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THIS EDITION'S WORDS OF WISDOM:

"*Only two things are infinite, the universe and human stupidity, and I'm not sure about the former*." (Albert Einstein (1879-1955))

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***Case Law*:**

CASE LAW:

***Sexual Battery, per P.C. § 243.4*:**

In re Shannon T. **(Nov. 1, 2006) 144 Cal.App.4th 618**

Rule: "*Sexual abuse*" for purposes sexual battery includes an intent to insult, humiliate, intimidate or physically harm a person sexually by touching an intimate body part.

Facts: Shannon T, a 14-year-old minor and would-be pimp, walked up to a 16-year-old female at school and commanded that she "*Get off the phone. You're my 'ho.'*" The

victim, who had been talking on her cell phone, told defendant, "*Whatever*," and started to walk away. Defendant pursued her, telling her: "*Don't talk to me like that*." He then slapped her in the face, grabbed her arm, and pinched her breast hard enough to make her cry and to cause a one-by-one-half-inch purple bruise above her nipple. Charged by petition in Juvenile Court with sexual battery and battery on school property, the magistrate found the allegations to be true. Defendant appealed the sexual battery true finding, arguing that because he and the victim had engaged in "playful hitting" in the past, there was insufficient evidence that he touched her on this occasion with the necessary "specific purpose of sexual arousal, sexual gratification, or sexual abuse."

Held: The Third District Court of Appeal (Sacramento) affirmed. Sexual battery, per P.C. § 243.4, includes the touching of an intimate part of another person, against the will of that person, for the purpose of (among other things) "*sexual abuse*." A woman's breast is one of the listed intimate body parts (subd. (g)(1)). "*Touching*" includes any physical contact, even through the clothing of the victim (subd. (e)(2)). The only issue is what is meant by "*sexual abuse*." Without a statutory definition, the Court turned to the "fundamental rules of statutory interpretation" in defining "*sexual abuse*" as including those situations where a defendant intends to insult, humiliate, intimidate or physically harm a person sexually by touching an intimate body part, even though the touching does not result in any physical injury. The circumstances of this case support the magistrate's finding that when defendant touched the victim, he was doing more than just participating in some innocent horseplay. "(T)he pinching of such a sensitive area of a female's body, her breast, was calculated to cause her pain in order to insult and humiliate her for her refusal to submit to what the minor perceived to be his dominance over her, and to intimidate her into complying with his demands." This constitutes "*sexual abuse*" for purposes of the sexual battery statute.

Note: This offense, by the way, is only a misdemeanor, per subdivision (e)(1). To be a felony, it has to involve actually touching the victim's skin, although it can be through the defendant's clothing (e.g., gloves) (subd. (f)). A felony sexual battery must also meet one or more of the requirements contained in subdivisions (a) through (d): Subd. (a): While the victim is unlawfully restrained; *or* (b) is institutionalized for medical treatment and seriously disabled or medically incapacitated; *or* (c) when the victim is unconscious of the nature of the act because the perpetrator fraudulently represented that the touching served a professional purpose; *or* (d) by causing another person while unlawfully restrained, or institutionalized for medical treatment and seriously disabled or medically incapacitated, to masturbate or touch an intimate part of either of a third person who is also so-institutionalized. But whether a felony or a misdemeanor, it is good to have a judicial definition of the term, "*sexual abuse*."

***Kidnapping of a Child*:**

People v. Dalerio **(Nov. 7, 2006) 144 Cal.App.4th 775**

Rule: "*Force*," for purposes of kidnapping of an unresisting infant or child, is simply that amount of physical force required to take the child a substantial distance for an

illegal purpose or with an illegal intent. Obtaining the victim's cooperation by deception, verbal directions, and constant physical presence, constitutes a "*taking*," for purposes of kidnapping.

Facts: The nine-year-old female victim was looking for her playmates who lived next door. She asked defendant, who was standing in front of their house, where they might be. Defendant told her that they were in a nearby park looking at a deer. When the victim got to the park's gated entrance, defendant was there on his bicycle. He rode along with her as they skirted a softball field and up onto a fire road. He continued to tell her that her friends were further up with their mother, observing the deer. After passing over a bridge, defendant told the victim to turn into the woods. Abandoning his bike, he led her up a trail for a distance later measured to be about 5 or 10 minutes into the woods, or 15 to 20 minutes from the park's entrance. After pretending to look for the victim's friends, he grabbed her by the back of her neck, held his other hand over her mouth, and told her not to scream or he'd "break (her) neck." He laid her on the ground and choked her into unconsciousness. When she woke up sometime later, she was missing a shoe and had a wet sock in her hand. As she walked back towards her house, Craig L. saw her walking with her head down, leaves in her hair, a dirty shirt, and one shoe missing. She had a gash over one eye, blood on her face, was bruised, and extremely confused. Craig took her to a nearby fire station where the police were called. After the victim identified defendant in a photographic lineup, he was arrested. He admitted to choking the victim, saying that he stuck her sock into her mouth to prevent her from screaming. Believing that he'd killed her, he covered her with leaves and branches. Defendant was prosecuted and convicted of premeditated attempted murder and kidnapping. He appealed.

Held: The First District Court of Appeal (Div. 5) affirmed. Defendant argued on appeal that he could not be convicted of kidnapping in that the victim had gone with him voluntarily and that a kidnapping requires that the victim be moved a substantial distance "forcibly, or by any other means of instilling fear, ..." (P.C. § 207(a)) The Court noted, however, that the California Supreme Court has ruled that "the amount of force required to kidnap an unresisting infant or child is simply the amount of physical force required to take and carry the child away a substantial distance for an illegal purpose or with an illegal intent." (*In re Michele D.* (2002) 29 Cal.4th 600.) This rule, as it applies to infants and children, has since been enacted into law by the Legislature with the addition of subdivision (e) of P.C. § 207. And while it can be argued that this rule applies only to a "*young*" child (as opposed to any minor), the victim here, at age nine, "certainly qualifies as a 'young child.'" And although both *Michele D.* and P.C. § 207(e) still require a "*taking*," this element is met when a suspect uses "deception to obtain a child's consent to walk with him and then, through verbal directions and his *constant physical presence*, takes the child a substantial distance for an illegal purpose." (Italics in original.) Defendant, therefore, was properly convicted of kidnapping.

Note: The Court specifically leaves open the question whether 207(e) was intended to include *all* minors. The Supreme Court in *In re Michael D.* talked about the need to protect an "*infant or small child*," although their ultimate conclusion was that any "*infant or child*" (as P.C. § 207(e) also reads) can be the victim of such a kidnapping with no

other age limitation specified. So we still don't know how "*youn*g" a child must be for purposes of this statute. The answer to that will have to await the next case on this issue.

***Search Warrants and Good Faith*:**

United States v. Luong **(9th Cir. Dec. 12, 2007) 470 F.3rd 898**

Rule: "*Good Faith*" does not save a deficient search warrant when the affidavit is so lacking in indicia of probable cause that official belief in its existence is objectively unreasonable.

Facts: The Drug Enforcement Administration's (DEA) Hong Kong office notified their Los Angeles office that "a suspected suspect known as a chemist" was arriving at the Los Angeles International Airport (LAX) to "set . . . up and manufactur(e) methamphetamine." This information was used by an officer from the Monterey Park Police Department working with the DEA to put together a search warrant for defendant Thai Tung Luong's residence. Also in the affidavit was a description of a Taiwanese male by the name of Chun Ying Jao arriving at LAX from Hong Kong on August 1, 2003, that there was a multiagency investigation of Jao underway, that Luong met Jao in Jao's hotel room on August 2, and that minutes later the two of them drove to a restaurant where they ate lunch. As also noted in the affidavit, they then drove to what was later determined to be Luong's residence. They entered the residence and walked back and forth several times between the front door and the back yard. Several hours later, they left the residence and drove to a Home Depot store where they entered the store with Jao carrying a red high-pressure hose. They purchased a new adapter for the hose after asking an employee how to fit it onto the hose. They then drove back to Luong's residence. The officer concluded a description of these events with her statement that she recognized the hose as a common tool used with a vacuum pump in the production of methamphetamine. After another seven hours of uneventful surveillance of Luong's house, the agents prepared and submitted the affidavit to a state magistrate who issued a warrant for evidence of methamphetamine manufacturing. Execution of the warrant resulted in recovery of evidence of a methamphetamine laboratory and documents related to a storage unit. A second warrant for the storage unit resulted in the seizure of 68 pounds a methamphetamine. Upon the filing of charges in state court, the Superior Court judge granted defendant's motion to suppress, finding that the warrant affidavit lacked probable cause and that "*good faith*" didn't save it; a decision upheld by an appellate court. Charges were thereafter filed in federal court where a District Court Judge reached the same conclusion. The Government appealed.

Held: The Ninth Circuit Court of Appeal, in a split 2-to-1 decision, affirmed. The Government conceded that the warrant affidavit failed to establish probable cause. Its argument, however, was that the "*good faith*" exception to an otherwise invalid warrant applied in that, having been approved by an independent, neutral magistrate, the officers reasonably, and in good faith, relied upon the validity of the warrant. (*United States v. Leon* (1984) 468 U.S. 897.) There are a number of circumstances, however, when the good faith rule *does not* apply. One of them is when "the affidavit is so lacking in indicia

of probable cause that official belief in its existence is objectively unreasonable." In finding this rule applicable to this case, the Court noted that "the officer's affidavit must establish at least a colorable argument for probable cause." "The warrant here fails to meet this threshold showing." For instance, there was nothing in the warrant affidavit identifying Jao as the chemist who was alleged to be coming in from Hong Kong. Secondly, the basis for DEA's conclusions that a "chemist" was coming to Los Angeles for the purpose of setting up a meth lab was never described in the affidavit. Lastly, nothing was observed in Jao's and/or defendant's actions that was indicative enough of setting up a drug lab to establish even a "*fair probability*" that they were engaged in that kind of activity. Buying an adaptor for a hose recognized as a common tool used with a vacuum pump during the production of methamphetamine is, by itself, not enough. The Government argued that the affiant's belief that Jao and defendant were in the process of fixing the plumbing to a meth lab which, if fired up, constituted a serious danger to the neighborhood, added an exigency which allows for a lower standard of proof. While noting that such an exigency might in fact justify reliance upon an otherwise deficient warrant, the Court noted here that the officers did not treat the circumstances as an exigency. For example, they waited seven hours while surveilling defendant and Jao after their visit to the Home Depot before applying to get a warrant, and another three hours before serving it. Also, the fact that the affiant had difficulty typing the warrant due to a hand injury, and that they had problems with the printer, didn't add to the exigency under the circumstances. The Government's alternate argument was that the affiant relayed certain information to the magistrate over the telephone that was neither sworn to nor referred to in the affidavit, and which, if taken into account, supplied the necessary probable cause. (This information had to do with a wire tap conducted by the DEA in Hong Kong which DEA did not yet want to divulge, and the fact that the agents had observed some "counter-surveillance driving" during their investigation.) Because this information was not contained "within the four corners of a written affidavit given under oath," it cannot be considered when attempting to establish probable cause.

Note: I have been accused by some people in my office of being a *soft touch* for finding probable cause in the warrants I review and/or write for San Diego County peace officers. But even I would have sent this one back telling the officer that she wasn't even close. An unsubstantiated piece of information in the form of what we sometimes call a "*conclusionary statement*" (i.e., without describing the factual basis for reaching such a conclusion) from a federal agency, even though supplemented by personal observations during a surveillance, but where those observations are of perfectly innocent activity, fails to establish "*probable cause*." But it is interesting to note the Court's conclusion that exigent circumstances may be a factor to be considered when trying to establish a "*good faith*" argument to an otherwise deficient warrant. I didn't know that. Also, the dissent makes the argument, citing federal authority from other circuits, that facts known to the affiant and the magistrate, even though not described in the affidavit, can be used to help establish probable cause. (See *United States v. Frazier* (6th Cir. 2005) 423 F.3rd 526, 535-536; *United States v. Legg* (4th Cir. 1994) 18 F.3rd 240, 243.244) But the California rule is to the contrary. (P.C. § 1526; *Charney v. Superior Court* (1972) 27 Cal.App.3rd 888.) So I wouldn't try making that argument in state court.

***Impounding Vehicles; Constitutionality*:**

People v. Williams **(Dec. 13, 2006) 145 Cal.App.4th 756**

Rule: Impounding vehicles, even pursuant to statute, may be a Fourth Amendment violation unless necessary to prevent it from being a hazard to other drivers, or being a target for vandalism or theft.

Facts: Defendant was observed by a Santa Monica police officer driving without his seatbelt on. Defendant pulled his car to the curb in front of his own house and legally parked it as the officer stopped him. Defendant had a valid driver's license but no proof of registration or insurance, the car being a rental. A computer check revealed that defendant had an outstanding arrest warrant. He was arrested and his car was impounded pursuant to V.C. § 22651(h)(1). An impound inventory search of defendant's car resulted in recovery of a loaded gun inside a bag on the back seat. Charged with a violation of P.C. § 12031(a) (possession of a loaded firearm), defendant's motion to suppress the gun was denied. He was tried, convicted, and placed on probation.

Held: The Second District Court of Appeal (Div. 8) reversed. The gun was illegally seized during the inventory search because the car was illegally impounded. V.C. § 22651(h)(1) allows a police officer to impound a vehicle when "an officer arrests any person driving or in control of (that) vehicle . . . ." However, statutory authorization to impound a vehicle does not "determine the constitutional reasonableness of the seizure" of that vehicle. In other words, the Fourth Amendment takes precedence over a statute. Under a police officer's "*community caretaking functions*," a vehicle may be constitutionally impounded only under limit circumstances. (*South Dakota v. Opperman* (1976) 428 U.S. 364.) As recently noted by the Ninth Circuit Court of Appeal, whether "impoundment is warranted under this community caretaking doctrine (and the Fourth Amendment) depends on the location of the vehicle and the police officers' duty to prevent it from creating a hazard to other drivers or being a target for vandalism or theft." (*Miranda v. City of Cornelius* (9th Cir. 2005) 429 F.3rd 858.) In this case, defendant's vehicle was legally parked in front of his own house. There was no evidence that it was parked where it might create a hazard or be a target for vandalism or theft. Defendant had a valid driver's license and was in lawful possession of the vehicle. "No community caretaking function was served by impounding (defendant's) car." Having been impounded in violation of the Fourth Amendment, therefore, the resulting impound search was unlawful. The gun found during the search should have been suppressed.

Note: *Miranda v. City of Cornelius*, cited by this Court here, came down over a year ago; November 17, 2005. (See *Legal Update*, Vol. 10, No. 18, pg. 9.) At that time, we were all put on notice that impounding a vehicle pursuant to a state statute might, absent some valid need to do so, be a Fourth Amendment violation as an unreasonable "seizure" of property. The Fourth Amendment takes precedence over a statute. *City of Cornelius* seems to have been pretty much ignored by many police agencies, perhaps because, after all, it was *only* a Ninth Circuit Court of Appeal decision, a civil suit, and one from an incident arising out of another state (i.e., Oregon) at that. Well, now we have a California

case, in a criminal prosecution context, saying the same thing, with a conviction being reversed as a result. So it is my strong suggestion that if your agency has not already revised its vehicle impound policies accordingly, that you do so now. Note also, by the way, that the gun *could have* been found lawfully as a search incident to arrest. But the officer lost his right to conduct such a search once he waited until after the car was impounded; i.e., it was no longer "*contemporaneous in time and place*" to the arrest.

***Patdown for Identification*:**

People v. Garcia **(Dec. 14, 2006) 145 Cal.App.4th 782**

Rule: A patdown for identification is illegal.

Facts: A Santa Paula police officer lawfully stopped defendant riding a bicycle at night without an operative headlamp; a violation of V.C. § 21201(d). When the officer asked defendant for some identification, defendant, who spoke limited English, said that he didn't have any. Not believing him, the officer attempted to pat defendant down, looking for some form of identification. Defendant mildly resisted, pulling away, causing the officer to use "minimal force by grabbing a hold of his arm and plac(ing) him in what's commonly referred to (as) a control hold just to gain control of him." Defendant was then handcuffed for safety purposes, and patted down. Feeling in his pants pocket "a crystal grain-type substance" that the officer recognized to be methamphetamine, he reached into defendant's pocket and retrieved the illicit substance and arrested him. Charged in state court with possession of methamphetamine, defendant's motion to suppress was denied. He was convicted and appealed.

Held: The Second District Court of Appeal (Div. 6) reversed, finding the patdown for identification to be illegal. The Supreme Court in *Terry v. Ohio* (1968) 392 U.S. 1, allowed a police officer to pat a person down for weapons so long as the officer is able to articulate a reasonable suspicion for believing that the person may be armed and dangerous. Such a patdown, being allowed on a lower standard of proof than most searches, was justified by the need for a police officer to be able to protect himself from suspects bent on hurting him. However, "(t)his rule cannot be morphed into a new rule to justify a search for ordinary evidence, here evidence of identification." The People cited a couple of cases (i.e., *People v. Long* (1987) 189 Cal.App.3rd 77; and *People v. Loudermilk* (1987) 195 Cal.App.3rd 996.) where officers were allowed to search a defendant's wallet for identification on less than probable cause. However, both of these cases involved situations where the respective suspects had a wallet that was visible to the officer as the suspect was denying having any identification. These cases did not purport to allow a patdown for a wallet not otherwise believed to exist. The patdown search here, therefore, was illegal. The meth should have been suppressed.

Note: There's really a fine line between this case and the cited cases where a detained suspect, although claiming not to have any identification, clearly had a wallet in his pocket that was visible or otherwise known to the officer. But fine line or not, at least we know where that line is. In *Long*, the officer asked the defendant to open his wallet and

insisted on being able to watch as defendant thumbed through it for identification. In *Loudermilk*, the officer merely took the defendant's wallet from his pocket to check it for identification after defendant denied having any. The Court in *Loudermilk* knew they were pushing the envelope a bit, noting that their ruling was "limited to the unique facts of this case, where defendant lied to the officer and himself created the confusion as to his own identity." Absent knowing the suspect has a wallet, the rule is that you will have to take a suspect's word for it when he denies having any identification.

***Vehicle Stops; A Missing License Plate*:**

In re Raymond C. **(Nov. 20, 2006) 145 Cal.App.4th 1320**

Rule: A missing rear license plate and no visible temporary registration displayed in the rear window is sufficient reasonable suspicion to justify a traffic stop.

Facts: Fullerton Police Officer Timothy Kandler observed defendant driving a new Acura. As the defendant drove past him, the officer noticed that the vehicle did not have a rear license plate nor any dealer designation or advertising in its place. The officer also couldn't see any Department of Motor Vehicles (DMV) paperwork displayed in the window, although he admittedly could not see from behind the vehicle whether anything was displayed in the front windshield. Suspecting a possible violation of V.C. § 5200 (no license plates), the officer made a traffic stop of defendant's car. Defendant told Officer Kandler that the DMV paperwork was taped to the inside of the front corner of the windshield (which, apparently, it was). However, in talking to defendant, the officer noticed the odor of alcohol on his breath. After a field sobriety test, defendant was arrested for driving while under the influence of alcohol. A petition was filed in Juvenile Court alleging that defendant was DUI. After defendant's motion to suppress was denied, the petition was sustained and defendant appealed.

Held: The Fourth District Court of Appeal (Div. 3) affirmed. Defendant argued that the traffic stop was made without the necessary "*reasonable suspicion*" in that the DMV's "New Vehicle Dealer Notice Temporary Identification" was property attached to the inside lower right-hand corner of the windshield as provided for by DMV guidelines. According to the DMV handbook, the preferred placement for this form in the lower rear window, but may be placed in the windshield or the lower right portion of a side window. Defendant was in compliance with these requirements; a fact the officer would have known had he looked at the front window. Defendant therefore argued on appeal that "police officers should not be permitted to 'pullover new car purchasers who properly display their new car registration papers in the front windshield in full compliance with the Vehicle Code.'" While expressing sympathy with this argument, the Court noted that; "[t]he question for us, though, is not whether [the] vehicle was in fact in full compliance with the law at the time of the stop, but whether [the officer] had 'articulable suspicion' it was not." "The possibility of an innocent explanation for a missing rear license plate would not preclude an officer from detaining the motorist to investigate the potential Vehicle Code violation." An officer only needs a "*reasonable suspicion*" to believe that defendant was in violation of the law to justify a traffic stop to check out that

possibility. The missing rear license plate and no visible registration in the window is sufficient to establish that necessary reasonable suspicion. The fact that there was no dealer's logo or advertisement in place of the missing rear license plate only added to the officer's reasonable suspicion. The Court also ruled that requiring the officer to use some less intrusive method of verifying the registration, such as pulling up next to the car to check the front windshield, was not feasible at roadway speeds. And checking by radio was impossible without a license plate number to give to the dispatcher. Besides, the law does not require an officer to use the least intrusive method available in attempting to determine whether a person is in violation of the law. Stopping defendant under the circumstances of this case, during which the officer developed probable cause to believe defendant was driving while under the influence of alcohol, was therefore lawful.

Note: *Wow*! I have to say I'm surprised. Although I often tell police officers when describing our burden in writing a search warrant or making an arrest that "*we don't have to be right; we only need to be 'probably right,'*" this case seems to fly in the face of other cases that don't often let an officer get away with claiming ignorance of facts he could have verified with a little extra effort. I would have predicted that where the owner of a motor vehicle complies with the law by displaying a vehicle registration form in the windshield, a police officer is going to be held to that knowledge and has a duty to check it out before making a traffic stop. But what do I know. This is a great case for the proposition that the law requires only that an officer act reasonably, recognizing that honest mistakes will happen. When you think about it, the officer here met that standard.

***Hobbs Warrants; Retention of a Sealed Affidavit*:**

People v. Galland **(Dec. 28, 2006) 146 Cal.App.4th 277**

Rule: A search warrant and attached documents, including the sealed portion of the affidavit, must all be retained by the court.

Facts: A Buena Park police detective obtained a search warrant for defendant's residence, person and vehicle, and executed it that same day. Narcotics evidence was recovered. A week later, the detective appeared before a different judge with the original search warrant, the warrant affidavit, the "return" (aka; "receipt and inventory"), and a property report. In a second affidavit, the detective requested an order sealing these documents for the purpose of protecting the identity of a confidential informant that was used to get the warrant, and that the sealed documents be secured in the Buena Park Police Department property room. The judge signed the order. The detective then filed the sealed search warrant, the return, the property report, and only a portion of the warrant affidavit with the clerk of the Superior Court. The rest of the warrant affidavit, which included the description of the probable cause justifying the issuance of the search warrant, was transported to the Buena Park Police Department for storage there, as authorized by the court's order. At some later point, those documents that were retained by the Superior Court in their files were ordered unsealed and given to defense counsel. The portion of the affidavit retained by the Buena Park detective remained sealed. Charged in state court with various drug-related offenses, defendant filed a motion to

traverse the warrant, specifically objecting to the detective's failure to file the entire affidavit with the court. The defendant also asked for an "in camera" review of the sealed portions of the warrant affidavit. The trial judge ignored defendant's request for the in camera hearing and instead heard evidence on a separate knock and notice issue. Upon completion of the testimony on this issue, the court denied defendant's motion. Defendant's renewed request for an in camera review of the affidavit was also denied. Defendant later pled guilty and appealed. The Appellate Court, in *People v. Galland* (2004) 116 Cal.App.4th 489, reversed, sending the case back to the trial court for an in camera hearing as requested by the defense. The trial judge held such a hearing with the detective in chambers, as ordered, and then again denied defendant's motion to suppress the evidence. It was also noted on the record that a copy of the sealed portion of the affidavit was made a part of the court's record and that the original was returned to the Buena Park Police Department. Defendant again appealed.

Held: The Fourth District Court of Appeal (Div. 3) *again* reversed. On appeal, the purported copy of the sealed affidavit that was supposed to be in the court file could not be found. Also, the original copy held by the Buena Park Police Department was, for unexplained reasons, purged and destroyed. The Orange County District Attorney submitted instead an unsigned, reconstructed version of the entire warrant affidavit which the trial judge "found . . . (to be) the same affidavit he had reviewed . . . ." Defendant complained on appeal that the procedures for sealing search warrants, including the filing of the affidavit with the court, had not been followed and that as a result, his "*due process*" rights had been violated. The Appellate Court agreed, ruling that the trial court's decision to allow the affiant officer to retain a portion of the original search warrant affidavit deprived defendant of an adequate appellate record, thus violating his "*due process*" rights. "From the moment a magistrate reads the search warrant and supporting affidavit, those documents become court documents." The Government Code (see sections 69846 and 68151(a)(1)) mandates that the trial court take custody of all court documents. Gov't Code § 68152(j)(18) says that the a search warrant must be retained by the court for 10 years (or permanently, for capital cases). And then, under the due process clause of the 14th Amendment, a defendant is entitled to have a complete and reliable record available for appellate review. The trial court violated all these provisions when it allowed the Buena Park Police Department to retain in its own files the sealed portion of the affidavit. The reconstructed affidavit was not legally sufficient to replace the missing affidavit. For these reasons, the defendant's conviction must be reversed.

Note: While this seems to conflict with those cases that talk about administrative errors not being sufficient to require the traversal of a warrant or suppression of evidence, other cases have held that an incomplete record on appeal (e.g., lost transcripts) will result in an automatic reversal of a conviction. San Diego County has had in place since 2001 a Superior Court directive dictating the procedures to be used in obtaining search warrants, including the requirement that the court clerk take custody of all filed documents including sealed affidavits. To my knowledge, this has worked quite well over the years. If your court doesn't have such a procedure established, and want a copy of ours, I'll be happy to send it to you.