

ENDORSED FILED
SAN MATEO COUNTY

OCT - 5 2005

Clerk of the Superior Court
By C.R. Hernandez
DEPUTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN MATEO
APPELLATE DIVISION

PEOPLE OF THE STATE OF CALIFORNIA,

Respondent and Plaintiff

vs.

JOHN BARLOW

Appellant and Defendant

Case No.: AD - 4813

ORDER FOR FURTHER BRIEFING AND
RESUBMISSION OF CASE

Counsel are ordered to address and brief the following issues in the above entitled matter:

1. This issue is addressed to both Appellant and Respondent: In light of society's heightened concerns about airline safety didn't Appellant impliedly consent to a search of his luggage when he submitted his luggage to the airline for transportation since he could have declined to travel on the airline? Counsel are ordered to survey all jurisdictions, whether federal or state, to determine if any other cases on this subject or analogous subjects¹ have been decided on this specific point, regardless of the specific motive of the examiner or regardless of the administrative scheme established.

¹ For example, driving under the influence checkpoint stops.

1 2. This issue is addressed to Appellant: Appellant claims in his reply brief on page 6 that “[t]he scheme
2 at issue herein, however, has not been similarly reviewed – this is a case of first impression.” What is the
3 scheme and why does Appellant think it is a case of first impression?
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5 3. This issue is addressed to both Respondent and Appellant: Why shouldn’t the “administrative search
6 scheme” that was apparently employed here be examined by counsel in detail to determine what it
7 consisted of, whether those who examined the luggage (first apparently by x-ray and then later by hand)
8 complied with the scheme in place, and whether they deviated from it and why? Must there be evidence
9 presented about the existence of an “administrative scheme” that otherwise deviates from the traditional
10 requirement of probable cause to search? How detailed may counsel explore the parameters of the
11 “administrative scheme?” How detailed may counsel explore the possibility of deviation from it in the
12 specific case before the magistrate? In a sense the concept might be similar to whether lab personnel
13 complied with the procedures established with respect to DNA testing or police officers complied with
14 the procedures established with respect to PAS devices, etc.
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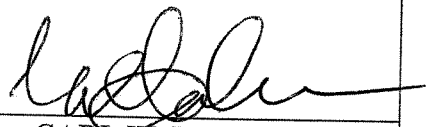
16 4. This issue is addressed to both Respondent and Appellant: Did Appellant waive the due process issue
17 raised in his pleadings by failing to “writ” the rulings on the disputed discovery issues, e.g. the
18 subpoenaed TSA training information?
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20 5. This issue is addressed to both Respondent and Appellant: Respondent contends that the magistrate
21 could have employed “[t]he traditional mechanisms of protective orders and in camera reviews”² to
22 “accommodate the state’s need for confidentiality.” What specifically could be done in the context of
23 this case? What would the format be? What could be examined? What issues should be raised by the
24 magistrate *in camera*? How should he or she proceed?
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28 ² See Appellant’s Reply Brief page 12.

1 Counsel are ordered to submit to the appellate department one original brief and four copies
2 along with copies of all out-of-state authorities cited by them in their respective appellate briefs
3 consistent with California Rule of Court 313(h).³ Given the potential complexity of these issues counsel
4 are ordered to submit such briefs by December 16, 2005 with any reply briefs filed three (3) weeks
5 thereafter. Upon receipt of the reply briefs the matter will be taken under submission as of that date of
6 receipt.

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10 Dated this October 5, 2005
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15 CARL W. HOLM
16 PRESIDING JUDGE
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³ This Court recognizes the rule is applicable to civil cases but given the anticipated volume of out-of-state authorities that might be cited we are asking for this assistance.