

# *San Diego District Attorney*

## *D.A. LIAISON LEGAL UPDATE*

(COPY -- DISTRIBUTE -- POST)

---

Vol. 11

December 12, 2006

No. 16

Subscribers: 2,137

[www.sdsheriff.net/legalupdates/](http://www.sdsheriff.net/legalupdates/)

### *Remember 9/11/01; Support Our Troops*

**Robert C. Phillips**  
**Deputy District Attorney**  
**Law Enforcement Liaison Deputy**

(W) (858) 974-2421  
(C) (858) 395-0302  
(E) [Robert.Phillips@SDSheriff.org](mailto:Robert.Phillips@SDSheriff.org)  
(E) [RCPhill808@AOL.com](mailto:RCPhill808@AOL.com)

#### **THIS EDITION'S WORDS OF WISDOM:**

*"We should restore the practice of duelling. It might improve manners around here."* (Edward Abbey 1927-1989)

#### **IN THIS ISSUE:**

Page:

##### *Administrative Notes:*

*Samson v. California* as it Relates to Probation  
Fourth Wavier Searches 1

##### *Case Law:*

*Miranda*; Volunteered Statements 2  
Detentions (Vehicle Stop) and Pat Downs for Weapons 4  
Metal Knuckles, per P.C. § 12020(a)(1) 6  
Torture, per. P.C. § 206 7  
Residential Entries and Exigent Circumstances 9

#### **ADMINISTRATIVE NOTES:**

***Samson v. California as it Relates to Probation Fourth Wavier Searches:*** Last June, I briefed *Samson v. California* (2006) 165 L.Ed.2<sup>nd</sup> 250 (See *Legal Update*, Vol. 11, No. 8, pg. 3), where the U.S. Supreme Court held for the first time that California parolees, all of whom are on a "Fourth Waiver" (See P.C. § 3067(a)) may be searched without any suspicion, thus agreeing with California's long-standing rule on this issue. (See *People v. Reyes* (1998) 19 Cal.4<sup>th</sup> 743.) In my

brief I noted how the Court in *Samson* specifically declined to tell us whether the same rule would apply to a person who had waived his Fourth Amendment rights as a condition of *probation* (as opposed to *parole*). I did point out, however, that the Supreme Court hinted very strongly in *Sampson* that, should the issue ever raise its ugly head, they will likely impose a stricter standard for probation Fourth Waivers; i.e., a “*reasonable suspicion*” of renewed criminal activity. (See *United States v. Knights* (2001) 534 U.S. 112.) This comment has evoked a number of responses from some people who are a lot smarter than me telling me that I am wrong. And I have to admit that my win-loss record in attempting to predict what the U.S. Supreme Court will decide on any particular issue is probably worse than that of the Oakland Raiders (if that’s possible). So I reread *Samson* this last weekend paying particular attention to this issue. While I have to admit there are a number of times the Court notes the similarities between probation and parole Fourth Waivers, I marked off no less than seven significant comments, each noting quite blatantly how parolees should be held to a higher standard than probationers. (E.g.: “As we noted in *Knights*, parolees are on the ‘continuum’ of state-imposed punishments. [Citation.] On this continuum, parolees have fewer expectations of privacy than probationers, because parole is more akin to imprisonment than probation is to imprisonment.”) So here’s the present state of the law: There is presently no state or federal decision specifically saying that you need a reasonable suspicion to search a person on a probation Fourth Waiver. To the contrary, California law specifically says that you do not. (See *People v. Bravo* (1987) 43 Cal.3<sup>rd</sup> 600; and *People v. Brown* (1987) 191 Cal.App.3<sup>rd</sup> 761.) But given the relevant language *Samson*, I stand by my original prediction: If and when eventually decided by the U.S. Supreme Court, it will be held that a “*reasonable suspicion*” is required to search a probationer on a Fourth Waiver.

## **CASE LAW:**

### ***Miranda; Volunteered Statements:***

#### **People v. Terrell (Aug. 8, 2006) 141 Cal.App.4<sup>th</sup> 1371**

**Rule:** Defendant’s intervening act of asking to talk to his mother breaks the causal chain between an officer’s violation of defendant’s *Miranda* rights and the defendant’s subsequent admissions of culpability made to his mother.

**Facts:** Defendant and Dwayne Reed drove around the San Francisco area one evening, smoking and doping while looking for people to rob. At about 1:00 a.m., they confronted a couple at gunpoint on Bay Street, taking a wallet from one of them. A half hour later, they robbed another couple in a parking lot at Eighth and Brannon Streets. Shortly after that, with Reed standing by in their nearby car, defendant confronted another couple on Mariposa Street. While pointing a gun at them, defendant demanded Hunter McPherson’s wallet. McPherson told him no. After several more unsuccessful attempts, defendant took McPherson’s companion’s purse. He then turned back to McPherson and repeated his demand for his wallet a couple more times. When McPherson continued to

refuse, defendant cool-bloodedly shot him in the chest, killing him. Defendant, taken into custody on an unrelated probation violation some days later, was interviewed by San Francisco Police Department investigators. The interview was surreptitiously videotaped. Defendant initially waived his rights under *Miranda*, but then invoked when asked about some gang-related shootings in the area. The detectives, however, ignored the invocation and continued questioning him. After four more invocations, the detectives started asking defendant about McPherson's murder. Nine more attempts to invoke were similarly ignored. Continued questioning eventually led to defendant reluctantly agreeing to talk, but only after the officers told him that they would inform the district attorney that he cooperated and was sorry, inferring (in the Court's opinion) that this might help him avoid the death penalty. He thereafter admitted to "accidentally" shooting McPherson. As defendant provided the officers with the details of the shooting, he asked if he could call his mother. The officers agreed and brought him a telephone, leaving him alone in the interrogation room. With the hidden video camera still recording, defendant made admissions to his mother and three other relatives over the telephone, telling them about the shooting. Charged with various robberies and first degree murder, defendant's motion to suppress his statements made to the detectives was granted when the prosecution conceded the *Miranda* violation. The trial court, however, denied his motion to suppress the videotaped statements made to his mother and other family members. He was convicted of first degree murder with special circumstances and a firearm use, with the jury either acquitting him or hanging on the other robbery counts. Sentenced to life without the possibility of parole, defendant appealed.

**Held:** The First District Court of Appeal (Div. 1) affirmed. Being an uncontested issue, the Court assumed for the sake of argument that defendant's confession to the interrogating detectives was involuntarily obtained, and thus inadmissible. The question here was whether defendant's later incriminating statements made to his mother and other family members, as the product of the involuntarily obtained statements, should have also been suppressed. Defendant argued that because his statements to the detectives were involuntarily obtained, his later statements to his mother and other family members were necessarily tainted and should have been suppressed. But the Court here noted that it was defendant's idea, not the detective's, to talk to his mother. Whatever coercion might have been involved when defendant was being interrogated by the detectives no longer existed when defendant talked to his mother. While his motive for talking to the detectives was to secure a lighter sentence, his motive for admitting his guilt to his mother was "to talk to people who knew and cared about him, and to be comforted about the situation he was in." At that point he was no longer being subjected to a coercive interrogation, or even the "*functional equivalent*" of an interrogation. The Court recognized that "(a) subsequent confession is not (necessarily) the tainted product of the first merely because, 'but for' the improper police conduct, the subsequent confession would not have been obtained." Defendant's decision to call his mother constituted an "*independent intervening act*" breaking the causal chain between the improper police questioning and his subsequent, self-initiated conversation with his mother and other family members. The recorded incriminating statements made to his mother and other family members were therefore properly admitted against him.

**Note:** This case is consistent with, and even a little more obvious (although analyzed differently) than the recent decision of *People v. Davis* (2005) 36 Cal.4<sup>th</sup> 510, where, after defendant had invoked, he was put into a holding tank with co-suspects in a robbery/murder case, falsely told by police officers that his fingerprints were on the murder weapon, and then left alone while surreptitiously being recorded. Defendant's resulting incriminating statements to his co-suspects were held to be admissible in that, although the officer's ruse was improper, defendant was not being interrogated when he made his statements. As "volunteered" statements, they were admissible. But this game-playing will be tolerated by the courts only so far. The Court in this new case cited, but differentiated itself from prior cases where coercive police interrogative tactics were in fact exploited in obtaining a second, subsequent confession, thus invalidating both confessions. (See *People v. Hogan* (1982) 31 Cal.3<sup>rd</sup> 815.) Also, the United States Supreme Court has criticized what is sometimes called a "two-step interrogation tactic" where an illegally obtained confession is purposely used to motivate a subsequent *Miranda* waiver and confession. (*Missouri v. Seibert* (2004) 542 U.S. 600.) The big difference here in this new case is the lack of an intentional exploitation of the prior illegally obtained statements. Lastly, don't take this case as the Court's endorsement of the tactics the detectives used here; purposely violating this defendant's *Miranda* rights by ignoring his repeated attempts to invoke. Doing this made his statements to them not just the product of a *Miranda* violation, but, more importantly, a 14<sup>th</sup> Amendment constitutional "due process" violation. I continue to maintain that such an interrogative technique is illegal, improper, and unprofessional, and should not be done.

***Detentions (Vehicle Stop) and Pat Downs for Weapons:***

***United States v. Hartz* (9<sup>th</sup> Cir. Aug. 17, 2006) 458 F.3<sup>rd</sup> 1011**

**Rule:** The stop of a suspected stolen vehicle, and the pat down of its occupants, upheld under the circumstances of this case.

**Facts:** Defendant and another robbed a jewelry store in Bellevue, Washington, at gunpoint, stealing more than \$200,000 in gold and jewelry. The day after the robbery, a person arrested on an unrelated charge told officers that an individual named Tammy Trump had information concerning the jewelry store robbery. Execution of a search warrant on her residence resulted in the recovery of some of the stolen jewelry. Tammy told police that she had stolen these items from defendant who, with his friend, had been at her home bragging about committing the jewelry store robbery. She led the officers to defendant's travel trailer. A search warrant obtained for this trailer resulted in recovery of more of the stolen loot, the guns used in the robbery, and materials for making disguises. An arrest warrant was obtained for defendant. A day or so later, two Pierce County Sheriff's deputies (presumably in an adjoining county) received a radio call concerning an armed carjacking of an orange, 1977 Chevrolet pickup truck in Tacoma, Washington, with a particular license number for the truck. The suspects were reported to be man and a woman. Three hours later, the deputies spotted a matching orange 1977 Chevrolet pickup truck, but with a different license plate. This license plate, however, was attached to the truck by zip ties and appeared to be new and clean while the truck

was old and in poor condition. The truck was occupied by two persons, one of whom had long hair and appeared to be a woman (although, as it turned out, this was actually the defendant). The vehicle was stopped and its occupants contacted. A knife and bullets were observed in plain sight on the dashboard. A gun was observed on the front seat when the occupants were asked to step out of the truck. Based upon these observations, both subjects were patted down for more weapons. In defendant's front pants pocket the deputy felt a hard object. Believing (as he later testified) that it could be a weapon or contain a weapon, he removed it, finding it to be an Altoids tin. Looking inside the Altoids container, the deputy found some prescription pills. In another pocket, the deputy could feel a narrow object about four inches long. Believing that this item could be a knife, the deputy removed it from defendant's pocket and found that it was an illegal marijuana pipe. Defendant was arrested for possession of drug paraphernalia and searched incident to arrest. This more thorough search resulted in the recovery of a piece of paper on which was listed items of jewelry and their values. Evidence of defendant's true identity (he having falsely identified himself when first detained) was also found, following which the outstanding warrant for the jewelry store robbery was discovered. Charged in federal court with charges related to the robbery and firearms possession, defendant's motion to suppress the products of the traffic stop and the searches of his person was denied. Defendant was found guilty after a jury trial and appealed.

**Held:** The Ninth Circuit Court of Appeal affirmed. First, as to the legality of the stop of the stolen vehicle in which defendant was a passenger, the Court noted that only a "*reasonable suspicion*" was needed to justify a vehicle stop and a detention of its occupants. Under the circumstances as known to the deputies here, "the facts and reasonable inferences warranted the deputies' reasonable suspicion that the occupants of the truck they were following had stolen (the truck) at gun point, . . ." Observation of a vehicle that matched the description of one that had just been stolen in a carjacking, but with a different license plate that appeared to have been recently attached, and with two occupants who generally matched the suspects' description, constituted the necessary reasonable suspicion to justify the stop of that vehicle and the detention of its passengers. As for the pat down of defendant's person for weapons, it need only be proved that the officer reasonably believed (i.e., a "*reasonable suspicion*") that the suspect was "armed and presently dangerous." Stopping someone suspected of having just committed an armed carjacking, with the plain sight observation of a knife, bullets, and a gun, was more than enough to justify a cursory check of the suspects for possible weapons. Then, feeling objects that could be, or could contain, weapons, the removal and inspection of those items was justified. Finding prescription pills and a marijuana pipe in the process justified defendant's arrest. The recovery of the jewelry list during the subsequent search incident to that arrest was therefore also lawful. The defendant's motion to suppress the evidence recovered from his person was properly denied.

**Note:** The deputies' legal right to stop defendant's vehicle and pat him (and his companion) down for weapons under these circumstances is not really subject to debate. What is interesting, however, was comparing this case with a similar one where this same Court suppressed the results of a pat down when the officer failed to testify (no doubt because he wasn't asked) to the fact that he, in his opinion, believed that a hard object felt

during a pat down might be a weapon. (See *United States v. Miles* (9<sup>th</sup> Cir. 2001) 247 F.3<sup>rd</sup> 1009.) Here, in contrast to *Miles*, because the deputy “did testify that he thought the items in Hartz’s pockets might be weapons,” the pat down and the opening of the Altoids tin were upheld. I assume, however, that an officer’s conclusions on this issue would have to be reasonable. If an officer were to testify that a rotten banana felt in a suspect’s pocket could be, in his opinion, a weapon, is the court necessarily obligated to believe him? I would think not. So where do we draw the line between an Altoids tin and a mushy banana? Attempting to figure that one out is why we all get paid the big bucks.

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

***In re Martin Alonzo L.* (Aug. 21, 2006) 142 Cal.App.4<sup>th</sup> 93**

**Rule:** A wallet with metal spikes, capable of being held in the hand with the spikes protruding through the fingers, constitute “*metal knuckles.*”

**Facts:** Guadalupe Police Officer Davis responded to radio call concerning a group of “young men” threatening the complainant. Davis contacted defendant and some other juveniles and patted them all down for weapons. In defendant’s back pocket was a 5½ inch long leather wallet with five, one-inch-long metal spikes embedded in, and evenly spaced, along one edge of the wallet. When the wallet was rolled up and held in a closed fist, the metal spikes would protrude through the fingers. There was no money, cards or photographs in the wallet. Officer Davis arrested defendant for possessing metal knuckles, per P.C. § 12020(a)(1) and (c)(7). Charged in Juvenile Court with this offense, the petition was sustained and defendant appealed.

**Held:** The Second District Court of Appeal (Div. 6) affirmed. The possession of metal knuckles is prohibited under P.C. § 12020(a)(1). Metal knuckles are defined in subdivision (c)(7) as “any device or instrument made wholly or partially of metal which is *worn for purposes of offense or defense* in or on the hand and which either protects the wearer’s hand while striking a blow *or increases the force of impact from the blow or injury to the individual receiving the blow.* The metal contained in the device may help support the hand or fist, provide a shield to protect it, *or consist of projections or studs which would contact the individual receiving the blow.*” (Italics added) Defendant did not argue on appeal that his wallet did not fit this definition, but rather that there was no evidence that he knew the wallet could be used as a weapon or that he had ever used it as a weapon. Rejecting this contention, the Court noted that the crime of possessing metal knuckles is a “*general intent*” crime. Its mere possession is prohibited. “(T)here is no requirement that (the) prosecution show that the possessor intended to use the object in a violent manner.” The statute, however, does contain a “*knowledge*” requirement as additional implied element. Defendant must be shown to have a “*guilty mind*” (or, “*criminal intent*”). This, however, can be proved circumstantially. Defendant certainly knew that he possessed the wallet, and he knew that the wallet had metal spikes embedded in its leather. “A reasonable trier of fact (i.e., the Juvenile Court magistrate) could conclude (that defendant) was aware of this fact and thus knew it could be used for purposes of offense or defense.” The petition, therefore, was properly sustained.

**Note:** All the Appellate Court was saying here is that there was enough evidence, even though circumstantial, to sustain the Juvenile Court magistrate's conclusion that defendant knew his wallet could be used as a weapon. The magistrate, however, had a much higher burden; i.e., "*proof beyond a reasonable doubt.*" He could have very well gone the other way. Section 12020 does not specifically say that there is a "*knowledge*" element. This is something that is implied, per case law. So we sometimes forget that we need to prove more than simple possession of a 12020 weapon. We need to prove "*knowing possession.*" It would therefore be beneficial in such a circumstance for the arresting officer to look for some direct evidence of this knowledge element of a P.C. § 12020(a) violation. For instance, simply asking the suspect about the wallet's capabilities for use as a weapon ("*Hey dude, what a cool wallet. Ever have to use it to defend yourself?*") might very well have gotten some very helpful responses as the jerk's machismo kicks in and he tries to impress you with what a tough guy he is.

***Torture, per. P.C. § 206:***

***People v. Massie* (Aug. 29, 2006) 142 Cal.App.4<sup>th</sup> 365**

**Rule:** A sustained assault using various methods to inflict serious injuries supports a conviction for torture.

**Facts:** After getting her husband off to work and her older children to school, C.T. sat her 3-year-old child in front of the T.V. set and went into the bathroom to take a shower, leaving the bathroom door open so that she could monitor her child. Defendant entered C.T.'s home and watched her shower through the open bathroom door. C.T. saw defendant as she got out of the shower and attempted to close the door. While trying to hold the door shut, C.T. was able to put on a two-piece swimsuit and a pair of pants. Defendant, however, was able to eventually force his way into the bathroom and accosted her with a knife. He dragged C.T. to a nearby walk-in closet and pushed her to the floor where he held her down with his knee and arm. Defendant put the knife on a shelf and pulled off C.T.'s pants and swimsuit bottom. Realizing that she was about to be raped, C.T. submitted, asking only that he not kill her. Defendant inserted his finger in C.T.'s vagina and lifted her swimsuit top, fondling and sucking her breast. When C.T. heard defendant unzip his pants, she began to struggle again until defendant started to choke her. Believing she was going to die, C.T. relaxed and began to pray. When defendant got up, looking for his knife, C.T. tried to crawl out of the closet. Defendant grabbed her and pushed her head down to her knees and stepped on her back until she heard it pop. Unable to find his knife, defendant broke a glass from a picture frame and began cutting her with the broken pieces. Among other injuries, he cut her neck and attempted to cut her wrists. He yanked her head back and forth as though he was trying to break her neck. C.T. told defendant; "Jesus loves you. If you kill me, he's going to forgive you if you ask him." This, however, only made defendant more violent. Defendant then momentarily broke off the attack as if to regain his composure. But when C.T. tried to stand up, he dragged her by the hair into the bathroom where he threw her to the floor and twice stomped on her face with the heel of his boot. When she tried to escape again, defendant

dragged her back and again threw her to the floor, kicking her in the face. Defendant then left the bathroom giving C.T. the opportunity to escape out of a window to the street where neighbors came to her rescue. Among C.T.'s injuries, she suffered an acute compression fracture of the fourth thoracic vertebrae. Although the spinal cord was not damaged, this injury required her to wear an immobilizing back brace for several months. It is expected that she will probably have chronic back pain and progressive angulation as she ages. She also suffered many lacerations from the superficial to the significant. When first treated, she had a large facial bruise, her eyes were swollen shut, and she had trouble talking due to injuries to her mouth. Defendant was eventually convicted of rape by foreign object, and torture. Defendant appealed, arguing that the evidence was insufficient to sustain the torture verdict.

**Held:** The Third District Court of Appeal (Butte) affirmed. The torture statute, per P.C. § 206, states: “Every person who, *with the intent to cause cruel or extreme pain and suffering* for the purpose of revenge, extortion, persuasion, *or for any sadistic purpose*, inflicts great bodily injury as defined in Section 12022.7 upon the person of another, is guilty of torture. [¶] The crime of torture does not require any proof that the victim suffered pain.” (Italics added) Two elements must be proved: (1) The infliction of great bodily injury; and (2) the specific intent to cause cruel or extreme pain and suffering for the purpose of revenge, extortion, persuasion, or for any sadistic purpose. Citing prior case law, the Court noted that “*sadistic purpose*” requires proof that the defendant caused “the infliction of pain on another for the purpose of experiencing pleasure.” It is not necessary that the sadistic pleasure be of a sexual nature. Torture does not require the defendant to act with premeditation and deliberation, and it does not require that the defendant intended to inflict prolonged pain. The severity of the wounds inflicted, although relevant, are not necessarily determinative. Defendant’s argument on appeal was that C.T.’s mentioning of Jesus set him off, causing him to act with “animal fury” in “an explosion of violence.” Such uncontrolled anger, according to defendant, precludes a finding that he acted with the specific intent to cause cruel or extreme pain. As authority for this argument, defendant cited prior case law describing the torture special circumstance under P.C. § 189. However, while torture under P.C. §189, in a special circumstance capital case, does in fact require evidence of a wilful, deliberate, and premeditated intent to inflict extreme and prolonged pain, the separate substantive offense of torture under P.C. § 206 does not. To prove a violation of P.C. §206, an intent to inflict cruel or extreme pain and the actual infliction of cruel and extreme pain can occur instantaneously without any need to prove deliberation or premeditation. One’s anger, therefore, does not preclude a finding of an intent to cause cruel and extreme pain. To the contrary, anger may very well be the reason a person intended to inflict cruel and extreme pain. Although a jury may find that acting in a mindless rage precluded any through process whatsoever, negating specific intent, that is not what happened here. An appellate court will not second guess a jury’s finding on this issue so long as there is evidence to support the jury’s conclusion. In this case, the jury’s finding of a specific intent to inflict cruel and extreme pain is supported by “ample evidence.” Defendant’s attack went on for some time, included a number of breaks in the assault, and involved various methods used to inflict the injuries. These circumstances do not suggest such a blind rage sufficient to negate the possibility that he harbored an intent to inflict injuries



on the victim. The Court also rejected defendant's argument that where the proof is close enough to support two competing inferences (i.e., one that he had the necessary intent and the other that he did not), the jury must go with the inference that supports acquittal. That, as the Court noted, is a jury issue, and one for which this jury decided any inferences supporting acquittal were not reasonable. The Appellate Court, on the other hand, must uphold the jury's decision on this issue so long as supported by the evidence.

**Note:** The deputy district attorneys in Butte County must have been lining up for the privilege of prosecuting this animal. The only type of case that could possibly be more obviously one involving torture would be through the use of the proverbial bamboo shoots under the fingernails, or possibly with electrodes connected to certain body parts of a foreign spy tied to a chair in a basement cellar somewhere. Why this guy wasn't convicted of attempted murder (if it was even charged), I'll never know. Just from the description of the facts as provided by the Appellate Court, it was obvious that he fully intended to kill this woman, and would have had she not escaped. It's cases like this that make being a prosecutor and a cop two of the most fulfilling and rewarding jobs in government service. Congratulations to the law enforcement officers who worked on this case, and the Butte County District Attorney's Office for putting this guy away.

***Residential Entries and Exigent Circumstances:***

**United States v. Arellano-Ochoa (9<sup>th</sup> Cir. Aug. 31, 2006) 461 F.3<sup>rd</sup> 1142**

**Rule:** A possible trafficker in narcotics, ducking back into his residence upon the approach of peace officers, while attempting to shut the door and close the blinds, is an exigent circumstance justifying an immediate, warrantless entry.

**Facts:** Wyoming police stopped an illegal alien heading south with \$15,000 in a car registered to a Daniel Priego at a specific address in Billings, Montana. The illegal alien told police that he was being paid to drive the car to Arizona to deliver it to a woman who was going to "do something" with it. He was then supposed to drive the car back to the address listed on the vehicle's registration in Billings. He also indicated that Daniel Priego was an illegal alien. This information was relayed to the Border Patrol in Billings. A Border Patrol agent went to the address to conduct a "knock and talk," taking with him a couple of Montana State Narcotics investigators because the circumstances had all the earmarks of a "courier-type (narcotics) run." All three agents were in plain clothes and in unmarked vehicles. Upon arrival at the address, the officers found a trailer with a young woman sitting on its steps, watching two toddlers play in the yard. They asked the woman if anyone else was there, in response to which the woman called into the trailer for "Daniel" or "Danny." The front door of the trailer was open, but there was a closed screen door. Being able to see parts of the interior through the screen door, the officers noticed that some of the interior furniture one would expect to see, such as a kitchen table, was missing. As the Border Patrol agent walked up to the door to knock, a male, later identified as defendant, was observed coming up to the door from the inside. But instead of contacting the officers, defendant swung the solid door partially closed and ducked quickly out of sight. The blinds of the front window were then abruptly shut.

The officers immediately opened the screen door and stepped inside. As they did so, a .45 semiautomatic pistol was immediately noticed nearby on the floor at the doorjamb. Defendant, who attempted to reach for the pistol, was quickly subdued after a brief struggle, and handcuffed. A protective sweep of the rest of the trailer was made during which evidence of drug dealing was observed. A search warrant was then obtained resulting in the recovery of some cocaine, methamphetamine, a sawed-off rifle and \$1,000 in small bills. It was subsequently determined that Daniel Priego was actually defendant Arellano-Ochoa. Charged in federal court with various drug-related and firearms offenses, defendant's motion to suppress the evidence recovered from his trailer was denied. Defendant was convicted and appealed.

**Held:** The Ninth Circuit Court of Appeal affirmed. Defendant's argument on appeal was that opening the screen door and entering the trailer without defendant's consent was a Fourth Amendment violation. Any observations made from that point on, therefore, and used in the search warrant, were illegal, thus poisoning the subsequent search. The Court agreed that the point where defendant's privacy rights were first implicated was when the agents opened the screen door to make entry. Screen doors don't typically involve any reasonable privacy expectation rights when the regular inner door is shut, because it is expected that a person coming to the door will open the screen in order to knock on the inner, solid door. But during those warmer months when the solid door is typically left open for ventilation, such as in this case, a screen door is all that protects one's privacy from the outside world. Thus, in such a circumstance, opening the screen door has much greater constitutional significance. But in this case the agents had an exigent circumstance justifying the opening of the screen door and going inside despite the lack of any consent from defendant. Defendant argued on appeal that it was perfectly reasonable for him to try to shut the front door and the blinds. However, the test for determining the constitutionality of a warrantless entry is what was reasonable from the agents' point of view, under the circumstances, and not whether or not the defendant's actions were reasonable. Even before seeing the gun, the agents were justified in making an immediate, warrantless entry when, rather than just saying the he didn't want to talk to them, he partially closed the front door, ducking behind it as he did so, and shutting the blinds. Given these furtive actions, when combined with the agents' prior knowledge about defendant's possible involvement in a "courier-type (narcotics) run," the agents were in reasonable fear for their safety and the safety of the young woman and the toddlers in the front yard. The immediate entry, therefore, was legally justified.

**Note:** The potential danger defendant's actions signaled are frighteningly illustrated by the fact that if given the chance, he apparently would have gone for the pistol on the floor near the front door. This case is a good example of some cops not getting so hung up in all these over-analyzed search and seizure rules that they hesitated, debating the legality of making a quick entry, while defendant grabbed his gun. You need to do what you know you have to do in some circumstances, without thinking about it. The Court also, by the way, shot down—without discussion—defendant's argument that to ask him his name and where he was born before being Mirandized was a Fifth Amendment violation, and that the protective sweep was illegal.