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Remember 9/11/01; Support Our Troops

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

THIS EDITION'S WORDS OF WISDOM:

"*Nice guys finish last. Only cream and bastards rise to the top*." (Paul Newman, 1925-2008, in the motion picture "*Hud*.")

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ADMINISTRATIVE NOTES:

Petition Granted in People v. Kelly: *People v. Kelly* (2008) 163 Cal.App.4th 124 (see *Legal Update*, Vol. 13, #6), where it was held that H&S § 11362.77 (describing the presumptive legal limits on the amount of marijuana that may be lawfully possessed under the Compassionate Use Act) is unconstitutional, has been accepted for review by the California Supreme Court (Aug. 13, 2008). *Kelly*, therefore, is no longer citable authority pending a decision from the Supreme Court.

CASE LAW:

***Miranda*; *Anticipatory Invocations*:**

People v. Wyatt **(Aug. 19, 2008) 165 Cal.App.4th 1592**

Rule: Asking for the assistance of counsel prior to the initiation of a custodial interrogation is, at best, equivocal, and justifies a later attempt at clarification.

Facts: While an inmate of the Shasta County Jail, defendant's jail cell was searched by deputies. The search resulted in the recovery of a syringe and a home-made metal shank. As a result, defendant was scheduled for a disciplinary hearing. Among the rights accorded a jail inmate was to be represented at the hearing by a staff member or to represent himself. Under the law, inmates are not entitled to representation by an attorney at a disciplinary hearing. Defendant, however, was worried that anything he might say could later be used against him in a subsequent criminal prosecution. So he asked that an attorney be appointed to help him. After being reminded that he didn't get an attorney at a disciplinary hearing, defendant declined to say anything at all concerning the allegations against him. The hearing officer therefore found Wyatt "guilty by report," recommending 30 days in lockdown and a loss of privileges. Five days later, Shasta County Deputy Sheriff Mark Davis brought Wyatt into an interview room at the jail and read him his *Miranda* rights. Forgetting all the caution he had so wisely demonstrated at his disciplinary hearing, defendant waived his rights and admitted to possessing both the syringe and the shank. Defendant was charged in state court with possessing drug paraphernalia and a weapon while in jail. Before trial, defendant argued that his confession to Deputy Davis should be suppressed. His reasoning was that because he had invoked his right to counsel at the earlier disciplinary hearing, the U.S. Supreme Court's decision of *Edwards v. Arizona* (1981) 451 U.S. 477, dictated that he was off limits as to any further questioning concerning the syringe and the shank. The trial court disagreed, denied his motion, and allowed the prosecution to use his confession against him. Defendant was convicted by a jury of both charges and, as a three-striker, sentenced to two consecutive 25-to-life prison terms.

Held: The Third District Court of Appeal affirmed. The issue on appeal was the applicability of *Edwards v. Arizona* to defendant's situation; i.e., did defendant effectively invoke his right to counsel thus precluding any later attempts to question him? Under *Edwards v. Arizona*, once an in-custody suspect invokes his right to counsel, he remains off limits to any further questioning for as long as he remains in custody. However, defendant's request for the assistance of counsel was made at a county jail disciplinary hearing where he was not legally entitled to a lawyer. No one attempted to question him at that point so no "custodial interrogation" took place. Under these circumstances, in the Court's opinion, defendant's request for the assistance of an attorney was "ambiguous with respect to whether it would apply to a subsequent, independent custodial interrogation." As an equivocal attempt at an invocation, Deputy Davis was legally justified in seeking clarification from defendant about whether he indeed wished to have a lawyer's assistance in subsequent dealings with the authorities.

Edwards v. Arizona does not preclude an officer's attempts at clarifying an ambiguous request for counsel. "By advising defendant of his *Miranda* rights, and by obtaining a knowing and voluntary waiver of the same, Deputy Davis lawfully clarified the ambiguous request for counsel that defendant had made at the disciplinary hearing." Defendant's confession, made to Deputy Davis after waiving his rights, was therefore properly admitted into evidence against him.

Note: But was the request for assistance of counsel at the disciplinary hearing really equivocal? Noting that a *Miranda* invocation is legally effective only when attempted during a custodial interrogation, and that defendant's disciplinary hearing was in no way, shape or form, a custodial interrogation, one might ask; *where's the issue*? Despite this appellate court's opinion, the law is quite clear that any attempt by a criminal suspect to invoke his rights under *Miranda* prior to that point in time when (1) he is in custody and (2) an interrogation is either in progress or is imminent, is legally ineffective. In other words; *it doesn't count*. (*United States v. LaGrone* (7th Cir. 1994) 43 F.3rd 332, 339; *People v. Nguyen* (2005) 132 Cal.App.4th 350, 355-357.) A request for the assistance of counsel, made prior to any attempt at interrogation, is what we sometimes refer to as an "*anticipatory invocation*," and legally ineffective. So there was really nothing to clarify. But whatever works. The right result was reached no matter how the court got there.

***Consensual Searches when a Cotenant Objects*:**

United States v. Murphy **(9th Cir. Feb. 20, 2008) 516 F.3rd 1117**

Rule: When one cotenant objects to a search, but the other consents, police officers are bound by first cotenant's refusal to consent even though he has been removed from the scene by the time the other has consented.

Facts: Officers of the Jackson County (Oregon) Narcotics Enforcement Team followed two narcotics suspects to a storage facility. The officers already knew that defendant Murphy was living in two of the storage units at that facility although they were rented in the name of another suspect, Dennis Roper. After the initial two suspects left the facility, Officer Thompson knocked at unit #17. Defendant opened the door while holding (apparently as a weapon) a 10-inch piece of pipe. Recognizing defendant as a methamphetamine manufacturer, Thompson ordered him to drop the pipe which, reluctantly, he eventually did. Officer Thompson could see behind defendant an operating meth lab in the storage unit. He was arrested and a quick protective sweep was done of units 17 and 18. Asked for consent to do a more thorough search of the units, defendant declined. He was therefore transported to jail as Officer Thompson left to obtain a search warrant. While this was pending, some two hours after defendant's arrest, Dennis Roper showed up at the scene. He was immediately arrested on outstanding warrants. Although admitting that he allowed defendant to stay in the storage units, Roper denied any knowledge of the methamphetamine activity. He therefore agreed in writing to allow the officers to search the units. The meth lab was seized during the resulting consensual search. Charged in federal court, defendant's

motion to suppress the evidence recovered from the storage units was denied. Defendant pled guilty and appealed.

Held: The Ninth Circuit Court of Appeal reversed. Defendant argued on appeal that both the protective sweep and the later search with Roper's consent were illegal. The trial court had upheld the protective sweep based upon the fact that defendant was armed with a metal pipe when first contacted. The fact that defendant was armed, however, does not justify a protective sweep. Protective sweeps are for the purpose of locating dangerous confederates. In this case, Officer Thompson had cause to believe that Roper, for whom there as an outstanding felony arrest warrant and who was as of yet unaccounted for, might be inside. So for *that* reason, the protective sweep was justified. As for the legality of the search conducted with Roper's consent, the Court overruled the trial judge. While this case was pending, the U.S. Supreme Court decided the landmark case of *Georgia v. Randolph* (2006) 547 U.S. 103. *Randolph* held that when two cotenants are present at the scene, and one objects to a warrantless search (or entry), the consent of the other cannot overrule the person who objected. In this case defendant objected. After he was taken to jail, Roper consented. The Court first rejected the Government's argument that because defendant only lived there, rent free, with Roper's permission, he was not a "cotenant" as that term is used in *Randolph*. Defendant was living there and had his possessions there. He therefore had an expectation of privacy just as if it were his residence. The fact that this case involves a storage unit and not what is normally considered to be a residence is irrelevant. More importantly, the Court also rejected the Government's argument that because defendant was no longer present at the scene when Roper gave his consent to search, *Georgia v. Randolph* did not apply. The fact that defendant had been removed from the scene does not vitiate his refusal to consent. "(H)is refusal to grant consent remains effective barring some objective manifestation that he has changed his position and no longer objects." Roper's later consent, therefore, could not validly overrule defendant's refusal. The search based upon Roper's consent was illegal. The evidence should have been suppressed.

Note: Here's another Ninth Circuit decision that is ripe for reversal. *Georgia v. Randolph* clearly says that when the objecting party is *not* at the scene, a consenting cotenant who *is* at the scene can validly give police officers consent to enter and/or search a residence. The only exception relevant to this scenario, per the Supreme Court, is when the police take the objecting party away "*for the purpose of*" avoiding the rule of *Randolph*. In this case, the officers took defendant to jail with no idea that Roper would later show up and give consent. He was therefore *not* removed from the scene "for the purpose of" avoiding the rule of *Randolph*. Two other federal circuits that have considered this same issue disagree with the Ninth Circuit's conclusions. (See *United States v. Hudspeth* (8th Cir. 2008) 518 F.3rd 954; *United States v. Henderson* (7th Cir. 2008) 536 F.3rd 776.) Note also that the Court assumed for the sake of argument that Roper, in whose name the storage units were rented, was on an equal footing with defendant who was living in them. While it was noted by the Court that it could be argued that Roper was actually more like a landlord, with defendant as Roper's tenant, which would mean that Roper did not have the right to give the officers consent to enter

whether defendant objected or not, the Court did not discuss this potential issue. (See fn. 2.) This would have been a better argument for defendant to make.

***Warrantless Intrusion into a Side Yard*:**
***Plain Sight Observations; Standing on the Tiptoes*:**

People v. Chavez **(Mar. 27, 2008) 161 Cal.App.4th 1493**

Rule: Warrantless entry over a six-foot fence and past a locked gate, into a suspect's side yard, is lawful when justified by a plain sight observation of a cocked firearm where there is a concern for officer safety and the safety of a minor suspected to be in the home. An officer standing on his tiptoes to see over a six-foot fence is not an illegal observation.

Facts: Roseville Police Officer Aaron Leahy responded to a motel where he contacted defendant's girlfriend/significant other who complained that defendant had taken her car earlier that day, telling her she would never get it back. She was afraid to return home to get her car back because defendant had been violent with her in the past. She told the officer that she had seen a gun in the residence some six months earlier. *Oh*, *and by the way*, their seven-year-old son might also be at the residence (showing more concern for her car than her son). She asked the officer to try to get her car (no mention of her son) back from defendant. Officer Leahy and another officer went to her residence, arriving at about 9:40 p.m., and found the jeep with the engine grill still warm parked in the driveway. There was a light visible coming from the garage, but otherwise the house was dark. No one answered when the officer knocked at the front door. Walking a short distance along a concrete walkway from the front door to the corner of the house, the officer found a six-foot high fence with a locked gate, the fence being flush with the front of the house. The top of a sliding glass door at the side of the residence could be seen behind the fence. No lights were visible in the house and no one responded when the officer called defendant's name. Standing on his tiptoes, raising him about 3 inches so that he could see over the fence, the officer noticed something shiny on the ground near the sliding door. Shinning his flashlight on it, he observed what appeared to be a cocked revolver. Not being able to determine whether the gun was loaded, and fearing that the victim's son might have access to it, the officer climbed over the fence and retrieved it. He then immediately climbed back over the fence and out of the side yard. The identification number of the revolver had been removed. Later charged with one count each of obliterating the identification on a firearm and possession of a firearm by a felon, defendant filed a motion to suppress the gun. The trial court, finding that the officer unlawfully intruded into defendant's side yard, granted the motion. The People appealed.

Held: The Third District Court of Appeal (Placer County) reversed. First, the Court found no fault in Officer Leahy's decision to walk along the short walkway from the front door to the locked gate. It is not illegal for a police officer to enter an area that is impliedly open to the public. "A sidewalk, pathway, common entrance or similar passageway offers an implied permission to the public to enter which necessarily negates any reasonable expectancy of privacy in regard to observations made there." Having failed to get any response at the front door, but having reason to believe defendant was in

the house (i.e., the light in the garage, the warm grill of the victim's car), it was reasonable for the officer to take advantage of the short walkway up to the gate at the front corner of the house. Once there, the Court held that the officer's observation of the firearm was a "*plain sight observation*," and lawful. So long as the officer is in a place he has a lawful right to be, a plain sight observation of contraband is lawful. Citing authority from other jurisdictions which allowed officers to look over fences by standing on their tiptoes, standing on a rock, or on a car bumper, the Court held that the fact that Officer Leahy had to stand on his tiptoes to see over the fence is irrelevant. A six-foot fence isn't so high that many people can't see over it. Also, the use of a flashlight is also permissible. Under these circumstances, any expectation of privacy defendant might have thought he had was unreasonable. Lastly, it was reasonable for the officer to climb over the fence to retrieve the firearm for his own safety and the safety of the defendant's seven-year-old son who the officer reasonably believed might be home. The gun, therefore, being lawfully observed and seized, should not have been suppressed.

Note: Don't take this case as authority for borrowing a ladder from a neighbor so that you can look over a suspect's fence to make observations of suspected contraband. It's an issue of what privacy rights a suspect reasonably believes he can rely upon. If he builds an eight-foot fence, for instance, higher than almost anyone who doesn't play basketball for a living can see over, then using some artificial means to see over that fence is a violation of his privacy rights. But building that same eight-foot fence under a neighbor's second story window will have a whole different result. It would no longer be reasonable to assume that no one will be looking into his yard. Also note that just seeing contraband in a protected area (e.g., the suspect's back or side yard) does not automatically give you the right to go over the fence to seize it absent an exigent circumstance. (*Horton v. California* (1990 496 U.S. 128; *United States v. Murphy* (9th Cir. 2008) 516 F.3rd 1117.) Here, the officer felt that his own safety and the safety of a 7-year old child he believed might be in the house necessitated the seizure of the gun. The Court lastly noted that once he got a hold of the gun, he immediately left the side yard, refusing to succumb to the temptation to take a peek into the side door which, had he done so, would have been illegal. This is a good example of an officer acting reasonably, as dictated by the circumstances, which is all that the Fourth Amendment requires.

***Residential Entries*; *Emergency Aid Doctrine*:**

People v. Gemmill **(May 6, 2008) 162 Cal.App.4th 958**

Rule: Walking to the side of a house and peering into a window, when done with a reasonable suspicion to believe that someone inside may need assistance, is lawful.

Facts: A motorist nearly hit an unattended two-year-old child wandering on the street in a residential neighborhood. The motorist called the Sheriff. Shasta County Deputy Sheriff Jason Gassaway responded and took charge of the child. Although the child was too young to provide any useful information, neighbors indicated that the child lived at a nearby residence. No vehicles were parked at the residence and "knocking hard" at the front door failed to get any response. Believing that he didn't have enough to justify a

forced entry, Deputy Gassaway left. But once back at the station, he had a "gut feeling" that something "didn't seem right." Believing that it was possible that there might be another child in the house, Deputy Gassaway felt that he should have at least checked the perimeter of the house. About an hour after having left the house, he returned to try again. "Bang(ing) loudly" on the front door and yelling "Sheriff's Office" again failed to get any response. Nothing could be seen through the front window because the blinds were shut. While continuing to knock on windows and call out his presence, he walked around the house until he came to a side window with its blinds closed, but with a 5 to 6-inch gap in the slats. Peeking through this gap, Deputy Gassaway was able to see a six-month-old child on the floor playing with a plastic bag and a non-responsive adult male lying on a couch. Based upon this observation, Deputy Gassaway made entry to retrieve the child and check the welfare of the male (who was apparently sleeping off a drunk). A check for other children resulted in the discovery of 550 grams of marijuana and some methamphetamine paraphernalia, all within the child's reach. Defendant, although not home at the time, owned the house and it was her children involved. She was charged with various felony narcotics offenses and child neglect. Defendant's motion to suppress was denied by the trial court and defendant was convicted by jury of several misdemeanors as lesser included offenses of the original charges. She appealed.

Held: The Third District Court of Appeal (Shasta) affirmed. It's recognized that under the so-called "*emergency aid*" exception to the search warrant requirement, police officers may enter a home to render emergency assistance when they have an objectively reasonable basis (i.e., "*probable cause*") to believe someone inside is seriously injured or imminently threatened with such injury. (*Brigham City v. Stuart* (2006) 547 U.S. 398.) Defendant, in this case, did not argue that Deputy Gassaway didn't meet this standard when he actually entered defendant's home, after having observed a six-month-old child playing with a potentially lethal plastic bag and a non-responsive male on the couch. What defendant contested was the legality of Deputy Gassaway's trespass to the side of the house and his looking into the window. The People argued that merely walking to the side of the house and looking through a window, although a "search" under the Fourth Amendment, was less intrusive than actually making entry into the house. As such, it should be allowed under a lower standard; i.e., a "*reasonable suspicion*." The Court agreed. First, it was noted that defendant had an expectation of privacy that Deputy Gassaway intruded upon by being at the side of the house and "peering" through the gap in the blinds. Under the circumstances (e.g., no walkway), there was nothing to indicate that the public was inferably invited to the side of defendant's home. Also, having closed the blinds, looking through the small gap in the blinds was a search. Thus, the Fourth Amendment was implicated (i.e., it was not a "plain sight observation" from a place where the officer had a right to be). As already indicated, exigent circumstances will allow for the warrantless entry of a home. But the information available to the officer must be sufficient to support "an objectively reasonable basis to believe someone inside is seriously injured or imminently threatened with such injury." To merely look through a window, even though such a look is an intrusion on the homeowner's Fourth Amendment rights, only requires a "*reasonable suspicion*" to believe that someone inside is seriously injured or imminently threatened with such injury. Here, with a two-year-old child wandering the streets unattended in the middle of the afternoon, and no one

answering the door at the child's residence despite the officer's best efforts to get someone's attention, there existed sufficient reasonable suspicion to justify the limited intrusion into the side yard and peeking into a window. The Fourth Amendment, therefore, was not violated by the deputy's observations through defendant's window.

Note: While I like the result, I have to admit I had a real hard time following the Court's reasoning. While admitting that Deputy Gassaway looking through defendant's window was in fact a "search," and although searches typically require that there be "*probable cause*," the Court here held that the lesser standard of a "*reasonable suspicion*" to believe that an exigency existed was sufficient to allow for such a limited search. But, by the same token, it has always been my position that all an officer really needs to do is act "reasonably." Here, Deputy Gassaway acted on a "gut feeling," being uncomfortable with leaving the house after only having knocked at the front door. It is hard to argue that that wasn't a reasonable reaction to the circumstances.

***DUI Stops by a Non-Traffic Officer in an Unmarked Car*:**

Dyer v. Department of Motor Vehicles **(May 22, 2008) 163 Cal.App.4th 161**

Rule: The uniform and marked patrol vehicle requirements of V.C. § 40800 do not apply to an officer making a DUI stop, at least from a DMV license suspension perspective.

Facts: Placer County Sheriff's Sergeant Jess Phariss, in uniform but driving an unmarked patrol vehicle, observed defendant driving erratically just after midnight. Defendant was slowing and speeding up, and drifting across the center double yellow line. Sgt. Phariss called for another patrol unit and then stopped defendant by activating his emergency lights. Defendant exhibited signs of being under the influence of alcohol. Deputy Robert Griggs arrived at the scene and took control of defendant, administering a field sobriety test. When defendant did poorly, he was arrested for being under the influence of alcohol. A partially empty bottle of vodka and some marijuana was found in the car. Breath tests later revealed that defendant's blood/alcohol level was .11%. Pursuant to V.C. § 13353.2, the Department of Motor Vehicles (DMV) suspended defendant's driver's license after a review of the investigative reports. Defendant asked for an evidentiary hearing. The hearing officer upheld the suspension. Defendant filed a petition for writ of mandate with the Superior Court. The Superior Court trial judge granted the writ, finding that defendant was stopped illegally because Sgt. Phariss was not in a marked patrol vehicle as required by V.C. § 40800. The People appealed.

Held: The Third District Court of Appeal reversed. In addition to whatever criminal sanctions there might be, the Legislature established certain administrative procedures whereby DMV may suspend a person's license for driving while under the influence. Among those procedures is V.C. § 13353.2 (effective as of 7/1/90), authorizing either the arresting officer or DMV to serve a DUI driver (08% BA level or higher) with notice of a 45-day, pre-conviction suspension. But per case law, the driver's arrest must have been lawful. (*Gikas v. Zolin* (1993) 6 Cal.4th 841, 847.) The Superior Court judge was of the

opinion that defendant's arrest was not lawful because Sgt. Phariss was not in uniform and not in a marked patrol vehicle, as required by V.C. § 40800. First, there was no evidence that Sgt. Phariss was not in uniform. The reports indicated that he was on "uniform patrol." But more importantly, V.C. § 40800 did not apply to Sgt. Phariss under the circumstances of this case. Section 40800 (as it was written at the time) applied only to a "traffic officer on duty for the exclusive or main purpose of enforcing the provisions of Division 10 or 11 of (the traffic safety laws)." There was no evidence that Sgt. Phariss was a traffic officer or that he was engaged in traffic enforcement. To the contrary, Sgt. Phariss was exercising supervisory duties. However, even if section 40800 did apply to Sgt. Phariss, the only sanction available (making inadmissible the testimony of the officer) for violating section 40800 is in a prosecution involving the speed of a vehicle. (Former V.C. § 40804) Section 40805 also deprived a court of the jurisdiction to render a judgment, but only in the case of a violation of the Vehicle Code involving the speed of a vehicle. Defendant was stopped for DUI; not speed. The restrictions of section 40800 do not apply to this case. Defendant also argued that he was actually arrested by Deputy Griggs who did not witness the defendant's violation. In answer to that question, the Court noted that defendant was in fact arrested by both Sgt. Phariss and Deputy Griggs after Sgt. Phariss summoned Deputy Griggs to aid him in making the arrest, as authorized by P.C. § 839. Defendant's arrest being lawful, therefore, his license was validly suspended per V.C. § 13353.2.

Note: I have to admit that the Vehicle Code isn't my strong suit. Despite this failing, I often get questions concerning the legality of traffic stops by unmarked police units or officers in plain clothes, in the criminal, as opposed to a DMV administrative, context. Note that this case deals only with the administrative, license-suspension perspective of the DMV. But the Court also noted that V.C. § 40800 is included in a chapter of the Vehicle Code dealing with speed traps, which is why the section applies only to traffic officers whose exclusive or main purpose is to enforce traffic laws on the public highways. So from this reasoning, detectives or other officers in plain clothes driving unmarked cars, making investigative stops, is not illegal, even if done under the pretext of writing a traffic citation. Am I wrong? Someone correct me if I am.

***Patdown Searches*:**

People v. Sandoval **(May 23, 2008) 163 Cal.App.4th 205**

Rule: To be lawful, a patdown search of a person for weapons requires a reasonable suspicion that the person is armed.

Facts: Officer Shawn McGinnis, a 20-year veteran of the Redding Police Department assigned to the Shasta Interagency Narcotics Task Force, and with extensive experience in conducting narcotics investigations and executing search warrants at residences, headed a Fourth Waiver probation search at the home of Shawn Funchess. An investigation of Funchess had indicated that illegal drugs were in the house; e.g., other suspects coming from the house the previous week with drugs and paraphernalia in their possession. Defendant was one of Funchess's "known associates," living with Funchess.

The seven-officer search team hit Funchess's home at about 9:30 a.m. Defendant was sitting on the top steps leading to the front porch, smoking a cigarette, when the officers arrived. He was recognized as a subject who has been arrested several times in the last two years for possession of methamphetamine. The officers had defendant stand up and put his hands on his head, and turn around. As the entry team went into the house, Officer McGinnis handcuffed defendant and patted down his outer clothing for weapons. In so doing, Officer McGinnis felt what he thought might be a knife in his jacket pocket. Removing the object, it was found to be a stun gun. A further patdown for additional weapons resulted in the recovery of methamphetamine. Charged in state court with possession of methamphetamine, defendant moved to suppress the meth, arguing that the patdown search was illegal. At the hearing on the motion, Officer McGinnis testified, in effect, that the procedure used with defendant was "the safe thing to do" when making an entry into a residence under these circumstances, given the likelihood of persons being armed. However, Officer McGinnis *did not* testify that he believed defendant himself might be armed. The trial court denied defendant's motion. He pled guilty and appealed.

Held: The Third District Court of Appeal reversed, agreeing with defendant that the patdown search was illegal. The law is clear: In order to justify a patdown for weapons, the officer must have some reason to believe the person patted down might be armed. In this case the Court noted that: "Officer McGinnis did not testify he thought defendant was armed and dangerous. To the contrary, the officer testified he did not suspect defendant was engaged in criminal activity and the officer had no reason to believe defendant was armed. The fact that defendant was located in front of a house where narcotics were thought to be is insufficient, in and of itself, to justify a patdown search under (U.S. Supreme Court authority)." There being no reason to believe defendant was armed, the patdown search of defendant's person for weapons was illegal.

Note: The U.S. Supreme Court authority cited by this Court is *Terry v. Ohio* (1968) 392 U.S. 1, and *Ybarra v. Illinois* (1979) 444 U.S. 85. *Terry* allows for the patdown of a suspect for weapons despite the fact that the officer has nothing more than a reasonable belief (i.e., a "*reasonable suspicion*") to believe he may be armed. *Ybarra* puts a limit on this authority, requiring "*individualized suspicion*" to believe that the person being patted down is armed, and not allowing patdowns just because that person happens to be at the scene of someone else's criminal activity. There is authority, however, for the argument that being "*closely associated*" with narcotics suspects allows for a patdown for weapons. This is based upon theory that "*officer safety*" dictates the need to check such persons for weapons because drug dealers commonly arm themselves. (*People v. Samples* 1996) 48 Cal.App.4th 1197.) In this case, there is no indication whether Funchess was suspected of being a drug dealer or just someone who had friends who abused drugs. Either way, had Officer McGinnis been able to testify that he felt defendant might have been armed because of his close association with drug abusers and because such people are commonly armed (assuming this was in fact his belief), the result might have been different. Either way, if you don't actually suspect that the target of your attention is armed, don't expect the court to uphold your patdown of that suspect for weapons "just because that's what's always done." You have to reasonably believe the person to be patted down is in fact armed and be able to articulate your reasons for that belief.