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Robert C. Phillips (858) 395-0302 (C)
Deputy District Attorney (Ret.) RCPhill808@AOL.com

THIS EDITION'S WORDS OF WISDOM:

"*Only two things are infinite—the universe and human stupidity—and I'm not sure about the former.*" (Albert Einstein; 1879-1955)

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ADMINISTRATIVE NOTES:

***Refusal to Identify During a Lawful Detention*:** Question: Is it a crime in California for a person to refuse to identify himself to a peace officer during a lawful detention? My opinion is that depending upon the circumstances, refusing to identify oneself during a lawful detention *may* be a violation of P.C § 148(a)(1) for "*delaying or obstructing*" an officer in the performance of his (or her) duties. Some other "legal experts" disagree, arguing that P.C. § 148(a)(1) does not apply to such a situation. As I see it, there are two legal hurdles to validating my conclusion on this issue: (1) Is there a legal duty for one to identify himself when lawfully detained? (2) If yes, then is there a California state statute that a detainee is violating when he refuses to identify himself? As for *issue #1*, the United States Supreme Court has told us that a state statute requiring a lawfully detained person to identify himself when so requested by a law enforcement officer does *not* violate the Fourth Amendment. (*Hiibel v. Sixth Judicial District Court of Nevada* (2004) 542 U.S. 177.) California, however, has no such statute. But it is my argument that law enforcement's right to temporarily detain a criminal suspect on less than probable cause (i.e., a "reasonable suspicion") for the purpose of determining whether that person was, is, or is about to be involved in criminal activity—a power afforded by case law only (*Terry v. Ohio* (1968) 391 U.S. 1)—*inherently* includes the concurrent power to require that person to identify himself despite the lack of a statute so stating. Indeed, the United States Supreme Court has specifically held that: "[T]he ability to briefly stop [a suspect], ask questions, *or check identification* in the absence of probable cause promotes the strong government interest in solving crimes and bringing offenders to justice." (Italics added; *Hayes v. Florida* (1985) 470 U.S. 811, 816.) The *Hiibel* decision itself held that: "The principles of *Terry* permit a State to require a suspect to disclose his name in the course of a *Terry* stop" (i.e., a detention). (at p. 187.) The power to temporarily detain a suspect is, in my opinion, a hollow one without the concurrent power to also require him to identify himself. As for *issue #2*, P.C. § 148(a)(1) makes it a misdemeanor to *delay or obstruct* an officer in the lawful performance of his or her duties. When an officer lawfully detains a person, that person's refusal to identify himself may, depending upon the circumstances, delay or obstruct the officer in the performance of his duties as he is forced to take the extra time necessary to determine who the detainee is. California case law has not of yet answered this question for us, but has instead inferred that if it can be charged at all, it will depend upon whether or not the detainee's lack of cooperation, *under the circumstances*, did in fact delay or obstruct the officer in the performance of his duties. (See *People v. Quiroga* (1993) 16 Cal.App.4th 961; and *In re Gregory S.* (1980) 112 Cal.App.3rd 764.) If you choose to make case law for me on this issue, know that you must be ready describe *in detail* what it was about the detainee's refusal to identify himself that in fact delayed or obstructed you in some way: E.g.: Did the detainee's refusal to identify himself unnecessarily extend the time required to complete the detention or otherwise draw you away from performing other duties? If the answer is "*yes*," then we have a good argument that the elements of P.C. § 148(a)(1) have been met.

CASE LAW:

***Drug-Detection Dogs*:**

People v. Stillwell et al. **(July 25, 2011) 197 Cal.App.4th 996**

Rule: A properly certified drug-detection dog's alert on a container in a vehicle establishes probable cause to search that container even though it is never verified that it actually contained something the dog is trained to detect. The fact that the dog sniffed into the open bed of a pickup truck does not make the dog's acts a search.

Facts: Officer Matthew Minton, a reserve officer for the Marysville Police Department, while on patrol on May 14, 2009, noticed a pickup truck with its rear license plate obscured by its bumper and its license plate light out. So he made a traffic stop for the purpose of citing the driver for these equipment violations. Co-defendant Conley Briggs was driving with defendant Darla Stillwell in the passenger seat. Upon contacting Briggs, Officer Minton noticed that he appeared to be under the influence of something. Minton returned to his patrol car and called for a more experienced officer, Christopher Miller. Officer Miller, with his canine, Tommy, arrived within two minutes. Officer Minton had Briggs step out of his truck and told him that he would be evaluating him for being under the influence of a narcotic or otherwise being impaired. After conducting one test on Briggs' pupils, Minton asked him if he had taken any drugs. Briggs told him that he'd taken methadone earlier in the day. So Minton decided no more tests were necessary. Officer Minton then asked Briggs for permission to search his truck. Briggs denied the request. Based upon all these circumstances up to this point, Officer Minton suspected that Briggs might have a controlled substance or something illegal in the truck. He therefore asked Officer Miller to have Tommy sniff the air around the exterior of the truck. Tommy was P.O.S.T. (Peace Officers Standards and Training) certified as a drug-detention dog. He was trained to detect the odors of specific drugs in both vehicles and buildings. Tommy had to be recertified every year and, to date, hadn't failed once. Officer Miller, who had worked with Tommy since 2008, was himself trained and certified to handle Tommy. When Tommy notes an odor that he is trained to recognize, he changes his behavior and then sits and stares at the location where he noted the odor; i.e., a "passive alert." Officer Miller had been trained to note such changes in Tommy's behavior. Miller released Tommy and had him start at the front of the truck and move back towards the rear. When Tommy got to the rear tire on the driver's side, Officer Miller noticed a change in Tommy's behavior. Tommy "snapped" back from circling around the truck, redirecting his search by doubling back. Tommy exhibited a "scent cone" search pattern, honing in on the odor. He then stood up on his hind legs with his front paws on the side of the truck, sniffing over the edge of the bed of the pickup. He dropped down into his "sit/stare" alert. Tommy had alerted on a black backpack in the bed of the truck which was the only object in the truck. This alert took place within 10 minutes of the initial stop. Officer Miler opened the backpack and found paraphernalia used in a methamphetamine drug lab. Pursuant to policy, however, Officer Miller ceased his inspection of the contents of the backpack and was therefore unable to determine whether any of the actual drugs Tommy was trained to detect were in there. Defendants

were arrested. Based upon the contents of the backpack, a search warrant was obtained for the defendants' home where other drug-related items were found. Charged in state court with various drug-related charges, defendants filed a motion to suppress. The trial court denied defendants' motions. Both defendants then pled "no contest," and appealed.

Held: The Third District Court of Appeal (Sutter County) affirmed. Defendants first argued that because it was never proven that one of the controlled substances on which Tommy the Canine was trained to alert was actually in the backpack, the prosecution failed to establish that Tommy was a reliable narcotics detection dog. As a result, there was insufficient probable cause justifying the search of the backpack. The Court, however, started off by noting that the Supreme Court has already held that a person does not have a reasonable expectation of privacy in odors emanating from concealed contraband, and that the use of a trained narcotics-detection dog is not a search. The Fourth Amendment, therefore, is not implicated by such a dog smelling the outside of a vehicle. The Court rejected the defendants' argument that merely because there was no proof that the backpack did in fact contain one of the drugs Tommy is certified to alert on, that the dog was not reliable. Ample evidence was presented as to Tommy's reliability in the detection of drugs through Officer Miller's testimony. California does not require that a drug-detection dog's record be error-free. So even if it can be assumed that there were no drugs in the backpack, and that Tommy gave a false alert by alerting on the backpack, the necessary probable cause was still established. This conclusion also led to the Court's rejection of defendants' argument that a drug-detection dog's alert supplies no more than a reasonable suspicion that drugs are present. In California, a properly training drug-detection dog's alert constitutes probable cause for a search. The backpack was therefore lawfully searched based upon case authority that with probable cause, a vehicle and all its contents may be searched without a warrant. Lastly, the Court rejected defendants' argument that because Tommy sniffed up over the side of the truck into the truck's bed that the defendants' Fourth Amendment rights were violated. Absent Officer Miller instructing the dog to do so, a dog's instinctive act of putting its nose into an otherwise protected area of a vehicle is lawful. Also, the open bed of a pickup truck is not an area protected by the Fourth Amendment. Therefore, the dog's alert lawfully provided the necessary probable cause to conduct a search of the backpack.

Note: This is a good case on the use of drug-detection dogs, hitting a number of issues that we haven't seen in some time and/or for which there is no prior California authority. The case decision is also very complete in its description of the dog's certification training. Prosecutors who have to lay the foundation for the use of a drug-sniffing dog should read this case for the requirements to get your dog evidence admitted. Good case.

***Child Molest and Pornography*:**

Dougherty v. City of Covina **(9th Cir. Aug. 16, 2011) 654 F.3rd 892**

Rule: Evidence of a person's abnormal sexual interest in sixth grade girls, including inappropriate touching, does not establish probable cause to believe that the person might also have child pornography at his home.

Facts: Plaintiff Bruce Dougherty was a sixth grade teacher at the Royal Oak Elementary School in the City of Covina. In 2003, a female student complained that Dougherty pulled her shirt down to her waist while they were alone in a classroom. The victim also claimed that Dougherty had touched her bare breasts and told her she was a "special girl." The investigation of that incident was not pursued because the student gave inconsistent accounts. Then, in October, 2006, another sixth grade girl reported that Dougherty had lifted her up in front of the class after she'd told him that she'd won a cross-country meet. She said that Dougherty's hands were touching her breasts as he lifted her up to a level where he could look at her buttocks. Other students witnessed this event. This girl and others also complained that Dougherty commonly looked up girls' skirts and down their tops. Officer Robert Bobkiewicz of the City of Covina Police Department was assigned to investigate this incident. The assistant superintendent for the School District told Bobkiewicz that she'd checked into this incident and turned up multiple reports of Dougherty also touching girls' backs as if searching for bra straps with his hands. Bobkiewicz determined that based upon his training and experience, Dougherty probably had child pornography on his computer at home. In a search warrant affidavit, Bobkiewicz recounted the above information and included a paragraph describing his 14 years as a police officer having also worked as a School Resource Officer, his 100 hours of training in the area of juvenile and sex crimes, and hundreds of investigations related to sexual assaults and juveniles. Based upon this training and experience, Bobkiewicz noted in the affidavit that; "I know subjects involved in this type of criminal behavior have in their possession child pornography." A magistrate signed Bobkiewicz's warrant, authorizing him to search any computers and other electronic media Dougherty might have in his house for child pornography. The warrant was executed on Dougherty's home, but nothing was found. Dougherty sued Bobkiewicz in federal court arguing that his Fourth Amendment rights had been violated. The district court judge dismissed Dougherty's complaint, finding that the warrant was supported by probable cause and that Bobkiewicz was entitled to qualified immunity anyway. Dougherty appealed.

Held: The Ninth Circuit Court of Appeal affirmed, but only on the basis of qualified immunity. On the issue of whether Bobkiewicz's warrant reflected probable cause, a majority of the Court said *no*. "Sufficient information must be presented to the magistrate to allow that official to determine probable cause; his action cannot be a mere ratification of the bare conclusions of others." The "totality of the circumstances" must be considered, although the evidence does not necessarily need to be "direct" evidence. "The magistrate is free to draw "reasonable inferences" . . . from the material supplied to him by applicants for a warrant." To establish probable cause, only a "fair probability" needs to be shown. After running through these well-worn principles, the Court reduced the issue to but one question: "(W)hether evidence of child molestation, alone (even when combined with an experienced police officer's expert opinion), creates probable cause for a search warrant for child pornography." The Court noted that there is no Supreme Court nor Ninth Circuit decision on this issue, and the other lower federal courts are in disagreement. But the majority opinion is that you can't legally make the leap from having evidence of acts of child molestation, particularly when as obscure as they are in the instant case, to finding that the molester also keeps child pornography in his

home. The majority of the Court here agreed with this majority opinion. Officer Bobkiewicz's conclusionary statement alone, tying this person under these circumstances to also collecting child pornography, were insufficient to establish probable cause to support a search warrant. But, given the lack of any authority from the Supreme Court, and with the conflicting opinions from the lower federal courts, this rule is not sufficiently established to expect Officer Bobkiewicz to know it. Therefore, he was properly found to have qualified immunity from civil liability.

Note: The sole dissenting federal circuit court of appeal opinion came out of the Eighth Circuit, holding in *United States v. Colbert* (8th Cir. 2010) 605 F.3rd 573, that "(t)there is an intuitive relationship between acts such as child molestation or enticement and possession of child pornography." (*Id*., at p. 578.) Only one of the three justices in this new case agreed with the Eighth Circuit, but voted to affirm anyway because right or wrong, the officer was held to have qualified immunity. But that's all academic in that this case is now the rule in our area absent a contrary California case (of which I know of none). But as noted by the Court, this rule is one that can be different under other circumstances. For instance, if a well-qualified academic expert on this topic could opine that people participating in a particular type of behavior that is indicative of an abnormal prurient interest in children might also be expected to have an unhealthy interest in child pornography and is likely to collect it, the result could be different. The Court here indicates as much, noting that "the 'totality of circumstances' could, in some instances, allow us to find probable cause to search for child pornography." But you'll need more than what Officer Bobkiewicz had in this case.

***Arrests and Probable Cause*:**
***Citizen Informants*:**
***Miranda*; *Pre-Admonishment Questioning*:**
***Interrogations*; *Offers of Leniency*:**
***Interrogations*; *Coercion*:**
***Miranda*; *Equivocal Attempts to Invoke*:**
***Search Warrants and Probable Cause*:**
***Search Warrants*; *Motion to Traverse*:**
***Search Warrants*; *Identification of Victims*:**

People v. Scott **(Aug. 11, 2011) 52 Cal.4th 452**

Rule: (1) Probable cause exists when the facts known to the arresting officer would persuade someone of reasonable caution that the person to be arrested has committed a crime. (2) Information from a "citizen informant" is presumed reliable. (3) Limited pre-admonishment questioning will not invalidate post-admonishment admissions so long as the responses obtained prior to the admonishment were not involuntary and the eventual waiver was not the product of "softening up." (4) An alleged offer of leniency will not invalidate a later admission absent a causal connection between the two. (5) It is not "coercion" to tell a defendant that a victim might suffer emotional trauma by having to testify. (6) An attempt to invoke one's right to silence after a previous waiver must be clear and unequivocal to be legally effective. (7) The search warrant affidavit in this case

contained sufficient evidence of probable cause. (8) A defendant is not entitled to an evidentiary hearing on a motion to traverse absent a substantial showing that alleged omissions added to a search warrant affidavit would negate probable cause. (9) It is irrelevant that a theft victim is not identified by name in a search warrant affidavit so long as the theft of the victim's property is otherwise sufficiently described.

Facts: Between September, 1992, and January, 1993, defendant, believing himself to be some sort of "Ninja" warrior, went on a one man murder and rape spree throughout Riverside. On September 10, he raped and murdered Brenda Kenny, a librarian, at her Canyon Creek apartment, stabbing her to death. Defendant left his DNA at the scene. On October 1, defendant entered another home and found Colleen Cliff sleeping in the guest room. Waking her with a knife to her throat, he changed his plans when told that there were others in the house. He was dressed in all black and wearing a ski mask. After telling Colleen that he was a "hit man" and was in the wrong house, he left without further incident. On November 2, defendant found Regina M. asleep in her apartment in the Canyon Crest area. He was dressed in all black and had a mask that revealed only his eyes, and was armed with a silver pistol. He said that he was a "hit man" there to kill her husband (Regina wasn't married). But then he proceeded to rape her, leaving his DNA at the scene. On November 16, defendant accosted Regenia Griffin asleep in the bedroom of her apartment in the Canyon Crest area. He was dressed in all black with only his eyes and mouth visible, holding a gun. Defendant demanded money, but then left when she said she didn't have any, taking only some of her mail. On December 10, defendant, again dressed all in black and armed with a silver semiautomatic pistol, accosted Julia K. in her Moreno Valley home (just outside of Riverside). When Julia's fiancé, Joseph C., later came home, defendant took him hostage as well, putting a three-foot sword to his throat. He raped Julia during a five-hour ordeal, leaving his DNA. Before leaving, he took Joseph's paramedic identification and a photograph of Julia and Joseph. On the evening of December 17, Scott Clifford, from a second-story apartment in the Canyon Crest area, saw a hooded man with a sword strapped to his back emerge from a dark alley into a well-lit parking lot. The prowler, presumably defendant, spotted Clifford and ran away. On January 18, Beverly Losee heard someone knocking on her apartment door on Canyon Crest Drive. Seeing through the front window a man dressed all in black, she wouldn't let him in. He eventually left. An hour later, Alison Schulz and Phillip Courtney were entering their nearby Hidden Springs apartment when defendant accosted them. He was holding a gun and dressed all in black martial arts clothing with a black ski mask. Phillip was stabbed in the back during this confrontation, resulting in both his lungs being punctured. A neighbor, Howard Long, heard the commotion, retrieved his own gun, and ordered defendant to "freeze." Defendant instead shot at Long and ran away leaving a bullet in the doorframe. Throughout this time period, defendant was an employee at a local movie theater on Day Street in Riverside. On numerous occasions he would talk to others about his martial arts ability, commonly dressing in all black. After the murder of Brenda Kenny, but before the incident was reported in the newspapers, defendant told his girlfriend that he'd had a dream about a murder of a librarian occurring in Kenny's apartment complex, saying that in his dream he saw a man stabbing her to death. An anonymous informant called police and identified defendant as the "ninja guy who's breaking into the apartments in Canyon Crest," and that he worked at the movie

theater on Day Street. The informant also physically described defendant; a description that matched the suspect in the above crimes. The informant indicated that defendant had a "long skinny sword" and a "big knife," and that he'd spoken of stabbing people. The informant further indicated that defendant had claimed to have dreamed about the murder of the "librarian lady." A Riverside P.D. detective went to the movie theater and interviewed a number of employees who confirmed some of the information provided by the informant. She then talked to Ricardo Decker, another employee, who, when asked, freely admitted that he was the informant. But his information differed from what he'd provided over the phone to the extent that defendant owned a handgun and that it was defendant's girlfriend, and not Decker himself, who defendant had told about his dream. When asked about this discrepancy, Decker indicated that there were so many rumors going around about defendant being the "Ninja Rapist" that he couldn't remember for sure who had told him what. Defendant was eventually arrested. In an interrogation, he made a number of incriminating admissions although he consistently denied being involved in the described crimes. A search warrant was executed on his home resulting in recovery of Joseph C.'s paramedic identification, the photograph taken from Julia K's apartment, and Regenia Griffin's mail. Two swords were found, along with a silver semiautomatic pistol. Ballistics showed that the bullet in Howard Long's doorframe came from this gun. Defendant's DNA connected him to each of the rapes and the murder, at least to the extent that he was among 8% of the general population that shared the genetic profile left at each scene. Defendant was convicted of first degree murder with special circumstances (plus a whole bunch of other crimes) with the jury also returning a verdict of death. Defendant's appeal to the California Supreme Court was automatic.

Held: The California Supreme Court unanimously affirmed. *(1)* Among the issues on appeal, defendant first argued that his incriminating statements made to the police should have been suppressed. His primary contention was that his admissions were the product of an illegal arrest; i.e., one made without probable cause. The Court disagreed. "'Probable cause' exists when the facts known to the arresting officer would persuade someone of 'reasonable caution' that the person to be arrested has committed a crime." In this case, defendant made numerous admissions to his co-workers. Of particular importance were his statements to his girlfriend about his dream concerning the stabbing of Brenda Kenny even before the incident was publicized in the newspapers. He was also known to be involved in the martial arts and liked to dress as a ninja. He told co-workers that he possessed a semiautomatic pistol and he matched the physical description of the suspect in the various crimes. *(2)* Defendant further attacked the probable cause by arguing that Decker's information was not reliable, as shown by the fact that he changed his story about how he knew that defendant claimed to have had a dream about Kenny's murder. In response, the Court noted that although Decker's information had first come to the police anonymously, he readily admitted being the informant when confronted by the detective. Decker provided information without hesitation, expecting nothing in return. As such, he was a "*citizen informant*." Information from a citizen informant, provided out of apparent good citizenship, as opposed to one who is looking for some reward or benefit for himself, is presumed to be reliable. The discrepancies in Decker's information were logically explained. As such, there was more than enough information

provided to the police to establish probable cause for defendant's arrest. *(3)* Defendant next argued that his waiver of constitutional rights, per *Miranda*, was invalid because he had been "*cleverly softened up*" before being *Mirandized*. (See *People v. Honeycutt* (1977) 20 Cal.3rd 150.) Specifically, the detectives spent about 20 minutes talking to him about other matters before advising him of his rights and getting a waiver. The Court noted, however, that much of the 20 minutes was used to obtain background information for the booking slip. The rest of the time he was asked about his hobbies (including martial arts) and other topics. The Court ruled that so long as his initial statements were obtained voluntarily, later statements obtained after a proper *Miranda* admonishment and waiver are admissible. "Absent any actual coercion or other circumstances calculated to undermine the suspect's ability to exercise his free will, a *Miranda* violation—even one resulting in the defendant's letting 'the cat out of the bag'—does not 'so taint the investigatory process that a subsequent voluntary and informed waiver is ineffective for some indeterminate period.'" The trial court suppressed his pre-admonishment responses. That's all it was required to do. The Court also differentiated this circumstance from the *Honeycutt* "*cleverly softening up*" case, noting that the officers here did not attempt to "ingratiate themselves" to defendant. Also, there wasn't a prior personal relationship between defendant and his interrogators, nor did the officers here disparage the victim, as occurred in the *Honeycutt* case. *(4)* Next, defendant argued that his admissions to the police about his dream concerning Kenny's murder, which he admitted to the detectives after he was told that his co-workers had told them about it, were obtained through offers of leniency. Any statements made to the police as a direct product of an offer of leniency are inadmissible in evidence against a criminal defendant. This is because such statements are considered to be unreliable. But in this case, the Court found that nothing the detectives said could be considered an offer of leniency. (I.e., If you're truthful with us and you tell us exactly what happened, it'll make things go much better, cuz we both know what happened.") And even if they were, defendant's statements must be "*causally related*" to the alleged offer of leniency. Here, defendant continually denied his guilt, even after the complained-of comments from the detectives. And his admission to having a dream about Kenny's murder was separated from the detective's challenged statements by a break in the questioning and a change in interrogators. It was only after the new interrogator began to talk with defendant about his ninja skills, and asking him about his dream, that he admitted to it. As such, the causal connection was broken. *(5)* Defendant next complained that he was coerced into making certain admissions by the detectives telling him that a DNA test would be painful. But what the detectives actually said was that it would be a shame to put one of the rape victims through the *emotional* discomfort (". . . do you have to hurt her again?") of having to testify just because defendant didn't want to admit his guilt. There was no coercion in this. *(6)* Next, defendant argued that his attempt to invoke his right to silence midway through the interrogation was ignored. The Court again disagreed. The rule is that once a suspect has waived his rights, any attempt to invoke them later must be clearly and unequivocally expressed. In this case, as the detectives were attempting to get defendant to admit his guilt, he said; "*I don't, I don't want it, I don't wanna . . . .*" Taken in context, this was merely a refusal to admit his guilt and not an attempt to invoke his rights. Defendant, at the very least, did not clearly and unequivocally invoke his right to silence. The detectives were under no legal obligation to stop and seek clarification.

(7) Defendant also attacked the showing of probable cause in the search warrant affidavit issued for his home. Defendant's complaint was that the affidavit did not establish the reliability of the information obtained from the anonymous informant, who later was determined to be his co-worker, Ricardo Decker. To the contrary, the affidavit indicated that the telephone tipster was an adult co-worker of defendant's, that he was not in custody or a suspect, and that he appeared to be responsible and credible. In fact, when contacted, Ricardo Decker admitted to being the informant and was therefore no longer anonymous. Also, all the information by Decker was corroborated by what the officers already knew from the victims and others, including (but not limited to) the physical description of the defendant himself as "half Black, half Japanese" when the victims described the suspect as a Black male, possibly of Asian heritage. Also, the defendant, when interrogated, before the warrant affidavit was written, admitted to owning a semiautomatic pistol, a ninja uniform including a hood, shirt and pants, a sword, and other ninja instruments. Using all this information, there was more than enough probable cause in the affidavit to justify the issuance of the search warrant. *(8)* Defendant further complained that the trial court would not allow him an evidentiary hearing in his attempt to traverse the warrant. But before such a hearing is allowed, a defendant must establish by a preponderance of the evidence that (a) the affidavit contains statements that are deliberately false or were made in reckless disregard of the truth, and (b) the affidavit's remaining contents, after the false statements are excised, are insufficient to support a finding of probable cause. Defendant here claimed that material omissions were made. As such, it was his burden to prove that when the alleged omissions are added to the affidavit, there would no longer be probable cause. The omissions defendant complained of were that Ricardo Decker changed his story about how he knew of defendant's dream. The Court noted, however, that the change in the story was accounted for by Decker's explanation that he couldn't really remember how he found out about the dream. Also, given the abundance of probable cause in the affidavit, adding an explanation about this issue would not have detracted from the warrant's probable cause. *(9)* Lastly, defendant complained that the warrant affidavit did not mention Joseph C. or Regenia Griffin by name when asking to search for and seize Joseph's paramedic identification and Regenia's stolen mail. The Court found this to be irrelevant where the theft of the identification and the mail is otherwise sufficiently described. And even if not, items not requested in the warrant are still subject to seizure during the execution of a search warrant so long as the searching officers recognize it as relevant evidence upon seeing it during the execution of the warrant. These items, therefore, were properly seized. All these issues being without merit, defendant was properly convicted and sentenced to death.

Note: Sorry about the length of this brief, but when a defendant shotguns the issues, frivolously or not, it's best to at least touch on each of them. The original decision itself is some 61 pages long. But there really were no shockers in this case. When you're looking at death, one can't fault a defendant for bringing up anything and everything that could possibly have some merit, hoping that in the confusion and sophistry, a court might agree to at least one of his arguments. Throw enough of it against the wall and something might just stick. No such luck here, at least at this point. But then we haven't had our Ninth Circuit review of the case yet.