San Diego District Attorney

LEGAL UPDATE

(COPY - - DISTRIBUTE - - POST)

Vol. 13 July 30, 2008 No. 7
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Remember 9/11/01; Support Our Troops

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THIS EDITION'S WORDS OF WISDOM:

"*There's always a lot to be thankful for if you take time to look for it. For example, I am sitting here thinking how nice it is that wrinkles don't hurt*."
(Author unknown)

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ADMINISTRATIVE NOTES:

***Second Amendment Right to Bear Arms*:** The United States Supreme Court finally decided the long-debated issue of whether the Second Amendment ("*A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed*.") is a "*personal right*," protecting everyone's right to possess firearms, or a right that is necessarily tied to participation in a state militia. In *District of Columbia v. Heller* (June 26, 2008)

__ U.S. __ [128 S.Ct. 2783], the Court, overruling many cases to the contrary in a 5-to-4 decision, held that the Second Amendment is a *personal right*. In *Heller*, the Court threw out Washington D.C.'s attempt to prohibit altogether the personal possession of handguns, and requiring that any firearm, including long guns, even when kept in the home, must be disassembled or otherwise made inoperable. But the Court also notes that as with all other rights under the Bill of Rights, the Second Amendment is not absolute. Statutes that prohibit the possession of firearms by felons and mental patients, and those that regulate the purchasing or transfer of firearms, continue to be valid. It was also noted that the Second Amendment rights extend only to those types of weapons that were commonly used for self-protection "at the time of the founding" (e.g., handguns and rifles), hinting that atypical weapons (e.g., fully automatic firearms and many of today's military weapons) may still be restricted. The parties stipulated that statutory licensing requirements are valid, so that issue was not decided by the Court. The Court also notes that other reasonable regulations, without telling us which ones, may be appropriate. Civil suits have already been filed in San Francisco and Chicago challenging, in light of *Heller*, some restrictive ordinances. What was *not* decided is whether the Second Amendment applies to the states at all. Prior authority (*Presser v. Illinois* (1886) 116 U.S. 252.) held that the Second Amendment is *not* "incorporated" by the 14th Amendment's due process clause, meaning that its protections restrict only the federal government and not the states. *Presser* is a 122-year-old case, however, and may be ripe for change.

CASE LAW:

***Hearsay Statements of a Homicide Victim*:**

Giles v. California **(June 25, 2008) __ U.S. __ [128 S.Ct. 2678; __ L.Ed.2nd __]**

Rule: Hearsay statements of a homicide victim, describing prior acts of domestic violence perpetrated by the defendant, are not admissible at trial unless defendant killed the victim for the purpose of keeping her from testifying.

Facts: Defendant was visiting his grandmother when his ex-girlfriend, Brenda Avie, arrived. Defendant later told police that Avie, who had a history of violence, was jealous of his new girlfriend and had threatened to kill them both. Defendant and Avie could be heard by those in the house talking in the driveway in conversational tones. But then Avie yelled several times, "Granny," and six shots were heard. When everyone ran outside, defendant was found standing over Avie's dead body holding the proverbial smoking gun. Defendant immediately fled but was arrested two weeks later. He told police at that time that he retrieved the gun from the garage when Avie threatened him and that he shot her in self defense. At trial, the prosecution was allowed to introduce hearsay testimony via a police officer describing Avie's statements when she reported to the police three weeks earlier that she had been assaulted by defendant with a knife, and that he threatened to kill her. The admissibility of this hearsay is provided for under Evidence Code § 1370; i.e., statements describing the infliction or threat of physical

injury on the declarant (Brenda Avie, in this case) when that declarant is unavailable to testify at trial and the prior statement is deemed by the trial judge to be trustworthy. Defendant was convicted of first degree murder and appealed. While his appeal was pending, the U.S. Supreme Court decided *Crawford v. Washington* (2004) 541 U.S. 36, where it was held that the Sixth Amendment right to confrontation prohibits the use in court of "testimonial" hearsay statements *except* when the declarant (Avie) is unavailable *and* the defendant has had a prior opportunity to cross-examine her. The parties here agreed that Avie's statements to the police officer, reporting defendant's assault and threat against her life, qualified as "testimonial" statements (i.e., "pretrial statements that declarant would reasonably expect to be used prosecutorially"). Defendant here had not yet had an opportunity to confront and cross-examine Avie about these statements. The California courts used an exception to the rule of *Crawford* known as the "*doctrine of forfeiture by wrongdoing*." Under this theory, a defendant who is the cause of the declarant's unavailability cannot later complain about declarant's hearsay statements being used at trial when those statements otherwise fit into one of the recognized statutory hearsay exceptions (E.C. § 1370, here). Defendant's conviction was affirmed by the California Supreme Court. He petitioned to the U.S. Supreme Court.

Held: The United States Supreme Court, in a split 6-to-3 decision, reversed. The Court found that California gave too broad an application to the "*doctrine of forfeiture by wrongdoing*." Per the Court, exceptions to the right to confrontation are limited to "those . . . (that were) established (at common law) at the time of the founding." Two forms of testimonial statements were admitted at common law even though unconfronted; (1) dying declarations (not in issue here) and (2) those that come in under the "*doctrine of forfeiture by wrong doing*." Tracing the history of this doctrine, however, the Court found that it only applies in those cases where the defendant engages in conduct "*designed to prevent the witness from testifying*." In this case, defendant killed Avie. But he didn't kill her to keep her from testifying. Rather, he killed her as an outgrowth of their continuing domestic discord as evidenced by their argument some three weeks earlier. The California courts were wrong in finding that the prosecution needed only to prove that defendant killed Avie without regard to his purpose in doing so. Having given too broad an interpretation to the doctrine of forfeiture by wrong doing, Avie's statements to the police about defendant assaulting her, made to the police on a prior occasion, should have been excluded under the rule of *Crawford v. Washington*.

Note: While I don't normally brief cases dealing with in-court evidentiary issues only (this publication being intended primarily for police officers in the field), the *Crawford* rule is one with which everyone needs to be familiar. In a lot of ways, *Crawford* has crippled our ability to present to a jury a now-unavailable victim's hearsay statements made to the police (or others) on prior occasions in domestic violence, sex, gang, and other cases despite a number of otherwise applicable statutory exceptions to the hearsay rule that, prior to *Crawford*, made for some dynamite evidence. While the victim's prior statements are still important and should be collected when available, you need to know that other direct evidence of guilt is now just that much more important. If you are interested in a complete description of all the *Crawford* cases describing and limiting the rule, I just happen to have an outline of those cases that I can send you upon request.

***First Amendment Freedom of Expression When Offensive to Others*:**

Center for Bio-Ethical Reform, Inc. v. Los Angeles County Sheriff's Dept. **(9th Cir. July 2, 2008) __ F.3rd __ [2008 WL 2599683]**

Rule: The public display of offensive pictures, even to minors and even though done for the purpose of shocking viewers, is constitutionally protected.

Facts: Plaintiffs Paul Kulas and Thomas Padberg were members of a nonprofit organization called "Center for Bio-Ethical Reform, Inc.," which promotes the right to life for the unborn. As a part of one of their educational programs called "Reproductive Choice Campaign," plaintiffs sought to "expose as many people as possible to the reality of abortion" by displaying large, graphic photographs of first term aborted fetuses on the sides of trucks. In 2003, plaintiffs sought to do just that at Dodson Middle School in Rancho Palos Verdes in the County of Los Angeles. Plaintiff Kulas drove the truck around the school with Plaintiff Padberg following him in a "security vehicle" with flashing red and amber lights, just as students were coming to school in the morning. Art Roberts, the assistant principal, noted two or three girls crying over what they saw. Other students expressed anger over the pictures. Several were caught plotting a rock assault on the truck. Roberts was also concerned with students' safety, believing that the early morning traffic problems might be aggravated by the students stopping to view the pictures as the truck drove around the school. The Los Angeles Sheriff's Department was called. Two deputies responded to the report of an "antiabortion truck with offensive language and pictures circling the school, . . ." causing a disturbance. The deputies stopped both vehicles because they were "driving these pictures around the school with offensive language, and scaring kids . . . ." Plaintiffs were detained. Unsure how to handle this "novel situation," the deputies called for a supervisor. During the detention the deputies searched the security vehicle at least once and possibly twice. After about 75 minutes of deliberation, it was decided that plaintiffs were in violation of P.C. § 626.8 (interfering with the peaceful conduct of the activities of the school) and told to leave the area. Plaintiffs promptly complied. The Center for Bio-Ethical Reform subsequently sued in federal court everyone involved in the incident for violating their *First* (freedom of speech), *Fourth* (unlawfully prolonged detention) and *Fifth* (due process) *Amendment* rights. Plaintiffs appealed when the trial court threw out most of the case.

Held: The Ninth Circuit Court of Appeal reversed, remanding parts of the case back for reconsideration and other parts for trial. First, it was noted that plaintiffs' Fourth Amendment rights were not violated when the deputies first stopped their vehicles and detained them. The information the deputies were acting on was that the occupants of the two vehicles were causing a disturbance, giving them a reasonable suspicion sufficient to justify the original stop in order to investigate that complaint. However, holding on to them for some 75 minutes, waiting for a supervisor and trying to figure out what to do with the plaintiffs, was an unreasonably prolonged detention. The civil defendants (the deputies) argued that they were investigating the applicability of P.C. § 626.8. However, "an officer's uncertainty about the law cannot excuse the (unreasonable length of a)

detention." The Court noted that the elements of section 626.8 clearly do not apply to what plaintiffs were doing and that it was unreasonable to take 75 minutes trying to figure that out. The primary issue, however, was whether the plaintiffs' actions, in displaying graphic anti-abortion photographs on public property around a school, can be regulated. In discussing this issue, the Court noted that "under our Constitution, the public expression of ideas may not be prohibited merely because the ideas are themselves offensive to some of their hearers, or simply because bystanders object to peaceful and orderly demonstrations." Even P.C. § 626.8 contains a paragraph saying that the section "shall not be utilized to impinge upon the lawful exercise of constitutionally protected rights of freedom of speech or assembly." The plaintiffs' actions here were clearly protected by the First Amendment.

Note: The display of anti-abortion photographs, typically blown up to well beyond life-size and often showing up at middle and high schools, is very common. But unless the demonstrators actually go onto the campus (See *Reeves v. Rocklin United School District* (2003) 109 Cal.App.4th 652.), or the demonstrators violate other laws (e.g., blocking sidewalks or streets, per P.C. § 647c), there is absolutely nothing you can do about it no matter how upset the students, their parents, or school officials may be. The First Amendment trumps the discomfort the demonstrators cause. I have an article I can send you that I wrote on the First Amendment freedom of expression and how it relates to this and a host of other "novel" situations (e.g., in shopping malls, etc.) that police officers get called to on a regular basis. You'll note when you read the article that my general advice is to stay out of it except to preserve the peace. Doing any more than that will only get you sued, as happened in this case.

***Residential Burglary; Entry by an Estranged Husband*:**

People v. Gill **(Jan. 22, 2008) 159 Cal.App.4th 149**

Rule: A person may be convicted of burglarizing his own home when, at the time, he had lost his right to exert control over the home to the exclusion of others and/or to enter as the occupant of that structure.

Facts: Defendant's wife, "T.G.," gave him until the end of the month to get a job and get help for his depression. When nothing changed by this deadline, she ordered him to leave. The day he left, defendant was angry, complaining to a neighbor that T.G. wouldn't let him back into the house. The neighbor later brought defendant $50, a suitcase, and a note from T.G. He retrieved from defendant, without protest, his house keys to take back to T.G. A still-angry defendant continued to hang around outside the house throughout the afternoon, causing both T.G. and the neighbor to call the police. When an emergency protective order was denied, the police officers suggested that either defendant or T.G. leave in order to avoid any further problems. Both refused to do so, defendant saying that he was going to wait in his car until T.G. let me back into the house. Apparently the officers left it like that. Around dinner time, defendant telephoned the house, but T.G. refused to answer the phone, making him even angrier. Around 1:00 a.m., defendant disabled the house telephone line and unsuccessfully attempted to break

in through the front door. He then removed a window screen and entered the house. In the house, defendant accosted T.G., dragging her around the house by her hair while hitting and kicking her, threatening to kill her. He dragged her into the garage and forced her to lie face down on the floor and take off her clothes. He put a rag in her mouth, wrapped her head with duct tape, and threatened to cut off her arm with a chainsaw. He sexually assaulted her with his fist and a flashlight, and then raped her. Telling her she was going to die, he hogtied her in the back seat of her car and drove her from their home in Stockton to Lake Tahoe. While en route, defendant forced T.G. to orally copulate him. Stopping at a campground in Lake Tahoe, defendant attempted suicide but couldn't bring himself to do it. He then became remorseful and started driving her home. Defendant was later taken into custody by police. Following a *Miranda* admonishment and waiver, defendant confessed. T.G. described for police and to a rape counselor the acts defendant had committed. By trial, however, both defendant and T.G. testified that it was all consensual. Despite this change of heart by T.G., defendant was convicted of numerous sex offenses, kidnapping for purpose of committing a sexual assault, and residential burglary. Sentenced to 64 years, 8 months to life in prison, defendant appealed.

Held: The Third District Court of Appeal affirmed. Among the issues litigated on appeal was whether defendant could properly be convicted of residential burglary for breaking into his own home. The general rule is that one cannot be found guilty of burglarizing one's own residence. (*People v. Gauze* (1975) 15 Cal.3rd 709.) Since *Gauze*, the courts have not been quite so absolute. Burglary is a violation of a possessory right in the building by one who has no right to be in the building. The possessory right protected by the burglary statute is the "*right to exert control over property to the exclusion of others*" or "*to enter as the occupant of that structure*." It therefore becomes an issue whether the defendant had an unconditional possessory right to enter his family residence. If he does, then he can't be convicted of burglary for entering his residence despite his intent to commit a felony therein. Comparing the facts of this case with prior cases, it was noted that defendant had just been forced to leave the house by his wife, T.G. He acknowledged that he had no right to come back by voluntarily giving up his keys and by telling his neighbor and the police that he couldn't reenter his house unless his wife relented. By these actions, it was T.G. who exerted possessory control over the family home, and not defendant. Having given up his right to a possessory interest, he did not have the right to enter the residence at will. Under these circumstances, defendant was properly convicted of residential burglary.

Note: I've always wondered about the wisdom of the rule that a person can't burglarize his own home. It seems to me that even if a person has the right to enter his own home, when he enters with the intent to assault another who *also* had a possessory right to the residence, her right to be secure in her own home was certainly violated. But that's not the rule. The courts are more concerned with the defendant's right to enter, ignoring the victim's rights to be safe from assault in her home. Lower appellate courts don't seem to think much of this California Supreme Court rule first announced in *Gauze*, having worked hard since then to find exceptions. This case here does a pretty good job of reviewing those cases and is a good one to read if you're interested in the whole history.

"*Standing*" *When the Suspect Denies Ownership*:

People v. Tolliver & Villasenor **(Mar. 11, 2008) 160 Cal.App.4th 1231**

Rule: Denying ownership of the thing to be searched negates a suspect's standing to later challenge the legality of that search.

Facts: Jason Tolliver and Antonio Villasenor were involved in a large-scale drug trafficking enterprise as proved by evidence collected during a two-year investigation conducted by a multi-agency task force. Tolliver was a distributor of controlled substances (and not a party to the reported issue in this brief) while Villasenor was one of the organizers. Part of the operation was to transport cocaine from Texas to Sacramento. In early 2002, another co-conspirator, Joseph Duarte, while working for Villasenor was scheduled to go to Texas in a 1993 Chrysler Concorde with a built-in false compartment to await another loan of cocaine. Villasenor had purchased the Concorde from a private party, but sent his brother, Raymond, with $3,000 in cash to make the purchase. Raymond put the car in his name. There was no documentation connecting Villasenor to the car, a situation he purposely set up knowing that the car was to be used for transporting controlled substances. Unbeknownst to either Villasenor or Duarte, a GPS tracking device was installed in the Concorde by law enforcement under authority of a search warrant. Because the first GPS wasn't working properly, officers entered the car a second time without a new warrant and fixed the problem. Duarte eventually drove the Concorde to Texas but got cold feet and returned to Sacramento leaving it there. Other persons eventually began the trip back in the Concorde when, with the aid of the GPS, they were stopped by Texas law enforcement. Forty nine kilograms of cocaine were recovered from the vehicle. Villasenor was charged with a host of narcotics-related charges in California. As a part of his defense, Villasenor filed a motion to suppress the drugs recovered from the Concorde alleging that the second entry into the car to correct the problems with the GPS was done in violation of the Fourth Amendment. The trial court denied his motion finding that he did not have standing to challenge the legality of the search. Convicted by a jury on most counts, Villasenor was sentenced to 30 years. (Tolliver was sentenced to 27 years to life.) Villasenor appealed.

Held: The Third District Court of Appeal affirmed, agreeing with the trial court that Villasenor did not have standing to challenge the legality of the entry of the vehicle to fix the deficient GPS. (Tolliver's case was remanded for further hearings as to the validity of an alleged prior conviction.) On the issue of standing, it is the defendant's burden to prove that he has a legitimate expectation of privacy in the thing being searched. Villasenor's argument was that as the owner of the car, it was his privacy interests that were violated when the officers entered the car a second time without a new search warrant. Whether or not a person has a legitimate expectation of privacy is subject to a two part test: (1) Did the defendant manifest a subjective expectation of privacy in the object of the search; and (2) is society willing to recognize the expectation of privacy as legitimate. Ignoring the first part, the Court held that where a person purposely separates himself from the thing searched, society does not recognize the expectation of privacy as legitimate. "It is settled law that a disclaimer of proprietary or possessory interest in the

area searched or the evidence discovered terminates the legitimate expectation of privacy." The fact that Villasenor did not verbally disclaim ownership of the Concorde at the time of its search, which is what happens in most cases, is irrelevant. Villasenor did even more. He very carefully planned in advance to disassociate himself from the Concorde, exploiting others to take the fall should it be seized and searched. Having done this, he forfeited any standing he might have otherwise been able to claim.

Note: Good case on standing, but no real surprise. Note by the way that the second entry of the Concorde to fix the GPS without a new warrant was in fact illegal. Once a search warrant is executed, and the search is finished, you cannot execute it a second time. (*People v. James* (1990) 219 Cal.App.3rd 414.) The officers here should have gotten a second warrant to get back in the car to fix the GPS. But because Villasenor didn't have standing, the issue became moot.

***Homicide; Provocative Act Theory*:**

People v. Concha & Hernandez **(Mar. 18, 2008) 160 Cal.App.4th 1441**

Rule: The assailants in a premeditated attempted murder, where the victim reasonably responds to the threat by killing a third co-principal, are guilty of the first degree murder of that third party under the "*provocative act theory*" and via the "*doctrine of transferred intent*."

Facts: Jimmy Lee Harris, weighing in at 6 feet 2 inches and 225 pounds, parked his car and started to get out late one evening in an alley behind his business at Normandie and Vernon in Los Angeles. As he did so, he was approached by the two defendants. Both defendants are about 5½ feet tall, if that. Two other males, including Hernandez's cousin, Max Sanchez, stood back to watch. Addressing Harris, Concha demanded money and "smokes," "*or we're gonna to kill you*." When Harris denied having any smokes, Concha repeated the demand for money and the death threat, and saying something to the effect of "*46 Crips*." When Harris attempted to flee, all four suspects began to physically beat on him. Harris was able to escape, however, and ran out onto Normandie with the four suspects in hot pursuit. They chased Harris for about a quarter of a mile down the middle of Normandie as Harris unsuccessfully attempted to summon help from others on the street. Turning onto 48th Street, Harris, who was rapidly tiring, ran up to a house and pounded on the door. No one answered. When he attempted to go around the house and over a fence, his pursuers caught him. Pulling him off the fence, they started beating and stabbing him. Harris remembered at that point that he had a small knife in his pocket. He pulled it out and started "fighting for his life," stabbing at least three of his assailants. Seeing an opening, Harris escaped again and was finally able to get someone to open his door (with a gun in hand) and call the police. Defendants were later arrested when they brought a mortally wounded Sanchez to a hospital. Harris suffered numerous cuts to his upper torso and head resulting in some 60 stitches, and "residual injuries" (causing sensitivity to light) from being hit in the head. Defendants Concha and Hernandez were charged with the first degree murder of Sanchez under the "*provocative act theory*," as well as the willful, deliberate and premeditated attempted murder of Harris (along with a

number of other charges and allegations). Convicted of both charges by a jury, defendants appealed.

Held: The Second District Court of Appeal (Div. 5) affirmed. On appeal, defendants argued that the evidence was insufficient to prove murder under the provocative act theory. The Court disagreed. The provocative act theory applies "(w)hen the defendant or his accomplice, with a conscious disregard for life, intentionally commits an act that is likely to cause death, and his victim or a police officer kills (a third party) in reasonable response to such act." Having created the dangerous situation, a defendant becomes liable for the death caused by the assault victim acting in self-defense, or a police officer acting in the performance of his duties. The dead third party may be one of the co-principals in the provocative act itself. Typically, the provocative act theory is triggered by an armed robbery/assault with a deadly weapon situation, at least where the robbery victim, as a result of being shot at, is led to believe that he may die and then acts in reasonable response to that threat. But the theory is not limited to robberies, nor to firearms. In this case, the victim Harris was verbally threatened with death and attacked by four suspects with knives and a broken bottle under circumstances leading him, the victim, to believe that he was about to die. In reasonable response to this life-threatening situation, Harris fought back and killed one of his assailants (Max Sanchez). Under the provocative act theory, Concha and Hernandez, having provoked Harris's response, are liable for Sanchez's death. It is a rule, however, that the provocative act theory does not apply when the one doing the provoking is the one who is killed in response. An exception to that rule, applicable here, is when there is more than one suspect whose acts are, at the very least, a "substantial factor" in the provocative act. In such a situation, it is irrelevant that the deceased himself was also a partial cause of his own death. Lastly, the Court noted that although the classic provocative act murder prosecution (e.g., a death of a co-principal or innocent third party perpetrated by a robbery victim) is only a second degree murder (i.e., an unintentional, "implied malice" death), that is not true in this case. Here, defendants were found by the jury to have committed a willful, deliberate, and premeditated attempt to murder Harris. If defendants had been successful in killing Harris, such a willful, deliberate and premeditated murder, by definition, is a murder in the first degree. (P.C. § 189) Under the "*doctrine of transferred intent*," that intent automatically transferred to the killing of Sanchez. Defendants were therefore properly convicted of the first degree murder of Sanchez.

Note: We don't see too many provocative act murders, so this is a good one to read and remember. The Court did an excellent job explaining the theory and how it applies to an attempted murder situation. Add to this the "transferred intent" doctrine, making defendants liable for first degree murder instead of the more common second degree, and you have the complete package leading to Concha's 40-years-to-life sentence with 81-years-to-life for Hernandez (this being his second strike). Homicide cops and prosecutors should pull this case and read the whole thing. It is very instructive. By the way, if you're wondering, there is never any mention of who the fourth suspect is. He, apparently, escaped to assault others on another day.

***Drunk in Public, per P.C. 647(f)*:**

In re R.K. **(Mar. 21, 2008) 160 Cal.App.4th 1615**

Rule: A shed at the side of a house is not a public place for purposes of P.C. § 647(f); drunk in public. Asking the drunk to come out to the street doesn't change the result.

Facts: Plumas County Deputy Sheriff Matthew Beatley, responding around midnight to a call concerning juveniles drinking alcohol, found the house to be dark and locked up. Walking around to the side of the house, Deputy Beatley found a woodshed situated about 10 to 15 feet from the house. Defendant, who was drunk, was in the shed. Upon Beatley's request, defendant willingly followed him out to the street to the patrol car. Defendant was issued a citation and released to his parents. Charged in Juvenile Court with being drunk in public, the magistrate sustained the petition under the theory that having voluntarily come out to the street, defendant, at least at that point, was in fact in a public place while drunk. Defendant appealed.

Held: The Third District Court of Appeal (Plumas) reversed. Penal Code § 647(f) requires that a person "(w)ho is found in any public place" be intoxicated to the extent "that he or she is unable to exercise care for his or her own safety or the safety of others." It was agreed that defendant was drunk. The issue is whether he was "found (to be) in any public place" at the time. The Court reviewed a number of cases discussing what was, and what was not, a "public place" for purposes of P.C. § 647(f). The Court cited a number of different definitions, including that the place be "common to all or many; . . . open to common use, participation, enjoyment, etc. . . ." Private property may be "public," at least if it is somewhere where it is "open to delivery men, service men, solicitors, visitors and other strangers . . . ." A person's front porch, unless locked off or otherwise made inaccessible to the public, is a public place. But a woodshed at the side of the house where strangers are not expected to tread is not. Defendant was originally found in a non-public place—the woodshed—and was therefore not in violation of P.C. § 647(f) at that point. But the real issue here is whether, by voluntarily coming out to the street (which is obviously a public place), was defendant *then* in violation of P.C. § 647(f)? The Court, citing cases where defendants were held *not* to be drunk in public when they were forcibly taken to a public place, ruled that it made no difference that this defendant "voluntarily acquiesced" to go to a public place. When he is initially found in a non-public place, going into a public place at the request of the police does not make him liable for being drunk in public. Defendant, therefore, was unlawfully arrested.

Note: Well, that sucks. Inviting a drunk husband out onto his own front porch and then arresting him was how we (when I was a cop) commonly defused domestic violence incidents even without the wife's cooperation. But according to this case, we can't do that any more. There's authority (in a different context) for the argument that a person loses the privacy protections of his home even though he left it at the request of the police. (See *People v. Jackson* (1986) 187 Cal.App.3rd 499, 505; *Hart v. Parks* (9th Cir. 2006) 450 F.3rd 1059, 1065.) But there's no authority that this concept applies to a case like this. So, unfortunately, until another court deals with the issue, this is to be the rule.