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THIS EDITION'S WORDS OF WISDOM:

"*Some see the glass as half-empty, some see the glass as half-full. I see the glass as too big*." (George Carlin)

IN THIS ISSUE: Page:

Administrative Notes:

The Community Caretaking Function and the Unlicensed Driver 1

Case Law:

Searches Incident to Arrest 2
Vehicle Searches; Inventory Searches 2
Unsolicited Statements and "Small Talk" 4
An In-Custody Suspect's Intent to Initiate Interrogation After a Prior Invocation 4
Implied Consents to Search 7
Traffic Stops and Reasonable Suspicion 9

***ADMINISTRATIVE NOTES*:**

The Community Caretaking Function and the Unlicensed Driver: In my brief of *People v. Torres* (2010) 188 Cal.App.4th 775 (See *Legal Update*, Vol. 15, No. 12, dated 12/2/10), I noted that "*just because an unlicensed driver may repeat his offense by driving the car away after being cited is not, by itself, one of the recognized community caretaking function concerns and does not justify the impoundment of the vehicle*." A number of you have questioned this conclusion.

But I didn't just make it up. *Torres* itself says: "Federal cases underscore the impounding of a vehicle driven by an unlicensed driver must be supported by some community caretaking function *other than temporarily depriving the driver of the use of the vehicle*." (pg. 792.) In *United States v. Caseres* (9th Cir. 2008) 533 F.3d 1064, the Ninth Circuit noted that prior case law does "*not*" support the conclusion "that impounding an unlicensed driver's car to prevent its continued unlawful operation is itself a sufficient community caretaking function." (pg. 1075.) And lastly, in *Miranda v. City of Cornelius* (9th Cir. 2005) 429 F.3d 858, the Ninth Circuit court cautioned that if the community caretaking function were so broad as to include the deterrence of "*future illegal activity*" (referring to the possibility that the unlicensed driver would repeat her offense), it "would expand the authority of the police to impound regardless of the violation, instead of limiting officers' discretion to ensure that they act consistently with their role of 'caretaker of the streets.'" (pg. 866.) It must be noted, however, that in *People v. Benites* (1992) 9 Cal.App.4th 309, the officer testified that one of the reasons why he impounded the defendant's car when it was discovered that he was driving on a suspended license was because neither he nor his passenger had a valid license and he (the officer) was concerned that they would return after being cited and begin their unlawful driving again. However, the officer was equally concerned that the car would have to be left in a remote area where it was subject to vandalism, one of the recognized community caretaking concerns. (pg. 326.) But the *Benites* court never actually ruled that the possibility defendant might reoffend is sufficient *by itself* to justify impounding the car. None of these cases are directly on point with the situation where you have (1) an unlicensed driver, (2) no one who is available to legally drive the car, (3) no recognized community caretaking theory to justify impounding the car, and (4) an articulable reason to believe that the cited driver will in fact reoffend by driving again as soon as you leave him. *So can you impound the car when your only justification is to prevent the driver from reoffending*? The above cases tend to hint strongly that you cannot. But until we have a case directly on point, feel free to set up one for me.

CASE LAW:

***Searches Incident to Arrest*:**
***Vehicle Searches*; *Inventory Searches*:**

United States v. Maddox **(9th Cir. Apr. 6, 2010) 614 F.3rd 1046**

Rule: (1) Search of a container found in defendant's possession when arrested, but separated from his person and not searched until after he is secured, is unlawful. (2) An inventory search of a vehicle is unlawful unless it is stolen, used in a felony, or the officer's "*community caretaking function*" applies.

Facts: Officer Scott Bonney of the Washington State Police observed defendant's Chevrolet truck come to an abrupt stop in the middle of an intersection. Defendant immediately proceeded in reverse, narrowly missing another car crossing the intersection,

and then made a "three-point turn" blocking traffic as he did so. He then accelerated rapidly out of the intersection. Officer Bonney made a traffic stop a short distance away. Defendant was told that he was stopped for driving recklessly. During the ensuing conversation, it was determined that defendant did not have a driver's license and that he had been given the truck by a friend but had not yet registered it and didn't have a bill of sale for it. Officer Bonnie further noted that the registration sticker was expired and that a temporary registration sticker in the window was not only a photocopy, but purportedly valid for longer than is normal for a temporary sticker (i.e., 31 days instead of 30). A computer check revealed that defendant's driver's license had been suspended. Defendant was asked to step out of the truck, but he refused. Officer Bonney took defendant's car keys and a cell phone from his hand, tossing them onto the truck's seat, and then arrested him by forcefully extracting him from the truck and handcuffing him. After searching defendant and finding $358 in cash in his pants pocket, defendant was put into the back seat of the patrol car. Officer Bonney then returned to defendant's truck and recovered the cell phone and car keys from the vehicle's seat. Hanging on the key chain was a small metal vile which, when opened, was found to contain a small amount of methamphetamine. A laptop computer bag was also found in the truck. Opening the bag, the officer found a handgun and more methamphetamine. Charged in federal court, defendant filed a motion to suppress the evidence found in his truck. The district (trial) court granted his motion. The Government appealed.

Held: The Ninth Circuit Court of Appeal, in a split, two-to-one decision, affirmed. (1) The Government argued that the search of the metal vial on defendant's key chain was lawful as a search incident to his arrest. A "*search incident to arrest*" is one of the "few specifically established and well-delineated exceptions to the warrant requirement of the Fourth Amendment." The rationale for allowing such a search is "for the twin purposes of finding weapons the arrestee might use, or evidence the arrestee might conceal or destroy." In determining the validity of a search incident to arrest, two factors must be considered: (a) Was the container searched within the arrestee's immediate control when he was arrested, and (b) did events occurring after the arrest but before the search make the search unreasonable? In this case, although the key chain vial was under defendant's immediate control when he was arrested (as he was being extracted from his truck), subsequent events—being handcuffed and put into a patrol car—rendered the later search unreasonable. More to the point, when defendant's vial and car were searched, there was no longer any possibility that he could have reached for it and concealed or destroyed evidence. "Temporal or spatial proximity" between the arrest and the search isn't enough to justify the search unless there is some threat or exigency to justify the delay. Here, there was no such threat or exigency. Therefore, the "search incident to arrest" exception to the Fourth Amendment didn't apply. (2) If the search of the vial was illegal after defendant had been secured, then certainly the search of the laptop computer bag was as well. However, the Government sought to justify the search of defendant's laptop computer bag as an inventory search. Impounding and inventorying a vehicle's contents is lawful under limited circumstances. For instance, if the vehicle was stolen or used in the commission of a felony, neither of which happened here, the car may be impounded and searched. Also, under an officer's "*community caretaking function*," the officer may impound a vehicle so long as allowed under local state law *and* one or more of the

following circumstances exist; i.e., it is abandoned, impeding traffic, or threatening public safety or convenience. Aside from noting that there was no Washington State statute allowing for an impound of a vehicle under these circumstances (fn. 5), none of these community caretaking factors were found to exist in this case. Therefore, an inventory search of defendant's vehicle was not lawful under these circumstances. The evidence found in defendant's truck, therefore, was properly suppressed by the trial court.

Note: On the issue of the purported search incident to arrest, the Court never even mentions *Arizona v. Gant* (2009) 129 S.Ct. 1710. But *Gant*, to me, is the key. In *Gant*, the U.S. Supreme Court held that once a defendant who's been arrested in his vehicle has been secured (e.g., handcuffed and/or locked into a patrol car, as occurred in this case), and can no longer lunge for evidence or weapons, a search of his vehicle incident to the arrest is illegal (absent limited circumstances not applicable in this case). The Government and the dissenting opinion relied upon the old theory that used to allow for a search incident to arrest *so long as* the suspect *could* have lunged for the evidence prior to being physically secured. *Gant* put the kibosh on that argument. This case perhaps takes *Gant* a step further by finding that it matters not that the officer took the container in issue away from the arrestee during the act of arresting him. Now, taking a container away and separating it from the soon-to-be-unsecured suspect deprives the officer of the right to come back minutes later, after the suspect is secured, and searching it. On the issue of the legality of the vehicle's impound, this is but one more case emphasizing the need for one of the factors under the officer's "*community caretaking function*," i.e., that it was abandoned, impeding traffic, or threatening public safety or convenience, before you can tow it. Not mentioned is the likelihood of the car being stolen or vandalized if left at the scene. And added are the non-community caretaking factors of when the car is stolen or was used in the commission of a felony; i.e., it is evidence of a crime. Absent one or more of these situations applying to your proposed impound, the fact that a statute may purportedly allow you to tow it is irrelevant. It's as simple as that.

***Unsolicited Statements and "Small Talk*:"**
***An In-Custody Suspect's Intent to Initiate Interrogation After a Prior Invocation*:**

Mickey v. Ayers **(9th Cir. June 7, 2010) 606 F.3rd 1223**

Rule: Incriminating statements made to police by an in-custody suspect during "*casual conversation*," so long as not solicited, are admissible. Showing an inclination to want to talk may, depending upon the circumstances, allow for a second attempt to seek a *Miranda* wavier despite a prior invocation of the suspect's right to counsel.

Facts: During the evening of September 28, 1980, defendant brutally murdered Eric Lee Hanson and Hanson's girlfriend, Catherine Blount, in their home in Placer County. Defendant beat Hanson with a baseball bat and then slit his throat from ear to ear, clear through to the spinal cord. He then stabbed Blount seven times in the chest, penetrating her heart. Defendant and Hanson, who was a dope dealer, were (or had been) friends. Defendant's motive to kill Hanson was related to his belief that Hanson had stolen money from him. At that same time, defendant had stolen some of Hanson's marijuana crop and

buried it for later use. Defendant had traveled from Japan where he lived with his wife, who was a nurse, and her two children on an Air Force base, for the purpose of committing these murders and to recover the hidden marijuana. After killing Hanson and Bount and stealing their car and some personal belongings, defendant flew back to Japan. An investigation quickly led to defendant. On October 14, 1980, Placer County Sheriff Donald Nunes traveled to Japan and arrested him. He was advised of his *Miranda* rights but declined to speak at that time, telling Nunes that he first wished to speak to a friend who was an attorney. Although defendant wanted to waive extradition, Japan was not ready to let him go. It wasn't until January 12, 1981 (three months later) that Nunes returned with Detective Curtis Landry and a federal marshal and an extradition warrant. On January 16, at about 3:30 p.m. Tokyo time, they picked defendant up and began their journey back to California. During the three hour car ride to the airport, defendant was alert, healthy, jovial, and talkative, initiating and engaging in small talk with Nunes. He remained talkative on the flight to Hawaii. At 8:00 p.m. Tokyo time, Detective Landry offered defendant a breath mint that he'd obtained from a candy bowl in defendant's wife's home during a previous interview with her. Detective Landry asked him if he knew where it came from. Defendant said that he did, and put his head in his hands. But he soon continued to initiate small talk with both Nunes and Landry. About two hours later, defendant suddenly asked Landry whether Hanson and Blount were buried together. When told that they'd been cremated and their ashes scattered, defendant, while crying uncontrollably, told Landry that nothing would have happened if Hanson had not reacted as he did to the theft of his marijuana. This conversation lasted about 20 minutes with Landry saying nothing. About an hour later, defendant resumed his generalized non-incriminatory small talk with Landry. The plane landed in Hawaii at 1:30 a.m. Tokyo time (a 5½ hour flight). Before taking defendant to a Hawaiian jail, defendant told Landry; "*Curt, I would like to continue our conversation at a later time*." The officers then called the Placer County District Attorney's Office for advice and were told to ask defendant if he wished to speak, and if so, *Mirandize* him again and question him. Landry did so some six hours later. Defendant confirmed that he'd requested this conversation and waived his *Miranda* rights. During the following four-hour interrogation, defendant was alert and aware. His composure came and went several times as he made a number of incriminating statements. They resumed their flight to California the next day where defendant was finally booked. He was convicted of two counts of first degree murder with special circumstances and, following the penalty phase, sentenced to death. In an automatic appeal to the California Supreme Court defendant's conviction and penalty were affirmed. (*People v. Mickey* (1991) 54 Cal.3rd 612.) In its affirmation, the Supreme Court upheld the admissibility of defendant's in-flight and Hawaii admissions, citing the lack of any coercion. The United States Supreme Court denied certiorari. (*Mickey v. California* (1992) 506 U.S. 819.) Defendant then began pursuing federal habeas corpus relief which included the issues discussed below. The federal district court made a mixed ruling concerning the voluntariness of defendant's statements. Both sides appealed.

Held: The Ninth Circuit Court of Appeal affirmed and reversed various rulings of the district court, but upheld the voluntariness of defendant's statements and the validity of his Hawaii *Miranda* waiver. Defendant claimed that the statements he made on the

plane while traveling from Tokyo to Hawaii, and then those made when interrogated while in the Hawaiian jail, were constitutionally inadmissible. He based these claims on allegations (among others) that he had been mistreated in Japan and that the officers had "coerced" him into talking. The alleged mistreatment while in custody in Japan involved the poor conditions in the Japanese prison and the lack of contact he'd been allowed with his family for the three months that he was there. The law on this issue is well-settled: An admission "is involuntary if coerced either by physical intimidation or psychological pressure." The issue is "whether a defendant's will was overborne by the circumstances surrounding the giving of a confession." In making this determination, a court must consider "the totality of all the surrounding circumstances—both the characteristics of the accused and the details of the interrogation." Also, it must be proved that there was some "*causal connection*" between the police conduct and the defendant's incriminating statements. Looking at the circumstances of this case, the Court noted that, contrary to his claims, his family had in fact visited him three or four times during his three months in the Japanese prison. Also, when picked up by the California officers, the evidence was that defendant "was alert and in good health; he was also jovial and extremely talkative." There was no evidence that he'd suffered any while in Japanese custody, but rather that he'd "weathered (his Japanese incarceration) quite well." Also, the evidence showed that on the flight between Japan and Hawaii, the officers did not threaten defendant physically or psychologically. In fact, they did not even ask him any questions. They "merely reciprocated defendant's desire to engage in 'small talk' about traffic, philosophy, politics, and mutual acquaintances in California." There was no evidence here to support an argument that defendant's will was "overborne" by these circumstances. Defendant further argued that the mint given to him, which came from his wife's candy dish, was intended to "soften him up," leading to the incriminating statements he made while on the plane and his later agreement to waive his *Miranda* rights and talk about his crimes. The Court, however, found that the gift of a mint did not cause his will to be overborne. The initial incriminating statements weren't made until some four hours after he was given the mint. Given the fact that defendant acted the same before and after the mint incident, the Court found it hard to see how the mint was "*causally related*" to defendant's later statements. Also, giving a suspect candy "is a far cry from the type of police behavior typically associated with coercion." The Court also rejected defendant's claims that the flight "excessively fatigued" him, based upon the evidence. And even if he was tired, it takes more than merely being tired to make a defendant's statements involuntary. Defendant further argued that having invoked his right to counsel when first contacted in October, 1980, and remaining in continuous custody since then, the officers were precluded from reinitiating an attempt to question him by later seeking a *Miranda* waiver. "A suspect who invokes the right to counsel may not be interrogated unless he (himself) (re)initiates the conversation." (*Edwards v. Arizona* (1981) 451 U.S. 477.) *Miranda* and *Edwards*, however, apply only to "interrogations" and not to casual conversations. An "*interrogation*" is defined as "any words or actions on the part of the police that the police should know are reasonably likely to elicit an incriminating response from the suspect." On the airplane, the officers asked no questions and only responded to defendant's desire for small talk. They engaged in casual conversation of the type generally not subject to either *Miranda* or *Edwards*. On this issue, the Court rejected defendant's arguments that the officers purposely manipulated the conversation to lead to

incriminating statements. Any movement towards making incriminating statements were initiated by defendant and not the officers. Further, defendant's statement to Detective Landry saying, "*I would like to continue our conversation at a later time*," was found to be an initiation of the interrogative process by defendant himself, and sufficient to overcome an *Edwards* argument. Defendant's unsolicited incriminating statements made while on the airplane, and his later waiver of his rights, were voluntary. His statements were therefore properly admitted into evidence against him.

Note: Good case, and excellent handling of the situation by these officers. While doing nothing to push defendant into engaging in "casual conversation," they sat back quietly as defendant continued to dig a hole for himself. Politely responding to his "small talk" did not alter the equation. It is not improper to let him go rambling on or to respond. The officers did do some things that gave defendant some fodder for appeal, such as bringing up the topic of his brother who had committed suicide. But they were still a far cry from doing anything that could be considered as "*softening up*" or encouraging him to talk about his crimes. Lastly, seeking advice from your prosecutor about touchy issues, such as whether you can make a second attempt at getting a *Miranda* wavier, is a good idea. Even if you think you know all the rules, getting a second opinion is always smart.

***Implied Consents to Search*:**

United States v. Vongxay **(9th Cir. Feb. 9, 2010) 594 F.3rd 1111**

Rule: A consent to being searched must be freely and voluntarily obtained, but may also be implied under the circumstances.

Facts: Officer Alfred Campos of the Fresno Police Department was working near the "After Dark Nightclub" one evening in a marked patrol car. The area is known for gang activity and violence. Officer Campos observed a group of Asian males loitering in front of the club. They were dressed in blue athletic apparel commonly worn by members of the Asian Crips and the Tiny Rascals street gangs. Officer Campos knew that the club was a hangout for both gangs and that they didn't get along, engaging in "constant shootings at each other" and causing other disturbances. When the group noticed Officer Campos approaching, they began to funnel into the club. After calling for backup, Campos drove around the block and re-approached the club on foot. By this time, the same group of males had once again gathered outside the club. Officer Campos approached the nearest person, defendant in this case. Campos engaged defendant in a conversation and asked him if he was leaving or intended to go back into the night club. During this conversation, Campos noticed that defendant was attempting to conceal something under his waistband. He "turned his body to the left and kept his waist area away from [Campos] . . . [a]nd . . . he placed his left hand down towards his waist area as if he was covering something." Believing that defendant might be armed, Campos positioned himself behind him and asked if he had any weapons. Defendant said that he did not. Campos then asked for permission to search him for weapons. Defendant did not verbally respond, but instead "placed his hands on his head." Campos began the search by feeling defendant's waistband and immediately felt the frame of a large

handgun. As soon as Campos felt the gun, defendant attempted to pull away. A struggle ensued during which a loaded semiautomatic handgun fell from defendant's waistband. Defendant continued to struggle. With the help of other officers, he was taken to the ground, Tasered, and arrested. With a felony record, defendant was charged in federal court with being a felon in possession of a firearm (18 U.S.C. § 922(g)(1)). He filed a motion to suppress the gun as the product of an illegal search. (He also filed a motion to dismiss, arguing that section 922(g)(1) violated his Second Amendment right to bear arms as well as his Fifth Amendment due process right to equal protection.) The trial court denied defendant's motions. After his conviction by a jury, defendant appealed.

Held: The Ninth Circuit Court of Appeal affirmed. Defendant argued on appeal that he was illegally patted down for weapons. The Government noted in response that an officer may lawfully ask for consent to search and, upon receiving such consent, so long not coerced, a pat down for weapons is lawful. Whether or not the consent was valid is a question of fact and must be determined from all the surrounding circumstances. A court is to consider five factors in determining whether consent was voluntarily given; i.e., (1) whether the defendant was in custody at the time, (2) whether the arresting officer had his gun drawn, (3) whether *Miranda* warnings were given, (4) whether the defendant was notified that he had a right not to consent, and (5) whether the defendant had been told that a search warrant could be obtained. All five factors need not be satisfied in order to sustain a consensual search. In this case, defendant was not in custody and the officer did not have his gun drawn or even exposed. *Miranda* is inapplicable because defendant was not yet under arrest. And there were no threats to get a search warrant. So the only factor not satisfied was that defendant was never told that he had a right to refuse. However, although still a factor to consider, there is no legal requirement that a suspect be so-informed. Balancing these factors, therefore, the Court found defendant's consent to be valid. Of significance is that Officer Campos *asked* defendant if he could search him, thus giving him a choice. Officer Campos's request would not have "communicated to a reasonable person that he was not at liberty to ignore the police presence and go about his business." In this case, defendant never verbally consented, but rather put his hands on his head. Defendant argued that this gesture was actually his submission to an illegal arrest. But the Court found the lifting of his arms as a gesture so as to enable the search of his person in response to Campos's request, and to be an "*implied consent*." Defendant's motion to suppress the gun was properly denied.

Note: Good case, and not a big surprise. Implied consents to search have been around a long time. You just have to make sure that if you don't get an express consent, your interpretation of the defendant's actions (e.g., putting his hands on his head in this case) is reasonable. For instance, had defendant in this case raised one arm for the purpose of displaying the middle finger of that hand, it would have been hard to argue that the defendant was consenting to being patted down. The Court further held, by the way, that the Second Amendment right to bear arms did not confer on defendant a constitutional right to gun possession. The United States Supreme Court's ruling on the Second Amendment and firearm possession, *District of Columbia v. Heller* (2008) 554 U.S. 570, did not prohibit all restrictions on the ownership or possession of firearms. It is still constitutional for a legislature to prohibit felons, for instance, from gun ownership or

possession. Further, such restrictions do not violate a felon's equal protection rights under the Fifth or Fourteenth Amendments. This is just another in the succession of cases saying that *Heller* was never intended to open the floodgates on the ownership, use, or possession of guns to everyone and that certain categories of persons (e.g., felons and mental patients) may still be prohibited from the benefits of the Second Amendment.

***Traffic Stops and Reasonable Suspicion*:**

People v. Letner and Tobin **(Jul. 29, 2010) 50 Cal. 4th 99**

Rule: Traffic stops require only a "*reasonable suspicion*" of criminal activity. Innocent explanations for the observed circumstances do not necessarily negate a finding of a reasonable suspicion.

Facts: Defendants Richard Lacy Letner and Christopher Allan Tobin, buddies since high school, befriended 59-year-old Ivon Pontbriant and her live-in boyfriend Walter Gilliland, helping Gilliland repair appliances in the garage of their Visalia home. On February 28, 1988, Pontbriant and Gilliland had an argument resulting in Gilliland deciding to go visit his family for a while. Before he left, in the defendants' presence, he gave Pontbriant some cash for the rent which she put into her checkbook in her purse. Later, Gilliland took some tools from the house. On the evening of March 1st, defendants came to Pontbriant's home looking for their missing tools. Later, at around midnight of that same evening, defendants were stopped in Pontbriant's Ford Fairmont by Visalia Police Officer Alan Wightman. The stop was based upon the officer's belief that that car might have been stolen and that the driver was driving while under the influence. Defendant Letner was driving and Tobin was in the front passenger seat. They told the officer that they had borrowed the car from Pontbriant. Letner had no driver's license and the vehicle's registration was not in the car. Letner was found to be in possession of a buck knife and Tobin had a half-empty bottle of beer. The car was searched unsuccessfully for other open containers and Letner was given a field sobriety test, but found not to be under the influence. So Officer Wightman let them go with a citation. But because Letner was not licensed and Tobin did not appear to be in a condition to drive, the officer told them to lock the car where it was and to walk home. Checking the location later and noting that the vehicle was still there, the officer determined that the defendants did as they were told. The next day, however, Pontbriant's nude body was found in her living room with multiple stab wounds and with indications that she had been sodomized with a beer bottle. The money from her checkbook and her Ford Fairmont were missing. Upon learning of the homicide, Officer Wightman reported his contact with defendants to detectives. The Ford was recovered from the site of the traffic stop and searched pursuant to a search warrant resulting in the recovery of evidence connecting defendants to Pontbriant's murder. Warrants of arrest were subsequently issued for both defendants who were arrested a week later in Iowa. Both defendants were charged with murder with special circumstances. Their motion to suppress Officer Wightman's observations stemming from his stop of Pontbriant's Ford was denied by the trial court. They were both convicted of first degree murder with special circumstances and sentenced to death. Their appeal to the California Supreme Court was automatic.

Held: The California Supreme Court affirmed, but split four-to-three on the legality of the traffic stop. Defendant argued that Officer Wightman lacked the necessary reasonable suspicion of criminal activity to justify stopping Pontbriant's vehicle, an alleged Fourth Amendment violation. At the motion to suppress, Officer Wightman testified that he first observed the vehicle at around midnight in the downtown area of Visalia where there were no residences but many car dealerships. What first aroused the officer's suspicions was that the car was beaded with water, presumably from a heavy rainstorm that had occurred earlier that day but that had stopped by 9:30 p.m., some 2½ hours earlier. This indicated to the officer that the car had only been driven a short distance. With his knowledge of numerous reported thefts from the many car dealers in the Visalia downtown area, including a used Ford car lot in the area from where the car was coming, Officer Wightman believed that defendants' vehicle might have just been stolen. So he followed it. The vehicle eventually turned onto an on-ramp to a highway. But despite there being no other vehicles in the area except for the officer's, defendants drove at only 40 mph in a 55 mph zone, and continued to do so for about a mile. This indicated to the officer that the driver might be driving while under the influence. With the latter being the main reason for stopping the car, Officer Wightman made the traffic stop. The trial court ruled that when the officer's two reasons for making the stop are combined, there was sufficient cause to justify stopping the defendants' vehicle. The majority (4 to 3) of the Supreme Court agreed. A traffic stop is treated as an investigatory detention, requiring only that the officer have an objectively reasonable suspicion to believe that a crime is being committed. The totality of the circumstances is to be considered, taking into account the officer's training and experience. Noting that the "reasonable suspicion" standard is "not a particularly demanding one, but is, instead, 'considerably less than proof of wrongdoing by a preponderance of the evidence,'" the Court found that in this case Officer Wightman had sufficient reasonable suspicion to justify stopping the defendants' vehicle. The fact that many drivers may tend to slow down when they observe a police car is irrelevant. It is still a suspicious act that might help establish a reasonable suspicion. And the fact that there might be an innocent explanation for the defendant's observed acts does not mean that an officer can't use it as at least a part of his reasonable suspicion. "What is required is not the *absence* of an innocent explanation, but the *existence* of 'specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.'" The Court found, therefore, that the trial court properly ruled the traffic stop was lawful.

Note: Close case, but good enough. It was close enough to where three justices found it insufficient to justify the stop. But even though close, you have to also consider that had Officer Wightman *not* made the stop, we would not have had any of that evidence found in the car. We would have automatically lost it all without a fight. The lesson learned here is that when your suspicions are aroused but you recognize it is (or may be) thin, it is best to hold off for as long as you safely can, taking in all the observations you can, and then, when it doesn't look like it's going to get any better, just go for it. Then let the attorneys litigate it. Many judges, particularly in a case as important as a homicide, will bend over backwards to cut us some slack in close cases. But if we lose it, we're at least no worse off than if you'd done nothing. Great job by the officer in this case.