

## RESOLUTION 10-04-2017

### DIGEST

#### Vehicles: Exclusion of Evidence from Search and Specified Exceptions

Adds Evidence Code section 1110 to exclude evidence obtained from a vehicle search unless consent, a warrant, or imminent threat of harm exists.

### RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

#### History:

No similar resolutions found.

#### Reasons:

This resolution adds Evidence Code section 1110 to exclude evidence obtained from a vehicle search unless consent, a warrant, or imminent threat of harm exists. This resolution should be approved in principle because, absent an arrest, it makes sense to exclude information obtained by a warrantless search of a person stopped for a traffic violation.

“In California, issues relating to the suppression of evidence derived from governmental searches and seizures are reviewed under federal constitutional standards.” (*People v. Macabeo* (2016) 1 Cal.5th 1206, 1212, quoting *People v. Troyer* (2011) 51 Cal.4th 599, 605.) The *Macabeo* Court applied existing federal standards to conclude that the search of a cell phone without a warrant was not authorized following the traffic stop of a bicyclist who consented to the removal of the contents of his pockets, but was never asked for consent to search his cell phone. (*People v. Macabeo, supra*, 1 Cal.5th at pp. 1213-1219.) The Supreme Court held the lower courts erred in failing to suppress child pornographic images on defendant’s cell phone found as a result of the search. (*Id.*, at pp. 1219, 1226.)

*Macabeo* shows that application of federal constitutional standards for searches and seizures of property incident to an arrest, and the suppression of such evidence obtained as a result of a violation of those standards, works. This approach provides certainty of law with the flexibility necessitated by the particular facts of each case.

The resolution proposes that *Macabeo* be codified out of a concern that subsequent judicial decisions may limit its scope or overrule it. While this concern overlooks the fact that *Macabeo* is a California Supreme Court decision that lower courts must follow (*Auto Equity Sales, Inc. v. Superior Court of Santa Clara County* (1962) 57 Cal.2d 450, 455.), a similar concern exists for all California search and seizure cases that may be affected and informed by development of federal constitutional law, and for that reason should be approved.

## TEXT OF RESOLUTION

**RESOLVED** that the Conference of California Bar Associations recommends that legislation be sponsored to add Evidence Code section 1110 to read as follows:

1 § 1110

2 Pursuant to California Constitution, Article 1, Section 13, in any criminal action evidence  
3 obtained as a result of a search of a person or a vehicle incident to a stop for an infraction shall  
4 be inadmissible, except in the following circumstances:

5 (1) The person stopped or the owner of the vehicle, or a person in actual possession of the  
6 vehicle with the owner's permission, consents in writing or to the search, or orally to the search,  
7 provided that an oral consent is preserved on a recording instrument;

8 (2) The search is authorized by a warrant issued upon probable cause; or

9 (3) The search is necessary to protect persons from an imminent threat of harm.

(Proposed new language underlined; language to be deleted stricken)

**PROPOSERS:** Bar Association of San Francisco

## STATEMENT OF REASONS

The Problem: The law regarding searches following stopping a person or vehicle (mostly the latter) for a traffic infraction is confusing, although generally favors law enforcement. In a December 2016 decision, the California Supreme Court provided some clarification of the issue by limiting searches following stopping a person for a traffic infraction. (*People v. Macabeo* (2016) 1 Cal.5th 1206). The Court held that, unless the person consents to a search, or some other exception applies (such as the person being on probation), the police may not search a person after stopping that person for a traffic infraction, unless the police first obtain a search warrant for probable cause. The Court pointed out that police may not circumvent the limitation imposed by arresting the detained person, because the Vehicle Code permits the arrest of a person charged with an infraction only under limited circumstances. *Macabeo* should be protected from subsequent judicial decisions limiting its scope or overruling it.

The Solution: In addition to codifying a good court decision, the resolution would add another clarification to the law. Although the *Macabeo* case involved citing and searching a person on a bicycle for running a stop sign, the logic of the case applies equally to stopping a motorist for the same offense and searching the motorist's vehicle. This resolution would make that clear.

The resolution would greatly reduce the number of vehicle searches incident to traffic stops, and thereby relieve society and the court system of the burden of prosecuting minor drug offenses (falsely with some frequency due to the unreliability of field drug tests). In addition, there is considerable evidence that police are more likely to search vehicles of minorities when they are stopped for minor traffic violations; yet police discover drugs in vehicles about the same percentage of the time regardless of the ethnicity of the driver. (S. LaFreniere and A.W. Lehren. "The Disproportionate Risks of Driving While Black." *New York Times*, 10/24/2015. p.1a [<https://www.nytimes.com/2015/10/25/us/racial-disparity-traffic-stops-driving->

black.html?\_r=0.]). The resolution would alleviate that problem, as well.

**IMPACT STATEMENT**

The resolution does not affect any other law, statute or rule other than those expressly identified.

**CURRENT OR PRIOR RELATED LEGISLATION**

None known.

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