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16-017
02/10/16

2016 Case Law Update

Below are summaries of recent, significant law enforcement related cases.

FOURTH AMENDMENT: Probable Cause to Detain in Residence

***People v. Lujano* (2014) 229 Cal.App.4th 175:**

RULE: Observing someone stripping copper wire in a front yard does not give rise to probable cause to order a resident out of the house and detain him.

FACTS: Officers saw a man in a driveway in front of a house, stripping copper wire from an air conditioner. The man said he was visiting his friend (defendant), was on probation, and was stripping the wire because the air conditioner didn't work. An officer went to a slightly open side door and ordered defendant to come outside. Defendant complied, and consented to searches of his person and bedroom, where police found drugs and evidence linking defendant to a robbery.

HELD: The detention of the occupant of the house was unlawful. The police had no probable cause or reasonable suspicion that the occupant was connected to the man stripping copper in the front yard.

Police should have asked defendant a few identifying questions instead of immediately detaining everyone in the house. If the officer had invited the defendant to step outside the house and talk, the detention would have been analyzed as occurring outside the home.

FOURTH AMENDMENT: Reasonable Suspicion to Search Student's Locker

***In re J.D.* (2014) 225 Cal.App.4th 709:**

RULE: School security officers and administrators may search a student's locker if:

- (1) They have *reasonable suspicion* to believe the student committed a crime or violated a school rule for which there might be physical evidence; and**
- (2) The search was *reasonable in scope*.**

FACTS: Student notified campus security of a shooting the day before. She knew the student/shooter, who did not use his assigned locker, but "hangs around" locker 2499. Police searched locker 2499 and adjacent lockers, and found a sawed-off shotgun and indicia in locker 2501. The minor admitted the shotgun was his. Juvenile court charged Minor with felony possession of a firearm in a school zone.

HELD: Warrantless search of minor's locker was justified because of overriding need to locate the weapon, and the officers' reasonable belief that the weapon was located in or near locker 2499.

Searches of students by public school officials must be based on a *reasonable suspicion* that the student or students to be searched have engaged, or are engaging, in a violation of a school rule or criminal statute.

FOURTH AMENDMENT: Officer's Reasonable Mistake of Law

***Helen v. North Carolina* (2014) 135 S.Ct. 530:**

RULE: Traffic stop based on officer's reasonable mistake of law does not violate Fourth Amendment.

FACTS: Officer stopped motorist for driving with only one working brake light. Officer became suspicious of the occupants. Driver consented to search of vehicle. Defendant convicted of narcotics offense. Court of Appeals reversed conviction because state law only required one working brake light.

HELD: U.S. Supreme Court held that an officer's objectively reasonable mistake of law can give rise to reasonable suspicion necessary to uphold a seizure under the 4th Amendment.

Reasonable suspicion arises from the combination of an officer's understanding of the facts and his/her understanding of the relevant law. The officer may be reasonably mistaken on either ground.

FOURTH AMENDMENT: Warrantless Blood Draw (Consent after advisement)

***People v. Harris* (2015) 234 Cal.App.4th 671:**

RULE: Free and voluntary submission to a blood test, after receiving advisement of the implied consent law, constitutes actual consent to a blood draw under the Fourth Amendment.

FACTS: During a traffic stop, deputy observed objective signs that driver was under the influence of a stimulant. On arrest, deputy admonished driver of California's implied consent law. Driver consented. Blood test was positive for methamphetamine.

HELD: Blood draw was reasonable under the Fourth Amendment because actual consent to a chemical test is a valid exception to the warrant requirement.

FOURTH AMENDMENT: Warrantless Blood Draw (Exigent Circumstances)

***People v. Toure* (2015) 232 Cal.App.4th 1096:**

RULE: Exigent circumstances, under totality of circumstances on case-by-case basis, may justify obtaining warrantless forced blood draw following a DUI arrest.

FACTS: Driver of semi in head on collision. Defendant was violent and combative, and refused a blood draw after being admonished of implied consent, so a forced blood draw was performed. Defendant was convicted of felony DUI causing injury. He appealed on grounds that the blood alcohol evidence was obtained without a warrant, exigent circumstances, or his consent, in violation of Fourth Amendment.

HELD: Under the totality of the circumstances, exigent circumstances justified the nonconsensual warrantless blood draw. (Dissipation of alcohol in the blood was not the sole basis of exigency.)

FOURTH AMENDMENT: Forcible Blood Draw (individual on PRCS)

***People v. Jones* (2014) 231 Cal.App.4th 1257**

RULE: An officer can order a forcible blood draw of a DUI suspect if the officer knows the arrestee is on PRCS release with a search condition.

FACTS: Police dispatched to injury accident. Driver (defendant) had fled on foot. Police spotted defendant, exhibiting objective signs of intoxication. Police determined defendant was on PRCS with a search condition. Police *Mirandized* defendant, he admitted he was the driver, but refused to provide a breath or blood sample. Forced blood draw performed.

HELD: PCRS Search condition authorized a warrantless blood draw **because police confirmed that condition prior to the blood draw.**

FOURTH AMENDMENT: Detention of Parked Vehicle

***People v. Brown* (2015) 61 Cal.4th 968:**

RULE: Activating patrol car's overhead emergency lights behind a parked car, to indicate occupants are not free to leave, is a detention that requires *reasonable suspicion*.

FACTS: 911 caller reported men fighting and overheard someone say they had a loaded gun. Deputy Sheriff responded and saw the defendant, in the only car present, driving from the reported area. Deputy shouted to the defendant, asking if he had seen a fight, but defendant passed by. Deputy detained the car. Defendant remained in the car. Deputy observed signs of intoxication, leading to defendant's conviction of felony DUI.

HELD: (1) A detention occurred when deputy activated his vehicle's overhead emergency lights, because a reasonable person would not have felt free to leave and the defendant submitted to police authority by remaining inside his parked car; and (2) The detention was supported by reasonable suspicion.

Detention: Look at totality of circumstances. **Reasonable Suspicion**—criminal activity: particularized and objective basis for suspecting the person of criminal activity.

FOURTH AMENDMENT: Dog Sniff following Traffic Stop

***Dennys Rodriguez v. United States* (2015) 135 S.Ct. 1609:**

RULE: A seizure for a traffic violation becomes unlawful if it is prolonged beyond the time required to complete the goal of the seizure—to issue a traffic citation.

FACTS K-9 officer conducted a 22 minute traffic stop. Officer then asked permission to walk his dog around the vehicle. **Driver said "no."** Officer had the driver exit the vehicle, and a K-9 officer walked his dog around the car. The dog alerted, and a search revealed methamphetamine.

HELD: Dog sniff unreasonably prolonged duration of traffic stop. Traffic stop may last no longer than is necessary to carry out investigation of the traffic violation. Dog sniff is entirely unrelated to the purpose of issuing a traffic citation.

FOURTH AMENDMENT: Satellite-based Monitoring

***Torrey Dale Grady v. North Carolina* (2015) 135 S.Ct. 1368:**

RULE: When law enforcement affixes a device to a person's body, without consent, to monitor that individual's movements, it conducts a search.

FACTS: Trial court ordered defendant (recidivist sex offender) after release be subject to satellite-based monitoring for life. Defendant argued this violated Fourth Amendment as unreasonable search and seizure.

HELD: Satellite-based monitoring program for recidivist sex offenders constitutes a search. **However, Fourth Amendment only prohibits *unreasonable* searches.** U.S. Supreme Court remanded the case to state court to determine whether the monitoring program was reasonable. **Whether the satellite-based monitoring program is reasonable, and therefore not unconstitutional, depends on the totality of the circumstances, including the nature and purpose of the search and the extent to which it intrudes on one's reasonable expectation of privacy.**

FIFTH AMENDMENT *Miranda* Rights

***People v. Davidson* (2013) 221 Cal.App.4th 966**

Rule: Handcuffing a suspect and briefly questioning to confirm or dispel suspicion does not constitute **custodial interrogation** under *Miranda*. Whether the detention was "brief & casual" depends upon totality of circumstances surrounding the police encounter:

- Handcuffing for officer safety, and fear of flight
- Officer on duty alone
- Defendant not transported into custody
- Detention lasted only two minutes,
- Officer asked only one question.

FIFTH AMENDMENT: Equivocal Invocation

EXCEPTION TO MIRANDA REQUIREMENT FOR ROUTINE QUESTIONS ASKED DURING THE BOOKING PROCESS

***People v. Shamblin* (2015) 236 Cal.App.4th 1**

RULE: (1) *Miranda* is not violated where a defendant indicates in equivocal or conditional language that he is considering invoking his right to counsel.

(2) Questions that are innocuous and common to the booking process do not rise to the level of interrogation.

FACTS: DNA linked defendant to a cold-case murder. Defendant waived *Miranda*, but said, "I think I probably should change my mind about the lawyer now." Police let defendant take a break.

Defendant then made an incriminating statement. At booking, a sheriff's deputy asked defendant when he had last been booked. Defendant made further incriminating statements.

HELD: Defendant's statement, "I think I probably should change my mind about the lawyer now," contained conditional and equivocal language that would not indicate to a reasonable officer an unequivocal invocation of his *Miranda* rights. The incriminating statement made during that interview was therefore admissible. The defendant's statement made at booking was also admissible because the deputy's question was a **routine part of the booking process, and the deputy's follow-up question was neutral. **If defendant ambiguously refers to a desire for counsel such that a reasonable officer in light of the circumstances would only believe the subject *might* be invoking his right to counsel, an officer is not required to cease questioning.** Officers are not required to ask follow-up questions to clarify a subject's ambiguous statements. **Routine booking process exception to the requirement to give *Miranda* warnings for legitimate booking questions normally asked in the conduct of the booking officer's administrative duties.** (Must not be pretext.)**

FOURTH AND FIFTH AMENDMENTS: Seizure/Custodial Interrogation

***People v. Kopatz* (2015) 61 Cal.4th 62:**

RULE: Whether a person is seized within the meaning of the Fourth Amendment or in custody for purpose of *Miranda* is essentially the same: would a reasonable person have felt that s/he was unable to leave or to decline the officers' request to be transported to the detective bureau for an interview?

FACTS: Defendant reported his wife and daughter missing. Their bodies were found and defendant was convicted of their murders. Police took defendant from hospital to the detective bureau. (No handcuffs or search.) Detectives interviewed defendant for less than an hour in an unlocked room. Detectives asked about defendant's activities during the day and the last time he saw his wife and daughter. Police drove defendant home.

HELD: Videotaped interview did not violate *Fourth Amendment* because **defendant was not seized when he acquiesced to the detective's request to be transported for an interview**. No *Fifth Amendment* violation because **defendant was not in custody during the brief, non-hostile interview**. Defendant initiated the entire police encounter by reporting his wife and daughter missing.

FIFTH AND SIXTH AMENDMENTS: Implicit Waiver of *Miranda*; Equivocal Invocation of Right to Counsel

***People v. Cunningham* (2015) 61 Cal.4th 609:**

RULE: Implied Waiver of *Miranda* Rights when defendant confirms s/he understands rights before continuing to speak, subject to totality of circumstances analysis of voluntariness factors; no obligation to clarify if defendant makes equivocal statement arguably invoking right to counsel.

FACTS: Defendant killed 3 people in a burglary/robbery. Arrested/convicted and sentenced to death. Police provided *Miranda* warnings. Defendant confirmed he understood his rights but, per Department policy, was not specifically asked whether he waived them. Defendant partially confessed, then asked, "Should I have somebody here talking for me, is this the way it's supposed to be done?" Police re-read *Miranda* warnings and defendant said he understood, then confessed.

HELD: (1) Defendant's confession was voluntary, and waiver of *Miranda* rights was reasonably inferred. Department policy to omit the "express waiver" question from *Miranda* advisements did not render confession involuntary; (2) defendant's statements were not an unequivocal invocation of right to counsel.

Test for voluntariness is whether defendant's will is overborne and capacity for self-determination critically impaired and resulting confession must be "causally related" to police coercion.

FOURTH AND FIFTH AMENDMENTS: Use of Potentially Dated Information to Support Search Warrant; Voluntariness of pre-arrest questioning of police officer suspect by Non-Internal Affairs Investigators

***People v. Lazarus* (2015) 238 Cal.App.4th 734:**

RULE: Substantial delays do not render warrant stale where defendant is not likely to dispose of items police seek; voluntary statements given to police crime investigators are admissible; voluntary statements given to criminal investigators are not coerced merely because suspect is a police officer.

FACTS: Defendant/police officer murdered her ex-boyfriend's new wife in 1986, and staged the crime scene as a burglary. In 2009, defendant's DNA was linked to the crime. Police used a ruse to interview defendant. She provided untrue and evasive responses then left. Police arrested her, then executed a search warrant and seized her journal, planner, photographs of the victim, and computer evidence. Defendant moved to quash search warrants as based on stale information, and sought to suppress her pre-arrest interview on grounds it was coerced.

HELD: (1) Motion to quash the search warrant: denied, since defendant's obsession with the victim and her husband made it probable she would have retained evidence linking her to them and provided probable cause for search; (2) statements to police officers investigating criminal activities (not administrative investigators) were admissible as voluntary absent any evidence of coercion by the officers and evidence supporting defendant's belief she would be terminated if she refused to answer. No bright-line rule defining when information sought is considered stale.

Per DB 15-141, both sworn and non-sworn members are required to electronically acknowledge this Department Bulletin in HRMS.