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Remember 9/11/01; Support our Troops

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THIS EDITION'S WORDS OF WISDOM:

"*Put you hand on a hot stove for a minute and it seems like an hour. Sit with a pretty girl for an hour and it seems like a minute. THAT'S relativity.*" (Albert Einstein, 1879-1955)

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ADMINISTRATIVE NOTES:

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

CASE LAW:

***Knock and Notice & Exigent Circumstances*:**

People v. Murphy **(Nov. 28, 2005) 37 Cal.4th 490**

Rule: A contemporaneous drug transaction and a commotion occurring outside a residence, under circumstances where it is reasonable to believe the occupants of the residence have been forwarded of law enforcement's approach, constitutes a reasonable suspicion to believe there is more contraband in the residence and that such contraband will be destroyed unless an immediate entry is made.

Facts: San Diego Sheriff's Narcotics Detective Alberto Santana knew defendant was on probation with search and seizure conditions. In November, 2001, Santana saw a woman leaving defendant's home. The woman was stopped and admitted to having just purchased methamphetamine from defendant. Santana therefore decided to conduct a probation search on defendant and her residence. While Santana made preparations for the search, Detective John Marlow, surveilling defendant's home, observed an apparent narcotics transaction take place between defendant and a Hispanic male. Wearing raid clothing that conspicuously identified them as narcotics officers, a half dozen or more deputies approached the house. As they did so, they encountered a man at the side of the garage who appeared to be holding something in his hand. With guns drawn, the deputies "almost yell(ed)," that they were "Sheriffs," that they were conducting a probation search, and to get down on the ground. The man complied. It was noticed that a side window was open and their yelling caused a dog inside to start barking. Within the next five to seven seconds, four or five deputies entered the house and fanned out while verbally announcing their presence. No "*knock and notice*" compliance was attempted at the door because they believed that the occupants would have already heard them coming and that someone might now being arming him or herself, destroying evidence, or fleeing. Defendant, who later claimed she never heard them coming, was found in the opposite end of the house. Six baggies of methamphetamine and a scale were recovered. A later motion to suppress this evidence was denied, the trial judge ruling that although there were no exigent circumstances justifying non-compliance with the knock and notice requirements of P.C. § 844, the officers yelling at the person outside constituted "*substantial compliance*." Defendant thereafter pled guilty to possession of methamphetamine for sale (H&S § 11378) and appealed. The Fourth District Court of Appeal, in a split two-to-one decision, reversed. (See *Legal Update*, Vol. 8, #18, 11/18/03) However, the California Supreme Court reversed the Court of Appeal, ordering the Court to reconsider its ruling in light of the intervening U.S. Supreme Court case of *United States v. Banks* (2003) 540 U.S. 31. The Fourth District Court of Appeal, in a second split decision, *again* found the entry to be illegal. The People petitioned to the California Supreme Court for a second time.

Held: The California Supreme Court, in a 4 to 3 split decision, *again* reversed the District Court of Appeal. Ignoring the issue of whether there was "*substantial compliance*" with the knock and notice requirements (the AG having abandoned that

theory), the Court, following the U.S. Supreme Court's lead in *United States v. Banks*, ruled that "*exigent circumstances*" justified the officers' immediate entry. The test for allowing a "*no-knock*" entry is that the police must have a "*reasonable suspicion*" that knocking and announcing their presence, under the particular circumstances, would (1) be dangerous or futile, *or* (2) would inhibit the effective investigation of crime by, for example, allowing the destruction of evidence. The knock and notice requirements of P.C. § 844 are excused where "the specific facts known to the officer before his entry are sufficient to support his good faith belief that compliance will increase his peril, frustrate the arrest, or permit the destruction of evidence." The same rule applies whether the officers have knocked and then decide to make an immediate entry based upon what happens in response to the knock, or a no-knock entry is made. In *Banks*, the Court noted that the issue in a case such as this is the possible "*imminent disposal*" of contraband and not the time it might take for an occupant to get to the front door to open it. Where, as in this case, there is a contemporaneous sale of narcotics on the premises, coupled with the officers' yelling at a suspect outside an open window, it is reasonable to assume that compliance with the knock and notice requirements of P.C. § 844 (or P.C. § 1534 in executing a search warrant) will risk the destruction of more contraband inside the house. The deputies could reasonably assume (1) that more contraband will be found in the house and (2) that, given the commotion, the occupants of the house would be aware of the deputies' presence and will destroy any remaining contraband. As such, the deputies' failure to comply with the statutory knock and notice requirements was reasonable. The entry under these circumstances, therefore, was lawful.

Note: The Court cites with approval Justice Patricia Benke's dissenting opinions in the two Fourth District reversals where she basically says that the deputies in this case really had no choice, given the loud commotion that occurred outside before they could even get to the door. But note the Supreme Court's cautioning that they are *not* endorsing the intentional manufacturing of an exigency by purposely making a lot of noise outside. "(P)olice officers are not permitted to contrive to create their own exigency by making loud noises before entering, or even by loudly announcing their presence and purpose to serve as a pretext for entering without knocking." So expect inventive defense attorneys to argue that that is exactly what you did. Your lack of control over whatever it is that generates the need to skip knock and notice compliance *must* be noted in your reports and your testimony. The dissent in this case criticizes the lack of any specific information known to the officers justifying a belief that evidence would be destroyed, other than the fact that the occupants probably knew that officers were coming. This is not a totally specious argument, except that it flies in the face of *United States v. Banks*. I read *Banks*, and now this case, to say that under *certain circumstances*, it is logical (and lawful) to *assume* that evidence will be destroyed. And when that evidence is something like drugs, it can be destroyed in a matter of seconds. One of those "*certain circumstances*" would be when it is known that a drug deal had just been consummated on the premises and the occupants of the house have been forewarned that law enforcement is coming to get them. That, as I read it, is the current state of the law.

***Controlled Substances and Firearms*:**

People v. Heath **(Nov. 28, 2005) 134 Cal.App.4th 490**

Rule: Knowledge that a firearm is loaded and operable is not a required element of H&S § 11370.1(a) (Possession of a controlled substance while armed).

Facts: A Pittsburg, California, police officer observed defendant driving a motor vehicle at night with his lights out. Using his red and blue emergency lights, the officer attempted to stop defendant. After some delay, defendant eventually pulled over. But then defendant resisted the officer's efforts to have him turn off his engine and show his hands. He eventually complied and was detained. A small operable .22-caliber pistol with three bullets in its chamber was recovered from under the middle of the driver's seat, in a location where defendant could easily have reached it. Defendant was arrested, handcuffed, and put into the back seat of the officer's patrol car. While being transported to the station, defendant constantly moved around, trying to adjust his body position. After he was removed from the patrol car, a plastic baggie was found in the back seat with a white powdery substance, later determined to be methamphetamine, scattered across the seat. Later, during the booking process, a small plastic baggie containing cocaine base fell to the ground as defendant was removing his shoes. Among other charges, defendant was tried for being in possession of a controlled substance containing cocaine base, cocaine, and methamphetamine, while armed with a loaded, operable firearm. (H&S § 11370.1(a)) The jury disbelieved defendant's testimony that the gun was not his and that he didn't know it was there. He appealed from his conviction.

Held: The First District Court of Appeal affirmed defendant's conviction. His argument on appeal was that although not expressly indicated in section 11370.1(a), it *should* be required that the prosecution must prove as an element of the offense that defendant *knew* the gun he possessed was loaded and operable. Indeed, the need to prove some sort of guilty intent, knowledge, or criminal negligence (i.e., the "*scienter*," or "*guilty knowledge*" requirement) is commonly held by the appellate courts to be necessary under the "*due process*" clause of the Constitution (Amendments V and IV), even though not included as a statutory element of a criminal offense. As the California Supreme Court has ruled: "So basic is this requirement that it is an invariable element of every crime unless excluded expressly or by necessary implication." (*In re Jorge M.* (2000) 23 Cal.4th 866, 872.) *However*, it has also been held that this rule only applies in those circumstances where the charged section seeks to criminalize what otherwise would be innocent conduct. "(D)ue process does not require that factors that simply increase the penalty for already unlawful conduct be subject to a scienter requirement." Here, the knowing possession of cocaine, cocaine base and methamphetamine is already illegal. Section 11370.1(a) (possessing a loaded and operable firearm while in possession of a listed controlled substance) merely provides for a punishment that is enhanced over what would have been imposed for possessing the same substances while not armed. This enhancement does not seek to make illegal an act that, absent the enhancement, would be legal. Therefore, scienter is not necessary. Defendant's awareness concerning whether the gun is loaded or operable is irrelevant.

Note: *In re Jorge M.* is a case where the California Supreme Court inferred as a necessary element of the offense of illegally possessing an unregistered assault weapon that the possessor of the weapon must know that the weapon he possessed had the necessary characteristics bringing it within the definition of an assault weapon, as described in the Assault Weapons Control Act. Also, any simple drug possession case carries with it the necessary element, even if not so-stated in the codes, that the possessor at least knew that the substance he possessed was a controlled substance of some sort. So this scienter requirement is nothing new. This case, however, puts a limit on the use of this theory, making it inapplicable when the underlying act is already illegal, and where a proof requirement to show some sort of intent, knowledge or criminal negligence would do no more than enhance the punishment attached to an illegal act.

***The Extended Border Search Doctrine*:**

United States v. Sahanaja **(9th Cir. Dec. 8, 2005) 430 F.3rd 1049**

Rule: Federal Customs searches of containers found in this country after having been shipped from another country are lawful so long as based upon a "*reasonable suspicion*" that the package contains contraband.

Facts: The United States Postal Service (USPS) attempted to deliver a package addressed to a Harry Fox, at a specific address in the City of Duarte, the package having been mailed from Canada. Because no one was home, the postal carrier left a note that the package could be claimed at the Post Office. Although the package was labeled as containing videos, it felt more like there might be a liquid in it and gave off an odor. Shortly after handling the package, the letter carrier became nauseated. Later that day, a woman who identified herself as Alejandra Oquendo, living at the same Duarte address and who was later determined to be defendant's girlfriend, attempted to claim the package at the Post Office. However, she left empty handed after declining to allow the package to be opened in her presence. Four days later, defendant telephoned the Post Office and claimed that he was authorized to receive mail for Harry Fox. When told that he would need to provide some identification for Harry Fox, or a forwarding address, defendant said that he could do neither. He asked that the package be returned to the sender. However, with an illegible return address, the package was kept at the post office until the United States Bureau of Immigration and Customs Enforcement ("ICE") came to pick it up, taking it to a Customs and Border Protection laboratory. Pursuant to 19 U.S.C. § 482(a), the package was searched by ICE without a warrant and found to contain two one-gallon plastic containers of gammabutyrolactone ("GBL"), a precursor and analogue to gammahydroxybutyrate ("GHB"); a federal Schedule I controlled substance. In the mean time, defendant submitted the delivery notice that had been left at the residence to the Post Office and requested that another attempt at delivery be made. A controlled delivery was made with defendant signing for the package. As soon as he took possession of the package, ICE agents executed a search warrant on his home. In addition to the package that had just been delivered, three kilograms of GHB and "large quantities" of potassium hydroxide ("KOH"), a substance used in the manufacturing of

GHB, were recovered. Defendant was indicted in federal court on charges related to the importation and possession of GBL and the possession with the intent to distribute GHB. His motion to suppress was denied by the trial court. He pled guilty and appealed.

Held: The Ninth Circuit Court of Appeal affirmed. Title 19 U.S.C. § 482 authorizes a warrantless Custom's search of containers coming into this country "*wherever found*," whenever there is a "*reasonable cause to suspect*" (i.e., a "*reasonable suspicion*") that there is contraband in the container. The authority to conduct such a warrantless search, as described in section 482, is sometimes called the "*extended border search doctrine.*" Such searches have been upheld by the U.S. Supreme Court (see *United States v. Ramsey* (1977) 431 U.S. 606.). In this case, it was determined that the package had come from Canada. Although labeled as containing videos, the package appeared to contain a liquid and gave off an odor that made the letter carrier ill. Defendant's girlfriend suspiciously declined to allow the package to be opened in her presence. A number of inquiries were made concerning the package, asking to pick it up, although no one could show any association with the listed addressee (i.e., "Harry Fox"). All this was sufficient to supply the necessary reasonable suspicion that the package contained something illegal. The Court also rejected the defendant's argument that this was not a search by Customs, as required by section 482, but rather one instigated at the behest of the USPS. Despite whatever involvement the Post Office might have had, ICE was empowered by section 482 to make their own assessment and, upon determining that there was a reasonable suspicion, open the package. The search of the package, therefore, was lawful.

Note: The Court distinguishes 19 U.S.C. § 1582, which authorizes warrantless Customs searches at the border itself, or at the "*functional equivalent of a border*," without having to prove any reason to believe there is contraband inside the package. Section 482, requiring a "*reasonable suspicion*," applies at any time *after* the package's first stop *after* crossing the border. In other words, a package that comes by airmail from a foreign country into LAX may be searched in Los Angeles without any suspicion; a section 1582 search. But after that, such as when it is moved from Los Angeles to, say, the City of Duarte's Post Office without having been searched, then there must be at least a reasonable suspicion that it contains something illegal before it can be searched without a warrant; a section 482 search. Neither section 1582 nor 482, however, applies to anyone other that federal Customs agents. But, as noted in this case, as a local law enforcement officer who discovers such a suspicious package that has come in from another country, this does not stop you from calling ICE and reporting your suspicions. Then it will be up to ICE to determine whether section 482 gives them the authority to open the package.

***Fourth Waiver Searches; Belatedly Discovered Conditions*:**
***Outstanding Arrest Warrants; Belatedly Discovered*:**

Morena v. Baca **(9th Cir. Dec. 9, 2005) 431 F.3rd 633**

Rule: A belatedly discovered Fourth wavier and arrest warrant will *not* justify a detention and/or search.

Facts: Two Los Angeles County Deputy Sheriffs observed Richard Moreno and Joe Rodriguez walking in a "*high crime*" area of the City Terrace area of Los Angeles at about 7:00 p.m. Moreno contended that he and Rodriguez were detained, patted down, their pockets emptied onto the hood of the patrol car, and then put into the patrol car's back seat for no reason. The deputies, however, testified that Moreno appeared to be startled when he saw the patrol car and tossed something onto the front steps of a nearby residence. Per the deputies, the area where Moreno had tossed something was checked and a baggie of rock cocaine was found. Moreno contended that the rock cocaine came from the deputies' own glove compartment. A computerized check was made of the two subjects. It was determined that Moreno was on parole and had an outstanding misdemeanor arrest warrant. He was arrested on the arrest warrant and for the possession of the rock cocaine. Rodriguez was released. Moreno was later tried for possession of a controlled substance and acquitted in a jury trial. He subsequently sued in federal court, alleging that he had been illegally detained, searched and arrested. Defendants in the law suit (The L.A. Sheriff's Office and the deputies involved) moved for a summary judgment (i.e., to dismiss the law suit). The motion was denied by the trial court, ruling that based upon Moreno's version of the facts (which, for purposes of the motion, were assumed to be true), (1) he was detailed without a reasonable suspicion that he was involved in criminal activity and (2) that neither the parole condition nor the arrest warrant, both being discovered after his detention, could be used to justify his detention or search. The deputies appealed.

Held: The Ninth Circuit Court of Appeal, in rehearing the matter after a prior decision (See *Moreno v. Baca* (9th Cir. 2005) 400 F.3rd 1152.), affirmed the trial court's ruling for the second time. The basis for the deputies' appeal was that (1) because Moreno was on parole, he was subject to being detained and searched without any cause, and (2), his arrest and search were justified by the outstanding arrest warrant and/or his parole conditions. The Ninth Circuit ruled that neither the parole search and seizure condition nor the arrest warrant, both discovered after the fact, could be used to justify a detention, arrest and/or search. Therefore, the deputies' motion for summary judgment was properly denied by the trial court. (Also, this being sufficient to warrant denial of the deputies' summary judgment motion, the Court declined to reach and decide the issue of whether a detention or search can be based upon less than a reasonable suspicion.) The law is well settled that a person's search and seizure conditions (i.e., a "*Fourth Waiver*") cannot be used as a basis for detaining or searching a person unless the officer knows about the Fourth wavier at the time he detains or searches the person. The same rule holds true for a belatedly discovered arrest warrant. The deputies argued that despite this rule, Moreno, being on parole and subject to search and seizure conditions, had no "*standing*" to challenge the search. The Court rejected this argument saying that even a person who is subject to a Fourth waiver does not lose his standing to test the legality of a search or detention. Also, the Court rejected the deputies' argument that their subjective intentions are irrelevant under the rule of *Whren v. United States* (1996) 517 U.S. 806. *Whren* held that an officer's subjective intentions in conducting a stop or search are irrelevant, legitimizing "*pretext stops and searches*," so long as there is *some* legal justification for the detention or search. *Whren*, however, does not allow an officer to use as a pretext some legal reason to detain or search that the officer was unaware of at the

time. Lastly, the Court held that these are issues that are "clearly established" in the law, thus making "qualified immunity" from civil liability unavailable to the deputies. A civil jury will have to hear the competing versions of the facts and decide who is telling the truth.

Note: This is the case, if you remember, where the Ninth Circuit Court of Appeal specifically found that a reasonable suspicion of renewed criminal activity was necessary before a Fourth waiver could be used to justify a detention or search; a rule contrary to California's rule that *no* suspicion is needed. (See *Legal Update*; Vol. 10, #5, 3/25/05) This present decision, backing off from the Ninth Circuit's hardnosed position on this issue by refusing to decide it, replaces the prior *Moreno v. Baca* decision and leaves the Ninth Circuit's opinion on this issue again wide open. Fortunately, the issue of what it takes to justify a Fourth Wavier search is presently pending before the United States Supreme Court in another case; *Samson v. California*, No. 04-9728. But the rule that a belatedly discovered Fourth Waiver (and now, arrest warrant) cannot be used to justify a detention and/or search is well-established in both California state and federal decisions.

***Raw Investigative Notes; Discoverability*:**

People v. Cole **(Dec. 9, 2005) 134 Cal.App.4th 1049**

Rule: Destroying raw notes upon completion of the formal reports is lawful.

Facts: Defendant had a drinking problem, heard voices on occasion, and lived in an abandoned car in his girlfriend's garage. His girlfriend's sister had a physical altercation one day with a person who lived in an apartment complex across the street. Defendant's girlfriend urged defendant to "*be a man*" and to "*do something*" about it. This registered in defendant's soggy brain cells that "be(ing) a man" required him to sneak over to the apartment's garage in the dead of night and light the other person's vehicles on fire. With one car he was successful, blowing it up. The other car was left with a towel stuck in the vehicle's gas tank that burned out before doing any damage. Defendant boasted about this manly deed to his girlfriend and her mother; both of whom immediately reported defendant's admissions to the responding police officers. The girlfriend, herself a long-neck or two short of a six-pack, later asked if she couldn't "withdraw" this statement. Defendant, when interviewed, said that he didn't remember setting the fires, but that if he did it, it was "because of the drinking, to satisfy (the girlfriend who ratted him off quicker than you can say; "*You call that being a man*?"), and to get back at that person." While still making weak denials of guilt, defendant, at the investigator's suggestion, wrote a letter of apology to the victim, offering to pay restitution. (*You just can't fix dumb*!) Defendant was tried on charges of arson and attempted arson. In testimony, the girlfriend claimed she couldn't remember what defendant had told her. The girlfriend's mother, being a little more inventive in her dishonesty, simply said that she had lied. As a result of this testimony, the investigating officers were allowed to testify to the girlfriend and mother's prior inconsistent statements. Defendant had also been caught on video surveillance cameras setting the fires. Although the videos were unclear, the girlfriend's mother identified defendant as the person in the pictures.

Defendant appealed from his conviction, arguing that the failure to preserve and turn over the officers' raw notes violated the reciprocal discovery provisions of Proposition 115.

Held: The First District Court of Appeal (Div. 3) affirmed. During trial, it was discovered that the raw notes taken by the two investigating officers in their interviews with the girlfriend and the mother were destroyed. Pursuant to their normal practice, once the final reports were written, any raw notes relating to the information collected during the investigation were routinely destroyed. Defendant argued that pursuant to Proposition 115, the "*Crime Victims Justice Reform Act*" (1990), establishing reciprocal discovery rules for criminal cases, a police officer's raw notes are discoverable. The Court disagreed. While notes, if kept, will become discoverable when asked for (See P.C. § 1054.1), the long standing rule has always been that there is no error in destroying them so long as three requirements are met: (1) The notes were made for the purpose of transferring data; (2) the officer acted in good faith in destroying them, and (3) the officer acted in accordance with the normal procedure, either written or oral, of the governmental unit in so destroying the notes. And even then, in order to obtain sanctions against the prosecution for the destruction of notes, it is the defendant's burden to show that (1) the notes possessed an exculpatory value that were apparent before they were destroyed *and* (2) the notes were of such a nature that the defendant is unable to obtain comparable evidence by other reasonably available means. Here, the investigating officers testified that they used their raw notes for the purpose of refreshing their recollection when writing the final, formal reports which encompassed everything that was in the notes, and that they destroyed their notes in accordance with their department's normal custom and practice. Nothing in Proposition 115 (nor in the earlier Proposition 8, "*The Truth in Evidence Initiative*") changed any of this.

Note: I've been warning officers for some time that this rule may change someday in that P.C. § 1054.1 makes discoverable, among other things, all "(r)elevant . . . reports . . ." I can see some liberal court including an officer's raw notes into this broad and undefined category. But this case makes it clear that this is not to happen, at least in the near future. So should you keep your raw notes even knowing that they will then become discoverable if you do? When discussed by a number of seasoned trial attorneys in my office some years back, the general consensus was; *it's up to you*. But no one in that discussion could ever remember a case where a cop keeping his or her notes had a detrimental effect upon a prosecution. To the contrary, if anything, it might just help.

***Robbery; "Force" and "Immediate Presence" during Asportation*:**

People v. Gomez **(Dec. 14, 2005) 134 Cal.App.4th 1241**

Rule: With both the "*force or fear*" and the "*taking from the victim's immediate presence*" elements occurring during the defendant's flight with stolen property, the crime is a robbery.

Facts: Defendant broke into a closed Burger Boy restaurant early one morning, intending to steal whatever he could find. After taking money from an ATM in the lobby, he went

into the kitchen looking for food. Failing in this endeavor, defendant went upstairs and rummaged through the office. Meanwhile, the restaurant manager came to work and unlocked the front door. However, when he heard defendant upstairs, he retreated back outside and called 911. Defendant, hearing the manager, retrieved a pistol from a backpack he was carrying and snuck out to his car. The manager followed him as he drove away. Realizing that he was being followed, defendant shot at the manager from about 100 to 150 feet away. Responding police caught defendant shortly thereafter while still in possession of the money he had taken from the restaurant's ATM. He was charged with second degree, commercial burglary and second degree robbery with gun allegations. Convicted of everything, defendant appealed arguing that the evidence didn't support a robbery charge in that the victim was not present when the money he stole from the ATM was first taken.

Held: The Fourth District Court of Appeal (Div. 3) affirmed. A robbery is defined as the felonious taking of personal property in the possession of another, taken from that person's immediate presence, against his will, accomplished by means of force or fear. There are two acts that comprise the "*taking*" of personal property; "*caption*" (the original taking possession of the property) and "*asportation*" (the escape with the property). In *People v. Estes* (1983) 147 Cal.App.3rd 23, it was noted that the force or fear does not need to occur at the time of the original taking, or "*caption*," of the stolen property. It is still a robbery even if the force or fear used against the original possessor of the property occurs during the defendant's attempt to escape with the stolen property; i.e., during the "*asportation*". Similarly, it is still a theft (or, with force or fear used, a robbery) if the property is taken from the victim's immediate presence during either the "*caption*" or the "*asportation*" of the property. (*Miller v. Superior Court* (2004) 115 Cal.App.4th 216.) In other words, so long as either the act of "*caption*" *or* "*asportation*" occurs while in the victim's immediate presence, force or fear will convert the resulting theft into a robbery. In this case, defendant originally took the money from the ATM before the manager was on the scene. However, he committed an "*asportation*" of that money while in the victim's immediate presence. In defendant's attempt to escape with the property, he shot at the pursuing victim from about 100 to 150 feet away. This supplied both the force or fear element as well as the taking (or "*asportation*") from the victim's immediate presence element. Being within 100 to 150 feet of the defendant, with the only thing preventing the victim from catching and retaking the stolen money being the defendant's flight and his use of force, is sufficiently close to be within the victim's "*immediate presence*."

Note: Good case. While it may sound to you like splitting hairs, this case serves the important function of expanding the Common Law interpretation of what constitutes a theft and a robbery; something that at times has impeded the use of such statutes in unusual circumstances. Not all jurisdictions have been so generous, some states holding that to be a theft or robbery, the original taking of the property must be from the victim's immediate presence, and/or the force or fear must occur at that time as well. In such jurisdictions, if either or both the "*immediate presence*" or the "*force or fear*" elements occur during the later asportation of the property, as opposed to during its original caption, then the crime is not a robbery. So good decisions like this one are important.