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

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THIS EDITION'S WORDS OF WISDOM:

"*Fighting terrorism is not unlike fighting a deadly cancer. It can't be treated just where it's visible--every diseased cell in the body must be destroyed*."
(Lt.Col. David Hackworth, U.S. Army)

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ADMINISTRATIVE NOTES:

***Thanks*:** For the past four years, the *Legal Update* has been published for me by a company out of Santa Rosa, California, called "*Distance Learning*." They've done so at no cost to you or me and with no profit for themselves, although the hope is that someday they will receive some remuneration for their efforts. A plan is being worked on which, if successful, will result in you continuing to get

the *Update* for free while at the same time earning POST or MCLE credits. More details on the plan will be forthcoming in the future. In the meantime, I wish to express my sincere gratitude to Joe Soldis, Barry Niehuser, and the employees of Distance Learning for all the time and effort they've expended in keeping the *Legal Update* going these many years. You wouldn't be getting these if it weren't for these good people.

CASE LAW:

***Vehicle Code Violations*; *Failing to Signal, per V.C. § 22107*:**

People v. Carmona **(May 27, 2011) 195 Cal.App.4th 1385**

Rule: Failing to signal a turn, per V.C. § 22107, is not illegal unless there is another vehicle present that may be affected by the movement. V.C. § 22108 (not signaling for the last 100 feet) is also not violated unless signaling is required per section 22107.

Facts: La Habra Police Officer Nick Wilson was driving southbound on Walnut Street at the same time defendant was driving in the opposite direction towards him. There were no other cars in the vicinity. As the two cars approached each other but before crossing paths, defendant turned right, or eastbound, onto another street. The two cars were about 55 feet apart at the time. Defendant failed to signal his turn. When Officer Wilson reached the same intersection, he turned left and followed defendant. He made a traffic stop for a perceived violation of V.C. § 22107; failing to signal. Upon contacting defendant and obtaining his license and registration, Officer Wilson asked him if he was on parole. Defendant admitted that he was. When asked if there were any drugs in the vehicle, defendant admitted that there was. A search of the vehicle resulted in the recovery of 7.1 grams of methamphetamine and other evidence of drug dealing. A passenger had meth-snorting paraphernalia on her. Arrested and charged in state court with various drug-related offenses, defendant filed a motion to suppress. After the trial court denied the motion, defendant pled guilty and appealed.

Held: The Fourth District Court of Appeal (Div. 3) reversed. Defendant's argument on appeal was that for there to be a violation of V.C. § 22107, there must have been some other vehicle that may have been affected by the driver's failure to signal a turn. Indeed, section 22107 specifically requires that; "(n)o person shall turn a vehicle from a direct course or move right or left upon a roadway until such movement can be made with reasonable safety and then only after the giving of an appropriate signal in the manner provided in this chapter *in the event any other vehicle may be affected by the movement*." (Italics added) Officer Wilson testified that defendant's turn did not affect his (the officer's) vehicle, and there were no others cars on the road. Defendant argued, and the Court agreed, that because there was no other vehicle that could have been affected by his turn, failing to signal was not a violation of V.C. § 22107. The Attorney General argued, however, that if defendant did not violate section 22107, then he at least violated section 22108. Vehicle Code § 22108 provides that; "(a)ny signal of intention to turn right or left shall be given continuously during the last 100 feed traveled by the vehicle before

turning." The AG's argument was that not having signaled at all, defendant certainly violated this section. It is a rule of law that if an officer cites the wrong section in alleging a violation, the stop is still lawful so long as *some* section was violated. Rejecting the People's argument on this theory, the Court noted that sections 22107 and 22108 have to be read in conjunction with one another. What section 22108 actually means is that *if* it's required that a signal be given per 22107 (i.e., when another vehicle is affected by a turn or other right or left movement), then the signal must be for at least 100 feet before the turning movement is made. In fact, section 22107 itself makes mention of "*an appropriate signal in the manner provided in this chapter*," indicating the Legislature's intent that the sections be read together. Therefore, having violated no Vehicle Code sections, Officer's Wilson's stop of the defendant was illegal. The resulting search was also illegal as the product of the unlawful stop. The evidence recovered from his vehicle should have been suppressed.

***Note*:** I've received a number of inquiries about this case, questioning its validity. Quite frankly, I can't criticize it. And it isn't the first case to reach the same conclusion. (See *In re Jaime P.* (2006) 40 Cal.4th 128, 131; *People v. Cartwright* (1999) 72 Cal.App.4th 1362, 1366; and *United States v. Mariscal* (9th Cir. 2002) 285 F.3rd 1127, interpreting a similar Arizona statute.) The listed elements in section 22107 are what they are, including the necessity of showing that some other vehicle was in a position where it "*may be affected*" by a suspect's turning moment. Note that there is no need to show that another car was *actually* affected. The issue now is going to be whether another car could have been affected by a suspect's turning movement. The AG cited *People v. Logsdon* (2008) 164 Cal.App.4th 741, in their arguments. In *Logsdon*, the defendant made an unsignaled turning movement with a patrol vehicle within 100 feet behind him, traveling in the same direction and at the same speed. Under these circumstances, that court found the officer's car could have been affected. But in the instant case, the officer's car was traveling in the opposite direction, albeit within 55 feet, but not yet having reached the defendant's location before defendant turned off in another direction. Under *these* circumstances, defendant's turning movement could *not* have affected the officer or anyone else.

***Search Warrants; Probable Cause in Child Pornography Cases*:**

United States v. Krupa **(9th Cir. Feb. 7, 2011) 633 F.3rd 1148**

Rule: A single photograph of a nude minor when combined with other suspicious circumstances *may* be sufficient to justify the issuance of a search warrant for the contents of the suspect's computers.

Facts: Edwards Air Force Base military police officers went to an on-base residence to check on the welfare of the children (ages 5 and 10) of a divorced Air Force sergeant, based upon a report from the children's mother that the sergeant failed to return them to her in accordance with a shared custody order. Defendant, a civilian who was at the sergeant's residence, told the officers that the sergeant was overseas and not due to return for another nine days, and that he, defendant, was taking care of the children. The military police found the place to be in complete disarray. They also observed in plain

sight 13 computer towers and two laptops. Finding this unusual, the officers asked defendant if they could take and search the computers. Defendant agreed. Four days later, a trained specialist in computers and digital evidence, Investigator Reynolds, began a search of the computers. He found on one of them the photograph of a nude 15- to 17-year-old female with a website label of "www.nude-teens.com." Five days later, before Reynolds could finish his search, he was hospitalized with chest pains. The following day, defendant revoked his consent to search the computers. Reynolds subsequently sought consent for "military search authority" (i.e., a search warrant) for the computers. An Air Force colonel, who was appointed "Primary Search Authority Military Magistrate," approved the warrant. Under authority of this warrant, Reynolds continued his search and found some adult pornography along with 22 images of child pornography. Defendant made some admissions relative to his possession of the pornography to F.B.I. investigators. He was subsequently charged in federal court with possession of child pornography (18 U.S.C. § 2252(a)(4)). Defendant's motion to suppress the results of the search of his computers was denied, the federal magistrate finding that despite the lack of sufficient evidence to support the issuance of the warrant, that "good faith" saved the search anyway. Defendant pled guilty and appealed.

Held: The Ninth Circuit Court of Appeal, in a split 2-to-1 decision, affirmed, but for different reasons. The issue centered on prior Ninth Circuit authority to the effect that a single photograph of a nude teenage girl is insufficient by itself to establish probable cause for a search warrant. (*United States v. Battershell* (9th Cir. 2006) 457 F.3rd 1048.) However, in this case, contrary to *Battershell*, there were additional facts that the magistrate properly took into consideration in finding probable cause to search. Specifically, the nude photo of a teenage girl with a website label of "www.nude-teens.com" was "strong supporting evidence." The Court held that this was enough to support the issuance of a search warrant when added to the following: The unusual circumstance of defendant, a civilian with no apparent ties to the Air Force, being in possession of, and having control over, 15 computers, found in military housing which was in "complete disarray," and where he was taking care of two young children not his own with the children's father out of the country. The search warrant, therefore, being supported by probable cause without having to resort to "good faith," was lawful.

Note: Almost as an afterthought, the Court further noted that there's an argument (although not raised by the parties) that defendant, as a civilian on a federal reservation, had impliedly consented to the warrantless search of his property (i.e., the computers). But aside from this, the Court found the issue to be a "close case." The dissent argued that the affidavit supporting the warrant was, in his opinion, lacking in enough specificity as to what was sexual in nature about the photo first observed. The dissent also questioned why other listed factors (e.g., house in disarray, 15 computers in the house, civilian on a military base, etc.) were considered to be suspicious. I'm afraid I have to agree that the dissent has a valid point. But the lesson learned here is that if all you're working off of is one nude photo, per *Battershell*, you don't yet have enough. You're going to need to add significantly more information and particularity to your described facts to guarantee that a neutral magistrate will be satisfied that a search warrant should issue. Don't flirt with brinkmanship if there's no need to be pushing any envelopes.

***Miranda*; *Booking Exception and Gang Affiliation Questions*:**

People v Gomez **(Feb. 8, 2011) 192 Cal.App.4th 609**

Rule: Routine booking questions *may*, depending upon the circumstances, be an exception to the *Miranda* rule.

Facts: Defendant and three other gangsters, all affiliated with the "Arlanza 13" street gang, happened upon an apartment complex's maintenance man, Nicasio Estrada, in Riverside. Estrada was checking the security of some vacant apartments at 1:00 a.m. when the four gangsters approached him "very aggressively." They asked him his name and if he lived there (or something similar). Estrada told them that he did live there but that they didn't. At that point, the four of them attacked Estrada, beating him with their fists. Finally, defendant commanded the others to "finish him" while he himself twice threw a concrete block at Estrada's head causing minor injuries. At some point during the confrontation, one of the gangsters obtained the keys to Estrada's truck that had been in his coat. Finally, all four suspects ran back to their car, driven by defendant, and fled the area. Estrada returned to his apartment and called the police. But before the police arrived, defendant and his companions returned and attempted unsuccessfully to force their way into Estrada's apartment. Estrada remained inside his apartment as he made eye contact with the gangsters, being approximately 10 feet away from them. Failing in their attempts to get into Estrada's apartment, two of the suspects, using Estrada's keys, opened his nearby truck and drove it away. Defendant followed in his vehicle. Shortly thereafter, police caught all four suspects about two miles away looting Estrada's truck. With the suspects detained at the scene, Estrada made a curbstone identification of all four. Immediately following his booking, defendant was interviewed by Deputy Sheriff Mike Munoz; the jail's "classification officer." Deputy Munoz, who knew nothing about the circumstances of defendant's crimes, asked him his name, date of birth, and whether he had any gang affiliations. Defendant admitted to Deputy Munoz that he was affiliated with the Arlanza gang. Asked if he was an active member, associate member, or former member, defendant responded that he was an active member and that he used the moniker "Scooby." Deputy Munoz also noted that defendant sported tattoos on his chest and stomach saying "Arlanza" and "Traviesos" (a subset of the Arlanza gang). Defendant was later arraigned in state court on various charges related to the assault on Estrada and the carjacking of his truck, including allegations of active participation in a criminal street gang (P.C. § 186.22(a)) and that the offenses were committed for the benefit of, at the direction of, and in association with a criminal street gang (P.C. § 186.22(b)). Defendant's motion to suppress his statements made to Deputy Munoz, as a *Miranda* violation, was denied by the trial judge. At trial, a gang detective's expert opinions relative to defendant's gang association, based partially on his admissions to Deputy Munoz, were admitted into evidence. Convicted of the more serious charges, including the gang allegations, defendant was sentence to 23 years in prison. He appealed.

Held: The Fourth District Court of Appeal (Div. 2) affirmed. Among other issues, defendant argued on appeal that his admissions to Deputy Munoz were obtained in violation of *Miranda* and should have been suppressed. *Miranda*, of course, requires that

an in-custody suspect receive a recitation of his rights prior to being interrogated. An interrogation includes not only express questioning, but also any words or actions on the part of the police that the police should know are reasonably likely to elicit an incriminating response. The Court noted that a recognized exception to the above is when the questioning is for purposes of booking. The "'*routine booking question*' exception . . . exempts from *Miranda's* coverage questions (needed) to secure the 'biographical data necessary to complete booking or pretrial services.'" They typically involve questions "reasonably related to the police's administrative concerns." The fact that the booking question responses turn out to be incriminating does not, by itself, affect the applicability of the exception. But by the same token, the existence of this exception does not mean that all questions asked during the booking process will be admissible. Supposed booking questions that are in reality no more than a pretext for eliciting incriminating information are improper. In determining whether questioning comes within this exception, a court must consider the following factors: (1) The nature of the questions, such as whether they seek merely identifying data necessary for booking; (2) the context of the interrogation, such as whether the questions were asked during a non-investigative, clerical booking process and pursuant to a standard booking form or questionnaire; (3) the knowledge and intent of the government agent asking the questions; (4) the relationship between the question asked and the crime the defendant is suspected of committing; (5) the administrative need for the information sought; and (6) any other indications that the questions were designed, at least in part, to elicit incriminating evidence and merely asked under the guise or pretext of seeking routine biological information. In the instant case, Deputy Munoz testified that questions about an inmate's gang affiliation are necessary both for the safety of the inmate as well as the jail staff. Mixing rival gang members is a serious problem in the jail context. Deputy Munoz also had no knowledge of the crimes for which defendant was accused, or whether they involved alleged gang activity. The Court found that Deputy Munoz's questions were necessary to the jail's administrative booking procedures and not asked as a pretext to elicit incriminating information, making defendant's responses admissible against him at trial despite the lack of a *Miranda* admonishment and wavier.

Note: I was asked once years ago whether asking a suspect for his address for purposes of filling out the top sheet of an arrest report required a *Miranda* waiver when connecting him to a dope house was later determined to be an issue in the case. My response was that it could go either way; an answer even I considered at the time to be a "cop out." But now I see that I was "spot on." As noted by the Court: "We wish to make clear that we do not hold that questions about gang affiliation or monikers are per se booking questions for which the *Miranda* warnings need never be given. . . . (T)he booking question issue requires careful scrutiny of the facts and circumstances in each case."

***Residential Entries; Emergency Aid Doctrine*:**

People v. Troyer **(Feb. 22, 2011) 51 Cal.4th 599**

Rule: Pursuant to the "*emergency aid doctrine*," a warrantless entry into a residence, and a locked room inside the residence, is lawful when officers have an objectively

reasonable basis for believing that an occupant is seriously injured or immediately threatened with such injury.

Facts: Elk Grove (Sacramento County) Police Sergeant Tim Albright, in plain clothes and driving an unmarked vehicle, received a radio call that shots had been fired at a specific address. Per the radio broadcast, an unidentified male had "possibly been shot twice" and that the suspects were driving a Chevrolet. Sgt. Albright reached the scene within two minutes, finding a severely injured female who had been shot multiple times on the porch where a man was attempting to administer first aid. Also on the porch was a Hispanic male who was bleeding from an injury to the head. The female was experiencing "an altered level of consciousness" and was of no help. The injured male was also excited and agitated. In response to Sgt. Albright's questions, the male said that two males, who had fled the scene in a Chevrolet, were involved. Sgt. Albright then noticed there was blood smudges and droplets in multiple places, including on the front door near the door handle. This indicated to him that a bleeding victim had come into contact with that door, either entering or exiting the house. He asked the injured male if someone else might be inside. The male just stared at Sgt. Albright for 10 to 15 seconds without answering. So he asked him again. Again staring at the sergeant, the male eventually said that he "did not think so." Not yet satisfied, the question was asked a third time. This time the male, after another long pause, finally said "no." The situation being very chaotic, the male's indecisiveness, and with both injured victims yelling, Sgt. Albright believed that there might still be another victim, or maybe a suspect, inside the house. With all the confusion taking place, Sgt. Albright couldn't hear whether there were any noises coming from inside. So he decided at that point that he needed to verify whether there were additional victims or suspects in the house. Noticing that the male had in his hand a key on a lanyard, Sgt. Albright asked him if it was to the door. The male said yes, it was, but declined to open the door. After threatening to kick in the door, the male finally opened it. Responding patrol officers, after announcing their presence and demanding entry, entered and did a sweep of the house for more victims or suspects. No blood nor any signs of a disturbance were seen in the downstairs area. Finally, upstairs, one of the patrol officers (again after complying with knock and notice) kicked in an upstairs bedroom door, immediately smelling a strong odor of marijuana when he did so. Some marijuana was observed along with an electronic scale. No other victims were found, but these observations were used to obtain a search warrant. Evidence of marijuana distribution, money, and some firearms were recovered as a result. Defendant, who was not there at the time of this incident, was later determined to be a resident and the person in possession of the marijuana. He was charged with possession of marijuana for sale and related charges. After his motion to suppress was denied, defendant pled "no contest" and appealed. The Third District Court of Appeal, in a split 2-to-1 decision, reversed, finding that although the initial entry into the residence was lawful under the "emergency aid exception to the warrant requirement," the forced entry into defendant's bedroom was not. The People appealed.

Held: The California Supreme Court, in a split 5-to-2 decision, reversed, upholding the warrantless entry into defendant's bedroom (the only entry that was in issue). The legal theory allowing for the warrantless entry into both the residence itself, and the bedroom

in question, is the "*emergency aid doctrine*." The Court rejected the defendant's argument that probable cause is required to justify entering the bedroom. Rather, the Court noted, as established by the United States Supreme Court in *Brigham City v. Stuart* (2006) 47 U.S. 398, the test under the emergency aid doctrine is simply "whether the police officers had an objectively reasonable basis for believing that an occupant is seriously injured or immediately threatened with such injury." An officer's subjective intent or the seriousness of the crime being investigated when the emergency arises is irrelevant. The test is an "*objective*" one. In this case, Sgt. Albright had information that there was a male victim at the residence who had suffered multiple gunshot wounds. What he found on the front porch was a seriously wounded female and an injured male. There was blood on the door which could have reasonably been assumed were from another victim entering the house. Inquires directed to the injured male as to whether there was another victim inside the house resulted in suspiciously vague responses. The parties conceded that entry into the residence was lawful based upon the information available to the officers at the time. Once the downstairs was cleared without finding any other victims, and with the male with multiple gunshot wounds still missing, the Court found that it was reasonable to assume that the locked bedroom upstairs might be where that missing victim was located. Still acting under the emergency aid doctrine, forcing entry into that bedroom was therefore lawful. The fact that no blood or other indications of a disturbance was found in the downstairs area is irrelevant. It is reasonable to assume that the alleged victim may not have touched anything as he fled to the bedroom. Also, for officers' safety, with the whereabouts of the shooting suspects still unknown, it would have been unreasonable to leave the bedroom unchecked while the investigation ensued. "(T)he locked door posed obvious risks to the officers as they continued their search upstairs." "We cannot reasonably demand that officers called to the scene of a shooting, where they cannot be sure of the number or whereabouts of the armed assailants, proceed to assist victims and investigate the crime scene without securing themselves, witnesses, and others present against ambush from a nearby hiding place." Lastly, the Court rejected the dissenting justices' conclusion that there were other reasonable, innocent explanations for what Sgt. Albright first found. It is not the officers' responsibility to eliminate the possibility of other reasonable explanations, but rather to act on the reasonable belief that additional victims who need immediate assistance may be somewhere in that house.

Note: For those of you who don't know me (or don't care), I was a cop *way* back in the 70's. I can remember a number of instances when we forced entry into residences under circumstances where it just didn't feel right to walk away, despite knowing that we'd be subject to a lot of second-guessing afterwards for doing so. With those experiences under my belt, and since becoming a prosecutor, I've told cops on more than one occasion that it's often better to take a chance and force a warrantless entry than to walk away only to find out the next day that you could have saved a life in that house had you displayed a little more intestinal fortitude. Here, in this case, the California Supreme Court (quoting the United States Supreme Court decision of *Michigan v. Fisher* (2009) 130 S.Ct. 546, 549.) puts into words that feeling every cop in this country has had in similar circumstances, but maybe wasn't always able to express: "*It does not meet the needs of law enforcement or the demands of public safety to require officers to walk away from a*

situation like the one they encountered here (*where there are possible victims inside needing help*)."

***Detentions in a Residence During a Probation Search*:**
***Pat Down for Weapons*:**

People v. Rios **(Mar. 16, 2011) 193 Cal.App.4th 584**

Rule: A visitor in a residence being searched pursuant to a juvenile probationer's Fourth wavier condition may be lawfully detained long enough to determine whether he is a resident or otherwise connected to some illegal activity. A pat down for weapons is also lawful when the officer reasonably suspects, under the circumstances, that the detainee may be armed.

Facts: Kern County Probation Officers assigned to the High Risk Juvenile Supervision Unit went to the home of "R.R.," a juvenile probationer with search conditions. He'd also been ordered by the court as a condition of his probation not to associate with other gang members. During a recent probation visit, R.R. had been found to be under the influence of methamphetamine and had drug paraphernalia and "gang tagging" in his house. On the current visit, Deputy Probation Officer Michael Morris entered with other probation officers and found defendant sitting on a couch in the living room. Morris contacted defendant, asking him who he was. Uncooperative from the beginning, defendant responded merely that he'd just gotten there and wasn't doing anything. Morris asked defendant again who he was. He also asked for his address, whether he was on probation or parole, and his purpose for being in the residence. Defendant continued to respond only that he wasn't doing anything, his responses being interlaced with occasional expletives. While talking to defendant, Morris noticed that he was wearing various layers of clothing despite it being a warm day. He also had a tattoo over one eyebrow that read; "*One Way In*. *One Way Out*," and a tattoo of three dots on the web of one hand. Based upon his training and experience, Morris believed these to be gang-related. Morris also noticed that defendant would turn away from him while leaning forward slightly. As Morris tried to get around in front of him, defendant leaned forward still further, turning his shoulder away from Morris and pushing his right forearm against his waist. Morris told defendant not to do that and informed him that he was being detained and that he was going to do a records check on him. Defendant then turned his back to Morris and leaned his upper body down onto the couch with his right arm pressed against his stomach. Based upon all this, Morris believed that defendant was attempting to hide a weapon. He therefore ordered defendant to stand up and submit to a pat down for weapons. Defendant refused, necessitating Morris to attempt a wrist twist on him. Defendant continued to verbally and physically resist. With the help of a second officer, defendant was finally forced to the floor and handcuffed. Finally, while being patted down, a handgun wrapped in a blue bandanna fell from defendant's clothing. A switchblade was also taken from his person. Defendant was charged in state court with being a felon in possession of a firearm along with other charges. After his motion to suppress was denied, defendant pled "no contest." As a "three-striker" he was sentenced to 25-years-to-life plus three years. Defendant appealed.

Held: The Fifth District Court of Appeal affirmed. On appeal, defendant challenged the original entry into the residence, his detention, and the pat down for weapons. As for the entry, it was noted that (1) defendant's failure to raise the issue in the trial court waived the issue for purposes of appeal, and (2) even if not, defendant, as a mere visitor, did not have standing to challenge the entry of someone else's house. Later in the decision, the court also rejected defendant's argument that his attorney was incompetent for not having raised the issue in that because R.R., who lived there, was on a Fourth waiver, defendant would have lost the issue anyway. Lastly on that issue, the Court found that even if R.R.'s Fourth waiver was invalidly imposed by the Juvenile Court, as also argued by the defendant, the probation officers wouldn't have known that. Their "good faith" would still save the entry. The Court next upheld defendant's detention. Assuming for the sake of argument that defendant was detained when first contacted (an assumption that is not necessarily true), prior case law has allowed the detention of occupants of a house during the execution of a search warrant (*Michigan v. Summers* (1981) 452 U.S. 692.) and during the execution of an adult probation Fourth wavier search. (*People v. Matelski* (2000) 82 Cal.App.4th 837.) Further, the California Supreme Court has found that all occupants of a residence being lawfully searched may be detained long enough to determine their identity and whether they have any connection to the suspected illegal activity. (*People v. Glaser* (1995) 11 Cal.4th 354.) The reason for allowing such detentions is to prevent a suspect from evading the police and ensuring the safety of the police officers involved (*People v. Hannah* (1996) 51 Cal.App.4th 1335.), as well as determining whether the probationer is associating with other criminals or gang members in violation of the terms of his probation. The Court also rejected defendant's argument that a probation officer doesn't have the statutory authority to detain and pat down non-probationers, finding such authority pursuant to P.C. § 830.5(a)(4) (i.e.; enforcing "violations of any penal provisions of law which are discovered while performing the usual or authorized duties of his or her employment.") As for the pat down, Deputy Probation Officer Morris was confronted with an uncooperative, irate individual who appeared to be a gang member and who was overly dressed for the weather. Reasonably suspecting that defendant, by attempting to turn away and cover his stomach when ordered not to do so, was trying to hide a weapon, a pat down was legal. Defendant's motion to suppress, therefore, was properly denied by the trial court.

Note: If you can dig through the somewhat disjointed random wanderings of the Appellate Court in this case, the rulings discussed above are both correct and important to understand. Upon lawfully executing any type of search in a residence, it is extremely important from an officers' safety standpoint to keep track of all the occupants. The Court notes that if the person is a resident, you can hold onto him or her for the duration of the search. If not, you can continue the initial detention only if you develop "specific, articulable facts connecting him or her to the criminal activity suspected to be occurring on the premises or establishing a danger to the officers if the person is released." In defendant's case, he being a mental midget who was bent on self-destruction, the lawful detention and pat down led to probable cause to arrest. Good work by Deputy Probation Officer Michael Morris.