San Diego District Attorney

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Remember 9/11/01; Support Our Troops

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THIS EDITION'S WORDS OF WISDOM:

"*If you are patient, and wait long enough, . . . nothing will happen.*"
(Garfield the Cat)

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***ADMINISTRATIVE NOTES*:**

***Detentions of Vehicle Passengers*; *Brendlin v. California*:** I'm already getting a lot of questions on this case (located at 127 S.Ct. 2400, and briefed in *Legal Update*, Vol. 12, #8, pg. 4), where the U.S. Supreme Court ruled that a passenger in a motor vehicle, stopped for a traffic infraction, is necessarily detained simply by virtue of being in the car when stopped. The questions I'm getting deal with what you, as a police officer, can legally require the passenger to do, or not do,

since he's already being detained; an issue not addressed by the Supreme Court. So let me give you my take on this: In ruling that the passenger in a car being stopped by law enforcement is himself detained, the Court was discussing the passenger's right to challenge the legality of the traffic stop. They were *not* telling us that you have the right to continue that detention should the passenger indicate his intent to leave. The general rule on detentions is that you must be able to articulate facts and circumstances that cause you to reasonably believe the person to be detained is himself involved in criminal conduct. (*Terry v. Ohio* (1968) 392 U.S. 1.) In other words, without a "*reasonable suspicion*" to believe that the passenger is himself connected to some illegal conduct, you must let him go. The case law, however, is unclear as to what it takes to establish that reasonable suspicion. That potential criminal conduct may very well be the possibility that the passenger, if allowed to walk away, might come back and assault you during the traffic stop. (See *People v. Castellon* (1999) 76 Cal.App.4th 1369; passenger recognized as a gang member who had been present at a prior shooting incident.) But, per California case law, lacking any articulable reasons to support such a suspicion, it is illegal to hold onto him. (*People v. Gonzalez* (1992) 7 Cal.App.4th 381.) The federal Ninth Circuit Court of Appeal, on the other hand, acknowledges that traffic stops are inherently dangerous no matter what the circumstances, and have ruled that an officer has the right to order a passenger to stay in the car without having to articulate any specific concerns justifying such a "*minimal intrusion*." (*United States v. Williams* (9th Cir. 2005) 419 F.3rd 1029, and p. 1032, fn. 2, for a list of cases from other states that agree.) In a non-traffic vehicle stop (e.g., suspected dope-dealing), an officer can also hold onto the passenger when there is shown to be a "*close association*" (whatever that means) between the target of the investigation (e.g., the driver) and the passenger. (*People v. Samples* (1996) 48 Cal.App.4th 1197.) It's also interesting to note that the Supreme Court in the *Brendlin* decision specifically said that a reasonable person in the passenger's position would expect that the officer isn't going to let him go. They didn't say that such a detention is lawful; only that that is what a passenger would reasonably expect. So with this conflict in the case law, and until the issue is settled, my suggestion is to err on the side of caution and articulate in your reports your reasons (assuming there are some reasons) why you felt it would have been unsafe to let a passenger walk away, and/or describe his or her apparent relationship (i.e., a "*close association*") to the driver and why you think he's involved in the driver's illegal activities.

***New Number for Emergency Protective Orders*:** Effective 7/2/07, the San Diego Superior Court has changed the telephone number to use for obtaining domestic violence emergency protective orders to 619-557-2120. The old number will continue to work until the end of business on 7/13/07, after which calls will be automatically forwarded. The Family Law business office has also moved to 1555 Sixth Avenue, San Diego.

CASE LAW:

***Second Degree Felony Murder Rule; The Merger Doctrine*:**

People v. Bejarano **(Apr. 16, 2007) 149 Cal.App.4th 975**

Rule: The second degree felony murder rule is not applicable when the predicate inherently dangerous felony is a violation of P.C. § 246 (discharging a firearm at an occupied motor vehicle) and where the defendant's intent was to assault the occupants of a vehicle, resulting in the accidental killing of a third person.

Facts: Defendant, an admitted Los Angeles gang member, was either inside his house asleep, taking a shower, or sitting on his front porch with either his father and brother, or his brother alone, or by himself, depending upon which of his many lies you choose to believe. But one way or the other, defendant got into a verbal confrontation with the occupants of a black Oldsmobile that had pulled up in front of his house. The vehicle's occupants "claimed" their own gang membership and committed the cardinal sin of "look(ing) at (defendant)." Because such an unforgivable exhibition of disrespect obviously called for an immediate and unmistakable act of retaliation, defendant did the natural thing and ran into his house to retrieve his gun. He was able to get off one shot at the retreating Oldsmobile as it drove away. Being drunk, and no doubt mimicking that really cool way gangsters with an IQ of something less than bell pepper like to hold their guns sideways, defendant's shot missed the Oldsmobile entirely. Instead, it when through the rear window of a nearby Honda, hitting its driver, a totally innocent construction worker named Merced Ramirez. Mr. Ramirez died from a single gunshot wound to the back of his head. Defendant was eventually arrested and charged with murder, among other charges. In addition to the normal murder jury instructions discussing express and implied malice, the trial court also instructed the jury (and the prosecution argued) that defendant could be convicted of second degree murder under the so-called "*second degree felony murder rule*." Under this theory, the jury was told that a person is liable for second degree murder merely by having killed a human being, accidentally or not, when the "homicide . . . is a direct causal result of the commission of a felony that is inherently dangerous to human life," such as "shooting at an occupied motor vehicle" per P.C. § 246. At trial, defendant, being the coward that he is, blamed the shooting on his brother. The jury didn't buy it and convicted him of second degree murder, among other charges. Defendant appealed from his 40-years-to-life sentence.

Held: The Second District Court of Appeal (Div. 3) reversed. Murder, as a general rule, requires proof of either express or implied malice aforethought. An exception to this rule, and an alternative theory to use in a homicide prosecution, is the "*first degree felony murder rule*," as provided for in P.C. § 189. Pursuant to this statute, any killing of a human being that is the direct causal result of the commission of one of the inherently dangerous felonies listed in section 189, is automatically a first degree murder. In addition to this rule is the so-called "*second degree felony murder rule*." This non-statutory common law doctrine allows for a second degree murder conviction when a death is the direct causal result of the commission of an inherently dangerous felony

other than those listed in P.C. § 189. What is, and what is not, an "*inherently dangerous felony*" for purposes of the second degree felony murder rule is determined by case law on a case-by-case basis. Both theories, however, eliminate the need to prove "*malice aforethought*," express or implied. The primary purpose of both of these rules is "*deterrence*," attempting to discourage the commission of dangerous felonies by imposing a greater punishment on those who commit them. The California Supreme Court, however, has carved out an exception to the use of the second degree felony murder theory. Per this exception, the second degree murder rule cannot be used whenever the murder charged is "based upon a(n inherently dangerous) felony which is an integral part of the homicide and which the evidence produced by the prosecution shows to be an offense included in fact within the offense charged," (*People v. Ireland* (1969) 70 Cal.2nd 522.) In such a case, it has been ruled that the offense alleged to be an inherently dangerous felony "*merges*" with the homicide itself. An intentional assault typically falls within this so-called "*merger doctrine*," preventing the prosecution from using the second degree felony murder theory. For instance, an assault with a deadly weapon (per P.C. § 245) cannot be used under the second degree felony murder rule as the "predicate felony" to justify a second degree murder conviction. (It can still be a second degree murder, but only if "implied malice" is proved.) An exception to the merger doctrine, however, may apply in those cases where the defendant had some "*independent and collateral purpose*," such as merely to frighten a person as opposed to purposely trying to assault him. In the instant case, however, defendant admitted to police that he intended to shoot at (i.e., assault) the occupants of the Oldsmobile. As an intentional assault, the "independent and collateral purpose" exception does not apply. Because defendant intended to shoot the occupants of the Oldsmobile, the merger doctrine *does* apply. Defendant's assaultive act cannot be used as the predicate offense for a second degree felony murder. It was therefore improper for the trial court to tell the jury that they could use this theory to support a second degree murder conviction.

Note: The Court noted that, as stated by the California Supreme Court many times, the "felony murder rule (whether first or second degree) is a disfavored doctrine and should be interpreted narrowly." This is why the courts developed the "*merger doctrine*" exception, seeking to diminish the use of the second degree felony murder rule. As noted by various court decisions, without the merger doctrine to put a lid on the use of the second degree felony murder rule, every felonious assault resulting in someone's death would automatically be at least a second degree murder, thus virtually eliminating the need to ever have to prove malice in a murder case. This would subvert the Legislature's authority to differentiate between the different levels of culpability for assaultive-type conduct. If this whole concept is confusing to you, I highly recommend you read this whole case decision. The Court did an excellent job reciting the history, case by case, of (1) the second degree felony murder rule, (2) the exception provided by the "*merger doctrine*," and (3) the exception to the merger doctrine under the "*independent and collateral purpose*" rule. You may have to read it a couple of times like I did. But after awhile, it will start to sink in.

***"Public Place," per Local Ordinance*:**

People v. Krohn **(Mar. 29, 2007) 149 Cal.App.4th 1294**

Rule: The gated courtyard of an apartment complex is not a "*public place*" unless the general public can expect to access the area "without challenge."

Facts: A Tustin police officer conducting an investigation (on something unrelated to this case) used his "emergency access key" to gain entry to the "private parking area" of a gated two-story apartment complex. The access key opened an electric gate that blocked the driveway leading into the parking area. The gate, complete with spikes on top, automatically shut behind the officer. The front entryway to the apartment complex was also guarded by a tall, metal fence with similar spikes along the top. The fence included a locked gate that required a key or code to open. Because this front gate would automatically lock if closed, the tenants commonly left it propped open. It was unknown whether the gate was open or closed on this occasion. While in the parking lot, the officer noticed defendant coming down a flight of stairs into the ground floor courtyard area, toward a rear gate and the parking area. Defendant was carrying a bag of trash and a beer can. Tustin has a local ordinance making it "unlawful for any person to drink any alcoholic beverage on any . . . *public place* . . . in the City . . . ." (Italics added) Defendant was detained for violating the ordinance—*drinking in public*—and asked if he had any weapons or drugs on him. Defendant agreed to a consensual search while admitting to having drugs in his pocket. Marijuana, methamphetamine and Vicodin pills were found on his person. Charged with possessing these drugs, defendant's motion to suppress the evidence was denied. He appealed from his two-year prison sentence.

Held: The Fourth District Court of Appeal (Div. 3) reversed. The issue on appeal was whether defendant was in a "*public place*" at the time he was caught with the beer can, "*public place*" being a necessary element of the Tustin ordinance. The test is whether the area in issue is "readily accessible to all those who wish to go there." A place is generally considered "*public*" if "a member of the public can access the place 'without challenge.'" Therefore, even though one's front yard, for instance, is private property, it is a "*public place*" if the general public can be expected to walk across it to gain access to the residence's front door. That same front yard, however, would *not* be a public place if it were blocked off by a 3½ foot fence and had three dogs in the yard, as occurred in *People v. White* (1991) 227 Cal.App.3rd 886. This is because under these circumstances, it would have "provided challenge to public access." As noted in *White*, this is true even if the gate is unlocked. In the instance case, the Court held that "(t)he fences and gates certainly 'challenge' the public's access to the courtyard" where defendant was detained. The fact that the front gate is periodically propped open is irrelevant, at least in the absence of any evidence that it was open at the time in question. Defendant, therefore, was not in a public place. Not being in violation of Tustin's ordinance, defendant was unlawfully detained. As such, his admissions and consent to search were the products of that unlawful detention. The evidence should have been suppressed.

Note: What is, and what is not, a "*public place*" will differ depending upon the specific statute being interpreted. Here, the Court cites a number of P.C. § 647(f) (drunk in public) cases. It seems pretty evident that the locked-off gated area of a residential complex is not a public place for purposes of P.C. § 647(f), or this local ordinance. Even if there had been evidence that the front gate was propped open at the time, I don't think the result would have been any different. The security precautions described in this case were obviously erected for the purpose of giving the residents protection from intrusions by the general public.

***Detentions and Reasonable Suspicion*:**

People v. Perrusquia **(Apr. 25, 2007) 150 Cal.App.4th 228**

Rule: Evidence that defendant was, or was about to be engaged in criminal activity held to be insufficient under the facts of this case.

Facts: Anaheim Police Officer Ryan Tisdale, while on routine patrol at 11:27 p.m., stopped at a 7-Eleven store on the corner of Harbor and La Palma for a cup of coffee. At that time Anaheim was experiencing an armed robbery series where six 7-Elevens had recently been hit. The suspect in this series was a black or Hispanic male in his late twenties. Officer Tisdale also knew that this particular area, with numerous gangs "tied to the area," was considered to be a "high-crime area" where assault-with-a-deadly-weapon and drug violations were common. When Officer Tisdale drove into the parking lot, he immediately noticed defendant sitting in his car with the engine running, parked facing La Palma, near an exit. Other parking spots closer to the store's entrance were available. The officer watched defendant for about 45 seconds as defendant sat leaning against the glass, crouched low, and not moving. A second officer arrived and they continued to watch him. The two officers then approached defendant's car. As they did so, Officer Tisdale heard something he described as "kind of like a fumbling." He also heard something dropping to the floor of the car with a "thud." He could see defendant watching him in the car's side mirror. Defendant then shut his engine off and got out of the car, "aggressively, quickly" trying to walk past Tisdale. Defendant was wearing baggy jeans and an untucked, long-sleeve shirt obstructing the view of his waistband. Tisdale attempted to engage defendant in conversation, asking him what was going on. Defendant responded that he was going into the store. Telling defendant to "hang on for a second," Officer Tisdale asked for identification. Defendant responded with; "What's going on? and that he was just going into the store. After defendant produced identification from his car, Officer Tisdale asked defendant if he could do a "quick pat-down search for weapons." Defendant said "*no*." When told that he needed to pat him down for weapons, defendant said "*no*" again and immediately started to walk towards the street (instead of the store or his car). A resisting defendant was taken into physical custody. Two fully loaded pistols were recovered from his waistband. He was also found to be in possession of some methamphetamine. Charged with various gun and dope-related violations, defendant filed a motion to suppress. The trial court ruled that defendant had been illegally detained and suppressed the evidence. The People appealed.

Held: The Fourth District Court of Appeal (Div. 3), in a split, 2-to-1 decision, upheld the suppression of the evidence. It was agreed that defendant was in fact detained at that point in time when Officer Tisdale told defendant; "hang on for a second." A detention is lawful only if the officer can articulate specific facts causing him to reasonably suspect that (1) some activity relating to crime has taken place or is occurring our about to occur, and (2) the person he intends to stop or detain is involved in that activity. The totality of the circumstances must be considered. In evaluating the circumstances of this case, the Court gave little if any weight to the known circumstances that were unrelated to the defendant himself (i.e., the robbery series and other criminal and gang activity in the area). As to the defendant, the fact that he was parked facing an exit with the engine running, sitting in his car and not moving for some 45 seconds or more, and the "fumbling" noise and the "thud" of something hitting the floor, was not enough to detain him, in the Court's opinion. Defendant's reluctance to talk with the officer or agree to a patdown search were things he was constitutionally entitled to object to, and cannot be penalized for. This lack of cooperation also occurred after that point in time when defendant had already been detained, and is therefore irrelevant on the issue of whether the officer had cause to detain him when he did. Based upon this, the officer did not have sufficient information to justify a detention. Being unlawfully detained, therefore, the evidence recovered from his person was properly suppressed by the trial court.

Note: This is one of the most outrageous decisions I've seen come out of a California State Appellate Court since the days of Rose Bird and the "Gang of Three" way back in the 1980's. As noted by the dissenting opinion, an officer's actions are supposed to be judged by whether they were reasonable under the circumstances. What would have been *unreasonable* is for Officer Tisdale, knowing what he knew, to ignore defendant or to let him walk away after seeing what he was doing. Count the factors: It's almost 11:30 at night. You're in a gang area where drugs and assaults are not uncommon. 7-Elevens are getting hit in a string of armed robberies. A car, with the engine running, is parked in an odd place in a 7-Eleven store's parking lot, perfect for a quick get-away if he's a robber. And then, as the officer approaches, defendant, when he spies the approaching officers in his mirror, engages in some unusual "fumbling" while something heavy hits the floorboards of the car. And then defendant attempts to distance himself from the police in an "aggressive" and "quick" manner. *And the Court rules that stopping him from walking away is based on no more than a "hunch*?" *Give me a break*!!! One thing that would have helped is some evidence to the effect that the officer, prior to detaining defendant, noted the similarity in the physical description between him and the robbery suspect. Defendant is a 32-year old Hispanic male with a shaved head. But even without this, had Officer Tisdale let defendant just walk way I would have suggested that he look into getting a job as a bus driver if he didn't want to do police work. The United States Supreme Court has held that "flight" plus very little else (e.g., being in a "high narcotics area") is sufficient to justify a detention and a patdown for weapons. (*Illinois v. Wardlow* (2000) 528 U.S. 119.) In this case, defendant attempted to "aggressively (and) quickly" walk past Officer Tisdale. While we don't have in this case the same degree of "flight" as existed in *Wardlow*, its close enough, and we have a lot more in the way of other suspicious circumstances than did the U.S. Supreme Court in *Wardlow*. I hope this case is being appealed. The Court here is simply wrong. Its decision is ripe for reversal.

***Detention of a Package While in Transit*:**

United States v. Hoang **(9th Cir. May 14, 2007) 486 F.3rd 1156**

Rule: A ten-minute delay in processing a mailed package while a drug-sniffing dog checks it out, where it is not proven that delivery of the package is being delayed, is not a "significant" detention of the package sufficient to implicate the Fourth Amendment.

Facts: Orange County Sheriff's Department Investigator Todd, with his narcotics detection dog, Otto, were randomly inspecting packages at the FedEx World Service Center at the John Wayne Airport, when Otto alerted on a specific package. With the permission of FedEx, Investigator Todd and Otto were in the package holding area where mail awaited processing. In inspecting the package, Investigator Todd noticed that it was scheduled for priority overnight delivery with the delivery fee paid for in cash, with no telephone numbers listed on the package for either the sender or the recipient, and with the odor of coffee emanating from it; a common means of masking the odor of drugs. All these circumstances are consistent with the smuggling of controlled substances. Defendant, with a Hawaii address, was the listed recipient. The package was delayed no more than ten minutes between when Otto was first brought into the room and when Todd seized the package. After determining that the sender's address was fictitious, a search warrant was obtained. Upon opening the package it was determined that it did indeed contain a quantity of methamphetamine. Switching the drugs for "pseudodrugs," the package was sent on to drug enforcement authorities in Hawaii. A controlled delivery was made to defendant followed by the execution of an anticipatory search warrant. Defendant was arrested and charged in federal court with the possession of methamphetamine with the intent to distribute. Defendant filed a motion to suppress the evidence, which was denied. He therefore pled guilty and appealed.

Held: The Ninth Circuit Court of Appeal affirmed. Defendant's sole argument on appeal was that Investigator Todd violated his Fourth Amendment rights by having "*detained*" his package while in transit, without any "reasonable suspicion" to believe that it contained contraband. The challenged detention was during that 10-minute time period during which Todd and Otto were in the facility's package holding room sniffing the packages. The Court recognized that "(l)etters and other sealed packages are in the general class of effects in which the public at large has a legitimate expectation of privacy." An addressee of a mailed package "has both a possessory and a privacy interest" in that package. The "privacy interest" may lawfully be invaded once probable cause has been developed that it contains contraband. The dog sniff of the outer surface of the package, for which there is no expectation of privacy, established the probable cause necessary for the search warrant. The "possessory interest," however, is reflected "solely in the package's timely delivery." Prior case law has held that a package may be temporarily detained only if an officer has a "*reasonable suspicion*" to believe that it may contain contraband. Defendant's argument here was that in the ten minutes it took to bring the drug-sniffing dog into FedEx's holding room where defendant's package was sitting, and for probable cause to be developed by the dog alerting on his package, the package was in effect "*detained*" without the necessary reasonable suspicion to believe it

contained contraband. However, unless the actual *delivery* of the package has been delayed, there is no "*significant interference*" with defendant's possessory rights in the package. There was no showing in this case that detaining defendant's package for some 10 minutes caused any delay in the time it would have taken to deliver defendant's package to him, had probable cause to seize it not been developed. Such a brief detention is not considered to be a "*seizure*" sufficient to implicate the Fourth Amendment. Therefore, because defendant's possessory interest in the package had not been interfered with by the brief, 10-minute delay, his motion to suppress the resulting evidence was appropriately denied.

Note: I found the defendant's argument that his package of dope had been "*detained*" merely because it was sitting on the floor with all the other packages waiting to be processed, during which time a drug-sniffing dog alerted on it, to be stupid. It seems to me that the package was not delayed, or "*detained*," by law enforcement at all. Rather, it was just sitting there waiting for a FedEx employee to pick it up and put it on an airplane for shipment to Hawaii. Law enforcement merely took advantage of this down time to run a dog by it. So where's the "*detention*," whether "*significant*" or not? But the case does provide a good review of the "*privacy*" and "*possessory*" interests of an addressee in a mailed or shipped package. This is a good case to read if your job is to check out such packages while they are in transit. You also need to read the next case.

***Search of a Package While in Transit*:**

People v. Pereira **(May. 15, 2007) 150 Cal.App.4th 1106**

Rule: The use of a fictitious name and return address on a shipped package does not necessarily deprive a defendant of his standing to contest the warrantless search of the package.

Facts: Defendant brought a package to a private shipping business for overnight delivery to Milwaukee. On the invoice, defendant falsely identified himself and used a return address other than his own. He also asked for a routing number so that he could keep track of the package. The owner of the business, Floyd Ponce, was suspicious of the package. He opened it and found a teddy bear inside. Noticing that the stitching on the bear was "abnormal, . . . as if something was inside the bear," and because defendant had paid a high postage to get the bear delivered while using a return address different than he had used for prior shipments, Ponce called the police. A police officer picked the bear up and took it to the police station. Four or five hours later, Officer Dale Utecht, who had been informed of the owner's suspicions, opened up the bear and found about a half pound of marijuana inside. No search warrant had been obtained. Defendant, who called Ponce several times asking about the status of the package, was tricked into coming back to the shipping business to pick it up. He was arrested when he did so. In searching his person, his vehicle, and later, his residence, methamphetamine, drug paraphernalia and ammunition (defendant being a convicted felon) were recovered. Charged with a pile of offenses, defendant's motion to suppress all this evidence was granted. The People appealed from the court's suppression of the evidence and dismissal of the case.

Held: The First District Court of Appeal (Div. 3) affirmed, upholding the trial court's suppression of the evidence and dismissal. The opening of the package by Floyd Ponce was not in issue because, as a private person who was not acting at the behest of the police, the restrictions of the Fourth Amendment do not apply to him. The issue was the warrantless search of the teddy bear by Officer Utecht. The People's argument on appeal was that defendant had given up any expectation of privacy in the contents of the teddy bear when he used a false name and return address. In other words, he had abandoned it. By abandoning the property, per the People's argument, defendant forfeited his right to challenge the warrantless search of the teddy bear. A person has standing to challenge a warrantless search only if he can show that he had a subjective expectation of privacy in the object of the search, and that society would recognize that expectation as reasonable. Whether or not a person has abandoned property is a question of fact, the resolution of which depends upon an evaluation of all the circumstances. The use of a fictitious name and address is but one factor to consider and is not necessarily dispositive by itself. The test is whether defendant's words or actions would cause a reasonable person in the searching officer's position to believe that the property had been abandoned. Aside from using a phony name and address, defendant demonstrated a continued interest in his package. For instance, there was no evidence that the intended recipient was fictitious. Also, defendant had obtained a tracking number, demonstrating his intent to maintain some control over the package, and called Ponce several times inquiring as to the package's status. And when he called Ponce, defendant left his correct telephone number, compromising his anonymity. The Court held that while the trial court could have gone either way on this issue, there is substantial evidence supporting the judge's conclusion that defendant did not abandon his package. The warrantless search of the teddy bear being illegal, the contents of the bear were properly suppressed.

Note: The Court also didn't like the Attorney General's argument to the effect that people who use phony names necessarily give up their privacy rights. There are any number of reasons why someone might use a fictitious name, many of them legitimate. And the fact that this defendant used a phony name for illegitimate purposes does not alter this conclusion, per the Court. Also, as the product of this illegal search, the evidence found on defendant's person, in his vehicle, and at his residence were also properly suppressed under the "fruit of the poisonous tree" doctrine, although this issue, not being contested, was not discussed. As for the search of a container, the general rule is, particularly when already in police custody and where there are no exigencies, we will need a search warrant. But there are exceptions. In this case, for instance, had the shipping company owner opened the bear up himself and observed the marijuana inside, the case law says that the contents of the package may then be field tested by a law enforcement officer, seized, and submitted to a law enforcement lab for further testing; all without a warrant. (*People v. Warren* (1990) 219 Cal.App.3rd 619; see also *United States v. Jacobsen* (1984) 466 U.S. 109; *United States v. Young* (9th Cir. 1998) 153 F.3rd 1079.) Unfortunately, Ponce wasn't curious enough to open the bear up on his own. He only opened the shipping container. To go any further, Officer Utecht should have gotten a warrant.