**Los Angeles County District Attorney's Office**
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# SEARCH & SEIZURE
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## ALLIANCE OF CALIFORNIA JUDGES

by

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# Recent US Supreme Court Decisions

**(1) *Rodriguez v. US* (2015) 135 S.Ct. 1609**

**ISSUE: May a traffic stop be prolonged in order to conduct a criminal investigation?**

In *Illinois v. Caballes* (2005) 543 US 405, the Supreme Court held that the Fourth Amendment was not violated when a drug-sniffing K-9 was run around a lawfully-stopped vehicle **during** a traffic detention. The court has now held that if the use of the K-9 **prolongs** the duration of a detention that is justified **only** by an observed traffic violation, the detention becomes unreasonable.

Dennys Rodriguez and his passenger were transporting more than 50 grams of meth across Nebraska when a K-9 officer stopped the car for unlawfully driving onto the shoulder of a highway. The officer obtained license, registration and proof of insurance from Rodriguez and ran a warrant check. Finding no wants, the officer issued a warning ticket, but delayed running his dog until back-up arrived, about 7 minutes later. The dog hit, a search disclosed the drugs, and Rodriguez was arrested. His suppression motion was denied by the trial court and the Eighth Circuit. The Supreme Court has reversed (6-3).

*"A seizure for a traffic violation justifies a police investigation of that violation. … Because addressing the infraction is the purpose of the stop, it may last no longer than is necessary to effectuate that purpose. Authority for the seizure thus ends when tasks tied to the traffic infraction are—or reasonably should have been—completed.*

*"We hold that a police stop exceeding the time needed to handle the matter for which the stop was made violates the Constitution's shield against unreasonable seizure. A seizure justified **only** by a police-observed traffic violation, therefore, becomes unlawful if it is prolonged beyond the time reasonably required to complete the mission of issuing a ticket for the violation." Rodriguez v. US* (2015) 135 S.Ct. 1609, 1614, 1612.

The court did acknowledge that additional steps are within the scope of the traffic stop, including **ordering driver and passengers out** for the duration of the stop, as approved in *Pennsylvania v. Mimms* (1977) 434 US 106 (driver), and *Maryland v. Wilson* (1997) 519 US 408 (all occupants). The court also said:

*"Beyond determining whether to issue a traffic ticket, an officer's mission includes ordinary inquiries incident to the traffic stop. Typically, such inquiries include checking the **driver's license**, determining whether there are outstanding **warrants** against the driver, and inspecting the automobile's **registration** and proof of **insurance**." Rodriguez*, *supra,* at 1615. (Officers may enter the vehicle to search for any such documents that are not produced on lawful demand, *In re Arturo D.* and *People v. Hinger* (2002) 27 Cal.4th 60, 79-81, and may routinely inspect the VIN. *New York v. Class* (1986) 475 US 106, 114.)

As long as **unrelated** investigative activity does not extend the duration of the stop, police may also pursue an unrelated criminal investigation: *"The Fourth Amendment tolerate[s] certain unrelated investigations that d[o] not lengthen the roadside detention." Rodriguez, supra,* at 1614 (citing as examples the K-9 sniff in *Caballes,* and gang-activity questioning in *Arizona v. Johnson* (2009) 555 US 323). However…

*"The seizure remains lawful only so long as unrelated inquiries do not measurably extend the duration of the stop. An officer, in other words, may conduct certain unrelated checks during an otherwise lawful traffic stop. But … he may not do so in a way that prolongs the stop,* ***absent*** *the reasonable suspicion ordinarily demanded to justify detaining an individual." Rodriguez, supra,* at 1615. **Translation:** If either reasonable suspicion or probable cause to suspect criminal activity is developed during the "unrelated" investigation, the stop may now be **lawfully extended** to investigate further, because this additional detention is justified *not* by the traffic violation, but by the independent suspicion or PC developed within the lawful scope of the initial detention, as in *Mimms, Wilson, Caballes* and *Johnson,* for example.

(*Rodriguez* was remanded to the Eighth Circuit to consider whether the officer's observations during the stop furnished reasonable suspicion to justify the extension.)

● The court has also held that during a traffic stop, officers may request consent to search the person and vehicle—even **after** the citation or warning has been issued and the person is otherwise free to go, but has not been told so. *Ohio v. Robinette* (1996) 519 US 33, 39-40.

**(2) *City of Los Angeles v. Patel* (2015) 135 S.Ct. 2443**

**ISSUE: May a city ordinance require hotel/motel operators to produce on police demand their guest registries with specified information?**

By ordinances, the City of Los Angeles required hotel/motel operators to maintain guest registries with information about guests and rentals, and to make registries available to police inspection on demand, on pain of misdemeanor prosecution. Operators challenged this ordinance as facially unconstitutional, in violation of the Fourth Amendment.

By 5-4 vote, the US Supreme Court held the statute facially unconstitutional, as permitting a warrantless seizure of property without any exception to the general warrant requirement. The court said that unlike mining, liquor sales, firearms dealing and vehicle salvage yard operations, transitory lodging is not a "closely-regulated" industry for which warrantless inspections can be allowed.

The majority suggested that LAPD officers might use administrative subpenas or administrative warrants to look at guest registries, permitting operators an opportunity for "pre-compliance review" by an administrative law judge, before turning over their registries. In dissent, Justice Scalia called this proposal *"Equal parts 1984 and Alice in Wonderland." Patel, supra,* at 2462. As Justice Scalia further noted, *"The private pain and public costs imposed by drug dealing, prostitution, and human trafficking are beyond contention, and motels provide an obvious haven for those who trade in human misery." Ibid.*

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

**ISSUE: If police discover an outstanding arrest warrant during an unjustifiable detention, are the fruits of a search incident to arrest on that warrant admissible?**

Eight years ago, in *People v. Brendlin* (2008) 45 Cal.4th 262, 272-73, the

California Supreme Court applied the doctrine of "attenuated taint" to hold that discovery of an outstanding arrest warrant during an unlawful vehicle stop breaks the causal chain between the stop and the discovery of evidence in a search incident to arrest on that warrant, so that the Fourth Amendment exclusionary rule does not apply. The US Supreme Court has now adopted the same rule.

A narcotics detective in South Salt Lake City followed pedestrian Edward Strieff from a suspected drug house to a nearby parking lot and made a ped stop, which the prosecution later conceded was not supported by reasonable suspicion. The detective ran Strieff for warrants and learned of an outstanding arrest warrant for a traffic violation. Strieff was arrested and searched, and methamphetamine was found. Strieff moved to suppress this evidence, based on the concededly-unlawful detention. Although the trial and intermediate appellate courts denied suppression based on "attenuated taint," the Utah Supreme Court reversed. On appeal, the US Supreme Court has reversed the state's high court (5-3).

In cases where official misconduct has not been flagrant and egregious, the occurrence of **independent intervening circumstances** may break the chain of causation from the initial error to discovery of evidence. This doctrine of "attenuated taint" is **not** a reason for officers to deliberately engage in searches or seizures they know to be unreasonable, but may allow the prosecutor to argue for admissibility of resulting evidence in appropriate cases. The Supreme Court majority found the doctrine applicable in *Strieff:*

*"[O]nce [the officer] discovered the warrant, he had **an obligation** to arrest Strieff. A warrant is a judicial **mandate** to an officer to conduct a search or make an arrest, and the officer has a sworn duty to carry out its provisions. …*

*"The outstanding arrest warrant for Strieff's arrest is a **critical intervening***

***circumstance*** *that is wholly independent of the illegal stop. The discovery of that warrant* ***broke the causal chain*** *between the unconstitutional stop and the discovery of evidence….*

*"We hold that the evidence [the officer] seized as part of his search incident to arrest is admissible because his* ***discovery of the arrest warrant attenuated the connection between the unlawful stop and the evidence*** *seized from Strieff incident to arrest." Utah v. Strieff* (2016) 136 S.Ct. 2056, 2062-63.

● If evidence showed a routine practice of making unsupported stops just to make warrant checks in the hope of making an arrest and search, the outcome *"could be different."*

● Prosecutors and courts applying the doctrine of "attenuated taint" must be wary of mistakenly applying a "but for" test of causation. *"[E]xclusion may* ***not*** *be premised on the mere fact that a constitutional violation was a* ***'but-for'*** *cause of obtaining evidence." Hudson v. Michigan* (2006) 547 US 586, 592.

**(4)** ***Birchfield v. North Dakota*** **(2016) 136 S.Ct. 2160**

**ISSUE: Can a DUI arrestee be compelled to submit to breath or blood testing as a warrantless search incident to arrest?**

In *Missouri v. McNeely* (2013) 133 S.Ct. 1552, the US Supreme Court held that natural dissipation of blood-alcohol was not in itself a sufficient **exigency** to permit warrantless blood draws in DUI cases. The court said that ***other search warrant exceptions besides exigency might permit a warrantless blood draw***; however, the ***only*** exception litigated in *McNeely* was the **exigency** exception. (See *McNeely* at 1559, fn. 3.)

Eleven states criminalize the refusal of a licensed driver to submit to chemical testing on demand, after lawful DUI arrest and implied-consent admonition. US Supreme Court cases from two of those states, North Dakota and Minnesota, presented **the issue** of the legality under the Fourth Amendment of warrantless BAC testing on the basis of the warrant exception for searches **incident to arrest**. The court has now ruled that **breath** samples may be compelled (via threat of penal sanctions for refusal) without a warrant **incident to arrest**, but **not blood.**

Noting that breath sampling, unlike blood testing, involves no intrusion into the body and does not result in evidence that might be used for additional tests other than for blood-alcohol content, the court has held that a different balancing of privacy vs. governmental need applies to the two methods:

> *"A **breath** test does not implicate significant privacy concerns. **Blood** tests are a different matter. They require piercing the skin and extract a part of the subject's body. … [Drawing blood] is significantly more intrusive than blowing into a tube. …*
>
> *"Because breath tests are significantly less intrusive than blood tests and in most cases serve law enforcement interests, we conclude that **a breath test, but not a blood test,** may be administered as a search **incident to a lawful arrest** for drunk driving. As in all cases involving reasonable searches incident to arrest, a warrant is not needed in this situation [breath test]."*

*Birchfield v. North Dakota* (2016) 136 S.Ct. 2160, 2178, 2185 (emphases added).

● Although a blood draw is not a permissible search incident to arrest, **other exceptions** may allow a warrantless extraction. *People v. Toure* (2015) 232

Cal.App.4th 1096, 1104 (**exigency** caused by unavoidable delays); *People v. Harris* (2015) 234 Cal.App.4th 671, 689 (**consent** given after implied-consent admonition); *People v. Jones* (2014) 231 Cal.App.4th 1257, 1256-69 (**probation/parole/PRCS** search term).

# Recent California Supreme Court Decisions

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

**ISSUE: Are the occupants of a parked vehicle detained when an officer stops behind the vehicle and turns on forward-facing red or blue lights?**

Upon the approach of an authorized emergency vehicle exhibiting a **red** light to the **front** and **sounding a siren**, the driver of every other vehicle must immediately yield to the right and stop. VC § 21806(a)(1). This is the familiar method by which police typically make traffic stops.

But what if a law enforcement officer pulls up behind a car that's **already stopped** and, without sounding a siren or giving any verbal commands or other signals, simply turns on red and/or blue lights, visible from the front of the police car? If the driver of that stopped or parked vehicle merely **remains stopped**, has a Fourth Amendment **detention** occurred, requiring justification with **reasonable suspicion**?

DUI case: A deputy sheriff investigating a late-night emergency call of a fight in progress in a residential neighborhood, possibly involving a loaded gun, saw only one person—Shauntrel Ray Brown, who was driving away from the location. Brown parked nearby and sat in his car. The deputy pulled in behind and turned on

overhead red and blue lights.

Brown remained stopped, and after the deputy approached and noticed Brown's DUI symptoms, Brown was arrested. His motion to suppress evidence on grounds of unlawful detention was denied, and his appeals eventually reached the California Supreme Court. That court has now unanimously said that Brown was **detained** when, following display of the police car's overhead emergency lights, he **remained** where he already was:

> *"[The deputy] stopped behind Brown's legally parked car and turned on his emergency lights. Under these circumstances, a reasonable person in Brown's position would have perceived [the deputy's] actions as a show of authority,* ***directed at him*** *and requiring that he submit by remaining where he was. …*
>
> *"Brown submitted to the deputy's show of authority by staying in his car at the scene. … Under the totality of these circumstances,* ***Brown was detained when [the deputy] stopped behind the car and turned on his emergency lights****." People v. Brown* (2015) 61 Cal.4th 968, 976-79 (finding that the detention was justified by reasonable suspicion of involvement in the reported fight, and affirming denial of Brown's motion to suppress evidence in his DUI case).

● The court acknowledged that not every display of emergency lights will necessarily create a detention, because officers may display them when responding to crashes and other emergency calls, to alert other traffic to a hazard, when assisting stranded motorists, etc. ***"To be clear, we do not adopt a bright-line rule***

***that an officer's use of emergency lights in close proximity to a parked car will always constitute a detention of occupants."*** *Ibid.*

● Since passengers are necessarily detained along with their driver, **every passenger** in a stopped vehicle who remains during a *Brown* detention will normally have "standing" to challenge lawfulness of the detention. *Brendlin v. California* (2007) 551 US 249, 255-62.

***Query: If a driver in Brown's position now drives away (an act which is not unlawful under VC § 21806(a)(1)), do police lack reasonable suspicion to stop him in that his actions do not involve criminal activity; or after Brown, do they now have PC to arrest him for PC § 148 for flight from what the California Supreme Court has now categorized a detention?***

***Consider: (1) Assuming there was reasonable suspicion before the flight (as existed in Brown), then the driver is subject to arrest for PC § 148, since flight from attempted lawful detention violates that section. In re Michael V.*** **(1974) 10 Cal.3d 676, 681.**

***(2) But even if there was no reasonable suspicion when officers first stopped and turned on emergency lights, if flight occurred in a high-crime area, the detention is lawful under Illinois v. Wardlow (2000) 528 US 119, 124, and thus the arrest for 148 violation is lawful. Michael V., supra, and see, US v. Santamaria-Hernandez*** **(9th Cir. 1992) 968 F.2d 980, 983.**

***(3) If no reasonable suspicion pre-existed the initial police conduct, and if flight did not occur in a high-crime area, the arrest is still lawful, even though***

***the elements of PC § 148 are not satisfied (and the driver cannot be convicted of that offense), <u>if</u> the elements of VC § 2800.1 (evading a uniformed officer in a marked vehicle with red light and siren on) are shown. If the arrest is justifiable for <u>any</u> offense, it is not dispositive that the officer relied on another, unjustifiable ground for arrest. Devenpeck v. Alford* (2004) 543 US 146, 153.**

(VC § 2800.1, like PC § 834a, does **not** have as an element that the peace officer be in the lawful performance of official duty, because 2800.1 is aimed at preventing the dangers of police pursuits. *Hubbard v. Boelt* (1980) 28 Cal.3d 480, 486, superseded by statute on other grounds as recognized by *Catalyud v. State of California* (1998) 18 Cal.4th 1057.)

**(6) <u>*People v. Jose Lupercio Casares* (2016) 62 Cal.4th 808</u>**

**<u>ISSUE</u>: Must police and prosecutors produce evidence negating a defendant's "standing" to suppress evidence, and choose between arguments *against* "standing" and *for* criminal possession?**

During a crime spree, Jose Lupercio Casares murdered one man and tried to murder another. Officers serving a search warrant found Casares in possession of car keys that matched a nearby vehicle, which Casares denied was his. Inside, officers found a handgun that Casares moved to suppress. His arguments? (1) He had only denied "owning" the car—not otherwise lawfully "possessing" it, which police and prosecutors failed to negate; and (2) the prosecutor cannot be allowed to simultaneously maintain *both* his possession of the car and his lack of "standing."

The prosecutor argued *both* that the gun was evidence against Casares, and

that his disclaimer as to the car deprived him of "standing" to suppress. The trial court denied suppression and permitted introduction of evidence of Casares's connections to the car and the gun. He was convicted of many crimes and sentenced to death. On appeal, he repeated his arguments to the California Supreme Court.

In *dicta* purportedly supporting defendant's motion to suppress, the court (though finding harmless error) agreed with Casares on both of his points:

(1) *"The record of the suppression hearing does not support the trial court's implicit finding that defendant disclaimed a* ***possessory*** *interest in the car merely by virtue of denying* ***ownership*** *of it. … [T]he evidence presented at the suppression hearing failed to support an inference defendant* ***lacked*** *a* ***possessory,*** *as distinct from an* ***ownership****, interest in the [vehicle]." People v. Casares* (2016) 62 Cal.4th 808, 835-36 (suggesting Casares might have **borrowed** the car, since police did not specifically ask about *that* possibility).

***Query:*** **Does the defendant have the burden of proving that he has "standing," or does the prosecution have the burden of eliminating every possibility that he might?**

*"The* ***proponent*** *of a motion to suppress* ***has the burden of establishing*** *that his own Fourth Amendment rights were violated by the challenged search or seizure." Rakas v. Illinois* (1978) 439 US 128, 130, fn. 1.

*"It has long been the rule that a defendant can urge the suppression of evidence obtained in violation of the Fourth Amendment only if that* ***defendant***

***demonstrates*** *that* ***his*** *Fourth Amendment rights were violated…" US v. Padilla* (1993) 508 US 77, 81.

(2) *"[Defendant argued that] the prosecution cannot contend* ***both*** *that defendant* ***possessed*** *the car in order to link him to the gun found inside it,* ***and*** *that he* ***lacked a possessory interest*** *in it … for purposes of challenging the warrantless search of the car.* ***Defendant is correct****."* *People v. Casares* (2016) 62 Cal.4th 808, 835.

***Query****: Really?*

*"The simple answer is that the decisions of this Court …* ***clearly establish*** *that a prosecutor* ***may*** *simultaneously maintain that a defendant* ***criminally possessed*** *the seized good, but was* ***not*** ***subject to a Fourth Amendment deprivation****, without legal contradiction." US v. Salvucci* (1980) 448 US 83, 90.

● Exclusionary rulings of the US Supreme Court, which are the supreme law of the land on *Mapp* issues, may not lawfully be disregarded. US Const., Art. VI, sec. 2; *Arkansas v. Sullivan* (2001) 532 US 769, 772; Cal.Const., Art. I, sec. 28(f)(2). *Salvucci* ***"…states a rule based upon the Constitution of the United States which, under the Supremacy Clause, is binding upon state courts*** *as well as upon federal courts." Henry v. Rock Hill* (1964) 376 US 776, 777, fn.* (referring to a rule enunciated in *Edwards v. South Carolina).*

*Suggestion:* When denying a suppression motion, trial courts may reduce risks of reversal by citing in the record those US and California Supreme Court decisions that support the ruling—even if prosecutors neglect to do so.

# Pending in the California Supreme Court

**(7)** ***People v. Ikeda*, No. S209192**

(Decision below: 213 Cal.App.4th 326)

***Issue: After police detain a person outside his hotel room, may officers enter the room to conduct a protective sweep?***

**(8)** ***People v. Lowe*, No. S215727; *People v. Buza*, No. S223698**

(Decisions below: 221 Cal.App.4th 1276; 231 Cal.App.4th 1446)

***Issue: Does PC § 296 (DNA collection) violate the 4th Amendment under Maryland v. King?***

**(9)** ***People v. Macabeo*, No. S221852**

(Decision below: 229 Cal.App.4th 486)

***Issue: When police have PC to arrest for a traffic infraction, may they conduct a search incident to arrest and then arrest for a greater offense revealed by the search?***

**(10)** ***In re Ricardo P.*, No. S230923** (and more cases)

(Decision below: 241 Cal.App.4th 676)

***Issue: When is an an electronics search condition on probationers justified?***

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***"Suppression of evidence ... has always been our last resort, not our first impulse."*** *Hudson v. Michigan* (2006) 547 US 586, 591.

***"The central purpose of a criminal trial is to decide the factual question of the defendant's guilt or innocence."*** *Colorado v. Connelly* (1986) 479 US 157, 166.