San Diego District Attorney

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Remember 9/11/01; Support Our Troops

THIS EDITION'S WORDS OF WISDOM:

"*If you want the rainbow, you got to put up with the rain*." (Steven Wright)

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***ADMINSTRATIVE NOTES*:**

***Medical Marijuana; Regulating Dispensaries*:** A conflict in the lower courts on the issue of whether a local city or county government may completely and permanently ban medical marijuana dispensaries was resolved by the California Supreme Court in *City of Riverside v. Inland Empire Patients Health and Wellness Center* (2013) 56 Cal.4th 729. The Court held that neither the Compassionate Use Act (CUA; H&S § 11362.5) nor the Medical Marijuana

Program (MMP; H&S §§ 11362.7 et seq.) expressly or impliedly preempts a city's zoning provisions declaring a medical marijuana dispensary to be a prohibited use and/or a public nuisance. Neither the CUA nor the MMP was intended to establish a comprehensive state system of legalized medical marijuana, grant a "right" of convenient access to marijuana for medicinal use, override the zoning, licensing, and police powers of local jurisdictions, nor mandate local accommodation of medical marijuana cooperatives, collectives, or dispensaries. Should your city or county, therefore, choose to ban marijuana dispensaries altogether, it is within its power to do so.

***CASE LAW*:**

***Medical Marijuana; Limits on Quantity*:**
***Open Field's Doctrine*:**

Littlefield v. County of Humboldt **(June 28, 2013) 218 Cal.App.4th 243**

Rule: Medical marijuana patients and caregivers may possess only that amount of marijuana that is reasonably related to the patient's current medical needs, with or without a physician's approval.

Facts: Humboldt County Sheriff's deputies, in a joint effort with "CAMP" (Campaign Against Marijuana Planting) agents, conducted an open field marijuana eradication operation in a remote area of Humboldt county. While so doing, aerial surveillance resulted in the discovery of a garden area containing 118 marijuana plants. Later, upon entering the area on foot, the deputies found medical marijuana recommendations for Sylvia, Timothy, and Roscoe Littlefield, each approving the use of up to two ounces of cannabis a day, or 45.6 pounds per year. The recommendations, all written by Dr. Norman Bensky, were for the stated purpose of treating such illnesses as degenerative joint disease, glaucoma, lower back pain, and anxiety. A fourth recommendation, not written by Dr. Bensky, was for Jeffrey Libertini and did not specify any specific amount nor the alleged illness. The recommendations were all posted on the front gate inside the garden. A well-worn footpath led from that garden to a second plot on the Littlefield property where deputies found another 96 flowering marijuana plants. Medical marijuana recommendations for Richard Littlefield and Summer Brown, each of which authorized up to two ounces daily for degenerative joint disease and low back pain, were posted at this garden. Deputies observed a number of other marijuana plots on the Littlefield property but left them undisturbed. It was determined that the aggregated canopies of both gardens clearly exceeded the canopy limitations determined to be reasonable under County guidelines for medical marijuana prosecutions. The total canopy of the two gardens was approximately 5,862 square feet, or 977 square feet of canopy per person; nearly 10 times more than the 100-square-foot canopy considered reasonable under the guidelines. The combined weight of the marijuana in both fields was approximately 1,508 pounds. This would measure out to be approximately 24,128 ounces per person, or enough of a supply for two ounces of cannabis daily for six people for 5½ years. Because this was considered to be more than necessary for medical

purposes, the marijuana was seized and, after saving the necessary samples and following the procedures as dictated by H&S § 11479, the rest was destroyed. No arrests or criminal charges resulted from the raid, but the Littlefields sued the County in state court for, among other things, the replacement value of the confiscated cannabis, physical and mental suffering, emotional distress, and medical expenses. Plaintiffs estimated its replacement value to be as much as $1,367,448. Determining that the amounts possessed were of such a quantity to lead a person of ordinary caution or prudence to believe, and conscientiously entertain, a strong suspicion that the plaintiffs illegally possessed and cultivated the marijuana, justifying the seizure and destruction of the marijuana, the civil court judge granted the County's motion for summary judgment. Plaintiffs appealed.

Held: The First District Court of Appeal (Div. 3) Affirmed. Plaintiffs' argument on appeal, as it was in the trial court, was that the mere presentation of a medical marijuana recommendation from a physician immunized them as "qualified users" from arrest, seizure, or prosecution. The Court held that the statutes don't go that far. In 1996, the California electorate approved Proposition 215, adopting the "Compassionate Use Act of 1996" ("CUA"). As a part of this Act, new H&S § 11362.5(d) provides that the prohibitions of sections 11357 and 11358, relating to the possession and cultivation of marijuana, do not apply to a patient, or to a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient, when based upon the written or oral recommendation or approval of a physician. But the CUA does not grant immunity from arrest or prosecution. Rather, it provides a qualified patient and his or her caregiver with no more than an affirmative defense. So long as the police have probable cause to believe that a marijuana violation is occurring, they may arrest a person for possession or cultivation despite a physician's approval. Nor does the CUA specify an amount of marijuana that a patient may possess or cultivate, providing only that the marijuana possessed or cultivated must be for the patient's personal medical purposes. In 2003, the Legislature enacted the "Medical Marijuana Program" ("MMP"), seeking to clarify the scope of the application of the CUA. As a part of the MMP, the Legislature sought to specify how much marijuana may be possessed (See H&S § 11362.77). However, this provision was declared to be unconstitutional in *People v. Kelly* (2010) 47 Cal.4th 1008. So the standard remains that which is "*reasonably related to the patient's current medical needs*." In this case, the Littlefields possessed amounts "so well beyond the standards promulgated by state and local authorities to lead a reasonable person to believe that the marijuana was possessed for unlawful purposes." A doctor's recommendations do not over-shadow this fact by itself, but rather is but one factor to consider in reaching this conclusion. Lastly, the Court found that the officers acted lawfully when they came onto Plaintiffs' property without a search warrant. Pursuant to the "Open Fields Doctrine," areas of a person's real estate that are not within the curtilage of his or her home are not protected by the Fourth Amendment. A search warrant is not constitutionally required for law enforcement to enter one's "open fields."

Note: The Court also included an analysis of H&S § 11479, which provides for the pre-trial destruction of large amounts of contraband under certain circumstances. The procedures for such destruction need to be strictly followed, but resolves any storage issues when confronted with the prospect of having to deal with large quantities of

contraband. But the real importance of this case is the very well-written analysis of what to do when you come upon someone who is in possession of (or is growing) marijuana, but claims that such possession (or cultivation) is based upon a medical necessity. While your legal options are actually broader than the circumstances of this case indicate, the gist of the decision is that when you have probable cause to believe that the amount of marijuana possessed is greater than that which is reasonably necessary for the person's medical needs, arrest of that person and/or seizure of the contraband is a lawful and appropriate response on your part. You just need to remember to note all the facts and circumstances (pro and con) that are relevant to the issue of whether the amount possessed is reasonable necessary.

***DUI Refusals*:**

Hoberman-Kelly v. Valverde **(Feb. 5, 2013) 213 Cal.App.4th 626**

Rule: When a DUI arrestee is confused concerning her right to the assistance of counsel due to the apparent conflicting Miranda and V.C. § 23612 admonitions, an officer has an obligation to attempt to alleviate that confusion.

Facts: California Highway Patrol Officer M. Perry and his partner responded to a radio call during the early morning hours of July 30, 2010, reporting a vehicle traveling westbound in the eastbound lanes of Sir Francis Drake Blvd. in Marin County. Defendant Zoe Hei Rim Hoberman-Kelly was found in her car, stopped in the street facing the wrong way. In contacting her, it was noticed that she had an odor of alcohol on her breath, bloodshot and watery eyes, slurred speech, and an unsteady gait. She performed poorly on the field sobriety tests. Defendant was read the standard PAS (preliminary alcohol screen) admonition. She declined to provide a breath sample. So she was arrested and read her *Miranda* rights. She was also advised of the consequences under V.C. § 13353 of failing to submit to a chemical test of her blood-alcohol content. Taken to the Marin Area CHP office where a certified phlebotomist was waiting to administer a blood test, Officer Perry read her the chemical test admonition verbatim as it is printed on the DMV form DS 367. (See V.C. § 23612, and below.) However, defendant apparently saw a sign on the wall next to where she was handcuffed saying that prisoners were entitled to make a telephone call. So she told Officer Perry that she wanted to call her attorney. Officer Perry ignored this request, causing an already belligerent defendant to "make plain" that she did not understand why she could not make the telephone call to which the sign referred. No effort was made to explain to her that despite her right to speak with an attorney, she was not entitled to do so or make her telephone call until after submitting to a blood test. Instead, Officer Perry "mechanically" continued on with a reading of the printed admonition form. Despite the admonition, which included an advisal that she *did not* have the right to talk to an attorney or have an attorney present prior to submitting to a test of her blood-alcohol content, it appeared from a video of this event that defendant was not listening to what was being read to her. She continued to voice her demands that she be allowed to contact an attorney during Officer Perry's attempts to read her the admonition. During this time, despite repeating her demand to speak with an attorney, defendant also indicated that she

was willing to take a blood test. Officer Perry paid no attention to her. When Officer Perry finished reading the admonition, he asked defendant whether she would submit to a blood test, to which she responded "*all right*." But Officer Perry responded; "*That's a no*," stating that he took her answer as a refusal. Defendant immediately shouted that she would "*give you a free f--king blood test*," repeating several times that she would do so. The phlebotomist administered the blood test without incident. Despite finally submitting to this blood test, the DMV, after an administrative hearing, suspended defendant's privilege to drive for one year due to her alleged "refusal." The hearing officer found that defendant "refused to take a chemical test and kept insisting she wanted her attorney present," with her finally submitting only after being advised by the officer that he considered her insistence on talking with an attorney to be a refusal. The hearing officer determined that the "opportunity to change her mind to retract her refusal to complete a chemical test had expired because the officer already notified her he considered her responses and actions as a refusal." Defendant filed a petition for writ of mandate in the Superior court seeking to vacate the suspension order. The Superior Court granted the writ, finding that the evidence was insufficient to show that defendant had refused to take a blood test. The DMV appealed.

Held: The First District Court of Appeal (Div. 3) affirmed the Superior Court's decision. Vehicle Code section 23612 provides in part that a person arrested for DUI "shall be told that his or her failure to submit to … the required chemical testing will result in … the suspension of the person's privilege to operate a motor vehicle for a period of one year . . . ." Section 23612 also requires the officer to "advise the person that he or she does *not* have the right to have an attorney present before stating whether he or she will submit to a test or tests, before deciding which test or tests to take, or during administration of the test or tests chosen, and that, in the event of refusal to submit to a test or tests, the refusal may be used against him or her in a court of law." Officer Perry did that in this case. However, the Court noted that this admonition is in apparent conflict with one's *Miranda* right to the assistance of counsel. The video shows that defendant was indeed confused as to her right to counsel under these circumstances. The Court found accordingly, i.e.; that defendant was "exasperated" and confused by the apparent conflict concerning her right to counsel as indicated on the wall of the police station as well as explained to her when she was read her *Miranda* rights, and how that figured in with the fact that she was being told that she had to complete a chemical test before talking with an attorney. Such confusion may offer a DUI arrestee a defense to the allegation that she refused to take a blood test. No effort was made to explain to her that the rights as described in the *Miranda* admonition, nor the right to make a phone call as described on the wall, do not apply to the taking of a blood test. A mechanical reading of the 23612 admonition does not help to alleviate this confusion. However, as a general rule, a defendant is entitled to relief only if the officer himself was incorrect or otherwise misled the defendant. Here there was no evidence that Officer Perry made any statements to defendant that were incorrect or misleading. Nevertheless, per the Court, an officer is obligated to attempt to clarify an arrested person's confusion as to when the right to counsel arises. Officer Perry made no meaningful attempt to do so. Although the Court "condemn(ed) (defendant's) belligerence and is sympathetic to the challenges of law enforcement in dealing with agitated members of the public," it also found that her

attitude did not excuse Office Perry's failure to recognize defendant's confusion and to provide clarification in an attempt to resolve the problem. But aside from this issue, the video of this episode also showed that defendant, while demanding to have access to her attorney, repeatedly stated that she would submit to a blood test, and in fact eventually did. Officer Perry did not acknowledge or accept defendant's offers to submit to a blood test, but instead read the admonition to its conclusion, stating at the end that he would record her responses as a refusal. The Officer's conclusion on this issue, along with the DMV hearing officer's concurring opinion, is not supported by the evidence.

Note: You can't get so hung up with attempting a "mechanical" compliance with all the arrest and procedural requirements foisted on you by the Legislature that you don't pay attention to what your arrestee is saying. I got the impression in reading this case that Officer Perry just got so fed up with Zoe Hei Rim Hoberman-Kelly's belligerent attitude that all he wanted to do was get the whole process over with and just go home. He either didn't hear her agreement to submit to a blood test amidst all the crap she was putting out or just didn't care at that point. Some arrestees use belligerence and a refusal to cooperate as an excuse to avoid saying yes or no. You can take that as a refusal. The video in this case, however, apparently, showed that Hoberman-Kelly wasn't one of those arrestees; i.e., that despite her attitude, she was agreeing to take the test. Somehow, Officer Perry didn't hear that.

***Fourth Waiver Searches*:**

United States v. King **(9th Cir. Mar. 8, 2013) 711 F.3rd 986**

Rule: Probationary Fourth wavier searches are lawful despite the lack of any suspicion justifying the search, so long as the probationer has specifically waived the constitutional search warrant and probable cause requirements.

Facts: (The facts are described at *United States v. King* (9th Cir. Mar. 13, 2012) 672 F.3rd 1133.): San Francisco Police Officer Joseph Engler was participating in the investigation of a homicide when he noticed an individual, identified only as "CW1," watching the police activity. In contacting CW1, it was determined that he/she knew a person named "Moniker" who claimed to know who the shooter was. Reluctantly cooperating with the police, CW1 agreed to participate in a controlled phone call with "Moniker." Moniker told CW1 that he had been told by an eyewitness to the shooting, identified as "CW2," that "Marcel" was the killer. CW1 also claimed to know Marcel, although he/she didn't know Marcel's full name. Per CW1, Marcel had been involved in an altercation with the victim several weeks before the murder. CW1 led Officer Engler to 1526 Hudson Street in San Francisco, indicating that this was where Marcel lived. Officer Engler did some Internet research and determined that Marcel's last name was "King;" the eventual defendant in this case. It was also determined that defendant was on probation with search and seizure conditions in a state case out of the San Francisco Superior Court. Officers went to 1526 Hudson Street to conduct a probation search, but found that it was defendant's grandmother who lived there. She told officers that defendant actually lived with his mother at 78 Edgar Place in San Francisco. Officers proceeded to that address

and, after confirming that defendant did in fact live there, conducted a warrantless probation search. In searching the room that defendant's mother identified as his, the officers found an unloaded shotgun under the bed. He was thereafter charged in federal court with being a felon in the possession of a firearm. (Defendant was never charged with the murder.) Defendant's motion to suppress the shotgun was denied, the trial court ruling that the probation search was supported by a reasonable suspicion. Defendant was subsequently convicted in a court trial. On appeal, the Ninth Circuit Court of Appeal held that the officers lacked a reasonable suspicion, but affirmed anyway, finding a suspicionless probationary Fourth-waiver search to be lawful. (672 F.3rd 1133.). An en banc panel (i.e.; eleven justices) agreed to rehear his appeal.

Held: The en banc panel of the Ninth Circuit Court of Appeal, in a ten-to-one decision, affirmed. Defendant argued on appeal, as he did in the trial court, that the shotgun should have been suppressed in that it was necessary for the officers to have at least a "reasonable suspicion" that defendant had committed a criminal offense. Specifically, defendant asserted that the only information linking him to the homicide, which led to the search of his room, was obtained from sources not shown to be reliable. Conceding this issue (see Note, below), a majority of the Ninth Circuit held that it is irrelevant whether the officers had a reasonable suspicion or not. This is because a "suspicionless (probationary) search" condition is constitutional, at least so long as the probationer has previously agreed to such a probation condition as defendant had done here. The defendant's state court probationary search condition was listed as follows: "*Defendant is subject to a warrantless search condition, as to defendant's person, property, premises and vehicle, any time of the day or night, with or without probable cause, by any peace, parole or probation officer*." Noting that California courts have interpreted search conditions such as this to allow for suspicionless searches, the only issue is whether such a condition is consistent with the dictates of the Fourth Amendment. Suspicionless searches of a *parolee*, as opposed to a probationer, have been upheld by the U.S. Supreme Court. (See *Samson v. California* (2006) 547 U.S. 843.) But in the *Samson* case, it was also noted that probationers have more "expectations of privacy" than parolees, in that being on parole is "akin to imprisonment" in state prison. The High Court has never specifically held that suspicionless searches of a probationer who has specifically agreed beforehand to such a probation condition isn't also lawful. In balancing the degree of intrusion on the defendant's expectation of privacy against the government's need to conduct the search for the promotion of legitimate governmental interests, the Ninth Circuit (despite the lack of a Supreme Court ruling on this issue) ruled here that suspicionless searches of a probationary Fourth waiver subject are not unreasonable. Despite the fact that probationers have a greater expectation of privacy than do parolees, the Ninth Circuit found that the same balancing test used in the case of a parolee also balances out in favor of the government's interest in keeping tabs on probationers. So long as the probationer specifically agrees to the search and seizure condition, no suspicion is needed by law enforcement to justify such a search.

Note: This is already the rule under California authority. (*People v. Bravo* (1987) 43 Cal.3rd 600; *People v. Brown* (1987) 191 Cal.App.3rd 761.) But it never hurts to have the Ninth Circuit on board as well. However, whether or not a suspicionless probationary (as

opposed to parole) Fourth waiver search is lawful, as noted above, has yet to be decided by the U.S. Supreme Court. And it doesn't appear from the research tools available to me that this new Ninth Circuit case has been appealed to the U.S. Supreme Court. Note also that the Ninth Circuit specifically refused to "condone (probation) searches that are conducted for illegitimate reasons, such as harassment." So just because you can do any probationary or parolee search at random, without any legal need to justify your actions, doing such a search for purposes of harassment will inevitably come back to bite you. You may also be wondering why everyone rolled over on the issue of whether the information Officer Engler had obtained from CW1, CW2, and "Moniker," wasn't enough to establish at least a reasonable suspicion. The Court discusses this issue at 672 F.3rd 1133, in the Ninth Circuit's initial decision on this case, where they found that none of these informants had a prior track record sufficient to establish their reliability, their information was not based upon any direct knowledge being hearsay and double hearsay, all had a motive to lie, and none of the information was corroborated by any of the circumstances. I find this conclusion to be questionable, considering that we're only trying to establish a "reasonable suspicion," but that decision was vacated anyway when the en banc panel agreed to a rehearing. So there is no precedent established there.

***Search Warrants and Probable Cause*:**
***Arrests and Probable Cause*:**
***Arrests and Excessive Force*:**
***Conspiracy and an Officer's Civil Liability*:**

Cameron v. Craig **(9th Cir. Apr. 16, 2013) 713 F.3rd 1012**

Rule: (1) Probable cause sufficient to support the issuance of a search warrant and to make an arrest is found where, under the totality of the circumstances, a reasonable officer would have believed that a search would uncover evidence relating to a suspected crime and then evidence of that crime is in fact found. (2) An otherwise lawful arrest may be unreasonably executed, such as when excessive force is used. (3) Conspiracy to violate a citizen's rights under the Fourth Amendment is as much a violation of an established constitutional right as the underlying constitutional violation itself.

Facts: Plaintiff Michelle Cameron and San Diego County Deputy Sheriff David Buether were romantically involved, eventually moving in together and producing a child. Cameron quit her job to stay at home with the baby, making her dependent upon Buether's income. She frequently used Buether's credit card, with his permission, to make purchases for herself and the family. They also opened a joint checking account, totally intermingling their finances. After having a second child, their relationship began to sour when it came to light that Buether was having affairs with other women. After two alleged incidents of domestic violence, Buether went to court and obtained an ex parte restraining and "kick out" order against Cameron, resulting in her being physically removed from their home by San Diego County Sheriff's Deputies. The separation led to a custody dispute over the two children, where the parties were referred to a mediator. Moving into an apartment but having no furniture or housewares of her own, she purchased close to $9,000 worth of these items using Buether's credit card. Eventually,

Buether attempted to reconcile with Cameron, sharing custody of the children and spending time at Cameron's home. Noticing all her nice new furniture, Buether told Cameron that once they got back together, they could sell all the duplicate items on eBay. But when Cameron refused to reconcile, Buether demanded that Cameron repay him for the furniture. She refused. So Buether went to the San Diego Sheriff and reported the unauthorized use of his credit card by an "unknown suspect," listing Cameron as the possible culprit. San Diego Sheriff's Detective Michelle Craig was assigned to the case. Buether and Craig were friends, having attended the Sheriff's Academy and worked a patrol shift together. Buether told Craig that he and Cameron had lived together for four years, claimed that she was "violent and unstable," and that he had recently seen some new furniture in Cameron's apartment. Through her own investigation, Detective Craig confirmed that it was Cameron who had used Buether's credit card. Although admitting that he had given Cameron permission to use his credit card in the past, Buether claimed that he had always been present when the card was used and that he did not authorize her to use it after they separated. Detective Craig obtained a search warrant for Cameron's apartment, indicating in the affidavit that the credit card used to buy the furniture "belongs solely to the victim, her (Cameron's) ex-boyfriend, who did not authorize the transactions." The warrant was executed at 7:00 a.m. on a day when it was known that Cameron would have custody of their children and after confirming that Buether would be available to pick them up. Detective Craig and six to ten other deputies executed the warrant. While executing the warrant, the deputies, dressed entirely in black with bulletproof vests and helmets, entering with their weapons drawn. Cameron was found in an upstairs hallway where "multiple deputies aimed their weapons at (her)." While Cameron "repeatedly implored" the deputies not to scare her children, who were apparently asleep in a bedroom, she was grabbed by the arms and shoulders and pushed back, out of the hallway. With her arms pulled behind her, she was pushed into the living room where she was handcuffed. The cuffs were applied tight enough to bruise her wrists. Following the search, Cameron was arrested for identity theft, grand and petty theft, and fraudulent use of an access card, and transported to jail. Later that day, Buether notified the mediator they had been working with to inform her that Cameron had been arrested. Cameron was released five days later when the District Attorney rejected the case. Cameron subsequently sued Buether, Craig, and the County of San Diego in federal court, alleging that the search and arrest were not supported by probable cause and that they all conspired to violate, and did violate, her Fourth (search and seizure) and Fourteenth (due process) Amendment rights. It was also alleged that the deputies had used excessive force in arresting her. The Federal District Court Judge granted the civil defendants' motion for summary judgment, dismissing the lawsuit. Cameron appealed.

Held: The Ninth Circuit Court of Appeal affirmed in part and reversed in part; reversing only the District Court's rulings as to Cameron's excessive force and conspiracy claims. (1) Cameron first claimed that the search warrant wasn't supported by probably cause, and was therefore issued in violation of the Fourth Amendment. Noting that it need only be shown that, under the totality of the circumstances, a reasonable officer would have believed that a search would uncover evidence relating to a suspected crime, the Court held that that standard was clearly met here. The actual motives of the officers involved are irrelevant. Buether's claim that he didn't authorize the use of his credit card, when

combined with evidence that Cameron had in fact purchased $9,000 in furniture and housewares with Buether's card after their separation, was sufficient to establish probable cause. Detective Craig did not have a duty to interview Cameron and investigate her version of the events prior to obtaining the search warrant. Also, there was no error in Detective Craig not including in the affidavit her working relationship with Buether, Buether and Cameron's ongoing custody dispute, and the extent of Buether and Cameron's financial intermingling. None of these facts were the type that, even if known by the magistrate, would have prevented a finding of probable cause. Based upon these same facts, Cameron was also lawfully arrested. Therefore, Cameron's allegations that the warrant was issued, and she was arrested, without probable cause were properly dismissed by the trial court. (2) As for the deputies' use of force in taking Cameron into custody, however, the Court found that these were issues that should be heard by a civil jury. Recognizing that even lawful arrests may be unreasonably executed, such as when excessive force is used, the Court found that Cameron's claims may be valid. The use of "SWAT-like" tactics by six to ten officers, with guns drawn, pointing them at her, may be excessive given that only a non-violent credit card/theft offense was alleged. Whether or not Buether's claims that Cameron was "violent and unstable" were sufficient to justify the force used is something a jury must determine. (3) Lastly, there was evidence to support Cameron's claim that Buether and Detective Craig had conspired together to obtain an invalid search warrant and to purposely execute it at a time when the children were present, and to use excessive force in the execution of the warrant with a goal of giving Buether an unfair advantage in the couple's custody proceedings. "Conspiracy to violate a citizen's rights under the Fourth Amendment . . . is evidently as much a violation of an established constitutional right as the underlying constitutional violation] itself." The conspiracy claim, therefore, is an issue that should be submitted to a jury. These last two allegations (i.e., excessive force and conspiracy) should not have been dismissed by the trial court.

Note: Somewhere in the lawyer's Code of Professional Responsibility is the rule that attorneys are to avoid even the "appearance of impropriety." This rule is one that law enforcement officers would similarly do well to heed. While Deputy Buether certainly has a right to seek redress for Michelle Cameron's alleged misuse of his credit card, and to fight for at least shared custody of his children, attempting to accomplish these goals through the criminal justice system as opposed to the civil courts has opened up a whole can of worms for himself, Detective Craig, and the County of San Diego. At the very least, all the gritty little details of Buether and Cameron's relationship, as well as Buether and Detective Craig's acquaintanceship, should have been laid out on the table before any search warrants were issued or arrests made. The prospective prosecution of Cameron was compromised, and the case rejected by the DA, solely because of all the underlying ulterior motives involved in putting this case together, and the true relationships of the parties involved, that were not revealed right up front. In my opinion, although the Court disagrees, all this information should have been included in the warrant affidavit. And while I usually don't trust an appellate court's rendition of the facts (it being common for courts to make selective use of the facts in order to make a point), let alone the "moving party's" (Cameron, in this case) allegations (which by law have to be presumed to be true), there is certainly the appearance of some improprieties in this case. Enough said.