San Diego District Attorney

LEGAL UPDATE

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Vol. 15 December 17, 2010 No. 13
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THIS EDITION'S WORDS OF WISDOM:

"*If you don't know where you are going, you will wind up somewhere else*!" (Yogi Berra)

IN THIS ISSUE: Page:

Case Law:

Child Molests, per P.C. § 288(a), and the "Touching" Requirement 1
School Searches with Police Involvement 3
Firearms and "Place of Residence" 5
Residential Entries and Exigent Circumstances 7
Plain Sight Observations in a Residence 7
Vehicle Searches Without a Warrant 7

CASE LAW:

***Child Molests, per P.C. § 288(a), and the "Touching" Requirement*:**

People v. Lopez **(Jun. 23, 2010) 185 Cal.App.4th 1220**

Rule: The required "*touching*" for purposes of felony child molest, per P.C. § 288(a), may be by the child touching herself at defendant's direction and even if he is not present when the touching occurs.

Facts: Defendant married M.L. in 1999. They each brought two daughters into the marriage. ML's daughters (defendant's step-daughters) were C.H. (born in 1990) and

N.E. (born in 1992). In 2001, when C.H. and N.E. were 11 and 9 years old, respectively, defendant took camera film to Wal-Mart for developing. Among the photos were pictures of C.H. and N.E. in the shower and while blindfolded, wearing lingerie. Wal-Mart called police. An investigator took the photos to the local schools and determined that they were of C.H. and N.E. Contacting the two girls at home, they told the investigator that defendant, their step-father, had taken the photos. Defendant's wife, M.L., also verified that the photos were of C.H. and N.E. together, naked, in the shower. Other photos were of C.H. blindfolded and wearing a lingerie top. C.H. later told the investigator that when those photos were taken, she and N.E. were playing what they called the "money game." The money game involved defendant blindfolding them and, while they were dressed in lingerie or bathing suits, taking their picture as they looked for hidden coins. Defendant was interviewed and admitted to taking the photos, but didn't know why he did it. Child Protective Services interviewed C.H. and N.E. Both girls denied at that time that defendant had ever touched them inappropriately. So no charges were filed at that time. Six years later, in June, 2007, N.E. (now 15 years old) had a violent argument with defendant about some skimpy clothing she wanted to wear to school. When she got to school, she reported to a counselor that defendant had kicked her and, more importantly, had been molesting her. This led to a new investigation. A search warrant was executed on defendant's apartment resulting in the recovery of photos depicting C.H.'s and N.E.'s vaginal areas. Also found was the red negligee and shirt N.E. wore in some of the photos. Defendant was eventually charged with five counts of felony child molest, per P.C. § 288(a). Counts 1, 2 and 5 were based upon C.H.'s and N.E.'s testimony that defendant, at various times, had inappropriately touched them, often while masturbating himself. Counts 3 and 4 stemmed from photos of the girls playing the "money game." The testimony from C.H. and N.E. was to the effect that defendant would direct them to put on their mother's lingerie or a bathing suit. He would then take pictures of them looking for coins while they were blindfolded. This continued until shortly before N.E. reported defendant's abuse to school counselors in 2007. At trial, following the close of evidence, defendant filed a P.C. § 1118.1 motion to acquit on counts 3 and 4, arguing that there was "no evidence of concurrence between the prohibited act and lewd intent." After the trial court denied the motion, he was convicted of two counts of simple battery (as lesser included offenses of counts 1 and 2) and three counts of felony child molest (counts 3, 4 and 5.) He appealed, arguing that the trial court should have dismissed counts 3 and 4 relating to the "money game" occurrences.

Held: The Fourth District Court of Appeal (Div. 2) affirmed. On a motion by defendant pursuant to P.C. § 1118.1, a trial court must "order the entry of a judgment of acquittal of one or more of the offenses charged in the accusatory pleading if the evidence then before the court is insufficient to sustain a conviction of such offense or offenses on appeal." "The purpose of a motion under section 1118.1 is to weed out as soon as possible those few instances in which the prosecution fails to make even a prima facie case." In counts 3 and 4, defendant was charged with committing a lewd act upon a child under the age of 14, in violation of P.C. § 288(a). Section 288(a), as it read at the time, made it a felony when the defendant "willfully and lewdly commits any lewd or lascivious act, . . . upon or with the body, or any part or member thereof, of a child who is under the age of 14 years, with the intent of arousing, appealing to, or gratifying the

lust, passions, or sexual desires of that person or the child . . . ." A violation of section 288(a) requires "'*any touching*' of an underage child accomplished with the intent of arousing the sexual desires of either the perpetrator or the child." But the term "*touching*" can't be taken too literally. The defendant need not do the touching himself. Section 288(a) requires only that the defendant either touch the body of a child or willfully cause a child to touch her own body, the defendant's body, or the body of someone else. Any of these acts, when committed for a sexually exploitative purpose, is presumptively harmful and prohibited by section 288(a). The purpose of section 288 is to protect children from being sexually exploited. This cannot be accomplished unless the touching requirement is given broad application. Defendant argued, however, that there was no evidence that he was even present when the girls changed into the lingerie and bathing suits (i.e., touching themselves). Therefore, there couldn't have been the necessary concurrence of act (the girls touching themselves) and intent (defendant's lewd intent). The issue here, therefore, is whether the defendant need even be present at the time of the touching in order for there to be a crime. The Court determined that he need not be present. Whether present or not, defendant, with the requisite lewd intent, directed C.H and N.E. to change into provocative clothing. This act of changing clothing was sexually motivated by defendant's lascivious desire to observe and take pictures of the girls in that clothing while they played the money game. "Even though defendant may not have experienced sexual arousal at the moment the victims touched themselves while putting on the provocative clothing, defendant's intent when instigating or causing the touchings was lewd and lascivious within the meaning of section 288, since the touchings were sexually motivated and committed for the purpose of defendant's sexual gratification." This is sufficient to meet the requirements of section § 288(a). The trial court, therefore, was correct in refusing to dismiss counts 3 and 4 and defendant was properly convicted of these offenses.

Note: This issue, as the Court noted, is one of "first impression," i.e., must the defendant necessarily be present when the prohibited "touchings" occur. The decision here is in line with the intent of the Legislature, as interpreted by the courts, to give the section broad application. Good case, and one worth remembering, particularly for child abuse detectives investigating these types of cases.

***School Searches with Police Involvement*:**

In re K.S. **(Mar. 25, 2010) 183 Cal.App.4th 72**

Rule: The search of a student by school administrators requires only that there be a reasonable suspicion of criminal activity or a violation of school rules. The extent of law enforcement's involvement must be considered when determining whether law enforcement's stricter probable cause standards apply.

Facts: Detective Harrison of the Livermore Police Department Narcotics Division received information from a tested, reliable informant that defendant, a Livermore High School student, was in possession of Ecstasy pills hidden in a slit in his pants. Harrison passed this information on to Officer Cabral, a school resource officer, who in turn

contacted Livermore High School Vice-Principal Anne Harter Dolid. Dolid was not asked to search defendant or to otherwise follow up on the information. But Dolid, knowing that controlled substances on the school campus compromised the safety of the students, and because the information came from a police officer, decided on her own to investigate the allegation. After determining that defendant was at school that day and that he was scheduled for a physical education class, she decided to search his gym locker while he was dressed out for P.E. She asked Detective Harrison and another officer to accompany her because she didn't feel safe possessing the Ecstasy pills herself if she found any. Defendant's locker was opened and Dolid searched it. She found the pills in the slit in his pants just as the informant had predicted. Defendant was detained. With a petition filed in Juvenile Court, defendant filed a motion to suppress. After his motion was denied he admitted the offense and was placed on home probation. He appealed.

Held: The First District Court of Appeal (Div. 5) affirmed. The United States Supreme Court previously held in *New Jersey v. T.L.O.* (1985) 469 U.S. 325, that a warrantless search of a student by school officials was lawful so long as it was "*reasonable*," and that the usual "*probable cause*" standards did not apply. Similarly, the California Supreme Court in *In re William G.* (1985) 40 Cal.3rd 550, held that searches by school officials are lawful so long as the official has "a reasonable suspicion that the student or students to be searched have engaged, or are engaging, in a proscribed activity (that is, a violation of a school rule or regulation, or a criminal statute)." These courts reached this compromise by balancing the student's right to privacy with the school's need to closely supervise school children in order to preserve order and a proper educational environment. Defendant argued on appeal, however, that the *T.L.O.* and *William G.* relaxed search and seizure standards do not apply to his case because Vice-Principal Dolid was "carrying out a police initiated investigation in cooperation with the police for law enforcement purposes." Neither *T.L.O* nor *William G.* addressed this issue; i.e., what the search and seizure standards might be when law enforcement is involved. After reviewing a pile of case law discussing the state's obligations to provide a safe and secure learning environment for students and teachers alike, the Court noted that prior case law has upheld the right of a law enforcement-employed "school resource officer" to use the school officials' relaxed search and seizure standards while working on the campus. (*In re William V.* (2003) 111 Cal.App.4th 1464.) Law enforcement's participation in this case was even more limited than in *William V.* Here, law enforcement was really no more than the conduit by which the information was passed on to the school's vice-principal. The fact that the information came from law enforcement does not convert it into a police search. The vice-principal herself made the decision to investigate defendant's alleged illegal conduct. In fact, on her own, she went beyond the information provided by the police and determined that defendant was in P.E. with his street clothing in a locker, avoiding the issue of having to search his person or making him disrobe. "(T)he police role in the search of appellant was at all times clearly subordinate to the role of the vice-principal, who made the decision to search and conducted the search." Further, law enforcement's presence during the search was not enough to take it beyond a *T.L.O.* situation. Detective Harrison's presence was for the purpose of insuring the safety and security of the school; not to take responsibility for the search. That is not to say that police involvement is irrelevant. "Certainly, the extent of the police role in a student

search at a school will govern whether the *T.L.O.* standard applies. In making this determination, the totality of the circumstances must be examined." In this case, law enforcement's involvement was minimal, and clearly insufficient to make it a police search. The evidence was therefore lawfully seized.

Note: I'm often asked this question; i.e., what search standard applies when law enforcement works with school officials in doing a school search. Now we know. It depends on the circumstances, including the degree of involvement by law enforcement. So this decision tells you exactly how to handle this problem when it comes up. There was a second, unpublished segment to this decision, by the way, where the court held that the information from the informant was sufficient to establish the necessary reasonable suspicion to allow the vice-principal to conduct the search she did. In fact, information from tested reliable informants is typically enough to establish full probable cause.

Firearms and "Place of Residence:"

Garber v. Superior Court **(May 13, 2010) 184 Cal.App.4th 724**

Rule: A person's trailer, even when equipped for living purposes, is not a "*place of residence*" when it's mobile and being used as a vehicle, and therefore does not qualify for the Penal Code exceptions to the illegal carrying of a concealed and loaded firearm.

Facts: Off-duty firefighter Cliff Sorensen went to Hjelte park in Los Angeles to participate in a softball game with friends. Hjelte park is equipped for sports and other daily activities, but not for overnight camping. Being early, and seeing no one else around, Sorensen decided to screw around a little. Driving his Jeep Wrangler into a dirt parking area, he proceeded to spin it in circles, doing "donuts" in the dirt and kicking up a virtual dust storm. Sorensen did this for about 30 to 45 seconds before parking. Parked some 150 to 200 feet away at the other end of the dirt lot was a van with an attached travel trailer. As Sorensen was waiting for others to show up for the game, he noticed defendant walking towards him from the trailer. Realizing that he must have "dusted" the trailer, Sorensen held his hand up apologetically and said he was sorry. Defendant didn't respond but merely continued to walk towards Sorensen. Sorensen was attempting to apologize again when he noticed defendant was carrying a semiautomatic pistol, holding it down to his side. As defendant continued to walk towards him "in an angry manner," getting to within 20 feet, Sorensen began to feel threatened. Believing that discretion was the better part of valour, he decided to leave, and drove away. When Sorensen returned a short time later as his friends were preparing to play ball, defendant's van and trailer were still there. As Sorensen got out of his Jeep, he was approached again by defendant and another person, Joseph Chervansky. Chervansky started yelling at Sorensen about kicking up dust. Sorensen again attempted to apologize but also told Chervansky that "your buddy pulled a gun." By now, the police were called. After Chervansky and defendant walked back to their respective vehicles, two officers of the Los Angeles General Services Police Department (which patrols municipal sites like parks and libraries) arrived. Sorensen reported to them what had happened. The officers went to defendant's trailer and ordered him to come out, which he did. Defendant

admitted to having a gun in his trailer. A loaded .380 caliber semiautomatic pistol was recovered from a kitchen drawer in the trailer. Per the officers, defendant's trailer was hitched up to his van. He was charged with brandishing a firearm (P.C. § 417(a)(2)), carrying a concealed firearm in a vehicle (P.C. § 12025(a)(1)), and carrying a loaded firearm in a public place (P.C. § 12031(a)). At trial, defendant testified that the trailer was his home. "It has a range, refrigerator. It has . . . furniture. It has a shower, a toilet. It has . . . closets and drawers, a dinette. And it's where I live." (There was also testimony to the effect that Sorensen had driven dangerously when he did his donuts, that defendant never left the doorway of his trailer with the gun, and that Sorensen was also somewhat out of control, at least verbally. However, the truth or falsity of these accusations are irrelevant to the holdings below.) Defendant was acquitted of the brandishing charge but convicted of the other two. He appealed.

Held: The Second District Court of Appeal (Div. 3) affirmed. On appeal, defendant's primary contention was that the trailer was his home and that pursuant to P.C. § 12026(a), he could lawfully possess a firearm there. Pursuant to P.C. § 12025(a), a person is guilty of carrying a concealed firearm when he or she … [¶] (1) [*c*]*arries concealed within any vehicle* which is under his or her control or direction any pistol, revolver, or other firearm capable of being concealed upon the person." P.C. § 12026(a) provides that section 12025 does not apply to a citizen or legal resident over the age of 18 who carries the concealable firearm, openly or concealed, anywhere within his "*place of residence*." Similarly, Section 12031(a)(1) provides that "a person is guilty of carrying a loaded firearm when he or she carries a loaded firearm on his or her person or *in a vehicle* while in any public place or on any public street in an incorporated city . . . ." Section 12031(*l*) provides: "Nothing in this section shall prevent any person from having a loaded weapon, . . . at his or her *place of residence*, . . ." Defendant did not dispute that he had a concealable firearm concealed in a drawer in his trailer. He also did not dispute the fact that his firearm was loaded. His argument was that his trailer was his "*place of residence*," and not, under these circumstances, a "*vehicle*." The trial court disagreed with this argument and instructed the jury on the rules as related to vehicles. As to both counts, the jury was given the following definition of a "*vehicle*:" "A vehicle is a device by which any person or property may be propelled, moved, or drawn upon a highway, excepting a device moved exclusively by human power or used exclusively upon stationary rails or tracks. [¶] A trailer qualifies as a 'vehicle.'" The court refused to instruct the jury on the exceptions as described in sections 12026(a) and 12031(*l*) for a place of residence. Lastly, the trial court instructed the jury as follows: "A person who carries a loaded and/or concealed firearm in a vehicle on a public street or on public property is subject to prosecution under Penal Code sections 12025 and 12031 regardless of whether the vehicle has the capacity to function or does function as a 'home' or 'place of residence' when legally upon private property." Per the Appellate Court, the trial court was correct in these conclusions. In support of his argument, defendant cited *People v. Marotta* (1981) 128 Cal.App.3rd Supp 1, where the Appellate Department of the Superior Court, in a two-to-one split decision, ruled that a cab driver's taxi was his "*place of business*," allowing for the carrying of a concealable, loaded firearm therein under the exceptions provided for in P.C. §§ 12026(a) and 12031(h). But what might be a "*place of business*" does not dictate what qualifies as a "*place of residence*." In *People v. Foley*

(1983) 149 Cal.App.3rd Supp. 33, for instance, defendant's van did not qualify as his place of residence in that although he was sleeping in it, he was also using it as his means of transportation. Despite sleeping in his van, "(h)e was in fact using it as a vehicle at the time." Lastly, in *People v. Wooten* (1985) 168 Cal.App.3rd 168, the defendant claimed that his vehicle was his place of business because as a bounty hunter who traveled a lot, his vehicle was his office. The Court disagreed, finding that his vehicle was merely his means by which he got to where he was performing his business; i.e., arresting bail jumpers. It was not as with a taxicab, which is in fact a cab driver's business. In the instant case, defendant argued that he lived in his trailer full time although he would hook it up to his van and take it places such as the park. What is relevant here is that "(a)t the time of his encounter with Sorensen, he had been using his mobilehome as a means of transportation." When arrested, therefore, the trailer was not his "*place of residence*."

Note: It has always been a rule that when a trailer or a motorhome is relatively, or at least temporarily, immobile, hooked up, for instance, to electricity, water, and maybe a waste dump, it is a residence. Unhook it and take it out on the road and it becomes a vehicle. This case falls in line with that theory. To hold otherwise would allow us all to start packing pistols in our RVs and carrying them wherever we go (an idea some may say is a good one). But unless and until the Legislature agrees that it's a good idea to make guns that mobile, there's going to be a limit. This case helps us find that limit.

***Residential Entries and Exigent Circumstances*:**
***Plain Sight Observations in a Residence*:**
***Vehicle Searches Without a Warrant*:**

People v. Hockstraser **(Oct. 27, 2009) 178 Cal.App.4th 883**

Rule: (1) Warrantless entry into a residence to check the welfare of a missing person is justified whenever a police officer would reasonably believe, under the totality of the circumstances, the she may be inside either injured or in need of assistance. (2) Plain sight observations made while lawfully inside the residence can be used to establish probable cause. (3) With probable cause, the warrantless search of a vehicle parked in a carport at the apartment building is lawful.

Facts: Christine Gonzales called the Santa Clara Police Department from Sacramento, asking them to check on the welfare of her mother. Gonzales's grandmother had called her earlier to tell her that her mother (the grandmother's daughter) had been involved in a domestic violence incident the night before with her live-in boyfriend, defendant, and that he struck her during a physical fight. Since then, the grandmother had been unsuccessful in her attempts to get a hold of her. Defendant was apparently alone in their apartment with their two-year old son, Daniel. Gonzales had no idea where her mother could have gone and knew only that no one had heard from her. Gonzales asked the police dispatcher if they would go check on her and her son. Santa Clara Officer Liepelt arrived at the apartment at about 10:05 p.m. At that point, he knew only that they were to check on the welfare of a child and that the reporting party could not reach the child's mother. The child was supposed to be at that address with his father. It was also known that the

mother had been involved in a domestic violence incident with the father of the child the evening before. The officers found the apartment completely dark. The door was locked and the blinds were shut. One window off the front patio, however, was partially open. There was no sound coming from the apartment and no one responded to repeated attempts to get their attention by knocking on the door and windows. Officer Liepelt called Christine Gonzales from his cell phone. She explained to him in greater detail about her efforts to get a hold of her mother all day via the apartment phone and her cell phone. She said her mother, Dolores Gonzales, always had her cell phone with her "so it was very suspicious that she could not reach her mom either at the apartment or on her cell phone." She said defendant and Dolores shared one car and that she had no other means of transportation. Gonzales said that she was concerned about her mother and two-year old son, Daniel. She was about two hours away with a key but wanted the officers to continue their welfare check to see if anyone was in the apartment. This information heightened Officer Liepelt's concerns, particularly in light of the recent domestic violence incident. He also knew that domestic violence in Santa Clara often resulted in homicides. He was concerned that someone might be in the apartment "injured or hurt" and unable to respond. He knew he couldn't leave the scene without checking inside. He called his supervisor, Sgt. Brauer, who responded to the scene. After being informed of what was going on, Sgt.Brauer approved Officer Liepelt's plan to enter the apartment through the partially open window. It was never an option to wait until Gonzales arrived. Officer Liepelt made entry through the window and opened the door for other officers to come in. They verbally identified themselves as police officers, but still got no response. The completely-dark apartment was then checked room by room until getting to the last bedroom where they found defendant sitting on the bed, in the dark, bed sheets on the floor, with earphones in his ears. The room had a cold breeze blowing through from an open window. The officers told defendant why they were there and asked about Dolores. Defendant said simply that she was not home. He said that they had had an argument the night before during which they'd pushed each other. According to defendant, Dolores left early that morning and he hadn't been able to reach her since. Defendant took Daniel to his mother's in San Francisco and left him there. He left his car there and took his mother's Volkswagen Jetta. According to Officer Liepelt, defendant's demeanor was withdrawn, emotionless, and unconcerned about Dolores's safety or welfare. Sgt. Brauer described defendant's affect as "spacey." Another officer, Earl Amos, arrived at the scene and was told what was going on. He started looking around to see what might be in plain view. He noted the smell of fresh bleach or cleanser and paint, which was at odds with the unkempt condition of the apartment. He also noticed three or four Sawzall (a handheld reciprocal saw) blades sitting on the arm of the couch. One was used, as indicated by the fact that the painted area in the middle of the blade was all worn off. Sgt. Brauer noticed more blades on the kitchen table. The bathroom was clean and smelled very strongly of bleach. In the kitchen, Officer Amos located a small fanny pack in plain view on a kitchen table. The zipper along the top was partially open and Officer Amos could see a wallet of the type commonly used by females inside it. Shining his flashlight inside the fanny pack, Officer Amos could also see a female's driver's license photo. He removed the wallet without unzipping the pack and determined that the driver's license belonged to Dolores. The fanny pack also contained a cell phone, keys, ATM and credit cards, and some other personal items.

When asked why Dolores would have left without her ID or other belongings, defendant, with a "blank stare," didn't have an answer. Asked for permission to search his Jetta, defendant declined. The officers decided to search it anyway. The Jetta was parked in a carport for defendant's apartment. Officer Amos looked into the Jetta from the outside and saw a tarp on the floor and several 18x20x30 inch Rubbermaid containers stacked on the rear seat and another in the front. Thinking of another case the officer had been involved in a year earlier where a dead woman had been found in a Tupperware bin in a car, and considering all the suspicious circumstances of this case, the officer decided (at Sgt. Brauer's instruction) to enter the car and check the bins. In the first bin was a garbage bag. Looking into the bag, Officer Amos found "a mound of human flesh." Sgt. Brauer verified what appeared to be the human flesh of an adult. The search was ended and defendant was arrested. The body, of course, was Delores. Two-year-old Daniel was found to be safe in San Francisco with defendant's mother. Charged with first degree murder, defendant filed a motion to suppress all the evidence found in his apartment and the Jetta. The trial court denied the motion and defendant was convicted following a jury trial. Defendant appealed.

Held: The Sixth District Court of Appeal (Monterey County) affirmed defendant's conviction. At issue on appeal was (1) the warrantless entry into defendant's apartment, (2) the length of time the officers remained in the apartment, and (3) the warrantless search of the Jetta. (1) *Entry into the Apartment*: The trial court had held that the "*exigent circumstances*" exception to the search warrant requirement *did not* justify the warrantless entry into defendant's apartment. However, while this case was pending, the California Supreme Court decided *People v. Rogers* (2009) 46 Cal.4th 1146, where the warrantless search of storage rooms at defendant's apartment complex was upheld under very similar circumstances. The exigent circumstance in this case was the urgent need to locate Dolores and Daniel and verify their well-being. "Warrants are generally required to search a person's home or his person unless 'the exigencies of the situation' make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment." The need to protect or preserve life is one of the exigencies that provide an exception to the warrant requirement of the Fourth Amendment. "(L)aw enforcement officers may enter a home without a warrant to render emergency assistance to an injured occupant or to protect an occupant from imminent injury." The test is an objective one. So long as the entry is reasonable under the Fourth Amendment, an officer's subjective reasoning is irrelevant. Reasonableness is determined by looking at the totality of the circumstances. In doing so, it is not necessary that there be any obvious indications of foul play. The key in this case, as analyzed by the Appellate Court, was the fact of a reliable missing person report made under circumstances known to the investigating officers to strongly suggest that the missing person was injured or worse, this information being sufficient, under the totality of the circumstances (as detailed above), to cause a reasonably cautious person to believe that the action taken was appropriate. The entry to check on the welfare of Delores and Daniel was lawful. (2) *Length of Time Spent Investigating in the Apartment*: This argument by the defendant presupposes that the officers' entry into his apartment was justified under the officers' "*community caretaking function*," as held by the trial court. Indeed, "[a]ny intention of engaging in crime-solving activities will defeat the

community caretaking exception even in cases of mixed motives." However, the Appellate Court found the entry was justified under the "*exigency exception*" to the search warrant requirement instead, which is not subject to any such limitations. "On the contrary, '[t]he need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency.' And the police may seize any evidence that is in plain view during the course of their legitimate emergency activities." However, defendant still contended that once the officers determined that Delores and Daniel were not in the apartment, they were obligated to cease their investigation and leave. The Court disagreed. While lawfully there, the officers made certain plain sight observations related to their continuing concerns over the welfare of the victim and her son. The place smelled like cleaners; i.e., "a 'chloriney' smell reminiscent of a crime scene cleanup." The open window in defendant's bedroom, airing it out. The Sawzall with it's used blade. The victim's fanny pack. And defendant's strange demeanor. Based upon these and other plain sight observations as described above, the Court found that "it would have constituted a dereliction of duty for [the police] to turn around and abandon [their] investigation of Dolores's and Daniel's whereabouts and welfare." (3) *The Warrantless Search of the Jetta*: The Court found that the evidence discovered by the police in plain view following their entry into the apartment supplied ample probable cause to search the car for evidence of a crime. Per the U.S. Supreme Court: "If there is probable cause to believe a vehicle contains evidence of criminal activity, *United States v. Ross*, 456 U.S. 798, 820–821 . . . (1982), authorizes a search of any area of the vehicle in which the evidence might be found." Defendant, however, argued that because the Jetta was parked at or near defendant's apartment in a carport, the officers were obligated to obtain a search warrant first. According to defendant's reasoning, when a vehicle is not being used on the highways, but rather found stationary at a place regularly used for residential purposes, like an apartment building's carport, the automobile exception does not come into play. The Court again disagreed. In so doing it discussed what is known as the "twin justifications" for not requiring search warrants to search vehicles; i.e., "the pervasive schemes of regulation, which necessarily lead to reduced expectations of privacy, and the exigencies attendant to ready mobility." The Court found these justifications to apply as well when the vehicle is parked in one's carport attached to his apartment. The automobile exception to the warrant requirement was fully applicable to the car in which Dolores's dismembered body was found. The evidence found in defendant's apartment as well as in the Jetta, therefore, was properly admitted into evidence against him.

Note: What a great case! And what a great example of what a police officer can accomplish in establishing justification for a finding of exigent circumstances and probable cause by merely taking his time, marshalling all the information he can under the circumstances, involving a supervisor's approval, and then doing what he knows in his (or her) gut is the right thing to do. In these circumstances, a reasonable officer just wouldn't feel comfortable walking away from the scene without checking on the victim's welfare. The Courts are more and more recognizing that an officer's gut feeling is a better, more reliable litmus test than some cold, artificial, unrealistic rules. Good job by these officers.