

2026 Foreword

United States Supreme Court

Case v. Montana, 607 U.S. ____, 146 S.Ct. 500, 223 L.Ed.2d 382 (Jan. 14, 2026)

The Court affirmed the decision of the Montana Supreme Court that upheld the trial court’s denial of defendant’s motion to suppress evidence. The defendant, Mr. Case, was arrested and convicted of felony assault of a peace officer. The assault took place in Mr. Case’s residence. Police had been called to the home by Case’s girlfriend, who feared Case was going to kill himself. The officers had prior contacts with Case in which he had made similar statements. The officers believed Case might try and brandish a firearm in front of the officers in order to be shot and killed (“suicide by cop”.) After waiting for 40 minutes, officers forced entry into the home. One officer slowly climbed up stairs leading to the second floor bedrooms. Case suddenly opened a curtain across a closet entryway. The officer saw what he thought might be a handgun in Case’s hand. A firearm was later found near where Case had been standing. The officer shot Case. Case recovered and was arrested for assaulting the officer. Case moved to suppress all observations made by the officers while inside his residence. He argued the police needed probable cause to enter. The trial court held the officers did not need a warrant, or probable cause, to enter to determine if Case was injured (or dead) or in imminent danger of serious injury. The Montana Supreme Court affirmed the ruling but chose to do so based upon a faulty understanding of the law. Essentially, the Montana decision held the standard was “reasonable suspicion” based upon “specific and articulable facts”. The Supreme Court unanimously affirmed the ruling but not based upon the reasoning relied upon by the Montana Supreme Court. See § 8:3.

Chatrie v. United States, 223 L. Ed. 2d 553, 2026 WL 120676 (U.S. 2026)

The Court will consider the constitutionality of “**geofence warrants**” in the current term (2025–2026). The defendant, Okello Chatrie, was convicted of armed robbery of a credit union near Richmond, Virginia in 2019. The investigating officers utilized a “geofence warrant” that was served upon Google. The geofence

warrant determined Chatrie’s cellphone was within the immediate vicinity at or near the time of the robbery. Chatrie challenged this evidence, alleging the “geofence warrant” violated the fourth amendment because of its overbreadth and lack of particularity. The District Court was unconvinced the warrant was constitutional but denied the motion to suppress based upon “good faith.” The Court of Appeals, Fourth Circuit, affirmed the ruling in a one sentence “per curiam” decision. (*U.S. v. Chatrie*, 136 F.4th 100 (April 30, 2025)). We address “geofence warrants” and the *Chatrie* decision in § 10:21.

Ninth Circuit Court of Appeals

- “**Dominion and control**” language in search warrant was **overbroad** and lacked **particularity**. Magistrates reviewing search warrant applications should pay close attention to provisions in the warrant to search and seize objects or locations where evidence of dominion and control may be found. Such language is often inserted (“cut and paste”) with little thought as to temporal limitations, even when other provisions of the warrant did appropriately place such limitations on the ability of law enforcement to search (usually an electronic device) for incriminating evidence (often child pornography). Indeed, in many cases (including this one), the issue of dominion and control by the defendant was not contested. The evidence was suppressed; the court declined to apply good faith. (*U.S. v. Holcomb*, 132 F.4th 1118 (9th Cir. 2025)). We consider this decision in §§ 10:12, 10:13 and as to “good faith” in § 11:2.
- “**Hot pursuit**” affirmed even though officer lost sight of the suspect for **9 minutes**. The pursuit of the defendant into a residence belonging to a third party was essentially “immediate and continuous” since the brief delay was to await backup officers. The officer had a “reasonably good idea” where the suspect was hiding. (*Newman v. Underhill*, 134 F.4th 1025 (9th Cir. 2025)). See “hot pursuit” in § 8:6.
- In another “**hot pursuit**” case, a delay of **18 minutes** meant the trail had gone cold, or at least “lukewarm.” The case involved officers with a K-9 unit pursuing a suspected residential burglar into the backyard of a residence (not belonging to the suspect). The occupant had three dogs in the backyard and two of her dogs attacked the K-9. The officer in charge shot the two dogs and the homeowner sued for a violation of the fourth amendment. Summary judgment was granted to the officers because the entry was in “hot pursuit.” On appeal, the decision was reversed. (*Jones v. City of North Las Vegas*, 168 F.4th 1131 (9th Cir. 2026)). We also address this case in § 8:6.

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- What standard is applicable to believe a probationer (with a search clause) or parolee **“lives at”** a particular location before entry to perform a probation or parole search? As we explain further in § 9:4, the Ninth Circuit has employed the higher standard of “probable cause.” California requires the lesser standard of “objectively reasonable belief.” The issue of whether it was reasonable to search a location other than the residence officially listed as the probationer or parolee’s residence (gee, they don’t always give their real residence?) has proven challenging for the Ninth Circuit. Add another case to the list: *U.S. v. Barry*, 140 F.4th 1105 (9th Cir. 2025). See § 9:4.
- If the prosecution argues the defendant lacked “standing” to raise a fourth amendment challenge because the defendant **abandoned** the object or item containing contraband, the court is faced with having to decide whether the alleged abandonment was with the intent to abandon. This can get tricky, as we explain in § 2:18. In *U.S. v. Hunt*, 153 F.4th 858 (9th Cir. 2025), police seized the defendant’s cellphone when they found the iPhone in some bushes near where the defendant had been shot five times. No one, including the defendant, ever came to the department to request the iPhone be returned. Two years later, the police searched the iPhone based upon an unrelated criminal investigation. Incriminating evidence was obtained and Hunt was indicted on various drug dealing federal charges. He moved to suppress, alleging the officers violated the fourth amendment. The trial court denied defendant’s motion, based upon a finding he lacked a reasonable expectation of privacy. On appeal, the court affirmed but cautioned lower courts that the intent to abandon a cellphone is not necessarily the same as an intent to abandon the data on the iPhone. See § 2:18.

California Supreme Court

Sellers v. Superior Court, 19 Cal.5th 75, 582 P.3d 950, 341 Cal.Rptr.3d 173 (2026). The issue on appeal was whether the officers belief the presence of loose marijuana, weighing less than 28.5 grams, found scattered on the rear floorboard of a vehicle along with the observation of a “rolling tray” on the backseat constituted a violation of the marijuana **“open container”** law. The trial court upheld the search, reasoning the presence of any amount of usable marijuana not in a closed container violates the open container law. The appellate court agreed; the Supreme Court of California unanimously reversed. Interpreting the code section in the context of the voter’s intent when adopting Prop. 64, possessing and transporting less than an ounce of marijuana,

whether in a container or not, is not by itself sufficient to constitute a violation of the open container statute. To violate the statute, any marijuana not in a closed container must be (1) a usable amount; (2) imminently usable (consumable) and (3) readily accessible to the driver or passengers. In this case, the marijuana debris scattered on the rear floorboard was a usable quantity but was not imminently usable nor readily accessible to the driver and front-seat passenger. The court also held that the officers did not have probable cause to search the vehicle based upon the small amount of loose marijuana debris. The driver was a Hispanic female; the passenger an African-American male. See § 5:3.

California Courts of Appeal

Kazelka v. California DMV, 109 C.A.5th 1239, 331 Cal.Rptr.3d 251 (1st Dist. 2025). A motorist contacted CHP about a vehicle that was swerving and driving extremely slowly. Officer Phillips went to the location and confirmed the vehicle was swerving and driving very slowly. The vehicle was stopped and the driver, Kazelka, admitted he had been drinking. Kazelka failed the field sobriety tests. Officer Phillips then advised Kazelka he was going to do a PAS (preliminary alcohol screening) test. Phillips told Kazelka “California requires that I give the admonition for it.” However, Phillips did not provide the admonition or otherwise inform Kazelka the test was voluntary. The PAS tests showed results of 0.11 and 0.10 blood alcohol content. Kazelka was placed under arrest. Following his arrest, Kazelka performed a chemical breath test that also indicated 0.11 blood alcohol content. A second sample was not obtained because the machine malfunctioned. Officer Phillips subsequently prepared a sworn statement regarding the stop and arrest. In the statement, the officer set out the two PAS test results and the single chemical test result. He also stated he followed the manufacturer’s guidelines on administering the tests, etc. The page regarding admonitions was left blank. In a subsequent investigative report, prepared about a week later, Phillips checked the box indicating the “arresting officer” had provided the statutory admonition for the PAS test. The DMV notified Kazelka of its intent to suspend his driving privileges. Kazelka requested a hearing to challenge the suspension. He argued the officer did not provide the proper admonition and hence the PAS test results, along with the single chemical breath test result, was insufficient to support suspension. The hearing officer did not agree and suspended his license. Kazelka filed a petition for writ of mandamus challenging the suspension. The trial court ruled the results of the PAS test should have been excluded because Phillips failed to provide the admonition. DMV

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appealed. The Court of Appeal held the PAS test results were properly admitted into evidence. The statutory admonishment was not a foundational requirement for admissibility. Finally, the appellate court noted the exclusionary rule does not apply to APS (administrative per se) hearings. See § 1:16.

People v. Valencia, 119 Cal.App.5th 1, 342 Cal.Rptr.3d 297 (2d Dist. 2026). Police officers responded to a report of a possible drunk driver driving a Chevy Silverado pickup. The officers initiated a traffic stop but Valencia did not yield. Valencia engaged in a high-speed, reckless chase that ended near where it had begun. Valencia jumped from his vehicle and sprinted to a nearby apartment building. Officers ran after Valencia, losing sight momentarily. A family member led them to Valencia's apartment. The front door was open and the officers rushed in. The officers saw the same family member standing outside a closed interior bedroom door. She was calling to Valencia, using his first name. The officers asked the family member if there were any guns or weapons in the apartment. She said "no." Another family member, a brother to the defendant, said Valencia might have a knife. The officers attempted to get the defendant to leave the locked bedroom. He refused. Ultimately, the officers forced the door open and entered. Valencia shot two of the officers. Other officers then fired their weapons at Valencia. One of the officers died. Additional units arrived on scene and further attempts were made to get Valencia to step out. Finally, the officers stormed the bedroom and captured Valencia. Valencia was charged with murder of a peace officer "engaged in the performance of duty." Valencia argued the officers needed a search warrant to enter his apartment and bedroom. The prosecution argued, and the jury agreed, the officers were engaged in a lawful **hot pursuit**. The defendant was convicted and appealed. Held: the officers were lawfully performing their duties; Valencia's challenges to the special circumstances findings and the assault convictions failed. See § 8:6 re: "hot pursuit" and § 1:23 "engaged in the performance of duties."

People v. Anderson, 119 Cal.App.5th 173, 342 Cal.Rptr.3d 326 (6th Dist. 2026). The issue was whether the officers violated California's Electronic Communications Privacy Act ("**CalECPA**") when they searched the cellphone of Tyrone Lampley. The officers believed Lampley, along with two other men, committed an armed robbery. Police found Lampley's body near the location of the robbery. The officers suspected he had been killed by one of the two co-conspirators. The officers contacted Lampley's mother and

obtained her consent to search Lampley’s phone. Evidence was obtained that was used to implicate the co-conspirators, Allen and the defendant Anderson. Anderson moved to suppress the evidence, alleging the officers should have sought a search warrant before searching Lampley’s cell phone. The trial court denied the motion, ruling the officers reasonably believed the mother had the lawful right to give consent. Even if the officers violated CalECPA, the officers acted in **good faith**. See §§ 10:20, 11:3.

Meiner v. Superior Court of Orange County, 119 Cal.App.5th 284, ____ Cal.Rptr.3d ____ (4th Dist. 2026). Police suspected Meiner was stealing from an auto business by directing customers to send money to him rather than the business. Meiner was on probation and had a probation officer. The officers reviewed Meiner’s probation terms, which were provided by his probation officer. As part of probation, Meiner agreed to submit his person, residence, and electronic devices to search. In an attachment, the **probation search terms were limited** as follows: “Search authorization does not extend to medical/legal information, financial accounts or transactions, or to any data created before the acceptance of this probation grant.” The police arrested Meiner and seized and searched his cell phone, including defendant’s Apple Pay account. Using the evidence obtained from the Apple Pay account, police sought and obtained a search warrant to search defendant’s Chase and Credit One bank accounts. The statement of probable cause did not include the attachment. The warrant was issued and incriminating evidence was seized. Defendant moved to quash the search warrant. The trial court denied the motion; Meiner sought a petition for writ of mandate and/or prohibition. The Court of Appeal granted the petition. The motion was properly described as a motion to traverse. The defendant sustained his burden of proving the omission was done with an intentional or reckless disregard of the truth. The prosecutor argued the officers acted in good faith because it was unclear whether Apple Pay was a **financial account**. The appellate court did not agree; suppression was necessary in this case. See §§ 3:6, 3:36 and 9:5.

People v. Eric Perez, 119 Cal.App.5th 345, 342 Cal.Rptr.3d 534 (6th Dist. 2026). When a search of a vehicle is because the vehicle is going to be towed, the prosecution must be prepared to prove the officer’s decision to impound was to serve a “**community caretaking function**.” As we explain in § 4:37, to justify an impound the officer must comply with statutory provisions contained in the Vehicle Code. But **statutory authorization is**

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not enough. In this case, the officer learned Perez had his license suspended nearly 30 years earlier. In order to preclude Perez from continuing to drive with a suspended license, the officer decided to impound the vehicle. During the inventory search, the officer found a firearm and drugs. Perez moved to suppress the evidence, which was denied. On appeal, the appellate court reversed the ruling. The desire to protect public safety by preventing the driver from unlawfully driving does not alone satisfy the community caretaking function. See § 4:37.

People v. Ulises Perez, 119 Cal.App.5th 373, 342 Cal.Rptr.3d 550 (4th Dist. 2026). At around 11 p.m., a person called 911 and reported seeing a man walking around with a gun in an area known for gang activity. A follow-up call detailed the man's appearance and said he had placed a gun inside a white Kia in a nearby parking lot. Perez was then seen entering a nearby apartment. An officer walked up to the open front door, shined his flashlight through the closed screen door, and saw Perez sitting on a couch facing the door. Gun drawn, the officer told Perez that he was being detained and ordered him out. Perez didn't move. After another officer drew his gun and several more orders to come out, Perez complied. He was placed in handcuffs. He declined to answer any questions. The 911 caller identified Perez (in "in-field identification") as the person who placed the gun in the white Kia. The car was searched and a gun and drugs found. Perez was then formally arrested. A search of his person found his I.D., cash, pay-owe notations, a cellphone, and a receipt relating to the white Kia. Perez was a felon and was charged with possession of a firearm by a felon. Perez moved to suppress: the officers arrested him inside his residence without a warrant or probable cause. The prosecutor contended Perez was not arrested, simply detained. Further, argued the prosecutor, because the officers never entered the apartment, they did not need a warrant. The trial court denied the motion. Perez appealed. Held: the motion to suppress should have been granted. When Perez complied with the officer's commands and exited the apartment, he was seized. Was it an arrest or a temporary detention? Arrest. Police may not generally conduct a warrantless **in-home seizure** based upon a reasonable suspicion the person was engaged in criminal conduct. One exception to that rule is when the officer is lawfully present inside the residence. The appellate court determined this in-house arrest required a warrant even though the officers stayed outside. The evidence seized from his person, his statements during the initial seizure, and the in-field identification were ordered suppressed. See §§ 1:37, 4:6 and 4:37.