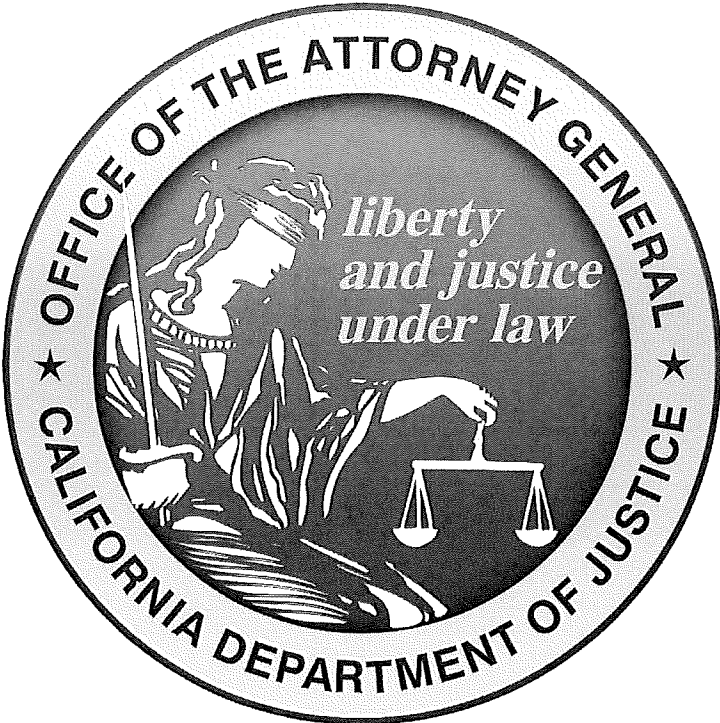


# CASE LAW



## **FOURTH AMENDMENT: REASONABLE SUSPICION FOR TRAFFIC STOP**

1. *People v. Holiman* (2022) 76 Cal.App.5th 825: Can an officer stop a vehicle for the failure to activate a turn signal before stopping at a stop sign?

**RULE:** The failure to signal continuously for the last 100 feet before a limit line is not a distinct traffic offense. It must be linked to the requirement that another vehicle is affected by the unsignaled movement.

2. **FACTS:** An officer began following a car due to hunch about a “furtive look” the driver gave her. The driver came to a full stop at a three-way intersection, signaled a right turn, and then turned right. Based on this, officer conducted a traffic stop and found contraband. Def. moved to suppress the evidence.

3. **HELD:** The stop was unlawful. The failure to signal is a traffic offense (Veh. Code §§ 22107, 22108) if another vehicle could have been affected by the non-signaling vehicle’s movement. Here, the officer’s car was the other vehicle, and def.’s use of right-turn signal after the stop—as opposed to before—could not possibly have affected the safety of the officer’s car. Thus, there was no reasonable suspicion that a traffic violation had occurred.

## **FOURTH AMENDMENT: PAT-SEARCH FOR WEAPONS DURING TRAFFIC STOP**

**1. *People v. Pantoja* (2022) 77 Cal.App.5th 483:** Can an officer pat-search a suspect for weapons during a traffic stop because he is wearing baggy clothes in the winter, the officer knows he had a history of arrests for weapons crimes, and the area is known for high crime?

**RULE:** There is no reasonable suspicion justifying a pat-search because a suspect is wearing baggy clothes, is stopped in a high crime area, and the officer remembers that the suspect has a violent criminal history.

**2. FACTS:** An officer conducted a lawful traffic stop for a broken tail light and broken license plate light. Def. declined to consent to a search. The officer conducted a pat-search because def. was wearing baggy clothes with “bulges,” and the officer knew that the suspect had a prior “history of violence and weapons possession.” Officer found a loaded gun. Def. moved to suppress.

**3. HELD:** The pat-search was unlawful. A pat-search must be based on reasonable suspicion that the suspect is armed. (But this is the incorrect legal standard, see NOTE below.) Def.’s baggy clothes did not justify this, given that the weather was cold and the clothes were appropriate. Def. made no suspicious statements or movements or attempts to hide a weapon. Nor did the officer’s memory that def. had prior arrests or convictions for weapons offenses justify the search. The offenses were years old, and the officer had no recent information or reason to believe def. was still violent or armed. Lastly, that it was a high-crime neighborhood, by itself, did not justify the pat down, particularly since def. was pulling into his own apartment.

**NOTE:** This is a troubling decision that is not aligned with controlling law. The ruling is based on decisions from lower federal courts, which do not control questions under the Fourth Amendment in California. It also relies on law addressing reasonable suspicion for a lawful detention, rather than the articulable facts needed to justify a pat-search after a driver is lawfully detained.

## **FOURTH AMENDMENT: UNLAWFULLY PROLONGED TRAFFIC STOP**

1. ***People v. Ayon* (2022) 80 Cal.App.5th 926:** Was a traffic stop unlawfully prolonged where officers did not investigate the traffic infractions and did not write a ticket while they waited for a narcotics dog to alert to the presence of drugs?

**RULE:** A traffic stop cannot last longer than is necessary to effectuate its purpose.

2. **FACTS:** After police saw def. commit two minor traffic violations, they conducted a traffic stop. Within the first four minutes of the stop, officers had gathered def.'s identification and completed the necessary records checks, but did not do anything else to investigate the traffic infractions, and no one wrote a ticket. When the def. refused to consent to a search of his vehicle, the officers requested assistance from a narcotics dog. The dog arrived at the scene about 13 minutes after the traffic stop began and alerted to the presence of drugs six minutes later. The police searched the car and found cocaine, methamphetamine, currency, and a scale. After the search, the def. asked about the traffic violations and the officer told him that his intent when initiating a traffic stop was not to issue tickets, but to uncover evidence of other crimes.

3. **HELD:** The search violated the Fourth Amendment because the traffic stop was unduly prolonged. Officers did not diligently pursue an investigation of the traffic infractions during the time they were waiting for the narcotics dog to arrive and while the dog was working prior to alerting.

**NOTE:** The court mentioned that the body camera videos were crucial to its decision. Without the videos—which undermined the officer's claim that the def. was hostile or intoxicated—"the outcome of the case likely would have been different."

## **FOURTH AMENDMENT: PROBABLE CAUSE FOR VEHICLE SEARCH BASED ON ODOR OF MARIJUANA; VEHICLE IMPOUND AND INVENTORY**

3. *Blakes v. Superior Court* (2021) 72 Cal.App.5<sup>th</sup> 904: When does the smell of marijuana provide probable cause to search a vehicle? Does driving on a suspended license permit a vehicle impound and inventory?

**RULE:** Just the smell of burnt marijuana during a traffic stop without facts pointing to driving under the influence or driving with an open container does not permit a search of a car. A vehicle impound must be based on “community caretaking,” and a stated desire to further investigate def. and search for evidence of criminal activity invalidates a vehicle inventory.

2. **FACTS:** Def. was driving with illegally tinted windows on a suspended license. He did not immediately stop when officers tried to pull him over. Officers smelled burnt marijuana coming from the car, but could not tell if it was freshly burned. They decided to tow the car because it was common to tow the vehicle of someone driving on a suspended license and because the officers believed “something else was going on.” The officers searched the car, both because they believed the smell of marijuana gave them probable cause to do so, and to conduct an inventory prior to the impound. The search revealed a gun and indicia of drug sales.

3. **HELD:** The odor of burnt marijuana alone, without any facts of driving under the influence or driving with an open container, did not provide probable cause that the car contained contraband or evidence of illegal activity. Nor was there probable cause based on the tinted windows, the fact that the car did not pull over immediately, driving on a suspended license, or the driver’s prior arrest for being a felon in possession of a firearm. Driving on a suspended license was not valid community caretaking rationale to impound the vehicle. The decision to impound was a pretext to conduct an investigative search.

## **FOURTH AMENDMENT: WARRANTLESS BLOOD DRAW BASED ON EXIGENCY**

1. ***People v. Nault* (2021) 72 Cal.App.5th 1144:** Can officers order a blood draw to test for alcohol content when a suspect is unconscious following an auto accident?

**RULE:** Officers can order a blood draw without a search warrant when the suspect is unconscious and injured and cannot be asked to consent to a breath test.

2. **FACTS:** Def. tried to pass a truck on a highway and crashed into oncoming traffic, killing the driver of another car. Initially semi-conscious, def. admitted to the officer that he had been drinking; his pants were soaked with alcohol and he smelled of alcohol. After being transported by emergency medical helicopter, and with def. no longer responsive, an officer told medical staff to draw his blood for alcohol testing before taking him into surgery.

3. **HELD:** The general rule is that search warrants are required for blood draws. But the rule does not apply in exigent or emergency circumstances. The severity of def.'s injuries, the extreme medical intervention needed, and the impossibility of requesting a breath test because of it, qualified as exigent circumstances permitting a warrantless blood draw.

## FOURTH AMENDMENT: SEARCH WARRANTS

1. ***People v. Delgado* (2022) 78 Cal.App.5th 425:** Did an affidavit in support of a search warrant application set forth sufficient information to establish probable cause?

**RULE:** Probable cause is a flexible standard that permits the magistrate to make commonsense judgments and inferences about human behavior.

2. **FACTS:** The affidavit in support of a search warrant detailed the officer's investigative experience, specifically his experience investigating gangs. It provided background information about Highland Park (HP), a criminal street gang known to traffic drugs and guns and commit violent crimes. It explained that HP members had committed more than two dozen violent crimes in the six months immediately preceding the warrant application. Def. was an active HP member and his home was a well-documented gang hangout. According to the affidavit, while surveilling def.'s home, officers saw an SUV stop in front of his house. Two men (one of whom was an HP member) got out of the SUV and went inside the house for three to five minutes while the driver waited in the car. The two men returned to the car, and then def. emerged from his house for a brief huddle with the men in the SUV before they drove away. Shortly thereafter, officers stopped the SUV. They found two guns and half a pound of drugs. Nearly all of the drugs were found in the pockets of one of the men who had gone into def.'s house. Based on these facts, the officers sought a warrant to search def.'s home.

3. **HELD:** Probable cause supported issuance of the search warrant. In reviewing a warrant application, a magistrate "must make a practical and commonsense decision about whether the affidavit shows a fair probability police will find contraband or evidence of a crime at a particular place." Here, the affidavit provided reasonable support for an inference police had witnessed a transfer of illegal contraband from def.'s home to the SUV. In context, the brevity and sequence of this in-person encounter was suspicious because it was more consistent with a pickup or drop-off, and that suspicion was further supported by the discovery of the drugs in the pockets of one of the men who had just been inside the home. Given this, that the house was "a busy gang hangout," and the other information about the gang's recent criminal activities, there was probable cause to search the home for guns, drugs, and other evidence of gang-related crime.

## FOURTH AMENDMENT: SEARCH WARRANTS

**1. *People v. Rowland* (2022) 82 Cal.App.5th 1099:** Did probable cause support the issuance of a search warrant seeking evidence of possession of child pornography?

**RULE:** (1) Information provided by an unbiased citizen informant does not need to be corroborated for it to constitute probable cause, even if the citizen's identity is unknown. (2) A magistrate can rely on an affiant's expertise when determining probable cause. (3) Whether information in affidavit is stale depends on the circumstances of the alleged offense and the continuing likelihood of uncovering the evidence sought.

**2. FACTS:** The National Center for Missing and Exploited Children (NCMEC) received two anonymous "cybertips" from a Microsoft Online Operation employee about pictures the employee viewed that appeared to be child pornography. The reports to NCMEC indicated the two photos were uploaded on two different days, two weeks apart. They were uploaded from the same IP address using the BingImage application, a Microsoft product. NCMEC relayed the information to local authorities, and the police initiated an investigation. Investigators viewed the images and confirmed both appeared to be child pornography. Through the Child Victim Identification Program (CVIP), they identified the child depicted in the first picture and confirmed the child was underage at the time the photo was taken. Through a separate warrant, officers learned the IP address was registered to def.'s residence. Four months after the images were uploaded to the internet, officers sought a search warrant for def.'s home and car. The affidavit detailed the information in the NCMEC "cybertips" and the information learned in the subsequent investigation. The affiant also detailed his training and experience in investigating child exploitation crimes. Specifically, he noted that suspects with an interest in child pornography tend to collect the images and videos and are unlikely to destroy them. The affiant described the images and his opinion that they were child pornography but did not include the pictures themselves.

**3. HELD:** (1) Based on all of the circumstances, the magistrate reasonably concluded that the "cybertips" came from an unbiased citizen informant who could be presumed reliable and no independent corroboration was required. (2) The magistrate was not required to personally view the images and properly relied on the affiant's description of the images and his expert assessment that the images were child pornography. (3) Despite the four months between the uploads of the images and execution of the warrant, the information was not stale because of the ability to recover digital files and the tendency of suspects interested in child pornography to retain such images.



## **FIFTH AMENDMENT: SUSPECT'S RE-INITIATION OF CONTACT AFTER *MIRANDA* VIOLATION AND SUBSEQUENT *MIRANDA* WAIVER**

1. ***People v. Johnson* (2022) 12 Cal.5th 544:** After an officer violates *Miranda* by repeatedly questioning a suspect who has invoked his rights, does the violation cast doubt on whether the suspect voluntarily reinitiated contact and validly waived his *Miranda* rights a short while later? When does an interview with a prosecution-hired psychiatrist constitute an interrogation?

**RULE:** An officer must stop questioning a suspect when he invokes his *Miranda* rights. If he does not, the suspect's statements will be suppressed. However, after such a violation occurs, the suspect may later voluntarily reinitiate contact with police and waive his *Miranda* rights. The suspect's subsequent statements are admissible only if there is a clear record that the earlier violations did not coerce him into making the later waiver. A psychiatric interview is an interrogation if the interview elicits material to be used by the prosecution.

2. **FACTS:** Def. kidnapped and sexually assaulted his estranged wife. When police responded to a 911 call, def. shot and killed an officer. At the hospital after his arrest, while being treated for a gunshot wound, a detective *Mirandized* def. and asked if he wished to talk; he said no. Over the next three hours, the detective and a prosecutor asked def. whether he wanted to talk; he repeatedly invoked his right to silence and right to counsel. An hour later, at another hospital, a different prosecutor (who did not know def. had invoked his *Miranda* rights) gave a psychiatrist a tape recorder and a *Miranda* advisement card to evaluate def.'s mental state. He told the psychiatrist to give def. *Miranda* warnings and see whether def. would talk to him. The psychiatrist gave partial *Miranda* advisements. Def. declined to talk and asked for a lawyer. Shortly thereafter, def. asked the psychiatrist, "You wanna talk about it?" He then made incriminating statements. While they spoke, medical staff performed procedures on def., including prepping him for chest tube insertion, drawing blood, administering local anesthesia, and inserting a chest tube.

3. **HELD:** Officers violated *Miranda* and *Edwards v. Arizona* (1981) 451 U.S. 477 by repeatedly questioning def. after he invoked his right to silence and right to counsel. Def.'s statements in the final interview with the psychiatrist, however, were voluntary and admissible.

(1) The initial interview attempts violated *Miranda* and *Edwards*. Officers sought to talk to def. five times in three hours, he invoked his right to counsel twice and invoked his right to silence each time. Officers did not wait long enough before asking if def. had changed his mind. Sending in a psychiatrist to see whether def. would talk did not excuse the conduct because one of his tasks was to elicit incriminating information.

(2) Def. reinitiated contact with the psychiatrist voluntarily. The earlier *Miranda* violations were not so serious that they wore down def.'s will. Def.'s ultimate choice to engage with the psychiatrist was not coerced. Def. specifically said he knew that he was providing potentially incriminating information by talking.

(3) When def. spoke to the psychiatrist, he validly and knowingly waived *Miranda*. The psychiatrist mainly listened while def. did most of the talking. Def. was coherent and intelligent and his comments reflected his knowledge of *Miranda* and the charges he was facing. Still, because def. did not explicitly say he was revoking his earlier *Miranda* invocation, this was "a close case." It was crucial to the Court's decision that the officer gave def. a complete *Miranda* advisement shortly before the psychiatrist gave the partial advisement.

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**Note:** The California Supreme Court repeatedly mentioned how useful it was to have a full audio recording of all the interactions between law enforcement and the def. It is unlikely that the prosecution would have prevailed here had there been gaps in the recording.

## **FIFTH AMENDMENT: IMPROPER INTERROGATION TACTICS**

**1. *People v. Jimenez* (2021) 73 Cal.App.5th 862:** Under what circumstances does a detective's threat to charge a suspect's family member render a confession involuntary?

**RULE:** Threatening to charge a suspect's teenage sons with murder unless he confessed, when the detective knew there was no probable cause to arrest them for murder, was improper and resulted in an involuntary confession.

**2. FACTS:** A deputy saw three men near trash cans in a field. The deputy thought they had engaged in illegal dumping and, when they drove away, tried to conduct a traffic stop. Def. led the deputy on a chase, during which he let his two teenage sons out of the car. He was eventually apprehended. Deputies found a dead body in one of the trash cans.

During an interview, the detective said he would have to charge def.'s sons with murder if def. did not confess, even though the detective knew that "they had nothing to do with this. . . ." He also said that he wanted "to try to help . . . your boys . . . so we don't have to make them criminals." After that, def. confessed to killing the victim. At trial, def. testified that he found a trash can in front of his house, saw a body inside, and tried to dispose of it. He claimed that he had given a false confession because the detective had threatened to charge his sons with murder.

**3. HELD:** When the detective told def. that, if def. did not talk him, def.'s sons would be charged with murder, even though the detective knew they were not involved, it was an improper coercive tactic that resulted in an involuntary confession. The only reasonable interpretation of the detective's statements is that he knew def.'s sons were not involved in the killing, but he intended to charge them with murder unless def. confessed. There was a clear causal connection between the threat and the confession: def. did not incriminate himself before the threat and immediately confessed after the threat.

## **FIFTH AMENDMENT: INVOCATION OF RIGHT TO SILENCE; *MIRANDA* WAIVER; INTERROGATION TECHNIQUES**

1. ***People v. Ramirez* (2022) 73 Cal.App.5th 862:** When does a suspect invoke his right to silence? Is a *Miranda* waiver valid if the most recent admonishment was incomplete? Does a detective improperly pressure a suspect to confess involuntarily by saying that being honest might lead to a better sentence?

**RULE:** A suspect does not invoke his right to silence if a reasonable officer would think that the suspect only *might* be invoking the right. A *Miranda* readvisement is unnecessary where the later interrogation is “reasonably contemporaneous” with a prior knowing and intelligent waiver. An officer may urge a suspect to tell the truth and point out the benefits that might naturally flow from a truthful confession.

2. **FACTS:** Def. committed scores of crimes—including carjacking, kidnapping, and murder—on three separate occasions. After his arrest in Texas, he was *Mirandized*, waived his rights, and during a long interview, claimed he had not been in California at the time of the crimes and denied involvement in response to repeatedly being accused of lying. At the end of the interview, the officers said they would let him “rethink everything” while they completed paperwork, and he could choose to talk to them again before they left Texas. Def. responded, “I don’t have nothing else to say to you guys.” Five days later, the officers returned to extradite def. to California. An officer gave him complete *Miranda* advisements again while they drove to the airport. Def. indicated that he understood his rights. The trip to California took about eight hours. They did not question him about the crimes during this period. Once in California, def. asked what would happen with the charges. The officer reminded def. of the previous *Miranda* admonition but did not reread the complete admonition from a card. Def. then waived his rights. The officers urged him to explain his role in the shooting and said that his truthfulness might have an impact on sentencing: “[T]he person who didn’t pull the trigger is going to be equally guilty to a certain extent but sometimes the truth may make a difference. I don’t know. It may not.” The sergeant invited def. to “start doing something right for a change and what’s right is the truth.” Def. confessed.

3. **HELD:** Def.’s statement was properly admitted. Viewed in context, a reasonable officer would have understood his statement—“I don’t have nothing else to say to you guys”—to mean he had nothing to add to his claims of innocence, not that he was invoking his right to silence. Def.’s *Miranda* waiver was valid, and a complete readvisement was unnecessary. In the five days before his *Miranda* waiver and confession, officers gave def. three complete *Miranda* advisements and a partial (but correct) one. There were no facts suggesting that def. was unaware of his rights or the significance of his waiver. Def.’s statement was voluntary. The following interview techniques were proper: urging def. to tell the truth and pointing out the sentencing benefit that might result from a truthful confession; and focusing on the emotional benefit def. would gain by taking responsibility for his actions.

## FIFTH AMENDMENT: INTERROGATION TECHNIQUES

1. ***People v. Zabelle* (2022) 80 Cal.App.5th 1098:** Does an officer improperly pressure a suspect to confess by saying that being honest might lead to a better sentence?

**RULE:** An officer may urge a suspect to tell the truth and point out the benefits that might naturally flow from a truthful confession.

2. **FACTS:** Def. was recorded on video surveillance committing a robbery. Officers stopped him and gave him *Miranda* advisements. After denying his involvement, the officer told def., “there is a very critical time where you can earn possibly some consideration,” “we can’t make any guarantees but sometimes being honest and up front, admitting your involvement . . . can go a[ ]ways to showing your remorse,” and, “sometimes that works in your favor.” Def. then confessed.

3. **HELD:** Def.’s statement was voluntary and properly admitted. The officer’s statements were not implied promises of leniency but discussed the “truthful” effects of being honest.

