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Remember 9/11/01: Support Our Troops

Dedicated to, and in memory of, Officer Christopher Wilson, San Diego Police Department, murdered in the line of duty on 10/28/1010

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THIS EDITION'S WORDS OF WISDOM:

"*I'm always slightly terrified when I exit out of Word and it asks me if I want to save any changes to my ten-page research paper that I swear I did not make any changes to*." (Anonymous)

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ADMINISTRATIVE NOTES:

Greene v. Camreta: This outrageous decision out of the Ninth Circuit Court of Appeal, found at 588 F.3rd 1011 (9th Cir. Dec. 10, 2009), ruling that interviewing a child victim on a school campus without the parents' consent, a search warrant or other court order, or exigent circumstances, constitutes a Fourth Amendment violation (see *Legal Update*, Vol. 14, No. 15, Dec. 31, 2009), has been accepted for review by the United States Supreme Court (Certiorari granted, 10/12/10). This means that (1) the decision is no longer valid law, and (2) the odds are good it will be reversed. *Yes, Virginia, there is a Santa Claus*.

P.C. § 666 (*Petty Theft with a Prior*): In my administrative note in the last *Legal Update* (Vol. 15, #8) concerning the recent amendment to this section requiring *three* (instead of one) prior theft-related convictions before the next petty theft can be charged as a felony, I opined that *only one* of the prior convictions must have resulted in "a term (served) therefor in any penal institution." Having reanalyzed the revised section (the details of my analysis with which I won't bore you), I have come to the conclusion that I was *probably* wrong; i.e., rather, that *all three* priors must each have included at least one day in jail. I say "*probably*," because based upon the questions I've received on this issue, and given the ambiguous nature of the statute as amended, no one seems to know what the Legislature really intended. But I've been told that at least some District Attorney Offices are alleging all three of the prior jail terms just to be on the safe side. *Safe is good*.

CASE LAW:

***Residential Searches; Consent by Parents*:**

***In re D.C.* (Sep. 24, 2010) 188 Cal.App.4th 978**

Rule: The warrantless entry of a residence and search of a minor's bedroom over the minor's objection is lawful when the minor's parent gives consent, at least in the absence of evidence suggesting that the parent has abdicated his or her authority over the minor.

Facts: Officers of the Oakland Housing Authority were called to an apartment building to check on a report of possible narcotics activity. Upon arrival, the officers contacted and detained defendant's adult brother. While checking out the brother, they discovered that he was on probation and subject to a Fourth wavier. At the same time, a neighbor complained to the officers that his apartment had just been burglarized. While escorting the brother to his apartment where he lived with his mother and 15-year-old defendant, they ran into mom. They told her they wanted to do a probation search of her apartment. She consented in writing to the search of "the whole interior of my apartment #2." Defendant, however, was standing at the door and told the officers; "*You're not going to enter the apartment*." Defendant's mother told defendant to "*get out of the way*." Defendant immediately complied. The officers entered and searched the entire apartment including its three bedrooms. In defendant's bedroom they found some of the items

reportedly taken in the burglary. A petition was filed in Juvenile Court alleging that defendant was in possession of stolen property, per P.C. § 496 (as well as having previously threatened a witness; P.C. § 140). His motion to suppress the evidence found in his bedroom was denied and the petition was sustained. Defendant appealed.

Held: The First District Court of Appeal (Div. 1) affirmed. Defendant's argument on appeal was that the evidence found in his room should have been suppressed because it was the product of a warrantless search done over his objection. A voluntary consent to search has always been recognized as a valid exception to the general rule that a search warrant is needed to enter and search a residence. Such consent can come from either the person whose property is searched or from a third person who possesses common authority over the premises. "*Common authority*" exists where there is a "mutual use of the property by persons generally having joint access or control for most purposes, so that it is reasonable to recognize that any of the co-inhabitants has the right to permit the inspection in his own right and that the others have assumed the risk that one of their number might permit the common area to be searched." It is also a rule that "officers may rely on the consent of a person whom they reasonably and in good faith believe has authority to consent to a particular search," sometimes referred to as "*apparent authority*." Defendant argued that there was no evidence supporting the argument that his mother had such "*apparent authority*" over his bedroom. With adults, living in separate bedrooms, it is presumed that a person does *not* have the authority to allow police officers into another's bedroom, absent evidence to the contrary. But with the adult child of an occupant, "absent circumstances establishing the son has been given exclusive control over the bedroom," it is presumed that the parents have retained the authority to enter the room and may therefore grant others access to it as well. With a minor child, this argument is even stronger. Parents have any number of legal obligations to their children, including (but not limited to) that of "reasonable care, supervision, protection and control" over the minor. Recognizing this, the Court held that a parent's "common authority over the child's bedroom is inherent." Parents have to have access to their child's bedroom, and the authority to consent to the search of the bedroom, in order to properly execute their duty of supervision and control over the child. "In the absence of evidence suggesting a parent has abdicated this role toward his or her child, police officers may reasonably conclude that a parent can validly consent to the search of a minor child's bedroom." In this case, it was apparent that mom remained in control, given defendant's immediate cessation of his resistance to the officers when she told him to "get out of the way." The Court further rejected defendant's argument that *Georgia v. Randolph* (2006) 547 U.S. 103, requires the officers to honor his objection to their entry. In *Randolph*, the U.S. Supreme Court ruled that when two co-occupants are present, and one objects to entry into a residence by the police, the officers may not rely upon the consent of the other to justify a warrantless entry. *Randolph*, however, deals with adult co-occupants having equal authority over the premises. It does not dictate a new rule for when a minor and his or her parents disagree. The officers' reliance on defendant's mother's consent to enter and search, even over defendant's objection, was lawful.

Note: We've all pretty much assumed this rule for a long time, but it's nice to have it in writing. *United States v. Randolph*, which changed the rule on us for when a husband

and wife are both present, with one objecting and the other consenting, might have caused some concern that D.C. was right in his arguments here. But *Randolph* makes it clear that the rule in that case only applies to co-equal adults. As much as many of the little "darlings" we're raising today might think they're co-equals with their parents (D.C. actually made that argument in this case), they're not! *But query*: How about when an adult child still lives at home and is paying rent? Does not landlord-tenant law then apply? (A landlord does *not* have the power to allow police to enter a rental; *People v. Roman* (1991) 227 Cal.App.3rd 674.) My belief, absent any case on point, is that an adult child living at home and paying rent is but one factor to consider. Other equally important factors would include whether the parents still have free access to the adult child's room, picks up his underwear, does his laundry, etc.

***Residential Entries and Standing*:**
***Residential Entries and Exigent Circumstances*:**
Miranda and the "Two-Step Interrogation Technique":"

***United States v. Reyes-Bosque* (9th Cir. Mar. 1, 2010) 596 F.3rd 1017**

Rule: (1) A defendant must prove standing before he can challenge the legality of a residential entry and/or search. (2) The warrantless entry and search of a residence is lawful so long as there is an objectively reasonable basis for believing that someone is in serious danger, the manner of entry is reasonable, and the scope of the subsequent search is reasonable. (3) Pre-*Miranda* admonishment questioning will not poison a subsequent post-*Miranda* confession unless use of a two-step interrogation technique was intentional.

Facts: Three illegal aliens escaped from an apartment at 362 Wilson Street, No. 4, in Brawley, California, despite being told not to leave. Eighteen other illegal aliens remained captive in the two bedroom apartment. Co-defendant/appellant Jose Ramirez-Esqueda (defendant #2) and a third co-defendant (defendant #3, who did not appeal) were assigned by defendant Emilio Reyes-Bosque (defendant #1) to watch the aliens and to keep them quiet. The three escapees went into town and were promptly confronted by Border Patrol agents Felipe Rodriguez and Louis Martinez. Admitting that they were in the country illegally, they also complained that they had been held against their will in an apartment where 18 other aliens were still being held. They showed the agents the apartment at 362 Wilson St., No. 4. Backup was called. When assistance arrived some 20 minutes later, defendant #3 was observed outside the apartment and contacted. He claimed to be visiting his godfather who lived in apartment No. 3, next door to No. 4. One of the agents went to No. 3 to verify his story. After knocking at the door for some time, defendant #1's wife finally opened the door. Asked for her documentation, she was able to produce a Mexican border card only. When asked to speak to her husband, defendant #1 came to the door. He presented valid identification and immigration documents. But he denied that defendant #3 was his godson. Defendant #1's wife was arrested for not having the proper documentation. She was allowed to take her three-day old baby with her so long as the agent could accompany her when she collected the baby's things from inside the apartment. As they did this, defendant #2 was found in a bedroom, hiding under the covers of the bed, fully clothed. Defendant #2 had a valid

Mexican passport and visa. Meanwhile, agents Rodriguez and Martinez went to apartment No. 4. Rodriquez knocked at the front door while Martinez watched the back. When Rodriquez identified himself, Martinez saw someone stick his head out of a back window and then quickly pull it back in. Martinez relayed this observation to Rodriquez who, with his gun drawn, entered the unlocked front door. The 18 illegal aliens were found inside along with documentation related to the defendants' alien smuggling operation. Defendant #2, having been removed from under the covers in apartment No. 3, was told to sit on the floor. Without the benefit of a *Miranda* admonition, agents questioned defendant #2 about his citizenship, his reason for being in the apartment, and whether he knew defendant #1. Taken outside, defendant #2 was briefly questioned on why he was there. He eventually admitted to working for defendant #1 and being paid $100 for scouting the highway checkpoints. Transported to the Border Patrol station, defendant #2 was finally read his *Miranda* rights by other agents who had not heard his statements at the apartment. He waived his rights and confessed again to working for defendant #1 by reporting to him via cell phone when the Border Patrol checkpoints were open so that the illegal aliens could be moved. All three defendants were indicted in federal court on alien-smuggling charges. After the defendants' various motions to suppress were denied, they were all convicted. Defendants #1 and #2 appealed.

Held: The Ninth Circuit Court of Appeal confirmed. At issue on appeal were the warrantless searches of the two apartments and the admission into evidence of defendant #2's pre- and post-*Miranda* statements. (1) *Apartment No. 3*: Both defendants #1 and #2 contested the warrantless entry of Apartment No. 3. As for defendant #1, Emilio Reyes-Bosque, the Court declined to decide the issue in that even though he was staying there with his wife, and thus had standing to challenge the legality of the search, no tangible evidence was recovered there that was used against him. Also, none of his wife's, nor defendant #2's, statements were used against him. So as to defendant #1, the issue was moot. As for defendant #2, Jose Ramirez-Esqueda, the Court ruled that he had *no standing* to challenge the legality of the search. In order to show standing (i.e., "a reasonable expectation of privacy"), a defendant must prove that it was either his apartment or that he was at the very least an overnight guest. Being there for no more than a "purely (illegal) commercial purpose is not enough." It is also not enough to merely *claim* that he was an over-night guest. Here, there was no evidence that he had personal items in the apartment to suggest that he was staying the night, nor a key, nor other items stored there, nor that he was free to come and go as he pleased. As such, there was nothing to substantiate his claim that he had standing. Evidence recovered from apartment No. 3, therefore, was properly admitted into evidence against defendant #2. (1 & 2) *Apartment No. 4*: Defendant #1 challenged the admissibility of evidence recovered from apartment No. 4. Here, defendant #1 argued his standing by pointing out that he had paid the rent for apartment No. 4, had an electric bill for that apartment in his own residence, and had joint control over it. The Court, however, ruled that he had no standing to challenge the legality of the entry or admissibility of evidence from that apartment. Records indicated that defendant #1 had not been the payor of the rent for No. 4 for some three months before the search, the receipts for payment being in someone else's name. Although defendant #1 claimed to have joint control over apartment No. 4, there was no evidence to support that claim. Defendant #1 did not live there and, other

than housing his illegal aliens there, had no other connection with it. However, even if defendant #1 did have standing, the Court found that exigent circumstances allowed for the warrantless entry and search of the apartment. So long as an officer has an "*objectively reasonable basis*" for believing that there is an immediate need to protect others or themselves from serious harm, and the manner of the entry and the scope of the subsequent search were reasonable to meet the need, a warrantless entry and search of a residence will be upheld. Having information that there were 18 people being held in that apartment against their will, and, with evidence that someone was attempting to escape through a back window, an immediate entry to secure the scene was lawful. The manner of entry was also lawful, having complied with the knock and notice rules. And although the agent entered with his gun drawn, he reholstered it as soon as it was determined that there was no danger. Also, with 18 people spread throughout the apartment, searching each room was reasonable. The evidence observed in plain sight during this search was lawfully seized under these circumstances. (3) *Defendant #2's confession*: Defendant Jose Ramirez-Esqueda complained that his un-Mirandized admissions made at the apartment were illegally obtained and that they therefore poisoned his later post-*Miranda* confession. Citing the United States Supreme Court case of *Missouri v. Seibert* (2004) 542 U.S. 600, where a "*two-step interrogation technique*" (a pre-*Miranda* confession closely followed by a post-*Miranda* confession) was condemned, defendant #2 argued that both sets of statements should have been suppressed. The Court, however, noted that *Seibert* requires that the two-step procedure have been done intentionally. Here, with defendant #2's post-*Miranda* confession being the result of questioning by agents who were unaware of his prior statements made at the apartment, *Seibert* was not intentionally violated. Therefore, his *Mirandized* confession was properly admitted into evidence. As for his pre-*Miranda* statements, even if they should have been suppressed (the Government arguing that he was not in custody at that time), the error was harmless. There was more than enough evidence to convict him even without those statements. Defendants' convictions, therefore, were upheld.

Note: This is an excellent case on the issue of standing, or, as it is more commonly referred to now, whether a person has a "*reasonable expectation of privacy*" in a residence. While the possibility that a particular defendant might not have the standing to challenge the entry and search of a residence doesn't excuse us from failing to get a search warrant when practical to do so, it might save our bacon when we otherwise screwed up or the issue is a close one. This case cites a bunch of case law on this issue, complete with factual examples. The case is also good for highlighting the rule that *Seibert* error must have been intentionally committed. For a more thorough explanation of the *Seibert* issue, see *Thompson v. Runnel* (9th Cir. Sep. 8, 2010) __F.3rd __ [2010 U.S. App. LEXIS 18750], as briefed in the previous *Legal Update*, Vol. 15, No. 8, p. 6.

***Strip Searches in Jails*:**

***Bull v. City and County of San Francisco* (9th Cir. Feb. 9, 2010) 595 F.3rd 964**

Rule: A blanket search policy requiring visual strip searches of all arrestees introduced into a jail's general population for custodial housing is lawful.

Facts: Mary Bull and other similarly situated county jail inmates brought this class action federal civil suit alleging the unconstitutionality of the San Francisco Sheriff's policy of conducting visual (non-contact) strip searches of all arrestees who were to be introduced into the general jail population for custodial housing. Per the policy, it mattered not what the inmate was charged with nor whether he was a pre-trial detainee or already convicted. In pretrial motions, the Sheriff presented evidence of the number of weapons, drugs and other contraband that get smuggled into his jail system, usually by incoming new arrestees, and the dangers this posed to other inmates and jail personnel. Evidence was also introduced describing how such searches were to be conducted in a professional manner, without any physical touching of the inmate, by personnel of the same sex as the inmate, and in a private place. Despite this evidence, the trial court granted the plaintiffs' summary judgment motion (i.e., finding for the plaintiff prisoners without benefit of a trial), citing the Ninth Circuit's prior rulings of *Thompson v. City of Los Angeles* (9th Cir. 1989) 885 F.2nd 1439, and *Giles v. Ackerman* (9th Cir. 1984) 746 F.2nd 614. These two cases found that visual strip searches of incoming jail inmates were lawful *only* if the arrest involved weapons, drugs, or acts of violence, or when jail officials possessed a reasonable suspicion that the individual arrestee was carrying or concealing contraband. These cases further held that just because an arrestee was to be housed with the general population (as opposed to being released shortly after booking) was not sufficient to justify the intrusion into a person's privacy that is inherent in visual strip searches. In this new case, the Ninth Circuit Court of Appeal, in a split 2-to-1 decision, affirmed. (539 F.3rd 1193.) However, a rehearing was granted by an en banc panel (i.e., eleven justices instead of the usual three) of the Ninth Circuit.

Held: The en banc panel of the Ninth Circuit, in a split 7-to-4 decision, reversed. In so doing, the Court not only overruled its prior decision in this case, but its prior decisions in *Thompson* and *Giles* as well. The Court found its inspiration in the U.S. Supreme Court case of *Bell v. Wolfish* (1979) 441 U.S. 520. In *Bell*, the High Court found that although prisoners do not forfeit all their constitutional rights, the rights they do retain must be balanced with a penal institution's need for a particular search. In *Bell*, prison officials had a policy of conducting visual body cavity inspections of all inmates at a Metropolitan Correctional Center in New York after contact visits with someone from outside the institution. The Supreme Court found such searches to be reasonable because they were necessary to accomplish the essential goals of maintaining institutional security and preserving internal order and discipline. The Supreme Court also found in *Bell* that lower courts must accord corrections officials wide-ranging deference in the adoption and execution of polices and practices that, in their own professional judgment, accomplish these goals. The Supreme Court further rejected the argument that such searches must be limited to those who have already been convicted of a crime. In *Bell*, the Government offered but one example of where contraband had been recovered after a prisoner's contact visit. In the instant case, the San Francisco Sheriff offered an extensive history of contraband and weapons being recovered from new arrestees being brought into the jail's general population. The Sheriff further took steps to insure that the searches were to be conducted in a professional manner, taking into consideration the arrestee's sex and other privacy interests. If the visual strip searches in *Bell* are reasonable, then they certainly

are under the San Francisco Sheriff's policies. Overruling its own prior decisions to the contrary (i.e., *Thompson* and *Giles*), the Court found that visual (non-contact) strip searches of all arrestees being introduced into a jail's general population are reasonable and lawful under the Fourth Amendment.

Note: Finally, some sanity out of the Ninth Circuit on this issue. Allowing prisoners into a jail system without an exhaustive search for weapons and contraband is not only stupid, but exceedingly dangerous. Kudos to San Francisco County Sheriff Michael Hennessey for defying the Ninth Circuit's earlier rulings on this issue and, armed with a comprehensive policy and evidence of a long history of contraband and weapons in his jails, thoroughly litigated this issue. Note, however, that this does *not* include arrestees who are *not* to be introduced into the general jail population; i.e., the ones who are released after booking but without being housed with the general population. Arguably, strip searches of those prisoners continue to be limited to those for whom there is a reasonable suspicion to believe are hiding contraband or weapons, or who are arrested for drug offenses, weapons offense, or crimes of violence. Also, this case does not cover strip searches involving "physical (as opposed to a non-contact) body cavity searches," for which a search warrant is required. (*People v. Collins* (2004) 115 Cal.App.4th 137, 143.) Note also that California has legislated the rules on searches of misdemeanants, under P.C. § 4030.

***Use of Force in Jails*:**

Wilkins v. Gaddy **(Feb. 22, 2010) __ U.S. __ [130 S.Ct. 1175; 175 L.Ed.2nd 995]**

Rule: The use of excessive force on a prison (or jail) inmate is an Eight Amendment "cruel and unusual punishment" issue. Also, relevant inquiry is *not* the extent of the injury that results, but rather the degree of the force used.

Facts: Petitioner Jamey Wilkins, a North Carolina state prisoner, filed suit in federal court alleging that he had been subjected to "cruel and unusual punishment" as prohibited by the Eight Amendment when he was "maliciously and sadistically" assaulted "without any provocation" by a prison guard by the name of Gaddy. The assault was the apparent result of Wilkins asking Gaddy for a grievance form. Allegedly, this angered Gaddy to the point where he "snatched (Wilkins) off the ground and slammed him onto the concrete floor." This was followed by Gaddy " punch(ing), kick(ing), knee(ing) and choke(ing) (Wilkins) until another officer had to physically remove (Gaddy) from (him)." Wilkins alleged that he sustained multiple physical injuries including a bruised heel, lower back pain, increased blood pressure, migraine headaches and dizziness, as well as psychological trauma and mental anguish including depression, panic attacks and nightmares. Wilkins further alleged that he received medical treatment as a result of these injuries. The trial court dismissed the lawsuit on its own motion, without asking to hear from Gaddy, noting that the Eight Amendment does not cover "*de minimis*" injuries. The Fourth Circuit Court of Appeal affirmed this ruling noting that by its own precedent, Wilkins would have to show some "significant injury" in order to invoke the protections of the Eight Amendment. Wilkins petitioned to the United States Supreme Court.

Held: The United States Supreme Court unanimously reversed, remanding the case back for trial. Citing *Hudson v. McMillian* (1992) 503 U.S. 1, the Court chastised the trial court and the Fourth Circuit Court of Appeal for ignoring the long-standing rule that whether or not the Eight Amendment protection from "*cruel and unusual*" punishment is violated depends *not* upon the extent of the injury, but rather the degree of force used. Per the Court, "The "core judicial inquiry" . . . (is) not whether a certain quantum of injury was sustained, but rather 'whether force was applied in a good faith effort to maintain or restore discipline, *or* maliciously and sadistically to cause harm.'" The degree of injury is not totally irrelevant, however. But it is only one factor to consider when determining whether the degree of force used was reasonable under the circumstances. It is possible for the victim to have suffered little if any injury with it still be held that the force used was excessive; intended to "maliciously and sadistically . . . cause harm," an Eight Amendment violation.

Note: The use of the Eight Amendment does not appear to apply in the street context, at least as explained by the Court. The Eighth Amendment talks about the judicial "punishment" one receives, which comes after sentencing in a criminal case. In fact, a concurring opinion by two of the justices noted that *Hudson v. McMillian* should perhaps be overruled in that the Eight Amendment was not originally intended to apply to anything other than the penalty imposed for the commission of a crime. It was not intended to cover excessive force used on a prisoner. But as it stands today, excessive force used in the jail context is an Eighth Amendment issue and grounds for a lawsuit.

***Vehicle Registration Stickers*:**

People v. Greenwood **(Oct. 28, 2010) __ Cal.App.4th __ [2010 Cal.App. Lexis 1850]**

Rule: Information that a vehicle's registration is expired, in the absence of other information that the vehicle is in the process of being re-registered, justifies a traffic stop despite the presence of an apparently valid temporary registration sticker in the window.

Facts: Officers James Moon and Ryan Marshall were on patrol at 11:05 p.m. on May 25, 2009, when they observed defendant driving his vehicle. Defendant's car had a red temporary registration sticker in the rear window with the number "5" prominently displayed. The officers ran a registration check on the license plate and discovered that per DMV, the vehicle's registration had expired two years earlier with no indication that the car was being re-registered. The officers knew that the registration sticker allowed for the vehicle to be driven until the end of the month, but erroneously believed that it could only be driven for the purpose of completing the smog check process. Doubting that defendant intended to get a smog check at eleven at night, they conducted a traffic stop. During the contact, a cigarette dipped in phencyclidine was discovered. Defendant was arrested and charged with being in possession of a controlled substance. During defendant's motion to suppress, it was stipulated by the prosecution and the defense that defendant's temporary registration sticker was valid. Despite this, defendant's motion was denied. He pled no contest and, having five prior prison terms (and one strike) on his record, was sentenced to 32 months in prison. Defendant appealed.

Held: The Second District Court of Appeal (Div. 2) affirmed. Defendant's argument on appeal was (as it was in the trial court) that the traffic stop leading to the discovery of his PCP cigarette was illegal. This, in turn, was based upon defendant's theory that an apparently valid temporary registration sticker visible in the window of his car "was intended to signal that the motorist has complied with the registration requirement and a stop to conduct a general inquiry into (the validity of the) registration is impermissible absent specific information the permit is invalid or fraudulent." Defendant was correct, *except* that his argument failed not allow for the exceptions applicable to this rule. The legal standards are clear. A police officer may conduct a detention under the Fourth Amendment when he or she can "point to specific articulable facts that, considered in light of the totality of the circumstances, provide some objective manifestation that the person detained may be involved in criminal activity;" i.e., a "*reasonable suspicion*." Traffic stops are treated as investigatory detentions. Thus, a traffic stop need be supported only by a reasonable suspicion. Following a brief, yet complete rehash of all the cases on the issue, the Court concluded that the general rule is as follows: "In the absence of other incriminating or ambiguous evidence, a vehicle displaying a valid temporary permit and no license plates may *not* be stopped for the purpose of investigating the permit's validity." *But* (and this is a "*Big Butt*"), should there be anything amiss, a traffic stop to check for an explanation of an otherwise unexplained inconsistency is lawful. This inconsistency is typically going to supply the necessary reasonable suspicion. In this case, based upon information from DMV that the registration hadn't been valid for two years, without any indication that the temporary permit was "part of the registration process," the officers reasonably believed that defendant's vehicle might not be legally registered. The fact that an apparently valid temporary registration sticker was visible in the window did not sufficiently explain the other information the officers had from DMV to the contrary. Under these circumstances, the officers were entitled to stop defendant and seek an explanation of this inconsistency. Also, the officers' subjective erroneous belief that defendant could only be driving lawfully in order to get a smog check does nothing to detract from the reasonable suspicion, and is irrelevant. A finding of a reasonable suspicion is based upon what a reasonable officer would have "*objectively*" believed under the circumstances; not an officer's erroneous subjective beliefs. Further, the test being what a reasonable officer would have objectively believed under the circumstances, it is also irrelevant that the permit was later determined to be valid. The traffic stop was lawful. Therefore, the resulting evidence was admissible against him, as ruled by the trial court.

Note: I briefed this case even though it's brand new and not final because I get calls and e-mails on this issue more often than most. But note that the rule is still that absent some unexplained inconsistency, you may not legally stop and investigate a vehicle's apparently valid red temporary registration certificate merely because you know, in your own experience, that crooks tend to forge the expiration month and/or move the sticker from one vehicle to another. (See *Brendlin v. California* (2007) 551 U.S. 249.) There always has to be either some other unexplained inconsistency, or, at the very least, that the sticker was not visible to you from your vantage point. In addition to this case, I have the whole scenario of cases talking about the individual circumstances that allow you, *or not allow you*, to stop a vehicle to check its registration. Ask and you shall receive.