4th 1038, 1042 [with “odor of fresh beer” the officers “were entitled to search the passenger compartment, including any containers therein, for open containers of alcohol”].

²³ See *People v. Guy* (1980) 107 Cal.App.3d 593, 598 [“Armed with the belief defendant was intoxicated, [the officer] had the right to conduct a reasonable search for intoxicants in the interior of defendant’s car.”]; *People v. Decker* (1986) 176 Cal.App.3d 1247, 1250 [“[B]ased on the obvious intoxicated state of appellant, the lack of the smell of an alcoholic beverage on her breath and the drink found in the van, [the officer] had probable cause to search Ms. Decker’s car for drugs.”].

²⁴ See *People v. Suennen* (1980) 114 Cal.App.3d 192, 203.

²⁵ See *People v. Gorak* (1987) 196 Cal.App.3d 1032, 1039; *In re Curtis T.* (1989) 214 Cal.App.3d 1391, 1398.

²⁶ See *People v. Martin* (1973) 9 Cal.3d 687, 696; *People v. Wolder* (1970) 4 Cal.App.3d 984, 994.

²⁷ See *In re Richard T.* (1978) 79 Cal.App.3d 382, 388.

²⁸ See *People v. Deutschman* (1972) 23 Cal.App.3d 559, 562.

“WHERE THERE’S SOME, THERE’S PROBABLY MORE”: When officers find drugs, weapons, or some other type of contraband in a vehicle, they will ordinarily have probable cause to search the passenger compartment and trunk for more of the same. The theory here is that criminals seldom put all of their illegal stuff in one place. As the Court of Appeal observed in a marijuana case, “[E]ven if defendant makes only personal use of the marijuana found in his day planner, he might stash additional quantities for future use in other parts of the vehicle, including the trunk.”²⁹

For example, the courts have ruled that the discovery of the following items in plain view justified a search for more: two pieces of rock cocaine,³⁰ a “small amount” of cocaine,³¹ marijuana,³² an open can of beer,³³ a firearm,³⁴ stolen property.³⁵

SEARCH FOR FRUITS AND INSTRUMENTALITIES: As noted earlier, officers who have probable cause to arrest an occupant of a vehicle will often have probable cause to search it for the fruits and instrumentalities of the crime, or the types of fruits and instrumentalities that are commonly associated with such crimes. This is especially true if the crime occurred fairly recently.

For example, if officers had probable cause to believe that the occupants had just committed an armed robbery, they would ordinarily have probable cause to search for the gun and whatever was taken in the holdup.³⁶ While probable cause may not exist for “old” robberies, searches have been upheld when they occurred hours and sometimes days later.³⁷

Thus, in *People v. Weston* the court ruled that officers had probable cause to search the getaway car used in an armed robbery that had occurred four days earlier, saying:

Because of the relative recency of the crime, and the connection of defendant and his car with it, the officers possessed sufficient information at the time they arrested defendant to create a strong suspicion in their minds that the Cadillac might currently contain evidence of the crime—a gun or stolen property.³⁸

The same theory applies to recent burglaries. For example, if officers have probable cause to believe that the occupants had recently committed a burglary, it is likely that they would also have probable cause to search the vehicle for burglar tools and stolen property. Similarly, in *People v. Suennen* the court ruled that officers who saw burglar tools and a

²⁹ *People v. Dey* (2000) 84 Cal.App.4th 1318, 1322.

³⁰ See *People v. Hunt* (1990) 225 Cal.App.3d 498, 509.

³¹ See *People v. Sandoval* (1985) 164 Cal.App.3d 958, 965.

³² *People v. Hunter* (2005) 133 Cal.App.4th 371; *People v. Brocks* (1981) 124 Cal.App.3d 959, 963 [“It requires no perspicacious intellect to reason the person smoking one marijuana cigarette may well want another and will carry sufficient marijuana to satisfy his appetite of the moment.”].

³³ See *People v. Chapman* (1990) 224 Cal.App.3d 253, 256 [“after observing the open container of alcohol, the officers had the right to search the vehicle for additional containers of alcohol”]; *People v. DeCosse* (1986) 183 Cal.App.3d 404, 411 [“And the [open container] clearly established probable cause for search of the vehicle for other contraband”].

³⁴ See *People v. Benites* (1992) 9 Cal.App.4th 309, 328 [upon seeing a loaded shotgun, the officer had “probable cause to search the rest of the van”]; *People v. Nicholson* (1989) 207 Cal.App.3d 707, 712 [search of containers OK after officer “observed an illegal shotgun in the trunk” and learned “there was an illegal handgun under the front seat”].

³⁵ See *People v. Evans* (1973) 34 Cal.App.3d 175, 180 [upon finding \$21,000 in cash in the suspect’s car, and suspecting it might be loot from a robbery, officers could search for more].

³⁶ See *Chambers v. Maroney* (1970) 399 U.S. 42, 47 [“there was probable cause to search the car for guns and stolen money” taken in a robbery that had just occurred]; *People v. Chavers* (1983) 33 Cal.3d 462, 467 [probable cause existed because “the officers had probable cause to believe that seizable items, including the fruits of the robbery” were concealed in the car]; *People v. Stafford* (1973) 29 Cal.App.3d 940, 948 [after stopping the car used in a supermarket robbery that had just occurred, the officers “had probable cause to search for the stolen property [and weapons]”]; *People v. Varela* (1985) 172 Cal.App.3d 757, 762 [“[T]he officers had probable cause to believe that seizable items, including fruits of the robbery” were in the vehicle used in the robbery earlier that day].

³⁷ See *People v. Gee* (1982) 130 Cal.App.3d 174, 182 [“[T]he officers had reason to believe that appellant’s car had been used as the getaway vehicle from the Taylor robbery [about eight hours earlier.]”]; *People v. Le* (1985) 169 Cal.App.3d 186, 190 [although the robberies had not just occurred, the defendant had, “a few hours before,” attempted to get an appraisal on some of the stolen property]; *U.S. v. Lawson* (D.C. Cir. 2005) 410 F.3d 735, 741 [“The vehicle matched a physical description of the getaway car in the Bank of America robbery [three days earlier.]”].

³⁸ (1981) 114 Cal.App.3d 763, 775.

handgun in a car they had stopped for a traffic violation had probable cause to search a pillowcase in the vehicle because they were aware that a series of pillowcase burglaries had recently been committed in the area. Said the court, “The presence of burglar tools in the vehicle in the possession of passenger, along with the pillowcase, the weapon, and [the officer’s] knowledge of prior pillowcase burglaries, furnished the latter with sufficient facts to entertain a strong suspicion that the fruits of a burglary would be found in the pillowcase.”³⁹

VEHICLE IS A CRIME SCENE: If a murder, rape, kidnapping, or other violent crime occurred inside a vehicle, officers will usually have probable cause to believe that relevant trace or scientific evidence is located somewhere in the vehicle; e.g., DNA, blood, semen, hair, fibers, human tissue, powder burns, and fingerprints.⁴⁰ Similarly, if the vehicle was the instrument that was used to commit the crime (e.g., hit-and-run), officers will often have probable cause to take paint scrapings and search the exterior for such things as tire tread, blood, hair, and parts of the victim’s clothing.⁴¹

SEARCH FOR INDICIA: Finally, if the identity of the owner or driver of the vehicle is relevant in a criminal investigation, officers may ordinarily search for indicia of ownership—such as registration, ID, bills, credit card receipts, letters—because such items are often found in vehicles.⁴²

What may be searched

Here’s another bright-line rule: If officers have probable cause to search a vehicle for evidence, they may search any place or thing in which the evidence could reasonably be found.⁴³ In the words of the United States Supreme Court:

When a legitimate search is underway, and when its purpose and its limits have been precisely defined, nice distinctions between glove compartments, upholstered seats, trunks, and wrapped packages in the case of a vehicle, must give way to the interest in the prompt and efficient completion of the task at hand.⁴⁴

Although the scope of a search based on probable cause is broad, there are some limitations and one twist.

PASSENGER COMPARTMENT: In most cases, officers may search throughout the passenger compartment, including the glove box, the console, the recesses of the seats, under the seats, and under the floor mats.⁴⁵

CONTAINERS: Officers may search containers in the passenger compartment so long as they were large enough to hold any of the sought-after evidence.⁴⁶ This is true even if officers knew that the container belonged to someone other than the suspect.⁴⁷

On the other hand, a container could not be searched if, because of its size, bulk, or weight, it was apparent that none of the evidence would be found inside. For example, in *People v. Chapman* the court ruled that

³⁹ (1980) 114 Cal.App.3d 192, 203.

⁴⁰ See *People v. Panah* (2006) 35 Cal.4th 395, 469 [“apparent bloodstains in the car”]; *People v. Superior Court (Nasmeh)* (2007) 151 Cal.App.4th 85, 101 [“[B]ased on his training and experience, Officer Wahl suspected that valuable trace evidence might be found in Nasmeh’s vehicle”].

⁴¹ See *Cardwell v. Lewis* (1974) 417 U.S. 583, 592; *People v. Wolf* (1978) 78 Cal.App.3d 735, 741; *People v. Robinson* (1989) 209 Cal.App.3d 1047, 1055 [paint samples of vehicle].

⁴² See *People v. Rogers* (1986) 187 Cal.App.3d 1001, 1009 [“[C]ommon experience tells us that houses and vehicles ordinarily contain evidence establishing the identities of those occupying or using them.”]; *People v. Remiro* (1979) 89 Cal.App.3d 809, 830 [officers reasonably believed that the van contained “evidence helpful in the apprehension” of occupant who fled].

⁴³ See *California v. Acevedo* (1991) 500 U.S. 565, 570 [officers may search the “compartments and containers within the automobile so long as the search is supported by probable cause”]; *Wyoming v. Houghton* (1999) 526 U.S. 295, 302 [“When there is probable cause to search for contraband in a car, it is reasonable for police officers to examine packages and containers without a showing of individualized probable cause for each one.”].

⁴⁴ *United States v. Ross* (1982) 456 U.S. 798, 821-22. Edited.

⁴⁵ See *People v. Weston* (1981) 114 Cal.App.3d 764 [jewelry found in recesses of the seats]; *People v. Kraft* (2000) 23 Cal.4th 978, 1043 [under the floor mats]; *People v. Chavers* (1983) 33 Cal.3d 462, 470 [glove box]; *People v. Odom* (1980) 108 Cal.App.3d 100, 106 [under the seats]; *People v. Franklin* (1985) 171 Cal.App.3d 627, 634 [under the seats].

⁴⁶ See *People v. Hart* (1999) 74 Cal.App.4th 479, 487 [“[I]t is well established that containers in a vehicle are searchable if the vehicle is searchable”]; *People v. Decker* (1986) 176 Cal.App.3d 1247, 1251 [search of purse]; *People v. Schunk* (1991) 235 Cal.App.3d 1334, 1342 [search of “small duffel bag”]; *People v. Carrillo* (1995) 37 Cal.App.4th 1662 [search of bag and pouch in trunk].

⁴⁷ See *Wyoming v. Houghton* (1999) 526 U.S. 295, 307 [“We hold that police officers with probable cause to search a car may inspect passengers’ belongings found in the car that are capable of concealing the object of the search.”].

officers with probable cause to search for open containers could not search a woman's compact or a grocery bag because neither appeared to contain heavy bottles or cans.⁴⁸

COMPUTERS: It is unsettled whether officers may search computers located in the vehicle.⁴⁹ Until the issue is resolved, officers should play it safe and seek a warrant or consent.

TRUNK: The trunk is searchable.⁵⁰ Note that it used to be the rule in California that officers could not search the trunk based on the discovery of a small amount of drugs in the passenger compartment (e.g., a single joint, a rock of cocaine, or the odor of burnt marijuana) as this would indicate the drugs were for personal use only.⁵¹ But because this rule is based on the kind of "nice distinction" that the Supreme Court has prohibited, it has been abrogated.⁵²

PASSENGERS: Officers may not search the clothing of passengers unless there was independent reason to believe the evidence was located there.⁵³

"BLACK BOXES": By statute, information stored in an Event Data Recorder (a.k.a. "Black box" or "Sensing and Diagnostic Module") may be downloaded or otherwise retrieved only by means of, (1) a search warrant or other court order, or (2) the registered

owner's consent.⁵⁴ It is apparent, however, that the box could be seized pending issuance of a warrant.

LIMITED PROBABLE CAUSE: Here is the twist: If officers know that the evidence is located *only* in a certain area or container, they may search *that* area or open *that* container but not elsewhere. For example, if they were tracking a container of drugs, and if they saw someone put it inside a taxi, they would have probable cause to enter the taxi and search the container, but they could not ordinarily search anywhere else for the drugs.⁵⁵

Note, however, that if indicia of ownership would constitute evidence (and it usually is), officers may search those areas in the vehicle in which indicia may be found, such as the glove box.

Intensity of the search

Officers may conduct a reasonably thorough or "probing" search of all compartments and containers in the vehicle.⁵⁶ For example, if they have probable cause to believe that evidence is located in a gas tank or a secret compartment, they may do whatever is reasonably necessary to examine those spaces.⁵⁷ Furthermore, if reasonably necessary, they may damage the vehicle or its contents; e.g., take paint samples.⁵⁸

⁴⁸ (1990) 224 Cal.App.3d 253, 259. ALSO SEE *United States v. Ross* (1982) 456 U.S. 798, 824 ["Just as probable cause to believe that a stolen lawnmower may be found in a garage will not support a warrant to search an upstairs bedroom, probable cause to believe that undocumented aliens are being transported in a van will not justify a warrantless search of a suitcase."]; *People v. Chavers* (1983) 33 Cal.3d 462, 470 ["Probable cause to search for a stolen television set would not justify a search of the glove compartment."].

⁴⁹ See *U.S. v. Burgess* (10th Cir. 2009) __ F.3d __ [2009 WL 2436674] ["[O]ne might speculate whether the Supreme Court would treat laptop computers, hard drives, flash drives or even cell phones as it has a briefcase or give those types of devices preferred status because of their unique ability to hold vast amounts of diverse personal information."].

⁵⁰ See *United States v. Ross* (1982) 456 U.S. 798, 821-22; *People v. Hunter* (2005) 133 Cal.App.4th 371.

⁵¹ See *People v. Wimberly* (1976) 16 Cal.3d 557, 572-73; *People v. Gregg* (1974) 43 Cal.App.3d 137, 142.

⁵² See *People v. Dey* (2000) 84 Cal.App.4th 1318, 1321-22 ["The holdings of *Gregg* and *Wimberly* have never been expressly repudiated. However, in light of *Ross* . . . we do not think these holdings have continued validity"]; *People v. Hunter* (2005) 133 Cal.App.4th 371, 379 ["On *Wimberly's* validity, we agree with *Dey's* rejection of both it and [*Gregg*]."].

⁵³ See *People v. Temple* (1995) 36 Cal.App.4th 1219, 1227 ["*Temple's* pockets were part of his person and therefore were not 'containers' within the scope of the vehicle search."]; *U.S. v. Soyland* (9th Cir. 1993) 3 F.3d 1312, 1314 ["There was not a sufficient link between Soyland [a passenger] and the odor of methamphetamine or the marijuana cigarettes, and his mere presence did not give rise to probable cause to arrest and search him."].

⁵⁴ Veh. Code § 9951(c).

⁵⁵ See *California v. Acevedo* (1991) 500 U.S. 565; *United States v. Ross* (1982) 456 U.S. 798, 824 ["Probable cause to believe that a container placed in the trunk of a taxi contains contraband or evidence does not justify a search of the entire cab."].

⁵⁶ *California v. Acevedo* (1991) 500 U.S. 565, 570. ALSO SEE *United States v. Ross* (1982) 456 U.S. 798, 820 ["[c]ontraband goods rarely are strewn across the trunk or floor of a car"].

⁵⁷ See *U.S. v. Flores-Montano* (2004) 541 U.S. 149 [removal of gas tank without causing damage was OK during border search].

⁵⁸ See *United States v. Ross* (1982) 456 U.S. 798, 818 [noting that in *Carroll v. United States* (1924) 267 U.S. 132 the Court ruled that prohibition agents did not violate the Fourth Amendment by ripping open the upholstery of Carroll's car because they had probable cause to believe contraband was hidden under the upholstery]; *United States v. Ramirez* (1998) 523 U.S. 65, 71 ["Excessive or unnecessary destruction of property in the course of a search may violate the Fourth Amendment"]; *Cardwell v. Lewis* (1974) 417 U.S. 583 [paint samples]; *People v. Robinson* (1989) 209 Cal.App.3d 1047, 1055 [scraping paint samples].

Search after impound

Officers who have probable cause to search a vehicle may search it where it was found or they may impound it and search later.⁵⁹ As the court pointed out in *People v. Decker*, “When there is probable cause to search at the scene, there is still probable cause later back at the police station.”⁶⁰

Searching a vehicle at a police or impound garage may, of course, be necessary or desirable if officers anticipate a lengthy search, or if the search may require tools or lighting.⁶¹ But even in the absence of such a necessity, officers are not required to obtain a warrant merely because the vehicle has been impounded. As the Supreme Court observed, “[T]he justification to conduct such a warrantless search does not vanish once the car has been immobilized.”⁶² The same is true if officers seized containers from the vehicle; i.e., if they have probable cause to search the containers, they may take them to the station and search them there.⁶³

How long may officers keep a seized vehicle or container without a warrant? The Supreme Court has not ruled on the issue, saying only that officers may not retain the car or container “indefinitely” without court authorization.⁶⁴ In one case, however, it had no problem with a search of containers that occurred three days after they were seized.⁶⁵

Get a warrant?

Although a warrant is not required to search a vehicle when there is probable cause, officers should consider applying for one if they are unsure whether probable cause exists and if they have time to do so. Under these circumstances, they can present the facts to a judge who will make the determination. Furthermore, if the judge issues the warrant, it will usually be upheld under the Good Faith Rule.

Inventory Searches

Inventory searches are different. Unlike the other vehicle searches, they are “totally divorced from the detection, investigation, or acquisition of evidence.”⁶⁶ Instead, they are classified as “community caretaking” searches because their objective is to serve the following societal interests: (1) protection of the vehicle and its contents by removing them to a safer location; (2) protection of officers and their agencies from false claims that property in the vehicle was lost, stolen, or damaged by providing an inventory of the vehicle’s contents; and (3) protection of officers and others from harm if the vehicle happened to contain a dangerous device or substance.⁶⁷

Despite their obvious benefits, vehicle inventory searches are subject to certain restrictions that help ensure that they are not used improperly as a pretext

⁵⁹ See *California v. Acevedo* (1991) 500 U.S. 565, 570 [“[I]f the police have probable cause to justify a warrantless seizure of an automobile on a public roadway, they may conduct either an immediate or a delayed search”]; *Chambers v. Maroney* (1970) 399 U.S. 42, 52 [vehicle may be searched “on the spot when it was stopped” or “at the station house”]; *Texas v. White* (1975) 423 U.S. 67, 68 [“the probable-cause factor that developed at the scene still obtained at the station house”]; *U.S. v. Ross* (1982) 456 U.S. 798, 807, fn.9 [“[I]f an immediate search on the scene could be conducted, but not one at the station if the vehicle is impounded, police often simply would search the vehicle on the street—at no advantage to the occupants, yet possibly at certain cost to the police.”].

⁶⁰ (1986) 176 Cal.App.3d 1247, 1251.

⁶¹ See *People v. Laursen* (1972) 8 Cal.3d 192, 202 [“The officers did not possess the proper tools to open the trunk and complete their search at the time and place where the vehicle was discovered”]; *People v. Superior Court (Nasmeh)* (2007) 151 Cal.App.4th 85, 98 [“The vehicle can be taken to a crime laboratory for the time reasonably needed to undertake and complete the search.”].

⁶² *Michigan v. Thomas* (1982) 458 U.S. 259, 261.

⁶³ See *United States v. Johns* (1985) 469 U.S. 478, 487, 484.

⁶⁴ *United States v. Johns* (1985) 469 U.S. 478, 487.

⁶⁵ *United States v. Johns* (1985) 469 U.S. 478, 487 [“[T]he warrantless search three days after the packages were placed in the DEA warehouse was reasonable”]. ALSO SEE *People v. Superior Court (Nasmeh)* (2007) 151 Cal.App.4th 85, 102 [10-day delay OK because of the “serious nature of the possible crimes and the complexity of the investigation”]; *U.S. v. Gastiburo* (4th Cir. 1994) 16 F.3d 582, 587 [“Not a single published federal case speaks of a temporal limit to the automobile exception.”].

⁶⁶ *Cady v. Dombrowski* (1973) 413 U.S. 433, 441.

⁶⁷ See *Colorado v. Bertine* (1987) 479 U.S. 367, 373 [“Knowledge of the precise nature of the property helped guard against claims of theft, vandalism, or negligence. Such knowledge also helped to avert any danger to police or others that may have been posed by the property.”]; *Whren v. United States* (1996) 517 U.S. 806, 811, fn1 [purpose of inventory search is “to ensure that it is harmless, to secure valuable items such as might be kept in a towed car), and to protect against false claims of loss or damage.”]; *Cooper v. California* (1967) 386 U.S. 58, 61-62 [“It would be unreasonable to hold that the police, having to retain the car in their custody for such a length of time, had no right, even for their own protection, to search it.”].

to look around for incriminating evidence. Specifically, the Supreme Court has ruled that officers may conduct inventory searches only if the following circumstances existed:

- (1) **Towing reasonably necessary:** The officers' decision to tow the vehicle must have been reasonable under the circumstances.
- (2) **Standard search procedures:** The search must have been conducted in accordance with departmental policy or standard procedure.

While these requirements might seem straightforward, there is an unusual amount of confusion in this area of the law. As we will discuss, this is mainly because some courts have mistakenly merged the two issues by ruling that both the towing and the searching must have been conducted in accordance with some "standard" procedure.⁶⁸

The decision to tow

Because an inventory search can be conducted only if officers have taken legal custody or control of the vehicle (albeit temporarily),⁶⁹ the first requirement is that towing must have been reasonably necessary. This does not mean that towing must have been imperative. It need only be justifiable. As the court explained in *U.S. v. Rodriguez-Morales*, "Framed precisely, the critical question in cases such as this is not whether the police needed to impound the vehicle in some absolute sense, but whether the decision to impound and the method chosen for implementing that decision were, under all the circumstances, within the realm of reason."⁷⁰

Accordingly, if an officer's decision to tow was reasonable, it is immaterial that there might have been a less intrusive means of protecting the vehicle or its contents; e.g., by locking the vehicle and leaving it at the scene.⁷¹ As the court pointed out in *People v. Williams*, "[A] police officer is not required to adopt the least intrusive course of action in deciding whether to impound and search a car."⁷²

As noted, some courts have mistakenly ruled that, even though towing was reasonably necessary, it was unlawful if the officers' departments did not have a "standard" towing policy or if the officers did not follow it.⁷³ But, as the court pointed out in *People v. Burch*, "It is the inventorying practice and not the impounding practice that, if routinely followed and supported by proper noninvestigatory purposes, renders the inventory search reasonable."⁷⁴

Furthermore, it would be impractical to require that officers or their departments devise "standard" procedures that cover the myriad circumstances that may necessitate towing. As the First Circuit observed:

Virtually by definition, the need for police to function as community caretakers arises fortuitously, when unexpected circumstances present some transient hazard which must be dealt with on the spot. The police cannot sensibly be expected to have developed, in advance, standard protocols running the entire gamut of possible eventualities. Rather, they must be free to follow sound police procedure, that is, to choose freely among the available options, so long as the option chosen is within the universe of reasonable choices.⁷⁵

⁶⁸ See *U.S. v. Duguay* (7th Cir. 1996) 93 F.3d 346, 351 [court noted that "the parties have commingled the issues in their briefs, the decision to impound (the 'seizure') is properly analyzed as distinct from the decision to inventory (the 'search')."]].

⁶⁹ See *U.S. v. Smith* (6th Cir. 2007) 510 F.3d 641, 651 ["A warrantless inventory search may only be conducted if police have lawfully taken custody of the vehicle."]. ALSO SEE *People v. Andrews* (1970) 6 Cal.App.3d 428, 433 ["[U]pon police impoundment of an automobile, the police undoubtedly become an involuntary bailee of the property and responsible for the vehicle and its contents."].

⁷⁰ (1st Cir. 1991) 929 F.2d 780, 786. Edited.

⁷¹ See *Illinois v. Lafayette* (1983) 462 U.S. 640, 647 ["The reasonableness of any particular governmental activity does not necessarily or inevitably turn on the existence of an alternative 'less intrusive' means."]; *People v. Benites* (1992) 9 Cal.App.4th 309, 327 [court rejects the argument "that impoundment was not necessary to ensure the security of the van since the doors could have been locked"].

⁷² (2006) 145 Cal.App.4th 756, 761.

⁷³ See, for example, *People v. Salcero* (1992) 6 Cal.App.4th 720, 723 ["In choosing to impound and inventory the vehicle the police must exercise their discretion according to standard criteria"].

⁷⁴ (1986) 188 Cal.App.3d 172, 180. ALSO SEE *U.S. v. Smith* (3d Cir. 2008) 522 F.3d 305, 312 [decision to impound contrary to standard procedure or even in the absence of a standardized procedure "should not be a per se violation of the Fourth Amendment"].

⁷⁵ *U.S. v. Rodriguez-Morales* (1st Cir. 1991) 929 F.2d 780, 787. ALSO SEE *U.S. v. Coccia* (1st Cir. 2006) 446 F.3d 233, 239 ["standard protocols have limited utility in circumscribing police discretion in the impoundment context because of the numerous and varied circumstances in which impoundment decisions are made"].

Officers and prosecutors may, however, attempt to buttress their showing that towing was reasonable by presenting evidence that it was based on a standard policy or practice, or by pointing out that it was authorized by one of the Vehicle Code sections that list the situations in which towing is permitted.⁷⁶ Still, if towing was unreasonable under the circumstances, the search will not be upheld merely because it was “authorized.” As the Ninth Circuit observed in *Miranda v. City of Cornelius*, “[T]he decision to impound pursuant to the authority of a city ordinance and state statute does not, in and of itself, determine the reasonableness of the seizure under the Fourth Amendment.”⁷⁷

While it would be impractical to provide a comprehensive list of those situations in which the decision to tow a vehicle would be considered reasonable, as we will now discuss, the courts have addressed most of the situations that officers regularly encounter.

TRAFFIC HAZARD: It is obviously reasonable to tow a vehicle that constitutes a traffic hazard. As the Supreme Court noted, “The authority of police to seize and remove from the streets vehicles impeding traffic or threatening public safety and convenience is beyond challenge.”⁷⁸ In fact, the Vehicle Code specifically authorizes towing for this purpose.⁷⁹

DRIVER ARRESTED: The Vehicle Code also authorizes towing when officers have arrested the driver, owner, or other person in control of the vehicle.⁸⁰ This does not mean, however, that officers may routinely tow the vehicles driven by arrestees. Instead, as noted earlier, towing is permitted only if it was reasonably necessary under the circumstances.⁸¹ For example, towing would be unnecessary if a

passenger in the arrestee’s vehicle was properly licensed, and the arrestee had given him permission to take the car. As the court explained in *United States v. Duguay*:

The policy of impounding the car without regard to whether the defendant can provide for its removal is patently unreasonable if the ostensible purpose for impoundment is for the “caretaking” of the streets. While it is eminently sensible not to release an automobile to the compatriots of a suspected criminal in the course of a criminal investigation, if the purpose of impoundment is not investigative, we do not see what purpose denying possession of the car to a passenger, a girlfriend, or a family member could possibly serve.⁸²

Towing may also be unreasonable if the car was legally parked in a safe place and was adequately secured. For example, in *United States v. Caseres* an officer decided to tow a car that the defendant had been driving shortly before he was arrested for 148 P.C. During an inventory search of the vehicle, the officer found a handgun, but the court suppressed it because the car “was legally parked at the curb of a residential street two houses away from Caseres’s home. The possibility that the vehicle would be stolen, broken into, or vandalized was no greater than if the police had not arrested Caseres as he returned home.”⁸³

On the other hand, towing would ordinarily be reasonable if the vehicle was away from the arrestee’s home, especially if it was in a high-crime area where there existed a real threat of theft or vandalism. As the Ninth Circuit explained, “Whether an impoundment is warranted under this community caretaking

⁷⁶ See *People v. Burch* (1986) 188 Cal.App.3d 172, 180 [“The officer testified it was his regular procedure upon citing a driver for a violation of Vehicle Code section 14601 to have the car towed so as to prevent the driver from simply getting back into his vehicle and driving away.”]; *People v. Benites* (1992) 9 Cal.App.4th 309, 327-28 [“[T]he deputies are clearly given parameters under which to exercise their discretion pursuant to [Veh. Code § 22651(p)].”].

⁷⁷ (9th Cir. 2005) 429 F.3d 858, 864.

⁷⁸ *South Dakota v. Opperman* (1976) 428 U.S. 364, 368-69.

⁷⁹ See Veh. Code §§ 22651-22711.

⁸⁰ Veh. Code § 22651(h)(1).

⁸¹ See *Miranda v. City of Cornelius* (9th Cir. 2005) 429 F.3d 858, 864 [“A driver’s arrest is not relevant except insofar as it affects the driver’s ability to remove the vehicle from a location at which it jeopardizes the public safety or is at risk of loss.” Edited.].

⁸² (7th Cir. 1996) 93 F.3d 346, 353. Edited.

⁸³ (9th Cir. 2008) 533 F.3d 1064, 1075. ALSO SEE *People v. Williams* (2006) 145 Cal.App.4th 756, 762 [“the car was legally parked in front of appellant’s residence”]; *Miranda v. City of Cornelius* (9th Cir. 2005) 429 F.3d 858, 864 [the car was “parked in the driveway of an owner who has a valid license.”]; *U.S. v. Pappas* (10th Cir. 1984) 735 F.2d 1232, 1234 [“[T]he car was parked on private property and there was no need for the impound and inventory search.”].

doctrine depends on the location of the vehicle and the police officers' duty to prevent it from creating a hazard to other drivers *or being a target for vandalism or theft*.”⁸⁴

Even if the area was not plagued with crime, a vehicle could certainly become a target for vandalism or theft if it was left in an isolated area. For example, in *People v. Benites* a Tuolumne County sheriff's deputy had just cited the defendant for driving on a suspended license when he decided to impound the car mainly because it was parked off the highway in a “dark, lonely and isolated” area located approximately three miles from the nearest town. Said the court, “The impoundment decision was reasonable under the circumstances.”⁸⁵

Similarly, in *People v. Scigliano* the court ruled that Anaheim police officers reasonably believed that the towing of a Corvette was necessary because the owner, Scigliano, had been arrested, the car was parked on the street, and it had no windshield. Although Scigliano argued that these circumstances did not justify towing, the court disagreed, pointing out, “We have no doubt Scigliano would sing a different tune had the officer simply abandoned the unsecured Corvette and the property within disappeared before Scigliano could return to retrieve it.”⁸⁶

Finally, towing an arrestee's vehicle would, of course, be unreasonable if the only justification was “standard procedure.” For example, in *People v. Williams* an officer testified that he decided to impound the defendant's car because he “almost always” towed the vehicles of the drivers he had arrested. In ruling that this was not a sufficient justification for the impound, the court noted that the officer “simply did

not establish that impounding appellant's car served any community caretaking function.”⁸⁷

CITATION FOR NO LICENSE: The Vehicle Code permits officers to tow a vehicle when the driver was cited for driving without a license or driving on a license that had been suspended or revoked.⁸⁸ The purpose is to prevent the driver from taking off after the officers left.⁸⁹ As the court noted in *Miranda v. City of Cornelius*, “An impoundment may be proper under the community caretaking doctrine if the driver's violation of a vehicle regulation prevents the driver from lawfully operating the vehicle.”⁹⁰

The question arises: May officers tow the vehicle if the cited driver told the officers that he wanted a licensed passenger to drive it? Unfortunately, the question has not yet been addressed by the courts. As noted earlier, if the driver had been *arrested*, officers must ordinarily permit a willing passenger to take the vehicle because there is usually no logical reason to tow it under those circumstances.

It would seem, however, that the situation would be different if an unlicensed driver would be cited and released. That's because it is possible—maybe even probable given the driver's exhibited defiance of the law—that he will reassume control of the vehicle after the officers had left, or after his friend had driven for a few blocks. Some indirect authority for towing under these circumstances is found in *People v. Burch* where, after citing the driver for driving on a suspended license, the officer impounded the car “to prevent the cited driver from simply getting back into the vehicle and driving away.” The court didn't seem to have any trouble with this justification, but it eventually upheld the search on other grounds.⁹¹

⁸⁴ *Miranda v. City of Cornelius* (9th Cir. 2005) 429 F.3d 858, 864. Emphasis added. ALSO SEE *People v. Scigliano* (1987) 196 Cal.App.3d 26, 29 [“the police have a duty to protect a vehicle, like any other personal property which is in the possession of an arrestee”]; *U.S. v. Coccia* (1st Cir. 2006) 446 F.3d 233 [towing OK where car was parked in the driveway of arrestee's psychiatrist's office]; *U.S. v. Staller* (5th Cir. 1980) 616 F.2d 1284, 1289-90 [impoundment OK where car was parked in mall lot, nobody to assume responsibility].

⁸⁵ (1992) 9 Cal.App.4th 309, 326.

⁸⁶ (1987) 196 Cal.App.3d 26, 30. ALSO SEE *People v. Green* (1996) 46 Cal.App.4th 367, 373 [“[T]here was no other person with a valid license present”]; *People v. Webster* (1991) 54 Cal.3d 411, 432.

⁸⁷ (2006) 145 Cal.App.4th 756, 763.

⁸⁸ Veh. Code § 22651(p).

⁸⁹ See *People v. Auer* (1991) 1 Cal.App.4th 1664, 1669 [“The obvious purpose of subdivision (p) of section 22651 is to prevent the offender who is cited on a public street for driving without a valid license from reoffending when the officer has completed the citation process and departed.”]; *People v. Green* (1996) 46 Cal.App.4th 367, 373 [arrest for 12500 VC and “there was no other person with a valid license present to take control of the automobile while defendant was taken to jail”]; *People v. Salcero* (1992) 6 Cal.App.4th 720, 723 [“The officer could properly impound the car when he discovered defendant had no driver's license.”].

⁹⁰ (9th Cir. 2005) 429 F.3d 858, 865.

⁹¹ (1986) 188 Cal.App.3d 172, 180.

EXPIRED REGISTRATION: Another Vehicle Code section authorizes towing if, (1) the vehicle was on the street or in a public parking facility; and (2) the registration had expired over six months earlier, or the registration sticker or license plate was issued for another vehicle or was forged. The Vehicle Code also prohibits the release of these vehicles until the owner provides proof of current registration and a valid driver's license.⁹²

PROTECTING THE VEHICLE: Even if the Vehicle Code does not expressly authorize towing under the circumstances, towing is permitted if reasonably necessary to protect the vehicle or its contents from theft or damage. As the court noted in *People v. Scigliano*, "The Vehicle Code is not the only source of authority to impound a vehicle. Indeed, the police have a duty to protect a vehicle, like any other personal property which is in the possession of an arrestee."⁹³

For example, in *United States v. Coccia*⁹⁴ a psychiatrist notified the FBI that one of her patients, Coccia, said that "he might plan a bombing or disperse anthrax," and that he was capable of such things "based on his military experience." Coccia also told her that people "would read about his actions in the papers; that he would go after President Bush." When Coccia arrived for his next appointment, FBI agents detained him after the psychiatrist issued a commitment order on grounds that he was a danger to himself or others.

Because Coccia had driven to the doctor's office, and because his car was "jam-packed" with personal property, the agents decided to impound and search it. Among other things, they discovered an assault rifle, approximately 1300 rounds of ammunition, and over \$160,000 in cash. After Coccia was charged with unlawful possession of a firearm, he filed a motion to suppress the evidence on grounds that the

impound was unlawful since the FBI had no standard procedure for impounding the vehicles of people who are mentally ill. It didn't matter, said the court, because the search was reasonably necessary as "Coccia would be indisposed for an indeterminate, and potentially lengthy, period."

Search pursuant to standard procedures

The second requirement for conducting a vehicle inventory search is that the scope and intensity of the search must have been circumscribed by means of "standardized criteria or established routine."⁹⁵ Keep in mind that the standardization requirement pertains only to the methodology of the search, not the decision to conduct it. This is because, as discussed earlier, the courts recognize that the preparation of an inventory is reasonable whenever a vehicle will be towed,⁹⁶ even if it will be held in a secure location.⁹⁷ Thus, the Ninth Circuit noted "it is undisputed that once a vehicle has been impounded, the police may conduct an inventory search."⁹⁸

The question arises: If inventory searches are inherently reasonable, why is it necessary to prove they were conducted pursuant to standard procedures? The Second Circuit provided a good explanation in *U.S. v. Lopez*:

A standardized policy is needed to ensure that inventory searches do not become a ruse for a general rummaging in order to discover incriminating evidence. . . . [W]hen a police department adopts a standardized policy governing the search of the contents of impounded vehicles, the owners and occupants of those vehicles are protected against the risk that officers will use selective discretion, searching only when they suspect criminal activity and then seeking to justify the searches as conducted for inventory purposes.⁹⁹

⁹² Veh. Code § 22651(o). ALSO SEE *U.S. v. McCartney* (E.D. Cal. 2008) 550 F.Supp.2d 1215, 1225.

⁹³ (1987) 196 Cal.App.3d 26, 29.

⁹⁴ (1st Cir. 2006) 446 F3 233, 240.

⁹⁵ *Florida v. Wells* (1990) 495 U.S. 1, 4. ALSO SEE *Colorado v. Bertine* (1987) 479 U.S. 367, 374, fn.6 ["Our decisions have always adhered to the requirement that inventories be conducted according to standardized criteria."]; *People v. Green* (1996) 46 Cal.App.4th 367, 374 ["The search should be carried out pursuant to standardized procedures, as this would tend to ensure that the intrusion would be limited in scope to the extent necessary to carry out the caretaking function."].

⁹⁶ See *People v. Benites* (1992) 9 Cal.App.4th 309, 328 [inventory searches of towed vehicles are "inevitable"]; *U.S. v. Lopez* (2nd Cir. 2008) 547 F.3d 364, 369 ["It is well recognized in Supreme Court precedent that, when law enforcement officials take a vehicle into custody, they may search the vehicle and make an inventory of its contents."].

⁹⁷ See *Colorado v. Bertine* (1987) 479 U.S. 367, 373 [storage facility security "does not completely eliminate the need for inventorying"].

⁹⁸ *U.S. v. Wanless* (9th Cir. 1989) 882 F.2d 1459, 1463.

⁹⁹ (2nd Cir. 2008) 547 F.3d 364, 371.

Similarly, the United States Supreme Court explained that standard procedures are necessary to ensure that the search is “designed to produce an inventory,” and because officers “must not be allowed so much latitude that inventory searches are turned into a purposeful and general means of discovering evidence of a crime”¹⁰⁰

As we will now discuss, a standardized inventory policy may be written or unwritten.

WRITTEN POLICIES: If a department has a written policy covering the scope of inventory searches, prosecutors can ordinarily satisfy the “standardization” requirement by introducing a copy of the policy into evidence after laying the necessary foundation by, for example, having the searching officer identify it.

What must the policy encompass? Although it must specify the general scope of inventory searches, it need not set forth precisely what places and things officers may and may not search.¹⁰¹ Nor must it require a listing of every object in the vehicle,¹⁰² or restrict the search to an inspection of things in plain view.¹⁰³

Instead, it is sufficient that the policy authorizes a search of places and things in which property is likely to be found, and that it requires that officers list anything of value that is discovered in such places.¹⁰⁴

Thus, a policy may require or authorize officers to look inside glove boxes, inside consoles, inside trunks, under the seats, and under loose carpeting.¹⁰⁵ It may also authorize a visual inspection of the engine compartment.¹⁰⁶

Note that the policy may authorize a search of motorcycles¹⁰⁷ and any property that officers turn over to a third party, such as a friend of the suspect¹⁰⁸ or a rental car company.¹⁰⁹ And it may require or permit officers to read documents and look through notebooks and other multi-page documents to “ensure that there was nothing of value hidden between the pages.”¹¹⁰ Officers may not, of course, be permitted to damage or destroy parts of the car.¹¹¹

What about opening closed containers? Here, as the Supreme Court noted, flexibility is also allowed: A police officer may be allowed sufficient latitude to determine whether a particular container should or should not be opened in light of the nature of the search and characteristics of the container itself. Thus, while policies of opening all containers or of opening no containers are unquestionably permissible, it would be equally permissible, for example, to allow the opening of closed containers whose contents officers determine they are unable to ascertain from examining the containers’ exteriors.¹¹²

¹⁰⁰ *Florida v. Wells* (1990) 495 U.S. 1, 4.

¹⁰¹ See *U.S. v. Lopez* (2nd Cir. 2008) 547 F.3d 364, 371 [“[W]e do not think [*Florida v. Wells*] meant that every detail of search procedure must be governed by a standardized policy.”].

¹⁰² See *U.S. v. Lopez* (2nd Cir. 2008) 547 F.3d 364, 371 [“It should serve no useful purpose to require separate itemization of each object found, regardless of its value, as a precondition to accepting a search as an inventory search.”].

¹⁰³ See *U.S. v. Edwards* (5th Cir. 1978) 577 F.2d 883, 894, fn. 23 [“We reject the defendant’s contention that the police may only inventory items found in plain view within the cabin of the automobile.”].

¹⁰⁴ See *U.S. v. Andrews* (5th Cir. 1994) 22 F.3d 1328, 1336 [“[I]nventory policies must be adopted which sufficiently limit the discretion of law enforcement officers to prevent inventory searches from becoming evidentiary searches.”].

¹⁰⁵ See *South Dakota v. Opperman* (1976) 428 U.S. 364, 376, fn.10 [OK to open unlocked glove compartment to which vandals would have had ready and unobstructed access once inside the car]; *U.S. v. Edwards* (5th Cir. 1978) 577 F.2d 882, 893, 894 [officers “may ordinarily inspect the glove compartment, the trunk, on top of the seats as well as under the front seats, and the floor of the automobiles”]; *U.S. v. Johnson* (5th Cir. 1987) 815 F.2d 309, 314 [OK to search trunk].

¹⁰⁶ See *U.S. v. Pappas* (8th Cir. 2006) 452 F.3d 767, 772; *U.S. v. Lumpkin* (6th Cir. 1998) 159 F.3d 983, 987-88.

¹⁰⁷ See *People v. Needham* (2000) 79 Cal.App.4th 260, 267 [“We see no reason to treat motorcycles differently from cars”].

¹⁰⁸ See *People v. Needham* (2000) 79 Cal.App.4th 260, 267 [policy properly required the search of “bags and other containers before turning them over to the person claiming them because of the possibility that the property may contain a concealed weapon”]; *U.S. v. Tackett* (6th Cir. 2007) 486 F.3d 230, 233 [the officer “stated that he would not release personal effects to anyone but a relative or spouse, and even if he did pass a bag to someone, he would inventory it to ‘cover myself and the sheriff’s department’”].

¹⁰⁹ See *U.S. v. Mancera-Londono* (9th Cir. 1990) 912 F.2d 373, 376; *U.S. v. Petty* (8th Cir. 2004) 367 F.3d 1009, 1012.

¹¹⁰ *U.S. v. Khoury* (11th Cir. 1990) 901 F.2d 948, 959. ALSO SEE *U.S. v. Andrews* (5th Cir. 1994) 22 F.3d 1328, 1335 [“Cash, credit cards, negotiable instruments, and any number of other items could be hidden between the pages of a notebook, and could give rise to a claim against the city if lost.”]; *People v. Hovey* (1988) 44 Cal.3d 543, 571 [OK to read “car receipt”].

¹¹¹ See *U.S. v. Edwards* (5th Cir. 1978) 577 F.2d 883, 893; *U.S. v. Lugo* (10th Cir. 1992) 978 F.2d 631, 636.

¹¹² *Florida v. Wells* (1990) 495 U.S. 1, 4.

CHP 180 FORM: In lieu of a written policy, many law enforcement agencies in California satisfy the “standardization” requirement by mandating that their officers complete a CHP 180 form which the California Highway Patrol provides to all officers in California. This form requires, among other things, that officers list all “property” in the vehicle, including radios, tape decks, firearms, tools, and ignition keys. It also requires a listing of all damage to the vehicle.¹¹³

UNWRITTEN POLICY: In the absence of a written departmental policy, it is sufficient that there existed an unwritten departmental policy or standard procedure so long as it sufficiently restricted the scope of the search.¹¹⁴ As the court explained in *U.S. v. Tackett*, “Whether a police department maintains a written policy is not determinative, where testimony establishes the existence and contours of the policy.”¹¹⁵ Similarly, the California Supreme Court pointed out that the Fourth Amendment “does not require a written policy governing closed containers . . . but the record must at least indicate that police were following some ‘standardized criteria’ or ‘established routine’ when they elected to open the containers.”¹¹⁶

For example, in *People v. Steeley* an officer in Modesto testified that his department’s unwritten policy required that he “inventory the contents of a vehicle prior to towing to make sure when the tow truck is towing the car, to make sure what property is in the vehicle in case it shows up missing from the tow yard. We have a record of what had left the scene so to speak.” In upholding the officer’s search, the court observed, “Inventory searches of the type conducted in this case are recognized across the nation as standard caretaking functions of the police.”¹¹⁷

Similarly, in *U.S. v. Kornegay* the court noted that, although the record “reflects no written regulations”

requiring the opening of closed containers, the FBI agent “established that it is the customary and standard practice when a vehicle is impounded. [The record] reflects that the opening of the bank bag and the separate cataloguing of its contents was standard practice and was reasonable.”¹¹⁸

Proving that a search was conducted pursuant to an unwritten standard procedure is usually not difficult. In most cases, prosecutors will simply ask the officer a few foundational questions, such as the following which were taken from a Fifth Circuit case:

DA: What was your purpose of doing the inventory search?

Ofr: Policy of Moss Point Police Department, when you arrest someone out of their vehicle, you tow it and do an inventory search of their personal belongings and items left in the vehicle for the protection of the city.

DA: Is that standard operating procedures?

Ofr: Yes, ma’am.

DA: And is the policy of the police department to do that in every case?

Ofr: Yes, ma’am.

DA: And you said it was to protect the City of Moss Point or the police department. What do you mean by that?

Ofr: Well, so the person that’s arrested doesn’t come back and say, well, I had a five thousand dollar stereo, or five hundred dollars and now it’s missing.¹¹⁹

Note that if officers are conducting a standardized search, it is immaterial that they suspected there was evidence inside or were otherwise on the lookout for it. As the Eleventh Circuit explained, “[A] legitimate non-pretextual inventory search is not made unlawful simply because the investigating officer remains vigilant for evidence during his inventory search.”¹²⁰

¹¹³ See *People v. Williams* (1999) 20 Cal.4th 119, 123 [“The purpose of the CHP 180 form and the inventory is, among other things, to preserve a record of the physical condition of the vehicle and its contents when police take possession of it.”].

¹¹⁴ See *People v. Needham* (2000) 79 Cal.App.4th 260, 266; *People v. Williams* (1999) 20 Cal.4th 119, 127; *People v. Steeley* (1989) 210 Cal.App.3d 887, 891; *U.S. v. Duguay* (7th Cir. 1996) 93 F.3d 346, 351 [“a well-honed department routine may be sufficient.”].

¹¹⁵ (6th Cir. 2007) 486 F.3d 230, 233.

¹¹⁶ *People v. Williams* (1999) 20 Cal.4th 119, 127. ALSO SEE *U.S. v. Lopez* (2nd Cir. 2008) 547 F.3d 364, 370 [standard NYPD towing was established through an officer’s testimony that, “You have to do a total inventory of a vehicle. Everything has to come out.”].

¹¹⁷ (1989) 210 Cal.App.3d 887, 892.

¹¹⁸ (10th Cir. 1989) 885 F.2d 713, 717.

¹¹⁹ *U.S. v. Andrews* (5th Cir. 1994) 22 F.3d 1328, 1335.

¹²⁰ *U.S. v. Khoury* (11th Cir. 1990) 901 F.2d 948, 959. ALSO SEE *U.S. v. Lopez* (2nd Cir. (2008) 547 F.3d 364, 372 [“[O]fficers will inevitably be motivated in part by criminal investigative objectives. Such motivation, however, cannot reasonably disqualify an inventory search that is performed under standardized procedures for legitimate custodial purposes.”].

Protective Searches

When officers detain a suspect in or near his car, a gun or other weapon in the vehicle can be almost as dangerous to them as a weapon in the detainee's waistband. But when the Supreme Court authorized pat searches of armed or dangerous suspects in 1968, it didn't say anything about searching their cars.¹²¹ It took 15 years for that issue to reach the Court and, when it did, the Court corrected the problem. Specifically, it ruled that officers may conduct a vehicle protective search—also known as a “vehicle pat down”—if the following circumstances existed:

- (1) **Lawful detention:** An occupant of the vehicle was lawfully detained.
- (2) **Weapon inside:** Officers reasonably believed there was a weapon in the vehicle.
- (3) **Potential access:** The detainee had not yet been subjected to a “full custodial arrest.”

Although the Court indicated that the detainee must also have had the ability to “gain immediate control” of the weapon,¹²² elsewhere it said this requirement would be met if a “full custodial arrest has not been effected” because, until then, he might break away or be permitted to reenter the car for some reason; e.g., to obtain ID.¹²³

Types of weapons

There are two types of weapons that may satisfy the “weapon inside” requirement: (1) conventional, and (2) virtual.

CONVENTIONAL WEAPONS: Conventional weapons consist mainly of guns and other things that are generally constructed for the purpose of causing injury or death; e.g., firearms, knives, brass knuckles, saps, billy clubs, and nunchucks. Plainly, the presence of a conventional weapon inside a vehicle will satisfy the requirement that the vehicle contains a “weapon.” This is true even if it was a “legal” weapon.

For example, in *People v. Lafitte*¹²⁴ Orange County sheriff's deputies stopped Lafitte at about 10:15 P.M. for driving with a broken headlight. While one of the deputies was talking to him, the other shined a flashlight inside the car and saw a knife on the door of the glove box. The deputy seized the knife and then conducted a protective search of the passenger compartment for additional weapons. During the search, he found a handgun in a trash bag that was hanging from an ashtray next to the steering wheel. Although it is not illegal to have such a knife inside a vehicle, and although Lafitte had been cooperative throughout the detention, the California Court of Appeal ruled that the search was justified because “the discovery of the weapon” provided “a reasonable basis for the officer's suspicion.”

VIRTUAL WEAPONS: In contrast to conventional weapons, virtual weapons are instruments that, although they can readily be used as weapons, are mainly used for other purposes; e.g., baseball bats, hammers, screwdrivers, crowbars, box cutters. Unfortunately, the courts have not yet determined whether the presence of a virtual weapon will justify a protective vehicle search. As the Court of Appeal observed in *Lafitte*, “Just how far this rule extends is unclear. [A] baseball bat or hammer can be a lethal weapon; does this mean a policeman could reasonably suspect a person is dangerous because these items are observed in his or her car?”¹²⁵

While the court did not need to answer the question, it seems likely that the presence of a virtual weapon in a vehicle would justify a protective search if, based on the nature of the instrument, its location, or other circumstances, it reasonably appeared that the detainee intended to use it as a weapon. Thus, it might be reasonable to conclude that a baseball bat was serving as a weapon if it was positioned between bucket seats.

¹²¹ See *Terry v. Ohio* (1968) 392 U.S. 1.

¹²² *Michigan v. Long* (1983) 463 U.S. 1032, 1049.

¹²³ *Michigan v. Long* (1983) 463 U.S. 1032, 1051-52. ALSO SEE *U.S. v. Graham* (6th Cir. 2007) 483 F.3d 431, 440 [although the detainee was “cuffed and secured in the back of the cruiser,” the protective vehicle search was permitted because he “was merely detained, but not under arrest.”]. **NOTE:** Defense attorneys may cite *Arizona v. Gant* (2009) __ U.S. __ as authority for prohibiting protective vehicle searches unless the detainee had access to the passenger compartment when the search occurred. But *Gant*'s requirement of access should not be imported into the field of protective searches because, as the Court observed in *Long*, officers who have detained a suspect do not have as much control over detainees as they do over arrestees; e.g., the officer “remains particularly vulnerable in part because a full custodial arrest has not been effected” At p. 1051.

¹²⁴ (1989) 211 Cal.App.3d 1429.

¹²⁵ *People v. Lafitte* (1989) 211 Cal.App.3d 1429, 1433, fn.5.

An object might also be deemed a virtual weapon if the detainee's explanation of its purpose was inherently suspicious. For example, in *People v. Avila*¹²⁶ an officer in San Bernardino County detained the defendant who was sitting inside a pickup. As the officer looked inside, he saw a "long black metal object" behind the seat. The officer testified it looked like a "Mag" flashlight and was located approximately eight inches from Avila's left hand. When the officer asked what it was, Avila responded—without looking at it—that he didn't know. Although the issue in *Avila* was whether the subsequent pat search of the defendant was lawful, it was apparent that the court had determined that the officer reasonably believed that the metallic object was being used as a weapon based on its location and Avila's suspicious response when asked what it was.

Circumstantial evidence of weapon

Even if officers did not see a conventional or virtual weapon in the vehicle, they may reasonably believe that one was there based on circumstantial evidence, such as a furtive gesture. For instance, in *People v. King*¹²⁷ two San Diego police officers on patrol at about 10 P.M. stopped King for driving with expired registration. As one of the officers was walking up to the driver's window, he saw King "reach under the driver's seat," at which point he heard the sound of "metal on metal." The officer testified that, based on these circumstances, he "feared for the safety of his partner and himself," especially because "there was increased gang activity in the area." After ordering King out, the officer looked under the seat and found a .25-caliber semiautomatic handgun.

In ruling that the officer reasonably believed there was a weapon in the car, the court said, "[I]n addition to King's movement, we have the contemporaneous sound of metal on metal and the officer's fear created by the increased level of gang activity in the area."

Search procedure

Officers who are conducting a protective search of a vehicle may, of course, seize any weapons in plain view. But they may also search elsewhere in the passenger compartment for additional weapons even if there was no direct or circumstantial evidence that additional weapons were present.

For example, in *Michigan v. Long*¹²⁸ sheriff's deputies who had detained a suspected drunk driver spotted a large hunting knife on the floorboard of his car. When they also saw an object protruding from under the armrest, they entered the car, lifted the armrest, and seized the object, which was a pouch containing marijuana. In ruling the search was lawful, the Supreme Court said the officers "did not act unreasonably in taking preventive measures to ensure that there were no other weapons within [the driver's] immediate grasp."

Two other things should be noted about the scope of protective vehicle searches: (1) the scope of the search is limited to the passenger compartment, and (2) the search must be restricted to areas to which the detainee "would generally have immediate control, and that could contain a weapon."¹²⁹ Thus, while officers could search the glove box and console, and look under the seats and the armrest, they could probably not search a container that was not large enough to hold a conventional weapon.

ID and Registration Searches

For various reasons, officers may need to inspect or obtain documents that establish the identity of the registered owner, driver, or other occupant of a vehicle. Usually it's the driver, and the documents are needed to confirm his identity because he may be cited for a traffic violation.¹³⁰ Although officers will usually permit the driver to retrieve the documents, there are situations in which it is reasonably neces-

¹²⁶ (1997) 58 Cal.App.4th 1069. ALSO SEE *U.S. v. Nash* (7th Cir. 1989) 876 F.2d 1359, 1361 ["A reasonable interpretation of this furtive gesture was that the defendant was hiding a gun"].

¹²⁷ (1989) 216 Cal.App.3d 1237.

¹²⁸ (1983) 463 U.S. 1032. ALSO SEE *People v. Molina* (1994) 25 Cal.App.4th 1038, 1042 ["Once the officers discovered the knives, they had reason to believe that their safety was in danger and, accordingly, were entitled to search the [passenger] compartment and any containers therein for weapons."].

¹²⁹ *Michigan v. Long* (1983) 463 U.S. 1032, 1050.

¹³⁰ See Veh. Code §§ 4462, 12951 ["The driver of a motor vehicle shall present the registration or identification card or other evidence of registration of any or all vehicles under his or her immediate control for examination upon demand of any peace officer" who has been lawfully stopped for a traffic violation]; *In re Arturo D.* (2002) 27 Cal.4th 60, 78 ["When the officer prepared to cite Arturo for a Vehicle Code violation, he had both a right and an obligation to ascertain the driver's true identity"].

sary for the officers to do this. So, because there is always probable cause to believe that vehicles contain such documents, the courts permit warrantless searches for them if the following circumstances existed:

- (1) **Legal right to examine:** Officers must have had a legal right to obtain such information.
- (2) **Reasonable for officer to search:** Officers must have reasonably believed it would have been impossible, impractical, or dangerous for them to permit the driver or other occupant to conduct the search.

The following are some common reasons for not permitting drivers to search: there were indications that the car was stolen or that the occupants were involved in some other illegal activity and thus presented a threat; the driver was not the owner of the vehicle and was unable to produce registration; the driver fled; the car was abandoned; the driver's search for the documents was unsuccessful.¹³¹

For example, in *People v. Webster* the court ruled that a California Highway Patrol officer had sufficient grounds to search for ID because, while the driver said the car belonged to one of his passengers, the passengers all claimed they were hitchhikers. After noting that the officer "had every reason to believe that the occupants, who disclaimed ownership, would not be able to find or produce the registration on their own," the court ruled that, "[i]n this uncertain situation, [the officer] was amply entitled to inspect the Chrysler's registration to ascertain its owner before deciding whether to release or impound the vehicle."¹³²

Similarly, in *People v. Faddler*¹³³ a Sacramento County sheriff's deputy signaled the driver of a car to stop after seeing him driving erratically and because one of the passengers was "leaning out of a window and shouting and waving what appeared to be a

whiskey bottle." The time was about 2 A.M. The deputy ordered the three occupants to exit after noticing that the passenger with the whiskey bottle was "boisterous and mouthy" and appeared to be drunk. When the deputy asked the driver for ID, he said it was in the glove box, at which point he started to walk back to the car to retrieve it. But the deputy stopped him and retrieved it himself and, while doing so, found drugs in plain view. The court ruled the deputy was justified in conducting the search himself citing the "lateness of the hour, the presence of three men in the vehicle, the nature of the suspected violation and the conduct of the defendants."

In another case from Sacramento County, *People v. Hart*,¹³⁴ sheriff's deputies were dispatched to check on a "suspicious" van parked in a residential area. The time was about 1:30 A.M. When they arrived, they noticed that the van was parked partly on the sidewalk. They also saw a man and a woman on a bed in the back of the van, so they asked what they were doing. At first neither responded, but the woman, Kristel Hart, eventually said that she and her friend were on a "rendezvous." When asked for ID, Hart "looked around on the floor" but said she couldn't find it. So the deputy ordered the pair to exit and conducted his own search for the ID. He found it, next to some marijuana and methamphetamine.

After noting that the deputy had a right to identify the driver because of the parking violation, the court ruled it was reasonable for him to conduct the search himself because he "did not need to permit [Hart] to rummage further in the vehicle or her purse, with the attendant risk that a weapon would be pulled, in light of the hour, defendant's refusal to acknowledge the reason for her presence upon the officer's original inquiry, and her belated disclosure of a rationale only after the officer stated his intent to search the vehicle."

¹³¹ See *People v. Vermouth* (1971) 20 Cal.App.3d 746, 752 ["When the driver was unable to produce the registration certificate and said the car belonged to someone else, it was reasonable and proper for the officers to look in the car for the certificate."]; *People v. Turner* (1994) 8 Cal.4th 137, 182 ["Here, the Chrysler was abandoned, and the person observed to have been a passenger disclaimed any knowledge, let alone ownership, of the vehicle. He also had been identified as a parolee, and it was the middle of the night."]; *People v. Hart* (1999) 74 Cal.App.4th 479, 488 ["[W]e must answer two questions: Was it permissible to require identification from the defendant? And, if so, could he obtain the identification from the van, himself, rather than allowing the defendant to retrieve it?"]; *People v. Remiro* (1979) 89 Cal.App.3d 809, 830 [officers reasonably believed that the van contained "evidence helpful in the apprehension of Remiro who was at large and known to be armed and dangerous"].

¹³² (1991) 54 Cal.3d 411, 431.

¹³³ (1982) 132 Cal.App.3d 607.

¹³⁴ (1999) 74 Cal.App.4th 479.

SEARCH PROCEDURE: After ordering everyone to exit,¹³⁵ officers may search the entire passenger compartment (but not the trunk¹³⁶) so long as they confine the search to places and things in which ID “may reasonably be found.”¹³⁷ This includes the glove box, above the visor, and under the seats.¹³⁸

For example, in *In re Arturo D.*,¹³⁹ a Suisun City police officer stopped Arturo for speeding. Although Arturo verbally identified himself, he “provided no documentary evidence as to his identity, proof of insurance, or vehicle registration.” So the officer ordered him and his two passengers to exit, and then “blindly felt” under the driver’s seat. Finding nothing, he “repositioned himself behind the driver’s seat, bent down, and looked under the seat,” where he saw drugs. On appeal, Arturo claimed the search was unlawful because ID is not usually found under car seats. Granted it’s not a “usual” place to find ID, but the court pointed out that “persons trying to hide their identity will often put their wallets underneath the seat.”

Other Searches

SEARCHES INCIDENT TO ARREST (*Belton* searches): As noted earlier, officers used to be permitted to search the passenger compartments of vehicles for weapons and evidence whenever they made a custodial arrest of an occupant. But earlier this year in *Arizona v. Gant*, the Supreme Court ruled that *Belton* searches would be permitted only if, at the time the search was conducted, the arrestee was not handcuffed and had immediate access to the interior.¹⁴⁰ As a practical matter, this virtually eliminates *Belton* as justification for a search because officers seldom—if ever—turn their backs on unsecured arrestees while searching their vehicles.

Note that the Eighth Circuit recently ruled that officers may conduct a *Belton* search if unarrested

passengers in the vehicle had access to the passenger compartment at the time of the search, and if the officers had reasonable suspicion to detain them.¹⁴¹ There will be many more cases in which courts try to make sense of *Gant*.

REASONABLE SUSPICION SEARCHES: Also in *Gant*, the Court ruled that if officers have arrested an occupant of a vehicle for a crime in which there are usually fruits or instrumentalities (e.g., robbery, burglary, drug possession, trafficking), but they lack probable cause to believe that such evidence is inside the vehicle, they may nevertheless search for it in the passenger compartment if they had reasonable suspicion to believe it was there.¹⁴² The differences between these searches and searches based on the automobile exception are, (1) probable cause is not required, (2) the evidence for which reasonable suspicion exists must pertain to the *same* crime for which the suspect was arrested, and (3) the search must be limited to the passenger compartment. This is another area of the law that the courts will certainly be exploring.

INSTRUMENTALITY SEARCHES: If a vehicle is in a public place, and if officers have probable cause to believe it was an instrumentality of a crime, they may examine it as they could any other piece of evidence. What’s an “instrumentality?” Although the term is vague, in most cases it is a vehicle in which a violent crime was committed, or a vehicle that was the means by which a crime was committed; e.g., hit-and-run. On the other hand, a vehicle is not an instrumentality if it had only an ancillary role in the commission of the crime; e.g., a getaway car, a car used to transport drugs.¹⁴³

The scope of an instrumentality search is fairly broad, as officers may search for any evidence that is associated with the crime for which probable cause exists. The following are some examples:

¹³⁵ See *People v. Webster* (1991) 54 Cal.3d 411, 431 [OK to remove occupants].

¹³⁶ See *In re Arturo D.* (2002) 27 Cal.4th 60, 86, fn.25.

¹³⁷ See *In re Arturo D.* (2002) 27 Cal.4th 60, 78, fn.19.

¹³⁸ See *In re Arturo D.* (2002) 27 Cal.4th 60, 81 [under the seat]; *People v. Turner* (1994) 8 Cal.4th 137, 182 [glove box]; *People v. Martin* (1972) 23 Cal.App.3d 444, 447 [“on the sun visors”]; *People v. Chavers* (1983) 33 Cal.3d 462, 470 [glove box].

¹³⁹ (2002) 27 Cal.4th 60.

¹⁴⁰ (2009) __ U.S. __ [2009 WL 1045962].

¹⁴¹ *U.S. v. Davis* (8th Cir. 2009) __ F.3d __ [2009 WL 1885254].

¹⁴² See *Arizona v. Gant* (2009) __ U.S. __ [2009 WL 1045962] [“[C]ircumstances unique to the vehicle context justify a search incident to a lawful arrest when it is reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle.”]; *U.S. v. Barnum* (8th Cir. 2009) 564 F.3d 964 [arrest for possession of crack pipe, search of passenger compartment permitted under *Gant*].

¹⁴³ See *People v. Minjares* (1979) 24 Cal.3d 410, 422; *People v. Gee* (1982) 130 Cal.App.3d 174, 182-83.

MURDER: A murder was committed inside the car (examine blood, fiber, paint samples).¹⁴⁴

MURDER: The vehicle was used to run over the victim (examine tire tread, blood, flesh).¹⁴⁵

KIDNAPPING: Kidnap victim was transported in the car (examine fingerprints, compare tire tread and wheel span).¹⁴⁶

RAPE IN VEHICLE (test for semen).¹⁴⁷

HIT AND RUN (examine trim).¹⁴⁸

Note, however, that it is seldom necessary to rely on the instrumentality exception nowadays because a vehicle that was an instrumentality in a crime can almost always be subjected to an intensive search under the automobile exception; i.e., a search based on probable cause.¹⁴⁹

SEARCH BY AUTO THEFT INVESTIGATORS: Per Vehicle Code § 2805, auto theft investigators may search a vehicle to determine the registered owner if it was located “in any public garage, repair shop, terminal, parking lot, new or used car lot, automobile dismantler’s lot, vehicle shredding facility, vehicle leasing or rental lot, vehicle equipment rental yard, vehicle salvage pool, or other similar establishment.” Although the statute also says that investigators may search vehicles located “on a highway,” this part of the statute may be unconstitutional as it would permit a search of any stopped or parked vehicle without a warrant and without good cause.¹⁵⁰

VIN SEARCHES: Regardless of whether there were grounds to do so, officers may look through the windshield to inspect the VIN plate located on the dashboard if the car was located in a public place.¹⁵¹ If the vehicle was stopped for a traffic violation, and

if the VIN plate was covered, officers may enter the vehicle, remove the covering, and check the VIN number.¹⁵²

CONSENT SEARCHES: The rules for conducting consent searches of vehicles are the same as those for any other type of consent search. There are, however, three issues that often arise in vehicle cases. First, the consent must have been given by a person who reasonably appeared to have had joint access or control over the vehicle.¹⁵³ Second, officers may search any place or thing in the vehicle they reasonably believed the consenting person authorized them to search.¹⁵⁴ For example, officers who have obtained unrestricted consent may usually search all personal property inside the vehicle unless they were aware that the property belonged to someone else.¹⁵⁵ Third, officers may assume that the consenting person understood that the search would be thorough,¹⁵⁶ but not destructive.¹⁵⁷

EXIGENT CIRCUMSTANCES: Officers may enter and search a vehicle if reasonably necessary to protect lives from imminent danger or property from imminent damage; e.g., child locked in vehicle, sick or injured person inside, gun or dangerous chemical inside.¹⁵⁸ It may also be necessary to enter a vehicle that has been burglarized or is otherwise insecure for the purpose of locking it or searching for registration that will enable officers to notify the owner.

PAROLE AND PROBATION SEARCHES: Finally, search conditions for all parolees and most probationers authorize warrantless searches for property under their control, which would include vehicles they owned or were driving.

POV

¹⁴⁴ See *People v. Griffin* (1988) 46 Cal.3d 1011, 1025; *People v. Teale* (1969) 70 Cal.2d 497.

¹⁴⁵ See *People v. Robinson* (1974) 41 Cal.App.3d 658, 675-75.

¹⁴⁶ See *North v. Superior Court* (1972) 8 Cal.3d 301; *People v. Braun* (1973) 29 Cal.App.3d 949, 970.

¹⁴⁷ See *People v. Bittaker* (1989) 48 Cal.3d 1046, 1076-77.

¹⁴⁸ See *People v. Wolf* (1978) 78 Cal.App.3d 735, 741; *People v. Rice* (1981) 126 Cal.App.3d 477, 487.

¹⁴⁹ See *People v. Gee* (1982) 130 Cal.App.3d 174, 182.

¹⁵⁰ See *In re Arturo D.* (2002) 27 Cal.4th 60, 69, fn.5 [legislative history of the statute suggests that it was designed to permit auto theft investigators to inspect vehicles “located in garages, repair shops, and automobile dismantlers’ lots, etc.”].

¹⁵¹ See *People v. Lindsey* (1986) 182 Cal.App.3d 772, 779.

¹⁵² See *New York v. Class* (1986) 475 U.S. 106.

¹⁵³ See *Illinois v. Rodriguez* (1990) 497 U.S. 177, 179.

¹⁵⁴ See *Florida v. Jimeno* (1991) 500 U.S. 248, 251.

¹⁵⁵ See *U.S. v. Harris* (11th Cir. 2008) 526 F.3d 1334.

¹⁵⁶ See *Florida v. Jimeno* (1991) 500 U.S. 248, 251-52; *People v. Crenshaw* (1992) 9 Cal.App.4th 1403, 1415.

¹⁵⁷ See *People v. Crenshaw* (1992) 9 Cal.App.4th 1403, 1415.

¹⁵⁸ See *Cady v. Dombrowski* (1973) 413 U.S. 433, 448.

Recent Cases

People v. Carrington

(2009) 45 Cal.4th 145

Issues

(1) Did officers have probable cause to search the home of a multiple-murder suspect? (2) When executing a search warrant, may officers permit investigators from an outside agency to participate? (3) Were the suspect's confessions voluntary?

Facts

In January of 1992, Celeste Carrington embarked on a crime spree up and down the San Francisco Peninsula, burglarizing businesses in which she had previously worked as a janitor. Using keys she stole or duplicated, Carrington started out in Los Altos where, in one night, she burglarized two businesses, Blackard Designs and NDN Enterprises, stealing checks from both. About a week later, she burglarized a Dodge dealership in Redwood City where she stole a .357 magnum revolver. She was carrying the gun a few days later when she broke into an office building in San Carlos. When she was surprised by the janitor, Victor Esparza, she shot and killed him.

In March, Carrington took the gun with her when she broke into an office building in Palo Alto. As she entered a copy room, she encountered an employee named Caroline Gleason. So she shot and killed her. Five days later, she broke into a medical building in Redwood City where, once again, she was caught in the act by an employee who was working late. This time it was a physician. She shot him and ran, but he was only wounded.

Just a few hours before the doctor was shot, a man named Christopher Mladineo was arrested after trying to cash one of the checks stolen from Blackard Designs. Mladineo told officers that he got the check from Carrington. At the officers' request, he made a recorded phone call to Carrington, during which she admitted stealing the check.

The officers who were investigating these crimes had formed a task force and they suspected that Carrington had committed all of them. But they believed they only had probable cause on the burglar-

ies in Los Altos. That was enough, however, to obtain a warrant to search her home in East Palo Alto for, among other things, stolen keys and checks.

The search warrant was executed on March 20th by Los Altos officers who were accompanied by investigators with Palo Alto PD. The search of the house began with a cursory inspection of the premises, during which officers saw evidence in plain view that linked Carrington to the murder of Caroline Gleason in Palo Alto; specifically, Gleason's pager and a key to the building in which she worked. At that point, the officers "suspended" the search and secured the premises while the Palo Alto investigators obtained a warrant to search the premises for evidence in their case. During the subsequent search they discovered additional evidence, including the murder weapon, Gleason's purse, a piece of paper with Gleason's PIN written on it, and a drug kit taken from the doctor's office in Redwood City.

During the search, Carrington arrived and was arrested. She was transported to the Redwood City police station where officers, after obtaining a *Miranda* waiver, confronted her with the evidence they had found in her home. She confessed to killing Gleason and, a few hours later, she confessed to killing Esparza and shooting the doctor.

Based on her confessions and the evidence discovered in her home, Carrington was convicted on all counts. She was sentenced to death.

Discussion

On appeal to the California Supreme Court, Carrington argued that her confessions and the evidence in her home should have been suppressed. As we will discuss later, she contended that her confessions should have been suppressed because they were involuntary. She attacked the admissibility of the physical evidence in her home on grounds that the officers did not have probable cause for the first warrant, and that the second warrant was invalid because it was based on evidence obtained during the execution of the first one. She also claimed the first warrant was illegal because it was merely a pretext to look for evidence in the Palo Alto murder.

PROBABLE CAUSE: Although the officers had probable cause to believe that Carrington had committed the Blackard burglary, she argued that probable cause to search her home was lacking because there was insufficient reason to believe that she had taken the stolen checks to her home. It is settled, however, that probable cause to search a certain place may be based on reasonable inferences as to where the evidence is probably located. And the most common inference is that the fruits and instrumentalities of a crime will be found in the perpetrator's home. As the court observed in *People v. Miller*, "A number of California cases have recognized that from the nature of the crimes and the items sought, a magistrate can reasonably conclude that a suspect's residence is a logical place to look for specific incriminating items."¹ Thus, the court ruled that Carrington's home was the "most likely place" to find the stolen checks.

Nevertheless, Carrington claimed that it was unreasonable for the officers to believe that the checks were still located there because of the time lapse—two months—between the Los Altos burglaries and the execution of the search warrant. But the officer who wrote the affidavit had anticipated that argument, so he explained that, based on his training and experience, "subjects who steal checks with the intent to commit forgeries will maintain possession of those stolen checks until they can be cashed." The court ruled that this was a reasonable conclusion, pointing out that the checks "still could be forged and cashed."

EXECUTION OF THE SEARCH WARRANT: Carrington also claimed that the warrant to search her home for evidence of the Los Altos burglaries should be invalidated because the presence of the Palo Alto officers demonstrated it was merely a pretext to look for evidence of the murder of Caroline Gleason. But, as the court pointed out, officers from outside agencies may assist in any warranted search—even if they were interested in finding evidence of a crime for which probable cause did not exist.² As the court

explained, "Officers from another jurisdiction may accompany officers conducting a search pursuant to a warrant without tainting the evidence (pertaining to crimes that are the subject of their own investigation) uncovered in the process, even when the officers lack probable cause to support issuance of their own search warrant."

Such a search will, however, become unlawful if the officers from the outside agency searched places or things in which the listed evidence could not have been found. But this was not a problem here because, as the court pointed out, the Palo Alto officers "did not exceed the scope of the search authorized by the warrant" and had, in fact, "observed Gleason's property in plain view."

THE CONFESSIONS: Carrington contended that her confessions should have been suppressed because they were involuntary. As we discussed in the article on interrogations in the Summer 2009 *Point of View*, a statement will be suppressed if it was involuntary, and that a statement will ordinarily be deemed involuntary if it was obtained by means of threats or promises pertaining to sentencing.³

Carrington was transported to the Redwood City police station shortly after her arrest. She waived her *Miranda* rights at about 5:15 P.M., at which point a Palo Alto investigator told her that, although she was arrested for the Los Altos burglaries, he wanted to talk to her about the murder of Caroline Gleason. To encourage her to talk about it, he suggested that the shooting might have been an accident or that there might have been other mitigating circumstances. Said the officer, "What if [Caroline] scared you? She confronted you. Or maybe there was someone else with you."

Carrington argued that these comments rendered her subsequent confession involuntary because they constituted an implied promise that she would receive lenient treatment if she admitted that the shooting was accidental or that an accomplice was the shooter. The courts have consistently ruled, how-

¹ (1978) 85 CA3 194, 204. ALSO SEE *People v. Koch* (1989) 209 Cal.App.3d 770, 779 ["It is settled under both California and federal law that the total circumstances surrounding an arrest or other criminal conduct can, without more, support a magistrate's probable cause finding that the culprit's home is a logical place to search for specific contraband."].

² See Pen. Code § 1530; *Horton v. California* (1990) 496 U.S. 128, 138 ["The fact that an officer is interested in an item of evidence and fully expects to find it in the course of a search should not invalidate its seizure if the search is confined in area and duration by the terms of the warrant"].

³ See *Arizona v. Fulminante* (1991) 499 U.S. 279, 287.

ever, that officers may point out to suspects that the punishment for their crime may depend on the role they played in its commission and their state of mind.⁴ Although such comments carry an implication that the suspects might be better off if they confessed and explained any mitigating circumstances, such an appeal is not objectionable so long as officers did not promise anything specific. Thus, the court ruled the detective's comments were proper because he "merely suggested possible explanations of the events and offered defendant an opportunity to provide the details of the crime."

Shortly after Carrington confessed to the Palo Alto crimes, she was questioned by detectives from Redwood City and San Carlos. Although she immediately confessed to shooting the doctor, she continued to deny killing Victor Esparza even though the officers informed her that Gleason and Esparza had been shot with the same gun. As the interview progressed, one of the officers told Carrington that he wanted to be able to tell the district attorney that she had "helped and assisted" the officers in solving all the crimes she committed. She confessed shortly thereafter.

On appeal, she argued that the officer's comment rendered her confession involuntary because it constituted an implied promise that the district attorney would be lenient if she confessed. It is settled, however, that an officer's promise to notify prosecutors or a judge of a suspect's truthfulness will not render a subsequent statement involuntary so long as the officer did not indicate that the prosecutor or judge would do something specific in return.⁵ And that was exactly what happened here. As the court observed, "The interviewing officers did not suggest they could influence the decisions of the district attorney, but simply informed defendant that full cooperation might be beneficial in some unspecified way."

Finally, Carrington argued that her confession to murdering Victor Esparza was involuntary because it occurred near the end of an eight-hour interrogation. While a lengthy interview can wear down a suspect physically and mentally, it is seldom a significant

circumstance if the suspect was not particularly vulnerable, and if he was given breaks when requested or when reasonably necessary.⁶ Thus, the court examined the record and found that Carrington "appeared lucid and aware throughout the entire interview session and never asked the police officers to terminate the interview. Defendant spoke with confidence, and her answers were coherent. Moreover, the police repeatedly offered defendant food and beverages, provided her with four separate breaks, and allowed her to meet privately with her partner, Jackie."

For these reasons, the court affirmed Carrington's convictions. It also upheld her death sentence.

People v. Rogers

(2009) 46 Cal.4th 1136

Issue

Did exigent circumstances justify an entry by officers into a murder suspect's storage room?

Facts

A woman notified San Diego police that a friend named Beatrice had been missing under suspicious circumstances. The woman explained that Beatrice was living with Ramon Rogers in an apartment complex that he managed, and that Beatrice and Rogers had a five-year old daughter. But even though Beatrice had been missing for three weeks, Rogers was refusing to file a missing person report. This was especially suspicious because she had heard him threaten to lock Beatrice inside a storage room in the basement of the apartment building. A missing persons investigator, Det. Richard Carlson, phoned Rogers who claimed that Beatrice had been missing only a week or so, at which point Rogers said he "had to go" and quickly hung up.

Later that day, Carlson and uniformed officers drove to the apartment but Rogers wasn't there. Carlson then spoke with a tenant who said that she had not seen Beatrice for several weeks, and she

⁴ See *People v. Holloway* (2004) 33 Cal.4th 96, 116 ["The officer suggested that "the killings might have been accidental or resulted from an uncontrollable fit of rage during a drunken blackout, and that such circumstances could make a lot of difference." Such statements, said the court, "fall far short of being promises of lenient treatment in exchange for cooperation."].

⁵ See *People v. Hurd* (1998) 62 Cal.App.4th 1084, 1091 ["Because none of the detectives' statements indicated that the district attorney would act favorably in specific ways if appellant cooperated, they did not constitute impermissible promises of favorable action."].

⁶ See *People v. Rundle* (2008) 43 Cal.4th 76, 123; *People v. Jablonski* (2006) 37 Cal.4th 774, 815 ["[T]he interrogation was spread over a four-hour period from midmorning to midafternoon with a refreshment break and a lunch break."].

confirmed that Rogers has a storage room in the basement. Just then, Rogers arrived. Carlson asked him how long Beatrice had been missing and Rogers said “a week and a half,” adding that he thought she had gone to Mexico “with someone.” Carlson told Rogers that he knew about his threat to lock Beatrice in the storage room, at which point Rogers’ neck “began to throb.” Having noticed that Rogers had not denied making the threat, Carlson asked if he could look in the storage room, just to confirm that she was not being held there. Rogers said no.

By now, Carlson was “very concerned” about Beatrice’s welfare and he felt “more and more convinced” that she was confined in the storage area. He told Rogers that he could not understand his refusal to permit a welfare check on his child’s mother, but Rogers remained firm that he would not permit Carlson to enter the room. So Carlson broke in.

As he entered, he saw a black nylon rope on the floor, and he noticed that it was tied in a loop “as if to bind someone’s wrist and ankles.” He then found some luggage with a tag bearing Beatrice’s name. The luggage contained clothing and toiletries which, as he testified, seemed suspicious because these were things “that someone would not be likely to leave behind if going on a trip.” Next, Carlson found a large piece of cardboard with an apparent blood stain two feet in diameter. Another suspected blood stain was found on a piece of wood.

Having concluded that the storage room was a crime scene, Carlson radioed for homicide detectives to respond, and he obtained a telephonic warrant to search the premises. When the warrant was issued, officers searched the storage room and found the following: flex cuffs, a saw, a claw hammer, Playtex gloves, ten fingers in a bucket, a jaw bone, teeth, and a butcher knife covered in blood. Forensics later determined that the body parts and blood were from Beatrice.

After Rogers was arrested, the investigation continued and he was linked to two other suspicious disappearances. He was charged with murdering all three people and, at his trial, the evidence from the storage room was used against him. He was convicted and sentenced to death.

Discussion

On appeal to the California Supreme Court, Rogers contended that Det. Carlson’s warrantless entry into the storage room was illegal, and thus the evidence discovered in the room should have been suppressed. The People argued that the entry and search fell within the exigent circumstances exception to the warrant requirement. The court agreed.

At the outset, the court noted that it had previously ruled that the circumstances surrounding a missing person report could constitute grounds for a warrantless entry if there was reason to believe the person was in danger and was now inside the location.⁷ But Rogers argued there were no such circumstances here, noting the absence of “obvious signs of an emergency, such as moans, groans, or chemical smells emanating from the storage rooms.” He also said the officers should have known that if Beatrice had been the victim of foul play, she was probably dead because she had been missing for weeks.

The court ruled, however, that the officers were not *required* to draw such a conclusion under the circumstances. Said the court, “[T]he length of time [Beatrice] had been reported as missing, i.e., three weeks instead of only hours or days, did not negate the emergency nature of the situation in light of the other circumstances known to Carlson.” Those circumstances included the “absence of any information suggesting that [Beatrice] was dead, [Rogers’] noticeable lack of concern over the whereabouts of his child’s mother” and his “physical reaction” when Carlson mentioned his threat to lock Beatrice in the storage room.

Finally, Rogers argued that Carlson, himself, apparently did not believe that exigent circumstances existed because, instead of going immediately to the house after receiving the report, he tended to some other matters. The court responded that “it makes no difference that Carlson could perhaps have acted even more quickly in trying to find [Beatrice]” because “the relevant inquiry remains whether, in light of all of the circumstances, there was an objectively urgent need to justify a warrantless entry.”

Consequently, the court ruled that the search was lawful, and it affirmed Rogers’ death sentence.

⁷ Citing *People v. Wharton* (1991) 53 Cal.3d 522; *People v. Lucero* (1988) 44 Cal.3d 1006.

Comment

A few days before deciding *Rogers*, the California Supreme Court issued an opinion in *People v. Farley*.⁸ Farley had been stalking a coworker at Electromagnetic Systems Laboratory (ESL) in Sunnyvale. On February 16, 1988, he walked into the office with a shotgun in his hands and with rifles and bandoliers of ammunition strapped to his body. He then opened fire, killing seven people and wounding four.

There were only three police-related issues on appeal. First, the court summarily ruled that these circumstances constituted probable cause for a warrant to search Farley's home the next day for, among other things, body armor, ammunition, photographs of the woman Farley had been stalking, and documents to or from the woman or ESL. Second, the court ruled that these descriptions were "sufficiently definite to allow the officer conducting the search to identify the property to be seized, and to prevent a wide-ranging exploratory search."

Third, Farley argued that a subsequent warrant to search ESL personnel files for "all documents and correspondence relating to [Farley]" was too broad. While the description was broad, the court noted, "In a complex case resting upon the piecing together of many bits of evidence, the warrant properly may be more generalized than would be the case in a more simplified case."⁹

Hunsberger v. Wood

(4th Cir. 2009) 570 F.3d 546

Issue

Did exigent circumstance justify an entry by officers into the Hunsbergers' home?

Facts

At 10:17 P.M., a woman phoned 911 in Roanoke, Virginia and said she thought some teenagers might be burglarizing or vandalizing the home of her neighbors, the Hunsbergers. The woman said that several teenagers had driven up to the house and had been "getting in and out" of their cars," but that the lights in the house were off. She added that she thought the Hunsbergers might be on vacation because she hadn't seen them in a couple of days.

When sheriff's deputies arrived and talked with the woman, they saw nothing suspicious so they left. At about 12:10 A.M., the woman phoned 911 again and said the unusual activities outside the house were continuing. The deputies returned and noticed that some lights inside the house were now on, and that an additional car was parked in front. They also saw a man walk from the house to the garage and back.

At this point, the deputies drove to the house and parked in the driveway. Suddenly, all of the lights in the house were turned off. The deputies rang the doorbell 25-30 times but no one responded. As they were walking back to their cars, they saw that one of the garage doors that had been closed was now open, causing them to suspect that someone had just fled.

Using a cell phone, Sgt. Wood phoned the registered owners of the cars parked in front, one of whom was William Blessard. Mr. Blessard immediately drove to the scene and told Wood that his 16-year old stepdaughter had been driving the car, that he didn't know the Hunsbergers, and that his stepdaughter was supposed to be spending the night at the home of a girlfriend. Blessard called his stepdaughter's cell phone several times but no one answered. He said he was worried.

Just then, they heard something fall in the garage. As Sgt. Wood entered, someone shut and locked the door leading to the house. He and Blessard then entered the house through another door in the garage. Sgt. Wood announced "loudly" that he was a sheriff's deputy and that "anyone in the home who was hiding should reveal himself." Again, there was no response, so he and Blessard walked down to the basement. No one was there, but the TV was on and some beer cans were scattered around.

Continuing their inspection, they walked up to the second floor and looked inside a closet where they found the Hunsbergers' 16-year old son sitting on the floor. Sgt. Wood asked if anyone else was in the house, and he said no. In another bedroom, Wood found the Hunsbergers' 10-year old daughter in bed. At this point, Mark and Cheryl Hunsberger awakened and confronted Sgt. Wood and Blessard, ordering them to leave. They then phoned the sheriff's office and complained about the intrusion.

⁸ (2009) 46 Cal.4th 1053.

⁹ ALSO SEE *Andresen v. Maryland* (1976) 427 U.S. 463, 480, fn10.

After a lieutenant arrived, the Hunsbergers' 18-year old son Zack surfaced and told the officers that some of his friends, including Blessard's stepdaughter, were currently hiding in the basement. After Mrs. Hunsberger drove the girl home, it was revealed that the Hunsberger boys and five friends had been in the basement playing cards, and some of them were drinking beer and vodka. As for the activity out front, it was mainly some of the boys smoking cigarettes and retrieving things from their cars, and Zack driving off to buy more beer.

Mark and Cheryl Hunsberger filed a federal civil rights action against Sgt. Wood and Mr. Blessard, claiming their warrantless entry into the home violated their Fourth Amendment rights. When the district court denied Sgt. Wood's motion for summary judgment on grounds of qualified immunity, he appealed to the Fourth Circuit.

Discussion

The issue on appeal was whether the situation constituted an emergency so as to trigger the exigent circumstances exception to the warrant requirement. The court concluded that it did—in fact, it found there were two emergencies.

First, it appeared that the house was being burglarized or vandalized. Among other things, the court noted that someone had turned off the lights when the deputies arrived, and it appeared that someone had immediately fled through the garage. In addition, no one answered the door when Sgt. Wood rang 25-30 times, and there were three cars parked in front, none of which belonged to the Hunsbergers. Said the court, these circumstance indicated a “strong possibility of an unauthorized intruder in the home.”

Second, the court ruled that Sgt. Wood reasonably believed that Mr. Blessard's missing stepdaughter was somewhere inside the house, and that she might be in danger because she wasn't answering her cell phone. “When a child goes missing,” said the court, “time is of the essence. It turned out that [the girl] was not in immediate danger, but we cannot judge Wood's search based on what we know in hindsight.”

The court concluded, “While it is tempting to second-guess an officer's actions, it is also true that real harm to persons and property could result if police tried to act with the calm deliberation associated with the judicial process.” Consequently, the

court ruled that Sgt. Wood's search of the house was reasonable, and that he was entitled to qualified immunity.

Comment

Here we have Mark and Cheryl Hunsberger, sleeping blissfully while their teenage children and five of their underage friends are downstairs drinking beer and vodka, smoking cigarettes, driving into town to buy more alcohol, and hiding from the police. Not even Sgt. Wood's ringing the doorbell 25-30 times, nor his loud announcement as he entered the house, could awaken the oblivious Hunsbergers. The only responsible people on the premises were Sgt. Wood and Mr. Blessard—so naturally the Hunsbergers decided to sue them. Although the legal system eventually regurgitated this reeking case, it is pathetic that parents would try to make some easy money by exploiting their own cluelessness and the misbehavior of their children.

U.S. v. Croto

(1st Cir. 2009) 570 F.3d 11

Issue

Was a tip that Croto was planning to attack a police station sufficiently reliable to justify a search warrant?

Facts

Two men told officers in Biddeford, Maine that their friend Croto was planning a series of violent acts directed at the police and the mayor. The men said that Croto had recently been telling them about his “anarchy plans,” saying he was going to “blow up” the Biddeford police station and kidnap the mayor. One of the men said that Croto had recently shown him a pistol and a rifle and had asked him to “join in the action.” The man said that Croto usually concealed one of his guns in his hunting vest and kept others next to his desk in his living room. The other man said he had seen “all kinds of guns and drugs” in Croto's previous residence.

Later that day, a detective questioned the men and asked why they had waited to make a report. One of them said that, at first, he didn't think Croto was serious. In addition, he had become “fed up” with Croto because he was selling drugs to kids. The other

man said he decided to report the threat because he, too, was thinking that Croto might carry it out.

The detective checked Croto's rap sheet and found that he had been convicted of drug trafficking and aggravated assault, both felonies. Based on this information, he obtained a warrant to search Croto's home for firearms. In the course of the search, officers seized ammunition and three guns. Croto was subsequently charged with being a felon in possession of firearms. When his motion to suppress the evidence was denied, he pled guilty but reserved his right to appeal the court's ruling.

Discussion

Croto contended that the warrant was not supported by probable cause because the detective had insufficient reason to believe that Croto's friends were reliable or that their information was accurate. The court disagreed.

It is settled that probable cause requires information that appears to be reliable, or at least "reasonably trustworthy."¹⁰ When this issue arises, the courts usually begin by distinguishing three types of sources: (1) untested informants, (2) tested informants, and (3) citizen informants. Because information from untested informants is inherently unreliable, it has little value unless officers have independent reason to believe it is accurate.¹¹ In contrast, information from tested informants and citizen informants will ordinarily support a warrant, so long as officers have no reason to believe it is false. As the court in *Croto* explained, "There is nothing wrong with a police officer relying on information provided by others to support the warrant application he makes, as long as the affidavit provided to the court establishes a sufficient basis for crediting the informant's reliability and his basis for knowledge of the facts supplied."

The issue in *Croto* was whether the two men were merely untested informants (as Croto claimed) or

citizen informants (as prosecutors claimed). In most cases, a person will be deemed a citizen informant if, (1) he was the victim or witness to a crime, (2) he had identified himself to officers, and (3) the officers had no reason to doubt his reliability or the accuracy of his information.¹²

As for the first requirement, both men saw firearms in Croto's possession and thus they were arguably eyewitnesses to a crime; i.e., possession of a firearm by a felon. Furthermore, the courts have consistently ruled that a person who was not an eyewitness may be deemed a citizen informant if it reasonably appeared that he furnished the information as an act of good citizenship, not for some personal advantage.¹³ For example, in one case the registered owner of a car was deemed a citizen informant when he identified the person who had borrowed his car.¹⁴ In another case, an insurance company investigator qualified as citizen informant when he told officers about the information he had developed in the course of his investigation into a suspicious fire.¹⁵

Consequently, the court in *Croto* ruled the first requirement was satisfied because it reasonably appeared that Croto's friends were simply "concerned citizens reporting potential criminal activity," and they "received nothing in return" for their information.

As for the second requirement, the court noted that both men identified themselves to the officers which, said the court, "bolsters their credibility because it opens them up for charges related to making a false report." Finally, the detective had no reason to disbelieve their information. Moreover, the court noted that the men provided detailed information, as opposed to unsubstantiated conclusions.

Consequently, the court ruled that the search warrant was supported by probable cause, and that the district court properly denied Croto's motion to suppress the evidence.

¹⁰ See *Beck v. Ohio* (1964) 379 U.S. 89, 91.

¹¹ See *Higgason v. Superior Court* (1985) 170 CA3 929, 946 (conc. opn. of Crosby, J.) ["There are few principles of human affairs more self-evident than this: The unverified story of an untested informer is of no more moment than a fairy tale on the lips of a child"].

¹² See *People v. Ramey* (1976) 16 Cal.3d 263, 269; *People v. Amos* (1977) 70 Cal.App.3d 562, 566-67.

¹³ See *People v. Jordan* (1984) 155 Cal.App.3d 769, 779-80 [store security officer furnished employment information about an employee]; *In re Joseph G.* (1995) 32 Cal.App.4th 1735 [woman who told officers that her son had reported seeing a fellow student with a handgun].

¹⁴ *People v. Moore* (1975) 51 Cal.App.3d 610, 616.

¹⁵ *People v. Superior Court (Bingham)* (1979) 91 Cal.App.3d 463, 472.

U.S. v. Payton

(9th Cir. 2009) 573 F.3d 859

Issue

Did a warrant to search the defendant's home for documents pertaining to drug sales impliedly authorize a search of his computer?

Facts

Having probable cause to believe that Payton was selling drugs, an officer in Merced County obtained a warrant to search his home for, among other things, indicia and "sales ledgers showing narcotics transactions such as pay/owe sheets." The warrant did not expressly authorize a search of computers on the premises.

In Payton's bedroom, an officer saw a computer that was on screen-saver mode. So he jiggled the mouse, at which point an image of child pornography appeared on the screen. This led to a search of the computer and federal charges that Payton possessed child pornography. When his motion to suppress the evidence was denied, he pled guilty.

Discussion

On appeal to the Ninth Circuit, Payton argued that the officer's act of jiggling the mouse constituted a "search" because it exposed to view something that Payton thought would be private. And he contended that it was an illegal search because the warrant did not expressly authorize a search of computers on the premises. The court agreed.

Although the documents listed in the warrant could have been stored on a computer, the court ruled that officers who are executing warrants to search for documents may not search computers on the premises unless they have express authorization to do so. The reason, said the court, was that "computers are capable of storing immense amounts of information and often contain a great deal of private information. Searches of computers therefore often involve a degree of intrusiveness much greater in quantity, if not different in kind, from searches of other containers."

The court also ruled, however, that a computer could be searched if officers saw something on the

premises that reasonably indicated that some of the listed documents were stored in it. But because there was no such indication in Payton's house, the court ruled the search of the computer was unlawful, and that Payton's child pornography should have been suppressed.

Comment

It is settled that officers who are executing search warrants may search places and things in which any listed item may reasonably be found. As the First Circuit observed in *United States v. Rogers*, "[A]s a general proposition, any container situated within residential premises which are the subject of a validly-issued warrant may be searched if it is reasonable to believe that the container could conceal items of the kind portrayed in the warrant."¹⁶ In fact, this principle, as it applies to vehicle searches, is the subject of one of the most quoted passages in the criminal law:

When a legitimate search is under way, and when its purpose and its limits have been precisely defined, nice distinctions between . . . glove compartments, upholstered seats, trunks, and wrapped packages in the case of a vehicle, must give way to the interest in the prompt and efficient completion of the task at hand.¹⁷

Although the court was aware of this principle, it said it was not applicable when the thing that was searched was a computer because computers "are capable of storing immense amounts of information and often contain a great deal of private information." It is also true, however, that "immense amounts" of personal information may be stored in desk drawers, closets, binders, bookcases, libraries, attics, basements, sheds, vaults, bins, lockers, and chests. And yet, it would be absurd to suggest that these places and things are off limits unless they were specifically listed in the warrant.

Apart from the silliness of trying to devise a constitutional distinction between "immense" and merely "large" amounts of personal information, the court faced a more serious problem. The Ninth Circuit had already rejected the precise argument that Payton was making. The case was *United States v. Giberson*—and just listen to what the court said:

¹⁶ (1C 2008) 521 F.3d 5, 9-10.

¹⁷ *United States v. Ross* (1982) 456 U.S. 798, 821-22.

Giberson's principal argument is that computers are able to store "massive quantities of intangible, digitally stored information," distinguishing them from ordinary storage containers. But neither the quantity of information, nor the form in which it is stored, is legally relevant in the Fourth Amendment context. While it is true that computers can store a large amount of material, there is no reason why officers should be permitted to search a room full of filing cabinets or even a person's library for documents listed in a warrant but should not be able to search a computer.¹⁸

The court also noted that restrictions on computer searches would "create problems in analyzing devices with similar storage capacities." Said the court, "If we permit cassette tapes to be searched, then do we permit CDs, even though they hold more information? If we do not permit computers to be searched, what about a USB flash drive or other external storage device? Giberson's purported exception provides no answers to these questions." While these are legitimate questions, the court in *Payton* did not address them.

Sanchez v. Canales

(9th Cir. 2009) __ F.3d __ [2009 WL 2256695]

Issue

When conducting parole and probation searches of homes, may officers detain the occupants pending completion of the search?

Facts

Due to numerous robberies in the LAPD's Wilshire Division, the department began conducting probation searches of homes located in the Wilshire Division, and occupied by probationers who had prior arrests for robbery. One of the people on the list was Oscar Sanchez who was living with his parents.

When officers arrived and knocked, Sanchez's sister started to open the door but closed it when she saw the police. The officers continued to knock and demand to see Oscar. Apparently yelling through the door, Oscar's mother repeatedly told the officers that Oscar was in prison. She then opened the latch, at which point the officers forced their way in. After

removing everyone from the house, they conducted the search but found nothing incriminating. Officers later confirmed that Oscar was, in fact, serving time in prison.

The family filed a lawsuit against the officers, claiming that officers who are conducting parole or probation searches do not have the authority to detain anyone other than the parolee or probationer. When the district court refused to grant the officers' motion for qualified immunity, they appealed.

Discussion

Although the Supreme Court has ruled that officers may ordinarily detain the occupants of a home they are searching pursuant to a warrant,¹⁹ there is no direct authority for detaining the occupants of homes that are being searched pursuant to the terms of probation or parole. Until now.

In *Sanchez*, the Ninth Circuit ruled there is no logical reason to distinguish between warranted searches of homes and probation-parole searches because, in both situations, the officers have an obvious need to take such action to secure the scene. Consequently, the court ruled that "officers may constitutionally detain the occupants of a home during a parole or probation compliance search."

U.S. v. Jackson

(7th Cir. 2009) __ F.3d __ [2009 WL 2392874]

Issues

Did officers violate Jackson's Fourth Amendment rights when they entered a friend's apartment for the purpose of arresting Jackson?

Facts

Officers in Winnebago County, Illinois had a warrant for the arrest of Eric Jackson for aggravated battery, but they were having trouble finding him. One day they received an anonymous tip that he would be at the apartment of his father's girlfriend early the next morning. When they arrived, they spoke with the resident, LanDonna Joseph, who invited them into the vestibule. LanDonna claimed she didn't know Jackson, but the officers thought she was lying based on her "body language." When they

¹⁸ (9th Cir. 2008) 527 F.3d 882, 888. ALSO SEE *U.S. v. Reyes* (10th Cir. 1986) 798 F.2d 380, 383.

¹⁹ See *Muehler v. Mena* (2005) 544 U.S. 93.

asked another woman who was sitting nearby, the woman “started to cry and nodded her head.” The officers then searched the apartment and found Jackson sleeping in the back bedroom. After arresting him, they conducted a search incident to arrest and found a handgun under the blanket.

Jackson was charged with being a felon in possession of a firearm and, after his motion to suppress the gun was denied, he was found guilty.

Discussion

Jackson argued that the gun should have been suppressed for two reasons: (1) the officers’ search was unlawful because they did not have a search warrant, and (2) they did not have probable cause to believe he was inside the apartment.

The Supreme Court ruled in *Payton v. New York* that officers may not forcibly enter or search a home to arrest someone who lives there unless they have an arrest warrant.²⁰ A year later in *Steagald v. U.S.* it ruled that officers may not forcibly enter or search a home to arrest a visitor unless they have a search warrant.²¹

The court assumed that Jackson did not live in the apartment, which meant the officers violated *Steagald* when they entered without a search warrant. But that does not mean the gun should have been suppressed. As the court pointed out, because the purpose of *Steagald* is to protect the privacy rights of the residents of the home in which the arrestee happens to be located, evidence can be suppressed as the result of a *Steagald* violation only if prosecutors sought to use it against a resident.

On the other hand, if prosecutors seek to use the evidence against the arrestee, it will be admissible if the officers had an arrest warrant. This is because only an arrest warrant is required to enter the arrestee’s home and, as the court pointed out, “it would be anomalous if the subject of an arrest warrant had a greater expectation of privacy in another person’s home than he had in his own.” So, because the officers could have entered Jackson’s home to arrest him if they had an arrest warrant, and because they had one, the court ruled that their forcible entry into the home of his father’s girlfriend did not violate his Fourth Amendment rights.

Although the gun was admissible against Jackson, the court indicated that LanDonna might have a civil cause of action against the officers because they apparently violated her privacy rights when they searched her apartment without a warrant.

U.S. v. Comprehensive Drug Testing

(9th Cir. 2009) __ F.3d __ [2009 WL 2605378]

On August 26, 2009, the Ninth Circuit filed its *en banc* decision in this case which resulted from the federal investigation into steroid use by major league baseball players, and the execution of warrants to search laboratory computers for test results. In an unusually pretentious opinion, the court purported to impose sweeping restrictions on the manner in which *all* warrants to search computers are issued and executed. Among other things, it announced that computer searches should now be conducted by disinterested observers; and that unlisted evidence in plain view must be suppressed, as judges “should insist that the government waive reliance upon the plain view doctrine in digital evidence cases.”

We decided to forgo reporting on this case for the following reasons: (1) it is not binding on California courts; (2) it can properly be applied only to searches of computers operated by a third party who was not suspected of involvement in the crime under investigation; (3) it is contrary to long-standing decisions of the U.S. Supreme Court pertaining to its plain view and nexus rules; and (4), while the court presumed to dictate new and radical restrictions on the law pertaining to the issuance and execution of search warrants—an area of vital importance—its opinion was based on nothing more than the court’s officious proclivities, not sound legal precedent or analysis.

Moreover, it demonstrates an almost paranoid obsession with computer privacy. And it is hard to avoid the conclusion that it was driven largely by the recent embarrassing revelations concerning the contents of the home computer of the judge who wrote the opinion. In fact, while the judge was adjudicating this appeal, a panel of federal judges was investigating his use of the computer at the request of the Supreme Court. As a result, the judge was publicly rebuked for “exhibiting poor judgment.”

POV

²⁰ (1980) 445 U.S. 573. ALSO SEE *People v. Ramey* (1976) 16 Cal.3d 263, 275.

²¹ (1981) 451 U.S. 204.

The Changing Times

ALAMEDA COUNTY DISTRICT ATTORNEY'S OFFICE

Capt. **Rick Marchitiello** retired after 24 years of service. Before joining the office in 1985, Rick was with the Richmond PD. Lt. **Jay Patel** was promoted to captain. Jay started his career with the Berkeley PD and has been with the DA's Office since 1994. Insp. **Tom Andrews** retired after 15 years of service. Before joining the office, Tom worked with the Alameda and Oakland PDs. Computer specialist **Danny Tong** left the office to join the staff of the Santa Clara County DA's Crime Lab.

The office was saddened by the death of retired prosecutor **Bob Platt** on August 26, 2009. A respected lawyer and a colorful person, Bob died of respiratory failure at the age of 73. He joined the office in 1968 and retired in 1998.

BART POLICE DEPARTMENT

Chief **Gary Gee** announced that he will retire at the end of December. Gary has been a BART officer for 42 years. **Thomas Smith, Jr.** and **Karen Kreitzer** were promoted to sergeant and assigned to Patrol. Dispatcher **Jason Devera** was promoted to communications supervisor. The following officers retired: Sgt. **Nicolaas Verhoek** (31 years of service), **Barry Williams** (32 years of service), and **Kim Garner** (22 years of service). Communications Supervisor **Jean Mulligan** retired after 32 years of service. Transfers: **Myron Lee**, **Michael Manzano**, **Leonard Olsen**, and **Esteban Toscano** to the Special Problems Unit, **Ken Dam** to crime analysis, **Alex Casadone** to detectives, **Guillermo Alcaraz** and **Yolanda Joseph** to applicant-background investigations. Sgts. **Edgardo Alvarez**, **Keith Justice**, and **Keith Smith** were selected as field training supervisors. **Rodney Barrera**, **Stewart Lehman**, **Cliff Valdehueza**, and **John Vuone** were selected as FTOs.

CALIFORNIA HIGHWAY PATROL

CASTRO VALLEY AREA: Capt. **Ed Whitby** retired after 31 years of service. Lt. **Chris Day** was appointed acting commander. Sgt. **Steven West** recently returned from a one-year tour of duty in Iraq. **Stephen Browning** was recently deployed to Iraq for a tour of

duty. Transferring in: **Anthony Rossi** (Tracy Area) and **Kathleen Hayes** (Office of Capital Protection). Transferring out: **Ralph Cervantes** (Office of Capital Protection), **Eric Padilla** (Mount Shasta Area), **Stacy Smith** (Office of Community Outreach and Recruiting), **Troy Thompson** (Oroville), and **Justin Wallace** (Oroville). The following officers graduated from the CHP Academy and were assigned to the Castro Valley Area: **Dustin Jorrick**, **Stephen Browning**, **Daniel Jacowitz**, **Santos Romo**, **Edward McGurn**, **Keith Nguyen**, **Tyson Sorci**, **Andrew Barnett**, **Marhault Bowers**, **William Lane**, **Bradley Larson**, and **Christopher Ogden**.

HAYWARD AREA: Capt. **Ruben Leal** transferred to the Sacramento Area. He will be succeeded by newly-promoted Captain **Mark Mulgrew** who transferred in from Willows. Newly-promoted sergeants transferring in: **Scott Yox** (Contra Costa Area) and **Antonio Dominguez** (Modesto Area). **David Cavett** transferred to San Andreas. The following officers graduated from the CHP Academy and were assigned to the Hayward Area: **Thomas Cobb**, **Timothy Lewis**, **David Harper**, **Jorge Roesler**, **Jeramie Hernandez**, **Jonathan Nelson**, and **John Fernandez**.

OAKLAND AREA: Lt. **Mike Sherman** transferred to the Oroville Area and will serve as commander. Lt. **Christopher Childs** has transferred in. Sgt. **Mark McAfee** and **Chris "Ski" Konstantino** have retired. Both served the CHP for 26 years. The following officers graduated from the CHP Academy and were assigned to the Oakland Area: **Richard Coward**, **Ukua Dungca**, **Robert Sylva**, **Vitaliy Kravchuk**, **Brandon Rogers**, **Khalid Rashid**, and **Daniel Rapp**.

BERKELEY POLICE DEPARTMENT

Lateral appointments: **Ryan Murray** and **Veronica Rodrigues**. **Michael Yu** graduated from the Sacramento Police Academy and was sworn in on June 24th.

FREMONT POLICE DEPARTMENT

The following officers have retired: Capt. **Robert Nelson** (25 years of service), Sgt. **Ken Heining** (28 years of service), Sgt. **Dean Cobet** (30 years of service), and **Gary Cooper** (28 years of service). Det.

Gregg Crandall and School Resource Officer **Paul McCormick** were appointed to the position of acting sergeant. New officers: **Kathryn Dudgeon**, **Natasha Johnson**, **Kyle Springer**, and **James Taylor**.

HAYWARD POLICE DEPARTMENT

Interim Chief of Police **Ron Ace** was appointed Chief of the Department. Prior to his appointment as interim chief in 2008, Ron served as the chief of the Concord PD. Sgt. **Judy Bergeleen** was promoted to lieutenant, and **David Dorn** was promoted to sergeant. Sgt. **Joseph Martin** retired on May after 29 years of service. **Pamela Bell** has taken a disability retirement after 20 years of service.

New officers: **Nicholas Niedenthal**, **Justin Green**, **Garrett Wagner**, **Alfred Clifford**, **Domingo Rodriguez**, **Claudia Salinas-Mau**, **Matthew Blum**, **Michael Clark**, and **Cassondra Huffman**.

NEWARK POLICE DEPARTMENT

Richard Lopez transferred from Patrol to Investigations. Lateral appointment: **Rod Hogan** (Contra Costa County SO). **Mike Rollins** transferred from Investigations to Patrol. New officers: **Eric Kelly** and **Randy Ramos**.

OAKLAND POLICE DEPARTMENT

Long Beach Police Chief **Anthony Batts** was appointed Chief of the Oakland Police Department. Chief Batts is 49 years old and has earned a doctorate degree in public administration. In an interview with the *Long Beach Press Telegram*, Chief Batts said that two of his top priorities will be reducing the crime rate and improving OPD's relationship with the community. Lt. **Mike Yoell** retired after 27 years of service, and **John Gutierrez** retired after 30-years of service. **Murray Hoyle** took his life on August 22, 2009. He was 51-years old and had been an OPD officer for 28 years.

OAKLAND SCHOOL POLICE DEPARTMENT

Pete Sarna was named Chief of Police, succeeding **Art Michel**. Pete was formerly a lieutenant with OPD and served as deputy director of the California Department of Justice's law enforcement division. **Steven Fajardo** joined the department as a lieutenant. New officers: **Thomas Ciccarella**, **Barhin Bhatt**, **Gene Lombardi**, and **Melissa Centeno**.

PLEASANTON POLICE DEPARTMENT

Aaron Ackerman retired after 28 years of service. **Glen Cornell** retired after 26 years of service. New appointment: **Anthony Pittl**.

SAN LEANDRO POLICE DEPARTMENT

Interim Chief **Ian Willis** was appointed Chief of Police on August 6, 2009. Ian, who has been a SLPD officer for 25 yeras, had served as interim chief since former chief **Dale Attarian** retired in 2008. Lt. **Steve Pricco** was promoted to captain. Sgt. **Jeff Tudor** was promoted to lieutenant. **Brian Anthony** was promoted to sergeant. Transfers: **Mark Clifford** and **Alex Hidas** to Criminal Investigations, **Tai Nguyen** and **Louis Guillen** to Patrol. Public Service Aide **Darlene Crowson** reitred after 20 years of service. The department is sad to report the sudden passing of jailer **Kathleen Mesa** in June. Kathleen was with the SLPD for 19 years.

UNION CITY POLICE DEPARTMENT

The following officers have retired: Lt. **Tom Haselton** (21 years of service), Sgt. **Chris Guckert** (10 years of service with UCPD and 18 years with Fremont PD), **Wayne Chapman** (21 years of service), **Rick Noack** (30 years of service), and **Greg Moller** (24 years of service). Sgt. **Lenora Laughlin** resigned to accept an appointment as lieutenant with the University of California, San Francisco PD.

UNIVERSITY OF CALIFORNIA (BERKELEY) POLICE DEPARTMENT

Chief of Police **Victoria Harrison** retired on July 31, 2009 after 34 years of service. She began her sworn career in 1975 as a police officer at U.C. Santa Barbara, transferred to the Berkeley campus as a lieutenant in 1985, and was promoted Chief of Police in 1990. She will be succeeded by Assistant Chief **Mitchell Celaya** who joined the department in 1982.

Lt. **Rick Dillard** retired after 31 years of service. Retired lieutenant **Richard "Bob" Ludden** passed away on June 24, 2009. Lt. Ludden retired from the department in 1982 after 35 years of service. Sgt. **Alex Yoa** was selected as acting lieutenant. Transfers: Lt. **Adan Tejada** from Administration to Services, Sgt. **John Duezaki** from Patrol to the Crime Prevention Unit, and Sgt. **Ken Moody** from Patrol to the Criminal Investigations Bureau.

POV

War Stories

Never stop learning

A Hayward officer had just arrested an 18-year old man for bank robbery and was taking him to the station for questioning. Just before they arrived, the man asked the officer if he could interview him for a criminal justice class he was taking at a local community college. “Sure,” said the officer, “if you’ll answer some questions for me.” “It’s a deal,” said the suspect. “One other thing,” he added, “I also need to interview a probation officer for the same class. Can you arrange that, too?” “No problem,” said the officer.

A cat burglary

It was 2:23 A.M. in Berkeley and a burglar had just crawled through the window of a home where an elderly woman lived with her cat named Alex. When the burglar dropped his screwdriver, the woman awoke and yelled, “Is that you, Alex?” The burglar replied, “No, but I’m a good friend of his; and he told me to come in and wait for him.” “That’s nice,” said the woman as she dialed 911. Alex’s pal was arrested without incident.

It would’ve made a good commercial

Police in Fort Wayne, Indiana were pursuing a suspected drug dealer named Jermaine Cooper who was racing down the street at over 90 m.p.h. Suddenly, he swerved into the drive-thru at Taco Bell—and ordered a burrito. He was quickly arrested and later told officers, “I knew I was going to the joint for a few years, so I wanted one last decent meal.”

Adjusting to prison

Multimillionaire con artist Bernard Madoff hired a veteran prison consultant to help him find “the best possible jail” in which to serve his 150-year sentence for Wall Street’s biggest fraud. During their discussions, the consultant told Madoff that, regardless of where he’s sent, he will have to make some big adjustments. “I told him that one of my clients was a former judge. He had just arrived at his isolation cell, and the guard had just removed his handcuffs, when the judge said, ‘One other thing: Would you be kind

enough to get me a coffee, with just a little cream?’ The guard responded, ‘I’m sorry, but we’re currently out of cream. How about some fresh milk?’”

Creative police work

An Oakland police officer who was investigating suspected election fraud received a report from OPD’s handwriting expert: All 50 signatures on an election petition were signed by the same person! So the officer went to the home of the first person who’d signed the petition:

Officer: Look at this petition. Is that your signature at the top?

Suspect: Yeah.

Officer: Well, our handwriting expert says that all of the signatures were signed by the same person. You know what that means? It means you signed the rest of the names, too.

Suspect: I did *not*.

Officer: Just as I suspected. Our handwriting expert blew it again. Look, we want to get rid of this bozo. You’d be doing us a big favor if you’d tell me exactly how many of these signatures you really signed.

Suspect: Well, it wasn’t all of ‘em. Maybe 20.

A bad day for a wannabe cop

A convicted car thief named Antonio Martinez was driving around Oakland in a black Crown Vic outfitted with red and blue lights on the dash and a loudspeaker system. Driving along International Boulevard, he decided to pull over a suspicious looking guy. It turned out, the guy was an undercover OPD officer. Antonio is now furthering his interest in police work by getting some firsthand experience with the criminal justice system.

A likely excuse

A man who had driven his mini van into a tree in San Leandro told officers that the wreck was the fault of a butterfly who flew into his windshield, blocking his view.

A great juror

A farmer who had been called to jury duty in a Dallas murder case was being questioned by the defense attorney:

Attorney: Do you believe in the death penalty?

Farmer: I suppose so.

Attorney: You suppose so? Let me be more specific. If it came down to you being the one asked to pull the switch, could you do it?

Farmer: Hmmmmm. They do that down in Austin, don't they?

Attorney: That's right.

Farmer: Well, I guess I could if it was on a weekend.

It helps to have a sense of humor

Excerpt from a Berkeley PD 647(f) arrest report: "En route to the station I was treated to an impressive and unending array of insults that covered my relationships, my mother, my sexuality, my job, my height, my weight, my ethnic backgrounds, and repeated tales of some mysterious pervert who is secretly entertaining my significant other while I am at work."

Cheaper than valium

During a traffic stop in Dublin, a CHP officer noticed a butterfly knife on the passenger seat. "What's that for?" asked the officer. The man explained, "I like to play with knives when I'm driving. With all the crazy people out on the freeways, it helps keep me calm."

Can't help tagging

In Fremont, three young men who had been arrested in a big graffiti case were confined in a holding cell while their attorneys were out in the courtroom arguing for OR releases. "The DA can't prove anything, judge," said one of the attorneys, "those tags on the freeway could've been painted by anybody." Meanwhile, the three taggers were busy in their holding cell, tagging the walls with the same design they used on the freeway. And it was all caught on the hidden video camera.

That changes everything

During her arraignment in Oakland, a female prisoner asked the judge to be released on her own recognizance. "Let me see," said the judge, "your file shows you have 29 failures to appear, 16 probation revocations, and two bench warrants out of Hayward." "That's incorrect, judge," said the prisoner, "I only have one bench warrant out of Hayward."

Father knows best

OPD homicide investigators arrested a 16-year old boy for murder and took him to the station for questioning. The minor then waived his *Miranda* rights and gave a full confession. When the interview was completed, the officers permitted him to speak with his father in the interview room. The hidden tape recorder caught their conversation:

Juvenile: I'm sorry Dad. I did it. I told 'em everything.

Dad: Son, I can't tell you how disappointed I am. All these years, what have I always told you? Never, *never* talk to the cops!

Got war stories?

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