



LEGAL UPDATE

August 2024 – December 2024

A brief summary of each case is provided below. Be advised that case law is complex and fact dependent and may be narrowly tailored in some circumstances. For that reason, each case title has the link to the case decision which will provide all of the pertinent facts for each case. Additionally, at the end of each case there is a link for any associated video if available.

DATE

CASE SUMMARY (LINK IN THE TITLE)

August 14, 2024



[CHONG V. UNITED STATES](#)

Los Angeles County Sheriff's

This case is about a warrantless search on a non-parole residence.

Defendant Tac Tran, who was a California state parolee, was believed by Homeland Security investigators to be engaging in criminal activity. This belief came from a wiretapping between the defendant and Hao Tang, a known drug distributor. Defendant Tac Tran is Chong's uncle who was only visiting Chong when the wiretaps occurred. Deputies believed Tran lived at the residence since he entered without waiting, and therefore thought they could legally conduct a warrantless parole search of the residence. Deputies approached the house by entering a neighbor's yard and jumping a side fence to enter the property without being observed. As Tran saw the deputy; he tossed a bag and ran. This initiated a protective sweep of the house in which drugs, cash, weapons, ammunition, and digital scales were found.

Both Tran and Chong were convicted of federal drug offenses. They both appealed their convictions asserting ineffective assistance of counsel by not moving to suppress the evidence. The Ninth Circuit ruled that Chong's conviction must be reversed while Tran's was upheld. The court reiterated that law enforcement officers must have probable cause to believe that a parolee is a resident of the house to be searched, which in this case they did not. The court stated the deputy's unconventional manner of entry onto the property objectively manifested his investigatory purpose, confirming that this trespass was unlicensed and thus illegal as the deputy was one foot away from the house when he saw Tran toss the bag (Tran was a parolee and therefore subject to searches and thus, could not argue the search issue).

Note: California state parolees have search clauses that allow for warrantless searches however, officers must have probable cause to believe a parolee is living at a residence before conducting a parole search. Officers should remember absent a search warrant or other exception they should approach a residence using a walkway that is open to the public. ([Reasonable Expectation of Privacy – POST; page 20](#))

September
25, 2024



[RAKES V. ROEDERER](#)

Charlestown Police Department

This case is about a lethal DV case.

Officer Roederer and Officer Johnson responded to a DV call for service. Amylyn (victim) and her husband RJ were arguing on the street where neighbors called 911 to report a fight. Amylyn told officers about RJ's threats to her, his family and himself. Instead of putting him in a 5150 hold, they convinced RJ to get evaluated voluntarily after telling Amylyn that he would be held for 24 hours. RJ was not held for 24 hours

		<p>and left the hospital within two hours. He then went home, killed Amylyn, and killed himself hours later.</p> <p>The Ninth Circuit ruled that Officer Johnson was not entitled to qualified immunity. A jury could reasonably infer that he misled Amylyn about RJ's detention, creating a danger she would not have otherwise faced. The court held that Officer Johnson's actions could be seen as a violation of clearly established law under the state-created danger doctrine. Amylyn was in an abusive marriage, but she had no idea that Officer Johnson had cut a deal with RJ that would allow him to return home in less than 24 hours.</p> <p><i>Note: Officers should remember to tell victims and witnesses that a subject being taken into custody may not remain in custody. Officers also should consider obtaining an emergency protection order and then seizing any weapons in accordance with General Order 533.04 (Domestic Violence).</i></p>
December 04, 2024	●	<p><u>PEOPLE V. CLYMER</u></p> <p>Redwood City Police Department</p> <p><i>This case is about legal consent to search from next of kin.</i></p> <p>Decedent died in the family home from an apparent drug overdose. Decedent's parents gave law enforcement permission to conduct a warrantless search of decedent's electronic devices. The search revealed messages from defendant (def.) to decedent about drug sales, including a message sent the day before decedent died wherein def. agreed to sell decedent oxycodone. Def. was charged with several sales-related drug crimes after officer's set up a controlled buy from him and searched his home and electronic devices pursuant to a warrant. Def. moved to suppress evidence obtained from decedent's electronic devices and quash the search warrant, claiming the search of decedent's devices violated the California Electronic Communications Privacy Act (CalECPA). The court denied the motion and the defendant pled no contest to possession for sale.</p> <p>HELD: The CalECPA allows warrantless searches with the specific consent of the authorized possessor of the electronic device. Decedent's parents became authorized possessors of his electronic devices upon his death where decedent died in his bedroom in the family home, his devices were found in his bedroom, and his parents knew the passcodes to his devices. Accordingly, decedent's parents had authority to consent to a warrantless search of the devices, and there was no CalECPA violation.</p> <p><i>Note: When investigating an unnatural death officers should consider asking the legal next of kin for consent to search the victim's property. The next of kin is established by California Probate § 8461</i></p>

Of note, in cases for summary judgement, the defendant(s) (generally the officers or government entity) must prove that they did not violate any clearly established case law. If the court declines to find for summary judgement the court believes there are sufficient facts for the case to go to trial for a jury to decide; and that the law was clearly established at the time of the incident. For that reason, officers should carefully evaluate their conduct in similar circumstances. Please feel free to reach out to the Compliance Team with any questions or any cases of interest for future editions.