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Volume 49 : No.1 • January 2021

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# VANGUARD

Official Publication Of The San Jose Police Officers' Association



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## Meeting Dates For 2021:

The following dates for SJPOA Membership Meetings are subject to change based on COVID-19 restrictions:

**January 5, April 6, June 1, October 5, December 7, 2021;**  
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# Legal Defense Fund Report

*Franco Vado, LDF Administrator*

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**Approved: 9**

**Denied: 0**

**Board Representative: 9**

**Attorney Request: 0**

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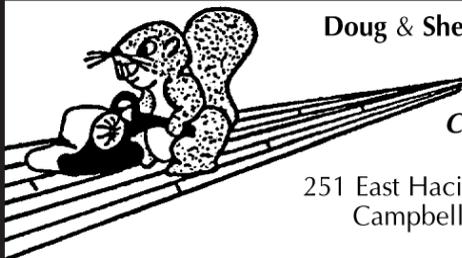
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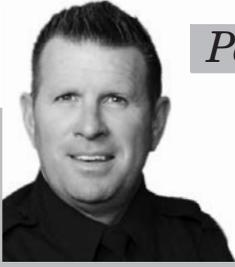


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# President/VP's Message

## Reimagine? More To Come

*We are in a new year, and we will continue to hear the phrase “Reimagine Policing.” We will continue to hear distorted facts and partial stats that just aren’t true about policing, uses of force, and race. COVID-19 is still here and not going away anytime soon and unfortunately so are the anti-police catch phrases and hate toward our police family.*

REIMAGINE POLICING IS NOT NEW; WE CONTINUOUSLY work to improve our profession. We’d like to share this 2021 editorial with our community, which includes community leaders, some real and some self-appointed, and politicians. It also includes our police officers who are a part of the community as well, which is sometimes forgotten.

First and foremost, we’d like to reimagine having politicians or leaders in our communities stop saying, “let’s talk about how the police can make the community feel safe.” We do this everyday, it’s our job, we swore an oath, and we would die, and have died, for a stranger at any moment if need be. Make the community feel safe? We do. The question we want answered is what is the community doing to keep itself safe?

There is discussion about again reforming Use of Force policies. This is not a one size fits all discussion. What policies did SJPd initiate and train in the past 5 years? What are the results of the new Use of Force state law? How does SJPd compare to other cities across the nation? We imagine if any objective person had these facts, they might not be talking about reform of policies but about more education to the public and government officials about what we already do.

We’ve heard from some in San Jose that they want to “redefine public safety.” What the hell does that mean and do these individuals even understand what our department does now for our community to keep them safe? We think it’s a good idea to “redefine” what it means to be a leader in San Jose and require those in leadership positions to have a plan,

**“We’ve heard from some in San Jose that they want to ‘redefine public safety.’ What the hell does that mean and do these individuals even understand what our department does now for our community to keep them safe? We think it’s a good idea to ‘redefine’ what it means to be a leader in San Jose and require those in leadership positions to have a plan, to back up what they are saying, and stop pointing fingers.”**

to back up what they are saying, and stop pointing fingers.

How about as a community we reimagine teaching everyone to not break the law, so a police officer is not called to make contact with anyone. Fix the tail light, register your car, don’t buy or use drugs, don’t steal a car, rob a store, or hurt anyone. If you do, then you should be held accountable.

We continue to have discussions on how the City of San Jose should have a civilian response for non-criminal cases for service. This is an easy one. We are in, we’ll sign the side letter for our membership as soon as you’re done reading this. Make the list as big as you want and send it our way. It’s easy to say the top line of “civilian response to non-criminal cases” but you have to do the work to make this happen.



Which calls, who responds, how long to respond, is there any officer standing by, 24/7 or 9 to 5, multilingual teams comprised of who? The knee jerk reactions of some will cause much hurt to our community. If this is the path our San Jose leaders want to pursue and shove it down our throats during this police reform movement, then so be it.

Reimagine while most people are staying in their homes safe during COVID-19, that every single minute a police officer will do their job and not only put themselves in harm's way, but their families, to make sure to answer the call for service for their community.

Reimagine not blaming every police officer in the nation when someone dies during an encounter with law enforcement. Reimagine if as much scrutiny is applied to what was happening before the police were called and that everyone responsible for what occurred prior to the incident was held accountable.

Imagine a city, a state, a world without the police that some

people say they hate so much. Imagine who would keep their families safe. Imagine who you would call. Imagine what you would do.

Our officers don't have to reimagine their core responsibility. They'll just show up to work every day, make sure you're safe, make you feel secure no matter what color or creed, and do their jobs. What will our politicians and community leaders do? Will they keep trying to Reimagine or take some personal responsibility for their defund efforts, for their failure to address homelessness, their failure to deliver mental health services to those in need?

More to come in 2021.

– Paul and Sean



**Editor's Note:** Please send any comments to Paul Kelly at: [president@sjpoa.com](mailto:president@sjpoa.com) or Sean Pritchard: [vicepresident@sjpoa.com](mailto:vicepresident@sjpoa.com)

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## Legal Counsel

# San Jose Pension Benefits In 2025 And Beyond

*There have been inquiries regarding what may happen to officers' pensions after 2025. As many know, in 2015, as part of the Settlement Framework, the POA, Local 230, and the City negotiated a 10-year, three-way Memorandum of Agreement ("MOA") governing pension benefits. When that agreement expires on June 30, 2025, each side will have some ability to seek to modify limited pension benefits – however, the City's ability to make any negative changes to benefits already promised is strictly limited by California law.*

FROM THE EARLY 1990'S THROUGH 2006, IN A SERIES of "Tripartite Retirement MOAs" (which were separate from the primary MOAs governing other wages and benefits), the POA, Local 230, and the City negotiated a series of improvements to pension benefits for police officers and firefighters. For example, in the 1996-2000 retirement MOA, retirement benefits increased from 75% to 80% (2.5% for years 1-20, then 3% for years 20-30); and again, in the 2000-2004 retirement MOA, from 80% to 85% (2.5% for years 1-20, 3% for years 21-25, and 4% for years 26-30). After 2004, retirement benefits became part of the POA's regular MOA, and, in 2006, increased to the current 90% Tier 1 formula. The Tripartite Retirement MOAs came to an end at that time.

In 2015, however, after the Measure B pension wars, the ground-breaking Alternative Pension Reform Settlement Framework brought back the three-party Tripartite Retirement MOA. The parties agreed to tie-up retirement benefits, after the turmoil of the Measure B years, for a lengthy 10-year period. Retirement benefits were moved back into their own distinct retirement MOA, with an extensive sum-

**“It is important to emphasize that there are important legal restrictions on the ability of the City to negatively impact the retirement benefits of existing employees, whether Tier 1 or Tier 2. Under the ‘California Rule,’ public employee pension benefits generally cannot be negatively changed unless the employee is offered offsetting, comparable advantages.”**

mary of benefits and agreements between the City and the two unions.

We are now slightly more than halfway through the 10-year term of the agreement. Once the agreement sunsets, on June 30, 2025, the parties will have some opportunity to negotiate changes to retirement benefits. For example, as with 1996, 2000, and 2006, theoretically, the POA and Local 230 could push to increase pension benefits. Equally, the City could propose to implement lower benefits for *future* employees; although, as it learned with Measure B's original second tier, doing so is a recipe for a collapse in recruiting and retention.

It is important to emphasize that there are important legal restrictions on the ability of the City to negatively impact



the retirement benefits of *existing* employees, whether Tier 1 or Tier 2. Under the “California Rule,” public employee pension benefits generally cannot be negatively changed unless the employee is offered offsetting, comparable advantages. On July 30, 2020, a unanimous California Supreme Court reaffirmed, in *Alameda County Deputy Sheriffs’ Association v. Alameda County Employees’ Retirement Board*, that the California Rule remains the governing law for pension in California. While the Supreme Court did allow the state legislature to make certain statutory changes, through PEPR, to the 1937 County Employees’ Retirement Law, it rejected the argument of former Governor Jerry Brown, previously championed by former Mayor Reed, that government employers were free to reduce future retirement benefits for active employees without limitation.

In sum, while the Retirement MOA will reopen in 2025, there is a limited amount of change that could occur.

It’s been a heck of a year, but San Jose’s finest have stood tall. Best wishes to all members and their families for a healthy and prosperous 2021. □

**Editor’s Note:** To contact Gregg McLean Adam, email: [gregg@majlabor.com](mailto:gregg@majlabor.com)

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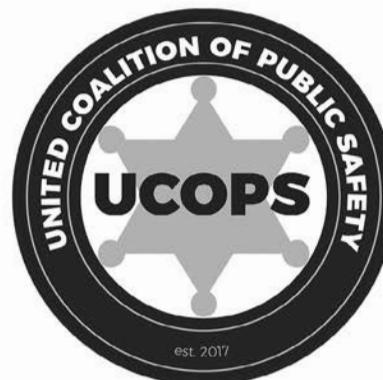
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Johnene Stebbins



## Third Degree Communications: Training Bulletin

# Reasonable Suspicion And Common Sense Prevail: *Kansas v. Glover*

*Well, we may be sheltering in place trying to avoid COVID19, but the wheels of justice are still spinning. The United States Supreme Court decided Kansas v. Glover on April 6, 2020, holding that a police officer does not violate the Fourth Amendment when initiating an investigative traffic stop for driving on a revoked license after running the vehicle's license plate and learning the registered owner has a revoked driver's license.*

TO MAKE AN INVESTIGATIVE TRAFFIC STOP, AN OFFICER must have reasonable suspicion that an individual is engaged in criminal activity. Reasonable suspicion cannot be a hunch, but rather based on articulable facts. Here, Kansas Deputy Mehrer observed an individual operating a Chevy truck. Deputy Mehrer ran the plate and it revealed that Charles Glover, Jr. was the registered owner and that his license to drive was revoked. Based on his common sense and experience, Deputy Mehrer assumed the registered owner of the truck was also the driver and he initiated a traffic stop to investigate the crime of driving with a revoked license. The deputy did not try to identify the driver prior to making the stop.

The US Supreme Court reiterated its prior rulings that reasonable suspicion "depends on the factual and practical considerations of everyday life on which reasonable and

prudent men, not legal technicians, act." The Court emphasized that officers must be permitted to make "commonsense judgements and inferences about human behavior." First, the Court found that although the registered owner is not always the driver of the car, this fact does not negate the commonsense inference that Glover was likely the driver. Next, the defense argued that because Glover's license was revoked, it was unreasonable for the deputy to assume that he would be driving the car as that would be illegal. Again, the Supreme Court explains that both commonsense and empirical evidence demonstrate that drivers often continue to drive while their license is suspended or revoked. Therefore, Deputy Mehrer's inference that Glover was the driver was also reasonable.

The US Supreme Court did emphasize the narrow scope of this holding in that reasonable suspicion is based on the totality of the circumstances, so additional facts might dispel reasonable suspicion. For example, if the deputy had a view of the driver before pulling the truck over and saw that it was a female driver, then the inference that Charles Glover, Jr. was the driver because he is the registered owner is negated. Deputy Mehrer possessed no exculpatory information in this case. Thus, the combined database information and commonsense judgments of the deputy that the registered owner is the driver and therefore is engaged in criminal activity constituted reasonable suspicion for the traffic stop under the 4th Amendment.

**What does this mean for you?** As always, continue to act reasonably and articulate the facts giving rise to your suspicion in your report to avoid having to testify to them in a suppression hearing. Also, don't disregard bad facts, and you should be fine. □

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**Editor's Note:** This article was presented by The Principals of Third Degree Communications, Paul Francois and Enrique Garcia. Tel. 408.766.1909 Email. [info@tdcorg.com](mailto:info@tdcorg.com) or visit [www.tdcorg.com](http://www.tdcorg.com)

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# Real Estate Perspective

## Homes For Sale Are Rapidly Disappearing...

*Through all the challenges of 2020, the real estate market has done very well, and purchasers are continuing to take advantage of historically low mortgage rates. Realtor Magazine just explained: “While winter may be typically a slow season in real estate, economists predict it isn’t likely to happen this year.... Low inventories combined with high demand due to record-low mortgage rates is sending buyers to the market in a flurry.”*

HOWEVER, ONE CHALLENGE FOR THE HOUSING INDUSTRY heading into this winter is the dwindling number of homes available for sale. Lawrence Yun, Chief Economist for the National Association of Realtors (NAR), recently said: “There is no shortage of hopeful, potential buyers, but inventory is historically low.”

In addition, Danielle Hale, Chief Economist for **realtor.com**, notes:

*“Fewer new sellers coming to market while a greater than usual number of buyers continue to search for a home causes inventory to continue to evaporate.” One major indicator the industry uses to measure housing supply is the months’ supply of inventory. According to NAR:*

“Months’ supply refers to the number of months it would take for the current inventory of homes on the market to sell given the current sales pace.”

Historically, six months of supply is considered a normal real estate market. Going into the pandemic, inventory was already well below this mark. As the year progressed, the supply has reduced even further.

Here is a graph showing this measurement over the last years’ supply refers to the number of months it would take

**“Months’ supply refers to the number of months it would take for the current inventory of homes on the market to sell given the current sales pace.”**

for the current inventory of homes on the market to sell given the current sales pace.”

### What Does This Mean If You’re A Buyer?

BE PATIENT DURING YOUR HOME SEARCH. IT MAY take time to find a home you love. Once you do, be ready to move forward quickly. Get pre-approved for a mortgage, be prepared to make a competitive offer from the start, and understand how the shortage in inventory has led to more bidding wars. Calculate just how far you’re willing to go to secure a home if you truly love it.

### What Does This Mean If You’re A Seller?

REALIZE THAT, IN SOME WAYS, YOU’RE IN THE DRIVER’S seat. When there’s a shortage of an item at the same time there’s a strong demand for it, the seller is in a good position to negotiate. Whether it’s the price, moving date, possible repairs, or anything else, you’ll be able to ask for more from a potential purchaser at a time like this – especially if you have multiple interested buyers. Do not be unreason-



## Months Supply of Available Inventory

### Existing Homes



able, but understand you probably have the upper hand. The housing market will remain strong throughout the winter and heading into the spring. Know what that means for you, whether you're buying, selling, or doing both. □

**Editor's Note:** Article brought to you by Karen Nelsen, GRI REALTOR® Intero Real Estate Services, 175 East Main Avenue, Suite 130 Morgan Hill, CA 95037. Office: 408.778.7474 Cellular: 408.461.0424 Email: knelsen@interorealestate.com BRE License: 00891921

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# Insurance News

## Beneficiary Review

*This holiday season, I noticed a lot more Christmas strands lighting the bay area. A sure sign of a community's growing faith or just a lot of extra time around the house, due to COVID shut downs. While I hope it's the former, they both might be true: Either way, this is the perfect time to review your Life Insurance Beneficiary Designation(s). This includes the SJPOA Insurance & Benefits Trust, City Human Resources Department, Retirement Services, and perhaps some private insurance policies.*

FAILURE TO PAY ATTENTION TO YOUR LIFE INSURANCE beneficiary designation creates problems for your survivors.

Since 1968, our insurance office has handled many POA death claims, and seen some unfortunate cases of policy benefits paid to unintended recipients, e.g. old and long forgotten girlfriends, boyfriends, former spouses (even the wrong former spouse), and so on.

A simple checklist can help: Prepare a register or list for your survivors, which will serve as a quick reference in future years:

- List insurance policies separately, row-by-row.
- Add a column, titled Beneficiary Designation and record the date of the last beneficiary update for each life insurance policy or other financial instrument.
- If you are not sure, then submit a new one (it won't hurt). Remember, these policies and accounts have their own (unique) life insurance beneficiary forms. Request and update them!
- Also include columns for Face Amount, Insurer Name, Policy No., and Policy Date.

**“Since 1968, our insurance office has handled many POA death claims, and seen some unfortunate cases of policy benefits paid to unintended recipients, e.g. old and long forgotten girlfriends, boyfriends, former spouses (even the wrong former spouse), and so on.”**

...Remember to review this list annually.

### Sample Beneficiary Form

WHEN COMPLETING THE SJPOA IBT BENEFICIARY Change Form, you have the option to designate two separate types of beneficiary designations:

- 1). *Primary* Beneficiary Name
- 2). *Contingent* Beneficiary Name

**How it works:** If you die while the Primary Beneficiary is still living, the Primary Beneficiary (or Beneficiaries) will receive 100% of the policy benefits, and the Contingent Beneficiary will receive zero benefits. Remember, the Contingent Beneficiary is a “back-up” beneficiary, in the event your Primary Beneficiary predeceases you. You are not required to designate a Contingent Beneficiary. It is also acceptable to name more than one Primary Beneficiary by listing each name, with the corresponding amount of insurance. For example:

John Smith, Brother, born March 21, 1963- \$50,000  
and Sally Smith, Sister, born August 1, 1959- \$100,000.

If Beneficiaries are receiving equal amounts, then you may state “Equal Shares” after their names.

Avoid naming minor children as Primary Beneficiaries (or Contingent Beneficiaries). This leads to all types of problems, as the insurance company will not pay death benefits to a



minor. Your survivors may be required to go to court to sort it out, delaying access to much needed funds.

## Additional SJPOA Benefit-Life Services Toolkit

SJPOA MEMBERS HAVE SPECIAL ONLINE TOOLS AND services that can help you create a will, make advance funeral plans and put your finances in order. *The Life Services Toolkit* is automatically available to participants in the SJPOA Insurance & Benefits Trust, just another benefit of SJPOA membership.

To access these services, visit the Life Services Toolkit website at [www.standard.com/mytoolkit](http://www.standard.com/mytoolkit) and enter the username, "assurance."

Reminder: SJPOA members have access to a free insur-

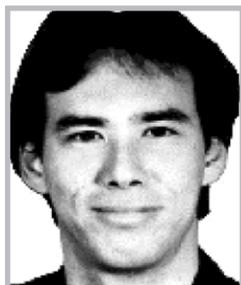
ance check-up through the Derendinger Insurance Agency in west San Jose. Family changes, a new mortgage, and young children are all good reasons to review your coverage needs. We suggest a separate check-up when you reach your early 50's, in order to learn which SJPOA coverages follow you into retirement.

Take charge of your plan: Review your life insurance beneficiaries every year! □

**Editor's Note:** *Derendinger Insurance has served as SJPOA insurance broker since 1968, and offers free assistance to SJPOA members at 408.252-7300. Or via email at [info@derendinger.com](mailto:info@derendinger.com)*

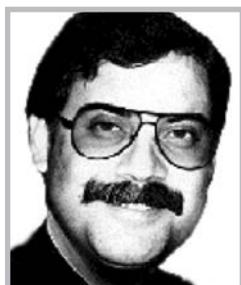
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# In Memorium



Officer **Robert A. WHITE**,  
Badge #2325

Killed on January 27 1985, by electrocution while investigating an accident in which a motorist struck a high voltage transformer.



Officer **Gordon SILVA**,  
Badge #1512

Killed on January 20, 1989, by gunfire in the same firefight with the mentally ill pedestrian who had just mortally wounded Officer Simpson.



Officer **Gene R. SIMPSON**,  
Badge #1409

Killed on January 20, 1989 by a mentally ill pedestrian who wrestled away the officer's handgun and shot him.

### SJPOA Office

Please update our phone number!

San Jose Police Officers' Association Office

**(408) 298-1133**

Please note that the (408) 277-4012 number is no longer in service.

### R

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## PINTEREST

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Stephanie Whitmore



# Home & Auto News

## California Casualty's Survivor Benefit Gives Added Protection For Peace Officers

*Every day can be challenging on the streets of America's towns and cities. You know that any encounter has its risk, whether it's a traffic stop, a domestic situation or responding to an accident. Officers now face the reality that they could be a target of violence just because of their profession. Despite the danger, thousands of men and women don their uniforms every day and go out to serve and protect. They live up to the oath they've taken to keep their communities safe.*

BUT WHAT HAPPENS WHEN ONE OF OUR BRAVE MEN or women loses their life in the line of duty? Once is too many, but it happened 148 in 2019 ([www.odmp.com](http://www.odmp.com)). It leaves friends and neighbors in shock and families and loved ones feeling a pain that only few will know.

While there is support for the survivors, California Casualty also feels an added obligation to provide help. We've been partnering with law enforcement groups for almost 50 years.

One of those extras is the **Fallen Hero Benefit\***. When a peace officer who is insured with California Casualty loses his or her life in the line of duty, their families are still protected. California Casualty waives the auto and home insurance premium for the surviving spouse or partner for the current policy year, and for the following year. It comes free with every policy and it's one of the promises California Casualty proudly lives up to when they take on the honor of insuring law enforcement officers and their families.

**“While there is support for the survivors, California Casualty also feels an added obligation to provide help. We've been partnering with law enforcement groups for almost 50 years.”**

We care, and we are here to help; contact a California Casualty advisor today and learn about the important benefits you qualify for as a peace officer at **1.877.264.3854** or visit [www.readyforquote.com/Stephanie](http://www.readyforquote.com/Stephanie). Currently, just for allowing us the honor to provide you your current, exclusive quote, we'll send you a \$25 Amazon gift card whether you join our CalCas family with a policy using the link provided. □

**Editor's Note:** Headquartered in San Mateo, CA, with Service Centers in Arizona, Colorado and Kansas, California Casualty provides auto and home insurance to educators, higher education employees, firefighters, law enforcement, nurses and United MileagePlus members across the country. To learn more about California Casualty, or to request an auto insurance quote, please visit [www.readyforquote.com/Stephanie](http://www.readyforquote.com/Stephanie) or call **1.877.264.3854**



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The **California Peace Officers' Memorial Foundation (CPOMF)** is proud to announce The California Peace Officers Specialty License Plate. Our specialty plate in conjunction with the California Department of Motor Vehicles helps support the CPOMF mission of honoring California's peace officers who gave their lives 'In The Line of Duty' and providing support to the family members left behind.



**1**

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**2**

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**3**

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Together we are supporting the families of our Fallen Heroes. Please help us to ensure we can honor our Fallen Officers with a specialty plate by joining our list today!



Lance Bayer



# Reliable Informer

*In this month's issue of the Reliable Informer, I will cover two cases, one decided by the United States Supreme Court and one decided by the California Court of Appeal. These cases look at the law relating to vehicle stops and blood draw incident to arrest for driving under the influence.*

## A Peace Officer Was Justified In Stopping A Vehicle Based On Information That The Registered Owner's Driver's License Was Revoked

*When an officer requests database information from the Department of Motor Vehicles, the response may show that the registered owner of the vehicle has a license that has been suspended or revoked. Under what circumstances may the officer stop the vehicle based on information about the registered owner?*

RECENTLY, THE UNITED STATES SUPREME COURT looked at this question in the case of *Kansas v. Glover* (2020) \_\_\_\_\_ U.S. \_\_\_\_\_.

In the *Glover* case, Deputy Mark Mehrer of the Douglas County Sheriff's Office in Kansas was on duty on a spring day when he observed a moving pickup truck. Deputy Mehrer followed the truck and ran the license plate through the file service of the state revenue department. The registration information for the vehicle came back to the correct make and model for the pickup truck. The file service also revealed that the truck was registered to Charles Glover, Jr. and that Glover had a revoked driver's license in the State of Kansas. Deputy Mehrer continued to follow the truck. He did not observe any traffic violations. He also did not attempt to observe the driver by positioning himself to get a good look at the driver.

Based solely on the information that the registered owner's driver's license was revoked, Deputy Mehrer initiated a traffic stop. He contacted the driver, who turned out to be none other than Charles Glover, Jr. The deputy placed Glover un-

der arrest and he was charged with driving as a habitual violator.

In the trial court, Glover made a motion to suppress the evidence. He argued that the stop of his vehicle was not based on a reasonable suspicion of criminal activity and that the stop violated his Fourth Amendment right against unreasonable seizures.

The trial court granted Glover's motion. The State then appealed the trial court's decision to the Kansas Court of Appeals. The Court of Appeals reviewed Glover's case and overturned the trial court's decision. The Court of Appeals found that there was sufficient reasonable suspicion to justify the vehicle stop.

Glover then appealed the Court of Appeals' decision to the Kansas Supreme Court. The state Supreme Court reviewed the case and reinstated the trial court's decision. The Court found that the deputy did not have sufficient reasonable suspicion but only had a hunch that the driver was engaged in criminal activity, such as driving with a revoked driver's license.

The State then requested that the United States Supreme Court review the case. The Supreme Court agreed to hear the case and overturned the Kansas Supreme Court's decision. The Court found that there was sufficient reasonable suspicion to justify the stop.

In its written decision, the Court first stated, "Under this Court's precedents, the Fourth Amendment permits an officer to initiate a brief investigative traffic stop when he has a particularized and objective basis for suspecting the particular person stopped of criminal activity. Although a mere 'hunch' does not create reasonable suspicion, the level of suspicion the standard requires is considerably less than



proof of wrongdoing by a preponderance of the evidence and obviously less than is necessary for probable cause.”

The Court continued, “Because it is a less demanding standard, reasonable suspicion can be established with information that is different in quantity or content than that required to establish probable cause. The standard depends on the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act. Courts cannot reasonably demand scientific certainty where none exists. Rather, they must permit officers to make commonsense judgments and inferences about human behavior.”

The Court noted that the states have a vital interest in ensuring that only qualified drivers are allowed to operate vehicles and that only registered vehicles are on the road. The Court looked at the facts of Glover’s case and stated, “Before initiating the stop, Deputy Mehrer observed an individual operating a [certain pickup truck]. He also knew that the registered owner of the truck had a revoked license and that the model of the truck matched the observed vehicle. From these three facts, Deputy Mehrer drew the commonsense inference that Glover was likely the driver of the vehicle, which provided more than reasonable suspicion to initiate the stop.”

The Court continued, “The fact that the registered owner of a vehicle is not always the driver of the vehicle does not negate the reasonableness of Deputy Mehrer’s inference. Such is the case with all reasonable inferences. The reasonable suspicion inquiry falls considerably short of 51% accuracy, for, as we have explained, to be reasonable is not to be perfect.”

The Court further stated, “Glover’s revoked license does not render Deputy Mehrer’s inference unreasonable either. Empirical studies demonstrate what common experience readily reveals: Drivers with revoked licenses frequently continue to drive and therefore to pose safety risks to other motorists and pedestrians.”

The Court then looked at Glover’s claim that an officer’s reasonable suspicion must be based on the officer’s own training and experience. The Court stated, “Nothing in our Fourth Amendment precedent supports the notion that, in determining whether reasonable suspicion exists, an officer can draw inferences only through law enforcement training and experience. We have repeatedly recognized the opposite. . . . The inference that the driver of a car is its registered owner does not require any specialized training; rather, it is a reasonable inference made by ordinary people on a daily basis.” The Court further stated, “In reaching this conclusion, we in no way minimize the significant role that specialized training and experience routinely play in law enforcement investigations. We simply hold that such experience is not required in every instance.”

The Court then looked at Glover’s claim that the Fourth Amendment does not permit officers to rely on probabilities in making their assessments of reasonable suspicion. Glover asserted that officers should be restricted to “spe-

**“Based solely on the information that the registered owner’s driver’s license was revoked, Deputy Mehrer initiated a traffic stop. He contacted the driver, who turned out to be none other than Charles Glover, Jr. The deputy placed Glover under arrest and he was charged with driving as a habitual violator.”**

cific and articulable facts.” The Supreme Court disagreed. The Court stated, “As an initial matter, we have previously stated that officers, like jurors, may rely on probabilities in the reasonable suspicion context. Moreover, as explained above, Deputy Mehrer did not rely exclusively on probabilities. He knew that the license plate was linked to a truck matching the observed vehicle and that the registered owner of the vehicle had a revoked license. Based on these minimal facts he used common sense to form a reasonable suspicion that a specific individual was potentially engaged in specific criminal activity – driving with a revoked license. Traffic stops of this nature do not delegate to officers broad and unlimited discretion to stop drivers at random. Nor do they allow officers to stop drivers whose conduct is no different from any other driver’s. Accordingly, combining database information and commonsense judgments in this context is fully consonant with this Court’s Fourth Amendment precedents.”

The Court continued, “This Court’s precedents have repeatedly affirmed that the ultimate touchstone of the Fourth Amendment is reasonableness. Under the totality of the circumstances of this case, Deputy Mehrer drew an entirely reasonable inference that Glover was driving while his license was revoked.”

The Court added, “We emphasize the narrow scope of our holding. Like all seizures the officer’s action must be justified at its inception. The standard takes into account the totality of the circumstances – the whole picture. As a result, the presence of additional facts might dispel reasonable sus-

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## Reliable Informer

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picion. For example, if an officer knows that the registered owner of the vehicle is in his mid-sixties but observes that the driver is in her mid-twenties, then the totality of the circumstances would not raise a suspicion that the particular individual being stopped is engaged in wrongdoing. Here,

Deputy Mehrer possessed no exculpatory information – let alone sufficient information to rebut the reasonable inference that Glover was driving his own truck – and thus the stop was justified.”

The Supreme Court’s ruling in the Glover case is significant because it demonstrates the Court’s willingness to apply a commonsense standard to looking at the facts supporting reasonable suspicion for a detention. □

# A Blood Draw After A Driver Was Arrested For Driving Under The Influence Of A Drug Was Lawful After The Officer Told The Driver That She Was Required To Undergo The Test Based On The Implied Consent Law

*When a suspect is arrested for driving under the influence of a drug, California’s implied consent law provides that the suspect is deemed to have given consent to a chemical blood test. What type of admonition is necessary for the implied consent law to be effective?*

RECENTLY, THE THIRD DISTRICT OF THE CALIFORNIA Court of Appeal looked at this question in the case of *People v. Lopez* (2020) \_\_\_\_\_ Cal.App.5th \_\_\_\_\_.

In the *Lopez* case, a driver later identified as Sharon Lopez was detained by officers of the Rocklin Police Department in Placer County after Lopez drove in a manner that provided an officer with reasonable suspicion to initiate a vehicle stop. Once Lopez had pulled over, she exhibited objective symptoms of being under the influence. After the stop, a second officer, Evan Adams, arrived and took over the investigation.

Officer Adams observed that Lopez spoke with slurred speech. She was unsteady on her feet and had constricted pupils. Officer Adams administered field sobriety tests which revealed that Lopez was impaired.

The officer had Lopez blow into a preliminary alcohol screening device. The device registered zero, indicating an absence of alcohol. Based on her level of impairment, and based on his training and experience, Adams placed Lopez under arrest for driving under the influence of a drug. She

was transported to jail. At some point, Lopez told the officer that she had taken Seroquel the night before and another medication.

At the jail, Officer Adams told Lopez that since she was under arrest for a DUI, and since he believed that it was a controlled substance DUI, that she was required by law to submit to a blood test. Officer Adams did not directly ask for Lopez’ consent and Lopez did not say she consented. Officer Adams “walked Lopez through” the procedure. Lopez did not refuse, object or resist. If she had, Officer Adams would have obtained a warrant and performed a forced blood draw. At no point did Officer Adams tell Lopez that she had a right to refuse to submit to the blood draw.

Lopez cooperated with the blood draw. She was unhandcuffed, took a seat, and moved her arm into position for the phlebotomist to draw the blood.

Lopez was charged with driving under the influence of a controlled substance. In the trial court, Lopez made a motion to suppress the evidence. She argued in part that the blood draw was performed without consent or a warrant and violated her Fourth Amendment rights against unrea-

The trial court denied Lopez’ motion to suppress the evidence. She appealed the court’s decision to the Appellate Division of the Placer County Superior Court. She claimed that the trial court should have granted her motion. The Appellate Division denied her appeal and she then requested that the Court of Appeal review her case. The Court of Appeal agreed to hear the case and upheld the trial court’s decision. As a consequence, the case was sent back to the trial court for trial.

In its written decision, the Court first stated, “The Fourth



**“The officer had Lopez blow into a preliminary alcohol screening device. The device registered zero, indicating an absence of alcohol. Based on her level of impairment, and based on his training and experience, Adams placed Lopez under arrest for driving under the influence of a drug. She was transported to jail. At some point, Lopez told the officer that she had taken Seroquel the night before and another medication.”**

Amendment protects the right of the people to be secure in their persons against unreasonable searches and provides that no warrants shall issue, but upon probable cause. A blood draw is a search of the person. We must determine if the warrantless draw was reasonable.”

The Court continued, “While a warrant is normally required to conduct a search, there are judicially-created exceptions to the warrant requirement. We can quickly eliminate two of them. Generally, a search may be conducted without a warrant when it is performed incident to an arrest or when it is necessitated by exigent circumstances. Neither of these exceptions applies here. A state may not compel a suspect to undergo a blood test without a warrant as a search incident to arrest. California courts have found a blood test may be administered without a warrant as a search incident to arrest where the suspect chooses a blood test after being given a choice between a blood test and a breath or urine test, but that did not occur here.”

The Court further stated, “As to the exigent circumstances exception, the fact that alcohol dissipates naturally does not by itself justify a warrantless blood test. An exigent circumstance exists when blood-alcohol evidence is dissipating and some other factor creates pressing health, safety, or law-enforcement needs that would take priority over a warrant

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## Reliable Informer

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application. The United States Supreme Court found such factors when a drunk-driving suspect was unconscious, and when the suspect was in a vehicle accident that required police to attend to other pressing needs. This type of factor does not exist here."

The Court then focused on the state's implied consent law. The Court stated, "The implied consent law, [Vehicle Code] section 23612, plays a part in our analysis, but it does not itself establish consent. At the time of defendant's arrest, the implied consent law stated that defendant, by driving a motor vehicle, was deemed to have given her consent to chemical testing of her breath or blood if she was lawfully arrested for driving under the influence."

The Court continued, "The implied consent law also required Officer Adams to inform defendant that she could choose between a breath test and a blood test. However, if defendant chose a breath test, Officer Adams was authorized to request that she take a blood test because he had reasonable cause to believe she was under the influence of drugs. In that event, the officer shall advise the person that he or she is required to submit to an additional test. The person shall submit to and complete a blood test."

The Court further stated, "Despite its common name, the implied consent law implicitly grants a suspect the right not to consent to a test. Under section 23612, by the act of driving on California's roads, defendant accepted the condition of implied, advance consent if lawfully arrested for drunk driving. That advance consent, however, could also have been withdrawn at the time of arrest by defendant's objection to a breath test or blood draw. The implied consent law is explicitly designed to allow the driver, and not the police officer, to make the choice as to whether the driver will give or decline to give actual consent to a blood draw when put to the choice between consent or automatic sanctions. Framed in the terms of 'implied consent,' choosing the 'yes' option affirms the driver's implied consent and constitutes actual consent for the blood draw. Choosing the 'no' option acts to withdraw the driver's implied consent and establishes that the driver does not give actual consent."

The Court added, "A suspect's refusal to consent will have consequences. The implied consent law required Officer Adams to inform defendant that the refusal to submit to testing would result in a fine, suspension of her driver's license, and, if she was convicted of DUI, mandatory imprisonment. The law also required Officer Adams to inform defendant that a refusal to submit to the test could be used against her in a court of law, and that she was not entitled to have an attorney present when she decided whether to take the test or during the test."

The Court noted that the implied consent law alone does not meet the legal standard for consent. The Court stated, "The Fourth Amendment test for a valid consent to search

is that the consent be voluntary, and voluntariness is a question of fact to be determined from all the circumstances. The totality of the circumstances that must be considered in determining if consent is voluntary includes not only advance consent, but the driver's conduct at the time of arrest and the circumstances surrounding the testing."

The Court found that substantial evidence supports the conclusion that Lopez voluntarily consented to a blood draw. According to the Court, the officer correctly told Lopez that she was required to submit to a blood test. She did not object or refuse to undergo the test and did not resist the officer's direction. She voluntarily placed her arm on the table and allowed the draw to take place.

The Court was not persuaded by Lopez' argument that Officer Adams was required to provide her with the full statutory admonishment in order to obtain a valid consent. The Court stated that, when considering consent under the totality of the circumstances, failure to strictly follow the implied consent law does not violate a defendant's constitutional rights.

The Court also dismissed Lopez' argument that her consent was not voluntary because she submitted to the officer's misrepresentation of a lawful claim of authority. The Court first noted that the officer's claim of authority was not false, because the implied consent law required Lopez to undergo the blood test and she had the option to refuse. The Court further stated, "And again, whether defendant knew she could refuse – she did not testify as to whether she understood she had the right to refuse consent – is not determinative. While knowledge of the right to refuse consent is one factor to be taken into account, the government need not establish such knowledge as the sine qua non of an effective consent."

The Court's ruling in the *Lopez* case is a helpful demonstration of how the legal standard for consent works for obtaining a blood sample after an arrest for driving under the influence of a drug. □

**Editor's Note:** *Lance Bayer is a private attorney specializing in police training and personnel issues in the Bay Area and can be reached by writing to: Lance Bayer, 443 Lansdale Avenue, San Francisco, CA 94127, by calling 415.584.1022, or by email at lbayer@comcast.net*

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