

Michael C. Gross  
DWI Case Law Update

# *Cortez* and driving on shoulder of road



Statute reqs driver to cross over the line, not merely to cross onto or touch it.

Momentarily touching the fog line does not constitute driving on the improved shoulder.

# *Speck* and failure signal in optional exit lane



If driving in lane that's not "Exit Only"  
lane and lane connects to optional exit ramp,  
must signal to indicate intention to exit.

# *Bernard* and driving on lane divider



## No reasonable suspicion intoxication:

- Driving at 0230
- Not speeding
- Swerving lane to lane (not on video)
- D stopped normally (welfare check)
- Video showed out lane 2X inches

*Ivey* and no custody for hospital treatment





D not in custody: *Miranda* not req'd

- C died so PC arrest D
- D not told free to leave
- D not forcibly restrained
- D incapacitated by injuries
- D was told not under arrest

*Smith* and traffic stop after door banging



No reasonable suspicion to stop car:

- Banging on door @ 2018 (length?)
- Entry refused (relationship?)
- No threats by D
- D left in silver Mercedes
- 911 call
- No traffic violation

# *Villalobos* and detention in suspicious place



Accident scene D fled suspicious place:

- Short time from accident to detention
- PO reasonably believed D DWI
- D in accident and fled scene
- So warrantless arrest proper

# *Ellis* and FBI/DPS database reliable for stop



“Unconfirmed” meaning:

- PO used 10,000's times
- Unconfirmed = no insurance
- So reasonable suspicion to stop car

## Key evid in database cases:

- Objective info about database
- How it works; timeliness of info
- Error rate
- PO's knowledge re its reliability



# *Binkley* and state car insurance database



Database return = no insurance?

- “Undocumented” “Unavailable”
- PO said = no insurance; UNK why
- PO said could also = insurance
- Weekly database error rate 33%
- Database coordinator UNK why 33%
- No reasonable suspicion to stop car

# *Garcia* and evid-destroying med treatment



## Warrantless blood draw before IV:

- OK if evid-destroying treatment now
- Treatment stopped before blood draw
- Not severe accident
- SW sought at beginning of treatment
- Unreas stop SW process to draw blood

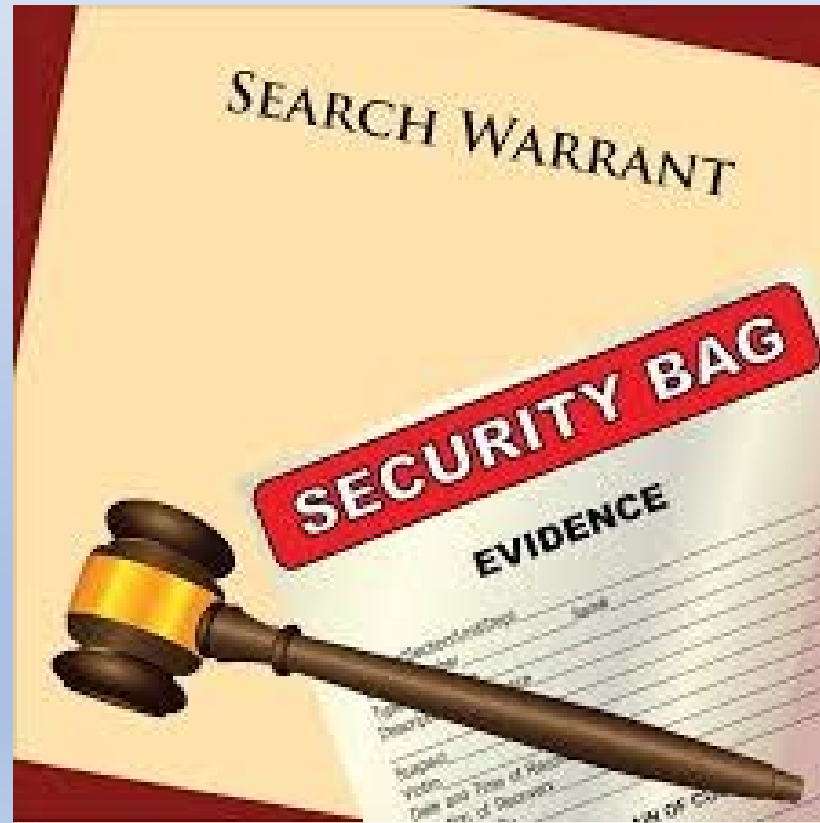
*Ruiz* and no exigency if unconscious



## No exigency for warrantless blood draw:

- Accident and fled scene
- Unconscious in nearby field
- Unconscious rest of night
- Conclusory stmt re can't spare PO for SW
- PO st'd alcohol dissipates over time

# *Arellano* and facially invalid SW for blood



## Facially invalid SW for blood:

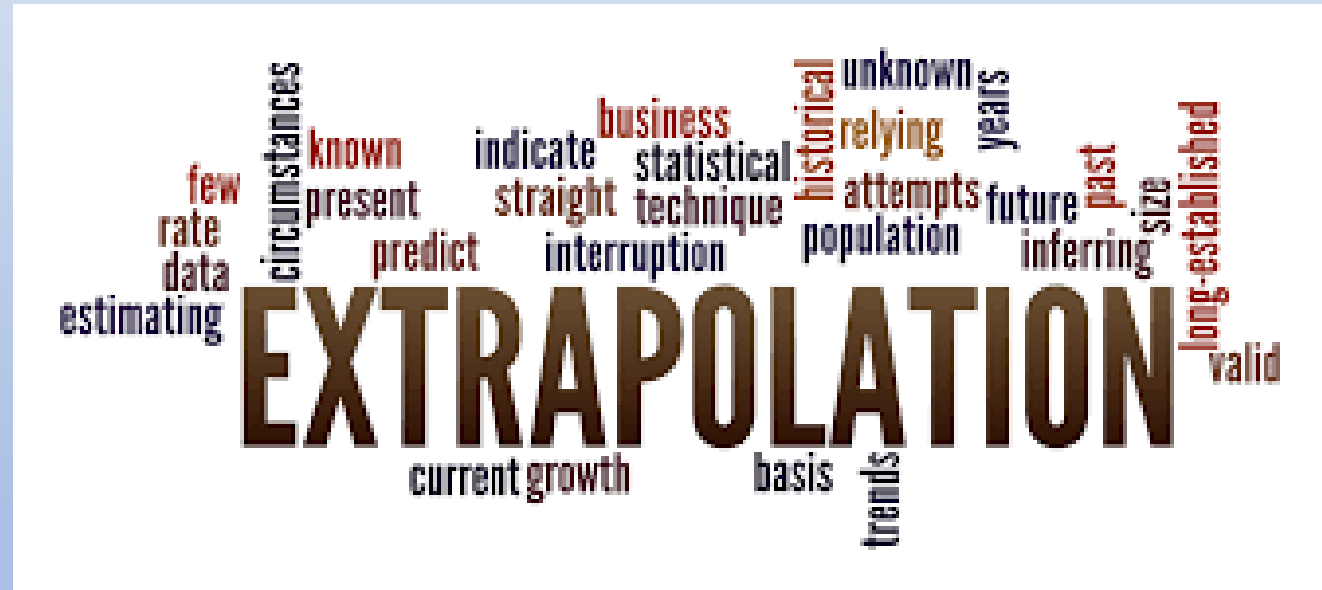
- 2015 TCCP 18.05 reqs legible mag name
- SW illegible mag name
- SW affid illegible mag name
- No good faith exception b/c reqs valid SW



*Oliva* and prior DWI not element of DWI 2d

- Prior DWI conv is not element of MA DWI
- No evid D's prior admitted during guilt phase

# Corley and retrograde extrapolation



Retrograde extrapolation was reliable:

- Ability explain/apply this science
- Recognize inherent risks this science
- 1hr between stop/breath test
- Knew amt food/when last ate
- Knew time last drink
- Knew results breath tests

# *Bowman* and IAC fail get payroll records



Unknown if got payroll records:

- Exposed officer's financial motive
- Failed get officer's payroll records
- Inadequate investigation
- Unreas professional judgment no recs
- I don't remember so no IAC
- Beware