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This edition of Point of View is dedicated to the memory of **Officer John Miller** of the California Highway Patrol who was killed in the line of duty on November 15, 2007

Contents

Pat Searches

"American criminals have a long tradition of armed violence."[1]

The statistics are chilling: Over 93% of the officers killed in the line of duty since 1968 were killed by gunfire.[2] And since 1995 most of these shootings occurred when the officers were detaining or pursuing the killer.[3]

And yet, neither of these statistics is surprising. After all, with a thriving underground market for firearms, it has become increasingly likely that a detainee will have one; and that he'll try to use it if he thinks he is about to be arrested, especially if he is a two or three striker.[4]

In addition, the very nature of detentions puts officers in a precarious position. As the U.S. Supreme Court pointed out, a detention "involves a police investigation at close range, when the officer remains particularly vulnerable."[5] And even though the detainee is technically under the officer's "control" in the sense that he is not free to leave, the Court noted that he still might "reach into his clothing and retrieve a weapon."[6] The Ninth Circuit captured the essence of the problem when it said:

> It is a difficult exercise at best to predict a criminal suspect's next move, and it is both naïve and dangerous to assume that a suspect will not act out desperately despite the fact that he faces the barrel of a gun.[7]

To help reduce this danger, the United States Supreme Court ruled that officers may conduct warrantless pat searches of detainees to determine whether they are carrying a weapon "and to neutralize the threat of physical harm."[8] But there is one restriction—and it's a big one: they may do this only if they have reason to believe that the detainee is armed or dangerous.

The question has been asked: Why can't officers pat search *all* detainees? It's a legitimate question, especially considering that the "armed or dangerous" requirement was established 40 years ago when weapons and violence were much less prevalent than they are now.[9] Still, there are reasons for not permitting indiscriminate pat searches. As the Supreme Court observed in the landmark case of *Terry* v. *Ohio*, the pat search is a "sensitive area of police activity"[10] which "must surely be an annoying, frightening, and perhaps humiliating experience."[11] The Court added:

> [I]t is simply fantastic to urge that [a pat search] performed in public by a policeman while the citizen stands helpless, perhaps facing a wall with his hands raised, is a "petty indignity." It is a serious intrusion . . . [12]

Consequently, it is, essential that officers understand when pat searches are, and are not, permitted. And that is the subject of the first half of this article. In the second half, we will discuss the other impor-

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[1] *Terry* v. *Ohio* (1968) 393 U.S. 1, 23.

[2] Source: U.S. Department of Justice, Federal Bureau of Investigation, *Law Enforcement Officers Feloniously Killed 1968-2005 (By type of weapon)*. ALSO SEE *Terry* v. *Ohio* (1968) 393 U.S. 1, 24 ["Virtually all of [the deaths of officers in the performance of their duties] and a substantial portion of the injuries are inflicted with guns and knives."].

[3] Source: U.S. Department of Justice, Federal Bureau of Investigation, *Law Enforcement Officers Feloniously Killed 1995-2004 (By circumstances at scene of incident and type of assignment)*

[4] See *Terry* v. *Ohio* (1968) 393 U.S. 1, 24 ["The easy availability of firearms to potential criminals in this country is well known."]; *United States* v. *Robinson* (1973) 414 U.S. 218, 234, fn.5 ["The danger to the police officer flows from the fact of the arrest, and its attendant proximity, stress, and uncertainty"]; *U.S.* v. *Holt* (10th Cir. 2001) 264 F.3d 1215, 1223 ["Resort to a loaded weapon is an increasingly plausible option for [detainees]."].

[5] See *Michigan* v. *Long* (1983) 463 U.S. 1032, 1052.

[6] *Michigan* v. *Long* (1983) 463 U.S. 1032, 1051.

[7] *U.S.* v. *Reilly* (9th Cir. 2000) 224 F.3d 986, 993.

[8] *Terry* v. *Ohio* (1968) 393 U.S. 1, 24.

[9] See *U.S.* v. *Rice* (10th Cir. 2007) 483 F.3d 1079, 1083 ["An officer in today's reality has an objective, reasonable basis to fear for his or her life every time a motorist is stopped."].

[10] (1968) 393 U.S. 1, 9.

[11] (1968) 393 U.S. 1, 25.

[12] (1968) 393 U.S. 1, 16-7. **NOTE**: A pat search is both a "search" and a "seizure." *Id.* at p. 19.

tant limitation on pat searches: the permissible scope of the search. Taking note of these fundamental restrictions, the Court in *Terry* said, "[O]ur inquiry is a dual one—whether the officer's action was justified at its inception, and whether it was reasonably related in scope to the circumstances which justified the interference in the first place."[13]

Before we begin, however, we must acknowledge that officers will sometimes encounter situations in which they reasonably conclude that a pat search is necessary even though the legal grounds for it are questionable, or maybe even nonexistent. Or they might have reason to believe that it would be too dangerous to follow the required procedure. In either situation, officers should do what they think is necessary for their safety, and not worry too much about whether the search will stand up in court. As the Court of Appeal observed, "Ours is a government of laws to preserve which we require law enforcement officers—live ones."[14]

"ARMED OR DANGEROUS"

As noted, pat searches are permitted only if officers have reason to believe that the detainee is presently armed or dangerous. But unless they actually see a weapon, or unless the detainee is outwardly hostile, this determination must necessarily be based on circumstantial evidence.[15] What circumstances are considered significant? And how do the courts evaluate them? These are the questions we will now examine.

General principles

ARMED *OR* DANGEROUS: In *Terry*, the Court said that pat searches are permitted only if officers reasonably believed that the detainee was armed "and" dangerous. Almost immediately, however, the lower courts understood that the use of the conjunctive "and" was an unfortunate lapse—that pat searches would be justified whenever officers reasonably believed that a detainee was armed *or* dangerous. After all, it is apparent that every suspect who is armed with a weapon is necessarily dangerous to any officer who is detaining him, even if the detainee was cooperative and exhibited no hostility.[16]

Furthermore, although the courts still routinely quote *Terry's* "armed and dangerous" language, they understand that a pat search will be justified if officers reasonably believed that a detainee constituted an immediate threat, even if there was no reason to believe he was armed.[17] As the Sixth Circuit put it, "The focus of judicial inquiry is whether the officer reasonably perceived the subject of a frisk as potentially dangerous, not whether he had an indication that the defendant was in fact armed."[18]

THE "REASONABLE OFFICER" TEST: To determine whether an officer reasonably believed that a detainee was armed or dangerous, the courts employ the "reasonable officer" test. Specifically, they permit pat searches if the threat would have been apparent to a reasonable officer in the same situation.[19] As the U.S. Court of Appeals put it, "[T]he facts must be such that a hypothetical officer in exactly the same circum-

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[13] *Terry* v. *Ohio* (1968) 393 U.S. 1, 19-20.

[14] *People* v. *Koelzer* (1963) 222 Cal.App.2d 20, 27. ALSO SEE *People* v. *Dumas* (1967) 251 Cal.App.2d 613, 617 ["The realities of present day law enforcement dictate that a failure to make such a search, in many cases, might mean death to policemen."].

[15] See *People* v. *Thurman* (1989) 209 Cal.App.3d 817, 823 [it would be "utter folly" to require officers "to await an overt act of hostility before attempting to neutralize the threat"]; *People* v. *Samples* (1992) 11 Cal.App.4th 389, 393 ["Our courts have never held that an officer must wait until a suspect actually reaches for an apparent weapon before he is justified in taking the weapon."].

[16] See *Pennsylvania* v. *Mimms* (1977) 434 U.S. 106, 112 ["The bulge in the jacket permitted the officer to conclude that Mimms was armed *and thus* posed a serious and present danger to the safety of the officer." Emphasis added]; *People* v. *Superior Court (Brown)* (1980) 111 Cal.App.3d 948, 956 ["[A] pat-down search for weapons may be made predicated on specific facts and circumstances giving the officer reasonable grounds to believe that defendant is armed *or* on other factors creating a potential for danger to the officers." Emphasis added]; *People* v. *Avila* (1997) 58 Cal.App.4th 1069, 1074 ["[T]he crux of the issue is whether a reasonably prudent person . . . would be warranted in the belief that his or her safety was in danger."]. **NOTE**: The Court in *Terry* at p. 28 acknowledged that an armed detainee is necessarily dangerous: "[A] reasonably prudent man would have been warranted in believing petitioner was armed and thus presented a threat."

[17] See *Michigan* v. *Long* (1983) 463 U.S. 1032, 1049; *People* v. *Superior Court (Simon)* (1972) 7 Cal.3d 186, 204 ["The critical question remains, is this the kind of confrontation in which the officer can reasonably believe in the possibility that a weapon may be used against him?"]; *U.S.* v. *Flett* (8th Cir. 1986) 806 F.2d 823, 828.

[18] *U.S.* v. *Bell* (6th Cir. 1985) 762 F.2d 495, 500, fn.7.

[19] See *Terry* v. *Ohio* (1968) 392 U.S. 1, 21-2.

stances reasonably could believe that the individual is armed and dangerous."[20]

It is therefore immaterial that the officer testified that he did not feel "threatened" or "scared."[21] But it is also immaterial that the officer believed in good faith that a pat search was justified.[22] Again, what matters is how the circumstances would have appeared to an objective observer.

THE NEED FOR FACTS: A determination that a suspect was armed or dangerous must be based on specific facts.[23] Feelings, hunches, and unsupported conclusions are irrelevant.

"ROUTINE" PAT SEARCHES: Because facts are required, pat searches can never be conducted as a matter of routine.[24] In fact, judges will usually conclude that an officer has no understanding of the law if he testifies that he always or usually pat searches the people he detains.[25] For example, the courts have summarily invalidated pat searches when the officer, when asked why he searched the defendant, replied as follows:

- "Standard procedure, officer's discretion and my training."[26]
- "Pat down everyone that I talk to, for safety reasons."[27]
- "Officer safety and because [the suspect] may have been armed."[28]
- "As far as I am concerned, anybody I stop could possibly have a weapon on them."[29]

In contrast, in *People* v. *Juarez* the court noted that the officer "testified that he was always in fear of harm when questioning a detained suspect but not that he always and without articulable reason allayed that fear by a frisk."[30]

TRAINING AND EXPERIENCE: The courts may consider an officer's opinion, based on training and experience, as to whether certain facts or circumstances demonstrated a legitimate threat.[31]

TOTALITY OF CIRCUMSTANCES: The courts will take into account all of the relevant circumstances surrounding the encounter—the total atmosphere. As the Seventh Circuit observed, "[T]he standard is whether the pat-down search is justified in the totality of circumstances, even if each individual indicator would not by itself justify the intrusion."[32] For example, in *People* v. *Avila* the court pointed out:

> All of these factors, although perhaps individually harmless, could reasonably combine to create fear in a detaining officer. The [pat search] test does not look to the individual details in its search for a reasonable belief that one's safety is in danger; rather it looks to the totality of the circumstances.[33]

Similarly, the court in *People* v. *Satchell* noted that, while none of the various circumstances clearly demonstrated a threat, when considered as a whole "there was something fishy in the situation and the officers were certainly entitled to contemplate the possibility of violence."[34]

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[20] *U.S.* v. *Hanlon* (8th Cir. 2005) 401 F.3d 926, 929.
[21] See *U.S.* v. *Tharpe* (5th Cir. 1976) 536 F.2d 1098, 1101 ["We know of no legal requirement that a policeman must feel 'scared' by the threat of danger."].
[22] See *People* v. *Adam* (1969) 1 Cal.App.3d 486, 491 ["[S]imple good faith on the part of the arresting officer is not enough."].
[23] See *Terry* v. *Ohio* (1968) 392 U.S. 1, 21 ["[T]he police officer must be able to point to specific and articulable facts"]; *U.S.* v. *Tharpe* (5th Cir. 1976) 536 F.2d 1098, 1100 ["feelings or hunches" are "too lacking in substance"].
[24] See *U.S.* v. *Post* (9th Cir. 1979) 607 F.2d 847, 851 ["It is clear that an officer who has the right to stop a person does not necessarily have a concomitant right to search that person."]; *U.S.* v. *Garcia* (10th Cir. 2006) 459 F.3d 1059, 1063-4 [pat searches are "not to be conducted as a matter of course during every investigative detention"].
[25] See, for example, *People* v. *Lawler* (1973) 9 Cal.3d 156, 162-3 ["The officer's testimony that he felt a 'routine' search for weapons was in order apparently betrays the presence of [an illegal police practice.]."].
[26] *Santos* v. *Superior Court* (1984) 154 Cal.App.3d 1178, 1181.
[27] *People* v. *Hubbard* (1970) 9 Cal.App.3d 827, 830 ["This undiscriminating approach does not meet the Supreme Court's test."].
[28] *People* v. *Dickey* (1994) 21 Cal.App.4th 952, 956 ["Without specific and articulable facts . . . these conclusions add nothing."].
[29] *People* v. *Griffith* (1971) 19 Cal.App.3d 948, 952.
[30] (1973) 35 Cal.App.3d 631, 637.
[31] See *United States* v. *Arvizu* (2002) 534 U.S. 266, 273; *U.S.* v. *Rideau* (5th Cir. 1992) 969 F.2d 1572, 1575 ["Trained, experienced officers like Ellison may perceive danger where an untrained observer would not."].
[32] *U.S.* v. *Brown* (7th Cir. 1999) 188 F.3d 860, 865.
[33] (1997) 58 Cal.App.4th 1069, 1074.
[34] (1978) 81 Cal.App.3d 347, 354.

POSSIBILITY OF AN "INNOCENT" EXPLANATION: A pat search will not be invalidated merely because there might also have been an "innocent" or non-threatening explanation for the circumstances.[35]

"CLOSE" CASES: Finally, in close cases the courts are apt to uphold an officer's determination that a detainee was armed or dangerous. As the Court of Appeal put it, "The judiciary should not lightly second-guess a police officer's decision to perform a patdown search for officer safety."[36]

Having discussed the general principles, we will now look at the circumstances that are relevant in determining whether it is reasonable to believe that a detainee is armed or dangerous.

Nature of crime under investigation

Grounds to pat search will automatically exist if the suspect was detained to investigate a crime closely linked to weapons or violence.[37]

DRUG SALES: At the top of the list of "armed or dangerous" crimes is drug trafficking. As the Court of Appeal observed in *People* v. *Simpson*, "Illegal drugs and guns are a lot like sharks and remoras. And just as a diver who spots a remora is well-advised to be on the lookout for sharks, an officer investigating cocaine and marijuana sales would be foolish not to worry about weapons."[38] Or, as the court pointed out in *People* v. *Thurman*:

> Rare is the day which passes without fresh reports of drug related homicides, open street warfare between armed gangs over disputed drug turf, and police seizures of illicit drug and weapon caches in warranted searches of private residences and other locales.[39]

Consequently, officers may pat search any detainee who is reasonably believed to be a drug dealer.[40]

VIOLENT CRIMES: A pat search is, of course, also warranted if the detainee was reasonably suspected of having committed a crime of violence, such as murder, ADW, robbery, or carjacking.[41]

BURGLARY: A suspected burglar may be pat searched because burglars often carry weapons or tools that could serve as weapons.[42] As the California Court of Appeal observed

> It is reasonable for an officer to believe that a burglar may be armed with weapons, or tools such as knives and screwdrivers which could be used as weapons, and that a pat-down search is necessary for the officer's safety.[43]

CAR THEFT: Because car thieves also frequently carry tools, they too may be pat searched.[44]

VEHICLE PURSUITS: Officers may pat search all occupants of a car that was stopped following a pursuit, regardless of the initial justification for the stop.[45]

TRAFFIC VIOLATIONS: While traffic stops are dangerous, the likelihood that a violator is armed or dangerous is too remote to justify a pat search.[46]

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[35] See *People* v. *Ledesma* (2003) 106 Cal.App.4th 857, 863; *People* v. *Brown* (1989) 213 Cal.App.3d 187, 191.

[36] *People* v. *Dickey* (1994) 21 Cal.App.4th 952, 957. ALSO SEE *People* v. *Lafitte* (1989) 211 Cal.App.3d 1429, 1433 ["[The U.S. Supreme Court] seemed willing to allow more leeway in the officer's decision that a suspect is 'armed and presently dangerous'"].

[37] See *U.S.* v. *Flatter* (9th Cir. 2006) 456 F.3d 1154, 1158 ["[I]ndeed, some crimes are so frequently associated with weapons that the mere suspicion that an individual has committed them justifies a pat down search."].

[38] (1998) 65 Cal.App.4th 854, 862.

[39] (1989) 209 Cal.App.3d 817, 822.

[40] See *Richards* v. *Wisconsin* (1997) 520 U.S. 385, 391, fn.2 ["This Court has encountered before the links between drugs and violence." Citations omitted]; *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."]; *People* v. *Osuna* (1986) 187 Cal.App.3d 845, 856 ["It should come as no great surprise that those who would profit by the illicit manufacture and sale of drugs which so often destroy their customers' very lives, are not above adopting lethal means to protect their products from seizure and themselves from apprehension."]; *People* v. *Limon* (1993) 17 Cal.App.4th 524, 535.

[41] See *Terry* v. *Ohio* (1968) 392 U.S. 1, 28 [robbery]; *People* v. *Atmore* (1970) 13 Cal.App.3d 244, 247, fn.1 [murder]; *People* v. *Rico* (1979) 97 Cal.App.3d 124, 132 [ADW]; *People* v. *Lindsey* (2007) 148 Cal.App.4th 1390, 1401 [shots fired].

[42] See *People* v. *Castaneda* (1995) 35 Cal.App.4th 1222, 1230; *People* v. *Koelzer* (1963) 222 Cal.App.2d 20, 27.

[43] *People* v. *Myles* (1975) 50 Cal.App.3d 423, 430.

[44] See *U.S.* v. *Hanlon* (8th Cir. 2005) 401 F.3d 926, 929 ["[W]hen officers encounter suspected car thieves, they also may reasonably suspect that such individuals might possess weapons."]; *People* v. *Vermouth* (1971) 20 Cal.App.3d 746, 753 [because the detainees were suspected of car theft, it was reasonable "to ask the two men out of the car and make a superficial search for possible weapons"].

[45] See *People* v. *Hill* (1974) 12 Cal.3d 731, 746, fn.13.

[46] See *People* v. *Superior Court (Simon)* (1972) 7 Cal.3d 186, 206; *People* v. *Superior Court (Kiefer)* (1970) 3 Cal.3d 807, 830.

A bulge

A bulge under the detainee's clothing will warrant a pat search if it might have been caused by a conventional weapon or an object that could readily be used as a weapon. As the Ninth Circuit pointed out, "[W]e have given significant weight to an officer's observation of a visible bulge in an individual's clothing that could indicate the presence of a weapon."[47]

In determining whether a bulge appeared to constitute a threat, the following circumstances are relevant, oftentimes determinative:

SIZE AND SHAPE: A pat search will always be warranted if the size and shape of the bulge was consistent with the size and shape of a weapon.[48]

HEAVY OBJECT: Officers may ordinarily pat search a suspect if there was reason to believe that the bulge under his clothing was caused by a heavy object. For example, in *People* v. *Miles* the court ruled a pat search was justified because, said the court:

> [T]he officer saw an exaggerated bulge in defendant's left jacket pocket and that the jacket "swung pretty freely" in the officer's direction. Because of the bulge and the manner in which the jacket swung, the police officer knew it was some type of heavy object, possibly a gun.[49]

LOCATION OF THE BULGE: A suspicious bulge is even more cause for alarm if it was located in a place where conventional weapons are commonly concealed; e.g., at the waist, in a pants or jacket pocket.[50] For example, in upholding a pat search in *People* v. *Brown*, the California Court of Appeal noted that the officer's decision to pat search the defendant "was based on his observation of a bulge under [the defendant's] jacket and his experience that weapons are commonly carried under clothing in that approximate location of the waistband."[51]

HIDING THE BULGE: A bulge is especially suspicious if the suspect was attempting to keep it hidden from officers. For example, in *People* v. *Superior Court (Brown)* the court noted, among other things, "[D]efendant was holding his hands clasped together in front of a bulge in the waistband in the middle of his waist . . . ."[52]

Similarly, in *People* v. *Glenn R.*, the court noted that the suspect "continually kept his right side averted from the officer and kept his right hand in his jacket pocket in such a manner as to lead any reasonable person to believe that he was attempting to conceal something from view."[53]

MAKING A GRAB: A bulge takes on even more significance if the suspect suddenly reached for it.[54]

Furtive gestures

A so-called "furtive gesture" is a movement by a suspect, usually of the hands or arms, that, (1) reasonably appeared to have been made in response to seeing an officer or a patrol car;[55] and (2) was secretive in nature, meaning that it appeared the suspect did not want the officer to see what he was doing. A furtive gesture is, of course, a concern because of the possibility that the suspect may be attempting to hide or retrieve a weapon.

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[47] *U.S.* v. *Flatter* (9th Cir. 2006) 456 F.3d 1154, 1157.

[48] See *People* v. *Guillermo M.* (1982) 130 Cal.App.3d 642, 647 [bulges consistent with knives]; *U.S.* v. *Meredith* (5th Cir. 2007) 480 F.3d 366, 370 ["handgun-like bulge"]; *People* v. *Ritter* (1997) 54 Cal.App.4th 274, 277 [bulge "appeared to be the outline of a small handgun"]; *People* v. *Snyder* (1992) 11 Cal.App.4th 389, 393 ["[T]he visible bulge created by the bulk of the liquor bottle announced to Officer Chase the potential of a weapon."].

[49] (1987) 196 Cal.App.3d 612, 618.

[50] See *Pennsylvania* v. *Mimms* (1977) 434 U.S. 106, 107, 112 ["large bulge under [Mimms'] sports jacket"]; *People* v. *Snyder* (1992) 11 Cal.App.4th 389, 391 ["a large bulge in the front waistband"]; *People* v. *Methey* (1991) 227 Cal.App.3d 349, 358 ["bulky outer jacket with bulging pockets."]; *People* v. *Allen* (1975) 50 Cal.App.3d 896, 899, 901 ["bulging" pockets]; *People* v. *Autry* (1991) 232 Cal.App.3d 365, 367 ["He was wearing a zippered jacket which bulged around and concealed his waist."]; *People* v. *Guillermo M.* (1982) 130 Cal.App.3d 642, 644 [bulge "in the front pockets of appellant's pants"].

[51] (1985) 169 Cal.App.3d 159, 165.

[52] (1980) 111 Cal.App.3d 948, 957.

51a (1970) 7 Cal.App.3d 558, 561.

[53] See *People* v. *Rosales* (1989) 211 Cal.App.3d 325, 330 [the suspect "suddenly put his hand into the bulging pocket," an indication that he "was or could be, reaching for a weapon."].

[54] (1970) 7 Cal.App.3d 558

[55] See *U.S.* v. *Edmonds* (D.C. Cir. 2001) 240 F.3d 55, 51 ["furtive gestures are significant only if they were undertaken in response to police presence"].

Nevertheless, the courts will not uphold a pat search simply because an officer testified that the suspect made a "furtive gesture." This is mainly because "furtiveness" is highly subjective, plus the term "furtive gesture" has been overused (and occasionally abused) by officers to the point that judges have become skeptical whenever they hear it. Instead, officers must explain what the suspect did and why it appeared threatening, or at least suspicious.[56]

For example, in *People* v. *King*[57] a San Diego police officer was on patrol in an area plagued by gang activity when he stopped a car for expired registration. As he walked up to the car, he saw the driver, King, "reach under the driver's seat" and do something that caused a sound—a sound that the officer described as "metal on metal." In ruling that the officer's subsequent pat search was lawful, the court noted that, "in 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."

In the following examples, note how the officers elaborated, at least somewhat, on the detainee's actions:

- He "lifted himself up from the seat with both arms in his rear portion of his body behind his back, both arms went up and down rapidly."[58]
- He "reached back inside the car toward his waistband."[59]
- He "clutched his stomach as he got out of the car, as if he were trying to keep something held against the front part of his body."[60]
- The officer "noticed Edmonds reaching under the driver's seat as though he were attempting to conceal something. 'I saw the Defendant lean all of the way forward,' he recalled, 'almost ducking out of my sight. I could see his head above the dashboard, and then I saw him lean back, up, seated upright in the vehicle.'"[61]
- "[The officer] noticed the driver lean to the right as if to conceal or obtain something."[62]
- "[D]efendant crouched forward and placed his left hand toward the lower middle portion of his body. Defendant fumbled with his left hand in the right front portion of his body."[63]
- "[T]he officers saw appellant reach into the back of his waistband and secrete in his hands an object which he had retrieved."[64]
- The detainee made "quick and furtive movements below the dashboard."[65]

Sudden movement

A sudden movement by a detainee may justify a pat search, especially if it was a reaching movement. As the Ninth Circuit explained, "We have also considered sudden movements by defendants, or repeated attempts to reach for an object that was not immediately visible, as actions that can give rise to a reasonable suspicion that a defendant is armed."[66] Here are some examples:

- "When defendant [a suspected street-level drug dealer] turned toward the patrol car and placed his hand inside his jacket, [the officer] believed that he was reaching for a weapon."[67]

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[56] See *People* v. *Frank V.* (1991) 233 Cal.App.3d 1232, 1240-1 [furtive gesture may justify a pat search]. COMPARE *People* v. *Dickey* (1994) 21 Cal.App.4th 952, 956, fn2 ["Just how this activity ['moving around in the driver's seat'] is invested with 'guilty meaning' is not explained in the record."].

[57] (1989) 216 Cal.App.3d 1237.

[58] *People* v. *Clayton* (1970) 13 Cal.App.3d 335, 337 ["[F]ailure to take similar precautions has resulted in the death of many law enforcement officers."].

[59] *U.S.* v. *Price* (D.C. Cir. 2005) 409 F.3d 436, 442.

[60] *U.S.* v. *Raymond* (4th Cir. 1998) 152 F.3d 309, 312 ["The troopers had a reasonable basis for conducting a patdown search of Raymond based on his strange exit from the car, as if he were attempting to conceal something under his jacket, and the awkward way in which he leaned against the car while talking to Trooper Summers."].

[61] *U.S.* v. *Edmonds* (D.C. Cir. 2001) 240 F.3d 55, 61.

[62] *Haynie* v. *County of Los Angeles* (9th Cir. 2003) 339 F.3d 1071, 1076.

[63] *People* v. *Armenta* (1968) 268 Cal.App.2d 248, 249.

[64] *People* v. *John C.* (1978) 80 Cal.App.3d 814, 819.

[65] *U.S.* v. *Yamba* (3d Cir. 2007) __ F.3d __ [2007 WL 3054387].

[66] *U.S.* v. *Flatter* (9th Cir. 2006) 456 F.3d 1154, 1158.

[67] *People* v. *Lee* (1987) 194 Cal.App.3d 975, 983.

- "When defendant [a suspected heroin dealer] suddenly put his hand into the bulging pocket, [the officer] reasonably believed he was, or could be, reaching for a weapon."[68]
- After the detainee produced an ID card from his rear pocket, the officer saw him "make a sudden gesture with his right hand to his left T-shirt pocket."[69]
- The officer testified that "all three suspects alighted from the vehicle almost simultaneously. They all got out on us . . . "[70]
- "[D]efendant got out of his car swiftly and walked quickly toward the squad car before the officer had the chance to get out of his car."[71]
- "Just after [the officer] started the search around defendant's waistband, defendant abruptly grabbed for his outside upper jacket pocket."[72]
- "Upon the officers' approach, defendant lunged forward thrusting his right hand into one of the bag's open pockets."[73]
- "When the officer approached the defendant he reached into his right rear pocket and appeared to be trying to get something out, and it was a jerking motion as though he were trying desperately to get something out of his pocket."[74]
- "Appellant was combative and reached towards the front of his pants several times."[75]

As we will discuss later, when a detainee suddenly reaches into a location where weapons are commonly concealed, officers may usually dispense with the pat search procedure and immediately reach inside.

Refusal to comply

A detainee's refusal to comply with an officer's request or command may indicate defiance, which is certainly a relevant circumstance. For example, in *People* v. *Superior Court (Brown)* the court ruled that a pat search of a detainee was warranted largely because the officer "twice called to defendant to stop but defendant without hesitation or turning around continued walking away from him."[76]

A refusal to comply is especially likely to justify a pat search if the objective of the officer's request or command was to restrict the detainee's ability to secretly obtain a weapon. For example, in *Adams* v. *Williams* the United States Supreme Court ruled that an officer was justified in conducting a protective search of the defendant because, among other things, "[W]illiams rolled down his window, rather than comply with the policeman's request to step out of the car so that his movements could more easily be seen."[77] Some other examples:

- After twice ignoring the officer's command to raise his hands, the defendant "turned his back" and started to walk away.[78]
- "[A]ppellant refused to drop the object in his hands when asked to do so by the officers."[79]
- "[The officer] asked Ratcliff to show what he had in his pocket, but he did not comply."[80]
- "Haynie also failed to obey [the officer's'] orders to spread his legs and keep his head facing forward."[81]
- "[The FBI agent] ordered Bell to put his hands on the dashboard of the car. Bell did not move his

[68] *People* v. *Rosales* (1989) 211 Cal.App.3d 325, 330.
[69] *People* v. *McLean* (1970) 6 Cal.App.3d 300, 306.
[70] *People* v. *Hubbard* (1970) 9 Cal.App.3d 827, 830.
[71] *U.S.* v. *Mattarolo* (9th Cir. 1999) 191 F.3d 1082, 1087.
[72] *People* v. *Atmore* (1970) 13 Cal.App.3d 244, 246.
[73] *People* v. *Flores* (1979) 100 Cal.App.3d 221, 226.
[74] *People* v. *Superior Court (Holmes)* (1971) 15 Cal.App.3d 806, 808-9.
[75] *People* v. *Lopez* (2004) 119 Cal.App.4th 132, 134.
[76] (1980) 111 Cal.App.3d 948, 954-5.
[77] *Adams* v. *Williams* (1972) 407 U.S. 143, 148. Edited.
[78] *People* v. *Wigginton* (1973) 35 Cal.App.3d 732, 735. ALSO SEE *U.S.* v. *Rideau* (5th Cir. 1992) 969 F.2d 1572, 1575 [detainee's act of backing away from the officer could, under the circumstances, be construed as an attempt to "gain[] room to use a weapon"]; *U.S.* v. *Bell* (6th Cir. 1985) 762 F.2d 495, 501 ["Bell's failure to follow [the FBI agent's] instructions would significantly and immediately heighten the level of concern upon the part of the officer."].
[79] *People* v. *John C.* (1978) 80 Cal.App.3d 814, 819.
[80] *People* v. *Glenn R.* (1970) 7 Cal.App.3d 558, 560.
[81] *Haynie* v. *County of Los Angeles* (2003) 339 F.3d 1071, 1076.

hands from their position on his lap or thighs. The agent repeated his command to no avail."[82]

- "Frank's starting for his pockets again, after being told to take his hands out, provided an additional factor justifying a patdown search for weapons."[83]
- "The deputy asked defendant to put the [fanny pack] on the hood of the patrol car, but defendant put it on the ground."[84]

Detainee's mental state

HOSTILE, AGITATED: A detainee's overt hostility toward officers or an agitated mental state are both highly relevant. For example, in *People* v. *Michael S.* officers who had detained a juvenile for mildly suspicious behavior testified that he "started breathing very rapidly, hyperventilating, and became boisterous and angry and very antagonistic [and] clenched and unclenched his fists" and was "borderline combative." In ruling the subsequent pat search was justified, the court noted that the defendant "displayed aggressive conduct and was either unable or unwilling to control himself."[85]

Similarly, in *U.S.* v. *Michelletti* the court ruled that a pat search was justified because "Michelletti, a large and imposing man, was heading straight toward [the officer] with a 'cocky,' perhaps defiant attitude and his right hand concealed precisely where a weapon could be located."[86]

It is also relevant that the detainee, although not overtly hostile at the time, had a history of hostility toward officers. For example, in *Amacher* v. *Superior Court* the California Court of Appeal upheld a pat search mainly because the officer "personally had words with petitioner when he stopped him for a traffic violation. He knew that petitioner had had numerous hostile run-ins with other officers, and that petitioner had little or no respect for law enforcement officers."[87]

NERVOUSNESS: A detainee's display of nervousness has little relevance unless it was extreme or unusual.[88] This occurred in *U.S.* v. *Brown* in which the court noted, anong other things, that the detainee's demeanor "was more nervous than one would expect in a routine traffic stop," plus he kept "repeatedly glancing back towards the car in question."[89]

UNDER THE INFLUENCE: A detainee who is under the influence of alcohol or drugs may be considered dangerous if his behavior was unpredictable, or if he was otherwise unable to control himself.[90]

Criminal history, gang affiliation

A detainee's criminal history (especially involving violence or weapons) is another circumstance that will be considered.[91] For example, in *People* v. *Bush* the court noted that the defendant "had a history of violence, possession of weapons and was reported to be a kick-boxer."[92]

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[82] *U.S.* v. *Bell* (6th Cir. 1985) 762 F.2d 495, 497. Edited.
[83] *People* v. *Frank V.* (1991) 233 Cal.App.3d 1232, 1241. ALSO SEE *U.S.* v. *Michelletti* (5th Cir. 1994) 13 F.3d 838, 842 [suspect's right hand was "concealed precisely where a weapon could be located."].
[84] *People* v. *Ritter* (1997) 54 Cal.App.3d 274, 277.
[85] (1983) 141 Cal.App.3d 814, 816-7. ALSO SEE *People* v. *Lopez* (2004) 119 Cal.App.4th 132, 135 ["Appellant was combative"].
[86] (5th Cir. 1994) 13 F.3d 838, 842.
[87] (1969) 1 Cal.App.3d 150, 154.
[88] See *People* v. *Lawler* (1973) 9 Cal.3d 156, 162 ["Many individuals who are accosted and queried by a police officer become [upset]."]; *People* v. *Brown* (1985) 169 Cal.App.3d 159, 164 ["He began turning pale and his hands began to shake."]; *U.S.* v. *Hanlon* (8th Cir. 2005) 401 F.3d 926, 929 ["extreme nervousness, profuse shaking, and refusal to look [the officer] in the eye"]; *U.S.* v. *Brown* (7th Cir. 1999) 188 F.3d 860, 865 ["Nervousness or refusal to make eye contact alone will not justify a [pat search], but such behavior may be considered"].
[89] (7th Cir. 1999) 188 F.3d 860, 865.
[90] See *Michigan* v. *Long* (1983) 463 U.S. 1032, 1050; *People* v. *Avila* (1997) 58 Cal.App.4th 1069, 1074; *People* v. *Wigginton* (1973) 35 Cal.App.3d 732, 737; *U.S.* v. *Salas* (9th Cir. 1989) 879 F.2d 530, 535.
[91] See *People* v. *Methey* (1991) 227 Cal.App.3d 349, 352 ["[The officer] recognized Methey from numerous prior police contacts and arrests for drug-related crimes."]; *U.S.* v. *Rice* (10th Cir. 2007) 483 F.3d 1079, 1084 ["the computer check identified Rice as 'known to be armed and dangerous'"]; *People* v. *Allen* (1975) 50 Cal.App.3d 896, 899 ["[D]efendant admitted that he had been released from prison just three weeks earlier."]; *People* v. *Autry* (1991) 232 Cal.App.3d 365, 367 ["Autry told the officer he had recently done time for robbery."]; *U.S.* v. *Jackson* (7th Cir. 2002) 300 F.3d 740, 746 [the officer recognized defendant "from the two previous arrests in which he recovered drugs and a firearm from Jackson"].
[92] (2001) 88 Cal.App.4th 1048, 1050.

It is also relevant that the detainee was a known gang member or affiliate.[93] For example, in *United States* v. *Flett* the court ruled that a pat search was warranted because, among other things, the officer knew that the detainee was a member of "a national motorcycle gang which had violent propensities, including charges of using firearms, assault and resisting arrest."[94]

Similarly, in *U.S.* v. *Garcia* one of the reasons the court upheld the pat search of the defendant was that he was a known gang member, and the officer had testified that, "based on his training and experience he knew that guns are often part of the gang environment." The court added, "In our society today this observation resonates with common sense and ordinary human experience."[95]

Presence during execution of drug warrant

As noted earlier, officers may ordinarily pat search anyone who is lawfully detained to investigate drug sales. This is because of the close connection between guns and drug trafficking. For this reason, the United States Supreme Court has also ruled that officers who are executing a warrant to search a residence for drugs may pat search everyone who is on the premises when they arrive.[96]

For example, in *People* v. *Thurman*[97] officers in Vallejo had just entered a home to execute a warrant to search for drugs when they saw Thurman sitting on a sofa in the living room. An officer then patted him down and, in the process, discovered rock cocaine. Although Thurman had done nothing to indicate he posed a threat to anyone, the court ruled the pat search was justified because of the potential for violence in these situations. Said the court:

> That appellant's posture, at that moment, was nonthreatening does not in any measure diminish the potential for sudden armed violence that his presence within the residence suggested.

For the same reasons that justify pat searching the occupants of drug houses, the California Supreme Court has ruled that officers may also detain people who arrive on the premises while the search is underway, at least if the manner of their arrival indicates they live there or are otherwise closely associated with the occupants.[98]

Nature of location

HIGH CRIME AREA: The fact that a detention occurred in an area where crime, gang, or drug problems are prevalent is a relevant circumstance,[99] but it will not automatically justify a patdown.[100] As the U.S. Court of Appeals put it, "The police do not have carte blanche to pat down anyone in a dangerous neighborhood."[101] Or, as the court explained in *People* v. *King*, "[T]he fact that an area involves increased

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[93] See *People* v. *King* (1989) 216 Cal.App.3d 1237, 1241 ["[D]etention of a known gang member would increase the likelihood of harm to an officer and further justify a search for weapons."]; *People* v. *Guillermo M.* (1982) 130 Cal.App.3d 642, 644; *People* v. *William V.* (2003) 111 Cal.App.4th 1464, 1472; *U.S.* v. *Osbourne* (1st Cir. 2003) 326 F.3d 274, 278.

[94] (8th Cir. 1986) 806 F.2d 823, 827.

[95] (10th Cir. 2006) 459 F.3d 1059, 1066.

[96] See *Michigan* v. *Summers* (1981) 452 U.S. 692, 702 ["[T]he execution of a warrant to search for narcotics is the kind of transaction that may give rise to sudden violence"]; *People* v. *Valdez* (1987) 196 Cal.App.3d 799; *People* v. *Roach* (1971) 15 Cal.App.3d 628, 632 ["Defendant's self-induced presence at an apartment where dangerous drugs were sold provided rational support for [the officer's belief that the occupants were dangerous]."]; *U.S.* v. *Fountain* (9th Cir. 1993) 2 F.3d 656.

[97] (1989) 209 Cal.App.3d 817.

[98] See *People* v. *Glaser* (1995) 11 Cal.4th 354, 365 [detainee "appeared to be more than a stranger or casual visitor"]; *People* v. *Huerta* (1990) 218 Cal.App.3d 744, 750 ["It was reasonable to believe a person entering a residence of illicit drug activity might be armed."]; *U.S.* v. *Bohannon* (6th Cir. 2000) 225 F.3d 615, 616; *Burchett* v. *Kiefer* (6th Cir. 2002) 310 F.3d 937, 943-4.

[99] See *Maryland* v. *Buie* (1990) 494 U.S. 325, 334, fn.2 ["in high crime areas . . . the possibility that any given individual is armed is significant"]; *Illinois* v. *Wardlow* (2000) 528 U.S. 119, 124 ["But officers are not required to ignore the relevant characteristics of a location in determining whether the circumstances are sufficiently suspicious to warrant further investigation."]; *People* v. *Limon* (1993) 17 Cal.App.4th 524, 534 ["The connection between weapons and an area can provide further justification for a pat-search."]; *People v. Stephen L.* (1994) 162 Cal.App.3d 257, 260 ["Failure to cursorily search suspects for weapons in a confrontation situation in an area where gang activity usage is known from the officers' past experience would be most careless."].

[100] See *Maryland* v. *Buie* (1990) 494 U.S. 325, 334, fn.2 ["Even in high crime areas, where the possibility that any given individual is armed is significant, *Terry* requires reasonable, individualized suspicion before a frisk for weapons can be conducted."]; *People v. Marcellus L.* (1991) 229 Cal.App.3d 134, 138, fn.2; *People* v. *Medina* (2003) 110 Cal.App.4th 171, 178 [pat search unlawful because it "was based solely on his presence in a high crime area late at night"].

[101] *U.S.* v. *Brown* (7th Cir. 1999) 188 F.3d 860, 865.

gang activity may be considered if it is relevant to an officer's belief that the detainee is armed and dangerous. While this factor alone may not justify a weapon search, combined with additional factors it may."[102]

DESERTED AREA: It is relevant that the detention occurred in a place where there were few, if any, other people around. This is mainly because the lack of witnesses and potential assistance to the officer may motivate the detainee to take chances that he would not otherwise have taken.[103]

NIGHTTIME, DARKNESS: The fact that a detention occurred in a dark or relatively dark place is a circumstance that indicates increased danger because officers may not be able to see the detainee's hands, movements by the detainee's companions, or potential weapons nearby.[104] As the court observed in *People* v. *Satchell*, "The area was dark and preparatory movements by defendant and his two companions might easily go unnoticed."[105]

That the detention occurred in a dark location may be especially significant if the officers were outnumbered, or if their duties prevented them from giving their full attention to the detainee.[106]

Some courts have indicated there is increased danger when a detention occurs at night.[107] It is not clear whether these courts meant that increased danger resulted from darkness or whether they view nighttime detentions as inherently dangerous, even if they occur in well-lighted places. In any event, if officers or prosecutors cite "nighttime" as a factor indicating increased danger, they should explain why this is so.[108]

Tips from citizens, informants

A pat search will be warranted if officers received a tip from a citizen or a tested informant that the detainee is currently carrying a concealed weapon. For example, in *Adams* v. *Williams*[109] a tested police informant approached a Connecticut police sergeant at about 2:15 A.M. and said that a man who was sitting inside a car parked nearby "had a gun at his waist." The Supreme Court ruled that the officer's subsequent search of the man was lawful, noting that the informant "was known to him personally and had provided him with information in the past."

On the other hand, a tip from an anonymous or untested informant would not justify a pat search unless there was some reason to believe the information was accurate. For example, in *Florida* v. *J.L.*[110] an anonymous person called the Miami-Dade police

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[102] (1989) 216 Cal.App.3d 1237, 1241.

[103] See *Michigan* v. *Long* (1983) 463 U.S. 1032, 1050 ["The hour was late and the area rural."]; *People* v. *Lafitte* (1989) 211 Cal.App.3d 1429, 1433 ["late at night in a rural area"]; *People* v. *Superior Court (Brown)* (1980) 111 Cal.App.3d 948, 956 [the area "was all but deserted of traffic with only a few cars passing through the intersection"]; *People* v. *Allen* (1975) 50 Cal.App.3d 896, 901 [officer "was alone at 2:30 in the morning"]; *U.S.* v. *Mattarolo* (9th Cir. 2000) 209 F.3d 1153, 1158 [the detention occurred "on a remote section of road at midnight"]; *U.S.* v. *Tharpe* (5th Cir. 1976) 536 F.2d 1098, 1100 ["[Officer] was alone, at night, in a poorly lit area, facing three men who had evidently been drinking."]; *U.S.* v. *Rice* (10th Cir. 2007) 483 F.3d 1079, 1084 ["there were no other cars or people around"].

[104] See *People* v. *Stone* (1981) 117 Cal.App.3d 15, 19 ["a poorly lit alley"]; *People* v. *Suennen* (1980) 114 Cal.App.3d 192, 199 ["it was dark"]; *U.S.* v. *Salas* (9th Cir. 1989) 879 F.2d 530, 535 [it was "10:30 p.m., when a hand movement to a weapon may be masked by the night's shadows"]; *U.S.* v. *Tharpe* (5th Cir. 1976) 536 F.2d 1098, 1100 [the officer "was alone, at night, in a poorly lit area"]; *Michigan* v. *Long* (1983) 463 U.S. 1032, 1050 ["It was 3:30 in the morning and fairly dark"]. COMPARE *Ybarra* v. *Illinois* (1979) 444 U.S. 85, 93 ["the lighting was sufficient for [the officers] to observe the customers."]; *People* v. *Samples* (1996) 48 Cal.App.4th 1197, 1210-1.

[105] (1978) 81 Cal.App.3d 347, 354.

[106] See *People* v. *Superior Court (Brown)* (1980) 111 Cal.App.3d 948, 956 ["It was dark, and any preparatory movements of defendant for possible violence most likely would go unnoticed because of the officers' preoccupation with writing citations for defendant and his companion."]; *People* v. *Barnes* (1983) 141 Cal.App.3d 854, 856; *People* v. *Satchell* (1978) 81 Cal.App.3d 347, 354.

[107] See *Adams* v. *Williams* (1972) 407 U.S. 143, 147 ["a high-crime area at 2:15 in the morning"]; *People v. Frank V.* (1991) 233 Cal.App.3d 1232, 1241; *People* v. *Barnes* (1983) 141 Cal.App.3d 854, 856 [detention occurred in "early morning hours" but at a "well-lighted gas station"].

[108] See *People* v. *Medina* (2003) 110 Cal.App.4th 171, 177 [nighttime, in and of itself, has, at most, "minimal importance"].

[109] (1972) 407 U.S. 143. ALSO SEE *People* v. *Richard C.* (1979) 89 Cal.App.3d 477, 488 ["[T]he officer was advised by a private citizen that the minor had exhibited and attempted to load a pistol in the citizen's driveway."]; *U.S.* v. *Poms* (4th Cir. 1973) 484 F.2d 919, 921 ["Here, the officers had received information from a reliable informant that Poms *always* carried a weapon in his shoulder bag."].

[110] (2000) 529 U.S. 266.

department's non-emergency number and reported that a "young black male" wearing a plaid shirt was standing at a certain bus stop, and that he was carrying a concealed handgun. When officers arrived they saw a man who matched the description given by the caller. So they pat searched him, and found a gun. But the United States Supreme Court ruled the search was unlawful because there was simply no reason to believe the informant was reliable. Said the Court:

> All the police had to go on in this case was the bare report of an unknown, unaccountable informant who neither explained how he knew about the gun nor supplied any basis for believing he had inside information about J.L.

Other circumstances

COMPANION ARRESTED, ARMED: The question sometimes arises: If two people are detained together, can both of them be pat searched if officers reasonably believed that one of them was armed or dangerous? Some federal courts have resolved this question by devising a so-called "automatic companion" rule by which grounds to pat search a person are said to exist automatically if his companion was being arrested and was "capable of accomplishing a harmful assault on the officer."[111]

The "automatic companion" rule may, however, be contrary to rulings of the United States Supreme Court that grounds to pat search cannot be based on mere proximity to someone else.[112] It is, however, a circumstances that may be considered.[113]

POSSESSION OF OTHER WEAPON: If officers seize a gun, knife, or other conventional weapon from the detainee—even a legal weapon[114]—they may pat search him to determine if he has any more.[115]

The question arises whether such a search would be justified if the detainee possessed a virtual weapon; i.e., an object that could conceivably be used as a weapon, such as a baseball bat or a hammer. Although this issue has not been resolved,[116] it seems likely that a pat search would be upheld if, based on the nature of the object, its location or other circumstances, there was reason to believe it was being used as a weapon; e.g., baseball bat located between bucket seats. In one case, the court upheld a search based mainly on an officer's observation of a "long black metal object" similar to a Mag flashlight in the detainee's truck, and the object was "within eight or ten inches of [his] left hand."[117]

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[111] See *U.S.* v. *Berryhill* (9th Cir. 1971) 445 F.2d 1189, 1193.

[112] See *Ybarra* v. *Illinois* (1979) 444 U.S. 85, 93-4 ["[*Terry*] does not permit a frisk for weapons on less than reasonable belief or suspicion directed at the person to be frisked"]; *U.S.* v. *Bell* (6th Cir. 1985) 762 F.2d 495, 498 ["We decline to adopt an 'automatic companion' rule, as we have serious reservations about the constitutionality of such a result under existing precedent."]; *U.S.* v. *Flett* (8th Cir. 1986) 806 F.2d 823, 829, fn.9 [[T]his court in no way condones the policy of the sheriff's office which provides that all males present at arrests such as these are to be subjected to cursory pat-down search."]. ALSO SEE *U.S.* v. *Tharpe* (5th Cir. 1976) 536 F.2d 1098, 1101 ["We need not go so far as the Ninth Circuit's rule of general justification conferring categorical reasonableness upon searches of all companions of the arrestee"]. **NOTE**: California courts have not yet ruled on the validity of the automatic companion rule. See *People* v. *Samples* (1996) 48 Cal.App.4th 1197, 1212 ["We need not decide whether such an 'automatic companion' rule is appropriate under *Terry*"].

[113] See *People* v. *Wright* (1988) 206 Cal.App.3d 1107, 1112 ["[D]efendant's companion, Reed, had a history of carrying concealed weapons."]; *U.S.* v. *Bell* (6th Cir. 1985) 762 F.2d 495, 498, 499, fn.4 ["We do not read *Ybarra* as holding that 'mere propinquity' cannot be considered as a factor in determining the legitimacy of a frisk; rather, the case held that proximity cannot be the sole legitimizing factor."]; *U.S.* v. *Barlin* (2nd Cir. 1982) 686 F.2d 81, 87 ["Fantauzzi was not innocuously present in a crowd at a public place. Instead, she entered in tandem with Frank and Gleckler, whose involvement in an ongoing narcotics transaction seemed apparent."]; *U.S.* v. *Rice* (10th Cir. 2007) 483 F.3d 1079, 1085 ["A reasonable officer can infer from the behavior of one of a car's passengers a concern that reflects on the actions and motivations of the other passengers."].

[114] See *Michigan* v. *Long* (1983) 463 U.S. 1032, 1052, fn.16 ["[W]e have expressly rejected the view that the validity of a *Terry* search depends on whether the weapon is possessed in accordance with state law."]; *People* v. *Lafitte* (1989) 211 Cal.App.3d 1429, 1433.

[115] See *Michigan* v. *Long* (1983) 463 U.S. 1032, 1050; *People* v. *Brown* (1989) 213 Cal.App.3d 187, 191 ["Because defendant was carrying two weapons, it was prudent to suspect defendant might be carrying other weapons as well."]; *People* v. *Castaneda* (1995) 35 Cal.App.4th 1222, 1230 ["And once the magazine was found, the fear of further weapons and ammunition was increased"]; *U.S.* v. *Hartz* (9th Cir. 2006) 458 F.3d 1011, 1018 [the officer "had already observed a knife, a gun, and ammunition in the truck"].

[116] See *People* v. *Lafitte* (1989) 211 Cal.App.3d 1429, 1433, fn.5 ["Just how far this rule extends is unclear. As Justice Brennan pointed out, 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?"].

[117] *People* v. *Avila* (1997) 58 Cal.App.4th 1069, 1073. ALSO SEE *People* v. *Lafitte* (1989) 211 Cal.App.3d 1429, 1433 [knife "resting on the open glove box door, with the handle extended over the edge toward the driver's seat"].

DETAINEE'S SIZE: Although a pat search would not be justified merely because the detainee was "big," his size would be a relevant circumstance if he was bigger than the officer.[118]

OFFICERS' OUTNUMBERED: The courts often note whether the number of detainees was greater than the number of officers on the scene, the relevance being the increased danger to officers who are outnumbered.[119]

HAND IN POCKET: It is relevant that the detainee was keeping a hand inside a pocket, even though he did not do so suddenly or furtively.[120]

ASSUMING THE POSITION: A detainee's act of spontaneously "assuming the position" for a pat search is a suspicious circumstance.[121]

PASSENGER IN POLICE CAR: The following is an exception to the "armed or dangerous" requirement: Any person may be pat searched before being transported in a police vehicle if officers had a duty to transport him; e.g., they were removing him from a freeway for his safety; he was a crime victim and he was going to be transported for showup.[122] If, however, officers did not have a duty to transport him, a pat search is permitted only if they notified him that, (1) he had a right to refuse the ride, and (2) he would be pat searched if he accepted it.[123]

SEARCH PROCEDURE

Having grounds to pat search a detainee does not give officers free rein to search him from top to bottom, rummaging through pockets or under clothing, indiscriminately probing and prodding, pulling out anything that seems remotely suspicious. Nor may officers adjust his clothing to see what's inside, or compel him to empty his pockets. As the Seventh Circuit observed, "An officer is not justified in conducting a general exploratory search for evidence under the guise of a stop-and-frisk."[124]

Instead, officers must follow a carefully circumscribed procedure. As the United States Supreme Court noted:

> The sole justification of the search is the protection of the police officer and others nearby, and it must therefore be confined in scope to an intrusion reasonably designed to discover guns, knives, clubs, or other hidden instruments for the assault of the police officer.[125]

The procedure, which has aptly been described as "coldly logical,"[126] starts out relatively unobtrusively with a patdown of the outer clothing. If nothing suspicious is felt, the search must be terminated. But if officers detect an object that feels as if it might be a weapon or something that could readily be used as a weapon, they may take certain steps to confirm or dispel their suspicion.

Furthermore, if at any point during the process they develop *probable cause* to believe that the object is a weapon, they may disregard the procedure and immediately seize it. The subject of expedited emergency searches for weapons is discussed at the end of this article.

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[118] See *People v. Michael S.* (1983) 141 Cal.App.3d 814, 817; *People* v. *Methey* (1991) 227 Cal.App.3d 349, 352.
[119] See *People* v. *Limon* (1993) 17 Cal.App.4th 524, 531; *People* v. *Samples* (1996) 48 Cal.App.4th 1197, 1210;
[120] See *People* v. *Woods* (1970) 6 Cal.App.3d 832, 837 [suspect in a "shots fired" call had "one of his hands in a jacket pocket"]; *People* v. *Wigginton* (1973) 35 Cal.App.3d 732, 737-8 [detainee's "right hand remain[ed] near the right hand pocket of his jacket"]; *People* v. *Glenn R.* (1970) 7 Cal.App.3d 558, 561 [detainee "kept his right hand in his jacket pocket in such a manner as to lead any reasonable person to believe that he was attempting to conceal something from view"]; *U.S.* v. *Michelletti* (5th Cir. 1994) 13 F.3d 838, 842 [the detainee kept "his right hand concealed precisely where a weapon could be located"].
[121] See *People* v. *Avila* (1997) 58 Cal.App.4th 1069, 1074; *U.S.* v. *Rice* (10th Cir. 2007) 483 F.3d 1079, 1085.
[122] See *People* v. *Tobin* (1990) 219 Cal.App.3d 634, 641; *People* v. *Ramos* (1972) 26 Cal.App.3d 108, 112.
[123] See *People* v. *Scott* (1976) 16 Cal.3d 242.
[124] *U.S.* v. *Brown* (7th Cir. 1999) 188 F.3d 860, 866. ALSO SEE *Terry* v. *Ohio* (1968) 392 U.S.1 28 ["The manner in which the seizure and search were conducted is, of course, as vital a part of the inquiry as whether they were warranted at all."]; *U.S.* v. *Hanlon* (8th Cir. 2005) 401 F.3d 926, 930 ["Because safety is the sole justification for a pat-down search for weapons, only searches reasonably designed to discover concealed weapons are permissible."]; *People* v. *Garcia* (1969) 274 Cal.App.2d 100, 106-7 ["[T]he manner of conducting an otherwise justified precautionary search is of vital importance."]; *Byrd* v. *Superior Court* (1968) 268 Cal.App.2d 495, 496 ["The manner of the search for weapons, however, is important."].
[125] *Terry* v. *Ohio* (1968) 392 U.S.1 29.
[126] See *People* v. *Atmore* (1970) 13 Cal.App.3d 244, 248.

Step 1: "Any needles?"

In the past, the first step in conducting the search was to start patting the detainee's clothing. But that changed with the increased threat of exposure to viruses from concealed syringes, especially HIV and hepatitis. As a result, officers will often begin the process by asking the detainee if he has any needles or other sharp objects in his possession. Such a question does not impermissibly enlarge the scope of the search because it is reasonably necessary for officer safety. Nor does it require a *Miranda* waiver because, even if the detainee was "in custody," it would fall within *Miranda's* public safety exception.[127]

Of course, if the detainee says he has a syringe in his possession, officers may remove it before beginning the patdown.[128]

Step 2: Patdown

The United States Supreme Court has explained that the search begins with a "careful exploration" of the outside surfaces of the detainee's clothing, "all over his or her body."[129] The Court added:

> A thorough search must be made of the [detainee's] arms and armpits, waistline and back, the groin and area about the testicles, and entire surface of the legs down to the feet.[130]

MANIPULATING OBJECTS: If officers detect an object under the detainee's clothing, and if they cannot immediately rule out the possibility it is a weapon, they may grasp or otherwise manipulate it to try to determine what it is. As the Court of Appeal explained in *People* v. *Lee*:

> Recognizing that the purpose of the pat-down is to dispel the suspicion that a person is armed, it seems to us that something more is contemplated than a gingerly patting of the clothing. [I]n order to rule out the presence of a weapon the officer may have to determine an object's weight and consistency. We fail to see how this can be accomplished without using some sort of gripping motion.[131]

Officers may also manipulate any container in the detainee's possession if it is, (1) large enough to hold a weapon, and (2) sufficiently pliable to permit officers to feel some or all of its contents; e.g., a purse or backpack.[132] If, however, the container is not pliable, it appears that officers may not open it to determine its contents unless there was reason to believe it contained a weapon. This occurred in *People* v. *Hill* in which the court noted, "The box was much heavier than an ordinary matchbox and the rattling sounds indicated that it contained metallic objects other than matches."[133] Note that a container

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[127] See *New York* v. *Quarles* (1984) 467 US 649, 658-9; *People* v. *Simpson* (1998) 65 Cal.App.4th 854, 861, fn.3 ["It is settled that the public safety exception applies even when police questioning is designed solely to protect the lives of police officers and the lives of other are not at stake."]; *U.S.* v. *Carrillo* (9th Cir. 1994) 16 F.3d 1046, 1049; *People* v. *Cressy* (1996) 47 Cal.App.4th 981, 986-8. ALSO SEE *Johnetta J.* v. *Municipal Court* (1990) 218 Cal.App.3d 1255, 1278 ["[T]he governmental interests behind [the mandatory AIDS testing procedure] including the assaulted officer's fear that he or she has in fact been infected, outweighs the psychological impact of the assailant's receipt of a positive test for HIV."]; *Love* v. *Superior Court* (1990) 226 Cal.App.3d 736, 746.

[128] **NOTE**: If the syringe was not in a container that met federal and state standards, the detainee would be arrestable for possession of drug paraphernalia, in which case officers could dispense with the pat search procedure and conduct a full search incident to the arrest. See Health & Safety Code § 11364(b).

[129] *Terry* v. *Ohio* (1968) 392 U.S. 1, 16.

[130] *Terry* v. *Ohio* (1968) 392 U.S. 1, 17, fn.13.

[131] (1987) 194 Cal.App.3d 975, 985. ALSO SEE *U.S.* v. *Yamba* (3d Cir. 2007) __ F.3d __ [2007 WL 3054387] ["[The officer] is allowed to slide or manipulate an object in a suspect's pocket, consistent with a routine frisk, until the officer is able reasonably to eliminate the possibility that the object is a weapon."]. **NOTE**: The need to manipulate an object is especially strong if the detainee's clothes were so rigid that it was difficult to determine the nature of the object by feeling the outside of the clothes. See *People* v. *Watson* (1970) 12 Cal.App.3d 130, 135 ["The leather-type material of the jacket would make it difficult to feel the outline of the object"]; *People* v. *Allen* (1975) 50 Cal.App.3d 896, 902 ["[T]he heavy levis worn by the defendant made it difficult for the officer to feel the outline of the hard object and prevented him from immediately determining what it actually was."].

[132] See *Michigan* v. *Long* (1983) 463 U.S. 1032, 1050; *People* v. *Ritter* (1997) 54 Cal.App.4th 274, 280 [fanny pack]; *U.S.* v. *Vaughan* (9th Cir. 1983) 718 F.2d 332, 335 ["The briefcase was soft and thin. Any weapons could have been felt through the cover."]; *U.S.* v. *Barlin* (2nd Cir. 1982) 686 F.2d 81, 87 ["a lady's handbag is the most likely place for a woman to conceal a weapon."].

[133] (1974) 12 Cal.3d 731, 747. COMPARE *Amacher* v. *Superior Court* (1969) 1 Cal.App.3d 150, 154 [insufficient reason to open a cigarette package]; *People* v. *John C.* (1978) 80 Cal.App.3d 814, 820 [insufficient reason to open a cigarette package].

may be pat searched even if the detainee had been separated from it; e.g. officers had taken possession of it, or the detainee had put it on the ground.[134]

"EMPTY YOUR POCKETS": In the absence of an emergency, officers may not bypass the standard patdown procedure by, for example, reaching inside the detainee's clothing or pockets, by lifting up his clothing to see what is underneath, or by ordering him to empty his pockets.[135]

THE NEXT STEP: What happens next depends on what the officers felt. If they felt a weapon or something that reasonably felt like a weapon or an object that could be used as a weapon, they may remove it. If they felt nothing suspicious, the search must be discontinued.[136] But if they felt something suspicious, and if they could not rule out the possibility that it was a weapon, they may go to step 3.

Step 3: Reaching inside

If officers detect something that feels like it might be a weapon, they will ordinarily have four options: (1) question the detainee about it,[137] (2) lift up his clothing if that would help them determine what it is,[138] (3) reach inside the detainee's clothing and feel the object directly, or (4) reach in and remove it.[139]

Because officers are not required to employ the least intrusive means of determining the nature of a suspicious object,[140] they may do any of these things. But they must have sufficient reason to believe that the object they felt could have been a weapon or an object that could have been used as a weapon.[141] This is often the key issue in pat search cases because the courts, over the years, have become somewhat skeptical of such claims. As the California Supreme Court observed:

> On occasion, the police have used the excuse that an object in a person's pocket felt like a weapon to perform an exploratory search of the person's clothing and empty the citizen's pockets of everything.[142]

For this reason, officers who are testifying at a suppression hearing must be very specific as to why

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[134] See *Michigan* v. *Long* (1983) 463 U.S. 1032, 1048 ["[S]uspects may injure police officers and others by virtue of their access to weapons, even though they may not themselves be armed."]; *People* v. *Ritter* (1997) 54 Cal.App.4th 274, 280 ["the deputy's prudence should not be faulted for a failure to pat down the fanny pack while defendant was wearing it."].

[135] See *People* v. *Lennies H.* (2005) 126 Cal.App.4th 1232, 1237 ["As a general rule, an officer may not search a suspect's pockets during a patdown unless he or she encounters an object there that feels like a weapon."]; *People* v. *Britton* (1968) 264 Cal.App.2d 711, 717 ["By requiring defendant to empty his pockets . . . the search exceeded the bounds of a permissible 'frisk.'"]; *People* v. *Mosher* (1969) 1 Cal.3d 379, 394 ["Unless the officer feels an object which a prudent man could believe was an object usable as an instrument of assault, the officer may not remove the object from the inside of the suspect's clothing, require the suspect to take the object out of his pocket, or demand that the suspect empty his pockets."]; *People* v. *Aviles* (1971) 21 Cal.App.3d 230, 234 ["[The officer] flipped open appellant's coat: 'I didn't know what I was going to find. I knew he put something in there but I didn't know what.' The search clearly was exploratory, and not justified under the law."].

[136] See *Minnesota* v. *Dickerson* (1993) 508 U.S. 366 ["[T]he officer's continued exploration of respondent's pocket after having concluded that it contained no weapon was unrelated to the sole justification of the search, the protection of the police officer and others nearby."]; *People* v. *Dickey* (1994) 21 Cal.App.4th 952.

[137] See *People* v. *Avila* (1997) 58 Cal.App.4th 1069, 1075 ["Officer Jones felt a bulky and somewhat hard object, and did not know if it was a weapon or not. He then asked defendant what the object was, *without* removing it. Defendant told the officer that it was 'meth'"]. COMPARE *People* v. *Valdez* (1987) 196 Cal.App.3d 799, 807 ["The question ['What is this?'] was not justified by the pat-search for weapons since [the officer] knew it was not a weapon."].

[138] See *People* v. *Limon* (1993) 17 Cal.App.4th 524, 536 ["The police are not required to grab blindly after a frisk reveals a possible weapon."].

[139] See *People* v. *Watson* (1970) 12 Cal.App.3d 130, 135 ["Where it is found that an object feels reasonably like a knife, gun or club to the searcher, he may properly withdraw the item from the clothing of the suspect."]; *People* v. *Collins* (1970) 1 Cal.3d 658, 662 [officers may remove an object only if "he discovers specific and articulable facts reasonably supporting his suspicion."].

[140] See *Michigan* v. *Long* (1983) 463 U.S. 1032, 1052 ["[W]e have not required that officers adopt alternate means to ensure their safety in order to avoid the intrusion involved in a *Terry* encounter."]; *People* v. *Ritter* (1997) 54 Cal.App.4th 274, 280.

[141] See *People* v. *Thurman* (1989) 209 Cal.App.3d 817, 826 [officers may expand the search if "an outside clothing search reveals the presence of an object of a size and density that reasonably suggests the object might be a weapon"]; *People* v. *Rosales* (1989) 211 Cal.App.3d 325, 329 ["A police officer is entitled to reach inside the suspect's clothing and remove objects therefrom only if the officer has reason to believe the object is usable as a weapon."].

[142] *People* v. *Mosher* (1969) 1 Cal.3d 379, 393. ALSO SEE *People* v. *Thurman* (1989) 209 Cal.App.3d 817, 826 ["We can impose a condition that an officer's belief that the object is a weapon be reasonably grounded and not a mere subterfuge for a random search."].

the object felt as if it could have been a weapon. For instance, they should, if possible, describe its apparent weight, size, and shape.

Note that many of the circumstances that are relevant in determining whether officers reasonably believed that a detainee was armed or dangerous are also relevant in determining whether they reasonably believed that a concealed object under his clothing could be used as a weapon. For example, its location would be significant if it was a place where weapons are commonly secreted, or if it was a place in which objects are not ordinarily kept; e.g., inside the detainee's boot.[143]

It would also be significant that the detainee had a history of carrying concealed handguns or engaging in gang violence, as this would rightly cause officers to view any suspicious object under his clothing with extra concern.

CONVENTIONAL WEAPONS: If the object felt like a conventional weapon, such as a gun or knife, officers may of course remove it.[144] Some examples:

- "a hard, rectangular object," maybe a knife, "either folded or in a case" (hide-a-key box containing heroin) [145]
- "a hard object which [the officer] thought was a knife" (gun clip with live rounds) [146]
- "[s]ome type of heavy object, possibly a gun" (loaded revolver) [147]
- "a sharp object like a knife blade" (watch and bracelet) [148]
- "a hard object," maybe a knife (straight-edge razor) [149]
- "a long hard object which could have been a knife" (long stem pipe) [150]
- "a bulge and a lump near the right jacket pocket," maybe "the butt of a hand gun" (baggie containing 14 grams of rock cocaine) [151]
- "a cylindrical object several inches long in the defendant's pocket . . . large enough that it could have been a knife" (drugs) [152]

VIRTUAL WEAPONS: A virtual weapon is an object that, although not commonly used to inflict bodily injury, is readily capable of doing so. Examples include baseball bats, razor blades, hypodermic needles, and bottles. If officers reasonably believe that an object they felt could have been a virtual weapon, they may remove it.[153]

ATYPICAL WEAPONS: An atypical weapon is an object that could conceivably harm someone, but is seldom used for that purpose; e.g., a ball point pen could be used as a stabbing instrument. The rules pertaining to atypical weapons are fairly strict: Officers may remove them only if they reasonably believed that removal was necessary for officer safety.[154]

The key word here is "reasonably." Officers cannot satisfy this requirement by engaging in "fanciful

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[143] See *People* v. *Willie L.* (1976) 56 Cal.App.3d 256, 262 ["The only logical reason a person would place items in boots is for concealment; it is not unusual for weapons to be concealed there."].

[144] See *People* v. *Watson* (1970) 12 Cal.App.3d 130, 135 ["Where it is found that an object feels reasonably like a knife, gun or club to the searcher, he may properly withdraw the item from the clothing of the suspect."].

[145] *People* v. *Limon* (1993) 17 Cal.App.4th 524, 535-6. ALSO SEE *U.S.* v. *Hanlon* (8th Cir. 2005) 401 F.3d 926, 930 ["small object" that "could have been a pocketknife"]; *People* v. *Wright* (1988) 206 Cal.App.3d 1107, 1111 ["[It] felt like it was a knife." Ten baggies of methamphetamines]; *People* v. *Hana* (1970) 7 Cal.App.3d 664, 670 ["[It] "felt like a pocket knife." Harmonica].

[146] *People* v. *Orozco* (1981) 114 Cal.App.3d 435, 445.

[147] See *People* v. *Miles* (1987) 196 Cal.App.3d 612, 618. ALSO SEE *U.S.* v. *Brown* (7th Cir. 1999) 188 F.3d 860, 866 ["Even if [the officer] would have been more reasonable to think the hard object was drugs rather than a gun, that does not mean he would have been unreasonable to conclude that it was a gun."].

[148] *People* v. *Mosher* (1969) 1 Cal.3d 379, 393.

[149] *People v. Donald L.* (1978) 81 Cal.App.3d 770, 774.

[150] *People* v. *Watson* (1970) 12 Cal.App.3d 130, 135.

[151] *U.S.* v. *Salas* (9th Cir. 1989) 879 F.2d 530, 533.

[152] *U.S.* v. *Mattarolo* (9th Cir. 1999) 191 F.3d 1082, 1088.

[153] See *People* v. *Snyder* (1992) 11 Cal.App.4th 389, 393 ["A full liquor bottle carries significant weight and the neck of the bottle may serve as a handle, two characteristics of a club."]; *People* v. *Autry* (1991) 232 Cal.App.3d 365, 369 ["It hardly takes the imagination of Alfred Hitchcock to think up any number of nasty ways a hypodermic needle and syringe can do grievous injury, at least in close combat."]; *People* v. *Franklin* (1985) 171 Cal.App.3d 627, 636 ["There is case authority to the effect that a shotgun shell could be used as a detonator. As a consequence, the shotgun shell may quality as a [weapon]."]; *People* v. *Atmore* (1970) 13 Cal.App.3d 244, 247 [shotgun shell]; *People* v. *Anthony* (1970) 7 Cal.App.3d 751, 763 [bullets].

[154] See *People* v. *Collins* (1970) 1 Cal.3d 658, 663; *People* v. *Brisendine* (1975) 13 Cal.3d 528, 543-4; *People* v. *Mack* (1977) 66 Cal.App.3d 839, 849.

speculation" about an object's potential dangerousness.[155] For example, in *People* v. *Leib* the court ruled that an officer's act of removing a pill bottle from under the suspect's clothing was unlawful because, said the court, "Even if a pill bottle could in some fanciful or extraordinary circumstances feel like a weapon, it is quite clear [the officer] knew the bottle was not in fact a weapon."[156]

HARD OBJECTS: If the object felt hard to the touch, officers may ordinarily remove it unless it clearly did not present a threat.[157] For example, the courts have ruled that officers were justified in removing the following objects:

- a hard object which the officer could not identify because the suspect was wearing heavy jeans (three car keys solidly taped together)[158]
- a "hard rectangular object" (a stack of 12 credit cards)[159]
- a "large, hard object" (a brass door knob)[160]
- a "firm object 8-10 inches long" (two film cans containing marijuana)[161]
- two "bulky" objects inside the suspect's boots (two baggies containing marijuana)[162]
- a "three-inch long, hard object" (a matchbox)[163]

SOFT OBJECTS: Because most objects that can pose a threat to officers are hard to the touch, officers may remove a soft object only if they can cite specific facts that reasonably indicated it posed a real threat.[164] As the California Supreme Court explained, "Feeling a soft object in a suspect's pocket during a pat-down, absent unusual circumstances, does not warrant an officer's intrusion into a suspect's pocket to retrieve the object."[165]

For example, the courts have ruled that officers did not have sufficient justification to remove objects that felt as follows:

- "[s]ome soft bulky material" (a baggie of marijuana)[166]
- a "soft bulge" (a baggie of marijuana)[167]
- a "small round object" (a bottle of pills)[168]
- a "lump [maybe] pills" (LSD tablets in a plastic bag)[169]

DRUGS: Under the "plain feel" rule, officers may remove an object that does not feel like a weapon if, (1) they have probable cause to believe it is an illegal drug or other contraband, and (2) probable cause existed at or before the time they determined it was not a weapon.[170]

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[155] *People* v. *Collins* (1970) 1 Cal.3d 658, 663. ALSO SEE *People* v. *Brisendine* (1975) 13 Cal.3d 528, 543 ["Nor can the People's burden be discharged by the assertion that the bottle and envelopes might possibly contain unusual or atypical weapons."].

[156] (1976) 16 Cal.3d 868, 876.

[157] See *People* v. *Limon* (1993) 17 Cal.App.4th 524, 535 ["When a police officer's frisk of a detainee reveals a hard object that might be a weapon, the officer is justified in removing the object into view."]; *People* v. *Allen* (1975) 50 Cal.App.3d 896, 902 ["Any hard object which feels like a weapon may be removed from pockets of clothing."]; *People* v. *Mack* (1977) 66 Cal.App.3d 839, 849; *People* v. *Brown* (1989) 213 Cal.App.3d 187, 192 ["they were hard objects which he was justified in removing"].

[158] *People* v. *Allen* (1975) 50 Cal.App.3d 896, 902. ALSO SEE *People* v. *Brown* (1989) 213 Cal.App.3d 187, 192 ["hard object"]; *Amacher* v. *Superior Court* (1969) 1 Cal.App.3d 150, 152 ["a hard object in a front jacket pocket [cigarette package].

[159] *People* v. *Mack* (1977) 66 Cal.App.3d 839, 851.

[160] *People* v. *Roach* (1971) 15 Cal.App.3d 628, 633.

[161] *People* v. *Lacey* (1973) 30 Cal.App.3d 170, 176.

[162] *People* v. *Willie L.* (1976) 56 Cal.App.3d 256, 262.

[163] *People* v. *Hill* (1974) 12 Cal.3d 731, 747.

[164] See *People* v. *Collins* (1970) 1 Cal.3d 658, 663 ["[A]n officer who exceeds a pat-down without first discovering an object which feels reasonably like a knife, gun, or club must be able to point to specific and articulable facts which reasonably support a suspicion that the particular suspect is armed with an atypical weapon which would feel like the object felt during the pat-down."].

[165] *People* v. *Collins* (1970) 1 Cal.3d 658, 662. ALSO SEE *People* v. *Dickey* (1994) 21 Cal.App.4th 952, 957.

[166] *People* v. *Hana* (1970) 7 Cal.App.3d 664.

[167] *People* v. *Britton* (1968) 264 Cal.App.2d 711.

[168] *People* v. *Leib* (1976) 16 Cal.3d 869.

[169] *Kaplan* v. *Superior Court* (1971) 6 Cal.3d 150.

[170] See *Minnesota* v. *Dickerson* (1993) 508 U.S. 366, 376 ["[T]he Fourth Amendment's requirement that the officer have probable cause to believe that the item is contraband before seizing it ensures against excessively speculative seizures."]; *People* v. *Lennies H.* (2005) 126 Cal.App.4th 1232, 1237 ["[U]nder what has been termed the 'plain-touch' exception to the warrant requirement, the officer may seize an object that is not a weapon if its incriminating character is immediately apparent."]; *People* v. *Avila* (1997) 58 Cal.App.4th 1069, 1075 ["However, if contraband is found while performing a permissible *Terry* search, the officer cannot be expected to ignore that contraband."].

The theory here is that, because probable cause gives officers a right to arrest the suspect, their seizure of the object is permitted as a search incident to arrest.[171] For example, in *People* v. *Thurman* the court upheld the removal of drugs from the defendant's jacket pocket because, "simultaneous with the [officer's] verification that the object was not a weapon" the officer realized that "the objects were pieces of rock cocaine contained in a baggie."[172]

In determining whether probable cause existed, officers may consider, in addition to how the object felt, any other relevant circumstances. As the Court of Appeal observed:

> The critical question is not whether [the officer] could identify the object as contraband based on only the "plain feel" of the object, but whether the totality of circumstances made it immediately apparent to [the officer] when he first felt the lump that the object was contraband.[173]

For example, in *People* v. *Dibb*[174] an officer who was pat searching a detainee's pants felt an object he described as "lumpy, and it had volume and mass." He concluded that the lump was illegal drugs because, in addition to how it felt, officers who had just conducted a consensual search of the detainee's fanny pack had found a gun clip, a gram scale having "the odor of methamphetamine," a small plastic bag, and a beeper. In addition, the detainee had denied there was anything in his pocket, which was an obvious lie. In ruling the seizure of the lump (more methamphetamine) was lawful, the court said, "[The officer] had probable cause to arrest defendant when he first touched the object."

Another application of the "plain feel" rule is found in the case of *People* v. *Lee*.[175] Here, an Oakland police officer on patrol in an area known for "high narcotic activity" lawfully detained a suspected drug dealer. While pat searching him, the officer felt some balloons in his jacket pocket. The officer testified that, as soon as he felt them, he knew they were the heroin-filled variety and, just as important, he was able to articulate why: he had felt and seized heroin-filled balloons on at least 100 other occasions, and these balloons had an "unmistakable" feel associated with them; specifically, "each balloon has about the size and shape of a pea, with a textured rubber feeling and a bounce or bend that bounces back to its original shape." In ruling the seizure of the balloons was lawful, the court said:

> [The officer's] tactile perceptions coupled with the other facts known to him, furnished probable cause to believe that defendant's jacket contained heroin, and therefore to immediately arrest him. At that point the officer was entitled to conduct a more thorough search as an incident of which the contraband was seized.

In contrast, in *People* v. *Valdez*[176] the court ruled that an officer's removal of a film canister from the suspect's pocket was unlawful because the officer had no reason to believe it contained anything other than film.

REMOVING OTHER EVIDENCE: The "plain feel" doctrine is not limited to drugs. In fact, officers may remove any item they feel if, when they first felt it, they had probable cause to believe it was evidence of a crime.[177] For example, in *People* v. *Lennies H.*[178] an

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[171] See *People* v. *Dibb* (1995) 37 Cal.App.4th 832, 837; *People* v. *Valdez* (1987) 196 Cal.App.3d 799, 806; *People* v. *Holt* (1989) 212 Cal.App.3d 1200, 1204 ["[A]n officer's entry into a person's pocket for narcotics can be justified only if the officer had probable cause to arrest the defendant for possession of narcotics *before* the entry into the pocket."]; *People v. Donald L.* (1978) 81 Cal.App.3d 770, 775 [the officer "could have reasonably believed that the assorted objects of jewelry, including women's jewelry, were probably stolen."].

[172] (1989) 209 Cal.App.3d 817, 826. ALSO SEE *U.S.* v. *Mattarolo* (9th Cir. 1999) 191 F.3d 1082, 1088 [officer was "alerted immediately to the presence of drugs by the familiar sensation of plastic sliding against a granular substance"].

[173] *People* v. *Dibb* (1995) 37 Cal.App.4th 832, 836-7. ALSO SEE *U.S.* v. *Yamba* (3d Cir. 2007) __ F.3d __ [2007 WL 3054387] [the officer felt "a plastic bag containing a soft, spongy-like substance" plus some "small buds and seeds"].

[174] (1995) 37 Cal.App.4th 832.

[175] (1987) 194 Cal.App.3d 975.

[176] (1987) 196 Cal.App.3d 799, 806. ALSO SEE *Kaplan* v. *Superior Court* (1971) 6 Cal.3d 150, 153 [officer merely "had an idea" the objects he felt were pills]; *Remers* v. *Superior Court* (1970) 2 Cal.3d 659, 663-4 [possession of a foil-wrapped package in high-drug area did not establish probable cause]; *People* v. *Holt* (1989) 212 Cal.App.3d 1200, 1206-7 [possession of foil-wrapped container]; *People* v. *Nonnette* (1990) 221 Cal.App.3d 659, 666-8 [baggies].

[177] See *U.S.* v. *Bustos-Torres* (8th Cir. 2004) 396 F.3d 935, 944 ["[W]e do not doubt the plain-touch doctrine extends to the lawful discovery of any incriminating evidence, not just contraband such as drugs."].

[178] (2005) 126 Cal.App.4th 1232.

officer in Vallejo detained a suspect in a carjacking that had occurred the day before in Sacramento. The suspect denied that he had the keys to the car, but the officer felt keys in his pants pocket when he pat searched him. So he reached in and retrieved them. In ruling the seizure of the keys was lawful, the court noted that although a key is not inherently illegal to possess, the officer "had probable cause to believe that the keys were evidence linking the minor to the carjacking at the time of the initial 'plain-feel' search."

Similarly, in *U.S.* v. *Bustos-Torres*[179] a sheriff's deputy felt a large amount of currency ($10,000) in the pockets of a suspected drug dealer. In ruling that the seizure of the money was lawful, the court asked rhetorically:

> Were the bills, by their mass and contour, immediately identifiable to the Sergeant's touch as incriminating evidence? Pondering the question with a dose of common sense, we believe they were.

Emergency procedure

As noted earlier, officers are not required to follow the standard pat search procedure if they reasonably believe that an attack is imminent or if they have probable cause (as opposed to reasonable suspicion) that the detainee possesses a concealed weapon.[180] Instead, they may take preemptive action, such as immediately going inside the clothing to locate and remove any weapons. This is permitted mainly because, as one court put it, "any other course of action would have been foolhardy and quite possibly suicidal."[181] The following are examples of circumstances that were found to justify an immediate search:

- The detainee jerked away when the officer started to pat search a bulge in the detainee's pocket; then he told the officer, "You cannot search me without a warrant even if I have a gun."[182]
- During a pat search, the detainee "abruptly grabbed for his outside upper jacket pocket; the officer could feel a "round cylindrical object" in the pocket.[183]
- During a contact, a suspected drug dealer "suddenly put his hand into [his] bulging pocket."[184]
- A suspect who was detained in connection with a "shots fired" call, kept his left hand concealed in a jacket pocket; when the officer asked what he had had in the pocket, the suspect would not answer.[185]
- The officer saw what appeared to be the outline of a small handgun in the detainee's fanny pack.[186]

Officers may also bypass the standard procedure if they have probable cause to arrest the detainee, even though they had not yet done so.[187] For example, if he had refused to comply with a safety-related command, officers would have probable cause to arrest him for a violation of Penal Code § 148 because he would have willfully resisted and obstructed an officer in the performance of his duties.[188]

In addition, officers may reach inside a detainee's clothing or lift up his outer clothing without first pat searching him if he was wearing clothing that was so bulky or rigid that a pat down would not have revealed the presence of a weapon. As the court noted in *People* v. *William V.,* "In light of William's bulky clothes, [the officer] reasonably lifted [his] jacket to search his waistband."[189] POV

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[179] (8th Cir. 2005) 396 F.3d 935. COMPARE *U.S.* v. *Garcia* (6th Cir. 2007) __ F.3d __ [2007 WL 2254435] [officers lacked probable cause to believe a pager was evidence].

[180] See *Adams* v. *Williams* (1972) 407 U.S. 143, 147-9 [based on reliable informant's tip and some corroboration, the officer had probable cause to believe the suspect was carrying a concealed gun]; *U.S.* v. *Orman* (9th Cir. 2007) 486 F.3d 1170, 1172 [officer had probable cause because the detainee admitted he was carrying a gun].

[181] *People* v. *Superior Court (Holmes)* (1971) 15 Cal.App.3d 806, 813.

[182] *People* v. *Todd* (1969) 2 Cal.App.3d 389, 393-4.

[183] *People* v. *Atmore* (1970) 13 Cal.App.3d 244, 248.

[184] *People* v. *Rosales* (1989) 211 Cal.App.3d 325, 330.

[185] *People* v. *Woods* (1970) 6 Cal.App.3d 832, 838.

[186] *People* v. *Ritter* (1997) 54 Cal.App.4th 274, 280.

[187] *See People v. Jonathan M.* (1981) 117 Cal.App.3d 530, 536 ["Once there is probable cause for an arrest it is immaterial that the search preceded the arrest."]; *People* v. *Limon* (1993) 17 Cal.App.4th 524, 538 ["An officer with probable cause to arrest can search incident to the arrest before making the arrest."].

[188] See *People* v. *Lopez* (2004) 119 Cal.App.4th 132, 136.

[189] (2003) 111 Cal.App.4th 1464, 1472

Protective Car Searches

"[S]uspects may injure police officers and others by virtue of their access to weapons, even though they may not themselves be armed."[1]

When a person is detained in or near his car, a gun or other weapon located in the vehicle could be just as dangerous to the officers as a weapon in his waistband. But when the United States Supreme Court authorized pat searches of armed or dangerous detainees in 1968,[2] it didn't say anything about searching their cars.

It took 15 years for that issue to reach the Court. And when it did, the Court decided that officers may look inside the vehicle for weapons if they reasonably believed that one was located somewhere in the passenger compartment.[3] The Court also ruled that officers may conduct the search even though the suspect had been handcuffed or was otherwise restrained.[4]

Although the justification for protective car searches is essentially the same as the justification for pat searches (in fact, they are sometimes called vehicle "frisks"[5]), there are two additional legal issues that may arise: (1) What type of weapon will justify a search? (2) If an officer's belief that a weapon is located in the vehicle is based on circumstantial evidence, what circumstances are relevant?

Conventional weapons

Officers may, of course, conduct the search if they reasonably believe there is a conventional weapon, such as a gun or knife, in the vehicle. Furthermore, they may search even if the detainee or other occupant possessed the weapon lawfully.[6]

For example, in *People* v. *Lafitte*[7] sheriff's deputies in Orange County 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 spotted a knife on the door of the glove box. The deputies then seized the knife and conducted a protective search of the car for additional weapons. During the search, they found a handgun in a trash bag hanging from the ashtray next to the steering wheel.

Although the knife was described as a "legal" weapon, and although Lafitte had been cooperative throughout the detention, the court ruled the search was justified because, said the court, "[T]he discovery of the weapon is the crucial fact which provides a reasonable basis for the officer's suspicion."

Virtual weapons

What if officers see a virtual weapon in the vehicle? As noted in the accompanying article on pat searches, virtual weapons are objects that are capable of being used as weapons, though they are mainly used for other purposes; e.g., hammers, screw drivers, crowbars. Unfortunately, the courts have not yet determined whether the presence of a virtual weapon will justify a protective search. As the Court of Appeal observed, "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?"[8]

Although the court had no answer to its question, it seems likely that the presence of a virtual weapon would justify a search if, based on the nature of the object, its location, or other circumstances, officers reasonably believed that it was being used as a weapon. For example, it might be reasonable to believe that a baseball bat was serving as a weapon if it was located between the bucket seats in a car.

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[1] *Michigan* v. *Long* (1983) 463 US 1032, 1048.
[2] *Terry* v. *Ohio* (1968) 392 US 1.
[3] *Michigan* v. *Long* (1983) 463 U.S. 1032, 1049-51.
[4] *Michigan* v. *Long* (1983) 463 U.S. 1032, 1052. ALSO SEE *U.S.* v. *Graham* (6th Cir. 2007) 483 F.3d 431.
[5] See *Maryland* v. *Buie* (1990) 494 U.S. 325, 332.
[6] See *Michigan* v. *Long* (1983) 463 U.S. 1032, 1052 ["Assuming *arguendo* that Long possessed the knife lawfully, we have expressly rejected the view that the validity of a *Terry* search depends on whether the weapon is possessed in accordance with state law."]; *People* v. *Perez* (1996) 51 Cal.App.4th 1168, 1178-9 ["The issue is not whether defendant had a right to have the gun; rather, it is the officers' right to conduct a limited search for weapons."].
[7] (1989) 211 Cal.App.3d 1429.
[8] *People* v. *Lafitte* (1989) 211 Cal.App.3d 1429, 1433.

As noted, in determining whether an object was being used as a weapon, officers may consider the various surrounding circumstances. For example, in *People* v. *Avila*[9] an officer detained Avila who was sitting inside a pickup truck. As the officer looked inside the vehicle, he saw "a long black metal object" behind the seat. The officer testified that it was similar to a "Mag" flashlight, and that it was located approximately eight to ten inches from Avila's left hand. When the officer asked him what it was, Avila responded—without looking at what the officer was talking about—that he didn't know what it was.

Although the issue in *Avila* was whether the pat search of the defendant was lawful, it was apparent that the court had determined that, based on the nature of the metal object, its location, and Avila's strange response when asked what it was, that it was being used as a weapon.

One other thing: It is possible, but unsettled, that the presence of a virtual weapon would justify a protective search if officers reasonably believed that the detainee posed a danger to them; e.g., detainee was hostile or his behavior was unpredictable because it appeared he was under the influence of drugs or alcohol.[10]

Inferring the presence of a weapon

Even if officers do not actually see a weapon in the vehicle, they may reasonably believe that one is present based on circumstantial evidence.[11] For example, in *People* v. *King,*[12] 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 he "feared for the safety of his partner and himself because there was increased gang activity in the area and the driver reached under the seat." After ordering King and the other occupants out, the officers looked under the seat and found a .25-caliber semiautomatic handgun.

In ruling that the search was a lawful protective search, the court said, "Here, in 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."

Note that if officers find a weapon in the vehicle, they may continue searching for additional weapons. As the Court of Appeal explained in *People* v. *Molina*, "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."[13]

Search procedure

Because the sole purpose of a protective vehicle search is to locate and secure weapons that could be used against them, officers may not search the trunk.[14] Instead, they must limit the search to the passenger compartment and any containers in the passenger compartment that are large enough to hold a weapon.[15]

Furthermore, the search of the passenger compartment must be limited to places and things in which weapons may reasonably be found. For example, officers may look under the seats, in the glove box, and under the armrest. And, of course, officers who are conducting the search may seize any item they see if they have probable cause to believe it is evidence of a crime.[16] POV

[9] (1997) 58 Cal.App.4th 1069.

[10] **NOTE**: Although we could not find any cases directly on point, as we explained in the accompanying article on pat searches, the courts routinely permit officers to pat search detainees who appear overtly hostile.

[11] See *People* v. *King* (1989) 216 Cal.App.3d 1237, 1240 ["In determining whether a weapon search was reasonable, we must view the search in light of all the facts surrounding the activity."].

[12] (1989) 216 Cal.App.3d 1237.

[13] (1994) 25 Cal.App.4th 1038.

[14] See *Michigan* v. *Long* (1983) 463 U.S. 1032, 1049.

[15] See *Michigan* v. *Long* (1983) 463 US 1032, 1048-9 [the "trial court determined that the leather pouch containing marijuana could have contained a weapon." At p. 1050-1]; *People* v. *Molina* (1994) 25 Cal.App.4th 1038, 1043 [search of duffel bag and toiletries case]; *People* v. *Lafitte* (1989) 211 Cal.App.3d 1429, 1431; *People* v. *King* (1989) 216 Cal.App.3d 1237, 1239.

[16] See *Michigan* v. *Long* (1983) 463 U.S. 1032, 1050 ["If, while conducting a legitimate *Terry* search of the interior of the automobile, the officer should, as here, discover contraband other than weapons, he clearly cannot be required to ignore the contraband, and the Fourth Amendment does not require its suppression in such circumstances."]; *Arizona* v. *Hicks* (1987) 480 U.S. 321, 326.

Recent Cases

People v. Chun

(2007) 155 Cal.App.4th 170

ISSUE

While questioning a murder suspect, did an officer engage in coercive interrogation tactics?

FACTS

At about 9 P.M., three people in a Mitsubishi car were waiting at a stop light at an intersection in Stockton when four men in a Honda pulled up beside them. When the light changed, three of the people in the Honda started firing into the Mitsubishi. At least six rounds were fired, and two of them—a .38 and a .44—struck the backseat passenger. He was killed. The other two victims were also hit, and both suffered serious, life-altering injuries.

The shooting appeared to have been gang-related. The survivors identified the driver of the Honda as "T-Bird," known to the police as a local gangster. He is still at large. Investigators theorized that the shooters had been trying to kill a member of a rival gang who sometimes drove the Mitsubishi.

About two months later, Stockton police arrested Chun and two other men who were suspects in the shooting. All three were transported to the police station for questioning. Chun, who was 16-years old, waived his *Miranda* rights and agreed to talk to the officers.

At first he claimed he had not been inside the Honda, but one of the officers told him that his two associates had said otherwise. The officer also told him that "no matter what you say to me tonight, you are going to prison," but that his sentence would depend on whether he told the truth. Said the officer:

> [T]his is gonna depend on whether you're gonna go to prison for the rest of your life or just gonna go to prison for a couple of years or couple of months, whatever. . . . But as of now what I have on you is you're gonna go to prison for the longest time if you don't speak out.

The officer also discussed the harsh realities of prison life: "When you go to prison, you ain't gonna be tough 'cause on a soaking wet day you maybe weighing 150 pounds, that's it. You get guys that are huge. Okay? I'm not trying to scare you or nothing like that. Just be aware of it . . . "

Chun then admitted that he was one of the occupants of the Honda, but denied that he had fired any shots. The officer responded by telling him that his associates were also contradicting that, and he urged Chun "to show some honesty":

> The thing is that, you know, I gotta write all these things down. I'm not writing right now, but I will 'cause I've gotta give it to the judge, hey, judge, this kid's, you know, he's 16 years old, he can learn from his mistake, you know, help him out here. You know what I mean? You're 16 years old, man. This is, this is a murder. This is as serious as it gets.

When Chun continued to deny that he had fired any shots, the officer told him that he knew there were two guns in the car, "a bigger gun and a smaller gun," and that his associates were claiming that he had fired the smaller one. Then the officer said, *"[I]f your gun didn't kill those people there, it's not your gun. I've been trying to tell you that."* After further urging by the officer to "just tell the truth," and "learn from your mistake," Chun admitted that he had fired two rounds from the .38.

Chun was tried as an adult, and his admission was used against him. He was found guilty of second degree murder.

DISCUSSION

Chun contended that his admission should have been suppressed because it resulted from an implied promise of leniency. The court agreed.

It is settled that a statement will be suppressed if it was involuntary, meaning the suspect was coerced into making it. As the California Supreme Court put it, "Involuntariness means the defendant's free will was overborne."[1]

It is also settled that a statement is not involuntary merely because officers put noncoercive pressure on a suspect to give a true statement. As the Court

[1] *People* v. *Depriest* (2007) 42 Cal.4th 1, 34. ALSO SEE *People* v. *Guerra* (2006) 37 Cal.4th 1067, 1093.

of Appeal observed, "When a person under questioning would prefer not to answer, almost all interrogation involves some degree of pressure."[2]

Thus, the court in *Chun* ruled that the officer's comments about the "harsh realities" of prison life did not constitute coercion. It also ruled that "[t]elling defendant that what he said would make the difference between life in prison or only a few years or months was not a false promise of leniency."

But the court ruled that the officer crossed the line because, after misleading Chun into thinking that the .38 was not the murder weapon, he implied that Chun would not face a lengthy prison term if he admitted that he had fired it. Said the court:

> [The officer's] statements were both factually and legally false. Both known guns were murder weapons and the law of aiding and abetting does not require one to be the actual shooter to be convicted of murder.

The court also thought that the officer had engaged in a coercive interrogation technique when he "offered to advocate for defendant before the judge." "In effect," said the court, the officer "falsely promised defendant more lenient treatment in a murder case . . . if he cooperated and admitted he had the smaller gun."

Consequently, the court reversed Chun's murder conviction on grounds that his admission "should have been excluded because it was procured by a false promise of leniency."

COMMENT

The United States Supreme Court has consistently ruled that a statement is involuntary only if officers placed so much pressure on a suspect to make a statement that he was unable to resist. As the Court observed in *Oregon* v. *Elstad,* a statement is involuntary only if it was obtained "by techniques and methods offensive to due process, or under circumstances in which the suspect clearly had no opportunity to exercise a free and unconstrained will."[3]

It is also settled that a statement is not involuntary merely because it resulted from an officer's lies or deception. Thus, the United States Supreme Court pointed out that it "has refused to find that a defendant who confesses, after being falsely told that his codefendant has turned State's evidence, does so involuntarily,"[4] and that "mere strategic deception" is not coercive.[5] The California Supreme Court has made this point repeatedly. For example, it has noted that "[n]umerous California decisions confirm that deception does not necessarily invalidate a confession,"[6] and "[w]here the deception is not of a type reasonably likely to procure an untrue statement, a finding of involuntariness is unwarranted."[7]

For example, the courts have ruled that officers did not engage in coercive interrogation tactics when they lied to the suspect that his accomplice had been captured and had confessed,[8] that his fingerprints had been found on the getaway car,[9] that a gunshot residue test showed that he had recently handled a gun,[10] and that he had been positively ID'd by the victim.[11] In fact, in one case the California Supreme Court ruled that officers did not engage in coercive interrogation tactics when they gave a murder suspect a bogus "Neutron Proton Negligence Intelligence Test" and claimed it absolutely proved that he had recently fired a gun.[12]

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[2] *People* v. *Andersen* (1980) 101 Cal.App.3d 563, 575.
[3] (1985) 470 U.S. 298, 304.
[4] *Oregon* v. *Elstad* (1985) 470 U.S. 298, 317.
[5] *Illinois* v. *Perkins* (1990) 496 U.S. 292, 297.
[6] *People* v. *Thompson* (1990) 50 Cal.3d 134, 167.
[7] *People* v. *Farnam* (2002) 28 Cal.4th 107, 182. ALSO SEE *People* v. *Maury* (2003) 30 Cal.4th 342, 411 ["[d]eception does not necessarily invalidate an incriminating statement."]; *People* v. *Chutan* (1999) 72 Cal.App.4th 1276, 1280 ["Police officers are at liberty to utilize deceptive stratagems to trick a guilty person into confessing."]; *People* v. *Felix* (1977) 72 Cal.App.3d 879, 886 ["The general rule throughout the country is that a confession obtained through use of subterfuge is admissible, as long as the subterfuge used is not one likely to produce an untrue statement."].
[8] *Frazier* v. *Cupp* (1969) 394 U.S. 731, 739.
[9] *People* v. *Watkins* (1970) 6 Cal.App.3d 119, 124-5.
[10] *People* v. *Parrison* (1982) 137 Cal.App.3d 529, 537.
[11] *People* v. *Pendarvis* (1961) 189 Cal.App.2d 180, 186; *Amaya-Ruiz* v. *Stewart* (9th Cir. 1997) 121 F.3d 486, 495.
[12] *People* v. *Smith* (2007) 40 Cal.4th 483, 506 ["[I]t does not appear that the tactic was so coercive that it tended to produce a statement that was involuntary or unreliable."].

We want you to lie

Although there is no material difference between the facts in *Chun* and the other cases in which deception has been employed, the court was disturbed that the officer made the following statement: "[I]f your gun didn't kill those people there? It's not your gun. I've been trying to tell you that." The court seemed to interpret these words to mean: *You should go ahead and admit that you fired the .38 even though you didn't. After all, since it wasn't the murder weapon, you've got nothing to lose by lying. And if you cooperate with us and lie, we'll even ask the judge to go easy on you*.[13]

Even if that was the thrust of the officer's statement, the question arises: What pressure did it place on Chun? The officer made it clear that nothing Chun said would keep him out of prison. The only question was how much time he would serve. And given the magnitude of the crimes, Chun must have known that he was going to serve a substantial sentence as an aider and abettor to a murder.

Moreover, it is reasonable to infer that, during the two months following the shootings, Chun would have become aware that two other people in the car had been seriously injured. Thus, even if he believed that he had not fired the fatal rounds, he would have known that he was responsible for the injuries to one or both of the other occupants. And, given the seriousness of their injuries, he must have known that he could be charged with murder in the not unlikely event that either of them eventually succumbed to their injuries. And even if they both survived, he could not have reasonably expected leniency for such an atrocious crime.

Consequently, it seems apparent that, even if the officer had mislead Chun into thinking that the .38 was not the murder weapon, he did not mislead Chun into believing that he would get off easy if he confessed to firing it.

False promises?

The court also ruled that the officer "falsely promised defendant more lenient treatment in a murder case—a chance to learn from his mistake—if he cooperated and admitted he had the smaller gun." The court was mistaken. The officer promised Chun nothing. He told him that he would fare better in court if his gun did not kill the victim. This was a true statement, and it was an appropriate one. For example, in *People* v. *Holloway*, the California Supreme Court ruled that, "[t]o the extent [the detective's] remarks implied that giving an account involving a blackout or accident might help defendant avoid the death penalty, he did no more than tell defendant the benefit that might flow naturally from a truthful and honest course of conduct."[14] Similarly, the Ninth Circuit has observed, "It is not enough, even in the case of a juvenile, that the police indicate that a cooperative attitude would be to the benefit of an accused unless such remarks rise to the level of being threatening or coercive."[15]

Moreover, the courts in California routinely hold that an officer's promise will not render a statement involuntary if the officer promised nothing specific.[16] And, as noted, the officer in *Chun* promised nothing other than the possibility of a lighter sentence if his gun was not the murder weapon.

The motivating cause requirement

Even if an officer engaged in coercive interrogation tactics, a suspect's subsequent statement will not be suppressed unless the officer's tactics caused the suspect to make it. As the California Supreme Court explained, "Coercive police activity does not

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[13] **NOTE**: The person who transcribed the recording of the interview inserted a question mark after "if your gun didn't kill those people there." But the statement does not call for a question. After the question mark, the transcriber began a new sentence, "It's not your gun." If the two sentences had not been split by the transcriber, the officer's words might not have sounded as if he was representing that the .38 was not the murder weapon. Instead, it would have sounded like this, "*If* your gun didn't kill those people there, *if* it's not your gun. I've been trying to tell you that."

[14] (2004) 33 Cal.4th 96, 116. ALSO SEE *People* v. *Hill* (1967) 66 Cal.2d 536, 549 ["When the benefit pointed out by the police to a suspect is merely that which flows naturally from a truthful and honest course of conduct, we can perceive nothing improper in such police activity."].

[15] *Juan H.* v. *Allen* (9th Cir. 2005) 408 F.3d 1262, 1273. ALSO SEE *U.S.* v. *Mashburn* (4th Cir. 2005) 406 F.3d 303, 310.

[16] See *People* v. *Jones* (1998) 17 Cal.4th 279, 298 ["[T]he detective's offers of intercession with the district attorney ['telling the district attorney that defendant had been honest'] amounted to truthful implications that his cooperation might be useful in later plea bargain negotiations."]; *People* v. *Hurd* (1998) 62 Cal.App.4th 1084, 1091; *People* v. *Groody* (1983) 140 Cal.App.3d 355, 359.

itself compel a finding that a resulting confession is involuntary. The statement and the inducement must be causally linked."[17]

With this in mind, consider that Chun did not admit firing the .38 immediately after the officer made his "if your gun didn't kill those people" remark. Instead, he responded by saying "Huh," then continued to lie. After that, the officer had to repeatedly try to get him to tell the truth by saying such things as, "Don't try to cover up, don't try to lie"; "don't do that to yourself man. Just, just tell the truth"; "learn from your mistake"; and "This is a big lesson. The biggest lesson of your life."

Eventually, Chun admitting firing the .38, but the record demonstrates that the officer's remark was not the motivating cause. Instead, it appears the real motivation behind his admission was his realization that he was in serious trouble, that his accomplices were telling the truth, and that he had better do so himself.

Also note that when Chun finally made the statement, he did not merely parrot the admission that the officer had been seeking; i.e., that he had fired the .38. Instead, he admitted that he had fired it twice and, more importantly, he started providing the officer with a detailed account of the shooting. This is a strong indication that he was motivated by the realization that it was time to tell the truth.

Chun's callousness

Sometime after making the statement, Chun said several things to jailers that demonstrated a callousness that is rare, even in today's street gang culture. Among other things, he told a jail supervisor:

> You don't know who you are fucking with, nigga. This is TRG [his gang was the Tiny Rascals Gangsters]. Bang, bang, motherfucker. That's how we do it. Yeah, nigger. Wait till I get out. Bang to the dome. Fuck that. You'll see when I get out.

Those are not the words of a person whose will was overwhelmed by an officer's brief remark in the course of an interrogation.

The evidence demonstrates that Chun is a callous, unrepentant killer who was unconcerned about what he and his accomplices had done to three innocent people. It is therefore especially distressing that the Court of Appeal struggled and strained to interpret the officer's words as being coercive. We hope the California Supreme Court takes a close look at this misguided decision.

People v. Garry

(2007) __ Cal.App.4th __ [2007 WL 3342586]

ISSUE

Did a de facto detention result when an officer spotlighted and approached a suspected drug dealer on a street corner?

FACTS

At about 11:30 P.M., a uniformed Vallejo police officer in a marked car was on patrol in a "high-crime, high-drug" area when he spotted Garry just standing on a street corner. The officer stopped about 35 feet from Garry and shined his white spotlight on him. As he did so, he noticed that Garry "looked nervous." The officer then got out of his car and walked toward Garry in a manner that the officer described as "briskly."

As the officer approached, Garry's nervousness appeared to increase to "shock." As the officer testified, Garry "started, like, walking backwards" and then spontaneously said, "I live right there," as he pointed to a house. The officer responded, "Okay, I just want to confirm that," at which point he asked, "Are you on probation or parole?" Garry said he was on parole.

The court's explanation of what happened next was unclear, possibly because the record was unclear. In any event, the officer decided to detain Garry (probably to conduct a parole search), but Garry "started to pull away violently." The officer was able to restrain him and, during a search incident to Garry's arrest for resisting, the officer found 13 pieces of rock cocaine in his jacket pocket.

Garry filed a motion to suppress the cocaine, but the court denied it on grounds that the officer had not detained him until after he learned that he was on parole. As the court noted, "[The officer] didn't

[17] *People* v. *Guerra* (2006) 37 Cal.4th 1067, 1093. ALSO SEE *Colorado* v. *Connelly* (1986) 479 U.S. 157, 165 ["Absent police conduct causally related to the confession, there is simply no basis for concluding that any state actor has deprived a criminal defendant of due process of law."]; *People* v. *Maury* (2003) 30 Cal.4th 342, 404-5 ["The statement and the inducement must be causally linked."].

yell anything at Mr. Garry. He didn't yell 'Stay where you are. You're under arrest,' or anything like that. He simply approached him." A jury subsequently convicted Garry of possessing cocaine base for sale.

DISCUSSION

Garry contended that the manner in which the officer approached him rendered the initial encounter a detention. And because the officer lacked grounds to detain him, the detention was illegal, and the cocaine should have been suppressed. The court agreed.

The United States Supreme Court has ruled that a suspect is detained "when the officer, by means of physical force or show of authority, terminates or restrains his freedom of movement."[18] Because the officer could have legally detained Garry when he learned that he was on parole, the issue was whether he detained him before then.

In determining whether an officer's "show of authority" transformed an encounter into a detention, the courts examine the surrounding circumstances (especially the officer's words and actions), then ask whether they would have caused a reasonable innocent person in the suspect's position to believe that he was not free to leave or otherwise terminate the encounter.[19]

As noted, the judge at the suppression hearing ruled that the officer did not initially detain Garry. But the Court of Appeal disagreed, ruling that the manner in which the officer approached him was so "aggressive and intimidating" as to render the encounter a de facto detention. Said the court, "[A]ny reasonable person who found himself in defendant's circumstances, suddenly illuminated by a police spotlight with a uniformed, armed officer rushing directly at him asking about his legal status, would believe themselves [sic] to be under compulsion of a direct command by the officer." Thus, the court ruled that the cocaine should have been suppressed.

COMMENT

In *Florida* v. *Bostick*, the U.S. Supreme Court said, "Our cases make it clear that a seizure does not occur simply because a police officer approaches an individual and asks a few questions."[20] Although the officer in *Garry* approached an individual and asked a single question, the court ruled that the Supreme Court's rulings on this issue did not apply because there were four additional circumstances: (1) the officer shined a spotlight on Garry, (2) the officer was armed and in uniform, (3) the officer walked toward him hurriedly, and (4) the officer asked if he was on probation or parole. As we will explain, none of these circumstances—whether singly or in combination—justified the court's decision.

THE SPOTLIGHT: The courts in California, and virtually everywhere else, have consistently ruled that an officer's act of illuminating a suspect with a white spotlight before speaking with him is relatively unimportant.[21] As the court said in *People* v. *Perez*, "While the use of high beams and spotlights might cause a reasonable person to feel himself the object of official scrutiny, such directed scrutiny does not amount to a detention."[22]

Nevertheless, the court in *Garry* complained that the officer "bathed defendant in light." *Bathed?* A little melodramatic, but with virtually no facts to support its decision, it was forced to hype the few that it could ferret out. Still, even if the officer had bathed, showered, washed, or shampooed Garry with light, it was not a significant circumstance.

ARMED AND UNIFORMED: The next circumstance relied upon by the court was that the officer was in

[18] *Brendlin* v. *California* (2007) __ U.S. __ [2007 WL 1730143].

[19] See *United States* v. *Drayton* (2002) 536 U.S. 194, 202; *Florida* v. *Bostick* (1991) 501 U.S. 429, 438.

[20] (1991) 501 U.S. 429, 434. ALSO SEE *Florida* v. *Royer* (1983) 460 U.S. 491, 497 ["law enforcement officers do not violate the Fourth Amendment by merely approaching an individual on the street or in another public place, by asking him if he is willing to answer some questions, by putting questions to him if the person is willing to listen"].

[21] See, for example, *People* v. *Franklin* (1987) 192 Cal.App.3d 935, 940 ["[T]he spotlighting of appellant alone fairly can be said not to represent a sufficient show of authority so that appellant did not feel free to leave."]; *People* v. *Rico* (1979) 97 Cal.App.3d 124, 130; *People* v. *Brueckner* (1990) 223 Cal.App.3d 1500, 1505 ["The fact he shined his spotlight on the vehicle as he parked in the unlit area would not, by itself, lead a reasonable person to conclude he or she was not free to leave."]; *State* v. *Baker* (Idaho 2004) 107 P.3d 1214, 1216 ["While this Court has not addressed the issue, courts in other jurisdictions have found the use of a spotlight alone does not constitute a show of authority such that a reasonable person would not feel free to leave."].

[22] (1989) 211 Cal.App.3d 1492, 1496.

uniform and was armed. That the court even mentioned this circumstance demonstrates the lack of factual support for its decision. Whether an officer was wearing a uniform or was carrying a weapon means absolutely nothing because *every* officer is armed, and virtually all of them who patrol the streets are in uniform. Thus, when this issue was raised before the United States Supreme Court, the Court responded, "That most law enforcement officers are armed is a fact well known to the public. The presence of a holstered firearm thus is unlikely to contribute to the coerciveness of the encounter absent active brandishing of the weapon."[23]

WALKING "BRISKLY": The officer testified that he walked "briskly" toward Garry. He also said that Garry was standing "probably about 35 feet away," and that it took him two and one half to three seconds to reach him after he had stepped out of his patrol car. Although these were, of course, estimates, the court held them up as precise and verified mathematical calculations. And after running the numbers it announced that it had determined that the officer did not actually walk "briskly" toward Garry. In reality, said the court, he was "rushing directly" at him. A little later, apparently dissatisfied with such a meager embellishment, the court reverted to hype and said, *"[The officer] all but ran directly at him."*

If the court had wanted to actually explore this issue, it might have looked at *People v. Kemonte H.*[24] in which the court ruled that officers did *not* detain the defendant merely because they "pulled the [patrol] car over, stopped the car approximately 15 to 20 feet away from Kemonte and walked toward him at a 'semi-quick' pace." Said the court, "A reasonable person of Kemonte's age would not have felt restrained by two police officers approaching him on a public street. [A] reasonable person could only conclude that the officers wanted to talk to him."

PROBATION OR PAROLE? The court also scolded the officer for "immediately and pointedly" questioning Garry about his probation and parole status. Would the court have preferred it if the officer had started out by engaging Garry in a discussion about the weather? In any event, as most courts understand, a mere investigative question such as this is not a circumstance that tends to indicate a suspect was being detained. For example, the United States Supreme Court has said, "We have held repeatedly that mere police questioning does not constitute a seizure,"[25] even if the questions were "potentially incriminating."[26] Thus, the California Court of Appeal observed in *People* v. *Bennett*, "By now, it is generally understood that there is nothing in the Constitution which prevents a police officer from addressing questions to anyone on the streets. Police officers enjoy the liberty possessed by every citizen to address questions to other persons."[27]

A SUPERFICIAL LOOK AT THE OTHER CIRCUMSTANCES: The court went through the motions of taking note of some of the circumstances indicating that Garry had not been detained. It devoted a short paragraph to this effort, a paragraph in which it listed—but did not bother discussing—a single one of them. There were, however, some significant circumstances:

NO COMMANDS: The officer did not order Garry to halt or issue any other commands to him.[28]

NO RED LIGHT: The officer did not engage Garry by means of activating a red light or siren.[29]

NOT BLOCKED IN: The officer did not park his car in a manner that blocked Garry's movement.[30] In fact, he parked about 35 feet away.

NO TOUCHING: The officer did not touch Garry until after he had been detained.

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[23] *United States* v. *Drayton* (2002) 536 U.S. 194, 204.
[24] (1990) 223 Cal.App.3d 1507.
[25] *Muehler* v. *Mena* (2005) 544 U.S. 93, 101. ALSO SEE *Florida* v. *Royer* (1983) 460 U.S. 491, 497.
[26] *Florida* v. *Bostick* (1991) 501 U.S. 429, 439.
[27] (1998) 68 Cal.App.4th 396, 402 [quoting from *United States* v. *Mendenhall* (1980) 446 U.S. 544, 553].
[28] See *United States* v. *Mendenhall* (1980) 446 U.S. 544, 554; *People* v. *Verin* (1990) 220 Cal.App.3d 551, 556.
[29] *Berkemer* v. *McCarty* (1984) 468 U.S. 420, 436; *People* v. *Bailey* (1985) 176 Cal.App.3d 402, 405-6.
[30] See *United States* v. *Drayton* (2002) 536 U.S. 194, 200 [Court notes that officers did not block the suspect's path]; *People* v. *Wilkins* (1986) 186 Cal.App.3d 804, 809; *U.S.* v. *Sanchez* (10th Cir. 1996) 89 F.3d 715, 718 [the officer "did not obstruct or block Mr. Sanchez's vehicle"]; *U.S.* v. *Dockter* (8th Cir. 1995) 58 F.3d 1284, 1287 [the officer "did not block appellants' vehicle"].

NO DRAWN WEAPON: The officer did not draw his gun.

PUBLIC PLACE: The encounter occurred in a public place. In fact, it supposedly occurred right in front of Garry's house. In the view of most other courts (including the United States Supreme Court), this was a noteworthy circumstance.[31]

NO BACKUP: The officer was alone.[32]

INVESTIGATIVE QUESTIONING: The officer's single question—"Are you on probation or parole?"—was a legitimate investigative question, and did not constitute a coercive accusation.[33]

It is rare these days to find a published opinion in California in which a court distorts and ignores the facts as was done in *Garry*. This is another case that ought to be reviewed.

U.S. v. Copening

(10th Cir. 2007) __ F.3d __ [2007 WL 3173961]

ISSUE

Can officers stop a car to investigate an anonymous citizen's report to 911 that the driver is carrying a concealed handgun?

FACTS

At 9:30 P.M., a man on a cell phone called 911 in Tulsa, Oklahoma and reported that he had just seen a man with a gun outside the QuikTrip convenience store. He said that the man, later identified as Copening, had arrived outside the store in a pickup truck driven by another man; and that, as Copening was walking toward the front door, he accidentally dropped a handgun on the ground. Copening then put the gun back inside the pickup and went into the store. The caller gave a detailed description of Copening and the pickup truck, including its license number. Although the caller refused to identify himself, the 911 operator's monitor displayed his phone number.

A few minutes later, the man called 911 again from the same phone and provided some additional information. He said that when Copening picked up the gun from the ground, he "stuck it in his pants," then he walked back to the pickup truck and put it under the seat. The caller said that Copening and the other man had just driven off, but he was following them. He also gave their current location. Although the call "dropped" at that point, the man called back and starting giving the dispatcher a turn-by-turn narrative of their route. When the connection dropped again, the man called again and continued to update the dispatcher on Copening's location.

At about this time, officers spotted the pickup truck and made a felony stop. After Copening and the driver were handcuffed, officers searched the pickup and found the handgun under the back seat. Copening was subsequently convicted of being a felon in possession of a firearm.

DISCUSSION

Copening contended that officers should not be permitted to make car stops based solely on information from 911 callers who refuse to give their names. This contention was based on a case decided by the United States Supreme Court in 2000, *Florida* v. *J.L.*[34] In *J.L.,* an anonymous caller phoned the Miami-Dade police department's non-emergency number and reported that a young black man wearing a plaid shirt was standing at a particular bus stop, and that he was carrying a concealed handgun. Officers who were dispatched to the call saw three black men "just hanging out" at the bus stop, and one of them, later identified as J.L., was wearing a plaid shirt. So the officers detained him and, during a pat search, found a gun.

But the Supreme Court ruled the detention and pat search were unlawful because the officers had no reason to believe that the anonymous caller was reliable or that his information was accurate. As the court explained, "All the police had to go on in this

[31] See *INS* v. *Delgado* (1984) 466 U.S. 210, 218; *People* v. *Sanchez* (1987) 195 Cal.App.3d 42, 47 ["the incident occurred on a public street"].

[32] See *People v. Manuel G.* (1997) 16 Cal.4th 805, 821; *People* v. *Profit* (1986) 183 Cal.App.3d 849, 877; *People v. Manuel G.* (1997) 16 Cal.4th 805, 823; *U.S.* v. *Crapser* (9th Cir. 2007) 472 F.3d 1141, 1146; *U.S.* v. *Washington* (9th Cir. 2004) 387 F.3d 1060, 1068.

[33] See *People* v. *Daugherty* (1996) 50 Cal.App.4th 275, 285; *U.S.* v. *Kim* (3rd Cir. 1994) 27 F.3d 947, 953 ["[W]e do not believe this question was accusatorial. The tone of the question in no way implied that [the agent] accused or believed that Kim had drugs in his possession; it was merely an inquiry."].

[34] (2000) 529 U.S. 266.

case was the bare report of an unknown, unaccountable informant who neither explained how he knew about the gun nor supplied any basis for believing he had inside information about J.L."

In 2006, the California Supreme Court had occasion to apply *J.L.* in a somewhat different situation. In *People* v. *Wells*[35] an anonymous caller notified the CHP in Kern County that he had seen a "possibly intoxicated driver" on Highway 99, and that the driver was "weaving all over the roadway." The court did not know whether the caller had called 911, so it apparently assumed that he had called a non-emergency number.

In any event, the caller described the car as a 1980's model blue van, and he said it was headed northbound on Highway 99 just north of Bakersfield. CHP units in the area were immediately notified and, about two minutes later, an officer on Highway 99 saw a blue van heading northbound and stopped it. After determining that the driver, Susan Wells, was under the influence of drugs, he arrested her. An inventory search of the van netted several syringes and some heroin. Wells tested positive for THC (marijuana), cocaine, and opiates.

The California Supreme Court ruled that, even though the CHP officer had seen nothing to indicate that Wells was impaired, the car stop did not violate *J.L.* for essentially two reasons. First, the caller had given the CHP operator an accurate and fairly detailed description of Wells' car and the route she was taking, both of which were corroborated by the arresting officer before he made the stop. Said the court, "[T]he relatively precise and accurate description given by the tipster in the present case regarding the vehicle type, color, location, and direction of travel, all confirmed by the investigating officer within minutes of receiving the report, enhanced the reliability of the tip."

Second, unlike the situation in *J.L.,* the caller had reported a crime that presented an imminent threat to other motorists. Thus, as the court pointed out, the officer needed to take immediate action.

The situation in *Copening* differed from both *Wells* and *J.L.* in that the record showed that the caller had phoned 911, not a non-emergency line. This was important because most people who call 911 know that their phone numbers are displayed on the dispatcher's monitor, and that their calls are recorded.[36] Thus, even though a 911 caller refuses to state his name, he probably knows that officers may be able to identify him. As the court in *Copening* observed, "The caller should have expected that 911 dispatch tracks incoming calls and that the originating phone number could be used to investigate the caller's identity."[37]

It was also significant that the caller in *Copening*, like the caller in *Wells*, provided the operator with details about what he had seen and where it had happened. In addition, he repeatedly called 911 to make sure that officers could locate the vehicle. As the court explained:

> [T]aken together, the caller's unusual efforts in reporting the QuikTrip events to 911 dispatch, detailing what he observed, following the vehicle, and updating dispatch regarding the truck's location, bespeak an ordinary citizen acting in good faith.

Thus, the court ruled the detention was lawful because the arresting officer had sufficient reason to believe the caller was reliable. Said the court:

> [T]he tip at issue in this case is readily distinguishable from the anonymous, unrecorded, and uncorroborated tip deemed unreliable in *J.L.* Multiple facts, known to [the arresting officer] when he initiated the stop, bolstered the tip's reliability.

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[35] (2006) 38 Cal.4th 1078.

[36] See *Florida* v. *J.L.* (2000) 529 U.S. 266, 276 (conc. opn. of Kennedy, J.) ["Instant caller identification is widely available to police"]; *U.S.* v. *Terry-Crespo* (9th Cir. 2004) 356 F.3d 1170, 1176 ["[A 911 call] is entitled to greater reliability than a tip concerning general criminality because the police must take 911 emergency calls seriously and respond with dispatch."]; *Commonwealth* v. *Costa* (2007) 862 N.E.2d 371, 377 ["By providing information to the police after knowing that her call was being recorded, and that the number she was calling from had been identified, we conclude that the caller placed her anonymity sufficiently at risk such that her reliability should have been accorded greater weight than that of an anonymous informant."].

[37] ALSO SEE *People* v. *Dolly* (2007) 40 Cal.4th 458, 467 ["[M]erely calling 911 and having a recorded telephone conversation risks the possibility that the police could trace the call or identify the caller by his voice"]; *People* v. *Lindsey* (2007) 148 Cal.App.4th 1390, 1398 ["It is unlikely that a caller would phone in a 'hoax' when police can travel to the person's home after receiving only a [911] hang-up call."].

COMMENT

The question remains: Will California courts uphold detentions based solely on information from anonymous 911 callers if the crime, like the one in *Copening*, did not present an imminent threat to other motorists? We think they will, but only if both of the following circumstances existed. First, 911 operators must have obtained a detailed report from the caller, including a detailed description of the crime, the perpetrator, and his location. As the California Supreme Court said in *Wells*, 911 operators "should attempt to gather additional information supporting the tip's reliability."

Second, prosecutors must present testimony that the caller's phone number was displayed on the dispatcher's monitor, that the caller's address was also displayed (if the call was made from a conventional phone), and that the call was recorded.

One other thing. Dispatchers should be sure to notify the responding officers if they had reason to believe that the caller was reliable or unreliable, as this information will assist the officers in determining whether there are grounds to make the stop. Relevant circumstances might include the caller's manner of speaking, how he described the incident, and how he responded to questions.

U.S. v. Diaz

(9th Cir. 2007) __ F.3d __

ISSUE

Did officers have sufficient reason to believe that a suspect was inside his home when they forcibly entered to execute an arrest warrant?

FACTS

One weekday afternoon, federal agents went to Diaz's home in Idaho to arrest him on a warrant for being a felon in possession of a firearm. The agents had had dealings with Diaz in the past, and they were familiar with his daily routine.

For one thing, they knew that Diaz was a self-employed auto mechanic who worked on cars outside his home, and that he drove a black sport utility vehicle which was usually, but not always, parked out front when he was at home. In addition, Diaz had previously told agents that they could usually find him at his house during the day. And they had reason to believe this was true because they had made four or five visits to his home during the previous 18 months, and he was absent only once.

Before they made their presence known, the agents attempted to make sure that Diaz was at home. But because he had guard dogs and security cameras around the property, they could only do a quick drive-by. Although they did not see him or his SUV, they saw two other people outside.

When the agents arrived at the front door, they tried to look inside through a window but they couldn't because Diaz had covered the windows with blankets. So they knocked, made the appropriate announcement and, when no one responded, they forced the door open. It turned out that no one was inside, but something else caught their attention: a plastic baggie containing methamphetamine. So, after obtaining a warrant to search the premises, they seized it.

DISCUSSION

Diaz contended that the methamphetamine should have been suppressed because the agents had insufficient reason to believe that he was inside his house when they broke in. The court disagreed.

In *Payton* v. *New York*, the United States Supreme Court ruled that officers may forcibly enter a suspect's home to arrest him if, (1) they have a warrant, and (2) they have "reason to believe" he is presently inside.[38] In *Diaz*, the court had to address two issues pertaining to this rule: (1) Does "reason to believe" mean probable cause? (2) If so, did the agents have it?

When the United States Supreme Court announced its "reason to believe" standard it, unfortunately, did not explain what it meant. As the court in *Diaz* pointed out, "The question of what constitutes an adequate 'reason to believe' has given difficulty to many courts, including the district court in the present case. The Supreme Court did not elaborate on the meaning of 'reason to believe' in *Payton* and has not done so since then."

Over the years, however, most of the federal courts that had occasion to address the issue ruled that only reasonable suspicion was required.[39] As frequently happens, however, the Ninth Circuit was

[38] (1980) 445 U.S. 573, 603.

[39] See, for example, *U.S.* v. *Barrera* (5th Cir. 2006) 464 F.3d 496, 501-2; *U.S.* v. *Route* (5th Cir. 1997) 104 F.3d 59, 62.

the exception, ruling that "reason to believe" meant probable cause.[40] Although the California Supreme Court has not yet ruled on the issue, it has observed that "reason to believe" probably means "something more" than a "reasonably well informed suspicion" that the arrestee is at home.[41] In any event, the court in *Diaz* continued to follow Ninth Circuit precedent, ruling that probable cause is required.

Diaz argued that the agents who entered his home did not have probable cause because they had not actually seen him inside, and they had no other direct evidence that he was there. The court responded by pointing out two things about probable cause. First, in determining whether it exists, the courts must apply common sense, and base their rulings on "the factual and practical considerations of everyday life on which reasonable prudent men, not legal technicians, act."[42] Said the court, "In this inquiry, common sense is key."

Second, probable cause to believe that an arrestee is presently inside his home may be based entirely on circumstantial evidence. As the court pointed out, "If juries can find someone guilty beyond a reasonable doubt without direct evidence, and magistrates can issue search warrants without direct evidence, police surely can reasonably believe someone is home without direct evidence."

Consequently, the court ruled that the agents who entered Diaz's home did, in fact, have probable cause to believe he was inside. Said the court:

> Diaz himself had told government agents that he was usually home during the day. Agents also knew that Diaz worked at home as a mechanic. Agents had visited Diaz's home several times before, and he was absent only one of those times. All of this information suggests that Diaz, on an ordinary day, would be home during daylight hours, which is when the agents came to arrest him.

In conclusion, the court said, "The officers had reliable information that Diaz was usually at home during the day. Nothing the agents observed made this belief unreasonable."

U.S. v. Barnes

(1st Cir. 2007) __ F.3d __ [2007 WL 3133807]

ISSUE

Did officers have sufficient grounds to conduct a visual body cavity search of an arrestee?

FACTS

Officers in Woonsocket, Rhode Island arrested Barnes for driving with a suspended license. During an inventory search of his car, they found a "large bag" of marijuana and a digital scale in the trunk. At the police station, the arresting officer strip searched Barnes by having him remove his clothing and lower his underwear. No contraband was observed. At that point, the officer decided to conduct a visual body cavity search because he suspected that Barnes was a marijuana dealer, and he knew that "some drug dealers concealed drugs between their buttocks." But Barnes refused to comply with the officer's instructions to "turn around, bend over, and spread his buttocks."

Just then a narcotics investigator walked into the room. The investigator, having learned that Barnes had been arrested, wanted to make sure that Barnes's buttocks were checked because the officer "had received a tip from some sources that Barnes was reputed to deal in drugs and, specifically, known to 'cheek' drugs—i.e., conceal drugs between his buttocks." When the investigator told Barnes that the visual cavity search "was protocol" with the department, Barnes "reached behind his back and removed a bag containing cocaine base from between his buttocks."

DISCUSSION

Barnes contended that the cocaine should have been suppressed because, (1) he produced the cocaine only because the investigator had informed him that he would be subjected to a visual body cavity search, and (2) the investigator lacked grounds to conduct such a search.

Under federal and California law, officers may not subject arrestees to visual body cavity searches

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[40] See *Motley* v. *Parks* (9th Cir. en banc 2005) 432 F.3d 1072; *U.S.* v. *Gorman* (9th Cir. 2002) 314 F.3d 1105, 1111.
[41] *People* v. *Jacobs* (1987) 43 Cal.3d 472, 479, fn.4.
[42] Quoting from *Brinegar* v. *United States* (1949) 338 U.S. 160, 175.

unless they have specific reason to believe that the arrestee is concealing a weapon or contraband in the cavity.[43] As the court explained:

> [A] visual body cavity search involves a greater intrusion into personal privacy. Accordingly, prior to conducting a visual body cavity search, we require a more particularized suspicion that contraband is concealed.

(California has an additional requirement: the supervising officer on duty must give prior, written authorization, and such authorization must include a listing of the circumstances upon which reasonable suspicion was based.[44])

Although the arresting officer in *Barnes* lacked grounds to conduct the search (he merely knew that "some drug dealers concealed drugs between their buttocks"), the narcotics investigator had more specific information; i.e., his sources had reported that Barnes was "cheeking" drugs.

The question, then, was whether this information constituted reasonable suspicion. It would have if the investigator had explained to the court why he believed his sources were reliable or "tested." He might have testified, for example, that their tips had led to arrests, convictions, or productive search warrants. But instead, he merely testified that they "had been reliable sources in the past." Such testimony, observed the court, "is completely lacking in any factual detail regarding the informant's tip. [T]he law requires more than naked assertions of reliability to support reasonable suspicion."

The court did not, however, suppress the cocaine. Instead, it remanded the case to the district court to determine whether the investigator had sufficient reason to believe his sources were reliable.

U.S. v. Holmes

(D.C. Cir. 2007) __ F.3d __ [2007 WL 3071629]

ISSUES

(1) While pat searching the defendant, did officers have grounds to remove car keys from his pocket? (2) If not, was the handgun they discovered as the indirect result of the search admissible under either the inevitable discovery or attenuation rules?

FACTS

At about 3:30 A.M., two officers with the Metropolitan Police Department on patrol in the District of Columbia saw a man and a woman standing together in an alley frequented by local drug dealers and prostitutes. When the pair saw the patrol car, they ran off in different directions. The man, later identified as Holmes, was quickly apprehended.

Before doing anything else, one of the officers pat searched him and, in the process, felt a set of keys inside one of his pockets. He also saw some cigarette rolling papers protruding from another pocket. After removing these items, the officer asked him why he had run. Holmes said it was because he had been soliciting sex from the woman.

Holmes had told the officers that he lived in Maryland, and that he had taken the train into D.C. But when they pointed out that the trains didn't run at this hour, he changed his story and said that a friend had dropped him off. So they asked him why he was carrying car keys, at which point he admitted that he had driven in, and that he had parked down the street.

One of the officers then activated the remote control device on Holmes's key ring which caused the lights to flash in an Acura down the street. Suspecting that there were drugs inside the car, the officers asked Holmes if he would consent to a search of it. At about this time, they also happened to mention that he was arrestable for possession of the rolling papers. Holmes consented to the search and signed a consent form.

Although the officers did not find any drugs in the vehicle, they *did* find a Ruger handgun under the driver's seat. As a result, Holmes was convicted of possession of a handgun by a felon.

DISCUSSION

On appeal, the government conceded that the officer who pat searched Holmes had exceeded the permissible scope of the search when he removed the car keys which obviously did not pose a threat to anyone and were not evidence of a crime, at least at that point. Because the keys had been seized illegally, Holmes argued that the handgun should have

[43] See Penal Code § 4039(f); *People* v. *Wade* (1989) 208 Cal.App.3d 304, 307; *Edgerly* v. *San Francisco* (9th Cir. 2007) 495 F.3d 645; *Way* v. *Ventura County* (9th Cir. 2006) 445 F.3d 1157, 1162; *Arpin* v. *Santa Clara Trans. Agency* (9th Cir. 2001) 261 F.3d 912, 922.
[44] See Penal Code § 4039(f).

been suppressed because it was the discovery of the keys that ultimately led to the discovery of the gun.

Although there was certainly a connection between the two discoveries, the government argued that the weapon was nevertheless admissible under two established theories: (1) inevitable discovery, and (2) attenuation.

Inevitable discovery

Under the inevitable discovery rule, evidence that was obtained unlawfully will not be suppressed if prosecutors can show that it would have been obtained inevitably by lawful means.[45] Prosecutors need not, however, show that the evidence would have been found "unquestionably" or "certainly."[46] Instead, they must prove that there was a "reasonably strong probability" that it would have been discovered "in the normal course of a lawfully conducted investigation."[47]

For example, in *Nix* v. *Williams*[48] the United States Supreme Court ruled that because the members of a search party were only a short distance from the body of a murder victim they were seeking, the body was admissible even though it was actually discovered by officers as a result of their questioning of the defendant in violation of the Sixth Amendment.

Citing *Nix*, prosecutors suggested that the officer, having lawfully felt the car keys in Holmes's pocket, might have asked him where his car was parked, and Holmes might have answered truthfully. The court responded, "All of this is nothing more than possibility. As evidence of inevitable discovery, this fails under *Nix*. It is, at best, speculative . . . "

Attenuation

As noted, prosecutors also argued that the gun should be admissible under the attenuation rule, which is part of the "fruit of the poisonous tree" doctrine. By way of background, evidence and statements that were obtained as a result of an unconstitutional search, seizure, or interrogation are known in the law as "fruit of the poisonous tree." But unlike the fruit that falls from real-life poisonous trees, not everything that can be traced to an illegal search or seizure will be plowed under. Instead, it will be admissible if, (1) something unexpected happened between the illegal search and the discovery of the evidence, and (2) this unexpected event played a sufficiently important role in the discovery of the evidence so as to break the chain of causation.[49]

The prosecutors in *Holmes* argued that Holmes's decision to consent to the search constituted such an unexpected act. And there are, in fact, many cases in which the courts have ruled that a suspect's post-search consent constituted an independent intervening act.[50] But there were two significant differences between those cases and *Holmes*.

First, the seizure of Holmes's keys played a direct role in the discovery of the gun. Specifically, the keys resulted in Holmes's admission that he had driven into town and, more importantly, it led the officers to his car. It was also somewhat significant that seizure of the keys enabled the officers to unlock the car just before they sought Holmes's consent to search it.

Second, even though the officers did not engage in blatant coercion, the court ruled that they had intentionally created a coercive environment in which to seek Holmes's consent, especially their implied threat to arrest him.[51] Said the court:

> By the time the officers sought Holmes's consent to search his car, the officers had already located his car and opened it with his car's remote door lock control as a direct result of the illegal seizure. At the very least, it appears that Holmes faced a coercive situation at the time he gave consent since the implication was that his only prayer of avoiding arrest that night was to consent to the search and simply hope that the officers would not discover the hidden handgun.

Consequently, the court ruled that the gun should have been suppressed. POV

[45] See *Nix* v. *Williams* (1984) 467 U.S. 431, 444, 447.
[46] See *People* v. *Superior Court (Tunch)* (1978) 80 Cal.App.3d 665, 680-1.
[47] *Lockridge* v. *Superior Court* (1970) 3 Cal.3d 166, 170.
[48] (1984) 467 U.S. 431.
[49] See *Wong Sun* v. *United States* (1963) 371 U.S. 471, 487-8.
[50] See *People* v. *Henderson* (1990) 220 Cal.App.3d 1632, 1651; *People* v. *$48, 715* (1997) 58 Cal.App.4th 1507, 1514.
[51] See *Mann* v. *Superior Court* (1970) 3 Cal.3d 1, 8.

The Changing Times

OFFICER JOHN MILLER

Officer John Miller of the California Highway Patrol was killed on November 15, 2007 when his patrol car crashed into a tree in Livermore. The accident occurred just after he had been called off of a pursuit of a suspected drunk driver. Officer Miller lived in Lodi, and is survived by his wife, Stephanie; his two-year old son, Chandler; and four-year old daughter, Reese. He graduated from the CHP Academy in March, and was assigned to the Dublin Area.

ALAMEDA COUNTY DISTRICT ATTORNEY'S OFFICE

INSPECTORS DIVISION: **Rick Knowles** has retired. Rick joined the office in 1995 after serving as a deputy with the Alameda County Sheriff's Office and a State of California investigator. **Al Davis** retired after eight years of service. Before joining the office, Al served for 18 years with the Livermore PD. New inspectors: **Steven Revel** (formerly a Fremont PD sergeant), and **Michael Foster**, formerly an Oakland PD sergeant.

PROSECUTORS: **Carrie Panetta** was appointed to the Alameda County Superior Court. **Jim Lee** retired after 33 years of service. **Jim Panetta** is on military leave, and has been deployed to Afghanistan. The following law clerks passed the State Bar and were sworn in as deputy DAs: **Danny Lau**, **Edward Vieira-Ducey**, **Matthew Foley**, **Ryan McHugh**, **Kalila Spain**, and **Laura Passaglia**.

ALAMEDA COUNTY NARCOTICS TASK FORCE

Dawn Sullivan-Adams (ACSO) has joined the task force. **Chuck Torres** (East Bay Regional Parks PD) returned for a six month assignment. Transferring out: **Kim Rodriguez** to the South County Marshal's Division.

BART POLICE DEPARTMENT

The following officers have retired: **Michael Davis** (26 years), **Gary Johnston** (two years), and **Michael Warren** (21 years). **Michael Williamson** was selected as as the department's training officer. **Daniel Hoover**, **Patrick Lennan**, and **Joel Young** were selected for the SWAT team. **Christopher Davis** and **Yvonne Moilanen** were selected as FTOs. New officers: **Justin Hawkins**, **Dexter Lawley** (South San Francisco PD lateral), **Nathan Moore**, **George Narcisse**, and **John O'Malley**.

BERKELEY POLICE DEPARTMENT

Sgt. **Ernie Montez** retired after 26 years of service.

CALIFORNIA HIGHWAY PATROL

CASTRO VALLEY AREA: **Sal Suarez** was promoted to sergeant and transferred in from the San Bernardino Area. **Mike Fitzgerald** was promoted to sergeant and transferred in from the Dublin Area. Also transferring in: **Rafael Cervantez** (West Los Angeles Area), and **Lamonte Bosco** (Newhall Area). Transfering out: Sgt. **Lori Marino** (Dublin Area), **Justin Hagen** (Capitol Protection Section, Sacramento), **Joseph DeSousa** (Golden Gate Division's Investigative Services Unit), **Adam Madrid** (Stockton Area), **Gustavo Arellano** (Stockton Area), **Joseph "Jay" Fischer** (Oroville Area), **Steve Bratcher** (Solano Area), **Chris Burks** (Field Services Section, Sacramento), **Scott Deschenes** (Dublin Area), **Ed Epps** (Tracy Area), **Andrea Missell** (Tracy Area), **Tyler Hahn** (Dublin Area), **Jude Dunbar** (Madera Area), and **Rick Schmier** (Stockton Area).

HAYWARD AREA: The following officers graduated from the CHP Academy and were assigned to the Hayward Area: **Rudy Briones**, **Kevin Fitzgerald**, and **Justin Miller**. Transferring out: **Andrew Welsh** (North Sacramento), **Mark Adolphson** (Contra Costa), **Daniel Fertado** (Truckee), and **Kerrie Alleman** (Solano). Transferring in: **Carlos Garcia** (Dublin), and **William Mason** (San Francisco). Internal transfers: **Federico Lazo** to accident investigation, and **Oscar Johnson** to public affairs officer.

EAST BAY REGIONAL PARKS POLICE DEPARTMENT

Sgt. **William Grangoff** retired after 27 years of service to the department and over 30 years in law

enforcement. **Ronald Straub** received a medical retirement after 19 years of service. Detectives **Scott McCaughin** and **David Phulps** were promoted to sergeant and assigned to Patrol. **Joseph Scott** has been assigned as a K-9 officer. Transfers: **Holly Sontag** and **Ken Wong** from Patrol to Investigations, **Charles Torres** from Patrol to ACNTF, and **William Granados** from Patrol to the SAFE Task Force.

HAYWARD POLICE DEPARTMENT

The following officers were promoted to sergeant: **Jeff Lutzinger**, **Bryan Matthews**, and **Eric Krimm**. Sgt. **Carlos Ferreyra** retired following nearly 28 years of service. Sgt. **Keith Bryan** retired following nearly 30 years of service. New officers: **Javier Rivera**, **Justin Ferreyra**, **McLean Obichere**, **Michael Goodness**, **William Stark**, **Nathanael Shannon**, **Jason Faria**, **Alvin Sangco**, and **Joseph Cervantez**.

LIVERMORE POLICE DEPARTMENT

Chief **Steve Krull** has retired. Capt. **Steve Sweeney** was promoted to Chief of Police. Chief Sweeney was the first in-house candidate to have been promoted to Chief in over 60 years. When his promotion was announced at a department-wide meeting, Chief Sweeney received a standing ovation. Lateral appointment: **Thomas Bettger** (Walnut Creek PD). Records supervisor **Sonia Cadinale** left the department to become records supervisor with the Brentwood PD.

NEWARK POLICE DEPARTMENT

Jeff Mapes was promoted to sergeant. The following officers retired: Sgt. **Al Lewis** (31 years), **Allen Chan** (33 years), and **John Boga** (25 years). Transfers: **Chomnan Loth** from Patrol to the Gang Violence Suppression Unit, Sgt. **Frank Lehr** from the Community Safety Team to Patrol, Sgt. **Dave Parks** from Patrol to the Community Safety Team, and **Adeceli Roman** from Patrol to Investigations. New officers: **Brian Fink** and **Lisa Schwerin**. **Britain Jackman** joined San Jose PD.

OAKLAND POLICE DEPARTMENT

The following officers have retired: **Thomas Viglienzone**, **Carmen Johnson**, **Michael Clark**, and **Michael Foster**. **Jaime Buna** and **Timothy Sanchez** have taken disability retirements.

PIEDMONT POLICE DEPARTMENT

Alvin Sangco has resigned to accept a position with Hayward PD.

PLEASANTON POLICE DEPARTMENT

Lateral appointment: **Matthew Lengel** (Modesto PD). Former Stanislaus County sheriff's deputy **Clint Greenwood** has joined the department. New officer: **Ryan Dawson**. **Serjio Martinez** was hired as a Community Service Officer.

Former officer **Robert Shaw** passed away on November 19, 2007. Robert was a Pleasanton officer from 1970 to 1984 when he left due to an injury. He was then employed as a dispatcher with the Alameda County Sheriff's Office.

UNION CITY POLICE DEPARTMENT

Transfers: **Sean Mace** from Patrol to COPPS, **Paul Kanazeh** from COPPS/SRO to Patrol, and **Roberta Paul** from Patrol to COPPS. New officers: **Daniel De Jong** and **Joseph Cota**.

UNIVERSITY OF CALIFORNIA, BERKELEY POLICE DEPARTMENT

Officer **Frank Jacques** was promoted to sergeant. Sgt. **David Eubanks** retired after 27 years of service. Lateral appointments: **Carolyn "C.J." Ellis** (UCPD Irvine), and **Deanna Ruiz** (Sausalito PD). New officers **Jason Tillberg**, **Jean Gorecki**, **Jonathan Wong**, and **Benjamin Long**. New security patrol officer: **Lateef Cooks**.

War Stories

A civics lesson

In Hayward, a woman was about to testify for the prosecution in a murder case. She was scared about testifying in open court, but the DA told her that he doubted there would be anyone in the audience. After the woman testified, she accused the DA of misleading her about the number of people in the audience. Said the woman, "When I sat down, I could see at least 12 people sitting there, and they were all staring at me. It really freaked me out." "Those people," said the DA, "were jurors." "Oh, she replied, "what are jurors?"

A science lesson

A metal detector at Oakland International sounded an alarm as a woman walked through, so sheriff's deputies searched her to see what she was carrying. Inside her coat, they found a package containing over 800 grams of heroin wrapped in aluminum foil. When asked why she wrapped the heroin in foil, she said she didn't think a metal detector could detect aluminum. A deputy asked, "Don't you know that aluminum is metal?" "Well, I guess I do *now*," she replied.

Not a promising candidate

At about 2 A.M., a police sergeant in San Carlos was parked at the side of a street when a car pulled alongside and the driver said, "Hey officer, I need to talk to you." The sergeant replied, "OK, what can I do for you?" The man then slurred, "I'm taking the oral boards for the San Carlos Police Department on Wednesday and I need to talk to you about it." The sergeant also wanted to talk to the man—about his apparent drunkenness—so he asked him to park his car. After that, the man proceeded to, (1) fail the FST's, (2) blow a .17 on the Intoxilyzer, and (3) withdraw his name from the oral board interviews.

Guilty with a (bad) explanation

A man charged with petty theft in Fremont told officers that he stole the money to pay his work furlough fees which were due in another petty theft case.

The life of a writer

A man named Colton Simpson was on trial in Riverside County, charged with the grab-and-run robbery of a jewelry store in Temecula. Simpson had previously written a book entitled *"Inside the Crips: Life Inside L.A.'s Most Notorious Gang."* And in one of the chapters, he explained how he enjoyed robbing jewelry stores, especially grabbing-and-running: "I love doing jewelry licks," he wrote. "It gets so I go in alone, ask to see a Rolex, grab two, dash out of the store, turn them around, and have $8,000 stuffed in my pocket."

Over the objection of Simpson's attorney, the DA was permitted to inform the jurors about Simpson's book, and especially his "jewelry licks." Simpson is now reportedly working on a sequel: *"Inside San Quentin: Life Inside California's Most Notorious Prison."*

This is your brain on drugs

A man who was charged with being under the influence of drugs decided to represent himself at his trial. After the forensic chemist explained how drugs affect people, the defendant decided to cross-examine him. (Note: This case did not involve a monkey.)

Defendant: "Say if I had a monkey, and I had the monkey take the coke and put it in his mouth, and the monkey ran around here with the coke, and you get the coke to your wonderful lab and you run the same tests on that coke out of that monkey's mouth, would it come back positive?"
Chemist: "What?"
DA: "Huh?"
Court reporter: "I didn't get that."
Judge: "What's with the monkey?"

This is your brain on rap music

A Hayward teenager who confessed to several armed robberies of liquor stores told HPD officers that he was inspired to commit the crimes by the lyrics in that classic rap song, "211," by someone called Master P. The clever and beguiling lyrics in question were: "We need the cash, we rob a liquor store." (And then we go to prison?)

The big bluff

A San Leandro police detective was questioning a man who had been arrested for burglarizing a church and stealing money from the poor box. The detective was trying hard to get a confession because there weren't any usable fingerprints at the scene:

Suspect: I didn't do it. I've never even been inside that church.

Detective: What would you say if I told you we found your fingerprints all over the place?

Suspect: Well . . . I guess I'd have to say I've been lying.

Detective: Then . . . I'm sorry. What?

Suspect: I've been lying. I did it.

Bowling for dealers

Oakland narcotics officers obtained a warrant to search the home of a drug dealer. But they knew he was real paranoid, and that he kept his stash next to his upstairs toilet so he could dispose of it quickly. They also knew that the toilet was located at the end of a long hallway, so they came up with a plan.

As they knocked and announced at the front door, an officer climbed up through a rear window. But this was no ordinary officer. He was an avid bowler with an average score of 183. He was also armed with a bowling ball. The officer could see the toilet down the hallway, and he could hear the drug dealer running up the stairs. So he launched the bowling ball down the hallway.

He later described how the ball had a real nice spin on it as it curved gracefully around the running dealer and crashed into his toilet—disintegrating it on impact. Without a toilet to flush, the dealer surrendered peacefully.

Thinking fast

After stopping for a few drinks at an illegal bar in Zimbabwe, a bus driver found that the 20 mental patients he was transporting to an asylum in Bulawayo had escaped. Figuring that he'd get fired if he failed to deliver some bodies to the hospital, he drove over to a nearby bus stop and offered everyone there a free ride. He then delivered them to the hospital, telling the staff that the patients were extremely deranged and prone to bizarre fantasies. The deception wasn't discovered for three days.

Unclear on the concept

New York police officers transported a purse snatcher back to the victim for a showup. When they arrived, the officers told him, "Okay, stand right here and face that lady over there. We're gonna see if we can get a positive ID." When the man saw the victim, he yelled, "That's her! That's the lady I stole the purse from!"

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