The Mouth of An Arrestee is NOT a "Sacred Orifice!"

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[Author's Note: This article is narrowly focused on the issue of what officers may legally do at an incident scene when confronted by a person who has placed contraband or evidence in his mouth. Due to the intricacies of the issues, this article does not include coverage of border searches, searches pursuant to a warrant, medical procedures to extract evidence such as by the administration of drugs (emetics) and/or surgery, or body cavity searches.]

It has been said time and time again that "your body is a temple" and the concept of human dignity inherent in that belief is reflected in the Fourth Amendment to the United States Constitution giving people the right to be secure in their persons against unreasonable searches and seizures. Simply put, an individual is going to have an expectation of privacy over his or her own body that our society is prepared to recognize as valid and worthy of protection from unjustified governmental intrusions. But, what about the situation where law enforcement officers see a suspect place what appears to be illegal drugs, or other contraband/evidence, in his mouth? Several questions that need to be resolved quickly will go through the officers' minds: "Can we attempt to retrieve the object?" "If so, how much force can be used in the process?" These are the questions that this article and the attached sample policy will attempt to deal with.

The short answer to the questions is that officers who have probable cause to arrest a suspect and who are searching the suspect incident to the lawful arrest and that have a "clear indication" that the arrestee has seizeable contraband in his mouth may, either with a warrant or when exigent circumstances (either an "urgent need to preserve evidence" or a "medical emergency") are present, use objectively reasonable force to acquire the contraband.

Suspect's Rights?

"There can be little doubt that the Fourth Amendment protects a person's body beyond the body's surface."[1] However, a person does not have a constitutional right to either destroy or dispose of evidence of a crime by swallowing such evidence and officers may use reasonable force to prevent such destruction.[2] Courts "do not intend to curtail proper police efforts to prevent the destruction of evidence. Inasmuch as the mouth is not a sacred orifice and there is no constitutional right to destroy or dispose of evidence, attempts to swallow evidence can be prevented ... as long as excessive force is not employed."[3] While there is no doubt that law enforcement officers are entitled to take some action to prevent the loss of evidence by a suspect placing the evidence in his mouth, the questions are: (1) when can the officers take forcible action to prevent the destruction of evidence, and (2) what forcible actions may the officers take?

Officers Must Have Probable Cause to Take Action?

In many cases involving a person placing contraband into his mouth, in order for the suspect to be charged with a crime the contraband must be recovered. Therefore, when officers see someone place something into his mouth a confrontation between the suspect and the officers becomes decisive as to whether the suspect will be criminally charged. Even though officers have a strong desire to acquire whatever it was the suspect placed in his mouth, it is imperative that the officers follow the rules of engagement that have been outlined by the Fourth Amendment to the United States Constitution and its case progeny, as well as applicable state and local laws and law enforcement agency policy and training.

Officers need to understand that before they may take action to prevent the person's swallowing of an object or use force to attempt to extract the object the officer **must** have more than "mere suspicion" or "reasonable suspicion." "The interest in human dignity and privacy which the

Fourth Amendment protects forbids any such intrusions on the mere chance that desired evidence might be obtained."[4] The officer must "know" more than the fact that the suspect placed "something"[5] in his mouth. The officer **must** have knowledge that rises to the level of probable cause.

In a Florida case, officers patrolling a high drug area saw a juvenile who upon seeing the officers quickly turned his back on the officers, crouched down and placed "something" into his mouth. The juvenile then attempted to walk away from the officers. After the juvenile ignored the officers requests to stop, the officers ran around him to block his path. The officers told the juvenile not to swallow what he had put into his mouth because if it was cocaine, he could die. The juvenile then told the officers that if he spit it out, he would go to jail. When the juvenile did spit out the contents of his mouth, as the officers suspected, it was cocaine. The Second District Court of Appeals of Florida ruled to suppress the cocaine as evidence because the officers' seizure of the juvenile was unreasonable. The Court noted that the officers' belief that the juvenile had cocaine in his mouth was not sufficient to rise to the level of probable cause and amounted to only a "mere hunch." The Court ruled that the encounter was transformed into a seizure when the officers ran in front of the juvenile and blocked his path while telling him that he should spit out whatever was in his mouth. Since the officers' seizure was only supported by a "mere hunch" and not probable cause, that the juvenile had cocaine in his mouth, the officers' seizure was "unreasonable" and therefore the evidence (the cocaine) had to be suppressed.[6]

Once officers have sufficient probable cause to make a lawful arrest, the officers may search the arrestee incident to that lawful arrest.[7] However, the search incident to the lawful arrest exception to the warrant requirement does not automatically extend to a forcible search of a suspect's mouth for contraband. In order to forcibly search a person's mouth for contraband the officers must have a greater level of articulable justification than merely the lawful arrest.

Officers Must Have Probable Cause of the "Seizeable" Nature of Items Found During a Search:

It is significant to distinguish between a "search" of an arrested person from a "seizure" of objects found in that search. As stated, once officers make a lawful arrest, they have a right to search the person incident to that lawful arrest. However, not everything uncovered in a lawful search is automatically subject to lawful seizure. In order to "seize" items discovered in a "search" officers must have probable cause of the criminal nature of the items to be seized. In Soldal v. Cook County[8], the United States Supreme Court noted that even as to the seizure of objects lawfully discovered and accessed, "in the absence of consent or a warrant permitting the seizure of the items in question, such seizures can be justified only if they meet the probable cause standard." In the Oregon Supreme Court case of State v. Elkins[9] a defendant was arrested for public intoxication and then searched, resulting in the officer's discovery of an unlabeled bottle containing three kinds of capsules and pills. The officer seized the capsules and pills and a later analysis established that some of them were methadone. At the motion to suppress hearing the officer conceded that he had seized the capsules and pills merely because he was "suspicious of them" and not because he recognized them as contraband. The Elkins' Court stated that "before the officer had the right to seize the implements of a crime committed in his presence, other than for which the arrest was made, he must have reasonable grounds to believe that the article he has discovered is contraband."[10]

Force to Search vs. Force to Arrest?

The reasonableness of the force used by officers to prevent the swallowing of evidence that a suspect places into his mouth depends upon the totality of the circumstances of each case. Law enforcement officers sometimes find it necessary to use force in conducting a search of a person at the arrest scene. In the context of this article, the officers are faced with an arrestee who has placed what appears to be drugs into his mouth, and the officers then attempt to retrieve the drugs and prevent the arrestee from swallowing them. The amount of force officers may use to "search" must be distinguished from the amount of force officers may use to "arrest" ("seize").

When officers use force to "arrest," the force used must meet the "objective reasonableness" test of the Fourth Amendment to the United States Constitution[11]. However, when "searches" of an arrestee involve bodily intrusions that go beyond the body's surface, that force must meet more stringent criteria. In order to determine whether officers' force to "search" beyond the body's surface is legally justified under the Fourth Amendment, the officers' force must be subjected to the criteria outlined by the United States Supreme Court in Schmerber v. California[12]:

1. whether the officers had a *"clear indication"* that incriminating evidence would be found [Forcible attempts to prevent destruction of evidence must be based on probable cause to believe that specific evidence is being disposed of.[13]];

2. whether the officers had a warrant or there existed exigent circumstances, such as the imminent destruction of evidence or a medical emergency, to excuse the warrant requirement; and

3. whether the method used to extract the evidence was reasonable and performed in a reasonable manner.

Schmerber 1: The "Clear Indication" Requirement

Under Schmerber, in order to search an arrestee beyond his body's surface, in addition to the requirement that officers must have probable cause to arrest, the officers must also have a "clear indication" that evidence will be found, in the context of this article in the suspect's mouth.[14] This "clear indication" standard is more than "mere suspicion" or "reasonable suspicion." The officers must "know" more than just the fact that the suspect placed "something" in his mouth. Under the totality of the circumstances the officers must have a "clear indication" that what the arrestee placed in his mouth was seizeable contraband.

Schmerber 2: The "Exigency" Requirement

Schmerber's second prong requires that if the officers do not have a warrant, then there must be "exigent circumstances." The "exigency" requirement can be met by either the "urgent need to preserve evidence"[15] or by medical emergency.

The "exigency" requirement is present when there is an "urgent need to preserve evidence." However, "[i]n the absence of an urgent need to preserve evidence, there cannot be a justification for the significant risks to health and safety posed by [placing a loaded gun to the suspect's head, dragging him to the ground, applying some degree of force to his throat, and having an officer's fingers inserted into his mouth without his consent or cooperation] ... to get a suspect to spit out what is believed to be a mouthful of drugs. It is true that a suspect has no right to refuse an order to disgorge, but refusal does not lift all limits on what is reasonable police behavior."[16] Since the ingested drugs are "susceptible to identification and recovery in supervised, nonviolent post-arrest settings ... [n]o emergency or exigency justifies the use of force at this level to preserve evidence which would be readily (if inconveniently) accessible through nonviolent means."[17] This view of

"exigency" assumes that the evidence would be Seizeable at a later time and that the contraband in the suspect's moth does not cause a medical emergency.

The other form of "exigency" identified under Schmerber is in a "medical emergency" context. In a Michigan Court of Appeals case, the search of a person's mouth was upheld where an officer observed a defendant put an object believed to contain drugs in his mouth. While the officer sought a warrant, the officer forced the suspect to spit out the contents of his mouth when the suspect appeared to become ill and lose consciousness.[18]

The "Safe Path/Exit" Philosophy:

Some courts have found that swallowed drugs can follow only two paths: (1) either they will pass through the person's system intact because of their packaging, or (2) they will be absorbed into the swallower's bloodstream. In either event, the drugs are susceptible to identification and recovery in supervised, nonviolent post-arrest settings[19] (*e.g.* collecting the drugs from a suspect's excrement after the drugs complete their path through the suspect's body). This reasoning assumes the "safe path/exit" philosophy.

However, this "safe path/exit" philosophy is not necessarily always true. In a border smuggling case, where a smuggler had swallowed packets of heroin, a medical doctor testified that "[t]he three packets ... might not pass through this pyloric sphincter [the opening between the stomach and the duodenum of the small intestine] because of the variation in its size in different individuals. ... The average size of a pyloric sphincter is approximately the diameter of a writing pencil. In not knowing the exact size of the various packets, or the exact time they had been placed in the stomach juices, it would not be 'safe medical practice' to await their possible passage event. The rubber containers [containing the heroin] can be destroyed by the action of gastric juices as they are high in hydrochloric acid content. Once the container is decomposed the heroin would be liberated into the stomach. There is risk of this occurring within 48 hours. The result would be death. Once the material is liberated the absorption is rapid."[20]

Schmerber 3: The "Reasonableness" of Extraction Method Requirement

The third Schmerber prong requires that the officers acted "reasonably" and perform in a "reasonable manner" in extracting, or attempting to extract, the contraband from the arrestee's mouth. In Winston v. Lee[21] (a case that involved the surgical removal of a bullet), the United States Supreme Court stated a three-part test to assess the reasonableness of a search procedure.[22] The Winston test requires that the reasonableness of officers' force used to search be measured against:

1. the extent to which the procedure used may threaten the safety or health of the individual,

2. the extent of the intrusion upon the individual's dignitary interests in personal privacy and bodily integrity, and

3. the community's interest in fairly and accurately determining the person's guilt or innocence.

Extractions That "ARE" Reasonable:

A District of Columbia Court has ruled that the use of the Heimlich maneuver to extract evidence from a person's mouth was reasonable.[23] A Michigan court ruled that it was lawful for an officer to apply pressure to the sides of a suspect's jaw to get his mouth open.[24] A California Court found that a police officer's placing his hand on the back of a suspect's head and forcing his chin to his chest, thereby making swallowing difficult while not cutting off breathing was reasonable.[25] Several courts have found that the use of the "lateral vascular neck restraint" to retrieve contraband in a person's mouth was reasonable.[26] In State v. Victor[27], the Ohio Court of Appeals found that an officer's application of pressure to the suspect's neck via the officer's application of his right thumb and forefinger and a firm thrust of the hand which caused the suspect's mouth to open and the suspect to expel two small plastic bags was a reasonable amount of force.

In State v. Jacques[28], the Kansas Supreme Court ruled that the use of Mace to get a suspect to open his mouth was reasonable. The Jacques Court stated that "[t]rying to force open the mouth of a young, healthy, adult male involves substantial risk both to the police and to the defendant. It would seem to us to be more humane to use a minimal amount of Mace rather than brute force."[29] The Court went on to state: "[t]he use of Mace approaches the outer limits of acceptable conduct on the part of the police officers, and we would have no hesitation in holding that the excessive use of Mace would shock our sense of justice. Here, there is no evidence that the defendant suffered any ill effects as the result of the use of Mace, and we cannot say the use of Mace standing alone is so unreasonable as to offend 'a sense of justice.'"[30] In another aerosol weapon case, United States v. Holloway[31], (this time oleoresin capsicum - pepper spray), the United States District Court for the District of Kansas found that the use of pepper spray to extract cocaine from a suspect's mouth was not unreasonable or outrageous.

Extractions That Are "NOT" Reasonable:

A California Appeals Court found that an officer's hitting a suspect on the back of the head with a club to force him to disgorge evidence was "brutal and offensive."[32] Likewise, another California Appeals Court found that an officer's placing a gun to the head of a suspect who had put evidence in his mouth and the officer stating "spit it out or I'll blow your head off" was unreasonable police conduct.[33]

In State v. Hodson[34], the Utah Supreme Court held that evidence obtained by officers from a defendant's mouth through the use of a gun to his head and a forcible neck hold was subject to evidentiary exclusion. The Hodson Court held that the threat to shoot the suspect in the head if he failed to comply with the officer's orders to spit out what was in his mouth was clearly violative of the Fourth Amendment: "[W]e do not tolerate threats to shoot suspects as a legitimate means to extract either information or physical evidence; in the absence of any resistance, violence, or opposition to them, police officers cannot reasonably threaten to hurt people they are searching."[35] The Hodson Court found that the Winston Court's concern about intrusions on bodily integrity and dignitary interests was relevant in the Hodson case: the "Defendant was assaulted with a loaded weapon, dragged to the ground, had some degree of force applied to his throat, and had fingers inserted in his mouth without his consent or cooperation. Thus the weight of the risk and the intrusion under the first two parts of the Winston test was considerable ..."[36]

Choking? The Big Question:

The primary question as to officers' use of force to prevent swallowing of evidence is whether officers may "choke" the suspect to extract the evidence? Whether officers may "choke" a suspect in order to acquire contraband from a person's mouth will largely depend upon what state (jurisdiction) the officers are in. Some state jurisdictions allow (limited) "choking," while other jurisdictions (states), *e.g.* California, flatly forbid choking to extract evidence from a suspect's

mouth.

What is "Choking?"

Whether officers' actions may be considered "choking," is a question of fact to be determined in each case. In general, "choking" occurs when officers place their hands on a person's throat in such a way as to "prevent him from breathing or obstruct the blood supply to his head."[37] One court has held that the application of any force by officers to a suspect's throat sufficient to prevent him from swallowing is the equivalent of choking.[38] Also, a law enforcement "choke hold" (an officer placing his hands on the suspect's throat to prevent the suspect from swallowing evidence) was constitutionally unreasonable, despite the fact that the "choke hold" did not prevent the suspect from breathing or cut off the blood supply to his head.[39]

The "California Rule" - No Choking:

The "California Rule" is that no object that is forced from an accused by means of choking should ever be received into evidence.[40] First, it is important to distinguish between "choking" and placing hands on a person's throat. The "California Rule" forbids choking. However, there are numerous California cases that allow officers to place their hands on a person's throat as long as the placing of the hands is not "choking."

In the California Court of Appeals case of People v. Trevino[41], the Court stated that: "[a]s to the amount of force that is permissible the [California] cases uniformly reject the use of choking as a means of preventing the destruction of evidence or forcing defendant to disgorge it. [citation omitted] ... [T]he [Trevino] officer testified on one occasion that he 'grabbed' [the] defendant by the throat and on another occasion described it as applying pressure sufficient to prevent swallowing but not sufficient to cut off air."[42] The Trevino Court ruled that: "[t]he application of force to a person's throat is [a] dangerous and sensitive ... activity ..."[43] That "type of force, more than any other, is likely to result in violent resistance by the arrestee."[44] The Trevino Court stated that an application of force to the threat sufficient to prevent swallowing is the equivalent of choking.

In addition to California, other jurisdictions have also forbidden the use of choking to acquire evidence a suspect has secreted in his mouth. The Florida Court of Appeals has stated that it is not proper for an officer to choke a suspect to prevent the swallowing of a small amount of drugs.[45] Also, the Louisiana Supreme Court has stated that choking a suspect to retrieve a packet of drugs violated due process and the Fourth Amendment; "We see no evidence in the record ... that this material, if swallowed, would not have traveled through [the] defendant's body without destruction of the evidence or harm to [the] defendant."[46]

Rejection of the "California Rule" - A "Choke" Hold MAY Be Reasonable?

Some courts, in other jurisdictions, have found that the use of a choke hold was reasonable to extract evidence in the suspect's mouth.[47] In (1968) State v. Santos[48], the New Jersey Superior Court in accepting the use of a choke hold to extract evidence stated that "the police have a right short of outright brutality of a shocking nature to apply such reasonable force to a suspect as is fairly necessary to prevent an imminent destruction of evidence of the commission of crime."[49]

In (1977) State v. Williams[50], the Washington Court of Appeals stated: "[w]e subscribe to the view that it is constitutionally reasonable for the police to 'place' their hands on a suspect's throat to prevent the swallowing of evidence, as long as they do not 'choke' him, *i.e.* prevent him from breathing or obstruct the blood supply to his head. ..."[51] The Williams Court went on to state: "[w]e emphasize that the police should be able to take reasonable measures to prevent the destruction of evidence which they are entitled to possess. Specifically, we believe the constitution permits them to place their hands on a suspect's neck to prevent the swallowing of evidence, or to go further

when necessary to overcome active resistance."[52] However, since "Williams did not resist beyond refusing briefly to spit out the drugs. We hold that the police, by choking Williams so he could hardly breathe, exceeded the bounds of reasonableness."[53] The Williams position distinguishes between force which merely prevents swallowing, the legitimate objective of the force, and force that prevents breathing or obstructing the blood supply. In (1984) State v. Taplin[54], a Washington Court of Appeals case that followed Williams, the Court stated "whether a choke hold constitutes excessive force is whether the officer's actions completely obstructed the defendant's breathing."[55] It would be very difficult for officers under the tense and uncertain circumstances of an arrest incident to ensure that the force they apply to the arrestee's throat does not prevent breathing or obstruct the blood supply to the brain, and thus it is clear that any action that could prevent breathing or an obstruction to the blood supply to the brain is strictly off limits.

In one California case[56] where an officer's use of force was found to be appropriate the officer properly pounded on the suspect's back, the officer placed pressure on the suspect's Adam's apple to prevent swallowing, and the officer pried contraband out of the defendant's mouth with a pen.

Unreasonable Extraction = "Suppressed Evidence" = Potential Civil Liability

It is clear that law enforcement officers may use reasonable force in an effort to prevent the loss of evidence.[57] It is equally clear that if the officers' force is excessive then they have engaged in an unconstitutional act which requires suppression of the evidence obtained by the unconstitutional act and have placed themselves and their employers in the unhappy position of facing serious civil rights litigation. By analogy, if an arrest is accomplished by an unnecessary breaking into a person's premises for the purpose of the arrest then the arrest, based upon the illegal entry, necessitates suppression of evidence obtained incident thereto.[58] Likewise, evidence should also be suppressed when the arrest is accomplished by an unconstitutional use of force against the person,[59] and the possibility of civil rights liability looms large.

Waiting for the Inevitable (Abandoned Property and Plain View)

As noted above, under the "safe path/exit" philosophy, once contraband is in an arrestee's excrement the contraband is "abandoned property" In Venner v. State[60], the Maryland Supreme Court found that balloons containing marijuana that were removed from the defendant's excrement by police was "Seizeable evidence." Also, in the "plain view" context, "there is no additional requirement of exigency for the seizure of property that is in plain view, provided that the police officer's presence on the property is lawful and the incriminating character of the evidence is immediately apparent."[61]

Conclusion:

With the expanding abundance of drugs in our society coupled with wrongdoers' increasing resistance to law enforcement efforts there will be more and more instances of arrestees attempting to secret contraband in their mouths. While the law may seem complicated the basic principles guiding officers' conduct are simple:

1. Without more, a person placing "something" in his mouth does not provide officers with sufficient justification to "seize" the person.

2. Once officers have legally arrested a person, then if the officer has a "clear indication" to believe that the person has contraband/evidence in his mouth the officers may use objectively reasonable force to extract the contraband.

The bottom line here, however, is one of causation. A department must have adequate policy,

training, supervision, and discipline on this subject and all of this should be reviewed by legal counsel to make ceratin that state and federal law is not violated. Readers should make no assumptions that the state cases cited above would apply in their own jurisdictions; they must be certain of the case law and statutes that apply to them before adopting policies and training protocols.
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1. State v. Dupree, 319 S.C. 454, 462 S.E.2d 279, 281 (1995).

2. State v. Harris, 505 N.W.2d 724 (Neb. 1993); People v. Bracamonte, 540 P.2d 624, 124 Cal.Rptr. 528 (1975); State v. Williams, 16 Wash.Ct.App. 868, 560 P.2d 1160, 1162 (Wash.App. 1977); and Dupree, 462 S.E.2d at 282.

3. Bracamonte, 540 P.2d at 624. See also State v. Williams.

4. Schmerber v. California, 384 U.S. 757, 770, 86 S.Ct. 1826, 1835, 16 L.Ed.2d 908, 919 (1966).

5. People v. Trevino, 72 Cal.App.3d 686, 140 Cal.Rptr. 243 (1977).

6. A.C. v. State, 630 So.2d 1219 (Fla.App. 2 Dist. 1994).

7. United States v. Robinson, 414 U.S. 218, 94 S.Ct. 467, 38 L.Ed.2d 427 (1973).

8. Soldal v. Cook County, 506 U.S. 56, 66, 113 S.Ct. 538, 546, 121 L.2d.2d 450 (1992).

9. State v. Elkins, 245 Or. 279, 422 P.2d 250 (1966).

10. Elkins, 245 Or. at 284, 422 P.2d at 252.

11. Graham v. Conner, 490 U.S. 386, 109 S.Ct. 1865. 104 L.Ed.2d 443 (1989).

12. Schmerber.

13. Trevino, and Foxall v. State, 157 Ind.App. 19, 298 N.E.2d 470 (1973).

14. Dupree, 462 S.E.2d at 282; quoting Schmerber.

15. State v. Hodson, 907 P.2d 1155 (Utah 1995).

16. Id. at 1158-59.

17. Id. at 1158.

18. Wayne County Prosecutor v. Recorder's Court Judge, 385 N.W.2d 652 (Mich.App. 1986).

19. See Williams.

20. Blefare v. United States, 362 F.2d 870, 873-74 (9th Cir. 1966).

21. Winston v. Lee, 470 U.S. 753, 105 S.Ct. 1611, 84 L.Ed.2d 662 (1985).

22. Winston, 470 U.S. at 761-62, using the framework of Schmerber.

23. Jones v. United States, 620 A.2d 249 (D.C.App. 1993).

24. People v. Halloway, 416 Mich. 288, 330 N.W.2d 405 (1982).

25. People v. Lara, 166 Cal.Rptr. 475 (Cal.App. 1980).

26. State v. Lomack, 545 N.W.2d 455 (Neb.App. 1996); and State v. Thompson, 244 Neb. 189, 505 N.W.2d 673 (Neb. 1993). See also Estwick v. City of Omaha, 9 F.3d 56 (8th Cir. 1993).

27. State v. Victor, 601 N.E.2d 648 (Ohio App. 8 Dist. 1991), *cert. denied*, 113 S.Ct. 292 (U.S.Ohio 1992).

28. State v. Jacques, 2 Kan.App.2d 277, 579 P.2d 146 (Kan. 1978), *modified by*, 225 Kan.38, 587 P.2d 861 (1978).

29. Jacques, 2 Kan.App.2d at 287, 579 P.2d at 155.

30. Id.

31. United States v. Holloway, 906 F.Supp. 1437 (D.Kansas 1995).

32. People v. Parham, 33 Cal.Rptr. 497, 384 P.2d 1001 (1963).

33. People v. Allen, 150 Cal.Rptr. 568 (Cal.App. 1978).

34. See Hodson.

35. Id. at 1157.

36. Id. at 1158.

37. Williams, 16 Wash.Ct.App. at 872, 560 P.2d at 1163.

38. See Trevino.

39. People v. Jones, 257 Cal.Rptr. 500 (Cal.Ct.App. 1989).

40. See generally, People v. Taylor, 13 Cal.Rptr. 73, 76 (Cal.App. 1961); People v. Martinez, 278 P.2d 26 (Cal.App. 1954); State v. Williams; State v. Tapp, 353 So.2d 265 (La. 1977). See also, People v. Jones, 209 Cal.App.3d 725, 257 Cal.Rptr. 500 (1989); People v. Parham; People v. Sanders, 268 Cal.App.2d 802, 74 Cal.Rptr. 350 (1969); People v. Erickson, 210 Cal.App.2d 177, 26 Cal.Rptr. 546 (1962); People v. Taylor, 191 Cal.App.2d 817, 13 Cal.Rptr. 73 (1961); People v. Brinson, 191 Cal.App.2d, 12 Cal.Rptr. 625 (1961); People v. Martinez, 130 Cal.App.2d 54, 278 P.2d 26 (1954); and People v. Trevino.

41. See Trevino.

42. Id. 72 Cal.App.3d at 691.

43. Id.

44. Id.

45. Locke v. State, 588 So.2d 1082 (Fla.Dist.Ct.App. 1991).

46. State v. Tapp, 353 So.2d 265 (La.1977).

47. See generally, United States v. Harrison, 432 F.2d 1328 (D.C.Cir. 1970); Espinoza v. United States, 278 F.2d 802 (5th Cir. 1960) *cert. denied*, 364 U.S. 827 (1960); State v. Jacques, 2 Kan.App.2d 277, 587 P.2d 861 (Kan. 1978), *modified by*, 225 Kan.38, 587 P.2d 861 (1978); State v. Lewis, 115 Ariz. 530, 566 P.2d 678 (Ariz. 1977); Salas v. State, 246 So.2d 621 (Fla.App. 1971); Hernandez v. State, 548 S.W.2d 904 (Tex.Crim.App. 1977); State v. Winfrey, 359 So.2d 73 (La. 1978); State v. Harris, 244 Neb, 289, 505 N.W.2d 724 (1993); and State v. Young, 15 Wash.App. 581, 550 P.2d 689 (1976).

48. State v. Santos, 101 N.J.Super 98, 243 A.2d 274 (N.J. Super. 1968), *cert. denied*, 244 A.2d 301 (N.J. 1968).

49. Id. 101 N.J.Super at 102, 243 A.2d at 276.

50. See Williams.

51. Id. 16 Wash.Ct.App. at 872, 560 P.2d at 1163.

52. Id.

53. Id.

54. State v. Taplin, 36 Wash.App. 664, 676 P.2d 504 (1984).

55. Taplin, 36 Wash.App. at 666, 676 P.2d at 506.

56. People v. Fulkman, 235 Cal.App.3d 555, 286 Cal.Rptr. 728 (1991).

57. See generally, Espinoza v. United States, 278 F.2d 802 (5th Cir. 1960); United States v. Harrison, 432 F.2d 1328 (D.C.Cir. 1970); State v. Lewis, 115 Ariz. 530, 566 P.2d 678 (1977); People v. Bracamonte; Foxall v. State; State v. Santos; Hernandez v. State, 548 S.W.2d 904 (Tex.Crim.App. 1977); and State v. Williams.

58. Ker v. California, 374 U.S. 23, 83 S.Ct. 1623, 10 L.Ed.2d 726 (1963).

59. Roose v. State, 759 P.2d 478 (Wyo. 1988).

60. Venner v. State, 367 A.2d 949 (Md. 1977).

61. G & G Jewelry, Inc. v. City of Oakland, 989 F.2d 1093 (9th Cir. 1993, interpreting and applying Texas v. Brown, 460 U.S. 730, 103 S.Ct. 1535, 75 L.Ed.2d 502 (1983).