San Diego District Attorney

LEGAL UPDATE

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Vol. 13 November 26, 2008 No. 12
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THIS EDITION'S WORDS OF WISDOM:

"*Reality is a hallucination brought on by lack of alcohol*." (Unknown Author)

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CASE LAW:

***Searches of Computers*:**

United States v. Ganoe (9th Cir. Aug. 15, 2008) 538 F.3rd 1117

Rule: Downloading "LimeWire," a file-sharing program which allows users to search for and share with one another various types of files, compromises a person's expectation of privacy in the contents of the affected file folders, thus allowing for a warrantless Internet search of those files via LimeWire by law enforcement.

Facts: Immigration and Customs Enforcement Special Agent Ken Rochford periodically used the Internet to investigate people who traded in child pornography. Using a file-sharing program called "LimeWire," which allows users to search for and share with one another various types of files including movies and pictures, Rochford was able to locate some five separate files showing children engaging in sexually explicit conduct. Rochford determined that these downloads originated from a computer with an IP address that led him to Tyrone Ganoe's residence in Norwalk, California. A search warrant was obtained for defendant's home. Defendant was contacted and, after Agent Margaret Condon told him that he was not under arrest, he admitted to "accidentally" downloading some child pornography while attempting to download music. The search of defendant's computer resulted in the discovery of some 72 image and movie files of suspected child pornography. The next day, Agent Condon called defendant and told him that some of the stuff taken during the execution of the warrant were available to be picked up. During this conversation, defendant volunteered to Agent Condon that he was seeking counseling for his "problem." When asked what problem, he told her that he was referring to his child pornography problem. Indicted in federal court on various counts related to knowingly receiving and possessing child pornography, defendant was convicted after a jury trial. He appealed from his 96-month prison sentence.

Held: The Ninth Circuit Court of Appeal affirmed. Among the issues on appeal was weather the use of LimeWire to access defendant's child pornography files on his computer without a search warrant violated the Fourth Amendment. LimeWire, however, is a file-sharing program that can be downloaded by anyone from the Internet free of charge. When a person downloads it onto his computer, as defendant did, other users of the same software can then search for and share various types of files, including movies and pictures, on another's computer. Although there is an objectively reasonable expectation of privacy in the contents of one's computer, the Court found that once defendant installed LimeWire onto his computer, thereby opening his computer up to anyone else with the same freely available program, any expectation of privacy he might have thought he had in his computer was no longer reasonable. Defendant also claimed that he didn't know that installing LimeWire onto his computer opened his files to others. But the evidence showed that he knew he had file-sharing software on his computer, admitting to Agent Condon that he used it to get music. He was also explicitly warned before completing the installation of LimeWire that the folder into which files are downloaded would be shared with other users in the "peer-to-peer" network. "(Defendant) thus opened up his download folder to the world, including Agent Rochford." Having done so, defendant had no expectation of privacy in that computer folders. No search warrant was necessary.

Note: Computers are like any other type of container requiring, as a general rule, a search warrant to peek into. But also like any other container, if a defendant opens his computer up for anyone to see into, he's compromised whatever expectation of privacy he might have had. But remember, this only applies to the situation where a defendant has compromised his expectation of privacy by using a program like LimeWire, giving anyone and everyone access to the contents of his computer, and then only to the affected folders. To actually get to the computer itself, a search warrant will be needed for the

defendant's house or where ever the computer is kept. And because you will then want to look for more files of the same type that may not have been opened up by LimeWire, add the computer itself and its contents to the items to be searched in that same warrant. That's what they apparently did in this case. It seemed to work just fine.

***Threatening an Illegal Detention*:**
***Searching a Vehicle Incident to Arrest*:**
***Impounding Vehicles After the Driver's Arrest*:**
***Parole Fourth Waivers per P.C. § 3067(a)*:**

United States v. Caseres **(9th Cir. Jul. 21, 2008) 533 F.3d 1064**

Rule: (1) Threatening an unlawful detention is not illegal in itself, so long as defendant is not actually detained. (2) Searching a vehicle "*incident to arrest*" is unlawful when the vehicle is not searched until "well after" the arrest and the arrest is made a block and a half from the vehicle. (3) Impounding a vehicle pursuant to V.C. § 22651(h)(1), when the driver has been arrested, is unlawful unless it serves some "*community caretaking function*." (4) A parole search is not authorized unless the officer knew before the search that the defendant was a California parolee and that the defendant's prior conviction leading to parole occurred prior to January 1, 1997, per P.C. § 3067(a).

Facts: Los Angeles Police Lt. Roger Murphy, in uniform but in an unmarked patrol car, observed defendant turn at an intersection without signaling. (V.C. § 22108) Lt. Murphy also noticed that defendant's front passenger window appeared to be illegally tinted. (V.C. § 26708(a)(1)) Lt. Murphy followed defendant while he checked the plates for warrants. Defendant eventually pulled over and legally parked his car at a location that was later determined to be two houses from his own home. Lt. Murphy quickly parked his own car and attempted to catch up with defendant on a residential front lawn. While identifying himself as a police officer, Lt. Murphy ordered defendant to stop. Defendant continued to walk away, telling Lt. Murphy that he was home. Defendant also impolitely suggested that the lieutenant commit an indecent act upon himself. As Lt. Murphy called for cover, he caught up with defendant and attempted to engage him in conversation until help arrived. Defendant, still with the attitude problem, threatened to "kick (Lt. Murphy's) f---ing ass." Lt. Murphy told defendant that he was under arrest and, as defendant shook his fists at him, tried to spray him with mace. Defendant ran with the lieutenant in hot pursuit. After running for a number of blocks, an exhausted defendant finally gave up. He was arrested for threatening a police officer (P.C. § 69) and resisting arrest (P.C. § 148). "Well after" defendant's arrest, and at some point after Lt. Murphy discovered that defendant was a parolee, he ordered other officers to search defendant's car "incident to arrest." A gun and thirteen rounds of ammunition were found under the driver's seat. Defendant was charged in federal court with a felon being in possession of ammunition, per 18 U.S.C. § 922(g)(1)) (The gun wasn't charged because it couldn't be proved that the gun had been transported in interstate commerce, an element of a federal "felon in possession of a firearm" statute.) Defendant's motion to suppress was denied by the trial court. He pled guilty and appealed.

Held: The Ninth Circuit Court of Appeal reversed. (1) On appeal, defendant first challenged his original arrest. The Court agreed that the alleged Vehicle Code violations did not justify defendant's detention or arrest. As for making the turn without signaling, the Court noted that failing to signal is not illegal unless "any other vehicle may be affected by the movement." (See V.C. § 22107) There was no evidence presented to the effect that there was another vehicle present that could have been affected by defendant's failure to signal his turn. As for the alleged illegal window tinting, Lt. Murphy had no way of knowing that defendant's tinting was not legal factory-installed safety glass. "Without additional articulable facts suggesting that the tinted glass is illegal, the detention rests upon the type of speculation which may not properly support an investigative stop." Therefore, when Lt. Murphy ordered defendant to stop walking away, it would have been an illegal detention had defendant submitted at that point. (See *California Hodari D.* (1991) 499 U.S. 621; threatening an illegal detention is not a Fourth Amendment violation unless and until the suspect is either physically restrained or he submits to the detention.) It was at that point, however, when defendant physically threatened Lt. Murphy, a violation of P.C. § 69. This threat gave Lt. Murphy the right to physically arrest defendant, which he did after the foot pursuit. Defendant's arrest, therefore, was lawful. (2) Defendant also challenged the legality of the search of his vehicle. Agreeing that there was no probable cause justifying the vehicle search, the prosecution first argued that its search was lawful as a "*search incident to arrest*." For such a search to be lawful, however, it must be proved that the search was done contemporaneously in time and place with defendant's arrest. Other than the trial court's ruling that the vehicle was searched "well after" defendant's arrest, there was no evidence of exactly how long it took before the officers searched it. Also, defendant's arrest occurred about a block and a half away from where the vehicle was parked. The Government further argued, however, that the U.S. Supreme Court has upheld a search incident to arrest so long as the defendant was at least a "*recent occupant*" of the vehicle. (*Thornton v. United States* (2004) 541 U.S. 615.) The Ninth Circuit determined that *Thornton* did not apply absent a showing that defendant, when arrested, was still within reach of his vehicle. The search, therefore, does not qualify as a "*search incident to arrest*." (3) The Government also argued that defendant's car was lawfully searched as an "*inventory search*" of an impounded vehicle. V.C. § 22651(h)(1) authorizes the impoundment of a vehicle "(w)hen an officer arrests any person driving or in control of a vehicle for an alleged offense." However, impounding a vehicle under authority of this section is constitutional only if impoundment serves some "*community caretaking function*." Whether or not the community caretaking function justifies the impounding of a vehicle depends upon the location of the vehicle and the police officer's duty to prevent it from creating a hazard to other drivers or from being a target for vandalism or theft. (See *Miranda v. City of Cornelius* (9th Cir. 2005) 429 F.3rd 858.) In this case, defendant's car was lawfully parked only two houses from his own home. There was no evidence presented that would indicate that leaving it where it was might impede traffic, threaten public safety, or make it vulnerable to vandalism or theft. The Government noted, however, that defendant was driving on a suspended license and that impounding the car was necessary to prevent defendant from continuing this violation. However, where the defendant is going to jail, it is obvious that he was not in a position to continue his unlawful driving. Defendant's car was therefore impounded unlawfully. (4) Lastly, the

Court rejected the Government's argument that because defendant was a parolee, his car was subject to a warrantless search. The Court's reasoning on this was based upon case law saying that a Fourth Waiver search is lawful only if the officer knew of the suspect's parole or probation status before conducting the search. (e.g., see *People v. Sanders* (2003) 31 Cal.4th 318.) A later-discovered search condition does not retroactively validate an otherwise illegal search. In this case, even though Lt. Murphy knew of defendant's parole status prior to the search, there was no evidence that he knew defendant was a California parolee or that defendant's prior felony conviction leading to his parole status had occurred on or after January 1, 1997, as required by P.C. § 3067(a). His parole status, therefore, cannot be used to justify the warrantless search of his car.

Note: The Ninth Circuit, for whatever reason, was determined from the beginning to strike down this search. Although it cannot be disputed that most of the Court's above rationalizations have some basis in the law, there are several specific exceptions. On the issue of the parole search, there is absolutely no authority for the argument that Lt. Murphy had to have specific prior knowledge that defendant was a California parolee as opposed to any other parolee. Even assuming that there is another state somewhere that does not impose search conditions on their parolees, finding defendant in California, living near the scene of his arrest, is at least probable cause to believe he is a California parolee. Also, there is absolutely no authority for the conclusion that Lt. Murphy had to know prior to the search that defendant's parole was the result of a conviction that occurred on or after January 1, 1997, as required by P.C. § 3067. Even assuming that defendant's felony conviction occurred *prior* to that date, he would still have been subject to search and seizure conditions under very similar language in Cal. Code of Regs, Title 15 § 2511, which imposes the same conditions on defendants whose convictions occurred *prior to* January 1, 1997. In fact, there is California authority tending to indicate that *the Ninth Circuit is dead wrong on this issue*. (See *People v. Solorzano* (2007) 153 Cal.App.4th 1026, 1030-1032 and *People v. Middleton* (2005) 131 Cal.App.4th 732.)

***Assaults*:**

People v. Chance **(Aug. 18, 2008) 44 Cal.4th 1164**

Rule: An assault is an act that will probably and directly result in injury to another even though a couple more steps must first be accomplished. Intervening acts that lessen the likelihood that the intended injury will ever occur don't make it any less of an assault.

Facts: El Dorado County deputy sheriffs went to defendant's rural home to serve some felony warrants on him. Defendant saw them coming and ran. Sgt. Tom Murdoch, wearing a vest on which "SHERIFF" was written in large letters, ran after defendant. Yelling, "*Sheriff's Department, stop*," Sgt. Murdoch chased defendant up a driveway and onto another property. Noticing that defendant was carrying a handgun, Sgt. Murdoch observed him run around the front end of a trailer. Suspecting that defendant was waiting for him around the corner, Sgt. Murdoch quietly went around the other end of the trailer. As he did so, he found defendant pressed against the trailer, facing towards the front end and away from the sergeant, lying in wait for him. Defendant was holding the gun in his

right hand, extended forward and supported by his left hand. As Sgt. Murdoch came up from behind, defendant looked back at him. Sgt. Murdoch, with his own gun trained on defendant, repeatedly told him to drop his gun. Defendant eventually did so. It was later discovered that there was no round in the chamber although it was otherwise fully loaded with 15 rounds in the magazine. Charged with assault with a firearm on a peace officer, per P.C. § 245(d)(1), defendant was convicted by a jury. He appealed. The District Court of Appeal, in a split decision, reversed. The Appellate Court reasoned that defendant did not have the "*present ability to commit a violent injury*," as required for an assault conviction. The State petitioned to the California Supreme Court.

Held: The California Supreme Court, in a 5-to-2 decision, reversed the appellate court and reinstated defendant's conviction. The argument for *not* finding an assault is that defendant's act of pointing his gun in the opposite direction from Sgt. Murdoch's approach, with no round in the chamber, "*was not immediately antecedent to a battery*." In discussing what this means, the Court compared "*attempts*" to "*assaults*," noting that while attempts may be more remote in time, that does not mean that there is no assault merely because the intended injury is still a couple of steps away. Assaults, as a separate offense in its own right (see P.C. § 240), are general intent crimes. In other words, it is not necessary to prove that the defendant intended to commit a battery. The crime of assault is proven by evidence that "*defendant willfully committed an act that by its very nature will probably and directly result in injury to another*," no matter what his ultimate intent might have been. But assaults also require a "*present ability*" to commit an injury. The Court here ruled that this also does *not* mean that the infliction of the injury must be the next possible act. "(I)t is the ability to inflict injury on the present occasion that is determinative, not whether injury will necessarily be the instantaneous result of the defendant's conduct." Also, a "*present ability*" is found once the defendant "has attained the means and location to strike immediately." It is irrelevant that the intended victim takes effective steps to avoid injury, such as when Sgt. Murdoch went around the other end of the trailer. In this case, defendant had the present ability to injure Sgt. Murdoch, and he committed an assault despite the fact that he was looking in the wrong direction, despite the fact that there was no round in the chamber, and despite the fact that Sgt. Murdoch came around from the opposite direction. Defendant was properly convicted of assault with a firearm on a peace officer.

Note: Because an assault is commonly described as an "*unlawful attempt*" to commit a battery, it's hard to understand how it can be construed as a general intent crime. This decision does about as good a job as any I've read to date explaining why assaults are not specific intent crimes. Basically, it says that assault is a separate crime in its own right, and not an "*anticipatory*" crime, necessarily attached to another, as is the case with an "attempt." So once a person puts himself into a position where he is ready, and has the "*present ability*," to commit a violent injury upon another, the crime of assault is complete. The real importance of this case, however, is in its highlighting the fact that the required threat of a "*violent injury*" need not be the next possible step in the sequence of events. It is sufficient that the defendant commit an act that by its very nature "*will probably and directly result in injury to another*," even though a couple more steps must first be accomplished. The Court also clearly sets out the rule that unforeseen events that

lessen the likelihood that the intended injury will ever occur don't make it any less of an assault. Good case, dealing with a very difficult concept.

***Search Warrants and a Motion to Traverse*:**
***Miranda, Beheler, and the Custodial Interrogation*:**

United States v. Craighead **(9th Cir. Aug. 21, 2008) 539 F.3rd 1073**

Rule: (1) A defendant is entitled to challenge the truth of the content of a search warrant affidavit by way of an evidentiary hearing only after making a "substantial preliminary showing" that the affiant intentionally included in the affidavit a false statement, or did so with a reckless disregard for the truth. (2) A suspect may still be in custody for purposes of *Miranda* despite being told that he is not under arrest and that he is free to leave.

Facts: FBI Special Agent (SA) Robin Andrews, a 17-year veteran and computer nerd, logged onto the "LimeWire peer-to-peer filesharing network" (see *United States v. Ganoe*, above) for the purpose of investigating child pornography distribution. This technique revealed that a computer using IP address 68.0.185.111 was sharing files that, by their titles, appeared related to child pornography. She downloaded several files from this IP address and confirmed that they did in fact contain child pornography. An attempt to download a third file resulted in a response indicating that the demand for the image had overloaded its capacity to supply it. SA Andrews was able to trace the IP address to defendant's computer in his residence on the Davis-Monthan Air Force Base in Tucson, Arizona. She obtained a search warrant for defendant's residence and computer. The warrant was executed with eight law enforcement officers from three separate agencies (the FBI, the Pima County Sheriff's Department, and the Air Force Office of Special Investigations (OSI)) taking part. All the officers were armed, with some of them unholstering their guns in defendant's presence. The FBI agents were wearing flak jackets or "raid vests." Two non-agents accompanied the law enforcement officers; an FBI evidence control clerk and Air Force Sergeant Mike Ramsey who, defendant belatedly discovered, was there for his "emotional support." During the execution of the warrant, SA Andrews told defendant that he was not under arrest, that any statement he might make would be voluntary, that he would not be arrested that day regardless of what information he provided, and that he was free to leave. Handcuffs were never used. She directed defendant to a storage room at the back of his house "where [they] could have a private conversation." Detective Jeff Englander from the Pima County Sheriff's Department, wearing a flak jacket and a sidearm, accompanied them into the room and stood against the wall near the closed door. Sgt. Ramsey was not allowed to accompany them because non-law enforcement is "never permitted to be present during an FBI interview." SA Andrews believed she told defendant again that he was free to leave. There were no threats or promises to induce defendant to speak. Defendant, however, was *not* read his *Miranda* rights. Defendant later testified that he felt that he was not free to leave because Detective Englander was in the way, and because of the "prevailing mood" of the morning. He also indicated that even though SA Andrews had told him he was free to leave, he believed that members of the other two law enforcement agencies would not let him go had he tried. He didn't know whether he needed permission from

all three agencies to actually leave. He also testified that he was unaware of the fact that Sgt. Ramsey was there for his support, and that Ramsey was his "first sergeant," a superior with authority over him. During the ensuing 20 to 30 minute interview, defendant admitted to downloading child pornography using LimeWire and that he stored child pornography on his computer and on some of his discs. As promised, defendant was not arrested. The search of defendant's computer and discs resulted in the discovery of child pornography in various forms. Indicted in federal court on child pornography-related charges, defendant filed a motion to traverse the warrant, challenging the veracity of the contents of the warrant affidavit. The trial court denied this motion, refusing to even allow an evidentiary hearing on the issue because of an inadequate showing by defendant that SA Andrews had made any intentionally false or reckless allegations in the warrant affidavit. Defendant also challenged the admissibility of his statements to SA Andrews based upon the lack of a *Miranda* admonishment and waiver. The court denied this motion as well, finding that because defendant was not in custody, *Miranda* was inapplicable. Defendant pled guilty and appealed.

Held: The Ninth Circuit Court of Appeal reversed. (1) The Court first noted that there was nothing intentionally or recklessly misleading in SA Andrews' search warrant affidavit. Contrary to defendant's claims, she never indicated that she had downloaded pornography directly from defendant's computer. She correctly stated in the affidavit that she merely downloaded two files that were listed as available for download from IP address 68.0.185.111. The fact that SA Andrews failed to mention the possibility that defendant could have been the victim of "spoofing" or "Internet hijacking," or that the pornography otherwise may not have originated from defendant's computer, is also irrelevant. An affiant to a search warrant is not required to mention all possible defenses no matter how unlikely they may be. Also, the fact that SA Andrews had indicated that numerous other files were also available for downloading from IP address 68.0.185.111 was not misleading. Nowhere did SA Andrews claim to know whether or not these files contained child pornography. The trial court correctly refused to allow an evidentiary hearing on these issues because defendant failed to make a "substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant to the warrant affidavit." (*Franks v. Delaware* (1978) 438 U.S. 154.) (2) Defendant also argued that he should have been advised of his *Miranda* rights because he was in custody for purposes of *Miranda* despite being told that he was not, and despite being interviewed in his own home. On this issue, the Court agreed with defendant. Whether or not one is in custody for purposes of *Miranda* depends upon an analysis of four factors: (a) The number of law enforcement personnel and whether they were armed; (b) whether the suspect was at any point restrained, either by physical force or by threats; (c) whether the suspect was isolated from others; and (d) whether the suspect was informed that questioning was voluntary and that he was free to leave or terminate the interview. In this case; (a) there were eight law enforcement officers, some of whom displayed their firearms. "The presence of a large number of visibly armed law enforcement officers goes a long way towards making the suspect's home a police-dominated atmosphere." (b) Although defendant was never handcuffed or otherwise physically restrained, he was taken to a back storeroom and the door was closed, with an armed detective standing at the door. (c) Being isolated from the outside

world is perhaps the most crucial factor that would tend to lead a suspect to feel compelled to provide self-incriminating statements. Here, defendant was taken to the storeroom and the door shut. The one person who was supposed to be there for his support was excluded from the storeroom. (d) Defendant was in fact told that he was free to leave; maybe more than once. And the Court noted that interrogations in the home tend to be less custodial than elsewhere. But the Court also noted that telling a suspect that he is not in custody—that he is free to leave—presents a dilemma when he is already at home. Where else can he go when he's told that he is free to leave? "The mere recitation of the statement that the suspect is free to leave or terminate the interview . . . does not render an interrogation non-custodial *per se*." The surrounding circumstances, and the context of the situation, must also be considered. With defendant having been taken to a back storeroom where he was questioned with an armed detective blocking the door, and where there were at least six other law enforcement officers executing the warrant in his home, any one of whom might prevent him from leaving, it was not unreasonable for defendant to question whether SA Andrews had the last say on the issue of his freedom. In this case, despite being told that he could leave, the Court determined that defendant could have reasonably believed he was not free to leave as he had claimed. Without a *Miranda* admonishment and waiver, therefore, defendant's statements must be excluded.

Note: Telling a suspect that he is not under arrest and that he is free to leave is sometimes referred to as a "*Beheler* admonishment." (*California v. Beheler* (1983) 463 U.S. 1121.) The case law on this issue has consistently held that telling a suspect he's not under arrest and that he's free to leave, or at least that he can terminate the conversation whenever he wants, takes the custody out of an interrogation. But, as this case indicates, you also have to also set up the scene to be consistent with that admonition. Having too many officers present, particularly where firearms have been displayed, while holding the suspect in a secluded back room, are all factors that may negate the effect of a *Beheler* admonishment, as it did here. So while you may not agree with this decision (I'm not sure I do), accept its message for the lesson it attempts to teach us.

***Illegal Possession of Metal Knuckles, per P.C. § 12020(a)(1)*:**

In re David V. **(Sept. 8, 2008) 166 Cal.App.4th 801**

Rule: A metal bicycle footrest carried on the person with the intention of using it as a weapon qualifies as a "metal knuckle" in violation of P.C. § 12020(a)(1).

Facts: Defendant was riding a bicycle when stopped by Officer Thomas Appleby. During the stop, a metal bicycle footrest was recovered from defendant's rear pants pocket. (The details of the stop and the search, not being contested, were not described in the decision.) The footrest was described as a cylindrical object, approximately 3½ inches long and 1½ inches in diameter, and was designed to be attached to a bicycle. However, there was nowhere on defendant's bike where the footrest could be attached and there were no other footrests already on the bike. At trial in Juvenile Court, Officer Appleby testified as a gang expert and told the court that bicycle footrests are commonly

used as metal knuckles; illegal to possess under P.C. § 12020(a)(1). Per Officer Appleby, a person could hold the footrest in his hand with the fingers rolled over it. Held in such a manner, it could be "an impact punching device to further the effect of punching." The Juvenile Court magistrate sustained the petition. Defendant appealed.

Held: The Second District Court of Appeal (Div. 5) affirmed. Among the issues was whether the evidence was sufficient to prove that defendant possessed metal knuckles. Metal knuckles are defined in P.C. § 12020(c)(7) as "any device or instrument made wholly or partially of metal which is worn for purpose of offense or defense in or on the hand and which either protects the wearer's hand while striking a blow or increases the force of impact from the blow or injury to the individual receiving the blow. The metal contained in the device may help support the hand or fist, provide a shield to protect it, or consist of projections or studs which would contact the individual receiving the blow." Subdivision (a)(1) of section 12020 makes it a felony to possess "any metal knuckles." Defendant argued that it was the Legislature's intent to apply the statute to a weapon that cannot be easily dislodged during a fight. Per the defendant, such a weapon must be "worn;" i.e., affixed to the hand. The Court rejected this argument, noting that the statute uses the disjunctive saying that the object may be worn "in *or* on the hand," indicating a legislative intent to include objects held in a closed fist. Also, the statute prohibits metal knuckles that "*either* protect the wearer's hand . . . *or* increases the force of impact from the blow or injury to the individual receiving the blow." The trial court reasonably concluded, therefore, that the bicycle footrest, when grasped inside a person's fist, could increase the force of impact from a blow and result in increased injury to the victim. Defendant also argued that there was insufficient evidence of his intent in possessing the footrest. The rule is that when the item possessed is an object of ordinary, innocent usage, a court must consider the attendant circumstances of the possession, "including the time, place, destination of the possessor, the alteration of the object from standard form, and other relevant facts" in determining whether the possessor intended to use the object for a dangerous purpose. While there is no requirement that the prosecution prove that defendant planned to use the object as a weapon against a specific victim at a specific time or place, it must be proved that defendant knew the object could be used as a weapon and was carrying it with the intent to use it as such if need be. When a defendant argues that he possessed the footrest for an innocent purpose, it is his burden to convince the trier of fact. In this case, the fact that defendant was carrying the object in his back pocket while riding a bicycle on which there was nowhere to attach it tends to indicate that it was his intent to use it as a weapon.

Note: Good case describing the flexibility of P.C. § 12020. Section 12020 is intended to be broadly interpreted to include atypical weapons. There's just no other way to keep up with the fertile minds of gangsters and other violent people as they continually invent ways to use any manner and any number of objects as weapons. For instance, a baseball bat can be a billy club under the right circumstances. An ice pick can be a dirk or dagger. And so on. As police officers in the field, just make sure you watch for and document the circumstantial evidence of your suspect's intent in carrying such items and, with a little luck, you'll have a provable case.