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Remember 9/11/01*: *Support Our Troops

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THIS EDITION'S WORDS OF WISDOM:

"*In the end, it's not the years in your life that counts. It's the life in your years.*" (Abraham Lincoln)

IN THIS ISSUE:

ADMINISTRATIVE NOTES:

Proposition 8, Search & Seizure, and the Exclusionary Rule: In June, 1982, California's citizens, tired of criminal defendants skating on legal "technicalities," voted into law Proposition 8, amending the California Constitution and eliminating California's excessively restrictive "exclusionary rule." Proposition 8 had the effect of limiting the suppression of evidence to what's required by the United States Constitution. The result is that California now abides by the federal

exclusionary rule only. But lately, California's Legislature has been attempting to bypass Proposition 8's mandate by enacting procedural statutes aimed at restricting law enforcement's investigative functions to something stricter than required by the U.S. Constitution, attaching a *statutory exclusionary rule* as a sanction for violating these new rules. For instance, presently pending before the California Legislature are the following bills:

SB 1300, mandating the audio or video recording of certain interrogations, with listed exceptions, the suppression of a suspect's incriminating statements being the sanction for non-compliance. *Miranda* does not require this.

SB 1434, mandating the use of a search warrant in order to obtain GPS location data from cell phones and other electronic devices. This bill greatly expands upon the U.S. Supreme Court's holding in *United States v. Jones* (Jan. 23, 2012) 132 S.Ct. 945 (see *Legal Update*, Vol. 17, No. 2, Feb. 27, 2012), which found such search warrants necessary *only* when the intrusion includes the act of attaching a GPS device to a suspect's vehicle, absent an exception. Suppression of the resulting GPS information is the mandated sanction for non-compliance.

SB 1536, banning, with exceptions, strip searches of in-coming jail inmates being booked for non-violent misdemeanors and infractions, directly contradicting the U.S. Supreme Court's holding in *Florence v. Board of Chosen Freeholders of the County of Burlington* (Apr. 2, 2012) 132 S.Ct. 1510 (see below), with the suppression of weapons and other contraband found on jail and prison inmates as the sanction.

SB 914, from last year's legislative session and passed by the Legislature unanimously, but eventually vetoed by Governor Brown, which would have required a search warrant to search containers (including cellphones) seized incident to arrest, even when "immediately associated with the person" of the arrestee. But for the veto, it would have negated the California Supreme Court's decision in *People v. Diaz* (2011) 51 Cal.4th 84, which approved the warrantless search of such a container recovered from the arrestee's person. (See following note.) The sanction would have been suppression of any recovered evidence.

If this disturbing trend, negating the positive effects of Proposition 8 via a legislative backdoor and thus thwarting the will of California's voters, offends you (as it does me), it is suggested that those of you with connections to any organizations having influence with the California Legislature or its members might consider lobbying against these proposed statutes. The safety and welfare of California's law-abiding citizens, as well as preserving the crime-fighting benefits that came with the passage of Proposition 8, are at stake.

Cellphone Searches 101: I get this question often enough that I decided to rehash this rule for everyone. The question: "*When do we need a search warrant to check the contents of a suspect's cell phone*?" The answer: "*Always, . . . except . . .*" Cellphones are nothing more than a container of information. To inspect the contents of a suspect's cell phone, as with any other type of container, the general rule is that you need a search warrant. However, there are certain notable exceptions: (1) With the owner's free and voluntary consent. (See *Bumper v. North Carolina* (1969) 391 U.S. 543.) (2) When the cellphone has been

abandoned. (*People v. Daggs* (2005) 133 Cal.App.4th 361.) (3) When the person in possession of the cellphone is subject to a probation or parole Fourth Wavier. (See *People v. Bravo* (1987) 43 Cal.3rd 600.) (4) When the cellphone is in a car for which there is already probable cause to search. (See *California v. Acevedo* (1991) 500 U.S. 565.) (5) Incident to any arrest, when the cellphone is under the control of an arrestee who has yet to be secured. (*New York v. Belton* (1981) 453 U.S. 454.) (6) When a person has been arrested in his car and has already been secured, *and* it is "*reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle*" (*Arizona v. Gant* (2009) 556 U.S. 332.) *and*, presumably, the relevant evidence is of the type that might also be contained in the suspect's cellphone itself. (*People v. Nottoli* (2011) 199 Cal.App.4th 531.) (7) When incident to arrest and the cellphone is found *on the person* of the arrestee. (*People v. Diaz* (2011) 51 Cal.4th 84.) It is this last justification, under *Diaz*, that I'm getting the bulk of the questions. *Diaz* appears to be an exception to *Gant*, but is limited to those circumstances where the cellphone is "*immediately associated with the person of an arrestee*" when recovered. This means that it is in the arrestee's pocket, on his belt, or otherwise on his person. Being on the seat next to him, even though under his control, is not enough. Also, the search need not be done contemporaneous with the arrest. The delay in *Diaz* was some 90 minutes after his arrest, and 30 minutes after the phone was recovered from his person. Noting that an exigency is not necessary to justify the search of an arrestee's clothing, or anything else "*immediately associated with the person of the arrestee*," the *Diaz* Court found the delay to be irrelevant to the legality of the search of the cellphone. The *Diaz* Court didn't specify how long this delay may be, but prior U.S. Supreme Court authority cited in *Diaz* has upheld a 10-hour delay in the search of property recovered from the defendant's person. (*United States v. Edwards* (1974) 415 U.S. 800.) So, if in doubt, it's always safer to take the time to get a search warrant. But the rule is that if searchable as a part of the defendant's booking process, it matters not how long officer delays.

CASE LAW:

***Jail Strip Searches*:**

Florence v. Board of Chosen Freeholders of the County of Burlington **(Apr. 2, 2012) __ U.S. __ [132 S.Ct. 1510; 182 L.Ed.2nd 566]**

Rule: Jail detainees who are to be admitted into the general population of a detention facility may be required to undergo a close visual inspection while undressed even though charged with nothing more than a non-indictable offense, and even in the absence of reason to believe that they may be in possession of weapons and/or other contraband.

Facts: In 1998, Petitioner in this civil suit, Albert W. Florence, was arrested in Essex County, New Jersey, and charged with obstruction of justice and the use of a deadly weapon. Florence pled guilty to lesser misdemeanor offenses and was fined, with the fine to be paid in installments. When Florence fell behind in his payments and FTA'd for

an enforcement hearing, a warrant was issued for his arrest. He soon returned, however, and paid the outstanding balance. However, the warrant was mistakenly left in a statewide computer database. Two years later, Florence was stopped by a state trooper in Burlington County, New Jersey, and was arrested when a records check showed the outstanding warrant. He was taken to the Burlington County Detention Center. As was the procedure with all new inmates, Florence was required to shower with a delousing agent. He was then forced to disrobe so that he could be checked for scars, marks, gang tattoos, and contraband. As a part of this procedure, and before being placed in with the general jail population, he was required to open his mouth, lift his tongue, hold out his arms, turn around, and lift his genitals. Six days later, Florence was transferred to the Essex County Correctional Facility where, after having to undress, an officer again checked him thoroughly for body markings, wounds, and contraband. Without being touched, an officer looked at his ears, nose, mouth, hair, scalp, fingers, hands, arms, armpits, and other body openings. This procedure included being required to lift his genitals, turn around, and cough while in a squatting position. After a shower, he was then again placed into the facility's general jail population. The next day, after it was verified that his arrest warrant was no longer valid, charges were dismissed and he was released. Florence sued in federal court, alleging that the above strip searches constituted a violation of his Fourth (search and seizure) and Fourteenth (due process) Amendment rights. His argument was that persons arrested for minor offenses should not be required to submit to strip searches absent a reasonable belief that the person was concealing a weapon, drugs, or other contraband. The trial court granted Florence's summary judgment motion, finding that any policy of strip searching non-indictable (i.e., misdemeanors and/or minor felonies?) offenders, absent a reasonable suspicion to believe they were holding weapons and/or contraband, violated the Fourth Amendment. On appeal, the federal Third Circuit Court of Appeal, in a split 2-to-1 decision, reversed. The United States Supreme Court granted certiorari.

Held: In a split, 5-to-4 decision, the United States Supreme Court affirmed the Third Circuit's decision, thus upholding the strip searches. The Court assumed for the sake of argument that we are talking about inmates who are to be housed in the general jail population. The Court also noted that the same rules would apply whether we are talking about a local jail, a prison, or any other detention facility. The primary issue is whether, under the Constitution, detainees who are to be admitted into the general jail population may be required to undergo a close visual inspection while undressed even though charged with nothing more than a non-indictable offense, and even in the absence of any reason to believe that the inmate may be in possession of weapons, drugs, and/or other contraband. The Court first noted its dislike for the term "*strip search*" (although I use that term as a shorthand method of describing what happened here) in that the types of visual inspections of an inmate's body vary considerably. In this case, at least, it was noted that the searches in questions were visual only, with no physical touching of the detainee's body. The Court then set out the general principle that "(c)orrectional officials have a legitimate interest, indeed a responsibility, to ensure that jails are not made less secure by reason of what new detainees may carry in(to) (a detention facility) on their bodies." What an in-coming inmate might sneak into a jail has the potential of endangering facility personnel, other inmates, and the detainee himself. A strip search,

even though impinging on an inmate's constitutional rights, must be upheld "if it is reasonably related to legitimate penological interests." "(D)eference must be given to the officials in charge of the jail unless there is 'substantial evidence' demonstrating their response to the situation is exaggerated." With these principles in mind, the Court set out to resolve the conflict in prior cases between those requiring a reasonable suspicion to believe that the inmate might be secreting something, with other cases that have allowed strip searches of all in-coming inmates who are to be brought into a jail's general population. The Supreme Court sided with the latter. Per the Court, strip searches are necessary in order to prevent the introduction of lice or contagious infections into a jail. Also, new inmates may have wounds or other injuries requiring immediate attention that would go unnoticed but for a visual inspection of the person while unclothed. Also, it is important to keep members of different criminal street gangs separated, justifying a visual inspection for certain tattoos and other signs of gang affiliation. And, of course, the security and safety within the jail requires that weapons, drugs, alcohol, and other types of contraband and prohibited items must be kept from entering into the jail. A jail's strip search policies designed to prevent such occurrences is not unreasonable given the realities of the jail setting. The Court lastly rejected the argument that the seriousness of the offense must be taken into consideration. "The seriousness of an offense is a poor predictor of who has contraband and that it would be difficult in practice to determine whether individual detainees fall within the proposed exemption." The Court, therefore, found that a visual inspection of an unclothed prisoner scheduled to be brought into the general population of a jail or prison to be reasonable under the 4th and 14th Amendments.

Note: The Ninth Circuit Court of Appeal had already held that strip searches under these circumstances are lawful. (*Bull v. City and County of San Francisco* (9th Cir. 2010) 595 F.3rd 964; reversing its prior decisions to the contrary.) So the rule is now well-settled. *Or is it*? The Supreme Court further noted that they were *not* ruling on whether such searches are lawful for a detainee who is not going to have substantial contact with other detainees. Two concurring opinions also stress the fact that the rule here applies only when the prisoner is to be put in with the general jail population. Also, one of two concurring opinions speculates that correctional officials might be obligated to hold a person arrested on a minor offense in "available facilities (if any) apart from the general population" pending the arrestee's first court appearance, thus avoiding the necessity of conducting a strip search. Also, see P.C. § 4030 for California's statutes on the uses of "*strip*," "*visual*" or "*physical*" body cavity searches for misdemeanor arrestees.

***Miranda*; *The Use of a Defendant's Silence as an Adoptive Admission*:**

People v. Bowman **(Dec. 23, 2011) 202 Cal.App.4th 353**

Rule: A defendant's selective silence as to certain questions during a post-*Miranda* wavier interrogation is admissible in court as evidence of defendant's guilt.

Facts: Victor Lopez took the trolley home from work, getting off a few blocks from his apartment at some time after midnight. As he walked home, defendant approached him and asked him, courteously, if he had any money. Lopez responded that he did not. A

second request for money received the same response. Defendant's third request was made in a more demanding tone. Lopez continued to deny having any money. Defendant then demanded that Lopez "(s)how me your wallet." Lopez denied having a wallet. After a brief stare-down, defendant physically wrapped his arms around Lopez's waist, squeezing him hard while searching his pockets. Unable to pull away from the stronger defendant, Lopez submitted as defendant took his debit card and other possessions. Defendant then brandished a switchblade knife while demanding Lopez's PIN number for the debit card. Lopez was able to flee into a store and asked for help. His debit card was used several times over the next several days before it could be cancelled, with a total loss of about $600. Two weeks later, Lopez saw defendant again at a trolley station, following him as he called 9-1-1. When the police finally caught up with them, defendant was detained. When questioned at the scene, defendant denied having robbed Lopez. He at first denied ever being in the area where the robbery occurred. But after a document with a preprinted address located in that area was found on his person, he admitted to living there with his girlfriend. Defendant was arrested and transported to the police station. He was then advised of his *Miranda* rights which he waived. In a 20 to 30 minute interrogation, defendant answered the detective's questions although he continued to deny being the robber. But when asked why he had at first denied ever being in the area of the robbery only to admit later that he lived there, defendant didn't respond. When asked why the victim was able to identify a cellphone defendant was carrying, he again failed to respond. And when asked why the victim would identify him, defendant sat silently for a third time. Defendant was charged in state court with armed robbery and false imprisonment. At trial, in response to the prosecutor's questions, the detective told the jury about defendant's silence in response to these three questions. The prosecutor later argued to the jury that defendant's silence constituted "*adoptive admissions*" (per Evid. Code § 1221). The court instructed the jury that they could consider defendant's silence as an admission if they found from the evidence that (1) the accusatory statement was made to defendant or in his presence, (2) defendant heard and understood the statement, (3) defendant would, under the circumstances, naturally have denied the statement if he thought it was not true, and (4) defendant could have denied it but did not. Defendant was convicted and appealed.

Held: The Fourth District Court of Appeal (Div. 1) affirmed. The United States Supreme Court has ruled that commenting on a defendant's silence during police questioning occurring after receipt of the *Miranda* warnings violates the defendant's right to remain silent. The prosecution may not use a defendant's post-arrest, post-*Miranda*, silence to impeach the defendant's trial testimony. To do so is a "due process" violation, being "fundamentally unfair" after having told the defendant, via the *Miranda* admonishment, that he had a right to silence. (*Doyle v. Ohio* (1976) 426 U.S. 610.) California has extended this rule to include the use of a defendant's post-*Miranda* silence as direct evidence of guilt (as opposed to impeachment evidence only) in the People's case-in-chief. (*People v. Coffman and Marlow* (2004) 34 Cal.4th 1.) However, *Doyle* and its progeny do not prevent the prosecution from cross-examining a defendant—who has *waived* (as opposed to invoking) his *Miranda* rights and who then voluntarily answered a police officer's questions—about discrepancies between his statements made during his interrogation when compared to his later trial testimony. (*Anderson v. Charles* (1980)

447 U.S. 404.) Impeaching a testifying defendant who had previously waived his *Miranda* rights with his prior inconsistent statements is not prohibited by *Doyle*. However, neither the U.S. nor the California Supreme Court has addressed the issue whether *Doyle* applies to a defendant who has waived his *Miranda* rights, voluntarily answering questions, but then selectively remains silent during his interrogation as to specific questions only. Lower courts have split on this issue. The Court here sided with those that have held that it is lawful to use such a defendant's selective silence as "adoptive admissions," per Evidence Code § 1221. The Court found this rule to be applicable at least when there is no indication that a refusal to answer specific questions was intended to be an invocation of his right to silence. "If a person is accused of having committed a crime, under circumstances which fairly afford him an opportunity to hear, understand, and to reply, and which do not lend themselves to an inference that he was relying on the right of silence guaranteed by the Fifth Amendment to the United States Constitution, and he fails to speak, or he makes an evasive or equivocal reply, both the accusatory statement and the fact of silence or equivocation may be offered as an implied or adoptive admission of guilt." There being no inference in this case that defendant was relying upon his right to silence, his selective refusal to answer certain questions was therefore properly used as evidence of his guilt.

Note: This is indeed a confusing area of the law, there being so many variables to an accused defendant's silence; e.g., pre-*Miranda*, post-*Miranda*, pre-arrest, post-arrest, all while taking into account some vague inference as to whether the suspect was relying upon his Fifth Amendment rights or was merely being evasive. I have outlined all the important cases on this issue, describing the various circumstances, which I can send you upon request. Fortunately for police officers, this is an issue with which only prosecutors have to be concerned. As an interrogator, so long as the suspect does not clearly and unequivocally invoke his right to silence, you need only to continue on with the interrogation, letting the prosecutor worry about whether a periodic refusal to answer certain questions is admissible as an admission. The investigator need only ensure that the record is clear as to what was said and done under the circumstances.

***The Stolen Valor Act: The Unauthorized Wearing of Military Medals*:**

United States v. Perelman **(9th Cir. Sep. 26, 2011) 658 F.3rd 1134**

Rule: While verbally claiming to be a war hero is constitutionally protected, the unauthorized wearing of military medals with an intent to deceive may be prohibited by statute.

Facts: Defendant served three months in Vietnam in 1971, while in the Air Force. Twenty years later, he accidentally shot himself in the thigh. After defendant fraudulently claimed that the wound was a shrapnel injury suffered while in Vietnam, the Air Force heaped a bunch of medals on him, including a Purple Heart. He also sought assistance through the Veterans Administration (VA), receiving over $180,000 in disability benefits. He further displayed the Purple Heart at a national convention of the Military Order of the Purple Heart in Las Vegas. When his lies were eventually detected,

defendant was indicted for theft from the VA by obtaining disability benefits under false pretenses, per 18 U.S.C. § 641 (Count 1), and for wearing the Purple Heart without authorization, per 18 U.S.C. § 704(a) (Count 2), a provision of the federal "Stolen Valor Act." Defendant moved to dismiss the Purple Heart allegation, arguing that the statute, on its face, violated the First Amendment (freedom of expression). The trial court denied his motion. Pleading guilty to both counts, defendant appealed, arguing that the trial court erred by not dismissing the Purple Heart allegation.

Held: The Ninth Circuit Court of Appeal upheld defendant's conviction. Defendant's initial argument was that the statute is too broad to be constitutional, potentially making innocent acts illegal. For instance, as defendant reads the section, actors playing a part in a play, or children in a veterans' parade wearing a relative's medals, could be in violation of this section. However, section 704(a), at issue in this case, makes illegal the act of "*knowingly* (italics added) wear(ing) (among other acts) . . . any decoration or medal authorized by Congress for the armed forces of the United States, . . . except when authorized under regulations made pursuant to law, . . ." The Court found that this prohibition is *not* too broad as written. By adding a "*scienter*" element, i.e., that it was done "*knowingly*," Congress intended to prohibit the wearing of a medal by a non-recipient only when done fraudulently. In other words, the wearing of a medal must have been done with the "*intent to deceive*." Therefore, when an actor, or a veteran's relatives out of a show respect, wears such a medal, done without any intent to deceive, there is no crime. Section 704(a) does not prohibit such innocent acts. Defendant's second argument was based on the Ninth Circuit's prior decision in *United States v. Alvarez* (9th Cir. 2010) 671 F.3rd 1198. In *Alvarez*, the Court found that subdivision (b) of section 704, which criminalizes false statements about the receipt of military decorations or medals, to be unconstitutional. Section 704(b) dealt with attempts to regulate speech; "plainly a content-based regulation." Attempts to regulate speech that is content-based is presumptively a violation of the First Amendment's freedom of expression protections. Also, subdivision (b) did not include a "scienter" requirement. Subdivision (a), on the other hand, criminalizes specified activities beyond mere speech, limited by a scienter requirement. The fact that fraudulently wearing a military medal might also contain an expressive element (i.e., inferring a false statement that "I received a medal"), it is still not the same as what the Court referred to as "*pure speech*." *Alvarez*, when it invalidated subdivision (b), involved the attempt to criminalize pure speech. By enacting the prohibition in subdivision (a) on fraudulently wearing a military medal, Congress was furthering an important and substantial governmental interest unrelated to the suppression of free expression. The regulation of military medals is within the power of the government, "preserving the integrity of its system of honoring our military men and women for their service and, at times, their sacrifice." Section 704(a) is constitutional.

Note: California also has a similar statute; P.C. § 532b, which, along with Gov't Code § 3003 and Mil. & Vet. Code § 1821, is known as the "*California Stolen Valor Act*." P.C. § 532b makes criminal *both* (1) the oral representation of oneself to be a "veteran or ex-serviceman of any war," *and* (2) the act of wearing any military decoration. Both aspects of this section, however, include the specific element of being "*in connection with the soliciting of aid or the sale or attempted sale of property*" (subd. (a)), or with an "*intent*

to defraud" (subds. (b) & (c)(1)). So the necessary "scienter" (i.e., criminal intent) element is express in California's statute, while it had to be implied under the federal statute. Whether this is enough to save California's version has yet to be determined. But does either the state or federal Stolen Valor provisions make criminal the wearing of parts of a military uniform and/or medals by the typical miscreant anti-establishment demonstrator? I would guess that it does not. Neither P.C. § 532b nor 18 U.S.C. § 704(a) makes illegal an intent to shock, or to show disrespect for the men and women who have served our country and, in some cases, sacrificed their lives. Such rebellious acts against the proud traditions of our military services do not involve any intent to deceive or defraud, but is rather an exercise of one's right to express him or herself, protected by the First Amendment. The fact that it is the sacrifices our military men and women make that ensures that a person who rebels against the government may do so without fear of reprisal, although perhaps ironic, does not constitute a basis for making such rebellion illegal.

***Search Warrant Affidavits, Informants, & Probable Cause*:**

People v. French **(Dec. 14, 2011) 201 Cal.App.4th 1307**

Rule: Conclusory statements and interlocking "pedestrian facts," without the underlying factual details, are insufficient to establish probable cause to support a search warrant.

Facts: Eureka Police Officer Gary Cooper asked an arrestee while en route to jail who he knew that was dealing drugs. The arrestee told the officer that a person he knew as "Robert," and who lived at a specific house, had sold heroin to his wife. The arrestee also referred to a specific truck parked at the residence that Robert drove. A registration check showed that the truck belonged to defendant, Robert French. Months later, Officer Cooper interviewed "confidential reliable informant one" (CRI-1), who told the officer that Maria Camacho and her boyfriend, "Robert," dealt heroin and methamphetamine out of the same residence previously identified by the arrestee. CRI-1 said that Robert drove a truck matching the description of the one identified by the arrestee. CRI-1 also described where Maria would conceal the drugs she sold. Two weeks later, CRI-2 was also interviewed concerning drug dealers. CRI-2 had provided information in the past that had been "corroborated and criminal cases were made behind the information." CRI-2 indicated that a woman named Maria Camacho, who lived in the previously identified house, sold heroin and meth out of her house with her boyfriend named "Ron." Per CRI-2, "Ron" drove a vehicle matching the description of the truck identified above. A records check indicated that Maria Camacho had "multiple arrests and convictions for possession of controlled substance for sale, and transportation of controlled substance." CRI-2 also said that he/she had been at their house recently and had "seen people who came to the house," who were "take(n) . . . in another room," and then "left a short time later." CRI-2 "believed" that these people were there to buy drugs. The above information was related in an affidavit and a search warrant was obtained. Execution of the search warrant resulted in recovery of methamphetamine and other controlled substances. "Robert" (or "Ron") turned out to be defendant. Charged in state court with various drug-related offenses, defendant's motion to suppress was denied by the

preliminary examination magistrate. Defendant's motion was again denied by the trial court. He pled guilty to a negotiated plea and appealed.

Held: The First District Court of Appeal (Div. 5) reversed, ruling that the defendant's motion to suppress should have been granted. Acknowledging the preference for search warrants, and that only a "fair probability" in the affidavit needs be found to support the issuance of a search warrant, the Court held that the affidavit in issue failed to meet this standard. In this case, three informants were used to support Officer Cooper's affidavit. The reliability of each of the informants, and their "basis of knowledge," is central to the validity of the warrant. As for the arrestee, no attempt was made in the affidavit to establish his reliability. And having just been arrested, his reliability was immediately suspect. Also, the information he had concerning defendant's illegal activities was based upon no more than hearsay that defendant had sold heroin to his wife. His identification of defendant's home and vehicle were "*pedestrian facts*" that anyone might be privy to. CRI-1 was identified in the affidavit as a "reliable informant," but this conclusory opinion was not supported by any specific facts. In the affidavit, there was nothing describing the basis for CRI-1's opinion that defendant and Maria dealt drugs out of their home, or how he knew where Maria stored her drugs. Lastly, CRI-2 was also described as a "reliable informant." Although the affidavit indicated that CRI-2 had given information to law enforcement in the past, there were no details given as to the nature of such information or how recent the information was provided. CRI-2's description of people coming to the house and taken into a room, and then leaving, is of little value, as is his opinion that such activity involves the sale of drugs. "The assertions of criminality by both CRI-1 and CRI-2 are merely conclusory, and conclusory statements are insufficient to support a warrant." Also, as with the arrestee, their description of the suspects' residence and Robert's truck were again nothing more than "*pedestrian facts*" available to anyone. Lastly, while similar information from unconnected informants "substantially increases the probability of its credibility," the "*interlocking details*" in this case relate only to pedestrian facts. In order for these interlocking details to be of any value, "at least some of the informants' statements must contain some indicia of reliability, such as an 'explicit and detailed description of alleged wrongdoing along with a statement that the event was observed first-hand." No such facts were described in the warrant affidavit in this case. Therefore, the affidavit failed to establish sufficient probable cause to support the issuance of the warrant. Defendant's motion to suppress should have been granted.

Note: However, the Court found that this case was close enough that "*good faith*" saved the search. There's enough authority, per the Court, to the effect that multiple unconnected informants with the same information (other than just "pedestrian facts") corroborate each other enough to establish probable cause, that a reasonable officer might well have concluded that the warrant in this case was good. But this case is illustrative of the need to support "conclusory" statements, of both the affiant and any informants used in the affidavit, with a detailed factual description of what these conclusions are based upon. The problem with this warrant is that there just wasn't enough in the way of factual details. I've always said that you can never put too much into a warrant affidavit. It's only what you leave out that hurts us. That's what happened in this case.