The California Legal Update

Remember 9/11/2001; Support Our Troops

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This Edition is dedicated to the memory of *Lt. Frank Nuñez*, San Diego Sheriff's Department (retired), who passed away from pancreatic cancer on April 28, 2014: *A great friend and a wonderful person.*

THIS EDITION'S WORDS OF WISDOM:

"*All my life, I always wanted to be somebody. Now I see that I should have been more specific*." (Jane Wagner)

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CASES:

***Detentions and Reasonable Suspicion*:**
***Illegal Detentions and Subsequent Fourth Waiver Searches*:**

People v. Bates **(Dec. 12, 2013) 222 Cal.App.4th 60**

Rule: Stopping a vehicle based upon no more than a "hunch" is illegal. A suspect's Fourth waiver search and seizure condition is insufficient to attenuate the taint of an illegal traffic stop.

Facts: Deputy Sheriffs responded to a radio call at about 1:15 p.m. concerning a disturbance between two males and a female in the town of Soquel (Santa Cruz County). One of the individuals at the scene reported that his cellphone had been taken from him in a strong-arm robbery (later charged as a grand theft from the person, per P.C. § 487(c)), giving deputies a specific clothing and physical description including that he was a black male. The victim also told deputies that he'd seen the suspect in the area before, that his first name might be "Marcus," and that he drove a gold van. A subject who the deputies knew as Marcus, and later identified as the defendant in this case, was known by the deputies to be on felony probation with search and seizure conditions, and living in a nearby apartment complex. Deputy Robert Gidding was directed to drive to the apartment complex and watch for the gold van. An hour and 45 minutes after the theft, other deputies went to Defendant's apartment intending to search it. Upon arrival in the area, they observed a suspect matching defendant's description walking along a fence separating the apartment complex from an adjacent mobile home park. Deputy Gidding, in the meantime, had driven his marked patrol car to an access road leading out of the mobile home park and parked at the side of the road. Within 2 minutes of hearing the broadcast about the suspect along the nearby fence, Deputy Gidding noticed a tan car driving towards the park's exit. The car was being driven by a white female. A black male was in the front passenger seat. A third figure could be seen in the back seat. Deputy Gidding, standing near his vehicle, raised his hand towards the car in an apparent gesture for the car to stop, which it did. Approaching the car, the deputy noted that the passenger in the backseat was also a black male and and that he matched defendant's description. That passenger identified himself as Marcus Bates. He was arrested at the scene. Charged in state court with grand theft person, defendant brought a motion to suppress all the evidence that was the product of his arrest. (Presumably, the victim's cellphone was recovered in defendant's possession when he was arrested.) The trial court denied the motion and defendant pled no contest and admitted a prior strike conviction. He appealed from his 32-month prison sentence.

Held: The Sixth District Court of Appeal reversed. The Court first ruled that the investigatory stop of the vehicle in which defendant was riding was illegal. Such a stop requires at a minimum that the officer have a "*reasonable suspicion*," i.e., "specific articulable facts that, considered in light of the totality of the circumstances, provided some objective manifestation that the person [or vehicle] detained may be involved in criminal activity." Here, Deputy Gidding knew that a black male, wearing specifically described clothing and possibly driving a gold van, had been involved in a felony offense almost two hours earlier. He also knew that the suspect possibly lived in an apartment complex adjacent to where the deputy was watching for the van. Instead, a tan vehicle with a white female driver and a black male passenger, whose clothing the deputy

could not see, approached him. While it was unclear from the record, it appeared that Deputy Gidding made a hand gesture towards the vehicle causing the driver to stop. The Court found that under those circumstances, any reasonable person in the driver's position would have believed that she was required to stop. As such, the driver and its occupants had been detained. However, there was nothing about that vehicle, nor its occupants, which could have reasonably led Deputy Gidding to believe it was connected to the earlier theft. In effect, he stopped the vehicle on no more than a "hunch." The fact that the passenger in the front was a black male, as was the suspect, is legally insufficient. "(T)he race of an occupant, without more, does not satisfy the detention standard." Defendant, sitting in the back seat, couldn't be seen by Deputy Gidding at the time he stopped the car. There being no reasonable suspicion that the tan car nor its occupants had been involved in any crimes, stopping it was unlawful under these circumstances. The Court next considered whether the fact that defendant was subject to warrantless search and seizure conditions (i.e.; a "*Fourth waiver*") "attenuated" the taint of the illegal detention. In analyzing this issue, a court must consider (1) the temporal proximity of the Fourth Amendment violation to the procurement of the challenged evidence, (2) the presence of intervening circumstances, and (3) the flagrancy and purposefulness of the official misconduct. In this case, the court ruled that the existence of search and seizure conditions was not enough of an "intervening circumstance" to overcome Deputy Gidding's act of purposely stopping the tan car for an offense that was almost two hours old. Therefore, defendant's arrest and the recovery of evidence connecting him to the crime were the products of an unlawful detention without sufficient intervening circumstances to attenuate that taint. The resulting evidence should have been suppressed.

Note: The People cited case authority to the contrary on the issue of whether the existence of a search and seizure condition attenuates the taint of an illegal traffic stop; *People v. Durant* (2012) 205 Cal.App.4th 57. This new decision disagrees with *Durant*, and differentiated it on the facts anyway. *Durant* involved an honest mistake on the officer's part as to whether defendant had committed a traffic violation. In this case, although noting that Deputy Gidding did not act in bad faith, the Court found that his actions in stopping the tan car was "purposeful." The Court also rejected the People's argument that *People v. Brendlin* (2008) 45 Cal.4th 262 applied. In *Brendlin*, the California Supreme Court held that an outstanding arrest warrant was an intervening circumstance that attenuated the taint of an illegal traffic stop. This Court differentiated itself from *Brendlin* by pointing out that while arresting someone on an outstanding arrest warrant is both an officer's "right and duty," searching someone under the authority of a probationary search waiver is discretionary. In my opinion, that's a weak argument for differentiating between executing an arrest warrant and conducting a Fourth waiver search, but what do I know. *Durant* and this case are close enough that a viable argument can be made that we now have two opposing rules for whether a Fourth waiver is sufficient to constitute an intervening circumstance. Also note, by the way, that these cases are not to be confused with when an officer discovers that a suspect is subject to a Fourth waiver *after* an otherwise illegal search is conducted. In such a circumstance, the belatedly-discovered Fourth waiver will *not* validate the illegal search. (*People v. Sanders* (2003) 31 Cal.4th 318.) The officer must know about the Fourth waiver before conducting the search.

***The Use of Firearms, Handcuffs, and De Facto Arrests*:**
***Anonymous Information and Detentions*:**

People v. Turner **(Aug. 28, 2013) 219 Cal.App.4th 151**

Rule: The use of a firearm, handcuffs, and putting a suspect on the ground is lawful where it is reasonably necessary to insure safety, and does not necessarily convert a detention into a de facto arrest. Information from various sources that a suspect is armed, particularly where corroborated by the observed circumstances, is sufficient to justify a suspect's detention.

Facts: Defendant, whose son was on the football team of a high school in Salinas, was apparently angry over something that had happened during one of their games. At some point during the game, defendant went up to Assistant Coach Anthony Steward and called him a "bitch-ass," throwing in a racial slur for effect, and told him; "I'll see you after the game." Taking this as a threat, Coach Steward reported the incident to the head coach, Rafael Ward. Others later came up to Coach Steward and warned him that "they said they're going to wait for you in the parking lot." Word apparently got around, resulting in a number of coaches walking their families to their cars in the parking lot after the game "because of security concerns." As Coach Ward was leaving the stadium, his aunt, Annie Camel, approached him and warned him to be careful because her friend, Jeannette Smith, had told her that defendant had a gun. All this was reported to the school principal, Darrin Herschberger. Monterey County Probation Officers Lawrence Fenton and Steve Hinze, who were both working security at the game in their off-duty time, were instructed by Principal Herschberger to go to the parking lot because there had been threats make to one of the coaches. They contacted Coach Ward who told them what was going on, that he had heard that defendant had a gun, and that whatever was going to happen was going to be "taken care of" in the parking lot. Probation Officer Fenton called the Salinas Police Department for assistance, telling the dispatcher that they'd received a report of a person at the school with a gun. As the game was letting out, Probation Officer Hinze observed six or seven persons, including defendant, standing near a dumpster at the edge of the parking lot. The same group had been seen there before the game, "standing . . . off to the side looking a little intimidating." It was also noted that there were discarded beer cans next to the group. As the first Salinas P.D. unit arrived, defendant was seen breaking away from the group and walking off the campus. Probation Officer Hinze shined his flashlight on defendant, identified himself, and drew his service revolver while ordering defendant to put his hands up. Salinas P.D. Officer Jordan White, who had just arrived knowing only that there was a report of a man with a gun at the school, assisted by ordering defendant to the ground. Defendant complied. Officer White handcuffed defendant as he was held at gunpoint by another officer. Officer White asked defendant if he was carrying any weapons. Defendant responded that he had a gun in his front pocket. Officer White pulled a short-barrel, loaded revolver out of his pocket. Charged in state court with a number of gun-related offenses, defendant filed a motion to suppress. The trial court denied the motion. Defendant pled "no contest" to possession of a firearm in a school zone (P.C. § 626.9(b)) and appealed.

Held: The Sixth District Court of Appeal affirmed. On appeal, defendant first argued that when he had been put to the ground at gunpoint and handcuffed, he had been subjected to a "de facto" arrest without probable cause. This, he argued, was an illegal arrest in that it was based upon information from an anonymous tipster of unproved reliability. The People argued, on the other hand, that defendant had only been detained. The Court agreed with the People. First, the rule is that while "the investigative methods employed should be the least intrusive means reasonably available to verify or dispel the officer's suspicion in a short period of time," a police officer is allowed to take into account the "totality of the circumstances." The use of a firearm by a police officer in order to affect a detention is lawful under circumstances where the officer reasonably believes that it is necessary for reasons of safety. Here, the officers had information that defendant was committing a felony (being in possession of a handgun on school grounds), that he'd threatened one of the school coaches, and that he intended to carry out his threat in the parking lot after the game. With this information, using firearms, handcuffs, and putting defendant to the ground in order to insure everyone's safety was reasonable and did not convert defendant's detention into a "de facto" arrest. The Court also discussed the argument that as "anonymous information," the officers did not have enough to even detain (let alone arrest) him. Defendant's argument was based upon the landmark U.S. Supreme Court case decision of *Florida v. J.L.* (2000) 529 U.S. 266, where it was held that an anonymous tip alone is insufficient information upon which to base a detention and/or a patdown for weapons. Here, however, the officers were not basing their detention of defendant on uncorroborated anonymous information. Rather, the information had come from any number of sources, all of whom who had no problem identifying themselves; e.g., Coach Ward's aunt who got the information that defendant was armed from another identified source, as well as Coach Steward who reported having been threatened by defendant, corroborated by others who warmed that the threat would be carried out in the parking lot after the football game. While the initial source of these various bits and pieces of information were not always identified, they still all tended to corroborate each other. Also, defendant had been seen hanging out with others in the parking lot where it was alleged that his threats would be carried out, with empty beer cans strewn around. Upon the arrival of officers from the Salinas Police Department, defendant attempted to flee the scene before being stopped and detained. The observed circumstances, therefore, all tended to corroborate the other information collected by the officers. Under the "totality of the(se) circumstances," defendant's detention was lawful.

Note: Ever since *Florida v. J.L.* was decided, courts have been looking for exceptions in order to provide police officers with the ability to lawfully detain and, more importantly, check suspects for dangerous weapons; typically a firearm. This case decision cites a number of California cases where courts have bent over backwards to do just this. So the basic rule is that if you get anonymous information that a particular person standing on the street corner (something any passerby could have seen) is illegally armed, with nothing more, then you may consensually encounter that person; but that's about it. You cannot pat him down for weapons absent something else to corroborate the allegation that he may be armed. That's the rule of *Florida v. J.L.* But it doesn't take much in the way of corroboration to conduct a detention and/or a patdown for weapons. So my advice has always been to take it slow and easy. While standing close enough to him to insure he can't pull a gun before you can react, look for signs of nervousness. Look for bulges in his waistband. Ask him if he's armed. Something will develop giving you the necessary reason to conduct a patdown. When you've gotten about everything

you're going to get, go ahead and do the patdown. But don't get so hung up in these rules that you allow someone, such as yourself, to get shot. I'd rather lose the gun in a motion to suppress than read about your untimely death. Note also that the United States Supreme Court has very recently clarified, if not loosened up, the rules on detentions based upon anonymous tips in *Navarette v. California* (Apr. 22, 2014) __ U.S. __ [2014 U.S. LEXIS 2930].) I intend to brief this case for the next *Update* in the next few weeks. In the meantime, if you want all the case law describing the various exceptions to *Florida v. J.L.*, and you have my Fourth Amendment Search and Seizure Outline (14th Edition), check it beginning on page 90. Otherwise, let me know and I will send you all the rules, or, if you prefer, the entire Outline. No extra charge.

***Involuntary Statements*:**
***Miranda*; *Booking Questions*:**
***Massiah*; *Questioning Related to a Prisoner's Safety*:**

People v. Williams **(Feb. 7, 2013) 56 Cal.4th 165 (as modified 5/1/13)**

Rule: (1) A threat made by a person unconnected to non-law enforcement, where the threat is not capitalized on by law enforcement, does not make a defendant's resulting admissions involuntary. (2) Questions "normally attendant to arrest and custody," unless intended to elicit an incriminating statements, do not require a *Miranda* admonishment and waiver. (3) Asking questions of a represented criminal defendant that are not deliberately intended to elicit incriminating statements do not violate the Sixth Amendment right to counsel.

Facts: Maria Corrieo, age 74, owned a restaurant but did not trust banks. She therefore took her business receipts home each day, storing the money in her car. Corrieo's disabled 54-year-old daughter, Gina Roberts, lived with her. On August 15, 1995, defendant, David Ross, and Dalton Lolohea, having been told by a restaurant employee of Ms. Corrieo's habit of storing large sums of money in the trunk of her car, followed her home. Defendant brought a Glock .40 caliber semi-automatic pistol with him. Wearing ski masks and gloves, they confronted Corrieo and Roberts in their home. As Ross emptied Corrieo's car, putting everything of possible value into their car, defendant and Lolohea tied up both victims. After ransacking their home, Ross (allegedly) went out and waited in the car. He heard a shot, after which Lolohea came running out. They then heard several more shots. Defendant came out of the house and told them that he'd shot both victims because Ross had used his name in their presence and they might have been able to identify him. Ms. Corrieo and Roberts were found dead the next day, both having been shot multiple times in the head. Meanwhile, defendant, Ross and Lolohea went through the stolen property Ross had taken from Corrieo's car and found $40,000, which they divided among them themselves. Defendant was arrested the next day for a different offense for which he was eventually sentenced to prison. An investigation of the murders led to Ross, who later agreed to testify against defendant in exchange for a 20-year prison sentence, eliminating the possibility of him being getting the death penalty. Defendant, while serving time in San Quinton, was questioned but denied any involvement in the murders. However, based upon Ross's statements and grand jury testimony, defendant was indicted on two counts of murder with special circumstances (multiple murder and in the commission of a burglary and a robbery). He was arraigned on the murder charges and appointed an attorney. Soon afterwards, defendant was moved from San Quinton to Folsom State Prison. While being processed at Folsom, Sergio

Corrieo—son of Maria Corrieo and brother to Gina Roberts—also happened to be a prisoner there and was assisting officers in processing new inmates. He immediately recognized defendant as his mother and sister's murderer. So he asked to be relieved of duty, telling his supervisor that defendant "was a suspect in my family's murder and I didn't want to do anything stupid." Being placed alone in a nearby room, Sergio learned that defendant had been placed in an adjoining cell, separated only by a door with a three-inch gap at the bottom. So he got down on his hands and knees and called to defendant through the gap. When defendant responded, Sergio asked him; "*Do you remember Maria Elena Corrieo*?" Defendant said that he did. Sergio then told him; "*You're a dead man*, (*expletive*)." When defendant's intake interview was resumed, he told officers that; "*I need to lock up*" (meaning that he needed to be placed into protective custody). When asked to explain why, defendant said only that "*they're going to stab me*," but declined to say who "*they*" were. When asked why, defendant responded; "*Because I killed two Hispanics*." At trial, these statements were used against defendant over his objections as admissions of guilt. Although there was plenty of reason to question Ross's credibility, he testified as above, claiming that defendant was the one who executed both Ms. Corrieo and Roberts. Defendant was convicted and sentenced to death. His appeal to the California Supreme Court was automatic.

Held: The California Supreme Court unanimously affirmed. On appeal, defendant argued that his statements made to the Folsom Prison intake officers should have been suppressed because (1) they were involuntarily made, (2) he was questioned in violation of *Miranda v. Arizona*, and (3) he was questioned without his attorney being present, in violation of *Massiah v. United States*. The Court rejected all three arguments. (1) *Voluntariness*: Defendant's involuntariness argument was based upon the fact that Sergio Corrieo, when he threatened defendant—that threat prompting defendant's later incriminating admissions—was a "state actor" in that he was working as a prison intake clerk. The Court determined, however, even if that made him an agent of law enforcement (a questionable, undiscussed conclusion), when the threat was made, Sergio had already been relieved of his duties and was acting on his own initiative. Also, the prison officers did not capitalize on Sergio's theat. Defendant was never pressed for a confession. His unsolicited admissions were made voluntarily in response to questions related to defendant's own plea that he needed protection and not as a result of the officers seeking incriminating statements. The officers were merely performing routine prison intake duties. There was nothing to indicate at that time that Sergio's threat was related to defendant's pending murder charges. He was under no compulsion to admit the murders. (2) *Miranda*: Defendant's next argument was that when asked by prison officials about why he needed to be protected, he should have been *Mirandized* first. However, it is a general rule that questions "*normally attendant to arrest and custody*," sometimes referred to as "*booking questions*," do not require a *Miranda* admonishment and waiver. The intake interview by the prison officials here was no different. Even so, booking questions do not escape the requirements of *Miranda* if found that they were "*designed to elicit incriminatory admissions*." The factors a court must look at in determining whether questions asked of an in-custody suspect is an interrogation requiring a *Miranda* admonition include: (1) The nature of the questions, such as whether they seek merely identifying data necessary for booking; (2) the context of the interrogation, such as whether the questions were asked during a non-investigative, clerical booking process and pursuant to a standard booking form or questionnaire; (3) the knowledge and intent of the government agent asking the questions; (4) the relationship between the questions asked and the crime the

defendant was suspected of committing; (5) the administrative need for the information sought; and (6) any other indications that the questions were designed, at least in part, to elicit incriminating evidence and merely asked under the guise or pretext of seeking routine biological information. In this case, the prison officials had no information concerning defendant's new case related to the murders. Their questions were motivated by, and related solely to, why defendant felt he needed protection; i.e., an issue of jail security. The officers had no reason to believe that defendant would respond with incriminating admissions. As such, *Miranda* was not required. (3) *Massiah*: Defendant lastly claimed that asking him questions without his attorney present (having just been appointed an attorney on the murder charges) violated his Sixth Amendment right to counsel, per *Massiah v. United States*. Such a violation occurs whenever the government intentionally creates, or knowingly exploits, a situation that is likely to induce the defendant to make incriminating statements without the assistance of his attorney. In this case, however, as indicated above, defendant was unable to show that the prison officials deliberately elicited incriminating statements. As such, the facts of this case "fell far short of an intentional exploitation required for a *Massiah* violation." His admission to having killed two people, therefore, was properly introduced against him at trial.

Note: Co-defendant Ross's testimony was recognized as critical in this case. There was good evidence tying all three defendants to the scene, but who pulled the trigger was an issue. They were all of course subject to being convicted of capital first degree murder, but the trigger man was more likely to get the death penalty than the others. It was also noted that Ross—a rotten person through and through—tended to minimize his own participation from the very beginning and told as many lies as not. He also admitted to a module-mate in the local county jail that; "*I wasted these two bitches*;" an admission just as damning as the one defendant made. So I'm guessing that this case was one of those where the first co-defendant to agree to testify against the others got the deal. I had one of those once (a two-defendant murder case with little hope of proving anything without the cooperation of the other) where I gave one murderer a sweetheart deal in exchange for his testimony. Unfortunately, that was not enough and the whole thing went to hell in a hand basket on me. So congratulations to some Contra Costa County DDA for successfully pulling this one off.

***Residential Parole Searches*:**

United States v. Grandberry **(9th Cir. Sep. 17, 2013) 730 F.3rd 968**

Rule: The Ninth Circuit Court of Appeal's rule for doing a parole search on a parolee's residence is that there be probable cause to believe that the parolee lives there. The fact that the parolee has some control over someone else's residence does not change this rule.

Facts: Based upon an anonymous tip that someone was selling crack cocaine out of a particular garage, LAPD detectives initiated an investigation. They determined that the garage in question was known on the street as "*Looney's spot*," and that defendant's gang pseudonym was "*Looney*." It was also determined that defendant was a parolee subject to search and seizure conditions. Surveillance of the garage on January 14, 2010, resulted in the observation of defendant selling what was soon (when an observed buyer was later stopped and arrested) determined to be crack cocaine. A few days later, defendant was followed as he drove from the

garage to an apartment two blocks away on So. Arlington Ave. In the following days, defendant was observed several times driving between the garage and the apartment "in a peculiar manner," cutting through an alley as if "to evade law enforcement detection." Between January 14th and 25th, defendant was seen going in and out of the apartment some 6 to 10 times, always between noon and 10 p.m., using a key, and once in the company of a female companion. He was also seen looking out from an upstairs window on at least one occasion. On another occasion, defendant was observed coming out of the apartment to give a man sitting in a parked vehicle a white paper bag, and then return to the apartment. Upon detaining that man, it was determined that the bag contained $9,000 in cash. Based upon the above, it was believed that defendant lived in the apartment. However, the officers did not check the names on the building's mailboxes, talk to any neighbors, check the building's trash, or try to determine who might be listed on a lease, if any. Also, no one ever saw him carrying groceries, laundry, newspapers, or mail, in or out of the apartment. The officers also failed to ask defendant's parole officer if he knew about the apartment. But it was known that defendant's listed parole residence was at another address on South Manhattan Pl., which was also where the Department of Motor Vehicles (DMV) showed that he lived. That other address was surveilled for about an hour on one afternoon with negative results. Nothing else was done to verify or negate the possibility that this second residence was where he lived. On January 25th, the officers attempted to contact defendant in front of the Arlington Ave. apartment. However, he fled on foot, tossing the keys onto the ground. He was arrested and the keys were recovered. Without asking defendant if he lived in the apartment, they told him that they were going to "*search your place now*." Defendant told them to "*do what you gotta do*." Using the keys to get in, a warrantless parole search was conducted of the apartment resulting in the recovery of cocaine and a loaded gun. More cocaine was found in his car. Charged in federal court with a host of cocaine-related offenses, defendant filed a motion to suppress the evidence recovered from the apartment. (He did not challenge the search of his car.) The trial court granted the motion, suppressing the evidence. The Government appealed.

Held: The Nine Circuit Court of Appeal affirmed. The rule as previously established by the Ninth Circuit is that in order for law enforcement officers to conduct a probation or parole Fourth waiver search of a residence, they must have full "*probable cause*" to believe that the residence to be searched is where the probationer or parolee in fact lives (but see Note, below). The facts in this case, per the Court, were insufficient to establish that the apartment they searched was where defendant lived. Finding this standard to be a "*relatively stringent*" rule, the Court held that there must be "*strong evidence*" supporting the officers' belief. Here, there was no such "*strong evidence*." All they had was defendant's response of, "*do what you gotta do*," when the officers told him that they were going to search "*his place*." But it was never specified which "*place*" they thought was his residence. Other evidence that he lived in the apartment was weak. A one-hour surveillance of the address he listed with his P.O. (i.e., the South Manhattan Pl. residence) was insufficient to show that he didn't live there. Six to ten observations of him at the Arlington Ave. apartment, without any evidence that he carried mail, newspapers, laundry, or groceries in or out of the apartment, only showed that he was a frequent visitor. And while seeing him with a key to the apartment was significant, by itself it was not enough. Further investigation should have been done, such as checking the mail boxes, talking to neighbors and/or the landlord, or contacting his parole officer. With the South Manhattan Pl. address being listed with his P.O. and DMV as his residence, something that was never disproven, the evidence

was clearly insufficient to prove, at least by a probable cause standard, that he lived at the apartment. The Court further rejected the Government's argument that a parolee, being subject to warrantless searches, no longer has any expectation of privacy no matter where he's searched. While it is true that law enforcement does not need any suspicion at all in order to conduct a Fourth waiver search under California's parole statutes (See *Samson v. California* (2006) 547 U.S. 843.), that does not mean that the rules restricting law enforcement's entry into a third party's residence no longer apply. The law is very clear that as an "overnight guest," or as a "frequent visitor," defendant had standing to challenge an entry into the apartment. (*Minnesota v. Olson* (1990) 235 U.S. 453.) And lastly, the Court rejected the argument that because defendant's search and seizure conditions included not only his residence, but any "*property under* (*his*) *control*," that the apartment was subject to search under the theory that it was "under (his) control." The Court found such language, at least when the place to be searched is a residence (as opposed to a vehicle or a package), cannot constitutionally refer to a place that belongs to a third party and is not the defendant's residence. Per the Court; a parole condition permitting searches of 'your residence and any property under your control' only allows for the search of the parolee's residence.

Note: First, this case perhaps should have been filed in state court as opposed to federal court. California authority disagrees with the Ninth Circuit, requiring only a "*reasonable suspicion*" to believe that the defendant lives at the residence to be searched. (*People v. Downey* (2011) 198 Cal.App.4th 652.) California's looser standard was not even mentioned by the Ninth Circuit. I would argue that in this case the officers had at least a reasonable suspicion to believe that they had the right house. It's also worth reading Justice Watford's concurring opinion (pgs.983-985) noting that there's something wrong when a parolee, subject to search and seizure conditions, enjoys a higher expectation of privacy in someone else's house than he does his own. Justice Watford calls for a reexamination of the issue whether the over-night guest rule of *Minnesota v. Olson*, as discussed above, should apply to someone on search and seizure conditions. I also strongly question whether the Court's "*property under your control*" argument is correct. As also noted by Justice Watford, under this rule as it has been held to apply by the Ninth Circuit, a drug dealer need only to center his selling activities in someone else's home, as the defendant did in this case, to avoid the inconvenience of being subject to a Fourth waiver. That's just not right. But unfortunately, we don't have any state authority to the contrary. So, at least for the time-being, we're stuck with it. So what do you do under the circumstances as described in this case? You either take the additional steps as noted by the Court above to verify that it is in fact that the defendant's house he's dealing out of, or, when in doubt, get a search warrant. End of issue.