

CALIFORNIA SEARCH AND SEIZURE

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2025 Foreword

- Suppression is not a sanction if officer does not comply with Veh. Code § 2806d

Vehicle Code § 2806, effective January 2024, mandates an officer making a traffic or pedestrian stop in investigation of a traffic violation, before engaging in any questioning, inform the motorist or pedestrian of the reason(s) for the stop. In *People v. Valle*, 105 Cal.App.5th 195, 325 Cal.Rptr.3d 730 (1st Dist. 2024), the trial court held the failure to comply with this admonition was evidence the stop was pretextual. The court granted the motion to suppress. The People appealed and the decision was reversed. While the statute serves important policy goals, it has no impact on the legality of pretext stops. Instead, the determination of whether the stop was pretextual is subject to federal constitutional limitations. The officer had an objectively reasonable basis for stopping the vehicle. (See § 4:25)

- DUI-drug suspect refused to take blood test. Officer got a search warrant. At trial, prosecutor argued refusal constitutes consciousness of guilt. Jury was so instructed (CALCRIM No. 2130). Error? No.

Under Vehicle Code § 23612. Subdivision (a)(1)(B), “A person who drives a motor vehicle is deemed to have given his or her consent to chemical testing of his or her blood for the purpose of determining the drug content of his or her blood, if lawfully arrested for” driving under the influence of a drug. If motorist refuses and forces officer to obtain a search warrant, is it lawful for the jury to be advised they may draw an adverse inference of consciousness of guilt based on the refusal? The appellate court answered the question “Yes.” Evidentiary penalties are permissible. Criminal sanctions are not. *People v. Bolourchi*, 103 Cal.App.5th 243, 325 Cal.Rptr.3d 3 (1st Dist. 2024). (See § 6:4)

- During lawful traffic stop, officer may order driver/passenger(s) out of vehicle without any articulable justification.

Trial court judge granted motion to suppress evidence because there were no “change of circumstances” between the time of the initial stop and three minutes later. As defendant was being removed, officer saw handgun behind driver’s seat. The appellate

court reversed: the officer need not immediately order the driver/passenger out of vehicle or justify order based on “change of circumstances.” *People v. Ramirez*, 104 Cal. App. 5th 315, 324 Cal.Rptr.3d 583 (4th Dist. 2024). (See § 4:24)

- Search pursuant to warrant went beyond date and time restriction in warrant. Affidavit not incorporated by reference. Trial court denied suppression based on Good Faith. Court of Appeal reversed.

Police obtain a search warrant to search defendant’s cellphone and residence for evidence of sexual assault. In the affidavit in support, detective explains why necessary to go outside of a date and time restriction. Search Warrant failed to include appropriate “incorporation” language and set out one month time parameter. While searching defendant’s cellphone, the technician expanded the search beyond the time limits and found images of child pornography. Defendant moved to suppress, since search exceeded the warrant. The trial court agreed the search exceeded the warrant, but upheld the seizure of the evidence based upon good faith. The defendant appealed. Held: good faith does not apply when the facts show a clear and intentional violation of the warrant’s restrictions. *DiMaggio v. Superior Court*, 104 Cal.App.5th 875, 325 Cal.Rptr. 3d 74 (6th Dist. 2024). (See § 11:6)

- Drug dealer moved to suppress pursuant to CalECPA (Penal Code § 1546.4) on grounds the police needed a search warrant to search the cellphone belonging to overdosed decedent.

In *People v. Clymer*, 107 Cal.App.5th 131, 327 Cal. Rptr.3d 828 (1st Dis. 2024), defendant was the supplier for a man who lived with his parents. The man had nearly overdosed several times and finally was successful. Parents found him and called police. Parents begged officer to search their now deceased son’s cellphone to learn the identity of the dealer. The officer did so and Clymer was later charged with various drug offenses. Clymer moved to suppress evidence found on the decedent’s cellphone. He had no “standing” under fourth amendment jurisprudence. Instead, based upon CalECPA, he contended the decedent was the only “authorized possessor” and thus the officer could not search without a warrant. The trial court ruled the officer reasonably believed the parents became the “authorized possessor” upon their son’s death since (1) they lived with their son; (2) the parents had access to their son’s cellphone and (3) the parents knew the passcode. Defendant appealed. Held: ruling affirmed. (See § 10:20)

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- Limitations of “Private Search Doctrine” in child pornography investigations.

In cases involving suspected child pornography images that come to the attention of private communications servers such as Google or Facebook, several recent Ninth Circuit decisions have been faced with whether the Private Search Doctrine permitted law enforcement (“FBI”) to view images without a warrant. Under the doctrine, if the images were viewed by employees of a private entity, such as Facebook, then the agent may view the same images without a warrant so long as the agent does not go beyond the scope of what was seen by the Facebook employee. What happens sometimes however is the employee only viewed “similar” images that matched the “hash value” of an uploaded file from a CyberTipline report that was previously viewed and categorized as apparent child pornography. In *U.S. v. Holmes*, 121 F.4th 727 (9th Cir. 2024), the Government conceded the agent unlawfully viewed the images and should have only done so with a warrant. The Government argued however that the agent acted in good faith and would have inevitably discovered the images. The Circuit Court did not agree and reversed. (See §§ 1:9, 11:2, 11:4)

- Police may ask motorist and passengers during a traffic stop if anyone on parole.

A police officer during a traffic stop may ask if anyone in the vehicle is on parole. The question reasonably relates to the officer’s safety and imposes a negligible burden. Asking the question did not unnecessarily prolong the traffic stop. *United States v. Ramirez*, 98 F.4th 1141 (9th Cir. 2024). (See § 4:24)

- Handcuffing motorist during traffic stop did not convert stop into de facto arrest.

Three officers on bicycle patrol in downtown Las Vegas see a car with a taillight out and a California license plate parked in a red-curb no-parking zone. The vehicle was occupied by the defendant, Larry Sing In. Officer Diaz walked up to the driver’s window and requested In produce his driver’s license, registration and insurance. While Officer Diaz spoke with In, Officer Anderson shone her flashlight into the interior of the vehicle and saw a Glock on the backseat passenger-side floorboard. Officer Anderson told Officer Diaz. Diaz ordered In to step out of the vehicle with his hands in the air. Diaz asked In if he had any weapons. In said, “No.” Diaz asked a few more questions and handcuffed In. Police learned In was a felon and was arrested for being a felon in possession of a firearm. He argued the weapon should be suppressed since he was in essence arrested when he was handcuffed

and the officers did not know at that time he was a felon from California. The trial court granted the motion and the Government appealed. Held: reversed. The officer's observation of the Glock, coupled with the defendant's answers, justified the use of handcuffs for officer safety. *U.S. v. In*, 124 F.4th 790 (9th Cir. 2024). (See § 4:11)

- State officer may rely upon suspected violation of federal law to justify search or seizure even if state did not criminalize the same conduct.

A Nevada trooper stopped a vehicle for excessive speed. The officer observed in plain view an ammunition box on the front right floor of the vehicle. He also observed items covered by a blanket in the back seat. Defendant admitted having ammunition but denied having guns in the car. Under Nevada law, it is not a crime to have ammunition in a vehicle. After running a criminal history check, the trooper learned defendant had been convicted of a felony. Pursuant to federal statutes (18 U.S.C. § 922(g)(1)), a felon may not be in possession of ammunition. Defendant argued the detention was unduly prolonged. The District Court granted defendant's motion to suppress; the Government appealed. Held: the stop was not unduly prolonged (see § 4:24). The trooper had probable cause to seize (and to search) the vehicle based upon the totality of circumstances including application of the principle of "**cross-enforcement**" of a federal crime observed by a state officer. As we discuss in § 5:3, Health and Safety Code § 11362.1(c) provides that "no conduct deemed lawful by this section shall constitute the basis for detention, search or arrest." Efforts to use federal law making simple possession of marijuana a crime to justify a detention, search or arrest for lawful **possession of marijuana** have so far failed. Nevada did not have a state statute prohibiting state law enforcement officers from enforcing the federal ban on felons possessing ammunition. *U.S. v. Steinman*, 130 F.4th 693 (9th Cir. 2025).

- Boilerplate provision to seize evidence of "dominion and control" unlimited to time. All other provisions of warrant properly limited to certain dates. Warrant became a "general warrant" and violated Fourth Amendment. Government argued "good faith." Held: not "objectively reasonable" for officer/investigator to search beyond time limits.

Law enforcement officers obtained a search warrant to search defendant's computers for evidence of possible sexual assault of girlfriend. Warrant authorized seizure of five categories of evidence. The first four were limited as to time. The fifth provision was a boilerplate provision to search and seize evidence

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showing “dominion and control” for the computers. There was no reason to include the provision; defendant did not contest he owned the computers. The provision for “dominion and control” did not include any time limits. A digital forensic examiner searched outside the time limits and found child porn. Law enforcement then obtained a second search warrant to search for child pornography and evidence of sexual crimes upon a child. Evidence was seized and charges were filed. Defendant moved to suppress, arguing the “dominion and control” provision allowed government authority to search without limitation to time and date. The District Court agreed and held the good faith doctrine did not apply. Government moved for reconsideration, arguing there were no appellate decisions that had held “dominion and control” provisions had to be limited as to time. District Court agreed and held good faith applied since officer would be entitled to qualified immunity. Defendant appealed. Held: it was not “objectively reasonable” to believe dominion and control provision without time constraint was lawful. Government argued the “objectively reasonable reliance” inquiry for suppression is the same as the “reasonable officer” standard in qualified immunity context. Without resolving this issue, the Ninth Circuit held when probable cause to search is limited to a particular location, suspect, time period, or type of evidence, any warrant provision that is wholly lacking in any corresponding limitation is **overbroad** and therefore renders the warrant facially deficient. Further, an officer who relies on any such provision while executing a search warrant **does not act in good faith**. *U.S. v. Holcomb*, ____ F.4th ____, 2025 WL 923757 (9th Cir. 2025).

About the Author

JUDGE GREGORY M. CASKEY (Ret.) has taught and written on the subject of Search and Seizure since 1987. He authored *Caskey's Benchguide on California Search and Seizure* (Specialized Legal Publications) in 1990 with quarterly updates until 2001. In 2003, Judge Caskey agreed to write a completely new reference book for Thomson Reuters on California Search and Seizure for their *Expert Series*. The first edition of *California Search and Seizure* was published in 2005 and revised and updated on an annual basis.

Mr. Caskey was appointed to the bench in Shasta County in 1982. He was elevated to the Superior Court in 1997 and took a deferred retirement in 2003. From 2003 until 2014, Caskey served as an Assigned Judge primarily in Contra Costa Superior Court. In April 2014, Caskey voluntarily resigned his position as an Assigned Judge and no longer serves in that capacity.

Judge Caskey is a graduate of California State University, Chico (1973) and University of Pacific, McGeorge School of Law (1976). He has taught Search and Seizure to judges in California and nationally through the National Judicial College.

Preface

This book is a practical, portable and timely guide for California judges, attorneys, law professors, and law students confronting the often confusing and complex body of law known as Search and Seizure. No other publication on this subject combines the benefit of quick reference and a thematic discussion of search and seizure law and procedure. The genesis of this book came from years of writing, thinking and lecturing on the subject and the need for an accurate, accessible and practical guide on California Search and Seizure.

Search and Seizure is of course a highly fact-dependent body of law. Given the endless permutations that can arise when a person comes into contact with a representative of a law enforcement agency, no book could provide “the” answer for every search and seizure question. As “bright lines” are drawn, new and creative challenges are mounted which often blurs what appeared to have been settled. What seemed “black and white” becomes gray as courts struggle to balance the individual’s expectation of privacy with the legitimate governmental interest in public protection.

The significance of a successful motion to suppress should not be underestimated. The suppression of incriminating evidence from the trier of fact in a criminal proceeding is one of the most important pretrial motions that a criminal defendant can make. An unprepared defense attorney or prosecutor who fails to properly prepare for and conduct such a motion has much to lose. The effect of a successful motion often results in a dismissal of the criminal charges; a denial usually results in a negotiated resolution. The judicial officer who does not understand and appreciate his or her statutory and constitutional responsibilities when it comes to deciding whether to issue a search warrant or grant a motion to suppress does great harm to the people of California.

No other book available to California lawyers, law schools and judicial officers provides both as thorough an analysis of the subject matter with the complex procedural requirements of California Penal Code § 1538.5.

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