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Remember 9/11/2001: Support Our Troops

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THIS EDITION'S WORDS OF WISDOM:

"*It matters not whether you win or lose; what matters is whether I win or lose*."
(Darrin Weinberg)

IN THIS ISSUE: Page:

***Case Law*:**

CASE LAW:

***Use of Force*; *Pepper Spray and Batons*:**

Young v. County of Los Angeles **(9th Cir. Aug. 26, 2011) 655 F.3rd 1156**

Rule: Use of pepper spray and a baton on a non-combative, albeit uncooperative, citizen is excessive force.

Facts: Plaintiff in this civil suit, a 46-year-old African-American who was employed as a probation officer, was on his way to the gym at about 10:22 a.m., "enjoying a snack of broccoli and tomatoes." He failed, however, to wear his seat belt; a fact noted by a motorcycle officer of the Los Angeles Sheriff's Department; Deputy Richard Wells. Deputy Wells stopped plaintiff for the purpose of issuing him a citation. In a contact that

was largely recorded on audio tape, a cooperative plaintiff conceded the violation as well as his failure to have a side-mirror on his truck and a rear license plate. Plaintiff gave Deputy Wells his driver's license and proof of insurance, but couldn't find his registration. Deputy Wells instructed him to continue looking for the registration while he started the citation. Plaintiff eventually found the registration and brought it over to Deputy Wells. Wells took it from him and told him to "just have a seat in the truck." Plaintiff, however, declined to do so, stating, "I don't feel like sitting in my truck, man." In defiance of Deputy Wells' instructions, plaintiff took his broccoli and tomatoes, walked past his truck, and sat down on the curb to eat. Deputy Wells approached plaintiff and told him five more times to sit in his truck, eventually telling him that he couldn't write the ticket until he complied. Plaintiff continued to refuse. Wells then came up behind plaintiff and, (allegedly) without warning, pepper sprayed him. It was never argued by Deputy Wells that up until that point that plaintiff posed any physical threat to him. Plaintiff rose to his feet and attempted to back away, telling Wells that "*I'm an officer of the law*," and complaining about the lack of a warning. Deputy Wells responded that he didn't have to give him any warning. Deputy Wells then drew his baton and struck plaintiff several times with it, ordering him to the ground. Plaintiff later alleged that Wells attempted to strike him in the head eight or more times before landing a "solid blow" to the shin. Deputy Wells asserted in his later motion for summary judgment that he used his baton because he "believed that (plaintiff) was trying to gain a position of advantage over [him], from which position he could then launch an assault," and that he "believed that (plaintiff) was about to throw the broccoli at [him] in order to cause a distraction before assaulting him." The Court noted, however, that on appeal, Deputy Wells failed to allege any safety concerns. Eventually, a cover officer arrived and ordered plaintiff to the ground. Plaintiff finally complied and, with the other officer's knee in plaintiff's back, was handcuffed. When he complained that the handcuffs were too tight, the other officer told him, "*Well, you know what, that's part of not going along with the program*." Plaintiff later alleged that while on the ground, Deputy Wells struck him again with the baton. And at one point while plaintiff was on the ground, he was threatened with being pepper sprayed again if he didn't settle down. Plaintiff was eventually allowed to stand and was put into the back seat of a patrol car. (It was not noted whether charges were ever filed against plaintiff, but apparently they were not.) Plaintiff filed this law suit in federal court alleging that Wells used excessive force. After an evidentiary hearing, the district court judge granted Deputy Wells' motion for summary judgment, dismissing the lawsuit. Plaintiff appealed.

Held: The Ninth Circuit Court of Appeal reversed. Determining whether a law enforcement officer used excessive force involves a balancing of "the gravity of the particular intrusion on the Fourth Amendment interests" with the "importance of the government's interests at stake." In other words, did plaintiff's acts warrant the degree of force that was used? The Court first discussed the "gravity of the particular intrusion." In so doing, it was noted that both pepper spray and batons are forms of force capable of inflicting significant pain and causing serious injury. Both are considered to be an "*intermediate force*" that while less severe than deadly force, still "present a significant intrusion upon an individual's liberty interest." Pepper spray itself "is designed to cause intense pain" by inflicting "a burning sensation that causes mucus to come out of the

nose, an involuntary closing of the eyes, a gagging reflex and temporary paralysis of the larynx," as well as "disorientation, anxiety, and panic." A law enforcement expert testified that pepper spray "should only be generally used as a defensive weapon and must never be used to intimidate a person or retaliate against an individual." Similarly, a baton can cause deep bruising and blood clots and should be limited to responding to aggressive or combative acts only. "Head strikes" are prohibited by Sheriff's Department policy unless circumstances justify the use of deadly force. In evaluating the governmental interests involved, three factors are to be considered; (1) the severity of the crime at issue, (2) whether the suspect posed an immediate threat to the safety of the officers or others, and (3) whether the suspect was actively resisting arrest or attempting to evade arrest by flight. Balancing the degree of force with the governmental interests involved, it was noted that initially we were dealing with nothing more than a seat belt violation. Because Deputy Wells had the lawful right to order defendant to wait in his vehicle, plaintiff's lack of cooperation may have escalated the situation into a misdemeanor P.C. § 148(a)(1) violation; delaying an officer in the performance of his duties. However, there was still no immediate threat to Deputy Wells that warranted the use of pepper spray or a baton. As for plaintiff's physical reaction to being pepper sprayed, Deputy Wells did not allege on appeal that there was a safety issue. A jury might very well determine that plaintiff was doing no more than attempting to shield himself from the pepper spray itself. Lastly, the Court noted that Deputy Wells had a number of available alternatives to using any force at all; e.g., (1) warning plaintiff that refusing to get back into his truck might subject him to arrest, (2) warning plaintiff that force might be used if he continued to be uncooperative, (3) simply handcuffing him without using the pepper spray or baton, and (4) waiting for assistance to arrive before acting. Instead, Deputy Wells went straight to the use of "intermediate force." Also, finding that the rules on the use of force are well settled in the law, Deputy Wells is not entitled to qualified immunity. A civil jury should be allowed to hear the evidence in this case, including Deputy Wells' version of the facts, to determine whether the degree of force used under the circumstances was excessive.

Note: First, note that at this stage of the proceedings, an appellate court is required to assume the truth of the plaintiff's allegations. So except where noted above, we're not getting Deputy Well's side of the story so it's not really proper to judge his actions until all the facts come out. But also recognize that the verbal exchanges were all recorded by someone's (presumably, Deputy Wells') tape recorder, some of which will be problematic for the deputy. So it is incumbent on you to not lose your cool and say stupid stuff (E.g., "*Well, you know what, that's part of not going along with the program*;" allegedly said by the cover officer and *not* Wells.) in your contacts with citizens on the street. Also, as the oft-stated Legal Maxim notes: "*Bad facts made for bad case law*." Walking up behind an uncooperative, but non-combative person and pepper spraying him, if that is in fact what happened, is going to be hard to justify. I have always strongly argued that a police officer in his or her contacts with citizens on the street must maintain control of the situation to keep it all from going to go to hell in a hand basket. But a sneak attack with pepper spray on a non-combative jerk is not really the way to handle such a situation. *Think* before you act!

***Felony Hit and Run, per V.C. § 20001(a)*:**

People v. Mace **(Aug. 24, 2011) 198 Cal.App.4th 875**

Rule: In an injury traffic accident, in which someone is injured or where it is reasonably anticipated that another person may have been injured, the driver of an involved vehicle has a duty to inquire whether the injured person is in need of assistance. Also, the term "driver of the vehicle," per V.C. § 20001(a), includes not just the actual driver but also the owner of the vehicle who is riding in the vehicle at the time of the accident "with full authority to direct and control the operation of the vehicle although some other person may be doing the actual driving."

Facts: Kern County firefighters responded to a single-vehicle accident in Weldon, near Lake Isabella. They found a pickup truck off the road with its front end planted up against a power pole. Taking into account when power was cut off in Weldon, the accident apparently happened at 1:47 a.m. although it wasn't found until almost an hour and a half later. Defendant's sister, Pauline, was found alone in the truck, on the passenger's side. She had a dislocated hip and bruising around her left eye and chin. When asked if she'd been driving, she answered "*no*." She was transported to the hospital where Highway Patrol Officer Jason Kremsdorf interviewed her at about 5:00 a.m. She indicated that she and her brother, defendant, had been drinking at a bar. She also said that defendant had been driving. Officer Kremsdorf found defendant at Pauline's daughter's house, about two blocks from the accident, asleep on the couch. Defendant denied knowing anything about the accident. He claimed to have been drinking "on Rancheria Road" and did not know how he'd gotten home. Defendant had the keys to his truck—the truck involved in the accident—on him. After a PAS (preliminary alcohol screening) test showed a blood alcohol level of .168 and .171 percent, he was arrested and taken to a hospital where blood was drawn. The blood sample, taken at 6:49 a.m., showed a blood alcohol level of .17 percent. Defendant denied that he'd been driving his truck at the time of the accident, saying he didn't know who was. He was charged in state court with *(1)* driving while under the influence, causing bodily injury to another, *(2)* driving with a .08% blood alcohol level while causing bodily injury (V.C. § 23153(a) & (b)), and *(3)* felony hit and run by failing to render assistance to an injured person (V.C. § 20001(a)). At the subsequent jury trial, Pauline testified and denied that her brother had been drinking alcohol, and claimed that she couldn't remember how she'd gotten into the crashed pickup truck. Defendant also testified and denied driving the truck, claiming that after drinking beer and mixed drinks with friends, he'd fallen asleep in the passenger side of his truck. He claimed that Pauline was already in the driver's side, passed out. The next thing he remembered was waking up in the crashed truck with Pauline still passed out behind the wheel. He left her there, taking his keys so she couldn't drive it again, and walked to Pauline's daughter's house where he went to sleep on the couch. The jury bought this cock-and-bull story and acquitted him of the DUI charges. But they convicted him of felony hit and run. Sentenced to prison for two years, defendant appealed.

Held: The Fifth District Court of Appeal affirmed. V.C. § 20001(a) says: "The driver of a vehicle involved in an accident resulting in injury to a person, other than himself or herself, or in the death of a person, shall immediately stop the vehicle at the scene of the accident and shall fulfill the requirements of Sections 20003 and 20004." Section 20003(a), in turn, requires "(t)he driver of any vehicle involved in an accident, resulting in injury to or death of any person," among other things, to "render to any person injured in the accident reasonable assistance, . . ." Section 20001 has been interpreted as requiring that the accused knew or was aware that (1) he had been involved in an accident, and (2) the accident resulted in injury to another. But that knowledge may be "constructive." In other words, criminal liability will attach if it is proved that the defendant either knew of the injury to another, or that he knew that the accident was of such a nature that one would reasonably anticipate that it resulted in injury to another. The jury was instructed according to the above requirements. The jury was further instructed that the term "*driver of the vehicle*" includes not just the actual driver, but also the owner of the vehicle who is riding in the vehicle at the time of the accident "with full authority to direct and control the operation of the vehicle although some other person may be doing the actual driving." Such an owner of a vehicle is therefore required to cause the vehicle to stop and to perform the other duties imposed upon the actual driver of the vehicle, such as rendering aid to anyone who is injured or reasonably believed to be injured. Defendant first complained that the jury wasn't also instructed that the prosecution must prove that that the defendant "knew assistance was required, or would have reasonably anticipated assistance was necessary." The prosecution had argued at the trial court level that a driver who knew, or "would reasonably anticipate" that someone was injured, had a duty to inquire as to whether assistance was necessary. The Court agreed with the prosecution that the jury had been adequately instructed on this requirement. Defendant, however, argued that he reasonably determined that Pauline did not need assistance. But in convicting defendant, the jury obviously did not believe him, finding instead that defendant either knew that Pauline was injured or that he should have "reasonably anticipated" that she was, under the circumstances. The defendant also complained that because he was not the actual driver (at least as found by the jury), it was error to instruct the jury that he could still be liable as merely the owner of the vehicle. But unfortunately for defendant, this instruction was based upon prior case law holding that the owner of a vehicle who is riding in the vehicle at the time of the accident "with full authority to direct and control the operation of the vehicle although some other person may be doing the actual driving," must also comply with the above described requirements imposed upon the actual driver. (*People v. Monismith* (1969) 1 Cal.App.3rd 762; *People v. Odom* (1937) 19 Cal.App.2nd 641.) Lastly, defendant argued that the jury should have been specifically instructed that he was entitled to an acquittal if it did not find beyond a reasonable that he had actual physical control of the vehicle and/or that the vehicle was being driven with his permission and under his direct control. The Court found, however, that this was not the law and that the jury had been properly instructed on the obligations of an owner of a vehicle. While the Court agreed that there may be circumstances where an owner, even if present, doesn't have control over the operation of his vehicle (e.g., a carjacking), this is not that case. There was testimony at trial that Pauline was allowed by defendant to drive his truck. Under the evidence as presented at

this trial, defendant's suggested pinpoint instructions were not necessary. Defendant, therefore, was properly convicted of V.C. § 20001(a).

Note: What was really eye-opening in this case was the fact that defendant not only injured his sister, and then leaving her alone in the crashed car, but that he also attempted to put all the blame on her. Even more amazing was that she then lied for him in court, under oath. Must be a wonderful brother-sister relationship. But aside from this lesson in the dark side of human nature, the description of the hit and run statutes and the responsibilities of the owner of a motor vehicle involved in an injury accident is extremely instructive. Traffic cops and prosecutors who handle such cases should pull this case and read it in its entirety. Cases on this topic only come along once in every 30 or 40-plus years, apparently.

***Search Warrants; Material Misstatements and Omissions*:**

***Chism v. Washington State* (9th Cir. Aug. 25, 2011) 655 F.3rd 1106**

Rule: Intentional or reckless misstatements and omissions in a search warrant affidavit are material errors whenever a magistrate would not have found probable cause absent those errors, and may result in potential civil liability for the affiant.

Facts: The National Center for Missing and Exploited Children notified Washington State's Missing and Exploited Children Task Force that the webhosting company Yahoo! had reported two instances of someone archiving images of child pornography contained in a particular website. The users' account names and IP addresses were also provided. Initially, the IP addresses used to create the two Yahoo! accounts and associated websites were traced in an effort to determine who was responsible for them. Someone named Cheryl Corn, of Walla Walla, Washington, and Vitina Pleasant, of Federal Way, Washington, were determined to be the responsible parties. The investigations of these two Yahoo! accounts were eventually combined and assigned to Washington State Police Officer Rachel Gardner, assisted by Officer John Sager. Search warrants were obtained to search Yahoo! records associated with the two user accounts. Both user accounts listed the name of "Mr. Nicole Chism," one showing a birth date of May 20, 1996, and living in Chili with a zip code of "ucc16," and the other showing a birth date of March 11, 1977 and a residence in Bolivia with a zip code of "nf897." The first account had been paid for with Todd and Nicole Chism's (plaintiffs in this lawsuit) credit card ending in 6907. The second had no billing information available. However, a check of the plaintiffs' credit card account showed that their credit card had in fact been used to pay for both Yahoo! accounts. The plaintiffs were determined through their account information to live in Nine Mile Falls, Washington. Officer Gardner checked with the bank issuing the credit card and was told that even though the Chisms' card had been reported lost in 2006, and subsequently replaced, no fraudulent activity had been reported on that card (information that was later determined to be false). Believing that the information thus obtained was sufficient for a search warrant, Officer Gardner obtained a warrant, reviewed and approved by Officer Sager, for the Chisms' home and Todd Chism's workplace (the Spokane Fire Department), seeking access to their computers.

An arrest warrant for both Todd and Nicole Chism was simultaneously obtained and executed along with the search warrant. The Chisms' computers were seized and forensically searched. However, no child pornography was found on any of them. No charges were ever filed. Plaintiffs sued the officers in federal court for violating their Fourth Amendment rights. The federal district court judge, however, granted the officers' motion for summary judgment (dismissing the case) based upon a claim of qualified immunity, specifically finding that the law in this area was not sufficiently settled. The Chisms appealed.

Held: The Ninth Circuit Court of Appeal in a split 2-to-1 decision reversed. In their filings, the plaintiffs alleged that the warrant affidavit as written and reviewed by the officers contained a number of material misstatements as well as omissions. The Court determined that there were in fact two misstatements in the affidavit: (1) It was alleged that Todd Chism had in fact downloaded child pornography onto his computers at home and at work. In fact, there was no evidence that Todd Chism had ever accessed any child pornographic images. The only evidence linking either of the Chisms to the pornography was that the Chisms' credit card had been used to pay for the Yahoo! accounts. (2) It was alleged in the affidavit that the Chisms' credit card had been used to purchase images of child pornography when in fact the credit card had been used only to pay for the Yahoo! accounts and not to actually purchase child pornography. The Court further found four omissions in the affidavit: (1) That the IP addresses that were used to open the Yahoo! accounts and websites were traced to people other than the Chisms; i.e., "Cheryl Corn" and "Vitina Pleasant." (2) That a third IP address was used to log into both of the user accounts, and that this particular address was never traced. (3) That Nicole Chism shared the 6907 credit card account with Todd, even though Nicole's name—not Todd's—was associated with the two user accounts. (4) That the user accounts contained nonsensical identifying information; i.e., "Mr. Nicole Chism," with addresses and obviously false zip codes in Chili and Bolivia. To survive a summary judgment motion, a party to a lawsuit must make a *substantial showing* that these misstatements and omissions in a warrant affidavit were either *deliberately* or *recklessly* included (or, for an omission, excluded), and that but for the misstatements or omissions, the warrant not would have been approved by the magistrate. Purely negligent or unintentional mistakes in a search warrant affidavit are irrelevant to the validity of the warrant. The Court had no difficulty finding that Officer Gardner's misstatements and omissions were at the very least reckless. Of particular significance is the fact that all of the mistakes in the affidavit were those that, if reported correctly, might have suggested that someone other than the Chisms were responsible for the user accounts, severely weakening the argument for probable cause to believe that the Chisms' were guilty. Also, the omissions "reflected an affiant 'reporting less than the total story . . . [to] manipulate the inferences a magistrate will draw.'" The Chisms, however, also have the burden of establishing that the false statements and omissions were material to the magistrate judge's probable cause determination. False statements and omissions are material only if "the affidavit, once corrected and supplemented," would not have provided a magistrate judge with a substantial basis for finding probable cause. In determining whether Gardner's affidavit, as corrected, would have established probable cause, the Court evaluated three factors: Would it have established (1) that a crime had

been committed, and (2) that the Chisms committed that crime, and (3) that the evidence of the crime would be in the place to be searched. In this case, a corrected affidavit would certainly have established the commission of a crime; i.e., the illegal possession of and/or trafficking in child pornography. The Court also found that it would have established that a computer had been used to upload the child pornography; the third factor. But it clearly would have failed to establish even a fair probability that the Chisms were responsible for this crime or that it was their computer that contained the illegal material. Officer Gardner's misstatements and omissions, therefore, were material. As for the issue of qualified immunity, the rule has always been that governmental employees are not entitled to qualified immunity on "judicial deception" claims. As such, the trial court improperly granted summary judgment to the officers in this case.

Note: The dissenting judge argued that despite the misstatements and omissions, a corrected warrant would still have shown probable cause based solely on the information that the plaintiffs' credit card had paid for the Yahoo! accounts. "*Follow the money*." I'm not sure the dissent takes into account the fact that these misstatements and omissions, if they had been included, might have caused the issuing magistrate to quickly realize that someone was using the Chisms' stolen credit card information to avoid being detected. But either way, this case very clearly shows the dangers of being lackadaisical in writing up a search warrant affidavit. Perhaps we tend to get lazy when all the magic words for an affidavit are already in our computers, often becoming almost a matter of merely changing the time, date, names, and places. I like to think that the officer's "misstatements and omissions" in this case were a matter of sloppiness as opposed to being intentional, merely writing down what she surmised as opposed to intentionally trying to slip one past the judge. But whether intentional or not, the officer now has a Ninth Circuit Court of Appeal published decision that will haunt her for the rest of her career, accusing her of intentionally or recklessly, through dishonesty, violating two people's constitutional rights, and may very well have a jury determination to the same effect in the not too distant future. Don't put yourself into that position. Just because you're not required to show any more than "probable cause" (i.e., a "*fair probability*") to get a search warrant, thus allowing for some mistakes, does not also allow you to ignore your good judgment and common sense.

***Prolonged Detentions*:**
***Vehicle Searches and Probable Cause*:**

United States v. Rodgers **(9th Cir. Sep. 7, 2011) 656 F.3rd 1023**

Rule: *(1)* Extending a traffic stop when new grounds for suspicion of criminal activity develop during the stop is not an illegally prolonged detention. *(2)* A vehicle passenger's denial that she has identification with her, even when in conjunction with apparent lies about her age and other suspicious circumstances that might justify an arrest for providing false information, is not probable cause to search the vehicle for identification.

Facts: Lakewood Police Department Officer Ryan Moody was patrolling a high crime area known for juvenile prostitution in Washington State at about 3:30 a.m., doing random license plate checks on passing vehicles. A check on a black Pontiac Grand Am came back to a car that was supposed to be gold in color. Knowing that cold plates are often put on stolen vehicles, Officer Moody decided to stop the car and check it out. Defendant was the driver. He was cooperative, explaining to Officer Moody that he'd painted the car but didn't have the money to update the registration. Defendant had a valid driver's license and the car was registered to him. The VIN listed on the registration also matched the number on his car. While talking to defendant, however, Officer Moody noticed a young "woman" in the passenger seat who appeared to be nervous and avoided eye contact with him. She appeared to be about 12 to 14 years old. Defendant was 51, according to his driver's license. When asked about the girl, defendant said that she was simply a friend who he was giving a ride home. Given these circumstances and the nature of the area, Officer Moody suspected that she might be an under-age prostitute, or possibly a runaway, and/or that defendant was "pimping (her) out." So he inquired further. When asked for some identification, the girl denied having any. But she told Moody that her name was S.F. (her real name not being used in the case decision) and that she was 19 years old. When asked for her date of birth, she told Officer Moody that it was January 7, 1990; consistent with being 19. Officer Moody returned to his radio to check on the name she provided and discovered that a juvenile with the same name, but with a birth date of January 7, *1993*, had an outstanding felony robbery arrest warrant. With the arrival of a backup officer, defendant and the girl were separated. At this point, defendant changed his story saying that he had just met S.F. and that a friend had asked him to give her a ride. Believing that S.F. was lying to him and did in fact have identification somewhere in the car, but not seeing any purse in which it might be contained, Officer Moody proceeded to search the passenger area of defendant's car. No I.D. was found, but he did find three bags of methamphetamine. Defendant was arrested and searched, resulting in the discovery of some marijuana, 20 oxycodone pills, and $284 in cash. A more thorough search of defendant's car resulted in recovery of a firearm, some used meth pipes, and a ledger. Defendant later admitted to selling drugs. S.F. was booked into a juvenile facility on the robbery arrest warrant. Indicted in federal court with being a felon in possession of a firearm and a multitude of drug-related charges, defendant's motion to suppress the evidence and his statements was denied. After a bench trial, defendant was found guilty. He appealed.

Held: The Ninth Circuit Court of Appeal, in a split 2-to-1 decision, reversed. The Court declined to decide whether the vehicle's color discrepancy in a high crime area was sufficient cause for a traffic stop, simply calling it "thin." But assuming for the sake of argument, without deciding, that it was a lawful stop, the Court moved onto other issues. *(1)* First, the Court specifically rejected defendant's argument that he'd been illegally subjected to a "prolonged detention." The general rule is that a traffic stop may last only as long as it reasonably takes to handle the cause of the stop. Extending the stop for the purpose of investigating other crimes for which there is no suspicion constitutes an illegal detention (i.e., an illegally "*prolonged detention*"). But it is also a rule that "(a) 'period of detention [may be] permissibly extended [where] new grounds for suspicion of criminal activity continue . . . to unfold.'" (Citing *U.S. v. Mayo* (9th Cir. 2005) 394 F.3rd

1271.) In this case, Officer Moody was developing new information as the contact proceeded, causing him to suspect that S.F. might be a juvenile prostitute and defendant her pimp. This newly developed reasonable suspicion justified a continuation of the detention up to and until the search of defendant's vehicle and discovery of the drugs and a firearm. As such, the detention of defendant and S.F. was not unlawfully prolonged. *(2)* From there, the Court considered the search of defendant's car for the juvenile's I.D., noting that an officer must have "probable cause" for such a search. The Government argued that Officer Moody had probable cause of at least two misdemeanor violations of Washington State law related to making false statements to him. But there is a difference between having probable cause to arrest someone and probable cause to search. "Probable cause to arrest concerns the guilt of the arrestee, whereas probable cause to search an item concerns the connection of the items sought with the crime and the present location of the items." Whether or not there was probable cause to arrest S.F doesn't mean that there was probable cause to believe that defendant's vehicle contained any evidence related to her alleged offenses. In the Court's opinion (or at least the majority of the Court), Moody's justifications for the search (i.e., the late hour, the high-crime area, the suspicious relationship between S.F. and defendant, the evasive answers to questions, the arrest warrant, and S.F.'s apparently false statements) lacked any particularized fact indicating that S.F. had identification hidden somewhere within defendant's vehicle. Also, disagreeing with Officer Moody (and the dissenting justice), the Court held that the fact that S.F. apparently didn't have a purse with her was not cause to believe she had identification hidden elsewhere in defendant's vehicle. Finding Officer Moody's rationale for searching defendant's car "nothing more than a half-baked hunch," the Court held that the search was illegal. The evidence recovered from defendant's car, therefore, should have been suppressed.

Note: The dissenting justice was in complete disagreement, finding the circumstances, particularly S.F.'s claim that she didn't have any identification when considered in conjunction with her obvious lies about her age, to be sufficient probable cause to search defendant's vehicle for the identification that most people carry somewhere. And the lack of a purse would reasonably lead one to believe that she had that I.D. hidden somewhere else in the car. Also, missing from the majority's discussion about "probable cause" was the usual comment about probable cause being in actuality no more than a "*fair probability*." My opinion? I found Officer Moody's justification for searching the car to be a bit weak. But I have a lot more respect for a police officer's sixth sense and street smarts than does many appellate court judges. Add into the mix Officer Moody's obvious expertise in sensing when something just isn't right and I would have to find that he had the necessary "*fair probability*" that S.F.'s identification was hidden somewhere in the car. Note also that California has case authority finding lawful a "limited search" for a driver's I.D. when he claims he doesn't have any. (*In re Arturo D.* (2002) 27 Cal.4th 60.) That limited search would include places where you would expect to find one's I.D.; i.e., under the front seat, in a glove compartment, and over the visor. Officer Moody's situation is a little different, although in some ways stronger. But then the Ninth Circuit ain't California.