San Diego District Attorney

D.A. LIAISON LEGAL UPDATE

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Remember 9/11/01; Support Our Troops

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THIS EDITION'S WORDS OF WISDOM:

"*When one engine fails on a twin-engine airplane, you always have just enough power left to get you to the scene of the crash*." (Unknown)

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ADMINISTRATIVE NOTES:

***Filing a Complaint as a Trigger to a Suspect's Sixth Amendment Right to Counsel*:** I am getting a surprising number of requests for information on "*some new rule*" about being required to advise a suspect of his "*Sixth Amendment right to counsel*" along with his *Miranda* rights when arrested on a warrant. Well, it's

not a new rule anymore, and in fact has been around for at least a year. But first, it is not the existence of an arrest warrant that causes the problem. *It is the filing of a complaint*, typically done as a prerequisite to obtaining an arrest warrant, that, as was held in *People v. Viray* (Dec. 14, 2005) 134 Cal.App.4th 1186 (See *Legal Update*, Vol. 10, No. 17, pg. 2; Dec. 20, 2005), triggers the applicability of a criminal suspect's *Sixth* Amendment Right to Counsel. (*Note*: That's *Sixth* Amendment, not "*Fifth*" Amendment/*Miranda*, Right to Counsel.) While an arrest warrant by itself does *not* trigger one's Sixth Amendment rights, the existence of an arrest warrant should be a red flag to you that in all likelihood a complaint has been filed. We do this commonly when we need to get an arrest warrant into the system because a known suspect cannot be located, or as a prerequisite to an extradition. In such a case, as long as the suspect has not yet been formally arraigned in court (his court appearance during extradition proceedings in another state does not count.), you can still initiate an interrogation with him. But you must first obtain a waiver of both his Fifth Amendment (i.e., *Miranda*) self-incrimination and attorney rights (at least if he's in custody), *and* his Sixth Amendment right to counsel. So what is the procedure for doing this? Funny you should ask: If your suspect knows that a complaint has been filed, then a simple *Miranda* admonishment and wavier will serve to waive both his Fifth *and* Sixth Amendment rights. If he doesn't, you must either first tell him that a complaint has been filed, or ask him whether, in addition to his Fifth Amendment self-incrimination rights (i.e., to remain silent and for the assistance of an attorney before and during questioning), he also waives his Sixth Amendment right to the assistance of an attorney (i.e., his right to have an attorney represent him at all "critical stages" of a prosecution). Should you fail to do this, we will lose his statements. I have an article I've written on this issue and a short training outline, both available to you upon request.

***Holiday Filing Deadlines*:** At the direction of the Hon. Janis Sammartino, Presiding Judge of the San Diego Superior Court, Downtown and Vista Courts have set a 9:30 a.m. filing deadline for all criminal cases for Friday, December 22, 2006, and Friday, December 29, 2006. It is assumed (not having heard from them) that the times are the same or similar for the other branch courts. In order to comply with this request, all in-custody arrest reports must be received by the Downtown and Vista offices of the District Attorney by the times set forth below:

> No later than 1:00 p.m., Thursday, December 21, for Friday (Dec. 22) arraignments, and;
> No later than 1:00 p.m., Thursday, December 28, for Friday (Dec. 29) arraignments.

In order to comply with the mandate of P.C. § 825, all persons arrested during the following time periods who remain in custody must be arraigned no later than the close of business on the date as listed:

> Arrests from between 1700 hours on Tuesday (Dec. 19) and 2400 hours on Wednesday (Dec. 20), must be arraigned by Friday (Dec. 22).

Arrests from between 1700 hours on Tuesday (Dec. 26) and 2400 hours on Wednesday (Dec. 27), must be arraigned by Friday (Dec. 29).

***Legal Update E-Mail List*:** If you are not already getting the *Legal Update* as it is published and wish to be put on the e-mail list, you need only ask by e-mailing a request to me via either of the above listed e-mail addresses. Please include why you are interested; e.g., you're a cop, prosecutor, attorney, instructor, student, etc.

CASE LAW:

***Sex With a Developmentally Disabled Victim*:**

People v. Thompson **(Sep. 15, 2006) 142 Cal.App.4th 1426**

Rule: The victim's lack of mental capacity to consent to sexual activity upheld under the facts of this case.

Facts: Renee R. was born with Down Syndrome and suffered from "a cluster" of physical deformities and disabilities including metal retardation. At the age of 36, she lived in a group home for developmentally disabled adults. She communicated at the level of a 9 or 10-year-old. She could read at a second grade level, but didn't always understand what she read. She could add, but had trouble subtracting and couldn't divide. She could not make change, carry out banking transactions, nor understand the concept of a credit card. She worked in a "sheltered workshop" for the developmentally disabled, stuffing envelopes, painting ceramics, hanging clothes and sorting books. She could not drive unsupervised nor use public transportation on her own. She didn't learn to cross a street safety until she was 30. She could not cook, except to scramble eggs, microwave bacon or boil water. She had to be reminded to use soap and shampoo when bathing and to wear underwear. Renee knew generally what sexual intercourse was, and that it could result in pregnancy. She had in fact had a sexual relationship with another resident of her group home (with the knowledge of the staff and approval of her mother), although it apparently did not involve intercourse. She did not understand such terms as sodomy or oral copulations, but knew what it meant to be raped. In May, 2004, defendant was hired to work at Renee's group home. On his first night there he entered Renee's bedroom and engaged in various sex acts with her (e.g.; oral copulation, digital penetration), but was apparently unable to have intercourse. Renee offered no resistance, saying nothing while defendant had his way with her. At trial, she was able to describe the specific acts although she testified to being in a "deep sleep" during the assault. The morning after being assaulted, Renee called her mother and told her that she'd been raped. Her mother took her to a hospital where a sexual assault exam confirmed that she had an injury consistent with having been sexually assaulted. Although no semen was found in Renee's vagina, there was some left on a sleeping bag defendant used to clean himself. DNA and defendant's admissions identified him as the perpetrator, although he denied any actual sexual intercourse. The prosecution was based upon the theory that Renee was so developmentally disabled as to be incapable of giving legal consent and

that this was either known, or reasonable should have known, to defendant. Upon being convicted of having penetrated the victim with a foreign object (P.C. § 289(b)) and oral copulation (P.C. § 288a(g)) (among other crimes), defendant appealed, arguing that the evidence was insufficient to prove that Renee was incapable of consenting.

Held: The Fourth District Court of Appeal (Div. 2) affirmed. The statutes for which defendant was convicted provide that it is a felony to (1) sexually penetrate or (2) engage in oral copulation with a person who is so developmentally disabled as to be incapable of giving legal consent, so long as this is known, or reasonably should have been known, to the person committing the act. Defendant argued that Renee R. was legally capable of consenting. The jury found otherwise and the Appellate Court agreed. "Consent" in the context of these statutes means "positive cooperation in act or attitude pursuant to an exercise of free will. The person must act freely and voluntarily and have knowledge of the nature of the act or transaction involved." (P.C. § 261.6) The Appellate Court compared the evidence in this case with prior case law and noted that convictions have been upheld in cases where the victims had more mental capacity to made decisions than did Renee. The fact that she could do some things for herself, had a general understanding of the concept of sexual intercourse, and knew how babies were made, does not mean that she was mentally capable of consenting to participating in sexually-related acts.

Note: Mental capacity, of course, is a matter of degree. Where you draw the line between being capable of consenting and being incapable is anyone's guess. The decision cites two prior cases, both of which upheld findings that the respective victims were incapable of consenting to sex: *People v. Boggs* (1930) 107 Cal.App. 492, victim with the mind of a 10 to 12-year-old; and *People v. Mobley* (1999) 72 Cal.App.4th 761; two victims, one with an I.Q. of 80 (ability to reason less than that of a 14-year-old) and the other with an I.Q. of about 70 to 75 (mental capacity of an 11-year-old). The Court also noted that just because Renee did not have the mental capacity to consent in this case does not mean that she couldn't under different circumstances. Here, she was taken advantage of by someone who was employed as one of her caregivers and who exploited her vulnerability, never offering her an alternative. Her relationship with the other resident with whom she had had a sexual relationship, as she so testified, was one where she understood what was going on, was a willing participant, and enjoyed the experience.

***Dependent Adult Abuse, per P.C. § 368(b)(1) & (f)*:**

People v. Matye **(Sep. 19, 2006) 142 Cal.App.4th 1510**

Rule: To qualify as a "*dependent adult*" for purposes of the elder abuse statute, one's physical or mental abilities need only be limited in some significant way.

Facts: Defendant, at age 37, lived with his 60-year-old mother, Estill, in her trailer. Estill had suffered a massive stroke in 1980 that had "some effect" on her mental abilities. The stroke also caused partial paralysis on the right side of her body, resulting in weakness and lack of coordination in her right arm and right leg, and making it

difficult for her to walk without a leg brace and the use of a cane, walker, or handrails. At some point defendant initiated a sexual relationship with Estill's 18-year-old granddaughter (defendant's niece?), who had also moved into the trailer. Estill objected to this going on in her trailer and tried make them both move out. During the resulting argument, defendant took Estill's cane and threw it into the hallway and began slapping her. He repeatedly slapped her throughout the weekend, hit her with some object (unknown what), and struck her in the chest with his fist. At one point, he twisted her arm and threatened to break it. When Estill attempted to leave her bedroom, he picked her up and threw her back onto the bed. Several times he threatened to kill her and pulled the telephone out of the wall. A neighbor eventually called police and defendant was arrested. Convicted of dependent adult abuse, per P.C. § 368(b)(1) and (f), defendant appealed, arguing that Estill did not qualify as a "*dependent adult*," as that term is defined in subdivision (h) of section 368.

Held: The Third District Court of Appeal (Sacramento) affirmed. P.C. § 368(b)(1) makes it a felony for "(a)ny person who knows or reasonable should know that a person is an elder or dependent adult . . . " to physically abuse an elder or dependent adult. Subdivision (f) makes it a felony to commit a "false imprisonment" of an elder or a dependent adult through violence, menace, fraud or deceit. Estill, being only 60 years old, didn't qualify as an "*elder adult*" because she was not yet 65 years of age or older. (subd. (g)) Defendant's argument on appeal was that the evidence was insufficient to prove that Estill qualified as a "*dependent adult*." Subdivision (h) defines "*dependent adult*" as "any person who is between the ages of 18 and 64, who has physical or mental limitations which *restrict* his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age." (Italics added). The Court noted that "*restrict*" is not synonymous with "*preclude*." It is not necessary that the prosecution prove that the dependent adult was incapable of carrying out normal activities or of protecting his or her rights. It is only necessary to prove that the victim's ability to do so is "*limited in some significant way*." In this case, Estill's physical limitations were obvious. She also testified to some difficulty in speaking, comprehending, and remembering. Estill qualified, therefore, as a "*dependent adult*."

Note: As noted above (See *Note* to the prior case where quantifying one's mental capacity is discussed), we can only speculate where the line is between who has, and who does not have, sufficient physical or mental limitations (i.e.; "*limited in some significant way*") so as to qualify as a "*dependent adult*." When you read the legal definition of a dependent adult as contained in the statute, many of us might have to wonder whether, with "physical or mental abilities (that) have diminished because of age," we ourselves are coming dangerously close to qualifying. For me, at the ripe old age of 61, it's a toss up as to which category I'll qualify for first; "dependent" or "elder" adult. But this case is important for noting that the impairment need only "restrict" or "limit" the victim's abilities "in some significant way." That's a good thing to know when attempting to apply section 368 to any alleged victim who has not yet reached the age of 65.

***The Exclusionary Rule; Fruit of the Poisonous Tree*:**

People v. Rodriguez **(Oct. 10, 2006) 143 Cal.App.4th 1137**

Rule: Existence of an arrest warrant will not validate the otherwise unlawful detention which precipitated the warrant check.

Facts: Two Bell Gardens police detectives working gangs and narcotics stopped defendant's vehicle for having a burnt out brake light. A warrant check resulted in discovery that defendant had an outstanding no-bail warrant. A search of defendant's car incident to his arrest resulted in recovery of a bag of methamphetamine. The detectives did not write defendant a citation for the brake light. Charged with possession for sale and transportation of methamphetamine, defendant filed a motion to suppress. At the hearing on the motion, defendant's employer testified to having retrieved defendant's vehicle a couple of days later at the impound lot and found all his lights to be functional. Defendant therefore contended that the detectives lied about there being a defective brake light. The trial court, however, ruled that it was irrelevant whether or not the officers made up a story about the brake lights. Per the trial court, the existence of the outstanding arrest warrant rendered the legality of the traffic stop irrelevant. The court, therefore, declined to make any findings on whether or not the detectives did in fact fabricate the cause for the stop. Defendant pled guilty and appealed.

Held: The Second District Court of Appeal reversed, remanding the case back to the trial court to finish the hearing on the motion to suppress, and to make a factual determination as to whether or not the brake light was in fact defective. The Supreme Court established the so-called "*Exclusionary Rule*" years ago, mandating the suppression of evidence that is discovered as a direct result of police misconduct. But it is also a rule of law that not all evidence that is discovered as a result of such misconduct is necessarily the "fruit of the poisonous tree" and subject to suppression. In determining where the line is between the direct products of an illegal search (which *will* be suppressed) and that which is not the "*fruit of the poisonous tree*" (which will *not* be suppressed), the Court ruled that the following factors are relevant: (1) The temporal proximity of the Fourth Amendment search and seizure violation to the ultimate procurement of the challenged evidence; (2) the presence of intervening circumstances; and (3) the flagrancy of the official misconduct. In this case (assuming for the sake of argument that the detectives did in fact fabricate the cause of the stop), the discovery of the outstanding warrant and the search of defendant's vehicle were very close in time to the allegedly fabricated cause for the stop. (First factor.) However, the existence of the outstanding arrest warrant qualifies as an intervening circumstance. (Second factor.) With these two factors balancing each other out, the deciding factor in determining the applicability of the Exclusionary Rule is the flagrancy of the officers' action in fabricating the cause for the stop. (Third factor.) On this issue, the Court noted that: "It is difficult to imagine a more flagrant example of official misconduct than perjury by a police officer." Such perjury "involve[s] a corruption of the truth-seeking function of the trial process." The Court rejected the People's argument that the recent U.S. Supreme Court ruling of *Hudson v. Michigan* (2006) 126 S.Ct. 2159, where it was held that

suppression of evidence was not a necessary result of a "knock and announce" violation in the execution of a valid search warrant, justifies the admission of the evidence in this case. The People's reasoning was that because there was a valid arrest warrant, the resulting evidence should not be suppressed even if the officers did fabricate the existence of a defective brake light. The Court, however, found *Hudson* to be inapplicable to this situation. The Supreme Court in *Hudson* noted how difficult it is to consistently apply the rules in a "knock/announce" case (i.e., how long is a reasonable time to wait before forcing entry?), and a violation of the rules does not necessarily involve intentional police misconduct. In contrast, the rule that a traffic stop must be justified by some observed traffic infraction is simple and straightforward. Fabricating probable cause is a clear constitutional violation and will remain subject to the Exclusionary Rule. The case, therefore, must be remanded to the trial court for a determination of whether the defendant's brake light was in fact defective.

Note: Now don't everyone get excited here about the Court (or me, for that matter) calling these two Bell Gardens detectives liars. Neither I nor the Court is doing that. Anyone who's been in this business for any length of time knows that 99% of the time, it's the defendant and the defendant's lying buddies who are perjuring themselves. But that does not lessen the importance of the message in this case: Despite the occasional exceptions being periodically carved out by the Supreme Court, the Exclusionary Rule is here to stay and will continue to be for some time. As long as there is that one percent of less than honest police officers on the street, thinking that putting crooks away justifies them compromising their integrity (as well as the damage it does to the public's trust in law enforcement in general), all of us can expect the courts to hold us in check through the use of the Exclusionary Rule. As big a critic as I am of the mistakes we all make, and of the few instances of law enforcement dishonesty from a few bad apples, I also truly believe that we in California have the best, most professional, and most honest law enforcement officers (and prosecutors) in this county. I also believe that it is the Exclusionary Rule that has helped to get us here, and that for those of us who try our hardest to live by the rules, its continued existence should not be a problem. So don't take it personal. Just know that as long as you and I measure up to what the courts (and the public) expect of us, we can all be proud of the job we do.

***Consent Searches, College Dorms, and Inevitable Discovery*:**

***People v. Superior Court* [*Walker*] (Oct. 11, 2006) 143 Cal.App.4th 1183**

Rule: University employees do not have the authority to allow police officers into a student's dorm room. However, where the evidence would have inevitably been discovered anyway, contraband recovered from the dorm room will be admissible under the facts of this case.

Facts: Kim Payne, a Santa Clara University Campus "Safety Service Officer" (*not* a peace officer), was on routine bicycle patrol on campus when he spotted defendant lighting up and smoking what is known as a "blunt" (described as a small cigar stuffed with marijuana). Despite defendant's attempt to hide the illicit substance, Officer Payne,

who by then could smell the stuff, stopped defendant and asked him what it was he was smoking. Proudly displaying two cannabis club cards, defendant admitted to smoking marijuana. Volunteering that he had a baggie of marijuana in his dorm room, defendant invited the officer up to see his Proposition 215 medical use authorization letter. Later escorting the officer into his room, defendant produced a single baggie of marijuana and a "medical release form" that purported to authorize his use of marijuana for therapeutic purposes. When defendant denied having any more marijuana, Officer Payne started poking around on his own and found a bunch more, $1,800 in cash, and other indications of an ongoing commercial enterprise. During this procedure, two Santa Clara Police Department officers arrived in response to a call from Officer Payne's department. They were escorted to the open door of defendant's dorm room where they could see, in plain sight, all the marijuana and other items unearthed by Officer Payne. When Officer Payne invited them in to participate in the search, the officers asked him if he had defendant's consent to do that. Officer Payne responded that he did, but that it wasn't necessary anyway because defendant had signed a waiver in his "Residence Housing Contract." As explained by the Court, this contract gave University officials the right to inspect his room with reasonable notice, or whenever "there is a reasonable suspicion that a violation of the law or University polices is occurring or has occurred." With that, the Santa Clara officers entered the room and took control of the contraband. Defendant was charged with possession of marijuana for purposes of sale. His motion to suppress the evidence, however, was granted; the trial court rejecting the People's argument that the Santa Clara police officers had either "actual" or "apparent" consent to enter defendant's dorm room and seize the evidence. The People appealed.

Held: The Sixth District Court of Appeal reversed. Despite rejecting the People's argument that the Santa Clara officers could rely upon Officer Payne's purported consent, the Court found that the evidence would have inevitably been discovered anyway and therefore should not have been suppressed. In an excellent, although excessively long-winded, decision, replete with enough legal cites and historical analysis to choke a good-sized Brontosaurus, the Court first considered the argument that the Santa Clara police officers' warrantless entry into defendant's dorm room was justified under the theory that Officer Payne had the "*actual authority*" to give them his consent. The issue was whether Officer Payne, as an employee of the University, had the legal authority to grant such consent. On this issue, the People argued that Officer Payne had common authority over the premises, and therefore had the legal right to give the Santa Clara officers permission and participate in the search. A "valid third-party consent to search (or enter) occurs where the party giving that consent 'possesses common authority over the premises.'" Noting the dearth of cases on the issue of a University employee's right to give consent to search a dorm room, the Court discussed one older California case that held that such an employee *did* have such authority (See *People v. Kelly* (1961) 195 Cal.App.2nd 669) and a number of cases from other states which have consistently held that he *did not*. Also taken into consideration was the Residence Housing Contract, purporting to give University employees the right to inspect the dorm rooms under certain conditions. Ultimately, the Court found that defendant's privacy rights in his dorm room were similar to those of the tenant in a landlord-tenant situation. A landlord does not have the right to give consent to the police to make warrantless entries and searches of his tenant's

residence. Neither should a University employee. While the Residence Housing Contract gives the University certain inspection rights, it does not grant to the University the right to let the police into a student's dorm room. There was, therefore, no actual authority to give consent in this case. The Court next considered the argument that the Santa Clara officers reasonably believed that Officer Payne had the "*apparent authority*" to allow them into defendant's room. Where police officers reasonably (albeit mistakenly) believe that the University's employee has the authority to give them consent to enter and search, then the officers may lawfully act upon that belief. After discussing this issue for some time, including defendant's failure to object when Officer Payne invited the Santa Clara officers into the room, the Court declined to decide this issue because the doctrine of "*inevitable discovery*" saved the evidence anyway. Under "*inevitable discovery*," where evidence that is recovered unlawfully would have been inevitably discovered by other lawful means, a Court will not suppress that evidence. The fact that the officers could have gotten a search warrant had they made the effort does not trigger the applicability of the inevitable discovery rule. But it also need not be shown that the evidence would undoubtedly been discovered lawfully. "The doctrine does not require certainty." The People need only prove a "*reasonable possibility*" that the evidence would have been discovered by other, lawful means. It need only be proved "by a preponderance of the evidence that evidence otherwise unlawfully obtained would have been inevitably discovered." Here, Officer Payne (for whom the Fourth Amendment did not apply in that he was not a law enforcement officer) would have inevitably just handed over to the Santa Clara officers all the physical evidence he had already recovered on his own even if the officers had not come in and seized it. Therefore, under the doctrine of inevitable discovery, the evidence should not have been suppressed.

Note: For prosecutors who need the cites to the various legal theories discussed, this 36-page decision will give you more information than if you had Shepardized it, complete with all the rules and the procedures for applying those rules. For cops, the main thing to take away from all this discussion is that a campus police officer or other college employee does not have the authority to allow you to enter or search a student's dorm room despite what is purported to be a prior written waiver of the student's privacy rights in his room. Get a search warrant. While "*inevitable discovery*" saved the evidence in this case, it might not be applicable under other circumstances. And as to "inevitable discovery," note that the fact you had probable cause and *could* have obtained a warrant if you had sought one will not save the evidence. As the Court here noted, if that were the rule, there would never be any reason to get a warrant. The courts are not going to allow us to get around the presumptive need for a search warrant that easily.

***Residential Entries; Welfare Checks*:**

***United States v. Black* (9th Cir. Oct. 26 2006) 466 F.3rd 1143**

Rule: Entry into a residence to check for the possible presence of a domestic violence victim is lawful under the circumstances.

Facts: Tyroshia Walker called 9-1-1 to report that she had been beaten by defendant that morning in their apartment, that defendant had a gun in the apartment, and that she wished to return to the apartment to retrieve her belongings. She told the 9-1-1 dispatcher that she would be waiting in her vehicle outside for the police to arrive. Two officers were dispatched to the scene, arriving within three minutes. Tyroshia, however, was nowhere to be found. One officer walked around to the back of the apartment and found defendant, noting that he matched the description of the suspect. Defendant admitted being the person about whom Tyroshia had complained, but denied knowing where she was. He also denied living in the apartment. When defendant became agitated, the officer patted him down for weapons and then, with defendant's consent, searched his person. A key to the apartment was recovered from his pocket. Using the key, the officer entered the apartment to check for Tyroshia, believing that she might be inside and injured. Tyroshia was not found, but a gun laying out on the bed was observed. A search warrant was subsequently obtained for the apartment and the gun was recovered. Defendant was prosecuted in federal court for being a felon in possession of a firearm. After his motion to suppress the gun was denied and he was convicted, defendant appealed.

Held: The Ninth Circuit Court of Appeal, in a split 2-to-1 decision, affirmed. The issue, of course, was the legality of the warrantless entry into the apartment under these circumstances, where such entry led to the observation of the defendant's gun. While noting that the officer was not looking for evidence of criminal activity, but rather making a "*welfare check*" for a possible domestic violence victim, the majority of the Court found that the circumstances "support an objectively reasonable belief that (Tyroshia) could be in the apartment." Using some very telling language, the Court noted that; "(t)his is a case where the police would be harshly criticized had they not investigated and (Tyroshia) was in fact in the apartment. Erring on the side of caution is exactly what we expect of conscientious police officers. . . . We should not second-guess the officers' objectively reasonable decision in such a case." As such, the entry and the observation of the defendant's gun were lawful.

Note: The dissent disagreed that the officers acted reasonably by believing that the victim might be lying injured in the apartment, given the limited time span between when Tyroshia had placed the call for assistance and the officer's arrival at the scene. But consistent with the majority opinion, most officers are not about to just walk away without checking the apartment for the victim when she can't be found out front where she says she'll be. "Erring on the side of caution" is the operative phrase here, and is certainly consistent with our duty to protect the public from the likes of this defendant. The Court further noted in a footnote (fn. 1) that it would have reached the same conclusion had it analyzed the situation under the so-called "*emergency aid doctrine*," where entry is made to rescue someone who officers have reason to believe (i.e., a "*reasonable belief*") is inside and needs law enforcement's help. (See *People v. Ray* (1999) 21 Cal.4th 464.) As a police officer faced with these circumstances, you typically don't try to categorize the legal theory justifying your warrantless entry, like the Ninth Circuit is prone to do. You just use your common sense and act reasonably. This, when all is said and done, should be the test the courts use when critiquing what you did.