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Remember 9/11/01*: *Support Our Troops

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THIS EDITION'S WORDS OF WISDOM:

"*The first testicular guard, the 'Cup,' was used in hockey in 1874, and the first helmet was used in 1974. That means it only took 100 years for men to realize that their brain is also important*." (Anonymous)

IN THIS ISSUE:

CASE LAW:

***Use of a Global Positioning System (GPS) Device and the Fourth Amendment*:**

United States v. Jones **(Jan. 23, 2012) __ U.S. __ [132 S.Ct. 945; 181 L.Ed.2nd 911]**

Rule: Attaching a GPS tracking device to the exterior of a vehicle for the purpose of collecting information constitutes a "search" under the Fourth Amendment.

Facts: Defendant, the owner/operator of a nightclub in the District of Columbia, was suspected of trafficking in narcotics. A joint FBI and Metropolitan Police Department task force (i.e., "the agents") conducted an extensive investigation. In addition to normal surveillance techniques, the agents used various high-tech investigative tools such as

cameras, pen registers and wiretaps. Eventually the agents applied to the United States District Court for the District of Columbia for a search warrant authorizing the use of an electronic tracking device (i.e., a "*global position system*," or "*GPS*") on a vehicle registered to defendant's wife, but driven exclusively by defendant himself. However, the GPS device wasn't attached to the car's undercarriage until after the warrant had expired and with the car in a public parking lot in the State of Maryland. The agents monitored the movement of defendant's vehicle for the next 28 days. More than 2,000 pages of data was collected over the 4-week period. This information connected defendant to his co-conspirators' stash house that, when eventually searched, was found to contain $850,000 in cash, 97 kilograms of cocaine, and 1 kilogram of cocaine base. Charged by indictment in federal court with various drug-related offenses, defendant moved to suppress the GPS-derived information. His motion was (for the most part) denied. Defendant was convicted and sentenced to life in prison. His conviction was overturned, however, by the Washington D.C. Circuit Court of Appeal which found the use of the GPS to be a Fourth Amendment violation. The government petitioned to the U.S. Supreme Court.

Held: A unanimous U.S. Supreme Court affirmed. With the Government conceding that the initial warrant did not authorize the installation and use of the GPS tracking device during the 28 days in question and that defendant had the necessary standing to challenge the use of the tracking device, the issue on appeal became whether the act of attaching the tracking device to the undercarriage of a vehicle constituted a "*search*." The United States Supreme Court found that it did. In analyzing this issue, the Court noted that from the Fourth Amendment's inception, "*property rights*" were foremost in the founding fathers' minds when they sought to protect "[t]he right of the people to be secure in their *persons, houses, papers, and effects*, against unreasonable searches and seizures, . . ." A vehicle certainly comes under the heading of "*effects*." Following the history of the Fourth Amendment's development, the Court then noted that these protections have expanded beyond a property-based concept, eventually taking into account a person's "*reasonable expectation of privacy*" in the area being intruded upon. But this expansion of the Fourth Amendment's protections does not mean that the original concern with a person's property rights is no longer valid. By intruding into defendant's vehicle (i.e., placing the GPS onto it undercarriage), defendant's property rights were affected. It was this act of physically intruding into defendant's private property for the purpose of collecting information concerning his activities that constitutes a search under the Fourth Amendment. The Government pointed out that the Supreme Court in *United States v. Knotts* (1983) 460 U.S. 276, had held that the use of a "beeper" to track a motor vehicle was not a Fourth Amendment violation. But in *Knotts*, there was no physical intrusion into or onto the defendant's property in that the beeper was already in a separate container given to defendant who put it into his own car. This, per the Court, was not necessarily a search. However, the Court further noted that under more aggravated circumstances; "(i)t may be that achieving the same result (as visually surveilling a vehicle) through electronic means, without an accompanying trespass, is an unconstitutional invasion of privacy (despite the holding in *Knotts*), but the present case does not require us to answer that question." The present case is therefore limited to finding that the act of attaching a GPS to a person's property (e.g., his vehicle) for the

purpose of collecting information through the subsequent monitoring of that device constitutes a search under the Fourth Amendment.

Note: As simple as is the final conclusion sounds, the Court strained a bit in reaching it, raising more issues than it answered. For instance, while it cited with approval the rule of *Knotts*, i.e., that the warrantless *monitoring* of a tracking device without a preceding trespassory attachment of the device is constitutional, it also noted that in more "*aggravating circumstances*" that issue may very well be revisited. What might constitute "*aggravating circumstances*" was not discussed. Also, it can be argued that despite the lack of a search warrant, the "search" under the circumstances of this case was nonetheless "*reasonable*" and did not require the use of a warrant. I.e., is there an applicable exception to the search warrant requirement? Unfortunately, this issue was "forfeited" by the Government by not having raised it at the trial court level.

***Use of Force; Tasers and Qualified Immunity*:**

***Mattos v. Agarano* & *Brooks v. City of Seattle* (9th Cir. Oct. 17, 2011) 661 F.3rd 433**

Rule: The use of a Taser to subdue non-threatening, even though uncooperative, suspects, depending upon the circumstances, may constitute an excessive use of force.

Facts: This single civil case decision involves two distinct incidents. *(1) Mattos*: Four police officers, including Darren Agarano and Ryan Aikala, responded to a domestic violence call at the home of Plaintiffs Troy and Jayzel Mattos. Troy—all six foot, three inches and 200 pounds of him—was contacted sitting on his front steps drinking beer. Troy told Officers that he and his wife, Jayzel, had had an argument but that nothing physical had occurred. As the officers talked to Troy, he became agitated and rude. Troy went inside to get Jayzel when one of the officers asked to talk to her. As he did, Officer Agarano stepped inside behind Troy. As Jayzel came out from a hallway to talk with the officers, Troy noticed for the first time that Officer Agarano had come inside, yelling at him that he had no right to be in his house. Officer Agarano asked Jayzel to step outside to talk with him. But before she could comply, Officer Aikala, having arrived at the scene after the other officers, came inside and announced that Troy was under arrest. As Officer Aikala moved to arrest Troy, he pushed up against Jayzel's chest, causing her to reach out to stop Aikala from "smash(ing)" her breasts. Jayzel asked Officer Agarano why Troy was being arrested. She also attempted to defuse the situation by asking everyone to go outside to keep from disturbing her sleeping children. But then Officer Aikala suddenly shot his Taser at Jayzel in the dart mode, causing her to fall to the floor. Both Troy and Jayzel were arrested and charged with resisting arrest, "harassment," and "obstructing government operations," under Hawaii's Revised Statutes. All charges were later dropped. The Mattoses sued the officers in federal court for violating their Fourth Amendment rights. The district court judge granted the officers' summary judgment (dismissal) motion on all the allegations except for the Fourth Amendment excessive force claims for the use of the Taser. The officers appealed. A three-judge panel of the Ninth Circuit Court of Appeal held that the officers were entitled to qualified immunity, and therefore reversed. An en banc panel (11 justices) of the Ninth Circuit agreed to

rehear the appeal. *(2) Brooks*: Plaintiff Malaika Brooks, who was seven months pregnant, was driving her son to school in Seattle, Washington, when she was stopped for speeding (32 mph in a 20 mph school zone) by Officer Juan Ornelas. When Officer Ornelas informed her that he was going to cite her for speeding, she complained that she was not speeding and that she wouldn't sign the ticket. Brooks again refused when asked by a cover officer, Donald Jones, despite being told that signing the ticket was not an admission of guilt and despite being warned that she'd be going to jail if she continued to refuse. A supervisor, Sgt. Steven Daman, also asked Brooks to sign the ticket and she again refused. Sgt. Daman therefore told Ornelas and Jones to "book her." When asked to step out of her car because she was going to jail, she refused. Officer Jones took out his Taser and showed it to her. Brooks then told the officers that she was pregnant and had to go to the bathroom. Brooks stiffened her body and clutched the steering wheel, resisting the officers' attempts to pull her out of the car as Jones cycled his Taser for Brooks to see. The keys to her car were removed by one of the officers. She was finally Tased in the left thigh in the drive-stun mode. Still struggling, 36 seconds later Brooks was Tased again in the left arm. Six seconds after that she got a third shock to the neck, causing her to fall over in her seat. She was finally dragged out and handcuffed. Brooks received no lasting physical injuries other than some permanent burn scars, and her healthy baby was born two months later. A criminal jury convicted her of refusing to sign the ticket but hung on the charge of resisting arrest, which was eventually dismissed. She then sued the officers in federal court. The district court judge denied the officers' summary judgment motion, finding that they were not entitled to qualified immunity. As in the *Mattos* case, a three-judge panel of the Ninth Circuit ruled that the officers were entitled to qualified immunity. An en banc panel, however, agreed to rehear the appeal.

Held: The en banc panel of the Ninth Circuit Court of Appeal, combining the two cases, held that the use of a Taser in these two cases violated the respective plaintiffs' constitutional rights but that the officers were entitled to qualified immunity. The Court first set out the procedures to be used in such cases. *First*, a court must determine whether an officer did in fact violate the Constitution. When the issue is whether a person's constitutional rights were violated through the use of excessive force, a Fourth Amendment issue, a court must balance the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interest at stake. The test is one of "reasonableness." In determining the "nature and quality of the intrusion," at least three factors are to be considered; (1) how severe the crime at issue is, (2) whether the suspect posed an immediate threat to the safety of the officers or others, and (3) whether the suspect was actively resisting arrest or attempting to evade arrest by flight. Also, a court may consider any other facts necessary to help it determine, based upon the "totality of the circumstances," whether the Fourth Amendment was violated. *Second*, if, in balancing the above factors, a court determines that there was in fact a constitutional violation, then the court must decide whether the constitutional right involved was clearly established at the time; i.e., whether the contours of that right were sufficiently clear that a reasonable officer would have understood that what he is doing violates that right. Even though a police officer is often forced to make split-second judgments in circumstances that are tense, uncertain, and rapidly evolving concerning the amount of force that is necessary in a particular situation, he may be still be civilly liable

under circumstances where he should have known that the force used was excessive, whether or not there is prior case law on point. The Court then went on to determine in both of the instant cases that a reasonable fact finder (i.e., a civil jury) could conclude that the officers' use of force against Jayzel and Brooks was constitutionally excessive. *(1)* In the *Mattos* case, Jayzel Mattos had a Taser in the "*dart-mode*" used against her. Such a use of the Taser has been held to be "an intermediate, significant level of force." Applying the above factors, Jayze's crime, if any, was minor. All she did, while attempting to calm everyone at the scene, was to put her hand on Officer Aikala to prevent him from pushing himself against her breasts. There was no indication that she posed any real threat to the officers. There was no indication that she was attempting to resist or evade arrest. At worst, given her position between Officer Aikala and Troy, she might have failed to facilitate Troy's arrest by not moving out of the way. But she did not do anything to actively impede his arrest. The Court also criticized the lack of any warnings given to Jayze before Tasing her. *(2)* In the *Brooks* case, Brooks was Tased with the Taser in the "*drive-stun*" mode. In such a mode, the operator removes the dart cartridge and pushes two electrode contacts located on the front of the Taser directly against the victim. The victim is subjected to an electric shock, but this does not override the victim's central nervous system as it does in the dart-mode. The level of force this involves was not determined by the Court, although it was alleged that it caused extreme pain to Brooks. Looking at the three factors discussed above, it was noted that Brooks criminal offenses involved speeding and refusing to sign a traffic ticket, neither of which are considered serious offenses. Under these circumstances, Brooks did not constitute a danger to any of the officers involved or anyone else. And although Brooks did in fact actively resist arrest, her resistance did not involve violence or physical threats to any of the officers. Once the keys to her car were removed, which occurred before she was Tased, she was not about to escape. Also, the officers' knowledge that Brooks was pregnant at the time added to the dangerousness of using a Taser. Lastly, the Court criticized the fact that Brooks was Tased three times in a matter of one minute, not giving her a chance to reconsider her position. *(1) and (2)* Both incidents involving an excessive use of force, and thus Fourth Amendment violations, the only question left was whether the officers were entitled to qualified immunity; i.e., whether the law on this issue was clearly established at the time of these incidents. The Court determined that it was not. The officers are therefore entitled to qualified immunity.

Note: The Court lists three lower federal appellate court decisions which held that the use of Tasers were *not* Fourth Amendment violations; *Russo v. City of Cincinnati* (6th Cir. 1992) 953 F.2nd 1036, *Hinton v. City of Elwood* (10th Cir. 1993) 997 F.2nd 774, and *Draper v. Reynolds* (11th Cir. 2004) 369 F.3rd 1270. These three cases, respectively, involved officers being attacked by a suicidal, homicidal, mental patient who was armed with two knives, a violently resisting suspect who was flailing at, kicking, and biting the arresting officers, and a lone officer being confronted by an angry, confrontational, and agitated truck driver who refused five times to produce certain documents as he paced back and forth, yelling at the officer. With these prior cases being the only authority on the issue, the Ninth Circuit could understand how officers might believe that anyone resisting their efforts to do their jobs were viable targets for a Taser. But now we have these two cases, plus *Bryan v. McPherson* (9th Cir. Nov. 30, 2010) 630 F.3rd 805 (See

Legal Update, Vol. 15, #5), all of which having found the use of a Taser to be excessive force in relatively none threatening circumstances. *But* (and this is a *big butt*), next time you can expect the Court to use these cases as having drawn a line for you on the use of a Taser. In circumstances such as the above, officers are going to be expected to use the more traditional means of subduing uncooperative suspects that were used prior to the advent of Tasers. That is; arm locks, wrist twists, and maybe the old reliable carotid restraint hold (where not prohibited by policy). Just know that you can't whip out that Taser just because someone has pissed you off or isn't cooperating.

***Miranda*; *A Minor's Request for a Parent*:**

People v. Nelson **(Jan. 12, 2012) 53 Cal.4th 367**

Rule: A minor's request to speak with a parent is not necessarily an invocation of his Fifth Amendment *Miranda* rights. When such an invocation is attempted after an initial wavier, the validity of the attempt depends upon how a reasonable officer would have interpreted the suspect's efforts. The same rule applies to the minor's apparent attempt to invoke his right to silence as well as to an attorney.

Facts: Fifteen-year old Samuel Moses Nelson murdered his 72-year-old neighbor, Jane Thompson, while burglarizing her home on June 26, 2004. The cause of death was listed as massive blunt-force head trauma, having suffered multiple skull fractures and brain hemorrhaging. Orange County Sheriff's investigators Daniel Salcedo and Brian Sutton contacted defendant on June 29th and asked if he would come to the sheriff's office to discuss the case with them. Defendant readily agreed. At the station, after some preliminary questions, Nelson was advised of his *Miranda* rights. He indicated that he understood them and expressed a willingly to answer the investigators' questions. Once the investigators were well into the interrogation, defendant admitted to having burglarized Thompson's home but continued to deny any complicity in her death. After about three and a half hours of questioning, defendant was asked if he would submit to a polygraph test. A now-nervous defendant asked instead if he could call his mother. When questioned as to why, he said he wanted to "*let her know what's happening*" and to "*talk to her about it*" and "*see what I should do*." The detectives continued with the questions and defendant continued answering them. After the next hour and a half as defendant was made aware of the evidence against him, he eventually confessed to two other burglaries he'd committed. He also made additional requests to call his mother and was permitted several times to try to reach her. Not being able to locate his mother, he spoke instead with his grandmother and brother. At one point, defendant told the investigators to leave him alone because they were "getting on me for something I didn't do." He also declined to take a polygraph because his relatives, in his telephone conversations with them, had advised him not to. They'd also told him to "*do nothing until a lawyer or his mother got there*." Despite this advice, however, defendant continued to answer the investigator's questions. Finally he asked to have "*a few moments to myself*." The investigators complied, but first offered him a pencil and paper with which to write down his feelings, telling him that it was his chance to explain what happened and that he should "[*d*]*o the right thing*." He was again allowed to call his

mother and his brother. When the investigators retuned, defendant hadn't yet written anything, but instead asked if he could be left alone again, at least until his family, who were only ten minutes away, got there. The investigators again encouraged him take this opportunity to write down in his own words what had happened. They left him alone again. When they returned, defendant had written out a statement admitting to beating Jane Thompson to death with a hammer he'd brought with him while burglarizing her home. At his murder trial, these statements and a subsequent more-detailed confession were admitted into evidence against him over his objection. Convicted of first degree murder and multiple counts of residential burglary, defendant appealed. The Fourth District Court of Appeal (Div. 3) reversed in a split, two-to-one decision, with the majority ruling that defendant had effectively invoked his Fifth Amendment rights when he asked for the assistance of this mother and that all questioning after that point should have ceased. The People petitioned to the California Supreme Court.

Held: The California Supreme Court reversed in a unanimous decision, reinstating defendant's conviction. In his appeal, defendant did not contest the validity of the initial waiver of his *Miranda* rights. Rather, he argued that his repeated requests to talk to his mother constituted a Fifth Amendment invocation of his right to silence. The California Supreme Court disagreed. With defendant's initial *Miranda* waiver being conceded, the issue became whether he had validly and effectively revoked that waiver at the point when he asked to speak with his mother. The United States Supreme Court, in *Davis v. United States* (1994) 512 U.S. 452, has clearly set out the rule that where there has already been a prior waiver of one's *Miranda* rights, a suspect's attempt to belatedly invoke those rights "requires, at a minimum, some statement that can reasonably be construed to be an expression of a desire for the assistance of an attorney." While the test in determining the validity of a waiver of rights at the initiation of an interrogation is a "*subjective*" one, taking into account all the surrounding circumstances including the suspect's state of mind, the same is *not* true when evaluating an alleged attempt to invoke those rights made after an initial waiver. At this later stage of an interrogation, the test is an "*objective*" one. "'(*T*)*he suspect* '*must articulate his desire to have counsel present sufficiently clearly that a reasonable police officer in the circumstance would understand the statement to be a request for an attorney*.'" The suspect's subjective intentions are irrelevant. An ambiguous or equivocal attempt at an invocation of rights at this stage is not legally effective and may be ignored. The Court also noted that "(e)ven though officers may ask questions to clarify whether the right to counsel is being invoked, they are not obligated to do so." And further, even though the U.S. Supreme Court in *Davis* was discussing a suspect's Fifth Amendment right to the *assistance of counsel* at the interrogation stage, the same rule applies to one's apparent attempt to invoke his *right to silence*. (*Berghuis v. Thompkins* (2010) 130 S.Ct. 2250.) The Court further rejected defendant's argument that because *Davis* and its progeny involved adult defendants, a higher standard should be used in the case of a juvenile. Per the Court, juveniles already receive sufficient protections against involuntary confessions. In this case, Investigators Salcedo and Sutton were confronted with an individual who, although younger than most murder suspects, expressed a willingness to submit to questioning. He'd been through the criminal justice system before and knew what an attorney was and what such a person could do for him. Defendant did not express a desire to talk with his mother until

confronted with the prospect of taking a polygraph test. The investigators could have reasonably interpreted defendant's requests to talk with his mother as no more than a desire to tell her what was happening and to seek advice on the taking of such a test, and not as an attempt to invoke his right to counsel or to remain silent. And in fact, when the investigators abandoned the request that he take a polygraph test, defendant continued without hesitation to answer questions. Having been given several opportunities to call his mother, defendant was aware that she was en route—only ten minutes away—when he finally chose to write out his initial confession for the investigators. It did not appear, therefore, that he was seeking any assistance from her similar to what he might expect from an attorney. Similarly, defendant's request to be left alone was held not to be a clear and unequivocal invocation of his *Miranda* right to silence. A reasonable officer in the circumstances could have viewed defendant's statements as an expression of frustration with the investigator's repeated refusal to accept his denials of guilt and not necessarily as an attempt to invoke. Lastly, the Court discussed "(a)s a legal matter" the applicability of these rules to a request by a juvenile for the assistance of his parent, as opposed to an attorney. Although it is now recognized that a minor's request to speak with a parent is not *per se* an invocation (*People v. Lessie* (2010) 47 Cal.4th 1152.), the rule is not absolute. The totality of the circumstances must be considered. First, it was noted that "the parental role does not equate with the attorney's role in an interrogation by police." And, "(w)here, as here, a juvenile has made a valid waiver of his *Miranda* rights and has agreed to questioning, a post-waiver request for a parent is insufficient to halt questioning unless the circumstances are such that a reasonable officer would understand that the juvenile is *actually*—as opposed to *might be* invoking—the right to counsel or silence." Under the circumstances of this case, the Court found that a reasonable officer would not have viewed defendant's request to call his mother as a clear and unequivocal invocation of his rights under *Miranda*.

Note: This case is important as a clarification that the rule of *Davis v. United States*, requiring a clear and unequivocal invocation in order for it to be legally effective, applies only mid-interrogation after there has been a prior wavier of *Miranda*. It also reaffirms prior cases in holding that *Davis* applies to attempted invocations of the suspect's *Miranda* "*right to silence*" as well as to the "*assistance of counsel*." And for the first time, it applies this rule to juveniles as well as adults. You can't ask for much more than that in one California Supreme Court decision.

***Residential Entries*:**

Ryburn v. Huff **(Jan. 23, 2012) __ U.S. __ [132 S.Ct. 987; 181 L.Ed.2nd 966]**

Rule: Police officers may make a warrantless entry into a residence whenever they have an objectively reasonable basis for believing that an occupant or the officers are imminently threatened with serious injury.

Facts: Burbank Police Officers Darin Ryburn and Edmundo Zepeda responded to Bellarmine-Jefferson High School in Burbank, California, to investigate a report concerning rumors that a student, Vincent Huff, who was often the target of bullying by

other students, had written a letter threatening to "shoot up" the school. Principal Sister Milner, concerned about the safety of her students, asked the officers to investigate. Although the officers were unable to verify the existence of such a letter, one of Vincent's classmates told the officers that he believed that Vincent was capable of carrying out the alleged threat. Vincent hadn't been at school for two days. Based upon their training and experience, the officers found Vincent's absences from school and his history of being subjected to bullying as cause for concern. So they decided to go to Vincent's home in an attempt to contact him and his parents; George and Maria Huff. At the Huff residence, no one responded when the officers knocked at the door and announced their presence. The officers called the residence by telephone, but no one answered. They then called Maria's cell phone. Maria answered, confirming that both she and Vincent were inside the house. Informed that the officers wished to talk to her and her son, she hung up on them. One or two minutes later, Maria and Vincent came out on the front steps. When the officers told them that they were there investigating some threats at the school, Vincent responded; "*I can't believe you're here for that*." Maria was asked if they could go inside to talk to which she responded; "*No*," not without a warrant. In Sergeant Ryburn's experience as a juvenile bureau sergeant, it was "extremely unusual" for a parent to decline an officer's request to interview a juvenile inside. Sergeant Ryburn also found it odd that Maria never asked the officers the reason for their visit. Asked if there were any guns in the home, Maria avoided the question by "immediately turn[ing] around and r[unning] into the house." Sergeant Ryburn, who was "scared because [he] didn't know what was in that house" and had "seen too many officers killed" in similar situations, entered the house behind her. Vincent entered the house behind Sergeant Ryburn and Officer Zepeda entered after him. Officer Zepeda testified to being concerned about "officer safety" and did not want Sergeant Ryburn to enter the house alone. Two other officers entered the house after everyone else believing they'd all been invited. The officers all remained in the living room as George Huff entered the room and challenged their authority for being there. The four officers were in the living room for about five to ten minutes, ultimately determining that the rumors about Vincent were false. While there, no searches were conducted. The officers then left and reported their conclusions to the school. The Huffs later sued the Burbank Police Department and the officers involved in federal court. The federal trial court found for the civil defendants (the officers) after a two-day bench trial. The Plaintiff Huffs appealed. The Ninth Circuit Court of Appeal, in a split 2-to-1 decision, reversed (*Huff v. City of Burbank* (2011) 632 F.3rd 539; see *Legal Update*, Vol. 16, #4) with the majority finding that the officers entered the house based upon no more than an unsubstantiated rumor. The officers/defendants petitioned to the U.S Supreme Court.

Held: The United States Supreme Court unanimously reversed. The issue on appeal was whether upon making the entry into the Huffs' residence, the officers had sufficient cause to make such an entry without first obtaining a search warrant. As previously set out by Supreme Court precedent, the rule is as follows: Officers may enter a residence without a warrant when they have "*an objectively reasonable basis for believing that an occupant* (*or the officers are*) *. . . imminently threatened with* [*serious injury*]." (*Brigham City v. Stuart* (2006) 547 U.S. 398.) The officers in this case testified to being aware of the following information: (1) The unusual behavior of the parents in not answering the

door or the telephone; (2) Maria hanging up on the officers when they finally reached her on her cell phone; (3) Maria not inquiring about the reason for their visit or expressing concern that they were investigating her son; (4) Maria refusing to tell the officers whether there were any guns in the house; and (5) Maria running back into the house while being questioned about the possible presence of firearms. When you combine this with the information already obtained at the school; i.e., that Vincent was a student who had been the victim of bullying and who had been absent from school for two days, plus the fact that he may have threatened to "shoot up" the school, the Court found that the officers' belief that there could be firearms inside the house and that family members or the officers themselves were in danger was certainly reasonable. The Court also took into account that the situation was "rapidly evolving" and that the officers had to make quick decisions. In finding the officers' actions to be reasonable under these circumstances, the Court criticized the Ninth Circuit's conclusion that it was constitutionally insignificant that Maria Huff may have "merely asserted her right to end her conversation with the officers and returned to her home." It is *not* true that conduct cannot be regarded as a matter of concern just because it may be lawful. The Court further held that the Ninth Circuit's practice of looking at each separate event in isolation and concluding that each, by itself, did not give cause for concern, is flawed. "It is a matter of common sense that a combination of events each of which is mundane when viewed in isolation may paint an alarming picture." Lastly, the Court found fault with the Ninth Circuit's failure to follow the well-established rule that "judges should be cautious about second-guessing a police officer's assessment, made on the scene, of the danger presented by a particular situation." Rather, "reasonableness 'must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight' and that '[t]he calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments in circumstances that are tense, uncertain, and rapidly evolving." As such, the Ninth Circuit's ruling, finding for the plaintiffs, was reversed, with the case being remanded for a finding in the officers' favor.

Note: Again, the U.S. Supreme Court is telling the courts, and the Ninth Circuit in particular, to knock off the practice of being super-critical of police officers' actions at the scene of a potentially dangerous situation where split-second decisions have to be made and lives are in the balance. In particular, the Court accuses the Ninth Circuit of being selective in its use of the facts to justify its conclusions. (*Gee, never seen the 9th Circuit do that before.*) As such, it is a great case for the good guys. Unfortunately, the Supreme Court did not discuss the Ninth Circuit's conclusion that "*a reasonable basis for believing*" requires full "*probable cause*." California courts, to the contrary, interpret this and similar language as something less than probable cause. (See *People v. Osborne* (2009) 175 Cal.App.4th 1052, 1065; and *People v. Nottoli* (2011) 199 Cal.App.4th 531, 551, fn. 9, & 553.) *But also*, don't take this case as your ticket to start forcing entry into peoples' residences at the slightest provocation. The whole theory of this case, as well as others cited in the decision, center on how a "*reasonable police officer*" under the facts and circumstances then known to him or her would, or should, have reacted. With any experience at all, you can instinctively sense when the pucker factor is getting too high for comfort. When it is, go for it. When it isn't, stop and think about what you're doing. That's the best advice I can give you for keeping the Supreme Court in your corner.