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Remember 12/7/41, 9/11/01: Support Our Troops

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THIS EDITION'S WORDS OF WISDOM:

"I fear all we have done is to awaken a sleeping giant." (Japanese Admiral Yamamoto upon attacking Pearl Harbor; December 7, 1941)

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ADMINISTRATIVE NOTES:

Out of State and Out of Touch: I will be out of state and without my computer from December 8th to 30th. We'll be traveling to Anchorage, Alaska, and back, and on the road for much of that time. Although my Blackberry will pick up your e-mails (and calls, while I'm in range; leave a message if I don't answer), I won't have access to my legal materials so I won't be able to send you the law behind any answers I might have for you.

Executing Arrest Warrants and Probable Cause: Two recent Ninth Circuit Cases (*Cuevas v. De Roco* (9th Cir. 2008) 531 F.3rd 726 and *United States v. Mayer* (9th Cir. 2008) 530 F.3rd 1099, 11-3-1104.) reiterate and confirm the rule that officers must have *probable cause* to believe that the subject of an arrest warrant does in fact live at the residence you are about to force entry into and that he's home at the time. In the former case, officers had every reason to believe the suspect had moved on elsewhere; no probable cause. The later case involved a number of sources reporting that defendant had returned to the suspect residence and was in fact dealing dope from there again; probable cause. What is, and what is not probable cause is, of course, always dependent upon the circumstances. But the rule is pretty clear now that no less than probable cause is needed before a forced, non-consensual entry is allowed while attempting to execute an arrest warrant.

CASE LAW:

Illegal Detentions and Arrest Warrants:

***People v. Brendlin* (Nov. 24, 2008) ___ Cal.4th ___ [2008 DJDAR 17352]**

Rule: An outstanding arrest warrant may, depending upon the circumstances, be enough of an intervening circumstance to allow for the admissibility of the evidence seized incident to arrest despite the fact that the original detention was illegal.

Facts: Sutter County Deputy Sheriff Robert Brokenbrough noticed a vehicle at 1:40 a.m. with an expired registration tab. Checking the registration via radio, Deputy Brokenbrough was told that the car's registration had in fact expired two months earlier but that a renewal application was "in process." Consistent with this information, the deputy noticed a red temporary operating permit taped to the rear window with the number "11," indicating that a temporary registration had been issued for the vehicle and that it was still valid for another 3 days (i.e., to the end of November). However, knowing that the use of such stickers is often abused, Deputy Brokenbrough decided to stop the vehicle to investigate whether the sticker did in fact belong to this vehicle. Upon stopping the car, Deputy Brokenbrough noticed that the passenger, defendant in this case, was either Scott or Bruce Brendlin; one of whom the deputy knew to be a parolee-at-large with an outstanding no-bail warrant for his arrest. In response to the deputy's request, defendant identified himself as Bruce. Deputy Brokenbrough checked over the radio and determined that Bruce was in fact the one who was wanted. He therefore arrested defendant. The time span between the vehicle stop and defendant's arrest was only a couple of minutes. Searching defendant and the vehicle incident to arrest, marijuana, methamphetamine and drug paraphernalia, along with materials used in the manufacturing of methamphetamine, was discovered. Charged with numerous drug-related charges in state court, the trial judge ruled that the traffic stop and defendant's arrest were both legal. Defendant pled guilty and appealed. The Court of Appeal reversed, finding the traffic stop to be illegal and that defendant, by virtue of being a passenger in the vehicle, was therefore unlawfully detained. The People appealed. The

California Supreme Court reversed the appellate court, ruling that even if the traffic stop was illegal, defendant, because he was no more than a passenger in the car, *was not* detained. Defendant appealed to the U.S. Supreme Court. In a unanimous opinion, the U.S. Supreme Court reversed the California Supreme Court, holding that defendant was necessarily detained merely by virtue of being a passenger in a stopped vehicle. (*Brendlin v. California* (2007) 551 U.S. __ [168 L.Ed.2nd 132].) The case was remanded back to the California Supreme Court for consideration of the issue whether this fact required the suppression of the evidence.

Held: The California Supreme Court, in a unanimous decision, held that an arrest warrant, at least under the circumstances of this case, is an intervening factor sufficient to attenuate the taint of an illegal detention. The trial court, therefore, properly refused to suppress the resulting evidence recovered incident to defendant's arrest despite the fact that the warrant would not have been discovered "but for" the illegal traffic stop. Defendant's conviction is to be reinstated. In reaching this conclusion, the Court noted that whether or not the taint of an illegal traffic stop requires the suppression of the evidence seized from a passenger of the vehicle who is discovered to have an outstanding arrest warrant depends upon an analysis of three factors: (1) The temporal proximity of the Fourth Amendment violation to the procurement of the challenged evidence; (2) the presence of intervening circumstances (e.g., an arrest warrant); and (3) the flagrancy of the official misconduct. In this case, (1) only a few minutes elapsed between the unlawful stop and the search. But that is typical in this kind of case. The important fact is that there was really little if any connection between the unlawful stop and the later arrest when the arrest is based upon an outstanding arrest warrant. So this factor counts for very little if anything. (2) The existence of the arrest warrant, which is not subject to an officer's interpretation or abuse, is a significant intervening circumstance separating the illegal traffic stop from the resulting search. (3) The flagrancy of the officer's misconduct, or lack thereof, is the most important factor. In this case, the deputy made the traffic stop in good faith, honestly believing that it was lawful to check the validity of the temporary registration sticker, and not as an excuse to go on a "fishing expedition." "(T)here is no evidence at all that the deputy 'invented a justification for the traffic stop in order to have an excuse to run [a] warrant check.'" Balancing these factors, the Court found that the existence of the arrest warrant did in fact separate the arrest and search of the defendant from the illegal traffic stop. The evidence, therefore, was properly admitted into evidence against him.

Note: Great case, giving us a new rule of "first impression." However, there are two things this decision *does not* answer for us: (1) Is it illegal to stop a vehicle to check the validity of the red temporary registration sticker despite the lack of any reason to believe, prior to the stop, that this particular sticker is invalid? Also, (2) although a passenger in a vehicle is considered to be "*detained*" merely by virtue of being in the car when it is stopped, thus giving him "*standing*" to challenge the legality of a traffic stop (see *Brendlin v. California, supra.*), does he remain detained when he later attempts to walk away during the traffic stop. Does the officer need a reasonable suspicion to believe that the passenger is involved in some illegal activity in order to lawfully stop him? As for issue #1, the People conceded in this case that the answer is "yes;" such a stop is illegal.

(E.g., see *People v. Nabong* (2004) 115 Cal.App.4th Supp. 1.) The issue was never discussed by this court. It is an issue, however, that is on review before the California Supreme Court in *People v. Hernandez* (2006) 146 Cal.App.4th 773. Issue #2: There is some authority for the argument that you may prevent a passenger from walking away for no other reason than that he is the passenger in a lawfully stopped car. (See *People v. Hoyos* (2007) 41 Cal.4th 872, 892-894.) I disagree. But note that it doesn't take much to justify refusing to let him walk away. (See *People v. Samples* (1996) 48 Cal.App.4th 1197; the detained passenger having a "close association" with the driver's illegal activity.) Also, a legitimate concern for "officer safety" is likely enough. (*People v. Vibanco* (2007) 151 Cal.App.4th 1.)

First Amendment Freedom of Expression:

***Fogel v. Collins et al.* (9th Cir. June 27, 2008) 531 F.3rd 824**

Rule: Threatening language written on one's vehicle, unless directed to a specific individual under circumstances indicating that the suspect would actually act on those threats, is constitutionally protected speech.

Facts: Plaintiff in this civil suit, a Nevada City, California, resident known to the Department of Homeland Security as an anti-government "local nut," parked his 1970 Volkswagen van in the parking lot of an apartment complex in the nearby City of Grass Valley. On the rear of his van, which was already liberally (no pun intended) decorated with slogans and paintings, plaintiff had painted in block letters: "I AM A FUNG SUICIDE BOMBER COMMUNIST TERRORIST!" Below that was written: "PULL ME OVER! PLEASE, I DARE YA" In slightly smaller letters, under the above, plaintiff had painted: "ALLAH PRAISE THE PATRIOT ACT . . . FUNG JIHAD ON THE FIRST AMENDMENT! P.S. W.O.M.D. ON BOARD!" An anonymous caller to the City of Grass Valley Police Department complained about plaintiff's van saying that it "frightened" her. Sgt. Michael Hooker responded to the scene. He, however, took no action other than to photograph the van because he concluded that plaintiff's artwork was really nothing more than "political satire." Hooker was overruled by a supervisor who ordered him to handle the situation as a bomb threat. The 22-year old plaintiff was located at the apartment complex and interviewed. When asked about what the purpose of the writings was, the "mild mannered" plaintiff stated that he wanted to "scare people," or "scare people into thinking." He told police that he wanted to "terrorize the people of Nevada County like the Iraqi people are being terrorized by the U.S. military." (Plaintiff later denied making these statements.) Plaintiff denied that there was a bomb in his van and encouraged the officers to search it. No bomb or anything else illegal was found. Plaintiff was arrested anyway and booked for making a "criminal threat" (P.C. § 422), making a false report of a bomb (P.C. § 148.1), and disturbing the peace with offensive words that were likely to provoke an immediate violent reaction (P.C. § 415.3). His van was impounded. The district attorney, however, declined to file criminal charges on plaintiff and he was released the next day. His van was released to him, but only after he agreed to paint over the offending words. Plaintiff filed a civil rights lawsuit in federal court per 42 U.S.C. § 1983, contending that his arrest and the impounding of his

van violated his First (freedom of expression), Fourth (search and seizure) and Fourteenth (due process) Amendment rights. With the civil defendant's (the Grass Valley Police Department and the involved officers) filing for summary judgment (i.e., dismissal of the lawsuit prior to trial), the federal trial court assumed that plaintiff's freedom of expression rights had been violated. However, the court held that the defendants were entitled to "qualified immunity" and dismissed the lawsuit. Plaintiff appealed.

Held: The Ninth Circuit Court of Appeal, although finding that the officers did in fact violate plaintiff's First Amendment rights, affirmed, agreeing with the trial court that the civil defendants had qualified immunity from civil liability. Whether or not an officer violates someone's First Amendment "freedom of expression" depends upon whether the offensive words are "*protected political hyperbole*" or an "*unprotected true threat*." In attempting to find the line between these two extremes, the Court noted that the "debate on public issues should be uninhibited, robust, and wide open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials." But what one may lawfully speak (or write on his van) is not absolute. A "*true threat*" is not protected under the First Amendment. A "true threat" is defined as "an expression of an intention to inflict evil, injury, or damage on another." Typically, but not without exception, a true threat occurs when the threatening speech targets a specific individual or is communicated directly to the subject of the threat. Exceptions to this rule, however, may occur when, considering the context, it does not appear that the threat would ever really be carried out. After discussing whether the test for finding a true threat might be an objective one (as a reasonable person would see it), or a subjective one (did the person really intend to carry out the threat?), the Court found that the statements on plaintiff's van were constitutionally protected under either theory. In other words, the threatening language written on plaintiff's van was not directed to any specific person, was not language that any reasonable person would really believe plaintiff intended to carry out, and was not a threat that plaintiff himself ever intended to act on. As such, plaintiff's words did not constitute "true threats" and were therefore constitutionally protected "*political hyperbole*." Arresting him for uttering such threats and impounding his van violated his First Amendment rights. However, despite the constitutional violation, the Court found that defendants' "conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Therefore, they are entitled to qualified immunity from civil liability.

Note: The lesson learned here is: *When in doubt, assume that a person's offensive words constitute protected speech.* It is a fact of life that courts are *very* protective of a person's right to express his or her opinions, no matter how unpopular or controversial those opinions might be. This may even include what appears to be threatening and/or offensive language. If what you're confronted with appears to be a "*true threat*," as defined above, it's still best to check with a prosecutor or county counsel. That's not a cop out on your part. This is a difficult call to make and you should take advantage of any legal advice you can get. Also, by publishing this decision, a future plaintiff has a stronger argument that the rule is now "*clearly established*." So don't think you'll automatically be protected by qualified immunity. By the way, it was me who left out the

full spelling of the F-words. Plaintiff, of course, spelled it all out. Its not that I don't know we're all adults here, but some recipients' e-mail systems are set to reject profanity.

Detentions vs. Arrests and the Use of Handcuffs:

***In re Antonio B.* (Aug. 28, 2008) 166 Cal.App.4th 435**

Rule: Handcuffing a detainee when the circumstances don't dictate the necessity for doing so (i.e., there are less intrusive ways to handle the contact) will convert the detention into an arrest.

Facts: Detective Hugo Cepeida, a juvenile narcotics enforcement officer for the Los Angeles Police Department, observed defendant with another minor walking down the street. The other minor was smoking what appeared to be a marijuana cigarette (i.e., hand-rolled and holding it in a manner consistent with the way people hold marijuana cigarettes). Cepeida parked his vehicle and, with two other narcotics officers, approached the two minors. As soon as they identified themselves as police officers, the other minor tossed the cigarette to the ground. One of the officers picked it up and confirmed that it was marijuana. The weed-smoking minor was physically arrested. Knowing that marijuana is a "communal drug," and that when one person is smoking it, the other will usually join in with the activity, defendant was detained. In so doing, however, defendant was immediately handcuffed. He was then asked for consent to search his person. Defendant gave his consent. Defendant was asked if he had anything on him that he was not supposed to have. He admitted to having cocaine in his left front pocket. Four small baggies of cocaine were recovered from his person. During a further search, six baggies of marijuana were found in a sock concealed in defendant's groin area. Defendant was charged by petition in Juvenile Court with possession for sale of these drugs. At the inevitable motion to suppress the evidence, Detective Cepeida testified that he always handcuffs people he intends to detain. "It's our procedure that if anybody is going to be detained for (a) period of time, and we know we're going to arrest them, we handcuff them." The Juvenile Court magistrate denied defendant's motion to suppress and sustained the petition. Defendant appealed.

Held: The Second District Court of Appeal (Div. 4) reversed, finding that by handcuffing defendant under these circumstances, he had been subjected to a "de facto arrest without probable cause." His consent to be searched, as a product of that illegal arrest, was also no good. The Court noted that the distinction between a detention and an arrest "may in some instances create difficult line-drawing problems." "An investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop. Similarly, the investigative methods employed should be the least intrusive means reasonably available to verify or dispel the officer's suspicion in a short period of time." Where the contact becomes too intrusive, the Court may find that the suspect was in fact arrested; i.e., a "*de facto*" arrest. Handcuffing a detainee for a short period of time does not necessarily transform a detention into an arrest. It depends upon whether the use of handcuffs during the detention was reasonably necessary under the circumstances. Here, the officer had the detainee outnumbered, three to two, with one of the two

(defendant's companion) already under arrest and in handcuffs himself. Nothing had occurred that would have indicated to the officers that defendant was a danger or might flee. A policy to handcuff all detainees does not overcome these facts or justify the handcuffing of a non-dangerous suspect who is unlikely to flee. Handcuffing the defendant in this case was unnecessary, and as such, converted the detention into an arrest. Because the officers did not have probable cause to believe defendant had any contraband on him at that point, the arrest was illegal. Defendant's consent to be searched, a direct product of that illegal arrest, was invalid. The resulting evidence should have been suppressed.

Note: It is indeed a thin line between a detention and an arrest. The lawfulness of a contact with a person on the street will depend upon an evaluation of the "reasonableness" of the officer's actions under the circumstances. While I never fault an officer's attempts to avoid unnecessary danger in any contact with a suspect on the street, a general policy to just handcuff all detainees, whether or not there's any reason to believe that the person might be dangerous, is just not a good idea. Every situation should be handled according to the unique circumstances of the situation in which an officer finds himself. Any response by an officer while testifying in court to the effect that; "*I always _____ (fill in the blank; "handcuff;" "patdown;" "draw down on;" "ask out on a date;" etc.) every person I detain on the street."* is just not an answer that's going to lead to anything good.

Switchblade Knives and Dirk or Daggers:

People v. Plumlee (Sept. 10, 2008) 166 Cal.App.4th 935

Rule: A closed switchblade knife, illegal under P.C. § 653k, is also a felony violation of P.C. § 12020(a)(4), dirk or dagger, when found concealed on a person.

Facts: Defendant was observed by a sheriff's deputy at the casino at the Tule River Indian Reservation. It was noticed that defendant seemed to be in an agitated state, "constantly moving around, unable to stay still." Believing that defendant was under the influence of something, the deputy asked for, and got consent to perform an evaluation. Determining that defendant was under the influence of methamphetamine, he was arrested and searched. In defendant's left front pants pocket the deputy recovered a switchblade knife. There was a button on the side of the knife which could be activated by a sliding motion of the thumb. The knife's three-inch, spring-loaded blade could then be opened automatically by pushing the button. The knife was folded shut when recovered from defendant's pocket. Defendant was charged in state court with possession of a dirk or dagger, a felony per P.C. § 12020(a)(4), and being under the influence of methamphetamine. Following a preliminary examination, the Court declined to find that defendant possessed a dirk or dagger, holding that at best, the knife was a switchblade, per P.C. § 653f; a misdemeanor. The People's motion per P.C. § 871.5 to reinstate the section 12020 charge was denied. The People appealed.

Held: The Fifth District Court of Appeal reversed. On appeal, the parties agreed that with its three-inch blade, the knife is an illegal switchblade knife, as defined in P.C. § 653k. The People, however, argued that the knife is *also* an illegal dirk or dagger. The

issue is merely one of statutory interpretation. Penal Code section 12020(a)(4) makes it illegal to carry concealed on one's person any dirk or dagger. Subdivision (c)(24) of section 12020 defines dirk or dagger as "a knife or other instrument with or without a handguard that is capable of ready use as a stabbing weapon that may inflict great bodily injury or death. A nonlocking folding knife, *a folding knife that is not prohibited by Section 653k* (Italics added), or a pocket knife is capable of ready use as a stabbing weapon that may inflict great bodily injury or death only if the blade of the knife is exposed and locked into position." Looking at the above definition, it is obvious that the last sentence, requiring that the blade to be exposed and in the locked position, does *not* apply to a knife prohibited by Section 653k. In other words, a switchblade knife that *is* prohibited by Section 653k, even though in a closed position, can also be a dirk or dagger. In this case, defendant's knife, with a blade of over two inches, is prohibited by P.C. § 653k. Therefore, the "exposed and in the locked position" requirement of 12020(c)(24) does not apply to defendant's knife. The Court also noted that this is *not* a case where a more specific statute (P.C. § 653k) takes precedence over the more general statute (P.C. § 12020(a)(4)). This rule applies only where each element of the more general offense is also an element of the more specific offense, or it appears from the entire context that a violation of the more specific statute will necessarily result in a violation of the more general statute. When comparing sections 653k to 12020(a)(4), it is noted that 12020(a)(4) requires that the dirk or dagger be concealed on the person where a switchblade is illegal merely by carrying it, concealed or not. Therefore, a violation of 653k will not always be a violation of 12020. It is the prosecutor's discretion which offense to charge. The dirk or dagger charge must be reinstated.

Note: Well, you learn something new everyday. Most of us, I would think, never thought to charge a felony 12020 violation for a folded switchblade knife found concealed in a person's pocket. But with a careful analysis of the statutes, the decision here seems obvious. Good case.

Patdowns and the Odor of Marijuana:

People v. Collier (Sept. 18, 2008) 166 Cal.App.4th 1374

Rule: A patdown for weapons is lawful where the possession and transportation of marijuana is suspected and the defendant's clothing is so baggy that it is impossible to determine whether there are any bulges that might indicate that the suspect is armed.

Facts: Los Angeles sheriff's deputies stopped a car for not having a front license plate. Defendant was the passenger in this car. Contacting the driver and defendant simultaneously, both deputies smelled the strong odor of marijuana. Deputy Brett Binder asked defendant to step out of the car and asked him if he had any weapons or anything illegal on his person. Defendant said he did not. Defendant, however, was taller than Deputy Binder and was wearing baggy shorts that hung down to his ankles, and an untucked shirt that extended down to his mid legs. Knowing that he was about to occupy himself with checking the vehicle for marijuana, and fearing that defendant might have a weapon that could not be detected through his baggy clothing, Deputy Binder decided to

pat defendant down for weapons. “His suspicion proved to be well founded.” A loaded Glock nine millimeter pistol was recovered from defendant’s pants pocket. He was also carrying a jar of PCP, a 36” flat screen T.V., and the entire University of South California cheer leading team. (I’m kidding about the T.V. and the cheer leaders.) Defendant’s motion to suppress was denied by the trial court. Defendant pled guilty and appealed.

Held: The Second District Court of Appeal (Div. 6) affirmed. The issue on appeal was the legality of the patdown search of defendant. The rule, of course, is that a patdown for weapons is only lawful when the officer can articulate a reasonable suspicion to believe that the person may be armed and dangerous. Citing a case from the federal Fourth Circuit (*United States v. Sakyi* (4th Cir. 1998) 160 F.3rd 164, 169.), the Court noted that: “[I]n connection with a lawful traffic stop of an automobile, when the officer has a reasonable suspicion that illegal drugs are in the vehicle, the officer may, in the absence of factors allaying his safety concerns, order the occupants out of the vehicle and pat them down briefly for weapons to ensure the officer’s safety and the safety of others.” In this case, while noting that this “was no ordinary traffic stop,” the Court found that with the odor of marijuana emanating from the vehicle, the deputies had a rational suspicion that defendant may have been transporting drugs. Knowing that guns often accompany drugs, and with defendant wearing clothing through which it was impossible to determine whether there were any bulges that would have indicated the presence of a weapon, a patdown for weapons was justified. The patdown, therefore, was lawful.

Note: The suspicion here, justifying the patdown for weapons, is a bit thin despite the Fourth Circuit’s apparent belief that if drugs are suspected, a patdown is always lawful. Not every court agrees that dope being involved automatically justifies a patdown for weapons. This case could have gone either way. Even this appellate court was concerned enough to caution us, in a footnote, that this “opinion should not be read as allowing the police carte blanche to pat down anyone wearing baggy clothing.” (pg. 459-460, fn. 1.) So while I always counsel that when it’s your safety that is of concern, its best to err on the side of caution, just know that if you push the envelope much further than the officers did here, don’t expect to always be as successful.

Counterfeit Money and Renting a Motel Room:

People v. Munoz (Sept. 29, 2008) 167 Cal.App.4th 126

Rule: Using a counterfeit bill to pay rent, without evidence that the person knew it was counterfeit, does not prove the person’s intent to defraud. Absent such evidence, and possibly evidence of the motel manager’s attempt to end the tenancy, the person continues to have a reasonable expectation of privacy in the motel room.

Facts: Garden Grove Police Officer Greg Gallegos was dispatched to the Morada Motel to investigate a situation where a motel tenant, defendant Munoz, paid her daily rental with money that included a possible counterfeit \$20 bill. Officer Gallegos checked the \$20 bill and, although it looked authentic, he could feel a difference in the density of the paper used. The motel manager indicated that a male, co-defendant Gilbert Prado, had

moved in with defendant. Officer Gallegos went to the defendants' room and knocked, announcing his presence. Although no one answered, the officer could hear voices and running water. After knocking for several minutes with no one coming to the door, the Officer Gallegos opened the door with a pass key the motel manager had given him. After knocking and announcing his presence at the bathroom door, defendant stuck her head out and told the officers that she was in the shower. She came out after getting dressed. Co-defendant Prado came out a couple of minutes later. The officer told defendant that he was investigating a counterfeit bill she'd used to pay the rent. She said that she'd gotten the money from Prado. Prado gave the officer \$210 that he had in his pocket which, when inspected, was found to include three more counterfeit \$20 bills. A later search of the room resulted in the recovery of methamphetamine. Defendants were charged in state court with possession of counterfeit currency (P.C. § 476) and some meth-related charges. During the subsequent motion to suppress evidence, it was stipulated that the manager did not attempt to evict the defendants and had not sought the help of the police to effect such an eviction. The trial court ruled that absent such an attempt, the defendants remained lawfully in the room. They therefore had standing to challenge the officer's warrantless entry. The trial court ruled that because the officer did not have a warrant and there were no exigent circumstances, the entry of the motel room was illegal. The court therefore suppressed the evidence. The People appealed.

Held: The Fourth District Court of Appeal (Div. 3) affirmed. The issue was whether the defendants had a reasonable expectation of privacy in the motel room. The People's argument was that because defendants had defrauded the motel manager when they paid with a counterfeit bill, their tenancy had expired, negating any expectation of privacy they might have had. The case cited by the prosecution in support of this position was one where it was held that paying rent with a stolen credit card forfeited the defendant's expectation of privacy in that he no longer lawfully occupied the room. (*People v. Satz* (1998) 61 Cal.App.4th 322.) But in *Satz*, the use of the stolen credit card was intentional, showing an intent to defraud. In the instant case, there was no evidence that defendants were aware that the \$20 bill they used was counterfeit. The bill actually appeared to be authentic, requiring a careful inspection to determine that the paper used was of a different density. As a result, there was no evidence of an intent to defraud. Also, in *Satz*, the manager had taken steps to end the tenancy by trying to evict the defendant and calling the police to assist him. In this case, there was no attempt at eviction or to enlist the help of the police to do so. Until such an attempt at eviction occurs, the agreement between defendants and the motel manager to extend their tenancy another day continued in effect. Defendants, therefore, continued to have an expectation of privacy in their motel room. Entering without permission or a search warrant was illegal. The evidence should have been suppressed.

Note: This is an issue with which the courts have been struggling for some time; i.e., what it takes before a tenant loses his expectation of privacy in a rented motel or hotel room. (E.g., see *United States v. Bautista* (9th Cir. 2004) 362 F.3rd 584.) But at least we can surmise that evidence of an intent to defraud is necessary. A manager's attempt to end the tenancy might also be necessary. But until the law is a bit more settled on this issue, when in doubt, I'd suggest you consider taking the time to get a search warrant.