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THIS EDITION'S WORDS OF WISDOM:

"*Always go to other people's funerals, otherwise they won't come to yours*."
(Yogi Berra)

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CASE LAW:

***Miranda; Custody and the Relevance of Age*:**

J.D.B. v. North Carolina **(Jun. 16, 2011) __U.S.__ [131 S.Ct. 2394; 180 L.Ed.2nd 310**

Rule: The known or apparent age of a minor is an objectively relevant issue that must be considered when determining whether the minor is in custody for purpose of *Miranda*.

Facts: J.D.B. was a 13-year-old seventh grader attending a middle school in Chapel Hill, North Carolina, at least when he wasn't out burglarizing houses. During one of his burglaries, he was contacted in someone's backyard by police who were investigating

several residential burglaries in the area. He was questioned but then released to his grandmother/guardian. Five days later, a digital camera taken in one of those burglaries showed up at defendant's school with information that defendant had had it in his possession. A police juvenile investigator, DiCostanzo, assigned to investigate that case, went to defendant's school for the purpose of interviewing him about that burglary and others. The school resource officer pulled defendant out of class and took him to a school conference room. With the door shut, defendant was questioned by Investigator DiCostanzo about the burglaries. Also present in the room with the investigator were the school resource officer, the assistant principal, and a school administrative intern. Defendant was not advised of his *Miranda* rights nor told that he could leave or talk with his grandmother. After some initial "small talk," DiCostanzo asked defendant to discuss with him the burglary. Defendant agreed. He at first denied committing the burglary, saying only that he was there because he had been looking for mowing jobs. But then he was confronted with the stolen camera and urged to do the right thing, telling him that "the truth always comes out in the end." Defendant began to weaken, asking if he'd still be in trouble if he returned the "stuff." DiCostanzo told defendant that that would be helpful, but that the matter was going to court nonetheless. He was also told that he might have to be taken to a juvenile detention center if he (DiCostanzo) believed that defendant was going to break into more houses. At that point, defendant confessed that he and a friend were responsible for the break-ins. DiCostanzo finally advised defendant for the first time that he could refuse to answer their questions and that he was free to leave. He still was not read his *Miranda* rights. Defendant indicated that he understood, but remained anyway and provided more details concerning the burglaries. When the bell rang indicating the end of the school day, defendant was allowed to leave and catch the bus home. The interview had lasted some 30 to 45 minutes. Charged in juvenile court with several residential burglaries, defendant moved to suppress his statements arguing that he had been interrogated by the police in a custodial setting without a *Miranda* admonishment and waiver and that his statements were involuntary. After the trial court denied the motion, defendant admitted to the charges, but appealed. The North Carolina Court of Appeals affirmed, as did the North Carolina Supreme Court. In affirming, the North Caroline Supreme Court specifically declined to include the defendant's age as a factor to consider on the issue of whether defendant had been in custody. The United States Supreme Court granted certiorari.

Held: The United States Supreme Court, in a split 6-to-3 decision, reversed. It has long been the rule that a suspect needs to be admonished pursuant to *Miranda v. Arizona* only when he or she is questioned while "in custody." "Custody" has been defined as when the suspect has been "formally arrested, or there is a restraint on freedom of movement of the degree associated with formal arrest." When attempting to determine whether a suspect is in custody, a court is to consider all the surrounding circumstances. But it has also long been a rule that the test is an *objective* one. Whether or not a particular interrogation involved custody is determined by evaluating how a reasonable person in the suspect's position would have perceived it. The *subjective* beliefs of the suspect or the interrogator are irrelevant. Also, only the *objectively perceived* circumstances are to be considered in determining whether custody is involved. Subjective factors related to the suspect himself, such as his age or criminal experience, have been considered

irrelevant to the custody determination. (*Yarborough v. Alvarado* (2004) 541 U.S. 652.) That is, until the decision in this new case. The Court here recognized that "(i)n some circumstances, a child's age 'would have affected how a reasonable person' in the suspect's position 'would perceive his or her freedom to leave.'" This is because "(c)hildren 'generally are less mature and responsible than adults.'" "In the specific context of a police interrogation, events that 'would leave a man cold and unimpressed can overawe and overwhelm a' teen." Debunking the idea that age is a "subjective" factor, the Court noted that a minor's age is commonly something that is either known, or at least apparent, to an interrogator. As such, it is often *not* something that is personal to the suspect and unknown to an interrogator, such as a suspect's IQ or other mental issues would be. Such subjective personal factors remain irrelevant to the issue of custody. But in contrast, a minor's age is generally something that is either known or apparent to the interrogator. "So long as the child's age was known to the officer at the time of the interview, or would have been objectively apparent to any reasonable officer, including age as part of the custody analysis requires officers neither to consider circumstances 'unknowable' to them (Citation), nor to 'anticipat[e] the frailties or idiosyncrasies of the particular suspect whom they question.'" A minor's age, therefore, should be considered in determining whether or not the minor, under the circumstances, would have believed he was in custody for purposes of *Miranda*. The Court therefore returned this case to the North Carolina courts for a reevaluation of the custody issue taking into account the defendant's age.

Note: So, would a 13-year-old minor, yanked out of his Social Studies class by a police officer and interrogated for 30 to 45 minutes by two cops and two school administrators, including the proverbial enforcer of all things bad and evil in the school setting, the dreaded vice-principal, believe he was in custody? Kind of changes the tenor of the whole situation, does it not? The dissenting justices made a kind of "slippery-slope" argument, predicting that changing the long-standing rule that age is a personal, subjective factor that is irrelevant to the custody issue, will open the door to other, even more subjective factors to complicate what used to be a relatively easy rule to apply. How about age on the other end of the spectrum; e.g., senility? How about an obviously mentally impaired, or even drunk, person? Only time will tell how far this will go. But I got the distinct impression in reading this decision that what the Court is really worried about is the proliferation of allegedly false confessions obtained by overzealous police interrogators from suspects, particularly minors. Given the publicity this issue has generated lately, it's inevitable that the rules on interrogations are going to be tightening up on us a bit. So don't think that we've seen the last of the courts' efforts to refine and alter the rules to a defendant's benefit on this issue.

***Administrative Jail Searches; Visitors*:**

People v. Boulter **(Sep. 29, 2011) 199 Cal.App.4th 761**

Rule: A county jail, including lockers located outside a visitor center but maintained by jail personnel, at least with signs warning visitors that they are subject to search, is the

equivalent of a closely regulated business allowing for a warrantless administrative search of a visitor and the property he deposits in the lockers.

Facts: Defendant came to the Men's Central Jail in Los Angeles to visit an inmate. Forty-one feet outside the jail's visitor center, but on jail property, were some lockers made available for use by visitors to secure property prohibited inside the visitor's center. At the entrance to the visitor's center was a sign announcing that no cameras, cellular telephones, recording devices, or purses were allowed inside. Another sign stated: "*Warning: persons entering this area are subject to the laws affecting a custody facility. You and your possessions are subject to search at any time*." A sign was also posted near the lockers, again stating that no cameras, cellular telephones, recording devices or purses were allowed inside the visitor center. Despite all these warnings, defendant was observed by a deputy sheriff inside the visitor center with a camera. The deputy, erroneously thinking that defendant was in violation of P.C. § 4575 (Possession of a Wireless Communication Device in a Jail), arrested defendant and searched him incident to arrest. The search resulted in discovery of two keys to the outside lockers. The two lockers were searched. Methamphetamine, 12 pills, and a scale, were found. Defendant was charged with various drug-related charges in state court. His motion to suppress the contents of the two lockers was denied by the trial court. Defendant pled no contest to one of the felony counts and appealed.

Held: The Second District Court of Appeal affirmed. Defendant did not challenge the validity of the search of his person. (Although defendant was not in violation of P.C. § 4575, he was subject to search based upon the signage warning all persons that they were subject to search when "entering the area.") But he argued that the warrantless search of the two lockers was in violation of the Fourth Amendment. The Court upheld the search of the lockers as an "administrative search." It has been held that, "(A)n administrative or regulatory search is one 'conducted as part of a general regulatory scheme in furtherance of an administrative purpose, rather than as part of a criminal investigation to secure evidence of crime.' Such searches are permissible under the Fourth Amendment 'though not supported by a showing of probable cause directed to a particular place or person to be searched.'" (*Estes v. Rowland* (1993) 14 Cal.App.4th 508, 522.) In determining the legality of such a search, a court must balance the governmental need to search with the extent of the invasion of the defendant's privacy rights. "Implied consent" is sometimes used as the basis for upholding administrative searches. Signs warning that a person and his possessions are subject to search validates the argument that one who voluntarily enters the area impliedly consents to being searched. More recently, however, administrative searches have been justified by the effect of heavy or close regulation of a business or activity, diminishing an individual's or business's expectation of privacy. For instance, one who voluntarily comes into a prison or jail surrenders his privacy expectations in favor of the need for that institution to strictly exclude weapons and contraband. "Because of the character of prisoners and the nature of imprisonment, corrections facilities are volatile places, brimming with peril, places where security is not just an operational nicety but a matter of life or death importance." The lockers in issue here were on the jail's property, even if some 41 feet from the entrance to the visitor center. Jail personnel are responsible for maintaining the security of those lockers. Signs

warned defendant that he was subject to search at any time while in "the area." And even if defendant could argue that he retained some semblance of a privacy right, he surrendered that right once it was noticed that he was in violation of the signs forbidding cameras in the visitor center, giving the officers cause to search for other violations. Lastly, noting that the power to conduct administrative searches cannot be used as a ruse for conducting a criminal investigation, the Court found that there was nothing here to indicate that a separate criminal investigation was the intent of the deputies.

Note: Defendant's argument appeared to be that he considered the warning signs applicable to the visitor center only, and not the outside lockers. The Court, in effect, found that the administrative search theory applies to everywhere on the jail property despite the placement of the "subject to search" warning signs at the visitor center's entrance only. But then, how bright can this defendant be in the first place, bringing his dope to the jail. Wouldn't it be nice if all the dopers in this country would just obediently report to their neighborhood jail with their dope in hand, thus eliminating the need for police to go out into the streets looking for it?

***Search of a Cell Phone Incident to Arrest*:**
***Vehicle Inventory Searches and Department Procedures*:**

People v. Nottoli et al **(Sep. 26, 2011) 199 Cal.App.4th 531**

Rule: The search of a cell phone found in a vehicle at the scene of an arrest is lawful so long as it is "reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle." An arrest for driving while under the influence of drugs provides the necessary "reasonable to believe" element for this search theory.

Facts: Santa Cruz County Deputy Sheriff Stephen Ryan was on patrol at 1:55 a.m., in uniform and in a marked patrol car, when he observed defendant Reid Nottoli (differentiating him from the co-defendant, his father; Barry Nottoli) driving at about 90 miles per hour in a 65 mile-an-hour zone. Upon stopping and contacting defendant, he (defendant) admitted that he didn't have his driver's license with him. (It was later determined that the license was expired.) Defendant exhibited a number of signs and symptoms indicating that he was driving under the influence of a controlled substance; i.e., a "stimulant," and, following some field sobriety tests, was arrested for that offense. Deputy Ryan's extensive training and experience in narcotics and drug influence was testified to at the defendants' (defendant and his father) later motion to suppress. He was handcuffed and put into the backseat of the patrol car. There was a female passenger in the car who was also arrested for being drunk. There being no one to take the car, and because they were on a remote rural road where defendant's "nicer, newer model car" might be stolen or burglarized, Deputy Ryan decided to impound the vehicle. A tow truck was called. In the meantime, Deputy Ryan did an inventory search of the vehicle. Under the driver's seat he found a loaded pistol that defendant admitted was his. In the driver's side door cubby, two hollow tubes—cardboard and plastic—were found, each with a white powdery residue inside. Deputy Ryan suspected that these tubes were "tooters;" i.e., straws used to ingest drugs. In the vehicle's center cup holder, Ryan found

a Blackberry Curve. The Blackberry Curve is a "smart phone" capable of receiving and sending e-mail and text messages as well as taking and storing photographs. It also has Internet access. Deputy Ryan pressed a key to see if it was functional, and it was. Based upon his training and experience, he knew that cell phones are the main communication device used by drug users and sellers. He also knew that they often contain text messages related to acquiring and offering drugs. Text and voice mail messages, contact lists, call history, photos, and videos found in cell phones can be useful in drug-related investigations. Upon turning on the phone, Deputy Ryan noted that the screen showed a wallpaper photograph of someone who appeared to be defendant and who was holding two rifles akimbo fashion. The rifles were AR-15 style assault rifles. Upon the arrival of a cover officer, Deputy Gonzales, Ryan gave him the cell phone. Deputy Gonzales looked through the cell phone in more detail, noting text messages, photographs of a number of firearms, and e-mails. There were some text messages that related to marijuana cultivation. And there was an e-mail receipt from "gunbroker.net" for "the purchase of incendiary projectiles for 50 BMG caliber;" items that are illegal in California. This information and the other contents of the defendant's vehicle were used to obtain a search warrant for a more complete search of defendant's cell phone. With the information gained from this more extensive search, a second search warrant was obtained for defendant's home and the home of his father, Barry Nottoli, both of which are located on the same property. Evidence recovered in that search served as the basis for numerous drug and weapons-related charges in state court against both Nottolis. Defendants filed motions to suppress at the preliminary examination. The prelim magistrate found the traffic stop, defendant Reid Nottoli's arrest, the impound of his vehicle, and the inventory search, all to be lawful. However, the court ruled that the initial warrantless search of defendant's cell phone was illegal. It also ruled that the subsequent search warrants for the cell phone and the two defendants' homes to be the product of the initial illegal search of the cell phone at the scene of the arrest. As a result, all the evidence recovered from defendants' homes and the cell phone was suppressed. With little evidence left to prosecute defendants, the magistrate dismissed the charges against both defendants. The prosecution's motion to reinstate the complaints in superior court (P.C. § 1538.5(j)) was denied. The People appealed.

Held: The Sixth District Court of Appeal reversed. The issue, of course, was the legality of the on-the-scene search of defendant's cell phone. The Court first rejected the Attorney General's argument that the search of the cell phone could be justified as a part of the inventory search of defendant's vehicle. It is a rule that an inventory search of any vehicle must be in accordance with a police department's established vehicle inventory procedures. It is permissible to include in such procedures the opening and inventorying of the contents of any containers. But there was no evidence in this case that the opening or searching of cell phones was any part of the Santa Cruz Sheriff's Department's vehicle inventory procedures. However, the search of the cell phone at the scene of defendant's arrest (leading to both the subsequent search warrants) can be justified as a search incident to that arrest. The Court first cited the history of the "incident to arrest" rule up to *New York v. Belton* (1981) 453 U.S. 454. In *Belton*, it was held that the arrest of an occupant of a motor vehicle automatically allowed for a warrantless search of the entire passenger area of the vehicle, including any containers within the vehicle. It was not

necessary to articulate any reason to believe that there would be evidence in the car or in any of its containers. The fact of the arrest alone justified the search. But then the Supreme Court, in *Arizona v. Gant* (2009) 129 S.Ct. 1710, backed off a bit and ruled that in a case where the occupant had already been secured (i.e., handcuffed and put into a patrol car), there was no longer any fear that he might destroy evidence or lunge for a weapon. Therefore, the legal justifications for a warrantless search of the vehicle no longer applied. However, the Court pointed out that *Gant* did not overrule *Belton*, but merely limited its applicability to when the vehicle's occupants had not yet been secured. More importantly, *Gant* also allowed for a second alternative justification for warrantless searches of motor vehicles; i.e., when it is "*reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle*." Noting that this is a less-then-probable-cause standard (i.e., a "*reasonable suspicion*"), the Court found that Deputy Ryan in the instant case had sufficient evidence to meet this standard of proof in believing that defendant's vehicle would have evidence relevant to the charge of driving under the influence of a drug. In noting that *Gant* didn't overrule *Belton*, the Court specifically found that *Belton*'s rule that it was not necessary to articulate any reason to believe that a particular container actually contained evidence was still in effect. Therefore, it was not necessary to find any reason to believe that defendant's cell phone, as a container of information, actually contained incriminating evidence. The cell phone was automatically subject to a warrantless search, per *Belton*, merely based upon defendant's arrest and the finding that it was reasonable to believe the evidence relevant to defendant's arrest might be *somewhere* in the passenger area of the car, per *Gant.* Also, however, the Court noted that even if this *Belton* rule opening up all containers found in the car to a warrantless search was no longer valid, there was in this case sufficient reason to believe that the cell phone itself would in fact contain evidence related to the offense of driving while under the influence of a drug. This would have been based upon Deputy Ryan's expert opinion related to the use of cell phones by drug users and sellers. So either way, the warrantless search of the cell phone at the scene of the arrest was lawful. The magistrate, therefore, was wrong when he found otherwise.

Note: What a great case! This has to be one of the better written, and reasoned, decisions that I've read or briefed in a long time. And, uniquely, it makes perfect sense. It provides us with an important explanation of the rule in *Gant*, making a warrantless search incident to arrest lawful so long as it is "*reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle*." The Court also went over the case law finding that when you bust a DUI suspect, it is reasonable to believe that his vehicle is going to contain evidence of his drinking (or doping) and driving; a question I get asked periodically. It also clearly notes that this is a less-than-probable-cause requirement. Also note that the defendant's vehicle was properly impounded in this case, the deputy testifying that he was fearful that, as a "nicer, newer model car," it would be subject to theft or burglary if he left it out in the rural area where the arrest took place. This met the "community caretaking" requirements and was not even an issue in this case. I can send you the law on community caretaking if you don't know what I'm talking about. But Deputy Ryan should have testified as to whether his department's policies allowed for the inspection of containers, including cell phones, as a part of an inventory search. A big problem I've noted over the years is that many police officers are unfamiliar with their

own department's established inventory procedures, making it difficult to lay a proper foundation in court for justifying an inventory search of an impounded vehicle. In this case, however, it was just as likely a problem with either a deficiency in Deputy Ryan's department's inventorying procedures themselves, not discussing the searching of containers, or the prosecutor's failure to ask the right questions. But either way, the need to prove that a vehicle inventory was conducted according to a department's policies and procedures really calls for more attention in the training of peace officers.

***Detentions and Parking Tickets*:**

***People v. Bennett* (July 21, 2011) 197 Cal.App.4th 907**

Rule: Writing a parking ticket justifies a temporary detention of the vehicle's occupant. The fact that parking tickets are subject to civil penalties only and are governed by civil administrative procedures is irrelevant.

Facts: Two Los Angeles Police Department officers observed defendant parked in a red "no parking" zone, marked as a fire lane, in his tricked-out Lincoln Town Car. The officers stopped, intending to write defendant a parking ticket. As the officers parked their own vehicle (legally, it is presumed) and walked up to defendant's car, defendant saw them coming. He quickly put his car into "drive" and lurched forward about three feet. The officers ordered him to stop, which he did. Defendant put his car back into "park," leaned forward, and threw something onto the floor in front of him. The officers ordered defendant to get out of his car, and he complied. As he opened the door, one of the officers could see a clear plastic bag containing what was believed to be rock cocaine on the driver's side of the car's floor. Defendant was arrested and his car was searched. Recovered from the car in the subsequent search was some rock cocaine and other narcotics paraphernalia. Charged with possession of cocaine for purposes of sale in state court, defendant's motion to suppress was denied. A jury convicted him of the charges and he was sentenced to prison. Defendant appealed.

Held: The Second District Court of Appeal (Div. One) affirmed. Defendant's argument on appeal was that the officers illegally detained him because the offense he was suspected of committing—being illegally parked in a fire lane in violation of V.C. § 22500.1—is a non-criminal offense subject only to civil penalties. The cocaine, per defendant's argument, was found as a product of this illegal detention. V.C. § 22500.1 is in fact subject to civil penalties only and governed by civil administrative procedures. (See V.C. § 40200) V.C. § 40202 sets forth administrative procedures for enforcing violations of the Vehicle Code that are less than misdemeanors with civil penalties only. This includes section 22500.1. Parking violations such as in this case are no longer treated as infractions, as they once were, but are subject to civil penalties and administrative enforcement only. Section 40202 provides that a peace officer or other person authorized to enforce parking laws and regulations shall handle parking tickets in one of two ways; either attach a parking cite on an unoccupied vehicle (subd. (a)) or, if the vehicle is driven away before this can be done, "file the notice with the processing agency" for later service to the offender by mail (subd. (d)). Per the defendant, once he

attempted to leave the scene, subdivision (d) provided the only enforcement procedure available to the officers. Detaining him under these circumstances, not being an option under the applicable statute, was therefore illegal. The Court disagreed. Citing U.S. Supreme Court precedent (*Whren v. United States* (1996) 517 U.S. 806), the Court noted that law enforcement officers are legally authorized to enforce civil traffic regulations as well as criminal. And while there is no California authority on point, the Court further noted that the Ninth Circuit Court of Appeal has approved investigative stops based upon parking violations. (*United States v. Choudhry* (9th Cir. 2006) 461 F.3rd 1097.) Lastly, even if the officers did in fact attempt to cite (and thus detain) defendant in violation of the procedures described in V.C. § 40202(d), the violation of a statute that doesn't also violate the Fourth Amendment, *does not* invalidate a resulting detention. (*People v. McKay* (2002) 27 Cal.4th 601.) There being no constitutional impediment to law enforcement officers enforcing civil traffic or parking regulations (per *Whren*), it was not unconstitutional for the officers to detain defendant for a parking violation despite the wording of section 40202(d). Defendant, therefore, was lawfully detained.

Note: There's nothing really new or earth-shattering in this decision, but it's nice to have this rule set out in a California case. Now we know that it is beyond dispute that you can cite a person for a parking violation and detain him in the process.

***Consensual Searches*:**
***Expectation of Privacy and Co-Ownership of the Item Searched*:**

United States v. Stanley **(9th Cir. Aug. 2, 2011) 653 F.3rd 946**

Rule: Allowing another person unrestricted access to a mutually owned computer negates any expectation of privacy the first person might have had. A co-owner has actual authority to give consent to search. And if not a co-owner, the doctrine of apparent authority to give consent may still justify the search.

Facts: Defendant jointly owned a computer with his girlfriend, Tiana Stockbridge. They both used the computer while living together, each having their own directories and folders. Defendant had his stuff "password-protected" during that time, taking steps to hide his files, presumably because his files contained child pornography. When defendant and Triana ended their relationship, defendant moved out and took the computer with him. He subsequently removed the password protection from his files although Tiana's files were still on the computer. Shortly thereafter, defendant was arrested on state child molest charges and eventually imprisoned. When arrested, defendant's parents asked Tiana to go to defendant's residence and retrieve the computer, which she did. Defendant acquiesced in her taking possession of the computer, expecting to get it back when he finished his prison term. Neither defendant nor his parents placed any restrictions on Tiana's use of, or access to, the computer. A year and a half later, the computer crashed. Tiana found a friend who could fix it; David Trimm. Trimm found files as he worked on the computer that clearly suggested child pornography. Because Trimm was on federal probation, he determined that he needed to turn the computer over to his probation officer. He contacted Tiana first and informed her of his predicament,

asking for her permission to give it to his probation officer. She consented. The probation officer subsequently turned the computer over to Special Agent Michael Prado of the Immigration and Customs Enforcement "who handles these matters." Agent Prado met with Trimm who filled Prado in on the computer's history and his suspicions about what it contained. Trimm also told Agent Prado that defendant and Triana were joint owners of the computer. So Agent Prado contacted Triana by telephone to determine whether she was in fact a joint owner of the computer and whether she had the authority to give consent to search it. Triana confirmed this and gave Prado permission to search it for illicit materials. Child pornography was in fact found on the computer. Defendant was therefore charged with possession of child pornography in federal court. His motion to suppress his pornography was denied. He therefore pled guilty and appealed.

Held: The Ninth Circuit Court of Appeal, in a split 2-to-1 decision, affirmed. The trial court held in the motion to suppress that not only had defendant lost any expectation of privacy in the computer while he was in prison, Triana having possession of it, but that Triana did in fact have the authority to consent to the computer's search as a "co-possessor," "co-owner," and "common user." The trial court further found that Triana did in fact give consent to Agent Prado to search it. The Ninth Circuit Court found that the record sufficiently supported these findings. Specifically, the Court found that defendant "certainly cannot have entertained a legitimate expectation of privacy in (the computer) once it was delivered unconditionally and without password-protection to its co-owner, knowing that she could access his files." In so finding, the court rejected defendant's argument that just because at one time he had his files password-protected, that he retained a reasonable expectation of privacy in those files while he was in prison. When he removed the password-protection and allowed his girlfriend unrestricted access to *their* computer, any expectation of privacy he might have had at one time was no longer objectively reasonable. Further, a co-owner has the actual authority to give consent to search which is valid against an absent co-owner. Given the mutual use of the computer, each of the parties had actual authority to permit inspection and assumed the risk that the other party might also. And even if it could be argued that Triana was not a lawful co-owner of the computer, Agent Prado was reasonable in concluding, under the circumstances, that she had such authority. The doctrine of "*apparent authority*," where under the circumstances it reasonably appears that a person has authority to give consent to a search, justifies the warrantless search of the computer in this case. The computer having been lawfully searched, defendant's motion to suppress was properly denied.

Note: Tiana Stockbridge changed her story by the time this case went to court, claiming that she couldn't remember whether or not she gave Agent Prado consent to search the computer. This change in attitude might have had something to do with her and her child-molesting boyfriend getting back together, and actually getting engaged. Ah, love is such a wonderful thing, turning people into perjurers. Both the trial court and the Ninth Circuit found this to be a good reason not to believe her courtroom testimony. The dissenting opinion, by the way, gave a different interpretation to the facts, finding that Triana was not a co-owner of the computer and never had any authority to consent to a search. The only reason this is interesting is because it is a good example of appellate courts giving their own interpretation to the actual facts to justify a conclusion.