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THIS EDITION'S WORDS OF WISDOM:

"*Hard work spotlights the character of people: some turn up their sleeves, some turn up their noses, and some don't turn up at all.*' (Sam Ewing)

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***Vehicle Burglary*:**

People v. Henry **(Mar. 23, 2009) 172 Cal.App.4th 530**

Rule: Entering the engine compartment of a locked motor vehicle with the intent to steal is a vehicle burglary.

Facts: Defendant was observed at about 11:45 p.m., by a neighbor, attempting to open the hood of a car with a pair of pliers or a wrench. As the neighbor called the sheriff, defendant was seen getting the hood open. The neighbor continued to watch as defendant

appeared to use his hands to measure something in the open engine compartment. Defendant carefully lowered the hood and walked across the street to another car of the same make and model. He took out some keys, opened the door, and got inside. Defendant was then observed getting out of that car and opening its hood, looking inside of the engine compartment, and again measuring something with his hands. Defendant then closed up that car and walked into a nearby apartment building. Responding sheriff's deputies arrested defendant in the apartment. The owner of the car the hood of which defendant forced open testified that she had locked the doors of her vehicle earlier that evening. Defendant was charged with vehicle burglary (P.C. §§ 459, 460(b)) and convicted after a jury trial. He appealed, arguing that entering the engine compartment of a motor vehicle is not a vehicle burglary, but rather a mere vehicle tampering.

Held: The Second District Court of Appeal (Div. 4) affirmed. Vehicle burglary, per P.C. 459, provides that: "Every person who enters any . . . vehicle as defined by the Vehicle Code, when the doors are locked, . . . with the intent to commit grand or petit larceny . . . is guilty of burglary." Such a burglary is of the second degree, per P.C. 460(b). The doors of the victim's car in this case were locked. The only issue is whether it was the intent of the Legislature to include the engine compartment of a locked vehicle within the protections of the vehicle burglary statute. The Court held that it did. Defendant cited *In re Young K*. (1996) 49 Cal.App.4th 861, which held that removing the headlights from a locked motor vehicle by entering the vehicle's headlight housings is *not* a vehicle burglary. But that case did not involve the entering into the interior areas of a locked vehicle where the owner has a higher expectation of privacy, such as the passenger area or the vehicle's truck. With the particular vehicle in this case, the engine compartment could not be opened (except by force) without pulling a latch inside the locked passenger area. Therefore, with the vehicle locked, the engine compartment is as protected as is the passenger area and the trunk. The fact that the engine compartments of some vehicles can be opened from the outside is irrelevant to this case. Entering the engine compartment of a locked vehicle, as in this case, is therefore a vehicle burglary. The Court also found the circumstantial evidence of defendant's intent to steal (e.g., breaking into a vehicle identical to his and measuring some components as if to see if it would fit his car) was sufficient to uphold his conviction.

Note: The Court hinted that entering the engine compartment of a locked vehicle when the vehicle's hood can be popped from the outside, without having to use a latch on the inside, *may not* be a vehicle burglary. We'll have to wait for a case involving those facts to see it that's true. Also note that the defendant never actually stole anything from the victim's engine compartment. But an actual theft, of course, is not an element of the offense. What's important is the circumstantial evidence of defendant's specific intent when he made entry into the engine compartment. Here, it was clear that he intended to take something from the victim's vehicle to replace something in his own, but, for whatever reason, never got that far.

***P.C. § 626.10(a)*; *Knives on School Campuses*:**

In re TB **(Feb. 26, 2009) 172 Cal.App.4th 125**

Rule: Possession of a "multi-tool," with its one-inch blade that locks into place, is a violation of P.C. § 626.10(a) when possessed on a high school campus.

Facts: Defendant/minor, a student at an Orange County high school, couldn't stay awake in class. A campus police officer was called. He found defendant to be "out of it" and "not . . . very coherent." He woke defendant up and took him to the school nurse. At the nurse's office, the officer asked defendant if he had anything in his possession that he shouldn't have at school. Defendant told the officer that he had some cigarettes. The officer immediately searched defendant's backpack and found a pack of cigarettes, glue, and a "multi-tool." The multi-tool, although closed up at the time, had built into it items such as pliers, a flathead screwdriver, a Phillips head screwdriver, a file, a can opener and a sharpened knife blade. When extended, the approximately one-inch long blade locked into place. Defendant denied any knowledge of the multi-tool, claiming that he didn't even know it was in his backpack. A Juvenile Court petition was filed alleging a violation of Penal Code § 626.10(a) for possessing a "folding knife with a blade that locks into place" on a school campus. The magistrate sustained the petition and defendant appealed.

Held: The Fourth District Court of Appeal (Div. 3) affirmed. P.C. § 626.10(a) provides in relevant part that; "Any person . . . who brings or possesses any . . . folding knife with a blade that locks into place . . . upon the grounds of, or within any, public or private school providing instruction in kindergarten or any of grades 1 through 12, inclusive, is guilty of a (felony) . . . ." On appeal, defendant argued that the Juvenile Court magistrate misinterpreted this statute; that it does not include the blade in a multi-tool such as the one in his possession. Specifically, defendant contended that a multi-tool, having only a small, insignificant knife blade, and with its variety of other tools included in it, would be awkward to use as a weapon. The Legislature, in the defendant's opinion, could not have intended a multi-tool to be included in the 626.10 prohibitions. The Court disagreed. In so doing, it was noted that the knife blade, as small as it is, can be deployed by pulling it out of the interior of the tool and locking it into place with the rest of the tool then becoming its handle. "Functionally, the 'multi-tool' is a 'folding knife' with a blade that locks into place." The statute does not require any more. It appears that the Legislature intended to protect against the danger of knives with concealed blades that can be deployed and locked into place, regardless of the size of the knife or its relative capability for inflicting bodily damage. The fact that the tool has other legitimate uses is irrelevant. By definition, defendant's multi-tool is included within the prohibitions of P.C. § 626.10(a).

Note: One doesn't need to be a rocket scientist to see the wisdom of this decision. When a statute's meaning is so easily discerned, the Court must normally go with it. Here, all you can say for the defendant's argument is that there's no harm in trying. Also, in a non-published portion of the decision, the Court upheld the officer's warrantless

search of defendant's backpack. Once defendant cop'd to having cigarettes, as well as the fact that he appeared to be under the influence of something, the warrantless search of defendant's person and his backpack was lawful.

***Patdowns and Reasonable Suspicion*:**

In re H.H. **(Apr. 30, 2009) 174 Cal.App.4th 653**

Rule: Asserting a constitutional right not to submit to a warrantless, suspicionless search cannot be used to establish a reasonable suspicion to pat a suspect down for weapons.

Facts: Albany Police Officer Ted Allen observed defendant/minor riding a bicycle at night without lighting as required by Vehicle Code § 21201(d). Stopping and detaining defendant, Officer Allen asked him to "step (away) from the bicycle." He then asked defendant to take off the backpack he was carrying. Defendant complied with both requests. However, without being asked, defendant volunteered at this point that he was *not on probation* and that he *did not consent to being searched*. These comments only raised a red flag for the officer who wondered why defendant would say these things. The officer was thus concerned that defendant might be armed. Upon advising defendant that he was going to pat him down for weapons, defendant reiterated that he did not give his permission to being searched. Officer Allen patted defendant down anyway and found a loaded revolver in his jacket. Defendant was charged by petition in Juvenile Court with various gun-related charges (i.e., P.C. §§ 12021(a), 12025(a)(2) and 12031(a)(1)). After his motion to suppress the gun was denied, he admitted the misdemeanor charge of possession of a deadly weapon (P.C. § 12020) and appealed.

Held: The First District Court of Appeal (Div. 5) reversed, finding that a person's refusal to submit to a search does not, by itself, justify a patdown search. It was agreed that defendant was lawfully detained. The issue was whether a refusal to submit to a warrantless, suspicionless search was, by itself, sufficient to give a police officer a reasonable suspicion that he might be armed, justifying a patdown search for weapons. All that's required to justify a patdown search is a "*reasonable suspicion*" to believe that the subject might be armed. "A limited, protective pat search for weapons is permissible if the officer has 'reason to believe that he is dealing with an armed and dangerous individual, regardless of whether he has probable cause to arrest the individual for a crime. . . . (I.e.;) (W)hether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger.'" The purpose of a patdown is not to discover evidence, but to allow the officer to protect himself and others during the contact. However, the assertion of a Fourth Amendment right cannot be used to justify the finding of a reasonable suspicion that he might be armed. And in this case, there were no other articulable suspicious circumstances (e.g., flight, time, location, and/or defendant's manner of asserting his rights) to provide the officer with the necessary reasonable suspicion. The patdown, therefore, was illegal.

Note: On the one hand, this decision is no surprise. It's always been the rule that you cannot use a person's assertion of a constitutional right as part of your reasonable

suspicion or probable cause to detain, arrest or search. But by the same token, it's hard to criticize this officer for acting on his gut feeling that this defendant's spontaneous and unprovoked refusal to submit to a search was just cause for concern (a concern that was subsequently determined to be well-founded, by the way). But the lesson to learn here is that as suspicious as the assertion of a constitutional right might be, it has to be recognized that the courts will not allow you to consider this fact in building your case against your suspect. That's just a fact of life you have to live with whether it makes sense or not to you. Deal with it.

***Container Searches and Expectation of Privacy*:**

United States v. Monghur **(9th Cir. Aug. 11, 2009) 576 F.3rd 1008**

Rule: A lawfully overheard discussion with a cohort concerning the contents of a container does waive one's expectation of privacy, particularly when the container itself and its contents are purposely described in ambiguous terms.

Facts: Defendant, a previously convicted felon, was arrested on a Nevada state warrant alleging one count each of attempted murder and battery, the victim being his girlfriend, Antoinette Wilson. Held initially in the Clark County Detention Center, defendant took advantage of a telephone available to inmates for making out-going telephone calls. A placard near the phone warned inmates that their calls were subject to monitoring and recording. The recipient of a call also received a similar auditory warning. Defendant called a friend, Prince Bousley, three times, making arrangements for Bousley to pick up "the thing" from Wilson's apartment where defendant periodically stayed. In the last call, defendant told Bousley that "the thing" was in the closet in his room and that it was located "*in the green*." FBI Special Agent Gary McCamey, who knew defendant through an investigation into local gang activity, reviewed defendant's phone calls and determined through his own expertise that "*the thing*" was a firearm. Law enforcement officers immediately proceeded to Wilson's apartment. Disavowing any knowledge of a gun in her apartment, Wilson gave officers permission to enter and seize any firearms found there. She led the officers to her eight-year-old son's bedroom where defendant would periodically stay. In the closet, where clothing and other items belonging to an adult male were noted, officers located an opaque green plastic storage container on the shelf. Removing the lid, a .38 caliber revolver was found. No search warrant was ever obtained. Defendant was charged in federal court with being a felon in possession of a firearm (18 U.S.C. §§ 922(g)(1), 924(a)(2)). With defendant filing a motion to suppress, contending that the search of the green container was illegal, the Government argued that (1) Wilson had authority to consent to the container search, (2) exigent circumstances justified the warrantless search, and (3) defendant had no expectation of privacy in the container. A magistrate judge rejected to the first two of these arguments, but ruled that because defendant had talked about the gun being in the green container over a phone system he knew was subject to monitoring, he waived any expectation of privacy he might have had in the container. With his motion denied, defendant pled guilty and appealed.

Held: The Ninth Circuit Court of Appeal reversed. With the Government not challenging the magistrate's rulings on the Government's first two arguments, and agreeing that defendant, at some point, had a reasonable expectation of privacy in the contents of the green container, the only issue was whether he had waived that expectation of privacy by openly discussing its contents over a phone system he knew was subject to being monitored.. In advancing this argument, the Government contended that because defendant knew his jail phone calls were subject to being monitored (i.e., in effect, exposing them to public view), he waived any expectation of privacy in not only the words he used, but also in the green container that was the subject of those words. The Ninth Circuit disagreed. While noting that defendant certainly had no expectation of privacy in the contents of his telephone calls from the jail, that's a totally separate constitutional issue from whether he retained an expectation of privacy in the green container that was the subject of those phone calls. There is authority to the effect that when a suspect makes "an unequivocal, contemporaneous, and voluntary disclosure (to a law enforcement officer) that a package or container contains contraband," he waives his privacy expectations as to the contents of that container, eliminating the need for a search warrant. (See *United States v. Cardona Rivera* (7th Cir. 1990) 904 F.2nd 1149.) However, in this case, defendant never explicitly identified the contraband at issue (i.e., "*the thing*"), nor the container involved (i.e., "*the green*"). Also, defendant's disclosures were never made directly to law enforcement. As such, there was no "direct and explicit" waiver of an expectation of privacy in the green container. To the contrary, defendant's efforts to conceal what it was he was talking about demonstrates both an objective and subjective intent to preserve his expectation of privacy in the contents of the green container. Having found the green plastic container in a closet in Wilson's apartment, in a room defendant was known to have stayed, with defendant's recorded phone conversations with Bousley, the officers had sufficient probable cause to support the issuance of a search warrant and no exigent circumstances excusing the lack of one. Having failed to obtain a search warrant, and with insufficient evidence to support the argument that defendant had waived his expectation of privacy in the green container, the gun was the product of an illegal search.

Note: The Court, however, did not totally slam the door shut. The case was remanded to the trial court for a hearing on whether the exclusionary rule necessarily requires the suppression of the gun; i.e., "whether the benefits of deterring police misconduct outweigh the 'substantial social costs' of applying the (exclusionary) rule, . . ." (See *Herring v. United States* (2009) 129 S.Ct. 695.) But I'm also not so sure that the Government didn't concede a bit too much in this case. Specifically, the Government stipulated to defendant's possessory interest in the green container; i.e., that he had a reasonable expectation of privacy in it prior to the telephone calls. Although found with his other belongings in the closet attached to the bedroom where he would occasionally stay, it was noted in a footnote (fn. 3) that the green container had the name "Aaron" written on it; not defendant's name. It also noted that the bedroom actually belonged to Wilson's 8 or 9 year-old son. I'm of course not privy to everything the Government knew in prosecuting this case, and it's always easier to "Monday-morning-quarterback" a case, but it appears to me that it might have been beneficial to put defendant to the test; i.e., make him prove that he had a possessory or privacy interest in the green container

even before he talked about it on the phone. You can't go stick your contraband just anywhere and then argue that you have a privacy interest in that location. (E.g.: *United States v. Fay* (9th Cir. 2005) 410 F.3rd 589; no expectation of privacy in a duffle bag left in an apartment laundry room open to anyone, even though placed out of the way on a high shelf.) Having put the gun into a container belonging to "Aaron," in a closet in his girl friend's son's bedroom, makes me wonder whether he ever had an expectation of privacy in the green container, or did he simply abandon the gun?

***Consent Searches and Coercion*:**
***Consent Searches by a Cotenant*:**

United States v. Brown **(9th Cir. Apr. 17, 2009) 563 F.3rd 410**

Rule: (1) Although stopped at gunpoint, put on the ground, and handcuffed, a subject is not later "in custody" after the guns are holstered, handcuffs are removed, she is told she is not under arrest, and she's allowed to walk back to her residence on her own. (2) Arresting a residential cotenant and removing him from the scene, absent some evidence this was done for the purpose of preventing him from objecting to a warrantless search, does not prevent a second, present, cotenant from consenting to the search.

Facts: ATF Special Agent Dale Watson received information from a confidential informant that defendant, a previously convicted felon who was wanted on an outstanding felony warrant, was staying at a specific apartment in Spokane, Washington, and that he was in possession of two firearms. Watson and four or five other members of the Spokane Gang Enforcement Team went to the area of the residence and observed defendant walking down the street with a woman later identified as Lacie Rishel. The officers confronted both subjects at gunpoint, ordered them to the ground, and handcuffed them. Finding no weapons on defendant, he was arrested on the outstanding warrant, put into a patrol car, and taken to jail. Agent Watson then initiated a conversation with Rishel, unhandcuffing her while telling her that she was not under arrest. She told him that she and her boyfriend (not defendant) lived at the residence and that defendant had been staying with them as a guest, sleeping on their couch for the past few nights. Agent Watson told Rishel that they suspected that there might be two firearms somewhere in her apartment. Rishel denied that there could be any firearms there and offered to let the officers search her home. After an apartment key that had been retrieved from defendant was returned to Rishel, she was allowed to walk home on her own where Watson met her. The officers also removed some of the police insignias because Rishel had expressed concern that her landlord would be upset by the police presence. At her apartment, with her permission, the couch where defendant had been sleeping was searched, resulting in the recovery of a semiautomatic pistol from under the cushions. After some probing by the officers, Rishel suggested that the other firearm might be found in the bedroom she shared with her boyfriend. With her consent, the bedroom was searched and a .357 caliber revolver was found in a dresser drawer. Charged in federal court with being a felon in possession of a firearm and ammunition (18 U.S.C. §§ 922(g)(1), 924(a)(2)), defendant's motion to suppress the guns and ammunition was denied, the magistrate

disbelieving Rishel's claims that her consent had been coerced. Defendant pled guilty and appealed.

Held: The Ninth Circuit Court of Appeal affirmed. (1) The Court first analyzed the issue of whether Rishel had been coerced into giving her consent to the search of her apartment, determining that she had not. A major consideration in determining whether a person's consent was coerced is whether or not she was in custody when the consent was given. Of particular significance was the difference between how she and defendant were treated. For instance, despite the fact that she'd been confronted by five or six officers who displayed their firearms, and was handcuffed, the coerciveness of these actions was undone after defendant was arrested and taken away. While defendant was taken to jail in a patrol car, Rishel was unhandcuffed, told she was not under arrest, given back her apartment key that had been retrieved from the defendant, and allowed to walk back to her apartment unaccompanied. After the initial encounter, therefore, subsequent events (as described above) would have communicated to a reasonable person that she was free to terminate the encounter at any time. There being no custody, and nothing else tending to indicate coercion, her consent, therefore, was obtained freely and voluntarily. (2) Next, defendant argued that because he himself had not given his consent to the search of the apartment, Rishel's consent was legally insufficient to justify a warrantless search for evidence of defendant's wrongdoings. (*Georgia v. Randolph* (2006) 547 U.S. 103.) *Randolph*, however, does not apply where the objecting cotenant is absent from the scene. By the time Rishel was asked for her consent, defendant was on his way to jail. And while it is also a rule of *Georgia v. Randolph* that the police cannot remove a "potential objecting party from the entrance (to the apartment) for the sake of avoiding a possible objection," that's not what occurred here. In this case, there was no evidence to support defendant's "speculation" that he had been arrested and removed from the scene for the purpose of avoiding the possibility that he might object. And the fact that Agent Watson had the opportunity to seek defendant's consent is irrelevant. There was no duty on Agent Watson's part to seek his consent. The consensual search of the apartment, therefore, was lawful.

Note: If you're wondering why defendant, as a guest, is entitled to the status of a "cotenant," it's because prior case law specifies that even an overnight guest has a protectable expectation of privacy in someone else's residence. (*Minnesota v. Olson* (1990) 495 U.S. 91.) In arguing the applicability of *Georgia v. Randolph*, defendant cited the Ninth Circuit's prior decision in *United States v. Murphy* (9th Cir. 2008) 516 F.3rd 1117, where an absent cotenant's objection, made after he had been arrested and removed from the scene, was held to be sufficient to overrule the present cotenant's consent; a very questionable decision that seems to ignore the rules that generally, a present cotenant's wishes trump those of an absent cotenant, and that there must be some evidence that the objecting cotenant was actually removed "for the purpose" of avoiding a possible objection. The Court here differentiated the two cases primarily by the fact that this defendant never did actually object. But this case does give us some excellent language to the effect that there must be some evidence that removing the a cotenant from the scene, whether he later objects or not, was done for the specific purpose of avoiding an objection. Note also the important point made by the Court that once a

cotenant has been arrested and removed from the scene, there is no duty to seek his consent.

***The Community Caretaking Function and Traffic Stops*:**

People v. Madrid **(Nov. 26, 2008) 168 Cal.App.4th 1050**

Rule: Although the "*community caretaking function*" may justify a traffic stop, it will do so only when an officer is acting reasonably in determining that an occupant's safety or welfare is at risk.

Facts: Redwood City Police Officer Perez, patrolling in a marked patrol car, observed a subject walking across a shopping center parking lot with an unsteady gait, and while sweating. Officer Perez watched the man as he stumbled, catching himself on a shopping cart. Perez believed that the person might be under the influence of alcohol, have a medical problem, be the victim of an assault, or be under the influence of drugs. As Perez watched, the subject staggered some 50 feet across the parking lot to a red Toyota and got into the front passenger seat. As the car started to drive away, Officer Perez drove his car in front of it, preventing it from leaving. Perez's reason for doing this was because he didn't want the car to leave knowing that there could be something wrong with the passenger. Officer Perez then approached the passenger side and contacted the subject, identified as Jeffrey Kendrick. The Toyota was being driven by defendant. Officer Perez noticed that Kendrick was sweating, had dilated pupils, and was "nodding off." The officer recognized these signs as the first stage of opium withdrawal. Asking both subjects for identification, defendant said that he didn't have any but verbally gave the officer his name and date of birth. Perez asked defendant and Kendrick if there were any weapons or drugs in the car. Kendrick responded by retrieving several hypodermic syringes from his pocket. As he did so, Officer Perez noticed a bulge in his sock that was found to be a fruit drink cap containing a piece of cotton and some residue that the officer recognized as heroin. At the same time, defendant handed the officer a Sav-On Pharmacy bag which was found to contain packages of Sudafed and Allerfrin, and a balloon. Officer Perez suspected that the balloon contained tar heroin. Kendrick told the officers that defendant had offered him the heroin in exchange for him buying the over-the-counter drugs because defendant, without his identification, couldn't buy them. Charged with a number of drug-related offenses, defendant's motion to suppress was denied. He was convicted in a court trial of possession of heroin for sale, per H&S § 11351, and sentenced to prison. He appealed.

Held: The First District Court of Appeal reversed. On appeal (as in the trial court), the People agreed that Officer Perez did not have any reason to believe that either defendant or Kendrick were engaged in criminal activity, but rather sought to justify the stop by the officer's exercise of his "*community caretaking*" function. Defendant argued that the community caretaking theory did not apply to the stop of a vehicle and the detention of its passengers. The Court disagreed with defendant's analysis, ruling (in a case of first impression) that an officer's community caretaking function may, under the right circumstances, justify the stop of a vehicle when necessary to ensure the safety of an

occupant, despite the lack of any reason to believe that criminal activity might be afoot. The only question is whether the officer is acting reasonably, based upon reasonable inferences he is entitled to draw from the facts, in light of his experience. "(H)e must be able to point to specific and articulable facts from which he concluded that his action is necessary." When the officer can do this, a vehicle stop is appropriate. But the Court also disagreed with the People arguments. While a vehicle stop may be predicated upon an officer's reasonable belief that an occupant's safety or welfare is at risk, this particular case fails to meet this standard. Based upon the facts known to Officer Perez, a reasonable officer would not have perceived a need to check on Kendrick's welfare. In reaching this conclusion, the Court considered a set of four factors derived from a pair of cases from the State of Texas (*Wright v. State* (Tex.Crim.App. 1999) 7 S.W.3rd 148, 151-152; and *Corbin v. State* (Tex.Crim.App. 2002) 85 S.W.3rd 272.): (1) The nature and level of the distress exhibited by the individual; (2) the location of the individual; (3) whether or not the individual was alone and/or had access to assistance independent of that offered by the officer; and (4) to what extent the individual—if not assisted—presented a danger to himself or others. The first of these four factors is considered to be the most important. Kendrick's level of observed distress was relatively low; i.e., merely an "unsteady gait" and sweating. However, Kendrick was still able to maneuver some 50 feet across a parking lot to defendant's car and get into the passenger's seat while unassisted. Once in the vehicle, Kendrick was in defendant's presence who could have provided any assistance he might need. Also, there was nothing about the location that called for the officer's intervention. Lastly, Officer Perez stopped the defendant's vehicle based upon his observation of the passenger, and not the driver. An impaired driver is a lot more dangerous than an impaired passenger. And under these circumstances, there were no facts supporting a conclusion that Kendrick presented a danger to himself or to others. As such, no reasonable officer would have perceived a need to stop defendant's vehicle to discharge his community caretaking function. The resulting evidence should have been suppressed.

Note: The possibility that Kendrick might have been on the verge of overdosing on drugs was held by the Court to be merely "speculative." (Question: Was he not 647(f) alcohol or drugs?; an argument waived by the People.) If it bothers you that we have some office-bound appellate court justices second-guessing a street-smart cop, telling us that the officer acted unreasonably and speculatively, then we're thinking a lot alike. But if you consider that the officer's conclusions, reasonable or not, must necessarily be balanced with Kendrick's and defendant's constitutional right not to be bothered by agents of the state absent good reasons for doing so, and accept the fact that we will lose this balancing test on occasion, then this case is a bit more acceptable. And if you also have a hard time accepting that philosophy, then just know that if nothing else, this is an excellent case to read for a decent analysis and historical accounting of the "*community caretaking function*;" something about which we don't have a lot of sources to review.