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Remember 9/11/01; Support Our Troops

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THIS EDITION'S WORDS OF WISDOM:

"*There are two different kinds of people in this world: those who finish what they start, and . . .* " (Brad Ramsey)

IN THIS ISSUE: Page:

ADMINISTRATIVE NOTES:

***V.C. § 23123*:** Reminder: *Driving While Using a Cell Phone*, becomes effective 7/1/08: A person shall not drive a motor vehicle while using a wireless telephone unless that telephone is specifically designed and configured to allow hands-free listening and talking, and is used in that manner while driving (Subd. (a)), except

when using a wireless telephone for emergency purposes, including, but not limited to, an emergency call to a law enforcement agency, health care provider, fire department, or other emergency services agency or entity. (Subd. (c)) Violation is an infraction; $20 fine for the first offense, $50 fine for each subsequent offense. (Subd. (b)) This section does *not* apply to an emergency services professional using a wireless telephone while operating an authorized emergency vehicle (per V.C. § 165) in the course and scope of his or her duties. (Subd. (d)) The section also does *not* apply to the use of a digital two-way radio that utilizes a wireless telephone that operates by depressing a push-to-talk feature and does not require immediate proximity to the ear of the user, while the person is driving one of the types of vehicles (e.g., commercial trucks, farm vehicles or tow trucks) as listed in the section (Subd. (e)). It also does not apply when driving a school bus or transit vehicle (per V.C. § 23125) (Subd. (f)) or while driving on private property (Subd. (g)).

***V.C. §23124*:** Reminder: *Minor Driving While Using a Mobile Service Device*, becomes effective July 1, 2008: It is an infraction for a person under the age of 18 years of age to drive while using a "*mobile service device*" or a wireless telephone even if the telephone is equipped with a hands-free device. A "*mobile service device*" is defined as including, but not being limited to, a broadband personal communication device, a specialized mobile radio device, a handheld device or laptop computer with mobile data access, a pager, or a two-way messaging device. It does *not* include devices used for emergency purposes, including an emergency call to law enforcement, a health care provider, or a fire department. Violation is an infraction; $20 fine for the first offense, $50 fine for each subsequent offense. The section specifically prohibits a law enforcement officer from stopping a vehicle for the sole purpose of determining whether the driver is violating this new section. (E.g., a law enforcement officer is prohibited from stopping the vehicle solely to check the age of a driver who is using a hands-free cell phone while driving.) But a law enforcement officer *may* stop a vehicle for a suspected violation of V.C. § 23123 (see above) by a driver of any age.

CASE LAW:

***Medical Marijuana; Possession of Over 8 ounces, per H&S § 11362.77*:**

***People v. Kelly* (May 22, 2008) ___ Cal.App.4th ___ (2008 WL 2133055)**

Rule: H&S § 11362.77, describing the presumptive legal limits on the amount of marijuana that may be lawfully possessed under the Compassionate Use Act, is unconstitutional because it was enacted in violation of the California Constitution.

Facts: Defendant, suffering from hepatitis C, chronic back problems, nausea, fatigue, mood problems, cirrhosis, and loss of appetite (sounds like a lot of people I know), obtained a doctor's approval to consume an unspecified amount of marijuana to alleviate these problems. Finding it hard to legally purchase marijuana, defendant grew his own in

his back yard. A neighbor reported this fact to the police who executed a search warrant on defendant's house. Seven plants and 12 ounces of bagged, dried marijuana were recovered. Charged with possession of marijuana for purposes of sale (H&S § 11359) and related offenses, defendant argued that he lawfully cultivated the marijuana under California's 1996 "*Compassionate Use Act*" (CUA; Proposition 215; H&S § 11362.5). Although the 1996 CUA does not specify how much marijuana may be legally possessed, the Legislature later (2004) enacted H&S §§ 11362.7 et seq. Part of this legislation, section 11362.77 provides that (with exceptions not applicable here) a qualified patient or primary caregiver may possess no more than eight (8) ounces of dried marijuana and six (6) mature or twelve (12) immature marijuana plants. At trial, the prosecutor was allowed to argue that having marijuana in excess of these statutory limits was evidence of defendant's guilt. Defendant was convicted and appealed.

Held: The Second District Court of Appeal (Div. 3) reversed, holding that the limitations listed in section 11362.77 were enacted in violation of the California Constitution. Proposition 215 (CUA) was an initiative passed by California voters in 1996. The Legislature is not empowered to amend an initiative unless the initiative itself grants the Legislature authority to do so. (Cal. Const. art. II, § 10, subd.(c)) The CUA does not contain any such authority. Section 11362.77 was enacted by the Legislature, effective 1/1/04, without voter approval. There is a difference between an amendment and merely supplementing a statute. The 1996 CUA did not quantify the amount of marijuana that may be lawfully possessed, saying only that it must be for the patient's "*personal medical purposes*." H&S § 11362.77 amends this phrase by specifying how much qualifies as "*personal medical purposes*." As such, section 11362.77 is an amendment that must be approved by the voters to be constitutional. This particular section, therefore, is unenforceable. Because the prosecutor was allowed to argue to the jury in this case the limitations imposed by section 11362.77, the case must be reversed.

Note: I briefed this case before it is final because I've already had a couple of calls on it and thought it might be convenient to know what I'm talking about (just for kicks). All this case does is invalidate section 11362.77. It does not affect the rest of the sections enacted at the same time (i.e., sections 11362.7 to 11362.83.), nor prevent an expert from testifying that in his or her opinion, a certain amount of marijuana is more than necessary for personal use. So there's no reason to panic. Continue on with business as usual.

***Medical Marijuana; Return of Marijuana to a Qualified Patient*:**

***City of Garden Grove v. Superior Court [Kha]* (Nov. 28, 2007) 157 Cal.App.4th 355**

Rule: A qualified patient whose marijuana is confiscated by law enforcement is entitled to get it back upon determination that he is in fact in compliance with California's Compassionate Use Act (Prop. 215).

Facts: Felix Kha ("*real party in interest*" in this petition for writ of mandate) was stopped by officers of the Garden Grove Police Department for going through a red light. During the stop, Kha consented to a search of his vehicle. The officers recovered 8.1

grams (less than a third of an ounce) of marijuana that was in a container labeled "medical cannabis." With the marijuana was a written authorization from a physician allowing Kha to use it for an undisclosed "serious medical condition." Kha later testified that he suffered from "sever pain." (Don't we all?) Despite these indications that Kha's possession of the marijuana might be lawful pursuant to H&S §§ 11362.5 and 11362.7 et seq. (California's "Compassionate Use Act" (CUA), or Proposition 215, plus later defining legislation), the officers cited Kha for possession of less than an ounce of marijuana while driving (V.C. § 23222) and confiscated his marijuana. The resulting criminal case, however, was subsequently dismissed upon verification that the physician did indeed authorize Kha to use the marijuana. Kha then asked the court for the return of his marijuana. Arguing that Kha's marijuana could not be returned to him without violating federal law, the City of Garden Grove filed a petition for writ of mandate with the appellate court seeking a reversal of the trial court's order giving him is dope back.

Held: The Fourth District Court of Appeal (Div. 3) denied the petition, upholding the trial court's order that Kha be given back his marijuana. A number of issues were discussed: (1) After ruling that the City had standing to litigate the issue, the Court rejected the City's arguments that to return Kha's marijuana would potentially put their law enforcement officers in violation of federal laws prohibiting the possession of marijuana on an "*aiding and abetting*," or maybe even a "*conspiracy*," theory. Per the Court, returning Kha's marijuana does not mean the City's officers have the intent to facilitate Kha's potential violation of federal law. What Kha does with the marijuana after he gets it back is not the City's responsibility. Also, a court order to return the marijuana to Kha provides the officers with immunity from civil or criminal liability. (See 21 U.S.C. § 885(d)) (2) To allow the police to seize a person's marijuana and then prevent its return when it is later determined to be possessed lawfully would thwart the purposes of the CUA. (3) As for the legality of Kha's possession of the marijuana, the Court noted first that there is no requirement that Kha prove how he initially obtained possession of the marijuana (i.e., legally or illegally). (4) As for the seriousness of Kha's medical condition, the Court held that the statement from his physician indicating that Kha had a "serious medical condition" and may benefit from the use of medical cannabis was sufficient proof of this issue. (5) The Court further ruled that Kha was protected from prosecution for V.C. § 23222 even though this particular violation is not listed as one of those for which state prosecution is precluded in the medicinal marijuana statutes. To give Kha protection from prosecution for transporting marijuana pursuant to H&S § 11360 (as so stated in H&S § 11362.765(a)), but not V.C. § 23222, would lead to an "absurd consequence." Also, subdivision (b) of section 23222 prohibits driving with marijuana, "[e]xcept as authorized by law." Kha was legally authorized to possess the marijuana and therefore was not in violation of section 23222. (6) The Court discussed the apparent conflict between state law, allowing for the legal possession of marijuana for medicinal purposes, and federal law, which does not, as it is applied in state court. For instance, H&S § 11473.5 provides for the destruction of controlled substances found to be possessed illegally. The City argued that defendant did not possess the marijuana lawfully in that he was in violation of federal law. However, the Court noted that federal laws are not enforced in state court. Section 11473.5 does not authorize the destruction of the marijuana when it's possessed lawfully under state law. (7) Lastly, the Court

considered the issue of "preemption." Where there is a conflict between state and federal law, federal law preempts any contrary state provisions. The City argued that federal law, preempting state law, prevented a state entity from returning to a citizen his marijuana even though he possessed it lawfully under state law. However, there is a presumption against preemption. Emphasizing this presumption, the Court noted that Congress, in enacting federal drug control statutes, specially indicated an intent *not* to preempt state statutes on the same topic. (8) In conclusion, the Court ruled that to deprive Kha of his marijuana, which he lawfully possessed prior to its seizure by the Garden Grove police officers, violated Kha's "due process" rights.

Note: While I understand the Court's analysis of the law on a strictly state law basis (the CUA is what it is, like it or not), I have a problem accepting this Court's strained analysis of the serious conflicts between the CUA and federal law. While I sympathize with the argument that Kha was entitled to his dope under state law (despite my personal reservations about the wisdom of the CUA), I have a great deal of difficulty with the idea that California Courts can so blatantly assist its citizens in violating federal criminal statutes. At the very least, I don't buy the argument that the City of Garden Grove isn't itself in violation of federal law by giving Kha his marijuana back. But my opinions aside, rest assured we have` not heard the last word on this issue. So stay tuned.

***Kidnapping for Purposes of a Sexual Offense, per P.C. § 209(b)(1)*:**

People v. Power **(Jan. 18, 2008) 159 Cal.App.4th 126**

Rule: Tricking a victim into going to various isolated places for purposes of sex by convincing the victim that a third party was threatening her family and would hurt them if she didn't comply is sufficient evidence of force, fear, and substantial movement to constitute a kidnapping for purposes of a sexual assault.

Facts: Defendant was secretly in love with a co-worker, Jane Doe, who was married and had children. Jane and defendant worked together in Riverside and were close friends. With marital problems at home, Jane had an affair with another co-worker; Lance. In June, 2004, Jane started receiving anonymous letters cautioning her to leave Lance alone. Jane told defendant about the letters. Defendant told her he thought the letters were from yet another co-worker, Tiffany, who had her own interest in Lance and who defendant described as being "psycho." In September, Jane broke it off with Lance and reconciled with her husband. The letters stopped. But then in November, Jane received a letter threatening to do harm to her and her family if she didn't do what she was told to do. Confiding in defendant again, he claimed to have also received a similar letter threatening his family if he and Jane didn't go to a nearby restaurant, sit in his car, and kiss for a certain amount of time. Jane was reluctant, but defendant was able to talk her into it "so our families don't get harmed." From December through the following May, defendant repeatedly claimed to be getting more letters addressed to either him or Jane, commanding them to go to various places (usually a motel in Moreno Valley or a nearby cemetery where they used defendant's car) and to engage in sexual intercourse and oral copulation. Eventually, defendant and Jane were ordered to video tape their sex acts.

Jane was always reluctant, but defendant would talk her into complying so that their families wouldn't be harmed. Defendant discouraged Jane from going to the police out of an alleged fear of what Tiffany might do. Jane was also told to provide periodic monetary payments which defendant claimed to be passing on to Tiffany through a third party. Finally, in July, Jane went to the police who immediately realized what was going on and set up a series of controlled telephone calls between defendant and Jane. Defendant was later arrested and eventually confessed to being responsible for all the letters, using them as a means to get Jane into bed. Defendant was charged with eight counts each of forcible rape (P.C. § 261(a)(2)), forced oral copulation (P.C. § 288(c)(2)), extortion (P.C. § 518), and kidnapping for purposes of sexual assault. (P.C. § 209(b)(1)) Defendant was convicted on all counts and sentenced to a whopping eight consecutive life terms plus 72 years in prison. Not surprisingly, defendant appealed.

Held: Except to remand the case back for resentencing (giving the trial court the option of imposing even more time), the Fourth District Court of Appeal (Div. 2) affirmed. Among the issues decided was whether there was sufficient evidence of "*force or fear*" to support the charge of kidnapping for purposes of committing a sexual assault. The "*force*" need not be physical. Force can be applied through threats to harm one's family. Also, section 209(b) refers to force or "*any other means of instilling fear*." Jane was led to believe that compliance with the orders conveyed in the letters was necessary in order to prevent harm to her family. Both "*force*" and "*fear*" are present whenever a victim complies under threats to harm her family. The Court further ruled that it is irrelevant that the threats and the actual movement are separated by a substantial amount of time. It was also an issue whether the movement was sufficiently substantial to constitute a kidnapping. Subdivision (b)(2) of section 209 requires that the victim be moved beyond that which is merely incidental to the commission of the sex offense. It must also be shown that the movement increased the risk of harm to the victim over and above that necessarily present in the underlying intended offense. In evaluating these requirements, it is necessary to consider the nature and scope of the movement as well as the context of the environment in which the movement occurred. Circumstances to consider include whether the movement decreases the likelihood of detection, increases the danger inherent in the victim's foreseeable attempts to escape, or enhances the attacker's opportunity to commit additional crimes. In this case, the victim was moved either to a motel in Moreno Valley or to a cemetery some 2 to 3 minutes from their office. Either movement isolated her, enabling defendant to videotape their sexual acts, and decreased the risk of detection. The chosen locations also increased the risk of psychological harm to Jane. These factors are sufficient to support the jury's conclusion that the movement of the victim in each instance was sufficiently substantial to constitute a kidnapping.

Note: I briefed this case to illustrate the somewhat novel use of the life-top "kidnapping for purposes of committing a sexual assult" charge as described in P.C. § 209(b)(1). We typically see such a kidnapping when some pervert drags an unsuspecting victim into his car, driving her into a dark alley, and does his deed. Here, in constrast, the victim went along with every act, but, as discussed, certainly not willingly. It sometimes helps to think outside the box when trying to determine whether an unusual set of circumstances fits the elements of an otherwise common offense. Good work, Riverside DA's Office.

***Residential Entries; Exigent Circumstances*:**

People v. Seminoff **(Jan. 29, 2008) 159 Cal.App.4th 518**

Rule: With probable cause to believe someone in a residence needs help, a warrantless entry to check that person's welfare is justified.

Facts: Four-year old Timothy came down to the lobby from his mother's room at a Holiday Inn in Placentia at about 11:00 a.m. and told an employee that he couldn't wake his mother (referred in the decision only as "Bassett"). An employee also attempted to wake Bassett, calling the police and paramedics when he couldn't. Placentia Police Officer Brad Butts responded to cover the paramedics. After complying with knock and notice at the door, and receiving no response, and after waiting about 30 seconds, Officer Butts used a card key to open the door. At the opened door Officer Butts announced his presence a second time and, after another 30 seconds with no response, entered the room. The officer noticed the strong odor of marijuana and saw two knives and a loaded pistol magazine on a table. Proceeding into the bedroom area, Officer Butts found the unconscious Bassett laying on the bed and a baggie of methamphetamine on a desk. Officer Butts unsuccessfully attempted to wake Bassett. The paramedics came in and, after more attempts, finally woke Bassett. Although groggy, Bassett was able to tell the paramedics that she was fine; just a heavy sleeper. Having seen the loaded magazine, Officer Butts asked her if there were firearms in the room. Bassett said that there were two firearms, but that she was not sure where they were. She gave Butts permission to look for them, directing him to the nightstand, a dresser, and a briefcase as possibly containing the firearms. Butts checked all three and, in the process, found another baggie of methamphetamine, drug paraphernalia, and a .357 revolver. A paramedic found a nine-millimeter pistol under the pillow on Bassett's bed. Paperwork with defendant Seminoff's name was also found. He was arrested shortly thereafter in the parking lot as he was returning from parts unknown. A search warrant was obtained for a more thorough search, the execution of which resulted in the recovery of 46 pounds of marijuana in a closet. Charged with various narcotics-related offenses in state court, defendant Seminoff's motion to suppress the evidence was denied. He pled guilty and was sentenced to prison. Defendant appealed.

Held: The Fourth District Court of Appeal (Div. 3) affirmed. Defendant Seminoff's argument on appeal was that there was insufficient cause to justify the police officer's warrantless entry into the motel room. While noting that warrantless entries by police into any residence (including motel or hotel rooms) are generally not allowed under the Fourth Amendment, there are exceptions. "One exigency obviating the requirement of a warrant is the need to assist persons who are seriously injured or threatened with such injury." The standard of proof justifying such an entry is "*probable cause*." "Absolute proof of an imminent emergency is not required: A warrantless entry will be justified if there is probable cause to believe there is a risk of danger to persons inside the dwelling." In this case, the Court noted that Officer Butts would have been in "dereliction of duty" had he failed to make entry to check Bassett's welfare where her own four-year old son and a motel employee both reported that she could not be aroused. It was the middle of

the day when people were not normally asleep and there was no response at the door when Officer Butts attempted to get Bassett's attention. Here, Officer Butts clearly had probable cause to believe that Bassett was in need of his help. The entry was lawful.

Note: I've often argued that in order to check the welfare of an occupant of a residence, an officer needed only a "*reasonable suspicion*" to believe that someone inside needed help. This is based upon language from a number of cases that talk about having "*a reason to believe*" (or "*reasonably believe*") that someone inside is in need of help. (E.g., *People v. Ray* (1999) 21 Cal.4th 464.) But recent case decisions have been interpreting "*reason to believe*" as another way of saying "*probable cause*." (E.g., *United States v. Gorman* (9th Cir. 2002) 314 F.3rd 1105.) The Court here noted that indeed, "*probable cause*" is the required standard of proof needed to justify a warrantless entry. For instance, as noted by the Court: "(A)n unanswered knock on the door is not enough to justify a warrantless police entrance, even if the officer has a general suspicion there is someone inside that might need help." Where you draw the line between "*reasonable suspicion*" and "*probable cause*" is always an issue. My personal opinion: *When in doubt, go on in*. I'd much rather lose some evidence in a motion to suppress and maybe even get sued than walk away only to be told the next day that I could have saved a life if I'd just gone on in. But that's a decision you—not me—will have to make. After all, *I'm retired*. ☺

***Searches Incident to Arrest in a Residence*:**

People v. Leal **(Feb. 28, 2008) 160 Cal.App.4th 701 (*Review Granted*)**

Rule: Searching the "*grabbing area*" incident to arrest after the defendant has already been removed from the scene, at least when it occurs in a residence, is illegal.

Facts: Salinas police officers, armed with two misdemeanor warrants for defendant's arrest, went to his house at 4:48 in the afternoon. The police had information that defendant was a gang member, armed with a gun, and using drugs. With the house surrounded, officers knocked at the front door. A male voice from inside answered, "*who's there*?" The officers identified themselves, but no one would open the door. The officers continued to knock, telling defendant to come out. Some 45 minutes later defendant finally opened the door. He was arrested while standing in the threshold, handcuffed, and led away. Immediately thereafter, officers entered the house and did a protective sweep of the house, but found no one. About two to three minutes after defendant's arrest, and with defendant secured in a patrol car some 30 to 38 feet away, a sergeant returned to where defendant had been arrested and lifted a sweatshirt lying in a chair within reach of the door. Visible in the chair was a loaded semiautomatic pistol with the serial number removed. Charged with the felony possession of a firearm with the identification numbers removed (P.C. § 12094(a)), defendant's motion to suppress the gun was denied by the trial court. He eventually pled "no contest" and appealed.

Held: The Sixth District Court of Appeal, in a split, 2-to-1 decision, reversed. As a general rule, a warrantless search of a residence is a violation of the Fourth Amendment.

The recovery of the firearm in this case was the product of such a warrantless residential search. The question here is whether there is an applicable exception to the warrant requirement. The attorney general argued that looking under the sweatshirt was justified as a "*search incident to arrest*." (*Chimel v. California* (1969) 395 U.S. 752.) In analyzing *Chimel*, the Court noted that there are two legal justifications for a search incident to arrest: "(T)o remove any weapons that the latter might seek to use in order to resist arrest or effect his escape," and to "search for and seize any evidence on the arrestee's person in order to prevent its concealment or destruction." When either justification applies, that area an arrestee might reach in order to grab a weapon or evidentiary items is subject to a warrantless search. Defendant in this case, however, had already been removed from the scene and was in a patrol car some distance away. He was no longer within reach of the chair when the sergeant looked under the sweatshirt. Also, there was no one else on the premises about whom the police had to be concerned, as determined by the protective sweep. For these reasons, looking under the sweatshirt cannot be justified as a "search incident to arrest." The gun should have been suppressed.

Note: As pointed out by the dissent, there is strong authority upholding such a search. Citing the accepted rule, supported by prior authority, the dissent noted that; "the '*grabbing area*' described by *Chimel* applies to the area immediately accessible to the suspect at the time of his arrest, and . . . a search of the area may be made subsequent to the arrest, so long as it is reasonably contemporaneous and nothing has occurred in the meantime to render it unreasonable." (E.g., see *People v. Rege* (2005) 130 Cal.App.4th 1584, 1590.) The theory behind upholding such a search, even after the arrestee has been removed from the area, is because it's unsafe to search the so-called "*grabbing* (or '*lunging*') *area*" while the defendant is standing there and the police shouldn't lose the right to make this type of search just because they choose the safer alternative by removing him from the area first. To the majority justice's credit, they didn't ignore this contrary authority. They simply disagreed with it. In fact, the majority goes on for some four pages listing contrary cases and either differentiating them on their facts or explaining why they think they're wrong. They also limit this decision to a search that takes place in a residence where the expectation of privacy is stronger. But the dissent does them one better, tracing the history of the "*search incident to arrest*" rule, case by case, state and federal (pgs 717-724). That's the bad news. *The good news* is that on June 11th, the California Supreme Court granted review in this case, making it unavailable for trial lawyers to use in court. But because some higher courts have hinted from time to time that cops have been given too much leeway in certain types of searches, you need to be aware that things may change for us. This could be the case.

***Traffic Stops; Illegible License Plates and V.C. § 5201*:**

People v. Duncan **(Mar. 5, 2008) 160 Cal.App.4th 1015**

Rule: An upside down license plate is a violation of V.C. § 5201; illegible license plate.

Facts: While on routine patrol, Chula Vista Police Officer Steve Szymczak observed defendant driving towards him in a vehicle with the front license plate mounted upside

down. Officer Szymczak followed defendant to the parking lot of a motel in a high crime area and contacted him as he was getting out of his car, carrying a bag of food. Szymczak asked defendant if he was staying at the motel, getting conflicting statements in response. Defendant admitted that the vehicle was his and provided Szymczak with a driver's license that he claimed was valid. A records check, however, showed that the license was suspended with the exception that defendant could drive in the course of his employment. Officer Szymczak concluded that defendant, carrying a bag of food in a motel parking lot, was not driving in the course of his employment. When asked, defendant admitted that he knew his license was suspended. Officer Szymczak cited defendant for driving on a suspended license and impounded his vehicle. An inventory search of the vehicle resulted in the discovery of methamphetamine, marijuana, an electronic scale, and some small baggies. Charged in state court with a number of narcotics-related offenses, defendant's motion to suppress was denied. He pleaded guilty and appealed.

Held: The Fourth District Court of Appeal (Div. 1) affirmed. Among the issues on appeal was the legality of defendant's detention based upon a violation V.C. § 5201. Section 5201 provides in pertinent part that: "License plates shall at all times be securely fastened to the vehicle for which they are issued so as to prevent the plates from swinging, shall be mounted in a position so as to be clearly visible, and shall be maintained in a condition so as to be clearly legible." Defendant argued that even if his front license plate was mounted upside down, it still was not a violation of V.C. § 5201. The Court, however, found that defendant's interpretation of the section was too narrow. Section 5201 deals with three situations, requiring that (1) license plates be securely fastened to prevent them from swinging, (2) they be clearly visible, and (3) they be legible. Looking at the Legislature's intent in enacting section 5201, the Court held that an upside down license plate is one that is not clearly legible. "*Clearly*" means "without equivocation. . . . Clearly suggests without doubt or obscurity," . . . and "free from obscurity . . . unmistakable . . . unhampered by restriction or limitation." "*Legible*" is defined as "capable of being read or deciphered, esp. with ease . . . easily readable." The Legislature intended section 5201 to insure that license plates be read with ease and without doubt or mistake. Mounting a license plate upside down makes it more difficult and confusing to read. Defendant, therefore, was in violation of section 5201 when he drove his vehicle with his license plate upside down. Detaining him for the purpose of citing him, therefore, was lawful.

Note: Sometimes it's better to be lucky than to know what we're doing. I'm taking odds right now that Officer Szymczak had no idea whether an upside down license plate actually constituted a violation of V.C. § 5201, or any other section for that matter. But good cops can sense when something *should* be illegal, and then just act on their common sense and innate intelligence. And then it takes a deputy district attorney who's not afraid to take a chance on issuing the case and later litigating it, all the while knowing that the success of the prosecution is totally dependent upon landing the case before the right judge and, eventually, the right appellate court panel. Good work on this case, all the way from the street cop up to the Attorney General's Office.