Recent Cases

People v. McDaniel

(2021) 12 Cal.5th 97

Issue

Under what circumstances may officers order a passenger in a stopped vehicle to remain inside?

Facts

At about 3:30 a.m., at the a housing complex in Los Angeles, Don'te McDaniel walked into the apartment of Annette Anderson and started shooting. Anderson and another person were killed; two others were shot but survived. McDaniel fled. The shooting was gang-related. At the scene, LAPD officers found cartridges for a nine-millimeter handgun and a shotgun.

Five days later, two LASD deputies happened to stop a Toyota because there were no license plates. As the car came to a stop, the passenger door came open and "a man stepped out and made a motion and tried to run out of the vehicle." That man was McDaniel. One of the deputies yelled "Get back in the car" and he complied. As things progressed, the driver was arrested for not having a license, and the deputies decided to impound his car.

But before conducting an inventory search, one of them ordered McDaniel to step outside. As he did so, the deputy noticed a bulge "that resembled a gun" in his right pocket. So he conducted a pat search and found a loaded nine-millimeter Ruger semiautomatic handgun. McDaniel was arrested and the deputies seized the Ruger which was later determined to be the murder weapon.

Before trial, McDaniel argued that the search was unlawful and the gun should have been suppressed. The court disagreed, and McDaniel was convicted of two counts of first-degree murder. He was sentenced to death.

Discussion

McDaniel argued that the Ruger should have been suppressed because it was the fruit of an unlawful detention. Specifically, he contended that the deputies had seized him illegality when they ordered him to remain in the car. The California Supreme Court disagreed.

Because detentions are "one of the most perilous duties imposed on law enforcement officers,"[1] the courts "allow intrusive and aggressive police conduct without deeming it an arrest in those circumstances when it is a reasonable response to legitimate safety concerns on the part of the investigating officers."[2]

During traffic stops it is usually the driver who poses the greater threat, and that is why officers may, as a matter of routine, order the driver to exit or remain in the vehicle. But can they also order a passenger to remain inside?

McDaniel argued that such an order is unlawful unless officers had reason to believe that the passenger constituted a threat. But the California Supreme Court ruled that, even if such a threat was required, it certainly existed in this case. Said the court, the deputy "surely was not required to give McDaniel an opportunity to depart the scene after he exited the vehicle without first ensuring that, in so doing, the officer was not permitting a dangerous person to get behind him."

Consequently, the court ruled that McDaniel's motion to suppress the gun was property rejected, and it affirmed his conviction.

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[1] *Pennsylvania v. Mimms* (1977) 434 U.S. 106, 110.

[2] *U.S. v. Meza-Corrales* (9th Cir. 1999) 183 F.3d 1116, 1123.

People v. Cuadra

(2021) 71 Cal.App.5th 348

Issue

Was the defendant unlawfully detained?

Facts

As the result of widespread violence and looting resulting from Black Lives Matter protests, the County of Los Angeles established a curfew between the hours of 6 p.m. and 6 a.m. At about 2:15 a.m. two LASD deputies on patrol drove into the parking lot of a motel in the City of Commerce. As they did so, they saw a man, identified as Oscar Cuadra, standing near a parked car. While they remained inside their patrol car, they asked Cuadra if he knew about the curfew. He said no. The deputies did not intend to cite or arrest Cuadra for violating the curfew since he was standing on private property. Nevertheless, they were wondering why, with so much violent crime and destruction going on in the area, a person would be walking around at 2 a.m. for no apparent reason. So they decided to contact him.

As they stepped out of their car, one of the deputies asked—but did not order—Cuadra "to walk over to the hood of our patrol vehicle." Instead of complying, Cuadra "raised his hands and stepped backward, away from the patrol car, all the while asking why the deputies were attempting to detain him when he had done nothing wrong." As Cuadra raised his hands, one of the deputies saw a "pretty big" bulge in his right front pants pocket. The deputy also noticed that the bulge was consistent with the shape of a firearm.

At this point, Cuadra spontaneously said he had a gun. So the deputy ordered him to get on the ground and, after conducting a pat search, removed a loaded .38 caliber revolver. Cuadra was subsequently charged with possession of a firearm by a convicted felon. When his motion to suppress the gun was denied, he pled no contest.

Discussion

Cuadra argued that his handgun should have been suppressed because it was the fruit of an unlawful detention. And in a 2-1 decision, the court agreed.

It was apparently undisputed by prosecutors that Cuadra had, in fact, been detained when he was asked to raise his hands and walk over to the patrol car (even though he was not commanded to do so). Consequently, the central issues were (1) did the deputies have grounds to detain him, and (2) did he comply with the deputy's command.

GROUNDS TO DETAIN: Officers may detain a person only if they have "reasonable suspicion," which is a much lower standard of proof than probable cause. As the Supreme Court explained, "The reasonable suspicion inquiry falls considerably short of 51% accuracy,"[3] and that "reasonable suspicion is a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence."[4]

Moreover, in determining whether officers had grounds to detain a person, the courts are required to consider the totality of the surrounding circumstances. Thus, in reversing a circuit court in *District of Columbia v. Wesby,* the Supreme Court said that the two circuit judges in the majority had "viewed each fact in isolation rather than as a factor in the totality of circumstances."[5] And yet, the two justices who ordered the suppression of Cuadra's gun (the third dissented) not only ignored this requirement, but blatantly misrepresented the nature of the threat that the deputies were facing.

Specifically, in discussing why the deputies were on high alert, they merely said "there was a curfew in effect." But, for discerning readers who thought it would be helpful to know why the area was under curfew, and why Cuadra's early morning activities were of concern to the deputies, it was necessary to read the dissenting opinion of Justice Elizabeth Grimes:

> National Guard troops and police officers guarded the barricaded steps of Los Angeles

[3] *Kansas v. Glover* (2020) __ U.S. __ [140 S.Ct. 1183].
[4] *Illinois v. Wardlow* (2000) 528 U.S. 119, 123.
[5] (2018) __ U.S. __ [138 S.Ct. 577, 588].

> City Hall and tried to restore order in Santa Monica and Long Beach. For two days, looters spent hours vandalizing and breaking into stores, stealing items and setting fires in Los Angeles, Santa Monica, and Long Beach.

Not only did the majority ignore these seemingly important facts, they shamefully referred to the rioters as "protesters." (Isn't there a significant difference between a "rioter" and a "protester?")

DID CUADRA COMPLY WITH THE DEPUTY'S REQUEST? As noted, the two justices in the majority also ruled that Cuadra had complied with the deputy's request to walk over to the patrol car. But even if Cuadra had been illegally detained at that point, the detention would have automatically terminated if he did not comply with the deputy's request or command. As the Supreme Court explained in *Brendlin v. California*, "There is no seizure without actual submission; otherwise, there is at most an attempted seizure."[6]

Did Cuadra submit when the deputy asked him to "walk over to the hood of our patrol vehicle?" In the view of the majority, a detainee who is asked to walk over to a patrol car will have complied if, instead of walking over to the car, he stepped back, stood his ground, and started arguing. In their words, Cuadra's act of raising his hands and stepping backward "is not, by any stretch of the imagination, an indication that he believed he was not being seized and was, instead, free to leave."

Apart from the obvious fact that Cuadra did not comply with the deputy's command, the majority compounded their error when, as noted, they said that in determining whether a person was detained it is significant that the person subjectively believed so. And yet, the Supreme Court has expressly ruled that a person's beliefs are irrelevant in determining whether he had been detained. As the Court explained in *California v. Hodari D.*, the issue is "not whether the citizen perceived that he was being ordered to restrict his movement, but whether the officer's words and actions would have conveyed that to a reasonable person."[7]

There's more. The majority also claimed that Cuadra had been illegally detained because the ~~deputies had *intended*~~ to detain him. In their words, "It is objectively apparent the officers intended to detain and frisk appellant." Apart from the fact that the majority had no way of knowing the deputies' intentions, it was error to even consider them. As the Supreme Court said in *United States v. Mendenhall,* "The subjective intention of the DEA agent in this case to detain the respondent, had she attempted to leave, is irrelevant except insofar as that may have been conveyed to the respondent."[8] Thus, in *In re Manuel G.* the California Supreme Court explained that "the officer's uncommunicated state of mind [is] irrelevant in assessing whether a seizure triggering Fourth Amendment scrutiny has occurred."[9]

It would be pointless to go further. Fortunately, this decision was so blatantly wrong that it will likely be recognized as an aberration.

People v. Sumagang

(2021) 69 Cal.App.5th 712

Issue

Did a detective conduct an illegal two-part interrogation in obtaining a confession from the defendant?

Facts

A Monterey County sheriff's deputy was dispatched to investigate a 911 hangup call of a suspicious vehicle in a remote area of the county. When she arrived she found the car with the hood up, and a large crack in the windshield. In the backseat were Byron Sumagang and 20-year old Carole Sangco. Sangco was lying on top of Sumagang. When the deputy knocked on the window, Sumagang woke up but Sangco was dead.

Sumagang told the deputy that he and Sangco had made a suicide pact and that they had both taken "a bunch" of Klonopin and "drank as much tequila as they could." He also said "he was not supposed to wake up."

After Sumagang was released from the hospital, a detective went to the county jail to question him about the murder. The deputy did not, however, seek a *Miranda* waiver because he "wanted to see what he had to say first."

During this part of the interrogation, which

[6] (2007) 551 U.S. 249, 254.
[7] (1991) 499 U.S. 621, 628. Also see *Morgan v. Woessner* (9th Cir. 1993) 997 F.2d 1244, 1254.
[8] (1980) 446 U.S. 554, fn.6.
[9] (1997) 16 Cal.4th 805, 821. Also see *People v. Ross* (1990) 217 Cal.App.3d 879, 884.

lasted about 25 minutes, Sumagang said that after he and Sangco drank the tequila and took the pills, Sangco repeatedly asked him, "Can you please choke me out in the back seat please." He admitted that he did so and provided a detailed account.

After a two-minute break, the detective returned and *Mirandized* Sumagang. During this part of the interrogation—which lasted 45 minutes—Sumagang said that he and Sangco had been together for five years, that she had "depression problems" and had often talked about suicide. He explained that he and Sangco had initially attempted to kill themselves by cutting their wrists and setting the car on fire. But when that didn't work, Sumagang repeatedly asked him to strangle her. He explained that he "didn't want to hurt her" but she "just kept on telling me do." So he began to strangle her. At one point, he said, Sangco "closed her eyes, her arms went limp, and she just stopped moving." When asked why he didn't kill himself, Sumagang "I forgot."

Before trial, Sumagang filed a motion to suppress all of his statements to the detective on grounds he failed to obtain a *Miranda* waiver at the start of the interview. The court agreed in part, ordering the suppression of everything he said during prewaiver portion of the interview, but it admitted the statements he made after he had been *Mirandized*. Sumagang was convicted.

Discussion

It is settled that officers may interrogate a suspect in custody only if the suspect had been advised of his *Miranda* rights. This was why the trial court suppressed Sumagang's first confession. Sumagang argued that the post-warning potion should also have been suppressed because it was the product of an illegal two-step interrogation process.

The "two step" was a tactic in which officers would begin an interrogation before *Mirandizing* the suspect. Then, if he confesses or makes a damaging admission, they would seek a waiver and, if he waives, they will try to get him to repeat the statement. As the Ninth Circuit explained, "A two-step interrogation involves eliciting an unwarned confession, administering the *Miranda* warnings and obtaining a waiver of *Miranda* rights, and then eliciting a repeated confession."[10]

The two-step works on the theory that the suspect will usually waive his rights and repeat his incriminating statement because he will think (erroneously) that his first statement could be used against him and, thus, he had nothing to lose by repeating it.

In 2004, however, the U.S. Supreme Court ruled that a two-step interrogation is illegal the officer's objective was to avoid the *Miranda* restrictions.[11] Thus, the issue in *Sumagang* was whether the detective's decision to employ a two-step procedure was to circumvent *Miranda*. Although the courts will consider the totality of circumstances, the following are indications of such an intent.

Intense prewaiver conversation: The prewaiver portion of the interview consisted of detailed questioning pertaining to the crime.

Interrogation tactics: During the prewaiver interview, the officers utilized interrogation tactics that were designed to produce an admission; e.g., "good cop/bad cop."

Overlapping content: During the postwaiver interview, the officers referred to the suspect's prewaiver admission or otherwise reminded him that he had already "let the cat out of the bag?"

Time lapse: There was only a short time lapse between the two portions of the interview.

Same officers: Both portions were conducted by the same officers.

It was, therefore, apparent that Sangco's first confession had been obtained as the result of an illegal two-step. Among other things, the court noted that during the 25-minute prewaiver portion the detective "elicited a detailed narrative of the night that Sangco died, including all the facts needed to inculpate Sumagang." The court added that the detective had also obtained the prewaiver confession by asking leading questions which resembled "cross-examination."

In addition, the court observed that "there was no substantial break in time or circumstances between the two parts of the interrogation." For example, the "postwarning questioning started two min-

[10] *US v. Narvaez-Gomez* (9th Cir. 2007) 489 F.3d 970, 973.
[11] (2004) 542 U.S. 600. Also see *People v. Krebs* (2019) 8 Cal.5th 265.

utes after the prewaiver portion of what amounted to a continuous interaction between the detective and the suspect." Accordingly, the court ruled that Sumagang's postwaiver confession should have been suppressed, and it overturned his conviction.

People v. Jimenez

(2021) __ Cal.App.5th __ [2021 WL 5905719]

Issue

Did an officer coerce a murder suspect into confessing?

Facts

At about midnight, a San Bernardino County sheriff's deputy spotted Enrique Jimenez and two young men standing in an open field near some trash cans. When the men saw the deputy, they all ran to a Chevy Suburban parked nearby and sped off. Thinking that the men were illegally dumping garbage, the deputy gave chase. In a bizarre twist, Jimenez detoured back to the lot, stopped next to the trash can, opened the lid, and used a lighter to set fire to the contents—one of which was the dead body of Morris Barnes. Jimenez sped off again and later stopped briefly to let his two accomplices out. They ran, and Jimenez sped off, but all were quickly apprehended. It turned out that the two other people in the Suburban were Jimenez's teenage boys, aged 14 and 17.

Back at the lot, deputies determined that Barnes had been stabbed several times and that the reason the fire in the trash can started so quickly was because Jimenez or one of his sons had poured gasoline over the body.

At the sheriff's office, Jimenez waived his *Miranda* rights and was interviewed by a detective.[12] Although he claimed that his sons "didn't know nothin'" about the dead body, the detective informed him that his sons "told me everything that they were asked to do." He also said that they would be charged unless there was reason to believe they were not involved. And he pointed out that Jimenez was in a position to "help them" because, otherwise, "I'm gonna have to charge them with the death of this guy." Jimenez then confessed and was convicted of murder.

Discussion

On appeal, Jimenez argued that his confession should have been suppressed because the detective essentially threatened to charge his sons with murder if he refused. In a split decision, the court agreed.

A statement is deemed coerced if there was "police overreaching," meaning "coercive police activity" that generated the kind of stress that compelled the suspect to confess or make a damaging admission—the kind of pressure that has "drained [his] capacity for freedom of choice."[13] The question, then, was whether it was inherently coercive to inform Jimenez that his sons might not be charged if he explained what they had done.

Officers may not, of course, threaten to punish a suspect's friends or relatives if he refused to give a statement. If, however, they reasonably believed that the friend or relative participated in the crime or was an accessory they may inform the suspect that he might be able to reduce or eliminate their legal problems by making a statement. As the First Circuit observed, "An officer's truthful description of the family member's predicament is permissible since it merely constitutes an attempt to both accurately depict the situation to the suspect and to elicit more information about the family member's culpability."[14]

Accordingly, the main issue in the case was whether the detective had reason to believe that Jimenez's sons were involved in the murder as principals or accessories. Here's what he knew:

(1) When the deputy arrived at the lot, Jimenez's sons were standing at or near a trash can that contained the body of a man who had

[12] Note: The court did not say if Jimenez had been *Mirandized*; but because he did not allege that the detective violated *Miranda*, he presumably did so.

[13] Quotes from: *Culombe v. Connecticut* (1961) 367 U.S. 568, 576; *Colorado v. Connelly* (1986) 479 U.S. 157, 167, 169.

[14] *U.S. v. Hufstetler* (1st Cir. 2015) 782 F.3d 19, 24. Also see *Peoplev. McWhorter* (2009) 47 Cal.4th 318, 350 [defendant's comments about his wife, mother, and brother made them legitimate subjects of conversation]; *People v. Daniels* (1991) 52 Cal.3d 815, 863 ["Both had apparently helped defendant escape and hide from the police, and could in fact have been charged as accessories"]; *People v. Howard* (1988) 44 Cal.3d 375, 398 [officers "did not imply that the fate of defendant's son and of Stevens depended upon defendant stating what they wanted to hear."].

been stabbed to death.

(2) As the deputy arrived, Jimenez and his sons ran to the Suburban and fled.

(3) Jiminez led deputies on a dangerous, high-speed chase.

(4) As the chase continued, Jimenez detoured back to the lot where he "leaned out the window, lifted the lid the trash can, and used a lighter to set fire to the body of Mr. Barnes.

(5) While Jimenez was doing this, his sons could have jumped out and surrendered but they remained inside. The pursuit resumed.

(6) A few minutes later, Jimenez briefly stopped to let his sons out and both of them fled from deputies on foot.

(7) After the deputies apprehended the sons, they said, euphemistically, that they knew there were "some things" in the garbage can.

It seems apparent that the detective had good reason to believe that the sons were participants in the murder itself or were assisting Jiminez in disposing of the body. As the dissenting justice pointed out, "There was ample suspicion to investigate whether any, or all, of the three might have committed, or assisted or conspired with each other in committing, the murder itself." In fact, Jimenez admitted as much when, during the interview, he said "I shouldn't have involved any of them." But he *did* involve them, and it was the detective's responsibility to determine the extent of their involvement. The majority thought this was unreasonable.

Finally, the majority alleged that the detective "knew defendant's sons were not guilty of murder, but he intended to charge them with murder anyway, unless defendant confessed." Accusing an officer of corruption is a serious allegation that most judges would not make in the absence of direct proof. So, what proof did the majority present? None. What's more, in an ironic twist, Jimenez's attorney disagreed with the majority's allegation when, during the trial, he told the jury, "I think you will agree with me that [the detective is] an exemplary officer who did not do anything improper in this case, and certainly didn't do anything to force anybody to say what they said." Enough said.

French v. Merrill

(1st Cir. 2021) 9 F.4th 129

Issue

Did officers violate the Fourth Amendment while conducting a "knock and talk"?

Facts

Christopher French and Samantha Nardone, both students at the University of Maine, had a stormy on-and-off relationship that resulted in several 911 calls to the police. In one of those cases, officers arrested French for domestic violence, but the charges were eventually dropped for "insufficient evidence."

About seven months later, at about 3 a.m., officers responded to a report that French had broken into Nardone's home and stole a cellphone while she and her roommate were sleeping. When they arrived, they spoke with Nardone, but French had already left. So, they decided to go over to his home and conduct a "knock and talk."

French did not respond when the officers knocked on the door, so they continued knocking and yelling for him to come to the front door. He eventually did so, and admitted that he had visited Nardone's home earlier that evening." But he denied that he stole anything. Having concluded that French's story was "not credible," the officers arrested him for burglary. The charge was later dismissed because Nardone refused to cooperate.

French then sued the officers, contending that their "knock and talk" violated the Fourth Amendment. The trial court ruled the officers were entitled to qualified immunity on grounds that their conduct did not violate "clearly established" law. French appealed to the First Circuit.

Discussion

A "knock and talk" is simply a visit by officers to a suspect's home, usually for the purpose talking with the suspect to confirm or dispel their suspicion that he had committed a crime under investigation. Knock and talks have been described as "an accepted investigatory tactic,"[15] and a "legitimate investigative technique."[16] There are, however, a

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[15] *U.S. v. Roberts* (5th Cir. 2010) 612 F.3d 306, 310. Also see *U.S. v. Jones* (5th Cir. 2001) 239 F.3d 716, 720.
[16] *U.S. v. Lucas* (6C 2011) 640 F.3d 168, 174.
[17] *Florida v. Jardines* (2013) 569 U.S. 1, 8.

few restrictions. The main one is that officers must conduct themselves in a manner that is consistent with that of uninvited guests.[17]

Was this the type of conduct that people expect from visitors? Hardly. As the court pointed out, "police officers not armed with a warrant engaged in conduct in pursuit of a criminal investigation within the curtilage that was inconsistent with the implied social license pursuant to which an officer may enter the curtilage of a home." Consequently, the court ruled that "any reasonable officer would have understood that their actions on the curtilage of French's property exceeded the limited scope of the customary social license," and it ruled the officers were not entitled to qualified immunity.

U.S. v. Weaver

(2nd Cir. 2021) 9 F.4th 129

Issue

Did an officer have sufficient grounds to pat search a detainee?

Facts

At about 5 p.m., two officers in Syracuse, New York stopped a vehicle for a minor traffic violation. The stop occurred in a high-crime area known for a "high rate of shootings, homicides, and stabbings." Earlier in the afternoon, one of the officers happened to notice the same car in the area and a man standing next it staring at the officers' unmarked car as it drove by. And just as the man entered the vehicle, he gave "an upward tug to his waistband."

As the car came to a stop, a passenger sitting in the back seat on the driver's side suddenly opened the door into traffic as if he "was about to flee." One of the officers ordered him to stay inside and he complied. The officer recognized Weaver as a man he had seen earlier who had attracted his attention because, as he stared at the officers' unmarked car, gave an "upward tug" to his waistband.

As the officer spoke with the driver, he noticed that the front-seat passenger—later identified as Calvin Weaver—was "pushing down on his pelvic area and squirming kinda in the seat left and right, shifting his hips." The officer recognized Weaver as the man he had seen earlier trying to hitch up his pants. It was, therefore, especially suspicious when Weaver again tried to "push something" down his pants. So the officer ordered Weaver to step outside, put both hands on the trunk, and spread his legs. But as he did so, he stood only "a few inches" from the patrol car and he "kept moving his torso against the vehicle" so as to hinder the pat search. The officer asked him to step back, but Weaver claimed he could not do so because "the ground was too slippery."

When the officer began the pat search, Weaver repeatedly stepped forward, pressing his pelvis closer to the car." So the officer handcuffed him and, during the pat search, found baggies of cocaine" and a "loaded semi-automatic handgun with a detachable magazine." Weaver's motion to suppress the evidence was denied, and he pled guilty to possession of a firearm by a felon.

Discussion

If this case sounds familiar, it's probably because we reported on it in the Winter 2021 edition. In that case, two of three judges on the Second Circuit panel ruled the officer did not have grounds to pat-search Weaver. As we made clear, those judges were not only mistaken, they displayed a shocking disregard of basic Fourth Amendment law. Fortunately, the Second Circuit decided to rehear the case *en banc* and overturned the panel.

It is settled that officers may patsearch a suspect only if they have reasonable suspicion that he is

armed or dangerous. At the outset, the court noted that the first panel had ruled that the officer actually began the pat search when he ordered Weaver to exit. This was patently absurd and the court summarily ruled that the search did not begin until the officer "physically patted him down."

The question, then, was whether the officer had sufficient grounds to believe that Weaver was armed or dangerous. One circumstance that is commonly cited is that the suspect made a "furtive gesture," meaning a movement by the suspect, usually of the hands or arms, that was secretive in nature. A furtive gesture may be a legitimate concern if it reasonably appeared that the detainee might be attempting to hide or retrieve a weapon.

In this case, the furtive gesture obviously appeared to be an attempt to secrete or retrieve a weapon that this circumstance, in and of itself, would have warranted a pat search. Of particular importance, said the court, was the officer's observation of Weaver pushing down on his pelvic area and squirming left and right and "shifting his hips."

In addition, the officer recognized Weaver as the man who, after staring at the police car, had hitched his pants up. This was also significant because, said the court, "It is a reasonable inference that an 'upward tug' may be needed to counteract the downward pull of something else, and it takes no specialized expertise to understand that a firearm would be weighty enough to do just that." It was also suspicious that the backseat passenger suddenly had opened the door as it to flee.

For mainly these reasons, the court reversed the earlier panel's decision and ruled that the officer did, in fact, have sufficient grounds to patsearch Weaver, and it affirmed his conviction.

[4] (2007) 551 U.S. 249, 254. Also see *California v. Hodari D.* (1991) 499 U.S. 621, 626.
[5] *California v. Hodari D.* (1991) 499 U.S. 621, 628. Also see *Morgan v. Woessner* (9C 1993) 997 F.2d 1244, 1254 ["an officer's subjective belief is ordinarily irrelevant to the question whether a citizen believes that he or she is free to go." Edited.]; *U.S. v. Thompson* (7th Cir. 1997) 106 F.3d 794, 798 ["That Thompson subjectively perceived [the officer's] actions as coercive does not render them objectively unreasonable"]; *U.S. v. Analla* (4th Cir. 1992) 975 F.2d 119, 124 [an encounter does not become a seizure because the suspect testified that, based on his prior experience with officers, he thought he would be arrested if he tried to leave].
[6] (1997) 16 Cal.4th 805, 821. Also see *People v. Ross* (1990) 217 Cal.App.3d 879, 884 ["The officer's state of mind is not relevant for resolution of this question except insofar as his overt actions would communicate that state of mind."]; *People v. Bailey* (1985) 176 Cal.App.3d 402, 406 ["The officer's statement as to his state of mind at the time he turned on his emergency equipment, that the driver was not free to leave, is not relevant. His communication of that state of mind by energizing the signal to stop or to stay is relevant."].
[7] See *Maryland v. Wilson* (1997) 519 U.S. 408, 415 [officers "may order passengers to get out of the car pending completion of the stop"]; *People v. Lomax* (2010) 49 Cal.4th 530, 564 ["officers may order the driver and passengers out of the car pending completion of the [traffic] stop"].
[8] See U.S. v. Williams (9th Cir. 2005) 419 F.3d 1029, 1032, 1033 ["We think the difference in ordering the passenger back inside the car is immaterial."].
[9] *U.S. v. Narvaez-Gomez* (9th Cir. 2007) 489 F.3d 970, 973. Also see *Missouri v. Seibert* (2004) 542 U.S. 600.
[10] See *People v. Krebs* (2019) 8 Cal.5th 265; *U.S. v. Williams* (9th Cir. 2006) 435 F.3d 1148, 1158.
[11] *U.S. v. Roberts* (5th Cir. 2010) 612 F.3d 306, 310; *U.S. v. Jones* (5th Cir. 2001) 239 F.3d 716, 720 ["Federal courts have recognized the 'knock and talk' strategy as a reasonable investigative tool"]
[12] *U.S. v. Lucas* (6th Cir. 2011) 640 F.3d 168, 174.
[13] *Florida v. Jardines* (2013) 569 U.S. 1, 8.
[14] See *U.S. v. Cormier* (9th Cir. 2000) 220 F.3d 1103, 1110 [the courts "have recognized that nocturnal encounters with the police in a residence (or a hotel or motel room) should be examined with the greatest of caution."]. Compare *U.S. v. Crapser* (9th Cir. 2007) 472 F.3d 1141, 1146 ["The encounter occurred in the middle of the day"].
[15] See *Bailey v. Newland* (9th Cir. 2001) 263 F.3d 1022, 1026 [although the time was 2:15 a.m., "the lights were on in the room"].
[16] *Florida v. Jardines* (2013) 569 U.S. 1, 8.

Endnotes