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Remember 9/11/01: Support Our Troops

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THIS EDITION'S WORDS OF WISDOM:

"I think I've discovered the secret of life. You just hang around until you get used to it." (Charles M. Schulz)

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ADMINISTRATIVE NOTES:

Victim and Witness Statements: I was recently "cc'd" on a note from a San Diego County jurist (i.e., Judge Allan Preckel) with some 40 years' experience as

a Deputy District Attorney and Superior Court judge, concerning the practice by some law enforcement officers of having victims and witnesses to crimes write out statements in their own words concerning their observations of the crime(s) in issue. To quote Judge Preckel, “*THIS IS A TERRIBLE IDEA!!*” (Upper case his, italics mine.) To quote His Honor: “The practice invariably inures to the detriment of the prosecution, and I have found it to be invariably injurious to the ascertainment of truth in the courtroom.” The problem is that most victims and witnesses are not trained in comprehensive writing skills, are typically stressed out by what they have just seen or to which they have been subjected, and are prone to misstate facts or leave them out entirely. This makes such written statements great fodder for later cross-examination concerning the inaccuracies and omissions. This will invariably lead to unwarranted and misleading attacks on the victim or witness’s credibility, confusing the issues, and misleading the jury. Judge Preckel’s suggested solution: *Don’t do it.*

Protective Sweeps: Note that two of the following cases involve “*protective sweeps*” of residences. In one, *People v. Superior Court [Chapman]*, the sweep was indisputably lawful given the nature of the incident involved. Immediately below, *People v. Torres et al.*, a protective sweep was found by the trial court to be illegal. Despite not being an issue on appeal, the relevant issues warrant some discussion. I’m seeing more and more cases where protective sweeps are apparently being done as a matter of routine. While I find this practice hard to criticize, knowing how dangerous it is not to check for other suspects, the courts require you to be able to articulate some justification for believing someone is there who may be a danger to you. You must to be able to justify a protective sweep on something other than just a gut feeling or because that’s what you’ve always done. An exception allows for a cursory check limited to areas immediately adjacent to the location of the arrest; i.e., closets and other spaces immediately adjoining the place of arrest, despite the lack of any reason to believe someone is there. Also note that in *Torres*, the defendants were merely detained in a hotel hallway when the protective sweep was made. The California Supreme Court has specifically left open the question whether such a circumstance allows officers to enter a residence to conduct a protective sweep. (See *People v. Celis* (2004) 33 Cal.4th 667, 680.) So if you conduct protective sweeps as a routine without being able to justify why it was necessary, just know that you won’t be able to use your “plain sight” observations to seize evidence or even to obtain a search warrant. I have all the law for you if you want it.

CASE LAW:

The Odor of Marijuana and Residential Entries:

***People v. Torres et al.* (May 2, 2012) 205 Cal.App.4th 989**

Rule: The odor of marijuana is insufficient to allow for a warrantless entry into a residence.

Facts: A guest at a Los Angeles hotel reported that personal items, including a laptop computer and a Blackberry cellphone, had been stolen from her room. A hotel engineer told police that he'd unlocked the victim's door for two women. From the description of the two women, it was determined that they were staying in another of the hotel's rooms. Officers went to that room where, while standing in the hallway, they noted a "strong smell" of marijuana. A woman (one of the co-defendants) opened the door. The odor of marijuana became stronger. Both defendants and two men (who were later released) came out of the room at the officers' request. The officers conducted a "protective sweep" of the room whereupon some burning marijuana and the victim's Blackberry were observed in plain sight. Also observed were one of the defendants' identification and a credit card belonging to the victim. The victim's laptop was later found under a mattress during a more thorough search. Defendants were charged in state court with burglary and grand theft. In response to the defendants' motion to suppress, the trial court found that although the protective sweep was illegal (an issue not contested on appeal), the officers did in fact have an exigent circumstance; i.e., "to prevent the marijuana from being destroyed or from 'going up in smoke.'" Therefore, although the court suppressed the laptop computer, it having been found during an unlawful warrantless search of the hotel room, everything observed in plain sight during the initial entry, i.e., the Blackberry, the victim's credit card, and the defendant's identification, was ruled to be admissible. Defendants therefore pled "no contest," and appealed.

Held: The Second District Court of Appeal (Div. 8) reversed, finding that the warrantless entry into the hotel room was illegal under the circumstances. Specifically, the officers did not have an exigency justifying a warrantless entry. First, it was noted that a hotel room for purposes of the Fourth Amendment is entitled to the same protections as one's home. Residences enjoy a higher expectation of privacy than just about anywhere else the government may seek to intrude. As such, a search warrant is necessarily required to make entry into a hotel room, absent an exception. On appeal, the People argued that as the trial court had found, the officers had an exigent circumstance; i.e., to prevent the imminent destruction of evidence. Although it was agreed that the officers here had probable cause to believe that marijuana was being smoked in the defendants' hotel room, the Court ruled that this was insufficient to establish an exigent circumstance justifying an immediate warrantless entry. Citing *People v. Hua* (2008) 158 Cal.App.4th 1207, which was also a marijuana-odor case, the Court held that the exigent circumstance of preventing the destruction of evidence "is limited to evidence of crimes that are not minor." To determine what is considered to be "minor," the potential penalty is the best indicator. The courts have drawn that line between crimes that are "jailable" and those that are "non-jailable." Possession of less than an ounce of marijuana, per H&S 11357(b), is a non-jailable offense. Absent any evidence to believe that more than an ounce of marijuana was involved, a warrantless entry into a hotel room (or residence) is not justified under the "exigency" exception to the search warrant requirement.

Note: The Court also rejected as "speculation" the People's argument that with four people in the hotel room, there must have been a "marijuana-smoking party" which probably involved a bookable amount of marijuana. So while the odor of marijuana may

be enough to justify the search of a car (see *People v. Lovejoy* (1970) 12 Cal.App.3rd 883, 887.), it won't provide the necessary exigent circumstance to make a warrantless entry into a residence, given the higher expectation of privacy involved. Note also the trial court's rejection of the "protective sweep" theory, the issue not being contested on appeal, as a legal excuse for making entry into the defendants' hotel room. Check my comment on this issue in the Administrative Notes, above.

***Miranda; Invocation in a Non-Custodial Interview:
Interrogation Tactics:
Miranda; The Two-Step Interrogation Technique:***

***Bobby v. Dixon* (Nov. 7, 2011) __ U.S. __ [132 S.Ct. 26; 181 L.Ed.2nd 328]**

Rule: Invoking one's right to counsel during an out-of-custody interview does not prevent an officer from reinterviewing the suspect at a later time. Encouraging a suspect to "cut a deal" before his accomplice is not an improper interrogation tactic. The failure to administer *Miranda* warnings in a first custodial interrogation, so long as unaccompanied by any actual coercion or other circumstances calculated to undermine the suspect's ability to exercise his free will, does not prevent a valid *Miranda* waiver in a subsequent interrogation where the two interrogations are otherwise unconnected.

Facts: Defendant and a buddy, Tim Hoffner, beat another person, Chris Hammer, before tying him up. They then buried Hammer alive, shoveling dirt on top of him even as he continued to struggle. Defendant later used Hammer's birth certificate and social security card to obtain an Ohio state identification card in Hammer's name. He used the ID card to establish ownership of Hammer's car which he then sold. In the meantime, Hammer's mother reported him missing. On November 4, 1993, defendant was at a local police station attempting to retrieve his own car that had been impounded when a detective asked to talk to him. After a *Miranda* admonishment, defendant declined to answer questions without the assistance of a lawyer. He therefore left the station. It was later determined that defendant had sold Hammer's car and forged Hammer's signature cashing the check he had received for the car. On November 9, defendant was arrested for that forgery and brought to the police station. Fearful that defendant might again ask for a lawyer, the detectives purposely failed to read him his *Miranda* rights. In response to the detectives' questions, defendant admitted to getting an ID card in Hammer's name and signing his name to the check, but claimed that Hammer had given him permission to do so. He also denied having anything to do with Hammer's disappearance. The detectives challenged the plausibility of defendant's story, telling them that Hoffner was providing them with more useful information. They also told him that if Hoffner decided to work with them, defendant would get most of the blame. "*(If Tim (Hoffner) starts cutting a deal over there, this is kind a like a bus leaving. The first one that gets on it is the only one that's gonna get on.)*" Despite this interrogation tactic, defendant continued to deny any involvement with Hammer's disappearance. Defendant was booked on the forgery charges. Later that same day, Hoffner led the detective's to Hammer's grave, claiming that defendant had told him where the grave was. Hoffner was released and defendant was brought back to the police station. Defendant told detectives that he'd

heard that a body had been found, and asked if Hoffner was in custody. When told that Hoffner had been released, defendant announced that he'd talked to his attorney and that he now wanted to tell the detectives what happened. Following a *Miranda* admonishment and waiver, defendant confessed to murdering Hammer although he attempted to "pin the lion's share of the blame on Hoffner." Charged in Ohio state court with murder and other charges, the trial court admitted into evidence his confession to murder, but suppressed his pre-*Miranda* admissions concerning the forgery. Defendant was convicted and sentenced to death. The Ohio Supreme Court affirmed. Defendant filed a Writ of Habeas Corpus in federal district court, which was denied. The Sixth Circuit Court of Appeal, however, reversed. The United States Supreme Court granted the state's writ of certiorari.

Held: The United States Supreme Court reversed the Sixth Circuit Court of Appeal, reinstating defendant's conviction and death sentence. In so doing, the Supreme Court ruled that the Sixth Circuit had erred in three respects. *First*, the Sixth Circuit had held that when defendant invoked his *Miranda* right to counsel during the detective's first attempt to interview him on November 4th, he was thereafter off limits to any further attempts to question him. It was therefore improper to attempt to question him upon his arrest for forgery five days later, on November 9th. In the words of the Supreme Court, "(t)hat is plainly wrong." It was undisputed that defendant was not in custody when the detective attempted to interview him on the 4th. It is well settled that a person cannot anticipatorily invoke his rights when not in custody. Invoking his right to counsel on the 4th, when he was not in custody, had no legal effect on any later attempts to interrogate him. *Secondly*, the Supreme Court criticized the Sixth Circuit's conclusion that it is an improper interrogation tactic to urge a defendant to "cut a deal" before his accomplice does so. Even where officers falsely claim that an accomplice is talking, a defendant's resulting confession is not involuntary. (Citing *Oregon v. Elstad* (1985) 470 U.S. 298; "[T]he Court has refused to find that a defendant who confesses, after being falsely told that his codefendant has turned State's evidence, does so involuntarily.") *Third*, and most importantly, the Court held that the Sixth Circuit was wrong when it ruled that by interrogating defendant without the benefit of a *Miranda* admonishment and waiver, followed up some four hours later with a second interrogation which was preceded by a proper *Miranda* admonishment, was an illegal use of the so-called "two-step interrogation technique" condemned in *Missouri v. Seibert* (2004) 542 U.S. 600. In *Seibert*, it was held that an un-*Mirandized* interrogation during which the suspect gave a full confession, followed up 20 minutes later with a *Miranda* admonishment, a waiver, and a second full confession, was an improper interrogation technique. Per *Seibert*, after providing a first confession taken in violation of *Miranda*, the person would not likely understand that there is any purpose to invoking his rights when asked to repeat the same incriminating statements in a second interrogation. In this case, as opposed to confessing, defendant refused to admit any culpability during the first, un-*Mirandized* interview. This attempt was interrupted by a four-hour break before he was brought back and properly *Mirandized*. Defendant also volunteered at the beginning of the second interview that he had since consulted with an attorney and that he was then ready to tell the detectives the full story. The Court further held that even though the officers purposely failed to inform defendant of his rights under *Miranda* during the first

interrogation, his statements were still voluntary. In *Oregon v. Elstad*, the Court rejected the notion that the failure to administer *Miranda* warnings unaccompanied by any actual coercion or other circumstances calculated to undermine the suspect's ability to exercise his free will, so taints the investigatory process that a subsequent voluntary and informed waiver is ineffective for some indeterminate period. Therefore, absent evidence that the subsequent waiver of his rights was involuntary, his confession was lawfully obtained and properly admitted into evidence against him. *Seibert* is inapplicable to this case.

Note: Even so, the Court didn't sound thrilled with the detectives' intentional failure to advise the obviously in-custody defendant of his *Miranda* rights at the initiation of the first interrogation, admittedly done because it was feared he might invoke. As the Court pointedly noted: "*That does not excuse the detectives' decision not to give Dixon Miranda warnings before his first interrogation.*" The statements he made at the first interview were suppressed by the trial court; a decision with which the Supreme Court agreed. But under these circumstances, that illegal tactic did not affect the admissibility of his later confession. The fear that a suspect might invoke his rights is never an acceptable excuse for not administering a *Miranda* advisal where it is legally required.

***Residential Searches; Consent, Exigent Circumstances, and Plain View:
Doctrine of Inevitable Discovery:***

People v. Superior Court [Chapman] (Mar. 29, 2012) 204 Cal.App.4th 1004

Rule: A warrantless reentry into a residence by police is lawful when done for the purpose of seizing and processing evidence observed in plain view during a prior lawful entry, so long as control of the residence had not been relinquished. The "Doctrine of Inevitable Discovery" saves that evidence not in plain sight, but which was found by a Coroner's investigator when he took control of a deceased body.

Facts: Police responded to defendant's residence in answer to a call for "shots being fired." Defendant was ordered to come out of the house, which he did. He was immediately taken into custody. A quick patdown for weapons resulted in the recovery of a pistol magazine loaded with 22-caliber rounds. Defendant's girlfriend, screaming hysterically, told police that defendant had "shot him." Defendant himself kept saying, "Just help him. Help him." Officers immediately entered the house to do a protective sweep for additional suspects and to check for victims. Defendant's adult son was found dead on the floor near the kitchen. Also during the sweep, officers observed shell casings on the floor, bullet holes in the walls, and blood. Nothing was disturbed as the whole house was checked. Paramedics were allowed to enter the house as soon as the protective sweep was over. Everyone then left the house except for one officer who secured the premises by remaining with the body. Defendant was transported to the police station within 20 minutes after the officers' first arrival at the scene. Another 20 minutes after that, two detectives arrived and were briefed on what had happened. The detectives were escorted into the residence by the first responders where they observed in plain sight the shell casings on the floor, strike marks on the wall and refrigerator, a dead body, and a handgun on the floor in the kitchen near the dead body. This walkthrough took about 30

to 40 minutes, during which nothing was disturbed or moved. An hour and a half later, Detective Umansky arrived at the scene and was also briefed as to what had happened. He was similarly given a tour of the residence. Meanwhile, criminalists and a police photographer entered the house and began processing the evidence. The Coroner's investigator arrived later that same evening and took charge of the body. When he moved the victim, he found another shell casing and a divot or depression in the floor, possibly from a bullet strike, all under the body. Detective Umansky confronted defendant during an interrogation with the evidence that he'd seen in the residence, resulting in a conviction. Returning to the scene some hours later, Detective Umansky found a previously undiscovered bullet fragment inside the refrigerator. No search warrant was ever obtained. Defendant was charged in state court with murder. He brought a motion to suppress all the evidence recovered from the scene, as well as his confession. The trial court granted defendant's motion as to the physical evidence, and partially as to defendant's statements. Pre-trial, the People appealed the court's suppression of the evidence.

Held: The Second District Court of Appeal (Div. 8) reversed, at least as to most of the evidence. The parties (and the trial court) all agreed that the initial entry of defendant's residence by the first officers at the scene was lawful. This initial warrantless entry was justified by both defendant's consent ("*Just help him.*") and exigent circumstances (i.e., to conduct a "protective sweep"). The issue in this case was whether the warrantless *reentry* by the "second wave responders" (i.e., the detectives and others) was lawful. Defendant's argument was that his consent to enter was no longer valid once it was determined that the victim was dead. Also, with the sole victim located and the house cleared for any other suspects, the exigency was over. Agreeing with defendant, the trial court had ruled that any further entries required a search warrant. The Appellate Court disagreed. The general rule is that an independent justification is required for each warrantless entry of a residence by police. But it has been held in prior cases that an officer's reentry for the purpose of seizing evidence that was observed in plain view during a prior lawful entry, and for which probable cause exists to believe is evidence of a crime, but that was not seized initially because the officer was performing a duty that took priority over the seizure of evidence, is lawful. In such cases, the courts have held that the police never relinquished their right to be in the house. In the instant case, the uninterrupted stream of second responders (detectives, criminalists, photographers, Coroner), which began when the first two detectives entered within 25 minutes after the protective sweep was completed, were entitled to enter defendant's residence to process and seize the evidence observed in plain view just minutes earlier. The concerns of the first responders—to check for other suspects and additional victims—took priority over the seizure of evidence observed in plain view during the course of the protective sweep. There was no indication that the first responders intended to abandon the residence. To the contrary, leaving an officer with the body shows an intent to keep the house secured until it was more practical to process the evidence that had been seen in plain view. "A close-in-time successive search of the areas already searched in order to begin processing and collecting (the already observed) evidence does not constitute an unreasonable and additional invasion of privacy." Therefore, no search warrant was needed under these circumstances for the second responders to come in and seize the evidence seen in plain

view. As for the evidence not seen in plain sight by the first responders (the shell casing and bullet-strike depression under the victim's body), the Court found that that evidence would have inevitably been provided to the police by the Coroner's investigator upon removal of the body. Pursuant to the "*Inevitable Discovery Doctrine*," that evidence was also held to be admissible. Also, defendant's statements to Detective Umansky, made when confronted with this physical evidence, was held to be admissible. However, other evidence (e.g., the bullet fragment found in the refrigerator) was properly suppressed, not being in plain view and there being no search warrant. The case, therefore, was remanded for trial with the above evidence, as indicated, being admissible.

Note: We've gotten so used to using search warrants at *all* homicide (and other serious crime) scenes, that many of us have forgotten this rule; i.e., that so long as the police retain control of the scene, an initial legal entry will often (but not always) justify subsequent entries without the need for a warrant. But retaining control of the scene does *not* justify a more thorough search beyond seizing what was seen in plain sight during the initial lawful entry. The rule is, and has been for years, that there is no such thing as a "homicide scene" (or other serious case) exception to the search warrant requirement. (See *Mincey v. Arizona* (1978) 437 U.S. 385.) And it's always safer to take the hour or two needed to write a search warrant than to rely on the assumption that you're only going to be seizing what's in plain view. In this case, we didn't lose a lot of evidence due to the lack of a search warrant. But what we did lose was an inestimable pile of man-hours expended by prosecutors, research attorneys, the courts, and myself (writing this brief), not to mention the time who-knows-how-many law enforcement officers spent sitting in a courthouse hallway waiting to testify in the suppression motion hearing, just to get where we are today; *pre-trial*. And all so a detective didn't have to take two hours to write a search warrant. I'll leave you with that thought.

Vehicle Searches Incident to Arrest:

Vehicle Searches with Probable Cause:

Inevitable Discovery:

***People v. Evans* (Nov. 4, 2011) 200 Cal.App.4th 735**

Rule: Where an arrestee in a vehicle has been secured, a search of that vehicle incident to arrest is unlawful absent reason to believe that evidence relevant to the cause of the arrest may be in the car. Otherwise, a warrantless search of a car for evidence requires probable cause to believe that evidence of a crime or other contraband is contained in the car. The "Doctrine of Inevitable Discovery" won't save evidence secreted in a vehicle absent a planned inventory search.

Facts: Los Angeles Police Department Gang Enforcement Officers Kevin Currie and Prodigalidad, while on patrol during the evening hours of September 27, 2009, observed defendant make a right turn without signaling. They then noted defendant driving erratically, moving from lane to lane, veering erratically. Defendant then pulled over, stopping on top of a curb. The officers pulled their patrol car in behind him. Officer Prodigalidad contacted the passenger as Officer Currie contacted defendant; the driver.

Currie immediately noticed that defendant's hands were shaking as he was attempting to use a cellphone. Officer Evans told defendant to put the cellphone down, turn off the engine, and roll down the window. Defendant complied, but only partially rolling down the window. Defendant acted nervously. Because of the time of night, defendant's nervousness, and the fact that the area was controlled by a criminal street gang, Officer Currie asked defendant to step out of his vehicle. Defendant did not comply, asking instead why he had been stopped. Officer Currie explained the reasons for the stop and then again asked defendant to step out of his vehicle. Defendant again asked why he'd been stopped. Officer Currie asked defendant at least ten more times to step out of the vehicle. Defendant continued to refuse to comply, asking repeatedly why he'd been stopped. When defendant asked to speak to a supervisor, Officer Currie told him that one was on the way. Throughout this contact, defendant continued to act nervously with his voice "shutter(ing) and crack(ing)." Officer Evans finally threatened to use pepper spray or a Taser if defendant continued to refuse to get out of his car, but to no avail. Cover units began to arrive. Finally, Officer Curry sprayed a small amount of pepper spray through the window that was open only about half an inch. Defendant rolled up his window while remaining in his car, staring forward. The officers finally broke the driver's side window, Tasing him, and dragging him out of his car. Placed face down on the ground and "immobilized," defendant was arrested. He was charged with "interfering with an investigation," per P.C. § 148, and taken to a hospital. Officer Prodigalidad did a cursory search of the car, finding eleven clear, empty sandwich baggies and \$65 in cash in the car's center console. The car was then towed to the police impound yard. At the police station, it was determined that defendant had once been arrested for murder (no case ever being filed) and that when arrested, a firearm had been found in the car's air vent. So the officers returned to defendant's car and searched the air vent, finding rock cocaine. Charged with various narcotics-related charges, the trial court denied defendant's motion to suppress. Defendant pled "no contest" and appealed.

Held: The Second District Court of Appeal (Div. 3) reversed, holding that the evidence from both the initial search of defendant's car done at the scene of the arrest, and from the later search at the impound yard, should have been suppressed. The Court first found that the initial traffic stop and the act of ordering defendant out of his vehicle were lawful. Defendant's erratic driving was more than enough reasonable suspicion to justify a traffic stop. (Even though defendant pulled over on his own, the Court considered the subsequent contact to be a "traffic stop.") Secondly, the Fourth Amendment allows an officer during a traffic stop to have a vehicle's driver and passengers alight from the vehicle for the duration of the contact. The first search of the vehicle, done at the scene of the arrest, was justified by the People as a "search incident to arrest." However, the U.S. Supreme Court held some five months prior to this event that once an arrestee has been removed from the vehicle and secured, a search of that vehicle incident to arrest is not lawful unless it is "*reasonable to believe evidence relevant to the crime of arrest might be found in the car.*" (*Arizona v. Gant* (2009) 556 U.S. 332 [173 L.Ed.2nd 485].) (At footnote 8, the Court notes that the record is unclear as to the status of defendant's passenger. But the People did not argue that he might still have had access to the vehicle, so the issue was waived.) Defendant had obviously been secured, having been drug out of the car and "immobilized." Secondly, the Court did a deep analysis of the parameters

of *Gant's* alternative theory for justifying a warrantless search of the vehicle incident to arrest; i.e., that there was “*reason to believe*,” or “*a reasonable basis for believing*,” that evidence of the crime of arrest might be found in the vehicle. The Court first ruled that in applying *Gant's* alternative theory, a court must take into account “the nature of the offense, considered in conjunction with the particular facts of the case, giv(ing) rise to a degree of suspicion commensurate with that sufficient for limited intrusions such as investigatory stops.” In making this analysis, the Court concluded that *Gant's* alternative theory was inapplicable in this case. The crime of arrest here being the interference with an officer in the performance of his duties, per P.C. § 148, it was not reasonable to believe that any evidence relevant to that crime might be found in the car. Therefore, the search of the vehicle at the arrest site, resulting in the recovery of the money and the sandwich bags, was illegal. The Court then turned to the issue of whether the so-called “automobile exception” to the search warrant requirement was applicable to either of the two searches. For this theory to apply, it must first be found that there was “probable cause” to believe that a lawfully stopped vehicle contains evidence of criminal activity or seizable contraband. The rule is that if such probable cause exists, then anywhere in the vehicle that a warrant could have authorized is subject to search. Warrantless searches in such cases are justified by “the reduced expectation of privacy in a vehicle, the fact a vehicle is inherently mobile, and the historical distinction between searches of automobiles and dwellings.” In this case, the car was stopped for traffic violations only. Defendant’s erratic driving, even when combined with his nervousness and a failure to cooperate is insufficient to establish probable cause to believe that evidence of a crime or contraband might be in the car. While these factors might be indicative of intoxication, that belief was totally dispelled when defendant was first contacted. Even the later developed information that defendant had previously used the air vents of his car to hide a weapon was, per the court, insufficient to establish probable cause. Neither of the two searches, therefore, were justified under this theory. Lastly, the People argued that the cocaine would have inevitably been discovered in an inventory search of the car. The Court rejected this argument as well. In this case, there was no evidence established that an inventory search, other than the officers’ initial search of the car at the scene of the arrest, was even contemplated. And the tow yard employees testified that any inventory that they might do would be limited to items in plain sight. Therefore, the Inevitable Discovery Doctrine was inapplicable to this case. Based upon the above, both searches of defendant’s vehicle were illegal. The evidence should have been suppressed.

Note: The value in this case is obvious: First, had the officers involved read the *Legal Update*, Vol. 14, #5, May 8, 2009, published 4½ months before the search in this case, or even listened to their Department’s own excellent legal advisors, they would have known about the rule of *Arizona v. Gant* and not made the errors made here. Also, the Court here does an excellent analysis of *Gant's* alternative legal justification for a search incident to arrest; i.e., when there exists “*reason to believe*,” or there is a “*reasonable basis for believing*,” that evidence related to the cause of arrest might be in the vehicle. Also, this court makes it obvious that the standard of proof is but a mere “reasonable suspicion.” And it is also just a good review of the rule of *Gant* in general, a landmark case decision which *every* officer in the field must be aware. These circumstances are just too common for any officer to ignore the lessons learned here.