The California Legal Update

Remember 9/11/2001, 12/7/1941; Support Our Troops; Support Our Cops

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THIS EDITION'S WORDS OF WISDOM:

> "*After you've done a thing the same way for two years, look it over carefully. After five years, look at it with suspicion. And after ten years, throw it away and start all over.*" (Alfred Edward Perlman)

IN THIS ISSUE:

***Administrative Notes*:**

> ***Large Capacity Magazines; Exceptions*:** On November 8th of this year, California's voters passed Proposition 63 which, among some other ludicrous provisions, includes making the simple possession of large capacity magazines (i.e., holding over 10 rounds) illegal (misdemeanor/infraction), effective as of July 1, 2017. (See P.C. § 32310(c).) There are a number of exceptions, however. Two of the exceptions that may be of interest to you are that this prohibition does not apply to you if you are a current, or an honorably retired, state or federal peace officer. (See P.C. §§ 32405 (amended) and 32406 (new), respectively.) Another exception is if you've already fled California and now live in the Great State of South Dakota (or elsewhere) where the 2nd Amendment, as interpreted by the United States Supreme Court, continues to be respected, and the "right to bear arms" actually means something and is not just a "well regulated" exception. . . . *Just saying*.

***Cases*:**

***Vehicle Impoundments and the Community Caretaking Doctrine*:**
***Vehicle Inventory Searches*:**

United States v. Torres **(9th Cir. July 14, 2016) 828 F.3rd 1113**

Rule: The impoundment of a vehicle is limited by the dictates of the Community Caretaking Doctrine and a police department's policies implementing the Doctrine. Searching of an impounded vehicle as a part of an inventory search must be in accordance with a police department's policies, and for purposes of inventorying its contents as opposed to a general rummaging around for evidence of criminal activity.

Facts: Las Vegas Metropolitan Police Department (LVMPD) Officers, responding to a possible domestic violence incident occurring in a particularly described vehicle, found the vehicle in the parking structure for a private apartment complex in the City of Las Vegas. The vehicle—a Saturn Vue—was found near a red zone; i.e. a designated no-parking-or-stopping area, backed up toward the curb with other vehicles parked in stalls perpendicular to it on both sides. Defendant was the driver while a woman, identified as Cara Young, was in the passenger seat.

Officer Jason Evans assisted by Officer Joseph Donaldson approached the driver's side of the car and immediately smelled the odor of alcohol on defendant's breath. Officer Evans had defendant get out of his vehicle and submit to a short field sobriety test on which defendant did poorly. Defendant was arrested for DUI. A records check resulted in the discovery that defendant was a convicted felon. Cara Young claimed that the Vue was her car although its registration, which was out of California, had expired. LVMPD's computers didn't show any ownership information. Young didn't have a valid driver's license. So it was decided that the car would be impounded.

During a detailed and methodical inventory search, following the check-off requirements of a departmental "Vehicle Impound Report," Officers Evans and Donaldson looked into, among

other areas, the engine compartment. Unlatching the lid of the engine's air filter compartment, Officer Donaldson discovered a Sig Sauer P229 semi-automatic pistol and a holster. It was discovered later that the gun was stolen in a burglary that had occurred earlier that day. Charged in federal court with being a felon in possession of a firearm (per 18 U.S.C. § 922(g)(1)), defendant filed a motion to suppress. At this motion, both Officers Evans and Donaldson testified that they always include the air filter compartment in an inventory search because they know from their training and experience that people often hide weapons and contraband in the engine compartment. Defendant's motion was denied. He therefore plead guilty and was sentenced to seven years and eight months in prison. Defendant appealed.

Held: The Ninth Circuit Court of Appeal affirmed (except to remand for purposes of resentencing; an issue not relevant here). There were two main issues on appeal; (1) the legitimacy of impounding the car, and (2) the inclusion of the air filter compartment in an inventory search.

(1) *The Community Caretaking Doctrine and LVMPD's Impoundment Policies*: "The impoundment of an automobile is a seizure within the meaning of the Fourth Amendment," and is limited by what is known as the so-called "*Community Caretaking Doctrine*." Under the community caretaking doctrine, police may, without a warrant, impound a vehicle so long as they do so in conformance with the standardized procedures of the local police department *and* in furtherance of a community caretaking purpose, such as promoting public safety or the efficient flow of traffic.

An impoundment and subsequent inventory search must not be a ruse for a general rummaging through the car intended to discover incriminating evidence. But so long as there is compliance with the community caretaking doctrine, the Fourth Amendment requirements are satisfied. The government bears the burden of establishing that a vehicle's impoundment and search are justified under an exception to the warrant requirement. In this case, the Court ruled that the officers' decision to impound the Vue was permissible under the Fourth Amendment because it was both consistent with LVMPD impoundment policy and served legitimate caretaking purposes; i.e., to promote other vehicles' convenient ingress and egress to the parking area, and to safeguard the car from vandalism or theft.

Under LVMPD's written policies, an officer may not leave the vehicle at the scene of an arrest if the arrestee is not the registered owner and/or he is under the influence of alcohol or drugs. In this case, defendant was both arrested and under the influence. Also, while the passenger, Cara Young, claimed to be the registered owner, that fact could not verified. She was also unlicensed. The Court found LVMPD's policies to be sufficiently standardized to satisfy the dictates of the Fourth Amendment. And under the community caretaking doctrine, the vehicle itself was positioned in a manner that could impede emergency services to the apartment complex and was blocking other vehicles from accessing or exiting the parking stalls on either side of it. Because neither defendant nor Young could legally drive the vehicle, the officers could not allow either of them to move the car to a less obtrusive location. In addition, the arresting officers had a reasonable interest in preventing the vehicle from being a target for vandalism or theft in the parking lot of an apartment complex where neither defendant nor Young lived. Under these circumstances, the Court concluded that impounding the Vue was lawful.

(2) *Search of the Air Filter Compartment*: Once a vehicle has been legally impounded, the police may conduct an inventory search without a warrant. However, like the decision to impound, the scope of the inventory search must conform to the standard procedures of the local police department. Such a policy may not constitutionally authorize officers to "rummage" for evidence of criminal activity under the guise of an inventory search. LVMPD has a written inventory policy that leaves little or no discretion to the officers in what areas of the vehicle may be searched. Specifically, the policy dictates that "[i]mpounding officers must thoroughly search vehicles and containers located therein . . . ." It also requires that "[p]ersonal property must be inventoried on the Vehicle Impound Report."

In accordance with the Fourth Amendment, the policy provides that an inventory is not a search for evidence of crime, but is justified only to protect an owner's property while it is in the custody of the police, to ensure against false claims of lost or stolen property, and to guard the police and others from danger. LVMPD's policy does not specifically mention air filter compartments. But it does contemplate a search of the engine compartment by listing the engine, battery, and radiator among the 51 features to be checked. Consistent with prior case authority, LVMPD's polices dictate the searching of all containers within the vehicle, along with enclosed spaces, and their contents. Officers Evans and Donaldson testified that their standard practice when inspecting the engine cabin is to search the air filter compartment in that they have been known to find secreted items in air filter compartments.

Officer Donaldson's search of the engine cabin was motivated, at least in part, by concerns for the safety of the police or others and the securing and protection of the contents of the vehicle. Having a duty, dictated by their department's polices, to locate and protect all items within the vehicle, searching the air filter compartment to accomplish this goal is reasonable. Doing so is also compatible with the dictates of the Fourth Amendment. The air filter compartment was obviously large enough to hold a firearm, and could be opened by lifting the hood and releasing the latches on the box. This search was not so much a general search for evidence of criminal activity as it was to find, list, and protect all items that may be within the defendant's vehicle. In light of the uncontradicted evidence that firearms and other weapons have been hidden in air filter compartments in the past, it is reasonable, and therefore constitutional, for the LVMPD to maintain an inventory search protocol that encompasses areas where weapons may be stored, if for no other reason, to "protect the public from the possibility that a revolver would fall into untrained or perhaps malicious hands."

Note: It is important that law enforcement officers be familiar with their own department's policies on the impounding of vehicles and inventorying of its contents, and then follow them. Their actions in this regard must be in compliance with such policies to be lawful. Officers must also be ready to testify to their department's policies and show how they attempted to comply with them. Reading the summary of Officers Evans and Donaldson's testimony in this case, it appears that a more astute defense attorney might have been able to get them to admit that they were doing a general rummaging around for evidence of criminal activity, as opposed to being concerned with complying with their department written policies relative to safeguarding the contents of the vehicle. Had a court found that the officers were so motivated, the result might have been different.

***Search Warrants and Motions to Traverse*:**

People v. Sandoval **(Dec. 24, 2015) 62 Cal.4th 394**

Rule: An evidentiary hearing in a motion to suppress, when the challenged evidence is the product of a search warrant, will not be granted absent something more than mere bare allegations that material information was left out of a warrant affidavit.

Facts: On April 29, 2000, defendant and 15 other members of the Barrio Pobre criminal street gang were drinking outside an abandoned house in Compton when someone in a car that had just pulled up yelled at them, suggesting profanely that the "BP" gangsters should have sexual relations with themselves. The person in the car then started shooting. No one was hit. Figuring that the shooting was instigated by the rival East Side Paramount gang, defendant and several others decided to retaliate. Arming himself with an AR-15 assault rifle, defendant led several others, including Miguel Camacho, to Lime Street in Long Beach where they knew that Vincent Ramirez, aka "Toro," a leader in the East Side Paramount gang, was throwing himself a birthday party. They intended to knock on Toro's front door and kill him when he answered.

Upon stopping down the street from Toro's house, defendant got out of the car with his AR-15. He saw Camacho, who had come in a different car, walking on the sidewalk across the street in the direction of Toro's house. Defendant was about to join Camacho when he saw a police unmarked car, made distinctive by the spotlights mounted on the sides, coming down Lime Avenue towards them. Defendant could see two police officers in the car, and noted that they were looking at Camacho. Defendant knew Camacho was on parole and was violating the terms of his parole because he was armed with a .45-caliber handgun. To "save" Camacho from "going to jail," defendant opened fire on the unsuspecting officers in the police car. Twenty-eight rounds later, seventeen of which hit the car, Long Beach Police Detective Daryle Black was mortally wounded with a gunshot to the head. Detective Rick Delfin was hit in the head and knee, but survived.

A resident on Line Street, Maria Cervantes, was also wounded by stray bullets while lying on her bed in her home, hitting her in the leg and abdomen. Although she was about eight months pregnant, miraculously, her unborn child was not injured. Defendant fled the area. Camacho also ran, but was found within 20 minutes hiding in the courtyard of a nearby house. Camacho first claimed he had been chased by a group of Black males, telling the officers they could "[c]heck with Detective Delfin" who would vouch for his credibility. When told that Detective Delfin was one of the officers who had been shot, Camacho "broke down in tears" and told the officers that "a fellow member of the Compton Barrio Pobre gang, named Ramon Sandoval," was the shooter. Camacho identified defendant from a photo lineup and led officers to his house.

After confirming that defendant lived at that residence, a search warrant was obtained. Upon execution of the warrant, defendant was arrested and the AR-15 was recovered. Defendant, when interviewed, confessed. He was subsequently charged in state court with murder, with special circumstances, and attempted murder. Among other allegations, it was alleged that the offenses were committed for the benefit of a street gang. Defendant's motion to suppress, alleging an invalid search warrant, was denied. Convicted and sentenced to death, defendant's appeal to the California Supreme Court was automatic.

Held: The California Supreme Court unanimously affirmed (except to strike a "lying in wait" special circumstance; not relevant to the issues discussed here). On appeal, defendant argued that the trial court had erroneously denied his challenge to the search warrant for his house. More specifically, he complained that the trial court had denied him a "*Franks*" hearing, pursuant to *Franks v. Delaware* (1978) 438 U.S. 154. Defendant's argument was based upon the theory that there were material omissions in the search warrant affidavit which if the magistrate who signed off on the warrant had known about, he would not have found probable cause.

Pursuant to *Franks*, defendant argued, he should have been allowed an evidentiary hearing on this issue. The first alleged omission was that the affidavit did not reveal that Camacho (whose statements to police were used as a large part of the probable cause in support of the warrant) was a notorious gang member who was suspected of committing two other homicides. Secondly, the affidavit did not reveal that the day before this warrant was obtained, another Long Beach police officer had obtained a warrant for a different address and a different suspect on a whole different theory; i.e., that Crip gang members in Long Beach had killed Detective Black in retaliation for the April 28, 2000 killing by a cop of Crip gang member. The rule is that because search warrants, once issued, are presumed to be valid, the defense has the burden of proof in challenging the probable cause in a warrant. To meet this burden, defendant here alleged that the above information should have been told to the issuing magistrate, asking for the right to cross-examine the affiant in an evidentiary hearing in order to prove this theory. To mandate an evidentiary hearing, however, it takes more than mere bare allegations that there were falsehoods in the affidavit, or, as in this case, that material information was left out. Per the *Franks* decision, "(T)he challenger's attack must be more than conclusory and must be supported by more than a mere desire to cross-examine. There must be allegations of deliberate falsehood or of reckless disregard for the truth, and those allegations must be accompanied by an offer of proof. . . . Affidavits or sworn or otherwise reliable statements of witnesses should be furnished, or their absence satisfactorily explained. . . . [A]nd if, when material that is the subject of the alleged falsity or reckless disregard is set to one side, there remains sufficient content in the warrant affidavit to support a finding of probable cause, no hearing is required."

The same procedural rule applies to when it is alleged that material information was left out of the affidavit. However, while every falsehood included in a warrant makes an affidavit inaccurate, not all omissions do so. An affidavit need not disclose every imaginable fact however irrelevant. It need only furnish the magistrate with information, favorable and adverse, sufficient to permit a reasonable, common sense determination whether circumstances justifying a search are probably present. An affiant's duty of disclosure extends only to "material" or "relevant" adverse facts. Facts are "material," and hence must be disclosed, if their omission would make the affidavit *substantially misleading*.

The trial court in this case held that defendant was not entitled to an evidentiary hearing because he made only conclusory allegations that admittedly were based upon assumptions. The Supreme Court agreed, ruling that defendant demonstrated no "more than a mere desire to cross-examine." Also, no evidentiary hearing would have been required even if defendant had supported his claims with affidavits or sworn statements because the information that he asserts was deliberately omitted from the affidavit was not material. I.e., its absence did not "make the affidavit *substantially misleading*." Camacho, for instance, was suspected at the time of being no more than a witness as opposed to a suspect. It wasn't until after defendant's arrest and confession, implicating Camacho, that it was known that he was actually a co-principal in the

planned homicide of another person (i.e., "Toro"). Also, the affidavit already contained information as to Camacho's criminal history, and that he was not an innocent citizen informant. The fact that he was on CYA parole, that he had been arrested for a parole violation, that there was a warrant out for his arrest, that he had a conviction for assault with a deadly weapon, and that he was a gang-banger, was all in the affidavit. So the magistrate already knew that he had a criminal history. Whether or not any other information would have affected the magistrate's decision was held to be "highly questionable."

The Court similarly ruled as irrelevant the fact that another officer had earlier obtained a warrant from a different judge under a different theory of the crime. The police are expected to follow up on all leads, many of which go nowhere. Whether or not there was probable cause to support a different theory is irrelevant to the issue of whether there was probable cause implicating defendant as well. Based upon this, the Court held that the trial court was correct in ruling that defendant was not entitled to a *Franks* hearing, and in denying his motion to suppress.

Note: Such a motion is commonly called a "*motion to traverse*." It is one where the defense goes behind the face of the warrant as it is written and tries to prove that there were material misstatements or omissions. A "*motion to quash*" (not "*squash*;" don't embarrass yourself), on the other hand, is one where the defendant challenges the sufficiency of the probable cause as the warrant is written; i.e., "on the face of the warrant." Given the presumed validity of searches conducted pursuant to warrants, motions to traverse are a real uphill battle for any defense attorney. They can't just allege errors in the warrant to be granted an evidentiary hearing. They must offer some actual proof, typically via sworn affidavits. This is why the safe rule for cops is; when in doubt, and there's time, get a warrant. The likelihood of the prosecution coming out ahead in a motion to suppress is increased ten-fold when you have a warrant.

***Standing, and Searches of Vehicles*:**
***Searches of Vehicles not Listed in a Search Warrant*:**
***Detentions and Reasonable Suspicion*:**

People v. Casares **(Feb. 4, 2016) 62 Cal.4th 808**

Rule: (1) A person in lawful possession of a vehicle, even if only borrowed, has an expectation of privacy in that vehicle and standing to challenge its warrantless search. The vehicle being in close proximity to an apartment that is being searched with a search warrant, but not on the property, is not subject to search unless specifically listed in the warrant. (2) An individual parked at the side of, and in a dimly lighted area, next to a business at night, even with knowledge that thieves commonly do the same, is not sufficiently suspicious to justify a detention of that individual.

Facts: On March 30, 1989, Alvaro Lopez and Guadalupe Sanchez were at defendant's home in Visalia where defendant asked Lopez to obtain three ounces of cocaine for him, for resale. Sanchez procured the cocaine before the three of them, plus another friend of the defendant, Ruben Contreras, drove to the prospective buyer's home. Sanchez was driving. Lopez was in the front passenger seat. Defendant sat behind Sanchez and Contreras sat behind Lopez. Defendant went into the buyer's home, only to return minutes later telling the group that the buyer had visitors and that he would meet them up the road to conclude the transaction. So Sanchez drove them all a short distance away, pulled over, and parked at the side of the road.

Defendant suddenly put a gun to Sanchez's head as Contreras put a knife to Lopez's neck. Defendant ordered Sanchez to give him the cocaine. Defendant then shot Sanchez in the back of the head, killing him instantly. Lopez was shot in the left arm as he bailed out of the car. Defendant shot at him again as he ran across the road. Somewhere in there, Contreras got a few stabs in. Defendant and Contreras fled in the victims' car leaving Lopez with 17 knife and gunshot wounds, several of them life threatening.

A motorist picked Lopez up and took him to the hospital where he remained for several weeks, but survived. Identifying defendant as the shooter, defendant was later arrested and charged in state court with first degree murder (P.C. § 187) with a "lying-in-wait" special circumstance (P.C. § 190.1(a)(15)), and attempted murder (P.C. §§ 664/187). Defendant was convicted and the special circumstance was found to be true. At the penalty phase of the trial, the People offered into evidence some P.C. § 190.3, "factor (b)" aggravating circumstance evidence. "Factor (b)" allows the trier of fact during the penalty phase of a capital murder case to consider evidence of "[t]he presence or absence of criminal activity by the defendant which involved the use or attempted use of force or violence or the express or implied threat to use force or violence." In this case, the People had a pile of aggravating circumstances related to prior events that they introduced into evidence. Defendant filed pre-penalty phase motions to exclude two of these factor (b) aggravating circumstances, both related to the illegal possession of firearms. The trial court denied both motions, allowing the jury to hear the evidence. The jury found that death was the appropriate punishment. An appeal to the California Supreme Court was automatic.

Held: The California Supreme Court unanimously affirmed defendant's conviction and sentence. But in so doing, the Court held that the trial court erred in not suppressing evidence of the two factor (b) incidents contested by defendant.

(1) The Strawberry Street Incident: The first involved the execution of a search warrant at an apartment on Strawberry Street in Visalia on February 19, 1987. Defendant happened to be present although he was not mentioned in the warrant, nor was his black 1974 Monte Carlo which was parked on the street in front of the apartment building. But being present, defendant was detained and searched. The searching officer recovered car keys from his pocket. Discovering that the keys fit the Monte Carlo, the officer searched it and recovered a small .45-caliber derringer from under the driver's seat. Although the officer had previously seen defendant in the Monte Carlo, he had never seen him driving it. Asked whether he owned "any vehicles," defendant replied that he did not. He also specifically denied that the Monte Carlo belonged to him.

The trial court ruled that defendant lacked standing to contest the search of the Monte Carlo due to his claim that he didn't own it. The defendant argued that this evidence should have been excluded as factor (b) evidence in this capital case. The Supreme Court agreed with defendant, ruling that the trial court had erred, and that defendant did indeed have standing to challenge the search of the car. "[C]apacity to claim the protection of the Fourth Amendment depends . . . upon whether the person who claims the protection of the Amendment has a legitimate expectation of privacy in the invaded place." "A legitimate expectation of privacy in a vehicle requires a showing of a property or possessory interest therein."

At defendant's trial, the prosecution argued that because defendant disclaimed ownership in the car, he lacked the necessary standing to challenge the search. The Supreme Court held here that

that was wrong. Defendant was never asked, and never claimed, that he might not have simply "borrowed" the car, and was using it with the owner's permission. He only denied *ownership* of it. Per case law, a person in lawful possession of a car, even if only borrowed, has an expectation of privacy in that vehicle. As to whether the search of the Monte Carlo was lawful as within the scope of the warrant, the Attorney General conceded that the Monte Carlo was not on the property of the apartment that was subject to being searched under authority of the warrant. The Court rejected the A.G.'s alternate argument that given its close proximity to the apartment that was searched, and defendant's statement that the vehicle was not his, showing a "lack of candor," it was reasonable for the officers to enter the vehicle to determine if it was associated with the residence.

The Court ruled that defendant's truthful statement that the Monte Carlo did not belong to him cannot reasonably be equated to a lack of candor justifying a warrantless search. And the A.G. cited no authority for the proposition that a vehicle's mere proximity to a place designated in a search warrant justifies a search of a vehicle not otherwise listed in the warrant. The Court therefore concluded that the trial court erred in denying defendant's motion to exclude the evidence of the gun found in the Monte Carlo. It should not have been available to the prosecution to use as factor (b) evidence in the current capital case.

(2) *The Circle K Convenience Store Incident*: The second incident that the prosecution introduced as factor (b) evidence involved a contact he had with a Visalia police officer at a Circle K convenience store on March 16, 1989. In this case, the officer observed defendant parked in a van late in the evening at the side of the store, in a poorly lit area that lacked any demarcated parking spots. The officer was aware of thefts from the store where subjects would exit to the side of the store and leave in vehicles. So he stopped to investigate the vehicle and its occupants, believing a robbery might be in progress. Defendant was found to be the sole occupant in the van. He had no identification, but gave the officer documentation for the van which he claimed belonged to a friend's uncle.

After the officer was unable to confirm defendant's identity using the name he had given, he asked for, and received, defendant's consent to search the van. About that same time, however, before the van could be searched, defendant's companion returned from the Circle K carrying a bag. That person was questioned and checked through a database. A second officer who had arrived on the scene asked store personnel whether defendant's companion had stolen anything, and apparently was told nothing had been taken. Because defendant had no identification and the van was registered to someone else, the officer felt that a patdown for weapons was called for. This resulted in the recovery of a $1,464 wad of bills. A search of the van, based upon defendant's earlier consent, resulted in the recovery of a gun, found on the floorboard to the right side of the driver's seat.

The trial court ruled (1) that defendant had been detained, but that the detention was supported by a reasonable suspicion of criminal activity, (2) that taking the money out of defendant's pocket during the patdown without cause to believe it was a weapon was illegal, thus suppressing the money, and (3) that the recovery of the gun from the van, based upon defendant's consent to search, was lawful. The Supreme Court, here, however, ruled that defendant had been illegally detained. Noting that the Fourth Amendment protects against unreasonable searches and

seizures, and that a detention is reasonable only if based upon a reasonable, articulable suspicion that the person detained may be involved in criminal activity, the Court held here that the mere fact that the officer was aware of prior thefts from the Circle K with a potential getaway vehicle parked in the shadows at the side of the building, was not sufficient to justify defendant's detention. "Defendant's mere presence in a car legally parked on the less illuminated side of the convenience store, in an area without demarcated parking spaces at a time when other parking is available, did not justify his detention." Everything else, including the recovery of the gun, was the product of that illegal detention and should have been suppressed. Therefore, it was improper to have used this case as factor (b) evidence. However, with all the other evidence of defendant's guilt, including an "abundan(ce)" of other factor (b) aggravating evidence, the Court found the admission of these two incidents was harmless error. Defendant's sentence of death, therefore, was upheld.

Note: What's interesting about this case is the fact that previously adjudicated search and seizure issues, from old "factor (b)" incidents, can be relitigated in a new case. I'm not sure I've seen that done before. Also, the Attorney General in this appeal made the interesting argument that the exclusionary rule should not apply to the penalty phase of a capital trial when the prosecution is attempting to introduce section 190.3, factor (b) evidence. Specifically, the A.G. argued that the exclusionary rule has little deterrent value at the penalty phase of a capital case, the purpose of which is "to enable the jury to make an individualized determination of the appropriate penalty based on the character of the defendant and the circumstances of the crime."

Because law enforcement is not likely to be deterred from conducting unreasonable searches and seizures where it is a remote possibility that the resulting evidence may not be admissible during the penalty phase in an unrelated prosecution potentially occurring years later, any limited deterrent value is outweighed by the societal costs of exclusion of the evidence and the resultant incomplete picture of the defendant's prior criminal activities. However, because this theory was not first raised by the prosecution in front of the trial judge, and finding admission of the questioned evidence to be harmless error anyway, the Supreme Court declined to resolve this question in this case. Too bad. I would liked to have known the answer.

***Consensual Encounters and Detentions*:**
***Vehicles Searches; Searches for Identification and Vehicle Documentation*:**

People v. Lopez **(Oct. 27, 2016) 4 Cal.App.5th 815**

Rule: A police officer asking for identification does not, by itself, convert a contact into a detention. Handcuffing the suspect does not necessarily convert a detention into an arrest. A limited warrantless search of a vehicle for identification and vehicle documentation is lawful.

Facts: On the morning of July 4, 2014, Officer Jeff Moe of the Woodland Police Department, working patrol, responded to a call of a particularly described car "driving erratically" at a certain intersection. Not finding the car, Officer Moe went to the address listed for the license plate that was provided; only a block away. The car was not found there either. Later that day, the officer received another dispatch regarding the same car, but at a different, although nearby, intersection. The informant this time indicated that "Marlena" was the driver, and that she had been "drinking all day." Again, not finding the car, Officer Moe drove to the registered address and sat on it until a few minutes later the car pulled up and parked on the street in front of that

address. Without having noticed anything erratic about her driving, or any other driving violations, Officer Moe walked up to the driver, soon identified as Maria Elena Lopez, as she got out of her car. When she saw the officer approaching her, she seemed "somewhat . . . panicked," and started to walk away.

Concerned that defendant "did not want to be present," and not wanting to "give her a chance to go anywhere," the officer asked her whether she had a driver's license. Defendant said she did not have a license, prompting the officer to ask whether she had any identification at all, to which defendant responded that "there might be identification in the vehicle." Defendant neither smelled of alcohol nor appeared to be intoxicated during this conversation. Officer Moe attempted to put defendant in a "control hold," causing her to pull away from him. So he secured her in handcuffs as another officer looked into her car and found a purse on the front passenger seat. The latter officer retrieved the purse and handed it to Officer Moe, who opened it in search of defendant's identification. In so doing, a small amount of methamphetamine was found in a side pocket. Charged in state court with possession of meth, defendant filed a motion to suppress. The motion was granted and the case dismissed. The People appealed.

Held: The Third District Court of Appeal reversed, upholding the search. First, it was noted that defendant was *not* detained when Officer Moe approached her in broad daylight as she got out of her car. Requesting identification, without more, is not generally considered a detention absent something that would have caused a reasonable person to believe that he or she was not free to leave (such as by the officer "demanding" identification, or by spot-lighting a person while aggressively approaching her; see *People v. Garry* (2007) 156 Cal.App.4th 1100.). In this case, Officer Moe's request concerning whether defendant had any identification did not constitute a "show of authority so intimidating as to communicate to a reasonable person (that) he or she was 'not free to decline [his] requests or otherwise terminate the encounter.'"

Officer Moe's subjective thinking that he did not want her to walk away was irrelevant in that the test is what a reasonable person in defendant's shoes, under the circumstances, would have believed. In other words, at this point at least, defendant was no more than being "*consensually encountered*." But then by telling the officer that she did not have a driver's license with her, she was admitting to being in violation of V.C. §§ 12951(a) and/or 12500(a); driving without a license, giving Officer Moe the necessary reasonable suspicion (if not probable cause) to cite (or arrest) her. Physically restraining her at this point, therefore, was lawful. Defendant, however, argued that searching her car and then her purse were illegal under these circumstances, as the trial court had held. The Appellate Court disagreed.

Over a decade ago, the California Supreme Court held that in "the context of a valid traffic stop during which a driver fails to produce [an] automobile registration, driver's license, or identification documentation upon an officer's proper demand" the officer may do a 'limited warrantless search . . . of areas within [the] vehicle where such documentation reasonably may be expected to be found.'" (*In re Arturo D.* (2002) 27 Cal.4th 60; see also *People v. Webster* (1991) 54 Cal.3rd 411.) This theory justifying a limited search for identification and vehicle documentation is based upon the "pervasive regulation" of motor vehicles, the statutory requirements that require a driver have her driver's license and vehicle documentation with her (V.C. §§ 4462, 12951), and the need for an officer who intends to issue a citation to ascertain the

true identity of a driver and owner of a vehicle so that he may include that information on the citation and the written promise to appear. Such a search is limited to those areas of the vehicle where it is expected that the required documentation might be found. Under the circumstances of this case, this would include her purse. Such a limited search for the vehicle's registration and other related identifying documentation does not violate the Fourth Amendment.

Defendant, however, argued that *Arturo D*. is no longer good law in light of the United States Supreme Court's subsequent decision in *Arizona v. Gant* (2009) 556 U.S. 332. In *Gant* it was held that a warrantless search of a suspect's vehicle and its contents incident to arrest, after that suspect has been secured and can no longer access the interior of her vehicle, is no longer lawful. *Gant*, however, is not without its exceptions. For instance, the *Gant* Court itself held that a warrantless search of the vehicle is still lawful after the arrest of its occupant when it is "reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle." The *Gant* court also acknowledged the existence of "[o]ther established exceptions" to the warrant requirement, citing its own decision in *New York v. Class* (1986) 475 U.S. 106, as authority. In *Class*, the U.S. Supreme Court upheld a limited warrantless vehicle search for the vehicle's identification number (VIN). Based upon this reasoning, the Court here held that a limited search of defendant's vehicle, and her purse that was in the vehicle, for valid identifying information was lawful. Recovery of defendant's meth, therefore, was also lawful.

Note: The Court held, without analysis, that handcuffing defendant did not convert the contact into an arrest, but rather merely a detention. But it did not discuss whether, under the circumstances, physically restraining her was constitutionally reasonable. That may be because discovery of the meth was *not* the product of the act of handcuffing her, making it irrelevant to the lawfulness of the subsequent search. The real importance of this case is the renewing of the validity of *Arturo D*., upholding limited searches of a vehicle for personal identification and vehicle information. This is an issue not yet discussed in any detail by the U.S. Supreme Court. In *New York v. Class*, cited in this case, the "search" was really no more than moving papers off the dash so as to make visible the VIN commonly found in that location, resulting in observation of a gun on the floor. *Arturo D.*, on the other hand, involved a more thorough search, allowing the warrantless search of those areas of the vehicle where you might expect to find such documentation; such as on the dash, over the visor, in glovebox, and under the front seat. How the U.S. Supreme Court might really view such a more thorough, yet still limited search remains an open question.