San Diego District Attorney

D.A. LIAISON LEGAL UPDATE

(COPY - - DISTRIBUTE - - POST)

Vol. 11 August 24, 2006 No. 10
Subscribers: 2,055 www.sdsheriff.net/legalupdates/

Remember 9/11/01: Is there Any Doubt That It Can Happen Again?
Support Our Troops

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THIS EDITION'S WORDS OF WISDOM:

"*No arsenal, or no weapon in the arsenals of the world, is so formidable as the will and moral courage of free men and women.*" (Ronald Reagan)

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ADMINISTRATIVE NOTES:

***Vehicle Inventory Searches*:** A recent unpublished decision of Fourth District Court of Appeal (*People v. Medina* (Jul. 27, 2006) Super. Ct. No. SCS189408) reversed a defendant's conviction for possession of dope due to the illegal inventory search of her car. The problem centered around the officer's testimony

to the effect that after arresting the car's owner, he conducted an inventory search of the to-be-impounded car pursuant to what he believed (erroneously, I'm sure) was his department's policy; i.e., to look for "something (or anything) illegal" that might have been left in the car. The correct legal justification for doing inventory searches, however, is to (1) protect the owner's property while it is in police custody, (2) insure against claims of lost, stolen or vandalized property, or (3) protect the police from danger. Using an inventory search of a vehicle as a "ruse for a general rummaging in order to discover incriminating evidence" without probable cause is *not* a legal justification, or at least cannot be the *only* reason why a car is searched. Officers *must* be familiar with their own department's policies and procedures for doing vehicle inventory searches *and* (just as importantly) be prepared to testify to the correct legal justifications for conducting such a search if you expect any contraband found in it to be admissible in court.

***Illegal Custodial Arrests for Misdemeanors and Infractions*:** It is a clear rule of law that a "*custodial arrest*" (i.e., one where an arrestee is physically transported from the scene) will justify a "*search incident to arrest*." (*Chimel v. California* (1969) 395 U.S. 752.) However, various state statutes limit the officer to citing and releasing the arrestee at the scene when the offense is a misdemeanor or an infraction; a "*non-custodial arrest*." (E.g., see P.C. §§ 853.5, 853.6, V.C. §§ 40303, 40500) In an interesting quirk of the law supported by both U.S. and California Supreme Court decisions (*Atwater v. City of Lago Vista* (2001) 532 U.S. 318; *People v. McKay* (2002) 27 Cal.4th 601.), it has been held that when an officer makes a custodial arrest for a non-bookable offense, even though the person should have been merely cited and released from the scene, evidence seized pursuant to a search incident that arrest will *not* be suppressed. The fact that the officer violated state statutes by making a custodial arrest instead of releasing him at the scene is irrelevant. This is because even though a custodial arrest under these circumstances might be in violation of a state statute, it is *not* in violation of the Fourth Amendment. And unless the U.S. Constitution is being violated, the "Exclusionary Rule" does not require that any resulting evidence be suppressed. Unfortunately, however, as a result of these cases, I'm now starting to hear about cops being trained that a police officer may conduct a "*search incident to a citation*," irrespective of an officer's intent to transport the person from the scene. This theory violates other Supreme Court authority specifically holding that a "*search incident to a citation*" *is* a violation of the Fourth Amendment. (*Knowles v. Iowa* (1998) 525 U.S. 113.) Therefore, absent some reason for finding an exception to the general statutory rule that a person arrested for a non-bookable offense should be cited and released from the scene (and there are such exceptions depending upon the circumstances; see P.C. § 853.6(a), (g)), the statutes mandating the subject's release on his written promise to appear should be followed. It is unprofessional and unethical to be teaching cops to violate California's procedural arrest statutes, as it is unprofessional and unethical for cops to be following such advice. Just because the Exclusionary Rule doesn't apply to a particular type of statutory violation by a police officer doesn't mean we have been given a green light to violate that statute.

CASE LAW:

***Fourth Waivers and Residential Searches*:**

United States v. Howard **(9th Cir. May 25, 2006) 447 F.3rd 1257**

Rule: A Fourth Wavier allowing for a warrantless search of a suspect's residence requires that the officers establish probable cause to believe that the suspect has in fact established the place to be searched as his residence.

Facts: Defendant was placed on federal "supervised release," or "probation" ("parole," in state practice) after doing a stint in federal prison for a bank robbery conviction. As a condition of his release, he was subject to a "search clause" (i.e., a "Fourth Waiver") that allowed for the warrantless search of his residence, person, property, and automobile at any time, and that he would not associate with any convicted felons. He reported his residence to his probation officer (P.O.) as being on East Owens, in Las Vegas, Nevada. Defendant eventually met Tammi Barner; a seven-time convicted felon and recovering cocaine addict, who was on state probation. Tammi and defendant asked the P.O. if, despite her criminal history and defendant's probation conditions, they couldn't maintain a "relationship." The P.O. told them no. Subsequently, the P.O. received information from a confidential informant that defendant was staying with Tammi at her apartment on West Bonanza, and that he stored a gun there. After several months of periodic surveillances, and by checking with Tammi's apartment manager, the owner of the apartment who subleased it to her, her neighbors, and defendant's neighbors at his East Owens residence, it became apparent that although defendant still maintained his East Owens address, he was also shacking up with Tammi at her apartment on a regular basis. Finally, after receiving information from another informant that defendant was a gun dealer and possibly involved in a street gang, the P.O. went to Tammi's apartment. Defendant was observed coming out from Tammi's door, sans shirt, and stretching for some 10 to 15 minutes. Shortly afterwards, Tammi and defendant came out together and were detained. Tammi admitted that some of defendant's personal belongings were in the apartment but refused to consent to a search. After Tammi was released and left the scene, the P.O. decided to search Tammi's apartment anyway, but discovered that he couldn't get in. Defendant did not have a key. The owner of the apartment then showed up and let the P.O. in with his key. A gun, which defendant acknowledged was his, was found in the closet. Charged with possession of a stolen firearm, defendant's motion to suppress the gun and his statements was denied. He pled guilty and appealed.

Held: The Ninth Circuit Court of Appeal reversed. Defendant's Fourth Waiver allowed for the warrantless search of *his residence*; not the residences of others with whom he might be visiting. In order to justify the search of Tammi's apartment under defendant's Fourth Waiver conditions, there must be "probable cause" to believe that the apartment was also defendant's residence. Spending the night there occasionally is not enough. In comparing the facts of this case with prior cases, the Court determined that the P.O. did not have enough information to support the conclusion that defendant did any more that periodically shack up with Tammi. It was apparent that defendant still maintained his

own residence where he initially reported it to be, on East Owens. Factors the Court considered include the fact that no one ever identified Tammi's apartment as where he lived; defendant did not have a key to Tammi's apartment; and he still maintained an apartment on East Owens where he continued to keep clothing and other personal belongings. As such, the P.O. did not have probable cause to believe that defendant lived at Tammi's apartment. The search of her apartment without her consent, therefore, was unlawful.

Note: "*Probable cause*" is now pretty much understood to be the standard when determining whether a suspect is in his house while attempting to justify a forcible entry to execute an arrest warrant, or perhaps when in the pursuit of a fleeing felon and you're trying to figure out where he's hiding. So it was no surprise here that "*probable cause*" would be used as the standard for determining where a Fourth Waiver suspect lives. But I have some difficulty with the Ninth Circuit's assumption that a person can have only one residence. For instance, California's registered sex offender statute (i.e., P.C. § 290(1)(1)(B)) recognizes the obvious; that a person might have more than one "residence address at which he or she regularly resides, regardless of the number of days or nights spent there." In this case, the P.O. certainly knew that defendant still maintained an apartment on East Owens. But the P.O. also had probable cause to believe that defendant was shacking up, at least part time, with Tammi in her apartment. To my (admittedly simple) mind, that gives this guy two residences at which he is "*regularly residing*." But according to the Ninth Circuit, a person on a Fourth Waiver can only reside in one residence at a time, and that would be where he stays most of the time. That conclusion defies common sense and allows the crook to thwart the purposes of his Fourth Waiver simply by keeping all his illegal stuff at his shack-up's house. That makes no sense to me.

***Stalking When in Violation of a Court Order*:**

People v. Corpuz **(Jun. 15, 2006) 38 Cal.4th 994**

Rule: Stalking, per P.C. § 646.9, subdivision (a), when done in violation of a probation-imposed stay-away order, is a straight felony per subdivision (b).

Facts: Defendant and Evelia Chavez dated and produced a child together. In 2001, defendant was arrested for battering Chavez. He was subsequently convicted of a misdemeanor spousal battery, per P.C. § 243(e)(1), and placed on probation for three years. One of the conditions of his probation was that he "stay away from Evie Chavez during probationary period." Despite this order, defendant and Chavez resumed their relationship until March, 2002, when Chavez started dating another man. This set defendant off, resulting in him following and harassing her. In April, defendant called Chavez on her cell phone and threatened to shoot both her and the new boyfriend. This threat was followed up by other threatening messages left on her cell phone. That same night defendant confronted Chavez as she arrived home, kicking and beating the locked door to her car until Chavez called 9-1-1, resulting in defendant's arrest. He was charged with the felony offense of stalking in violation of a court order, per P.C. § 646.9(b). Convicted by a jury and sent to prison, defendant appealed, arguing that "*or any other*

court order," as described in subdivision (b) of the stalking statute, does not include a court-imposed probation condition. The appellate court agreed and reversed. The State appealed to the California Supreme Court.

Held: The California Supreme Court, in a unanimous decision, reversed the Court of Appeal and resinstated defendant's conviction. Stalking is a felony (wobbler), pursuant to subdivision (a) of P.C. § 646.9. It becomes a straight felony per subdivision (b) when the stalking is in violation of "a temporary restraining order, injunction, *or any other court order* in effect prohibiting (stalking, as described in subdivision (a))." (Italics added) The lower Appellate Court was of the opinion that although a condition of probation was in fact a "court order," a felony stalking conviction cannot be based upon a violation of a condition of probation. The Supreme Court disagreed, noting that the plain language of the statute (i.e., "*or any other court order*") includes an order of probation. Any ambiguity in the Legislature's intent, in this regard, "is dispelled by the history of the provision," per the Court. After reviewing that history, the Court found no support for the argument that section 646.9(b) was not intended to include probation orders.

Note: There is a still-valid case that says that violating a condition of probation isn't chargeable as a "*contempt of court*," per P.C. § 166(a)(4). (*People v. Johnson* (1993) 20 Cal.App.4th 106.) That was defendant's argument here, on appeal. But even the lower Appellate Court rejected that argument, holding instead merely that a probation-imposed "stay-away order" is "not sufficiently 'like' TROs or injunctions to come within subdivision (b)." Both the lower Appellate Court and the Supreme Court reviewed the legislative history of section 646.9(b) and reached completely different conclusions, which tells you that any particular Court can pretty much justify whatever position it wants to take. Does that surprise you?

***Brady and Impeachment Evidence*:**

Youngblood v. West Virginia **(Jun. 19, 2006) 547 U.S. ___ [165 L.Ed.2nd 269]**

Rule: The defense is entitled to information with possible witness impeachment value, even when unknown to the prosecution.

Facts: Defendant was indicted in a West Virginia state court on charges that included the abduction of three young women and the sexual assault of one of them. With the three women testifying against him, defendant was convicted and sentenced to 60 years in prison, the jury declining to believe defendant's consent defense. Several months after defendant's conviction, an investigator working for the defense recovered a note purportedly written by two of the victims, taunting defendant and for having been "played" for a fool, warning him that they (the victims) had vandalized his house, and mockingly thanking him for performing oral sex on the one victim. The note had reportedly been shown to a state trooper investigating defendant's case. The trooper was reported to have returned the note to the person who produced it, telling that person to destroy it. The prosecutor was never made aware of this note. Defendant's post-conviction motion for a new trial was denied by the trial court which held that the note,

even if believed to be genuine, provided impeachment evidence only; not "*exculpatory*" evidence. The trial court also declined to fault the prosecutor for not having turned it over to the defense when he didn't know about its existence. A bare majority of the "West Virginia Supreme of Appeals" upheld the trial court's decision. The United States Supreme Court was petitioned by the defendant.

Held: The United States Supreme Court reversed (with three justice dissenting on procedural issues only), and remanded the case to the West Virginia courts for further hearings. In noting that the issue is one of a potential "*Brady violation*" (*Brady v. Maryland* (1963) 373 U.S. 83.), the Supreme Court listed the following well-established principles under *Brady*:

- A *Brady* violation occurs when the government fails to disclose evidence materially favorable to the accused.
- The *Brady* duty extends to *impeachment evidence* (relevant to the credibility of a witness) as well as *exculpatory evidence* (tending to exonerate the defendant).
- *Brady* suppression occurs when the government fails to turn over evidence even when it is known only to police investigators and not to the prosecutor.
- The individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police.
- Such evidence is material if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different, although it is *not* necessary that the defense prove by a "*preponderance*" of the evidence that defendant would have been acquitted.
- A defendant's conviction must be reversed upon a showing that the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict.

As noted: "The reversal of a conviction is required upon a 'showing that the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict.'" The note in question here, going to the issue of the credibility of defendant's accusers, met this test. Per the Court, it "clearly presented a federal constitutional *Brady* claim." It is irrelevant that the prosecutor didn't know about the note; he had a duty to find out about it. The Court therefore remanded the matter back to the Virginia State courts for further hearings on the issue.

Note: This is a pretty cut-and-dried *Brady* case. I briefed it, bulleting the important principles applicable under *Brady*, primarily as a refresher course for all of us on what *Brady* is, and as a reminder to any cops out there who may have difficulty communicating with their prosecutors that that problem needs to be resolved. Because *Brady* is such an involved, complicated issue, a mistake on which can carry with it some very disastrous consequences, its best to just give everything even remotely related to your case to the prosecutor and let him decide whether or not the defense is entitled to it. Writing off some little obscure piece of information as no one's business, declining to pull it out from the obscure regions in the back of your desk drawer just because *you* don't see the relevance, has the serious potential of getting your case reversed. Also, those "*off the record*" discussions with your crook about his gang affiliations, his partners in crime, or other "*intelligence gathering*" efforts, potentially lead to *Brady* information

about which the defense may be entitled to know. It is the prosecutor's job to make this decision; not yours. The state trooper in this case allegedly rejected the note in question because he "attached no importance" to it (a questionable conclusion if he in fact told the note's bearer to destroy it). That wasn't his decision to make. Neither is it yours.

***Eluding a Police Officer, per V.C. §§ 2800.1 et seq., and the Requirement of a "Distinctively Marked" Police Vehicle*:**

People v. Hudson **(Jun. 19, 2006) 38 Cal.4th 1002**

Rule: Defendant was observed by two Los Angeles police officers selling drugs from his car. The officers—one of whom, the driver, was in a police uniform—were in an unmarked, standard police issue Ford Crown Victoria "plain car." The car was equipped with a forward-facing interior red light, located immediately below the rearview mirror, and a blue amber blinking light in the back. The person observed buying drugs from defendant looked up in time to see the officers coming, and ran away. The officers followed defendant as he began to drive away. As defendant started to accelerate and make some evasive turns, the officers turned on their red light and siren. Defendant pulled over, but then ignored the officers' repeated commands to get out of his car. He then drove off again with the officers in pursuit with red light and siren again activated. Defendant blew a couple of stop signs and caused a near collision by going through a red light. As the chase proceeded, he was observed by the officers to stick his left arm out of the driver's side window, crumbling something in his hand. He eventually pulled over again and was arrested. The remnants of some cocaine base and related paraphernalia were recovered from his car. He was charged with transporting a controlled substance (H&S § 22352(a)), possession for sale of cocaine base (H&S § 11351.5), and attempting to elude a pursuing peace officer with a willful disregard for the safety of persons or property (V.C. § 2800.2(a)). An element of V.C. § 2800.2 requires that the vehicle being used to pursue the defendant to be "*distinctively marked*." (See V.C. § 2800.1(a)(3)) At trial, the court read to the jury a modified version of the jury instruction (CALJIC No. 12.85 (1999 rev.)) defining the statutory term "*distinctively marked*," telling the jury that the term "does not necessarily mean that the police vehicle must be marked with an insignia or logo," and that it was for the jury "to determine whether the circumstances, which may include evidence of a siren or red lamp, [were] sufficient to inform any reasonable person that he was being pursued by a law enforcement vehicle." Defendant was convicted on all counts and sentenced to prison. His conviction was upheld by the Second District Court of Appeal. Defendant petitioned to the California Supreme Court.

Held: The California Supreme Court, in a split 5 to 2 decision, reversed defendant's conviction on the V.C. § 2800.2(a) count. V.C. § 2800.1 makes it a misdemeanor to intentionally flee or otherwise attempt to elude a pursuing peace officer's motor vehicle. V.C. § 2800.2 elevates the offense to a felony (wobbler) if the "eluding" is done "in a willful or wanton disregard for the safety of persons or property." Section 2800.2 otherwise adopts all the elements of section 2800.1. V.C. § 2800.1(a) (1) through (4) (and, by referencing this section, 2800.2) requires four other necessary elements: That the pursuing police vehicle (1) exhibit at least one lighted red lamp visible from the front

which the defendant either sees or reasonably should have seen; (2) sounds a siren as may be reasonably necessary; (3) be "*distinctively marked*;" and (4) is operated by a peace officer who is wearing a distinctive uniform. Under the terms of the statute, all four elements must be present. Lower appellate courts have rendered conflicting decisions on what is meant by "*distinctively marked*." For instance, some courts have required something *in addition* to the red light and siren indicating that the pursuing vehicle was a law enforcement vehicle. The trial court in this case, following the rule from other appellate decisions, adopted a more lenient standard; i.e., that other than the red light and siren, no distinct insignia or logo is required. Rather, the test is whether, under the "totality of the circumstances," a reasonable person would have known he was being pursued by a law enforcement vehicle. The Supreme Court ruled that this more lenient standard violates the Legislature's apparent intent when it specifically required *all four* elements to be present. An officer in a distinctive uniform and a red light and siren are three of those elements. The need to be distinctively marked with something signifying that the pursuing vehicle is a law enforcement vehicle is fourth, separate element. To hold otherwise would have the effect of making the separate "distinctively marked" element mere surplusage. Also, as noted by the Court, what a reasonable person might have believed is *not* an element of V.C. § 2800.1. The jury should have been instructed that other than the uniform and the red light and siren, something else must be present which "distinctively marked" the pursuing vehicle as a law enforcement vehicle. Because they were misinstructed, the V.C. § 2800.2 conviction cannot stand.

Note: The two dissenting justices disagreed, siding with the trial court's finding that a red light and siren, by themselves, satisfies the "distinctively marked" requirement. But that knowledge and $1.80 won't get you any more than a "coffee vente of the day" at your local Starbucks. But when you think about it, should not the courts be looking at the *intent* of the statute, rather than some obscure interpretation that only serves to annihilate that intent? This case is a clear example. Both the defendant and the guy who was buying dope from him, as was readily apparent from their respective reactions to the officers' approach, knew full well who the officers were in their standard issue, Crown Vic. Defendant even pulled over once when the officers first hit him with the red light and siren. And then when he sped off, blowing stop signs and red lights, was not the public in just as much jeopardy by his reckless driving irrespective of whether the police car had some distinctive marking other than the light and siren? But, as the majority notes, when the terms of a statute are unambiguous, it is not up to the courts to question the Legislature's wisdom in writing laws. Maybe this section needs to be amended to reflect a more rational interpretation.

***Arrests: Probable Cause to Arrest and Ramey/Payton*:**

***Hart v. Parks* (9th Cir. Jun. 19, 2006) 450 F.3rd 1059**

Rule: *Peyton*/*Ramey* is not violated by asking a criminal suspect to come out of his house. Probable cause justifying an arrest exists when the "*cumulative information*" establishes a "*fair probability*" of the arrestee's guilt.

Facts: On March 13, 2000, a 500-pound pallet of Academy Award Oscar statuettes ("Oscars") were reported missing and possibly stolen. Two experienced Los Angeles Police Department detectives were assigned to investigate. It was quickly determined that the Oscars likely disappeared from the facilities of the company hired to ship them to the Academy of Motion Picture Arts and Sciences; *Roadway Express Shipping*. It was further determined that the Oscars would have had to have been taken from Roadway's Los Angeles loading docks between 3:01 am and 8:00 am on March 8, and that such a heist would have necessarily involved at least two people; a forklift operator and a truck driver. Interviews with various employees resulted in Anthony Hart (plaintiff in this civil suit; defendant in the criminal case), a Roadway forklift operator, being identified by a couple of people as a possible suspect in that he was a "known thief." Hart was interviewed, but refused to discuss the missing Oscars, saying he "was not a snitch." The next day, a $25,000 reward for information was offered to Roadway employees in a meeting at which Hart was present. Information about the reward was not publicly announced. This prompted an anonymous telephone call to Roadway's security chief identifying Hart as the thief. Also, an individual named Daniel Pearson (apparently an attorney) called and indicated that he had been retained by an individual who wanted to turn in the Oscars and claim the $25,000 reward. A surveillance was immediately initiated on Pearson during which he was followed while going to Hart's residence. A few days later, the reward was upped to $50,000 and again offered to Roadway employees without any public announcement. This resulted in a different anonymous caller identifying Hart as being involved in the theft. Also, within 30 minutes after this reward was offered, Pearson called again seeking the reward for his still-unidentified client. In this call, Pearson indicated that "they" had the Oscars, and that he would deliver them to an undisclosed location in exchange for the reward money. A third anonymous caller indicated that he had personally seen Hart load the Oscars into a truck driven by an employee named Larry. A check of company records corroborated the fact that both Hart and a truck driver named Larry Ledent were working on the morning of the theft. It was also learned that both Hart and Ledent had prior criminal histories for theft. Armed with this information, the detectives went to Hart's house. He complied when asked to step out of his house and answer some questions. But he refused to give the detectives permission to search his home. He was therefore arrested and taken to the police station for further questioning. Larry Ledent was arrested later that day and, when questioned, confessed that he and Hart had in fact stolen the Oscars. The missing Oscars were subsequently recovered (although we're not told how or where). The Los Angeles District Attorney rejected the case on Hart citing a lack of sufficient admissible evidence. Over the next five months, additional evidence was collected connecting Hart with at least two of the stolen Oscars, leading to a grand jury indictment charging him with theft. He was rearrested on an arrest warrant stemming from the indictment. He later pled "no contest" to one count of receiving stolen property and was sentenced to probation. Hart then filed this federal civil rights suit alleging that he had been illegally arrested. When the federal district court eventually granted the civil defendants' (i.e., police officers, etc.) motion for summary judgment (dismissing the lawsuit), Hart appealed.

Held: The Ninth Circuit Court of Appeal affirmed. Hart first argued that the detectives had violated *Payton v. New York* (1980) 445 U.S. 573 (known as a "*Ramey*" violation,

per *People v. Ramey* (1976) 16 Cal.3rd 263, in state practice), when they arrested him without a warrant in the first arrest at his home. Hart cited a prior case (i.e., *United States v Al-Azzaway* (9th Cir. 1985) 784 F.2nd 890.) where it was held that *Payton* was violated when officers ordered a defendant out of his house at gunpoint. The Court rejected this argument in that in this case, Hart was merely asked to step outside to talk. Without any evidence to the effect that he was somehow "*coerced*" into coming out, *Payton* (and *Ramey*) was not violated. Hart further argued that he was arrested without probable cause when he was taken to the police station for questioning. "*Probable cause*" merely requires that "the facts and circumstances within [the officers'] knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the [plaintiff] had committed or was committing an offense. . . . Police must only show that, under the totality of the circumstances, . . . a prudent person would have concluded that there was a fair probability that [the suspect] had committed a crime." The Court concluded here that the detectives had "*substantial evidence*" that Hart was involved in the theft of the Oscars when they arrested him at his house. For instance, the detectives knew that Hart was working at the time of the theft. It was known that a forklift would have had to have been used to take the 500-pound pallet of statuettes, and that Hart was a forklift operator. It was further known that both Hart and the co-suspect (Ledent) had criminal records for theft. The detectives were aware that Pearson claimed to know who had the Oscars, and where they were located, indicating at least some association with the thief. Pearson's acquaintanceship with Hart had been established by the time the arrest was made. (It was later discovered that they were in fact brothers-in-law.) Lastly, three separate anonymous calls had been received, each connecting Hart with the theft. Together, this was more than enough information upon which to base an arrest. The fact that a lot of the information the detectives had was "hearsay" and other inadmissible information is irrelevant. Also, the fact that the information available to police officers "gave rise to a variety of 'inferences,' some of which support Hart's innocence," is also irrelevant. "(O)fficers may 'draw on their own experiences and specialized training to make inferences from and deductions about the cumulative information available to them that might well elude an untrained person." Similarly, the fact that if viewed in isolation, any single fact, independently, might not be enough to establish probable cause is unimportant. Probable cause is a determination made based upon "*cumulative information*" (more often referred to as the "*totality of the circumstances*"). Because this arrest was lawful, his second arrest, based upon all the above plus the results of some further investigation by the detectives resulting in Hart being indicted by a grand jury, was also lawful. The trial court, therefore, was correct in granting the civil defendant's motion for summary judgment.

Note: While I'm trying to shy away from civil cases for the most part (being about two months behind in writing these briefs and desperately trying to catch up), this decision provides a thorough discussion of what it takes to establish probable cause, the detectives doing an excellent job of putting together, piece by piece, a whole bunch of circumstantial evidence. My only disappointment here is that he wasn't forced to go to trial on the theft charge instead of plea bargaining it away as a P.C. § 496, receiving stolen property. They never state the value of the Oscar statuettes, but 500 pounds of these things had to be worth a whole bunch more than just a probationary sentence.