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Robert C. Phillips (858) 395-0302 (C)
Deputy District Attorney (Ret.) RCPhill808@AOL.com

THIS EDITION'S WORDS OF WISDOM:

"*I like work; it fascinates me. I can sit and look at it for hours.*"
(Jerome K. Jerome)

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CASE LAW:

***Public Place; A Residential Front Yard*:**

People v. Strider **(Sep. 29, 2009) 177 Cal.App.4th 1393**

Rule: The front yard of a residence, surrounded by a 4½ to 5 foot fence, is not a public place for purposes of P.C. § 12031 (possession of a loaded firearm in a public place).

Facts: Los Angeles Deputy Sheriff Jason Bates and his partner were patrolling an area of Compton at around 6:20 p.m. when they observed defendant standing in the front yard of a single family residence. The yard was enclosed by 4½ to 5 foot fences consisting of wrought iron on two sides and wood and brick on the other. Although the yard was easily visible through the fence, the only access was through a gate in the wrought iron portion at the front. The deputy knew the house to be a hangout for the Southside Crips, and that rap music was produced in a detached garage in the back. As the deputies drove by, a person entered the yard and left the gate open. Defendant, still standing in the front yard, looked at the deputies, turned to his right, and quickly walked towards the front door. As he did so, Deputy Bates observed the butt of a handgun protruding from his left rear pants pocket. Bates immediately exited his patrol vehicle and ran after defendant. Defendant entered the house and slammed the front door. Bates opened the door and followed after defendant into the residence, calling for him to stop. As defendant was walking into the kitchen, he dropped a baggie of rock cocaine. He then stopped as ordered. Deputy Bates retrieved a loaded .40-caliber semiautomatic handgun from defendant's pocket. He was handcuffed and the baggie was recovered from the floor. It was determined that defendant didn't live there but had full access to the house, coming and going as he liked. Charged with gun and drug offenses, defendant's motion to suppress was denied. He was tried by a jury and convicted of possession of a controlled substance while armed with a firearm. Sentenced to prison, defendant appealed.

Held: The Second District Court of Appeal (Div. 3) reversed. Defendant was suspected of possessing a loaded firearm "*in a public place*," in violation of Penal Code § 12031(a)(1). The lawfulness of the deputy's detention and arrest of defendant in the kitchen depends upon whether the deputy had the right to chase him into the house. The legality of the deputy's entry into the house, in turn, depends upon whether the deputy had probable cause to believe defendant was in fact in violation of P.C. § 12031(a)(1) when he was observed standing in the fenced off front yard with a gun sticking out of his pocket. Lastly, whether or not defendant was violating P.C. § 12031(a)(1) depends on whether he was in a "*public place*" at that time. Although P.C. § 12031 does not define the term "*public place*," appellate court cases in California have routinely held that privately owned property can constitute a public place. Based upon these cases, we know that a public place is any location that is "readily accessible to all those who wish to go there." A key consideration "is whether a member of the public can access the place 'without challenge.'" For instance, places of business, private parking lots, and even apartment hallways, at least when open to the general public, are public places. In relation to the front yard of a private residence, it has been held that a "public place

includes the area outside a home in which a stranger is able to walk without challenge." This, depending upon the circumstances, might include one's driveway, lawn, or porch. But in this case, with the yard being surrounded primarily by a high wrought iron fence, "its appearance suggests its purpose is to block entry into the yard and act as a barrier to common or general use." And even though being able to see through the fence is a factor to be considered, it is not dispositive and does not overcome the formidable nature of the fence itself. The Court further rejected the People's argument that the fact that the gate was unlocked, and even open at the time, makes the front yard a public place. Lastly, the Court was unpersuaded by the People's arguments that because others rented some of the rooms in the house, that the detached garage doubled as a private recording studio, or because the house was a known Crips hangout, made the front yard a public place. Absent evidence that a large number of people frequented the area, none of these facts are sufficient to overcome the Court's conclusion that the front yard was not a public place. Therefore, because defendant was not in a public place when seen with the firearm, he was not in violation of P.C. § 12031. Having no reasonable cause to detain defendant, Deputy Bates' entry into the yard and then the residence was illegal. The cocaine and the gun, both being products of this illegal entry, should have been suppressed.

Note: What is, and what is not, a "*public place*" is often a difficult question to answer. No one can fault Deputy Bates here for assuming that the front yard in question was a public place, given the pile of cases that have generally found front yards to be areas open to the public. However, this case lists just about every case known to man that discusses the issue, so no one can accuse the Court of not doing its research. Although a close case, it's consistent with recent cases that seem to be getting tougher and tougher on this issue. (See *People v. Krohn* (2007) 149 Cal.App.4th 1294; fenced off court yard of an apartment complex not a public place.) Also note the Court's refusal (at fn. 4) to decide whether the warrantless entry into the residence would have been legal even if defendant had been in violation of P.C. § 12031. I have to think that the entry was legal under a "fleeing felon" theory, but the cases have been getting more and more protective of privacy rights in one's home as well. That issue will just have to await another day.

***Search Warrants; Mistakes in the Warrant*:**
***Computers; Probable Cause for Seizure and Search*:**
***Custody; Interrogations in the Home*:**
***Warrantless Arrests in the Home During Execution of a Search Warrant*:**

United States v. Brobst **(9th Cir. Mar. 9, 2009) 558 F.3rd 982**

Rule: (1) The wrong street number in a search warrant is not fatal to the warrant so long as the officers can still ascertain the correct residence with reasonable effort. (2) Seizure and search of a computer with its attachments, etc., is reasonable where there is cause to believe pornography was received through the computer. (3) A person is in custody for purposes of *Miranda* even though in his home when the police dominate the area. (4) A warrantless arrest in the home is lawful when the officers develop probable cause to arrest during the execution of a search warrant.

Facts: Defendant employed another person to do some cabinet work at his home at 31 Driftwood Lane, in Woods Bay, Montana. The cabinet worker found child pornography on a single piece of paper in defendant's home and reported it to the Lake County Sheriff's Department. The piece of paper appeared to have been printed off the Internet. Also, there were other similar pieces of paper there but he didn't look at them. The cabinet worker provided defendant's address. Based upon this information, Deputy Daniel Yonkin drafted a search warrant for defendant's computer and related items, seeking child pornography. The warrant included a physical description of the house and listed its address as 31 Driftwood Lane, Woods Bay, Montana. In attempting to execute the warrant, however, it was found that the residence actually had the address of 32877 Driftwood Lane. (The altered address was apparently the result of a reconfiguration of the city limits, changing defendant's residential location from Woods Bay to Bigfork, Montana.) However, defendant's name was on a tree and the mailbox in front of the residence. Except for the house number, the residence matched the physical description, although other residences in the area did as well. Before attempting to execute the warrant, the deputies verified with neighbors that defendant lived there. Also, a tax/property map was obtained that showed that the piece of property belonged to defendant. Satisfied that they had the right residence despite the disparity in the address, the deputies executed the search warrant and seized defendant's computer and printed photographs of child pornography. While the search was going on, defendant showed up. Told by one of the deputies that "you need to come with me," defendant was taken into his house. Detective Yonkin contacted him there and explained that they had a search warrant for his home, providing him with a copy. He was also told that they'd found child pornography in his bedroom and asked if it was his. Defendant responded that the house was his, so the pornography must also be. No *Miranda* admonishment was given. Following this two-minute interview, defendant was arrested and taken to a detention center. Two hour later, Detective Yonkin interviewed defendant again. This time defendant was given his *Miranda* rights which he waived. He then confessed to buying child pornography over the Internet and having printed out the pictures found in his house. Charged in federal court with various child pornography-related offenses, defendant's motions to suppress the pictures and his statements were denied. Convicted after a court trial, defendant appealed.

Held: The Ninth Circuit Court of Appeal affirmed, although it agreed with defendant that the initial responses he made to detective Yonkin in his home should have been suppressed. Of the issues discussed on appeal: (1) Defendant argued that the search warrant was legally insufficient because it failed to adequately describe the appearance of the residence and listed the wrong address. As for the physical description of the house, it was noted that several other structures in the area fit that same description. The rule is that the place to be searched must be described with "*particularity*." But the Supreme Court has held that; "It is enough if the description is such that the officer with a search warrant can, with reasonable effort, ascertain and identify the place intended." The Ninth Circuit has found the test to be, "whether the warrant describes the place to be searched with 'sufficient particularity to enable law enforcement officers to locate and identify the premises with reasonable effort,' and whether any reasonable probability exists that the officers may mistakenly search another premises." Here, except for the street number

change, the officers had no difficulty finding defendant's home. Defendant's name was posted on the property and steps were taken to confirm that he did in fact live there. The officers "located and identified Brobst's residence with reasonable effort." The description of the place to be searched in the warrant, therefore, was "*sufficiently particular*." (2) Defendant next challenged the seizure of his computer and all the computer-related items (e.g., compact disks, floopy disks, hard drives, memory cards, DVDs, videotapes, and other portable digital devices), noting that the probable cause consisted of one picture that may or may not have come from his computer. The Court found, however, that it was reasonable to conclude that the picture had come from his computer and that similar pictures were likely stored in it. Seizure and search of the computerized equipment was lawful. (3) Defendant next argued that because he was "*in custody*" when initially contacted, and not advised of his *Miranda* rights, the trial court erred in not suppressing his responses. As for defendant's admission to owning the pornography when first confronted in his home, the Court agreed. In determining whether a person is in custody for purposes of *Miranda*, five non-exclusive factors are considered: (1) The language used to summon the individual; (2) the extent to which the suspect is confronted with the evidence against him; (3) the physical surroundings of the interview; (4) the duration of the detention; and (5) the degree of pressure applied to detain the individual. The fact the initial interview took place in defendant's own home tends to indicate a lack of custody. But law enforcement's dominance over that area will offset this factor, as it did in this case. Defendant was also told "you need to come with me," implying a lack of choice. Then he was immediately confronted with the fact that child pornography was found in his bedroom. Despite the fact that the interview was short in duration (i.e., two minutes) and done without handcuffs or ever being told he was under arrest, the factors tending to indicate custody outweighed those to the contrary. Therefore, his initial admission to possessing the pornography, obtained without benefit of a *Miranda* admonishment, should have been suppressed. However, this error was held to be harmless in that the pornographic pictures found in his residence were the product of the search and not his admission. Also, his later full confession, obtained after a *Miranda* admonishment and waiver, were not tainted by this error. Specifically, because the initial interview was not deliberately coercive nor the product of improper tactics, his later *Miranda* waiver was valid. His full confession was therefore properly admitted into evidence. (4) Lastly, defendant complained that he shouldn't have been arrested in his home without an arrest warrant and that, pursuant to Montana law, there was insufficient probable cause and no exigent circumstances allowing for his warrantless arrest. The Court, however, noted that in a federal prosecution, the constitutionality of an arrest, pursuant to the Fourth Amendment, is judged by federal standards and not those of the individual states. As such, no arrest warrant is necessary when the officers are already lawfully in his home executing a search warrant. Here, the probable cause justifying defendant's arrest was developed as a result of the execution of the search warrant. Federal law does not require a separate arrest warrant under these circumstances.

Note: One of the most important points in this case, barely discussed by the Court, is the danger of asking incriminating questions prior to a *Miranda* admonishment and waiver. Here, fortunately, the prosecution lost only the un-Mirandized responses in the initial, two-minute interview. The Supreme Court told us *Oregon v. Elstad* (1985) 470 U.S. 298

that so long as this initial interview is not coercive or otherwise involves the use of improper tactics, a later *Miranda* waiver will validate a subsequent confession. It was also important that in *Elstad*, as was the case here, the initial un-Mirandized interview was very brief and general. But where the initial questioning gets too detailed, or too coercive, a later waiver is likely to be found to be invalid. (See *Missouri v. Seibert* (2004) 542 U.S. 600.) Sometimes referred to as a "*two-step interrogation*" technique, the theory is that once a suspect incriminates himself, he is not likely to understand that there may be reasons why he should later invoke his rights and refuse to answer the same questions all over again. An "*unknowing*" waiver results and the results of both interrogations are likely to be suppressed. So if you must engage in pre-admonishment discussions with an in-custody suspect, keep it brief and avoid discussing the facts of the case itself or suffer the consequences of a "*Seibert* error."

***P.C. § 273a; Child Endangerment*:**
***P.C. § 246; Shooting at an Occupied Dwelling From the Inside*:**

People v. Morales **(Nov. 26, 2008) 168 Cal.App.4th 1075**

Rule: (1) A person has the "*care or custody*" of a child, per P.C. § 273a (child endangerment), when the child is a passenger in his speeding car. (2) Firing a firearm from an attached garage into the residence is not a violation of P.C. § 246 (shooting at an inhabited dwelling).

Facts: On November 17, 2004, defendant was driving his car with 16-year-old Kayla in the front passenger seat. A Santa Rosa Police Officer noticed that the registration tab on defendant's car had expired, and attempted to stop him. Defendant fled, resulting in a high speed chase. After blowing a stop sign and a red light, defendant lost control of his car and hit a telephone pole, spinning into a metal post. Kayla was in defendant's car either to direct him to a house he was looking for, or because she had asked him for a ride, depending upon which story one wants to believe. In a separate incident on November 23, in the middle of the night, defendant went to a house in which Sebastian Fent was visiting Ronda Oliva and her three-month old baby. Defendant was the child's father. Defendant banged on the door, tearing off the screen door, demanding to be let inside. After unsuccessfully trying to get in through a window, defendant got into the unlocked garage. With Fent on the other side of the locked door between the garage and the kitchen, defendant shot three rounds through the door, striking Fent twice. Among other offenses, defendant was charged with, and convicted of, child endangerment, per P.C. § 273a(a), and shooting at an inhabited dwelling, per P.C. § 246.

Held: The First District Court of Appeal affirmed the P.C. § 273a count, but reversed the P.C. § 246 count. (1) P.C. § 273a(a), says that: "Any person who, under circumstances or conditions likely to produce great bodily harm or death, . . . *having the care or custody of any child*, . . . willfully causes or permits that child to be placed in a situation where his or her person or health is endangered" is guilty of a crime. Defendant argued that there was no evidence that he had the necessary "*care or custody*" of Kayla, or that he had otherwise assumed the responsibilities of a caregiver. The Court found that

no such relationship is required. The term "*care or custody*" does not require a familial relationship, or even an express agreement to assume responsibility for the child. In this case, Kayla was in the defendant's physical care while he was transporting her. As a passenger in his speeding car, Kayla was deprived of her freedom to leave. As such, defendant had, at least for that time, the "*care or custody*" of the child. (2) P.C. § 246 provides that: "Any person who shall maliciously and willfully discharge a firearm at an inhabited dwelling house . . . is guilty of a felony." Defendant's argument was that he couldn't be guilty of firing "*at*" an inhabited dwelling house when he's firing from inside its garage. *People v. Stepney* (1981) 120 Cal.App.3rd 1016, previously held that a person who shoots and kills his TV set while he is inside his own residence cannot be convicted of shooting *at* an inhabited dwelling. But in *People v. Jischke* (1996) 51 Cal.App.4th 552, the defendant's conviction for P.C. § 246 was upheld for shooting from his apartment, through the floor, into the apartment below him. There is also abundant case law that recognizes that an attached garage is an integral part of the residence, like any other room in the house. As such, defendant, by being in the attached garage, was in the residence itself. This case is more like *Stepney*; i.e., shooting at something from inside the same residence, and not a violation of P.C. § 246. The fact that the door from the garage to the kitchen was locked is irrelevant to this issue. Defendant's conviction for shooting at an inhabited dwelling, therefore, cannot stand and must be reversed.

Note: Neither ruling is a big surprise, based upon prior case law. The Court did say that interpreting P.C. § 246 to include shooting from inside the residence was not an unreasonable interpretation of the statute, but that any ambiguity in the statute had to be decided in the defendant's favor. So either the statute has to be rewritten, or we have to accept the fact that shooting a residence from inside cannot be a violation of P.C. § 246.

***Anonymous Tips and Reasonable Suspicion to Detain*:**
***Proving the Source of the Information in a Radio Call*:**
***Unlawful Detentions and Subsequent Criminal Acts*:**

In re Richard G. **(May 12, 2009) 173 Cal.App.4th 1252**

Rule: (1) An anonymous tip may be sufficient to justify a detention where the information provides a contemporaneous description of an incident with an accurate and complete description of the perpetrator, his location, and other details which were confirmed within minutes by the police. (2) The source of information reporting an incident need not be proved when the substance of the information is corroborated by what is found when the police arrive. (3) An unlawful detention does not immunize a suspect from prosecution for a subsequent assault on the officer.

Facts: Oxnard Police Officers Mora and Alva responded to a radio call at around midnight concerning two males causing a disturbance outside a specified residence, with one of the males possibly armed with a handgun. The two males were specifically described and were reportedly walking towards Colonia Park, across the street from the residence, in an area frequented by members of the Colonia Chiques street gang. Earlier that week, Officer Mora had responded to another call concerning a shooting at the same

residence where two guns were seized. The officers observed the two described males, one of them being defendant/minor. Officers Mora and Alva made contact with the males who ignored the officers' orders to stop. Believing that they might be armed, the officers told them to sit on the ground. Defendant repeatedly refused to comply with any of the officers' commands, telling Officer Mora that he was going to "*f__k you up*." Following defendant's repeated statements to the same effect, Officer Mora attempted to place him in a control hold. Defendant resisted, punching Officer Mora and causing visible injuries. Defendant was eventually subdued with the help of other officers. Charged by petition in Juvenile Court, defendant sought to suppress evidence of his statements and his conduct, arguing that both were the products of an unlawful detention. The magistrate denied his motion. Defendant also filed a "*Harvey-Madden*" motion (*People v. Harvey* (1958) 156 Cal.App.2nd 526; *People v. Madden* (1970) 2 Cal.3rd 1017.), demanding that the prosecution prove up the source of the complaint that led to the radio call. The magistrate refused the People's attempt to introduce into evidence an unsworn, unauthenticated copy of the radio dispatcher's printout (inadmissible hearsay), but let the officers testify instead to the content of the radio dispatch they heard and the fact that upon arrival at the scene, they found the two described suspects. Finding this to be sufficient, the magistrate also denied the *Harvey-Madden* motion. Defendant thereafter admitted to the charge of disturbing the peace (P.C. § 415(3), and appealed.

Held: The Second District Court of Appeal (Div. 6) affirmed. (1) Absent any evidence of the actual source of the complaint, the Court treated the case as one involving an anonymous complainant. Detentions, to be lawful, must be supported by an articulable "*reasonable suspicion*" that the person to be detained is involved in criminal activity. The U.S. Supreme Court held in *Florida v. J.L.* (2000) 529 U.S. 266, that an uncorroborated anonymous tip is insufficient to meet this standard. But there are exceptions. Specifically, a call concerning "a firsthand, contemporaneous description of the crime as well as an accurate and complete description of the perpetrator and his location, the details of which were confirmed within minutes by the police when they arrived," is enough to justify a detention. (*People v. Dolly* (2007) 50 Cal.4th 458.) The Court here found this case to be even stronger than in *Dolly*. Here, there was a contemporaneous report of a late night disturbance possibly involving a firearm, occurring in front of a specific residence where guns had previously been found, located in a known gang area. The individuals involved were specifically described and found in the area minutes later. This was sufficient to establish a reasonable suspicion and justify defendant's detention. (2) The so-called *Harvey-Madden* rule is a prosecutorial issue. The theory behind these cases is that an officer may lawfully act on information received through "*official channels*," i.e., a law enforcement source, justifying a detention or an arrest. Such information is presumed to be reliable. But when the case comes to court, it is the prosecution's burden to prove that the source of the information was in fact reliable; i.e., something other than the imagination of some other officer. That may be accomplished by calling as a witness the source of that information or, perhaps, the dispatcher who took the 9-1-1 call. The prosecutor in this case failed to do that. But an exception to the *Harvey-Madden* rule is when the circumstances found by the responding officers in the field corroborate the reliability of the information received via the radio. That is what happened in this case. There was no need to have the dispatcher further

corroborate the reliability of the information through his or her testimony. (3) Defendant in this case moved to suppress his obscene words directed at the officers and his assault on Officer Mora. Even if the detention here was illegal, the fact of defendant's violent response would not have been suppressed. The exclusionary rule acts to suppress the direct products of a Fourth Amendment, search or seizure violation. However, an unlawful detention or arrest does not excuse new crimes defendant perpetrates in response. Defendant had a duty to cooperate with an attempted detention whether lawful or not. His failure to do so is, in effect, an intervening act between the attempt to detain him and his later arrest. That intervening act dissipates any Fourth Amendment violations that might have been committed by the officers. Therefore, those who observed defendant's obscene remarks and his assault on the officer would not have been precluded from testifying about what they'd seen whether or not the detention was illegal.

Note: In a footnote (fn. 1), the Court further found that the circumstances known to the officers at the time would have justified a patdown for weapons, which is what Officer Mora obviously intended to do had defendant cooperated. Also, for those of you who feel that the Courts have little or no sympathy for the plight of police officers, you need to read the preamble to this case. In it, the Court notes that, "(E)ven when a police officer is careful, he is still subject to attack. The judiciary should not 'lightly second guess' an officer's decision to conduct a 'stop and frisk . . . . (P)olice officers (are) entitled to protect themselves during a detention: 'This is a rule of necessity to which a right even as basic as that of privacy must bow. To rule otherwise would be inhumanely to add another hazard to an already very dangerous occupation. Our zeal to fend off encroachments upon the right of privacy must be tempered by remembrance that ours is a government of laws, to preserve which we require law enforcement—live ones." Well said.

***Protective Sweeps of a Residence*:**

<u>United States v. Lemus</u> **(9th Cir. Sep. 22, 2009) 582 F.3rd 958**

Rule: Upon arresting a suspect at the threshold of his apartment, a cursory check of any immediately adjoining rooms for others who might constitute a danger is lawful despite the lack of any reason to believe anyone is there.

Facts: Defendant had an outstanding warrant for his arrest. Detectives drove to defendant's Calexico apartment for the purpose of executing that warrant. The detectives contacted defendant when they observed him walking up to his apartment. When defendant asked what was going on, the detectives told him that there was an outstanding warrant for his arrest and that they were going to take him into custody. Defendant did not respond, but started to slowly back away from them, toward the sliding glass door at the side of his apartment. Other officers arrived for backup and attempted to reason with him. Defendant, however, continued to retreat towards his apartment. He opened the sliding glass door and started to walk inside. As he did so, the officers grabbed onto him, handcuffing him before he could fully enter his apartment. Upon arresting him, fearing that there may be others who could be hiding inside, the officers entered the apartment to

do a protective sweep. They scanned the living room, the bedroom and the bathroom. After finding no one, one of the officers noticed the butt of a firearm sticking out from under the cushions of the couch. After confirming that it was in fact a gun by lifting the cushion, and knowing that defendant had a felony record, the apartment was secured while a search warrant was obtained. Defendant was charged in federal court with being a felon in possession of a firearm. He filed a motion to suppress, which was denied. He pled guilty and appealed.

Held: The Ninth Circuit Court of Appeal affirmed. Recognizing that making an arrest in one's home, being on the arrestee's turf, is often more dangerous than out on the street, the U.S. Supreme Court has held that an officer may take certain steps to protect himself. Without any probable cause or reasonable suspicion, a person who is arrested may be searched along with the area within his immediate reach. Part of the justification for such a search is to prevent the arrestee from reaching for a weapon. The Supreme Court has also held that the arresting officer may check parts of the residence for other family members or friends of the arrestee who may feel compelled to come to the arrestee's aid. This right comes at two levels. (a) First, without any reason to believe anyone is there, the arrest itself justifies a check of spaces immediately adjoining the place of arrest from which an attack could be immediately launched. (b) Next, an officer may perform a further protective sweep beyond the immediately adjoining areas (i.e., the rest of the house) when there are "articulable facts which, taken together with the rational inferences from those facts, would warrant a reasonable prudent officer in believing that the area to be swept harbor(ed) an individual posing a danger to those on the arrest scene." These warrantless residential checks are limited to "a cursory inspection of those spaces where a person may be found" and may last "no longer than it takes to complete the arrest and depart the premises." This theory may *not* be used as an excuse to check "every nook and cranny" for incriminating evidence. In this case, defendant was arrested at the threshold to his living room. Having arrested him at that location, and having no duty to immediately turn around and leave while ignoring the possibility that someone might shoot them in the back as they did so, the adjoining living room itself could be immediately checked for others who might constitute a danger. No probable cause or reasonable suspicion was necessary to do this. Being in a place where they had a right to be, the plain sight observation of the firearm in the couch, and the lifting of the couch cushion to verify that it was in fact a firearm, were lawful.

Note: Too many officers do protective sweeps of the entire residence after an arrest, well beyond the immediately adjoining rooms, without any articulable reasonable suspicion to believe anyone is actually there. While I'm always reluctant to discourage officers from taking whatever steps they feel they need to in order to stay alive, just know that such searches are in fact illegal absent some reasonable suspicion to believe that someone is there. Only the immediately adjoining rooms may be checked when there's no such suspicion. Also note that no search warrant was really unnecessary to seize the firearm. But getting a warrant in such a circumstance is still not a bad idea because a warrant will allow you to look for other evidence connecting defendant to the firearm; e.g., D & C documents, cleaning kits, etc. So with the apartment secured, there was no harm in leaving the firearm there while a search warrant was obtained.