

# SUPREME COURT COPY



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August 22, 2019

Jorge E. Navarrete, Clerk  
Supreme Court of the State of California  
350 McAllister Street  
San Francisco, CA 94102-4797

SUPREME COURT  
FILED

AUG 23 2019

Jorge Navarrete Clerk

Deputy

RE: *People v. Lopez*  
Supreme Court California Case No. S238627  
Supplemental Letter Brief of New Authorities

Dear Mr. Navarrete:

The People hereby submit the following new authorities pursuant to California Rules of Court, rule 8.520(d):

Recently, this Court decided *People v. Ovieda* (Aug. 12, 2019, S247235) \_\_\_ Cal.5th \_\_\_; [2019 WL 3771911] which quoted *Cady v. Dombrowski* (1973) 413 U.S. 433, 441:

“Because of the extensive regulation of motor vehicles and traffic, and also because of the frequency with which a vehicle can become disabled or involved in an accident on public highways, the extent of police-citizen contact involving automobiles will be substantially greater than police-citizen contact in a home or office. . . . Local police officers, unlike federal officers, frequently investigate vehicle accidents in which there is no claim of criminal liability and engage in what, for want of a better term, may be described as community caretaking functions, totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute.” [Citation.] The court observed, “The constitutional difference between searches of and seizures from houses and similar structures and from vehicles stems both from the ambulatory character of the latter and from the fact that extensive, and often noncriminal contact with automobiles will bring local officials in ‘plain view’ of evidence, fruits, or instrumentalities of a crime, or contraband.” [Citation.]

(*Id.* at p. \*8.)

This Court added, “The court has repeatedly acknowledged that vehicles and homes are afforded different levels of constitutional protection. [Citations.]” (*Id.* at p. \*9.)

This continuing recognition of the lower expectation of privacy in automobiles undermines Lopez's assertion that drivers enjoy "significant privacy expectations" in their vehicle. (Opening Brief, at p. 16.)

This Court also stated in *Oveida* that objective facts are required to elevate speculation to reasonable suspicion. (*People v. Oveida, supra*, \_\_\_ Cal. 5th \_\_\_ [2019 WL 3771911, \*8].) This holding is relevant to Lopez's argument that Officer Moe had viable alternatives to searching for identification. (Opening Brief, at pp. 22-27.) Lopez implicitly bases her position upon assumptions not supported by the record about Officer Moe's ability to access records. The only bona fide way to rule out unlawful impersonation is for the officer to see a photograph for comparison. Officer Moe received all of his information in the case from dispatch. (Reporter's Transcript [RT] 28-30, 36.) There is simply no showing upon this record that Officer Moe had the equipment necessary to run a license check and observe a picture of any individual. Without supporting objective facts, Lopez's speculation about the alternatives that might have been available should not be considered. (*People v. Oveida, supra*, \_\_\_ Cal. 5th \_\_\_ [2019 WL 3771911, \*8].) Officer Moe appropriately sought out objective facts to support a reasonable suspicion of criminal activity.

Furthermore, the New Jersey Supreme Court recently decided *State v. Terry* (2018) 232 N.J. 218 (179 A.3d 378), which upheld a warrantless search for registration. In *Terry*, the New Jersey high court observed that documentation searches had been endorsed in that state since 1967. (*Id.* at p. 389.) The *Terry* court specifically endorsed this Court's opinion in *In re Arturo D.* (2002) 27 Cal.4th 60 and cited California cases dating back to 1972. (*State v. Terry, supra*, 179 A.3d at p. 392.) The *Terry* court described the *Arturo D.* search exception as supported by the majority of states and the better view. (*State v. Terry, supra*, 179 A.3d at p. 392 ["We find the majority view, favoring a limited registration exception, more persuasive because it balances legitimate governmental interests in highway safety with individual rights."].)

In *Arturo D.*, this Court cited federal circuit authority, a learned treatise, and several sister state's opinions upholding the long-standing authority that document searches are reasonable. (*In re Arturo D., supra*, 27 Cal.4th at p. 76, fn. 16.) The *Terry* court agreed citing the same federal authority and treatise. (*State v. Terry, supra*, 179 A.3d at p. 391.) The *Terry* court also cited support from Illinois, New York, North Carolina, Oregon, West Virginia, and Kansas. (*Id.* at p. 391-392.)

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These recent authorities continue to support the Court of Appeal decision below that the search for identification documentation here was reasonable.

Sincerely,

A handwritten signature in black ink that reads "R. Todd Marshall". The signature is written in a cursive style with a large, prominent "M".

R. TODD MARSHALL  
Deputy Attorney General

For XAVIER BECERRA  
Attorney General

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**DECLARATION OF SERVICE BY E-MAIL and U.S. Mail**

Case Name: **People v. Lopez**  
No.: **S238627**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On August 22, 2019, I served the attached **AUGUST 22, 2019 LETTER TO SUPREME COURT OF THE STATE OF CALIFORNIA RE: ADDITIONAL AUTHORITIES** by transmitting a true copy via electronic mail. In addition, I placed a true copy thereof enclosed in a sealed envelope, in the internal mail system of the Office of the Attorney General, addressed as follows:

Solomon R. Wollack  
Attorney at Law  
P. O. Box 23933  
Pleasant Hill, CA 94523  
(Attorney for Appellant)  
(sent via e-mail to [sol@wollack.com](mailto:sol@wollack.com)  
and USPS)

Southwestern Law School  
3050 Wilshire Boulevard  
Los Angeles, CA 91403  
(via USPS only)

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on August 22, 2019, at Sacramento, California.

P. Robles  
\_\_\_\_\_  
Declarant

\_\_\_\_\_  
Signature