



2017 Case Law Update

Fourth Amendment: Detention based on taking an individual's driver license

People v. Linn (2015) 241 Cal. App. 4th 46

Rule: An officer's taking of a voluntarily offered drivers license does not automatically mean the encounter is casual. **The court will look at the "totality of circumstances" to determine whether an individual was free to leave transforming the casual encounter into a detention.**

- Officer did not conduct a traffic stop. Officer parked his motorcycle within three feet of the driver's car and approached her and asked for her driver's license.
- Officer made contact with the driver because the passenger of the vehicle was "flicking ashes out the window."
- Officer commanded driver to put out her cigarette and put down her soda can, thereby indicating that she was not free to do as she pleased, officer requested driver's license, and officer held the license as he initiated a record check of the driver.
- Officer conducted unexplained records check.
- Under the totality of circumstances, a reasonable person would not have felt free to leave.

Fourth Amendment: Warrantless Seizures of Blood/Breath subsequent to a DUI Arrest

Bloomfield v. North Dakota (2016) 136 S. Ct. 2160

Rule: Warrantless *breath* test incident to arrest IS permissible, but a warrantless *blood* draw is NOT. Under this scenario, nothing prevents the police from seeking a warrant or from relying on the exigent circumstances exception, if it applies, for blood tests as they are significantly more intrusive than breath tests.

- Search incident to arrest is NOT a valid exception.
- Consent given to avoid criminal liability is NOT an exception.

Fourth Amendment: Consent to Search during Unlawful Arrest is Involuntary

People v. Espino (2016) 247 Cal. App. 4th 746

Rule: Defendant's consent to search his vehicle is involuntary when consent is obtained while under an unlawful arrest. (Conviction reversed.)

- Officer stopped defendant for speeding.
- Based on informant's tip and other factors, officers prolonged the traffic stop to conduct additional investigation.
- Defendant consented to search of his person and officers found an object they thought was crack. Defendant was handcuffed.
- After examining the object, an officer determined it was a diamond.
- Without removing the handcuffs, officers continued to question defendant and requested consent to search his car.
- After some hesitation, defendant gave consent for the car search, whereupon officers found several grams of methamphetamine in defendant's car.

- Court found that officers had reasonable suspicion to extend the duration of the initial traffic stop beyond that necessary for traffic enforcement purposes.
- But, officers lacked probable cause to keep defendant under arrest when they requested his consent to search the vehicle because at this point officers had determined the object in his pocket was not contraband. Defendant was under a de facto arrest.
- Defendant's consent was involuntary because officers lacked probable cause to arrest him.

Fourth Amendment: Traffic stop based on visual estimate of speed

People v. Nice (2016) 247 Cal. App. 4th 928

Rule: Police officer's had reasonable suspicion to believe that vehicle was traveling in excess of 10 to 15 miles over the speed limit based on the officer's observations, experience and expertise in performing speed estimations.

- Whether the estimated speed is slightly or significantly in excess of the speed limit sets a baseline for the court to consider whether corroborating evidence is needed but that does not end the court's inquiry.
- Whether a traffic stop based on a purely visual estimate of speed will depend on the speed differential between the estimated speed and the speed limit, training, experience and other articulable facts supporting conclusion that driver was speeding.
- A probation condition prohibiting defendant from possessing or using illegal drugs or illegal controlled substances or going anywhere he knows illegal drugs or non-prescribed controlled substances are used or sold is constitutional.

Fourth Amendment: Traffic stop based on Officer Safety

People v. Steele (2016) 246 Cal. App. 4th 1110

Rule: An officer may effect a detention for officer safety that is limited in duration, scope, and purpose.

Officers observed two vehicles traveling together. Officers had probable cause to stop the lead vehicle for an expired registration and felony arrest warrant. The court held that the detention of a trailing vehicle was justified for the limited purpose of protecting officers' safety while officers approached and investigated the lead car. Officers then smelled marijuana and observed marijuana leaves in plain view in the trailing vehicle, which provided officers with probable cause to search the vehicle.

Fourth Amendment: Detentions of 3rd Parties

In re Chase C. (2016) 243 Cal. App. 4th 107

Rule: Bystander who encourages suspect not to cooperate with police did not violate Penal Code section 148, because the verbal criticism of a detention is protected political speech.

- A violation of Penal Code section 148 requires the defendant to willfully resist, delay, or obstruct a peace officer who is engaged in lawful performance of his or her duties and the defendant should have reasonably known that the officer was engaged in performance of his or her duties. This may include physical force, impeding an investigation, or lying to officers.
- The fact that someone verbally challenges a police officer's authority or is slow to comply with orders does not mean that he or she has delayed an investigation and violated Penal Code 148.

- Individual's refusal to provide his or her identity *preceding the booking stage* does not violate section 148.
- Failure to provide identity *during the booking stage or providing false identifying information* violates section 148.

Fourth Amendment: Search of Separate Living Unit in Probationer's Residence

People v. Carreon (2016) 248 Cal. App. 4th 866

Rule: It was not objectively reasonable for the searching officer to believe that the person living in one unit had authority to authorize the search of a separate living unit within residence.

- Defendant occupied a converted garage unit in probationer's residence. Probationer had a search condition.
- Generally officers may only search those portions of the residence they reasonably believe the probationer has complete or joint control over.
- The separate living unit door was closed but not locked.
- The presence of an overnight guest should prompt a searching officer to pause and determine whether there is authority to search that area.
- Houseguest had a young child sleeping in the separate living unit.
- There is no requirement that the tenancy be formalize. Houseguest have a legitimate expectation of privacy in host's home.
- Consider the guest's privacy expectations before intruding into an area assigned to the guest.

Fourth Amendment: Warrant for Blood Draw for DNA profile of probationer

People v. Simon (2016) 1 Cal. 5th 98

Rule: It's unclear whether a general probation search condition authorizes a warrantless, nonconsensual blood draw. It is advisable that all officers secure a warrant prior to drawing blood in all cases.

- Defendant was arrest for a homicide.
- At the time of the arrest, defendant was on probation with a search condition of person and property under his control with or without a warrant or probable cause.
- Police directed a nurse to draw defendant's blood three hours after the arrest. Police directed a second blood sample draw several hours later to create a DNA profile that was compared to DNA samples taken from the homicide crime scene.
- The court found that since the police had probable cause to arrest defendant for the homicide, the court would have ordered a subsequent blood sample even if the initial sample was obtained illegally. Therefore, the putative error was harmless.

Fourth Amendment: Staleness of Search Warrant for Felon in Possession of Firearm

People v. Lee (2015) 242 Cal. App. 4th 161

Rule: Guns registered to a person, whose possession of them would constitute a felony, is sufficient grounds to issue a search warrant regardless of whether, at the time the firearms were purchased, the defendant was entitled to lawfully possess them.

- Police secured a search warrant for two firearms that the defendant was prohibited from legally possessing. The police did not inform the judge that the restriction was placed after the defendant purchased the firearms.
- The search warrant affidavit stated that in 2001, the defendant was convicted for misdemeanor possession of a firearm and felony possession of narcotics. In 2007

defendant's criminal convictions were expunged but he was prohibited from legally possessing any firearms. In 2012, a law enforcement computer search revealed defendant had two firearms currently registered to him. The detective did not inform the judge that the firearms had been purchased 17 years prior to the restriction.

- A warrant is valid based on current records showing that the felon has guns registered to him and is prohibited from legally possessing them. The record search showed no sale or disposal of the firearms. Firearms purchased 17 year prior to restriction did not render the information stale.
- There is no requirement that the purchase of the firearms be recent.

Fourth Amendment: Attenuation Doctrine; effect of unlawful detention on Evidence admissibility

Utah v. Strieff (2016) 136 S. Ct. 2056

Rule: Absent flagrant police misconduct, discovery of a valid, pre-existing, and untainted arrest warrant is too remote or unconnected to the unlawful investigatory stop to apply the exclusionary rule to render the evidence inadmissible.

The attenuation doctrine evaluates the causal link between the government's unlawful act and the discovery of evidence, which often has nothing to do with a defendant's actions. The court will examine and balance the following 3 Factors:

1. Temporal proximity between the unconstitutional conduct and discovery of evidence to determine how closely the discovery of evidence followed the unconstitutional search
 2. Intervening circumstances, and
 3. Purpose and flagrancy of official misconduct
- In this case, police stopped a suspect leaving a drug house and detained him unlawfully. The police detained the defendant to learn what was going on in the drug house.
 - Police took the defendant's driver's license, ran it, and found an outstanding arrest warrant. Police conducted a search incident to the arrest and found drugs.
 - The court applied the three factors to the attenuation test. As to the first factor, the illegal stop was close in time to the defendant's arrest, which lead to the discovery of the drugs. But, factors two and three weighed in favor of the police. The second factor was an intervening circumstance because the arrest warrant was not connected to the police officer's stop. It was a pre-existing independent condition unrelated to the police officer's action of stopping the defendant coming out of the house. As to the last factor, the court found no evidence that the unlawful stop was part of any systematic or recurrent police misconduct that required a deterrent effect. Thus, there was no flagrant police misconduct.
 - The court applied the attenuation doctrine and declined to apply the exclusionary. Thus, the evidence was admissible,

Fifth Amendment: Police must wait 14 DAYS to re-interview a suspect who invoked right to counsel

People v. Bridgford (2015) 241 Cal. App. 4th 887

Rule: If suspect in *Miranda* custody invokes right to attorney, all further interrogation must cease until:

1. an attorney is present or
2. the *suspect* initiates further communication, exchanges, or conversations with the police, or

3. **when police re-contacts a suspect after there has been a break in custody so long as the suspect has a reasonable time and opportunity to consult counsel if desired. A 14-day break in custody is a reasonable time for the purposes of this rule.**

Defendant was in custody and the interrogation ended when he invoked his right to counsel. Defendant was released from custody. After additional investigation, law enforcement established probable cause to arrest the defendant. Defendant was arrested four hours later after being released from custody and invoking his right to counsel. During the second interrogation, defendant confessed to the crimes. Court held there was not a 14-day break in custody, which [would have provided] "... plenty of time for the suspect to get re-acclimated to his normal life, to consult with friends and counsel, and to shake off any residual coercive effects of his prior custody."

Fifth Amendment: Custodial interrogation of minor must stop when minor repeatedly asks to go home and to have his parents called

People v. Villasenor (2015) 242 Cal. App. 4th 42

Rule: A minor's repeated demands to be taken home and call his parents to pick him up is an unequivocal and unambiguous assertion of his right to remain silent.

- Minor was taken into custody and Mirandized.
- During the interrogation, minor repeatedly asked to go home and to call his parents.
- Minor said three times that he would wait out the 48-hour period that the police could hold him before they would have to release him and let him go home.
- Minor referenced his "rights" during the interrogation.
- Minor's demeanor changed, ceasing to be ambiguous, when he asked to go home.

Fifth Amendment: Officers' attempts to "clarify" *Miranda* invocation was in error

Garcia v. Long (9th Cir. 2015) 808 F. 3d. 771

Rule: Once suspect clearly and unequivocally invokes *Miranda* rights to remain silent, officers may not question him or her any further.

- Police Mirandized the defendant and asked, "Do you wish to talk to me?" Defendant said "No." Police then attempted to clarify, "No, because I don't want to, uh, I don't know what to—what is these charges ..." and "[w]ell, you don't want to talk to us because you don't know the charges.... You're telling [us] we can't tell you about it."
- Ninth Circuit held that defendant's "no" response was unambiguous and equivocal and the interrogation should have immediately stopped.

Fifth Amendment: Invocation of privilege against self-incrimination

Jones v. Harrington (9th Cir. 2016) 829 F. 3d. 1128

Rule: Post invocation responses to further interrogation may not be used to cast doubt on the clarity of an unequivocal invocation of the right to remain silent.

- Defendant was Mirandized. During the interrogation, defendant answered questions. Eventually, he said "I don't want to talk no more, man."
- The investigators continued to asked questions and defendant eventually made incriminating statements.
- Court held the right to remain silent could be invoked "in any manner" and that the interrogation must then "cease."

- Equivocation cannot be based on defendant's post-invocation statements.

Fifth Amendment: Confession given in response to promises of Leniency or Advantage to Obtain Confession is an "Involuntary Confession"

People v. Perez (2016) 243 Cal. App. 4th 863

Rule: Officers may not obtain a confession by promising a suspect that he will not be prosecuted or given an advantage in exchange for confessing or telling the truth.

- The law is well established that a criminal defendant's statements to law enforcement officers are "involuntary and inadmissible when the motivating cause of the decision to speak was an express or clearly implied promise of leniency or advantage."
- Officer may not make explicit or implied promise of leniency or advantage to induce a confession.

Defendant was Mirandized. Defendant denied involvement in the crime. Officer said that if he were to "tell the truth and be honest," then "we are not gonna charge you with anything." Defendant responded by confessing to his involvement of the crime.


WILLIAM SCOTT
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