

One Minute Brief

LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
DISTRICT ATTORNEY NATHAN J. HOCHMAN



da.lacounty.gov •    @LADAOoffice •   @LACountyDA

NUMBER: 2026-06
BY: Matthew Brown

DATE: March 31, 2026
TOPIC: CalECPA

ISSUE: Good-faith belief that a person is an “authorized possessor” under CalECPA

Effective January 1, 2016, the California Electronic Communications Privacy Act (CalECPA) provides increased protections for electronic information and devices. Among its protections, law enforcement may access an electronic device, such as a cell phone, only in listed situations, including with a warrant or “[w]ith the specific consent of the authorized possessor of the device.” (Pen. Code, § 1546.1, subds. (a)(3), (c)(1), (c)(4).) An “authorized possessor” is the person who possesses the device and is either the “owner” or “has been authorized to possess the device by the owner of the device.” (Pen. Code, § 1546, subd. (b).) CalECPA also allows “any person” to move to suppress evidence obtained in violation of its provisions under section 1538.5. (Pen. Code, § 1546.4, subd. (a).)

Sometimes the “authorized possessor” of a device is unclear. For example, in *People v. Clymer* (2024) 107 Cal.App.5th 131, 140–141, police searched devices of a deceased person at the urging of his parents. Under the circumstances, the court found they were the authorized possessors because the decedent was the devices’ owner, he lived with his parents, after his death the parents had physical possession of the devices, and they knew the passcodes.

But what if police believe someone is an authorized possessor, but that turns out to be wrong? If the belief is *reasonable*, the good-faith exception to the warrant requirement can save a consent search.

While CalECPA does not state whether traditional exceptions to the warrant requirement apply, such as the good-faith exception, in *Price v. Superior Court* (2023) 93 Cal.App.5th 13, 23–24, the court held that the good-faith exception applies to CalECPA *warrants*. Another court has now held that the good-faith exception applies to an authorized-possessor determination.

In *People v. Anderson and Allen* (March 13, 2026, H051905 & H051906) ___ Cal.App.5th ___, two men robbed a marijuana grower in his garage at gunpoint. After the robbery, neighbors heard gunshots and police later found a man, Lampley, lying on the ground in a nearby yard. Lampley had a phone, a gun, and a bag of marijuana on his body, and so he was likely one of the robbers. Lampley’s mother gave police Lampley’s phone number and gave them permission to search the phone. At the preliminary hearing, an officer testified that Lampley’s mother was his “next of kin”; as a supporting fact, they later released Lampley’s property to her. One week later, police extracted the phone’s data and found messages implicating defendant Allen, in turn leading to other evidence as well.

One of the defendants moved to suppress the phone evidence under CalECPA, arguing that there was insufficient evidence that Lampley's mother was an "authorized possessor" of the phone. The trial court denied the motion and the Court of Appeal affirmed. The Court of Appeal did not decide whether the police violated CalECPA; rather, it held that even if they had, they acted in good faith.

The court did **not** determine whether Lampley's mother was an authorized possessor under CalECPA. Rather, agreeing with the reasoning of *Price*, the court held that police acted reasonably under the circumstances by believing that she was:

When the officer obtained Lampley's mother's consent to search the phone, he informed Lampley's mother that Lampley was deceased. Because Lampley had died, he was no longer the authorized possessor of the phone. At that point, law enforcement acted in objective good faith in believing Lampley's mother as Lampley's "next of kin" was an authorized possessor of the phone. Law enforcement understood Lampley's mother to be Lampley's "next of kin," and they later released other personal property of Lampley to Lampley's mother. Nothing in the appellate record indicates anyone else besides Lampley's mother had a stronger claim to possession of the phone. Any deterrence rationale does not support suppressing the evidence in situations where law enforcement reasonably believes a family member is the authorized possessor of a deceased person's electronic device. In addition, as the Attorney General notes, no case law existed concerning the definition of "authorized possessor" at the time law enforcement obtained consent to search the phone, and nothing in the statutory definition should have caused law enforcement to believe Lampley's mother was not authorized to consent to the phone's search.

(*People v. Anderson & Allen*, *supra*, slip opn. at p. 12.) Of note, the court distinguished cases holding that a parent cannot consent to search a child's property (*In re Scott K.* (1979) 24 Cal.3d 395; *People v. Daniels* (1971) 16 Cal.App.3d 36) because those cases did not involve possession of a *deceased* child's property.

BOTTOM LINES: The good-faith exception to the warrant requirement may apply to reasonable determinations that a person is an "authorized possessor" of an electronic device under CalECPA.

Law enforcement: Notwithstanding the above, **get a warrant anyway**. If you need to rely on consent in a pinch, gather as many facts as you can to show the person giving consent is the *owner* or has *permission of the owner* to access it. Remember, in *People v. Anderson and Allen*, the mother was *next of kin*, not just a parent, though even that was not well-established. Ask more questions.

Prosecutors: The prosecution has the burden to show that the good-faith exception applies. (*People v. Smith* (2020) 46 Cal.App.5th 375, 382.) *People v. Anderson and Allen* involved **very thin evidence**; if you need to establish at least a good-faith belief that a person was an authorized possessor, marshal as many facts as you can at the hearing.

This information was current as of publication date. It is not intended as legal advice. It is recommended that readers check for subsequent developments and consult legal advisors to ensure currency after publication. Local policies and procedures regarding application should be observed.