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Arrest, Search and Seizure, and Confession Issues

Vehicle Checkpoint Whose Primary Purpose Was to Interdict Illegal Drugs Violated Fourth Amendment

City of Indianapolis v. Edmond, 121 S. Ct. 447, 148 L. Ed. 2d 333, 68 Crim. L. Rep. 194 (28 November 2000). Officers set up a vehicle checkpoint whose primary purpose was to interdict illegal drugs. An officer would approach a vehicle that was stopped at the checkpoint, advise the driver that he or she is being stopped briefly at a drug checkpoint, and ask the driver to produce a license and registration. The officer would also look for signs of impairment and conduct an open-view examination of the vehicle from the outside. A drug dog would walk around the outside of the vehicle.

The Court ruled that this checkpoint violated the Fourth Amendment because its primary purpose was to interdict illegal drugs. The court noted that it had directly or indirectly in prior cases approved of suspicionless seizures of vehicles at checkpoints to intercept illegal aliens [United States v. Martinez-Fuerte, 428 U.S. 543, 96 S. Ct. 3074, 49 L. Ed. 2d 1116 (1976)], to remove impaired drivers from highways [Michigan Dept. of State Police v. Sitz, 496 U.S. 444, 110 S. Ct. 2481, 110 L. Ed. 2d 412 (1990)], and to check driver's licenses and vehicle registrations [dicta in Delaware v. Prouse, 440 U.S. 648, 99 S. Ct. 1391, 59 L. Ed. 2d 660 (1979)]. The rationale in *Martinez-Fuerte* was based on the need to police the United States border and the rationales in both *Sitz* and *Prouse* were based on highway safety. The Court declined to approve a checkpoint whose primary purpose was to detect evidence of ordinary criminal wrongdoing, such as illegal drugs. The Court noted that a checkpoint set up for an emergency—such as thwarting an imminent terrorist attack or to catch a dangerous fleeing criminal—would likely not violate the Fourth Amendment.

The Court rejected the argument that the ruling in Whren v. United States, 517 U.S. 806, 116 S. Ct. 1769, 135 L. Ed. 2d 89 (1996) (officer's motivation in stopping vehicle is irrelevant when probable cause exists for traffic violation) bars inquiry into the primary purpose of a checkpoint. The Court noted that the *Whren* ruling does not apply to suspicionless inventory and administrative searches, and the Court stated that it also does not apply to an inquiry into the primary purpose of a checkpoint. However, the Court stated that the inquiry about primary purpose is limited to "the programmatic level and is not an invitation to probe the minds of individual officers at the scene." [Note: Federal appellate cases have applied the *Whren* ruling to seizures based on reasonable suspicion—see, for example, United States v. Dumas, 94 F.3d 286 (7th Cir. 1996)—and the Court did not address that issue in this case.]

The Court stated in footnote two of its opinion that it need not decide in this case whether a state may establish a checkpoint program with the primary purpose of checking licenses or impaired driving and a secondary purpose of interdicting illegal drugs.

Use of Thermal Imager Aimed at Private Home from Public Street to Detect Relative Amounts of Heat Within Home Constitutes a "Search" Under Fourth Amendment

Kyllo v. United States, 121 S. Ct. 2038, 150 L. Ed. 2d 94, 69 Crim. L. Rep. 321 (11 June 2001). A law enforcement officer suspected that marijuana was being grown in a person's home. The officer used a thermal imager to scan the home while in his vehicle on a public street. Based on tips from informants, utility bills, and the results of the thermal imaging, a judge issued a search warrant to authorize a search of the home, which revealed more than 100 marijuana plants. The Court ruled that the use of a thermal imager aimed at a private home from a public street to detect the relative amounts of heat within a home constitutes a "search" under the Fourth Amendment. The Court stated that obtaining by sense-enhancing technology any information concerning the interior of a home that could not otherwise have been obtained without physical intrusion into a constitutionally-protected area constitutes a search—at least when, as in this case, the technology in question is not in general public use. (Note: The Court's ruling requires probable cause and a search warrant to conduct thermal imaging of a home, absent exigent circumstances to excuse the requirement of a search warrant.)

Officers Did Not Violate Fourth Amendment When They Prevented Defendant from Reentering His Home While They Sought Search Warrant to Search Home for Marijuana

Illinois v. McArthur, 121 S. Ct. 946, 148 L. Ed. 2d 838, 68 Crim. L. Rep. 449 (20 February 2001). Officers accompanied the defendant's wife to a trailer, where she lived with the defendant, so she could peacefully remove her belongings. After collecting her belongings and leaving the trailer, she told the officers that she had seen the defendant slide some marijuana under the couch. An officer knocked on the door, told the defendant what his wife had said, and asked consent to search the trailer. The defendant refused. The officer then told another officer to get a search warrant and told the defendant that he could not reenter the trailer without an officer accompanying him. A search warrant was obtained within two hours. The Court ruled that the officers' action in preventing the defendant from reentering the trailer was reasonable under the Fourth Amendment. First, the officers had probable cause to believe that the trailer contained illegal drugs. Second, they had good reason to fear that the defendant, unless restrained, would destroy the drugs before they could return with a search warrant. Third, the officers imposed a significantly less restrictive restraint than arresting the defendant or searching the trailer without a warrant. Fourth, they imposed the restraint for a limited period of time, two hours.

State Hospital's Nonconsensual Testing of Pregnant Patients' Urine for Cocaine to Obtain Evidence for Law Enforcement Purposes Violated Fourth Amendment, When Testing Was Done Without a Search Warrant

Ferguson v. City of Charleston, 121 S. Ct. 1281, 149 L. Ed. 2d 205, 68 Crim. L. Rep. 567 (21 March 2001). A Charleston, South Carolina prosecutor set up a joint program with a state hospital concerning pregnant patients who were suspected of using cocaine. Selected pregnant patients would be tested for cocaine through a urine screen. A chain of custody would be followed, presumably to make sure that test results could be used in a criminal prosecution against the patients for child neglect or drug offenses. The threat of law enforcement involvement and prosecution was set forth in two protocols, the first dealing with the identification of cocaine use during pregnancy and the second dealing with the identification of cocaine use after labor. Plaintiffs, women who were patients and had been arrested after testing positive for cocaine, sued various public officials for Fourth Amendment and other constitutional violations. The case before the United States Supreme Court was decided under the following assumed facts: (1) that the patients had not consented to the urine screen for cocaine, and (2) there was no reasonable suspicion, probable cause, or a search warrant used to obtain the urine or to conduct the urine screen.

The Court ruled, distinguishing Skinner v. Railway Labor Executives' Association, 489 U.S. 602, 109 S. Ct. 1402, 103 L. Ed. 2d 639 (1989) and other "special needs" cases upholding suspicionless searches divorced from general law enforcement interests, that a state hospital's testing, without a search warrant, of patients' urine for cocaine to obtain evidence for law enforcement purposes violated the Fourth Amendment. The Court rejected the state's argument that the searches of the patients' urine were justified by non-law-enforcement purposes, based on the facts in this case. The Court stated that while the program's ultimate goal may have been to get the patients into substance treatment and off of drugs, the immediate objective of the searches was to generate evidence for law enforcement purposes to reach that goal.

[Note: The Court indicated that its ruling does not adversely affect laws or ethics requiring medical personnel to report to law enforcement agencies child abuse, gunshot wounds, or patients' threats to themselves or others. This ruling also would not make it unconstitutional when medical personnel take a vial of blood from a patient and give it to law enforcement officers at their request when there is probable cause and exigent circumstances—for example, the patient was injured in a car accident in which there was evidence of the patient's impaired driving.]

Fourth Amendment Does Not Bar an Officer from Making Warrantless Arrest for Misdemeanor That Is Punishable Only by Fine

Atwater v. City of Lago Vista, 121 S. Ct. 1536, 149 L. Ed. 2d 549, 69 Crim. L. Rep. 94 (24 April 2001). An officer made a warrantless arrest for a seat belt violation that was punishable only by a fine under Texas law. The Court ruled that the Fourth Amendment does not bar an officer from making a warrantless arrest for a misdemeanor that is punishable only by fine. [Note: This ruling has no practical effect in North Carolina.

North Carolina law does not authorize an officer to arrest a person for an infraction, which is punishable by a penalty only.]

Court Makes Clear That Its Ruling in *Whren v. United States* (Officer's Subjective Motivation for Making Traffic Stop Is Irrelevant As Long As Officer Had Probable Cause to Believe Traffic Violation Had Been Committed) Applies to Custodial Arrests As Well as Traffic Stops

Arkansas v. Sullivan, 121 S. Ct. 1876, 149 L. Ed. 2d 994, 69 Crim. L. Rep. 2054 (29 May 2001). The court made clear that its ruling in Whren v. United States, 517 U.S. 806, 116 S. Ct. 1769, 135 L. Ed. 2d. 89 (1996) (officer's subjective motivation for making traffic stop is irrelevant as long as officer had probable cause to believe traffic violation had been committed) applies to custodial arrests as well as traffic stops.

Officers Did Not Violate Defendant's Sixth Amendment Right to Counsel When They Interrogated Him About Offenses for Which He Did Not Have Sixth Amendment Right to Counsel But Which Were Factually Related to Offense for Which He Had Sixth Amendment Right To Counsel, Based on Facts in This Case

Texas v. Cobb, 121 S. Ct. 1335, 149 L. Ed. 2d 321, 69 Crim. L. Rep. 24 (2 April 2001). A home was burglarized and a mother and daughter living there were missing. The defendant confessed to the burglary but denied any knowledge of the missing mother and daughter. He was indicted for the burglary, and a lawyer was appointed to represent him. Officers later received information that the defendant had murdered the mother and daughter, obtained arrest warrants for the murders, and arrested the defendant. They then gave him *Miranda* warnings, received a proper waiver, and the defendant confessed to the murders. The defendant argued, relying on Michigan v. Jackson, 475 U.S. 625, 106 S. Ct. 1404, 89 L. Ed. 2d 631 (1986), that his Sixth Amendment right to counsel had been violated because officers interrogated him about the murders that were closely related factually to the burglary—thus his Sixth Amendment right to counsel attached to the murders when he was indicted for the burglary, even though he had not been charged yet with those murders. The Court rejected the defendant's argument, although noting that some lower federal court and state courts had adopted it.

The Court noted its ruling in McNeil v. Wisconsin, 501 U.S. 171, 111 S. Ct. 2204, 115 L. Ed. 2d 158 (1991), that the Sixth Amendment right to counsel is offense specific. The Court ruled, however, that the term "offense" in its double jeopardy jurisprudence [see Blockburger v. United States, 284 U.S. 299 (1932)] applies to the determination of whether the Sixth Amendment right to counsel applies to related offenses, so a defendant has a Sixth Amendment right to counsel for an uncharged offense only if it is the same offense under the *Blockburger* test [an offense is not the same "offense" as another offense if each of two offenses has an element that is not in the other offense]. The Court ruled that murder and burglary were not the same offense under the *Blockburger* test. Therefore, the defendant in this case did not have a Sixth Amendment right to counsel for the murder charges as a result of the burglary indictment, and thus the officers did not violate that right when they interrogated the defendant about the murders.

[Note: This case only involved the Sixth Amendment right to counsel. Under the Fifth Amendment right to counsel, as set out in Arizona v. Roberson, 486 U.S. 675, 108 S. Ct. 2093, 100 L. Ed. 2d 704 (1988) and other cases, officers may not initiate interrogation of a defendant about the same or unrelated offenses when the defendant had asserted his right to counsel during custodial interrogation and remains in continuous custody. For a discussion of these issues, see Robert L. Farb, *Arrest, Search, and Investigation in North Carolina*, pp. 215-224 (2d ed. 1992) and the 1997 Supplement at pp. 29-31.]

Witness Who Denied Culpability in Child's Death Validly Asserted Privilege Against Self-Incrimination When She Feared That Answers to Possible Questions Might Tend to Incriminate Her, Based on Facts in This Case

Ohio v. Reiner, 121 S. Ct. 1252, 149 L. Ed. 2d 158, 68 Crim. L. Rep. 2203 (19 March 2001). The Court ruled, based on the facts in this case, that a witness who denied culpability in a child's death validly asserted the privilege against self-incrimination when she feared that answers to possible questions might tend to incriminate her.

Miscellaneous Issues

Under Article IV of Interstate Agreement on Detainers, State That Requested and Received Custody of Prisoner from Florida Federal Prison (for Whom State Had Filed Detainer), Then Arraigned Him and Appointed Counsel, Triggered Duty Under Subsection (e) of Article IV to Try Prisoner Before Returning Him to Federal Prison, Even Though He Spent Only One Day in Receiving State

Alabama v. Bozeman, 121 S. Ct. 2079, 150 L. Ed. 2d 188, 69 Crim. L. Rep. 328 (11 June 2001). An Alabama prosecutor requested and received custody, under Article IV of the Interstate Agreement on Detainers, of a prisoner in a Florida federal prison (for whom the state had filed a detainer) and arraigned him and appointed counsel on criminal charges in an Alabama state court. After spending one day in an Alabama jail, the prisoner was returned to the Florida federal prison. He later was returned to Alabama for trial. The court ruled that the act of bringing the federal prisoner to Alabama triggered Alabama's duty under subsection (e) of Article IV (see G.S. 15A-761 for North Carolina's similar provision) to try the prisoner before returning him to the Florida prison. The Court affirmed the dismissal of the Alabama charges, rejecting Alabama's argument that dismissal is inappropriate for a "technical" violation. The Court stated in dicta that a prisoner could waive his right to trial under subsection (e) of Article IV.

Statute Ruled to Be Civil Cannot Be Considered Punitive "As Applied" to a Single Individual in Violation of Double Jeopardy and Ex Post Facto Clauses

Seling v. Young, 121 S. Ct. 727, 121 L. Ed. 2d 727, 68 Crim. L. Rep. 356 (17 January 2001). Young was civilly committed as a sexually violent predator under a Washington state commitment statute. The Washington Supreme Court ruled that the commitment statute was civil, not punitive, and thus did not violate the double jeopardy and ex post facto clauses. Young filed a federal habeas action alleging that the statute violated these

clauses as applied to him because of the conditions of his confinement. The Court ruled that a statute ruled to be civil cannot be considered punitive "as applied" to a single individual in violation of the double jeopardy and ex post facto clauses.

Federal Habeas Petitioner Generally May Not Challenge State Conviction on Ground of Ineffective Assistance of Counsel When That Conviction Was Used to Enhance Sentence for Later Conviction

Lackawanna County District Attorney v. Coss, 121 S. Ct. 1567, 149 L. Ed. 2d 608, 69 Crim. L. Rep. 133 (25 April 2001). The Court ruled that a federal habeas petitioner generally may not challenge in the federal habeas proceeding a state conviction on the ground of ineffective assistance of counsel when that conviction was used to enhance a sentence for later conviction. See also Daniels v. United States, 121 S. Ct. 1578, 149 L. Ed. 2d 590, 69 Crim. L. Rep. 127 (25 April 2001) (similar ruling involving challenge in federal postconviction proceeding to federal sentence enhanced by state conviction). [Note: A challenge to a prior conviction is permitted if the ground is the denial of counsel under the Sixth Amendment.]

Legal Error That Increased Defendant's Prison Sentence Between Six and 21 Months Constitutes "Prejudice" under Ineffective Assistance of Counsel Standard under *Strickland v. Washington*

Glover v. United States, 121 S. Ct. 696, 148 L. Ed. 2d 604, 68 Crim. L. Rep. 309 (9 January 2001). The Court ruled that legal error that increased the defendant's prison sentence between six and 21 months constitutes "prejudice" under the ineffective assistance of counsel standard under Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984).

Prisoners Do Not Possess Special First Amendment Right to Provide Legal Assistance to Fellow Prisoners That Enhances Protections Otherwise Available under *Turner v. Safley*

Shaw v. Murphy, 121 S. Ct. 1475, 149 L. Ed. 2d 420, 69 Crim. L. Rep. 91 (18 April 2001). The Court rule that prisoners do not possess a special First Amendment right to provide legal assistance to fellow prisoners that enhances protections otherwise available under *Turner v. Safley*, 482 U.S. 78, 107 S. Ct. 2254, 96 L. Ed. 2d 64 (1987).

No Violation of Due Process Clause When State Supreme Court Abrogated Common Law "Year and a Day Rule" for Murder and Upheld Murder Conviction

Rogers v. Tennessee, 121 S. Ct. 1693, 149 L. Ed. 2d 697, 69 Crim. L. Rep. 187 (14 May 2001). The Court ruled that there was no violation of the due process clause when a state supreme court abrogated the common law "year and a day rule" for murder and upheld the defendant's murder conviction. The Court also ruled that the ex post facto clause applies only to legislative acts, and the due process clause does not incorporate the specific prohibitions of the ex post facto clause. [Note: This case effectively overrules

that part of a ruling in State v. Vance, 328 N.C. 613, 403 S.E.2d 495 (1991) that the federal constitution's ex post facto clause barred the court from applying the abrogation of the common law "year and a day rule" to the defendant's second-degree murder conviction).

There Is No Medical Necessity Defense to Offenses of Manufacturing and Distributing Marijuana in Federal Controlled Substances Act

United States v. Oakland Cannabis Buyers' Cooperative, 121 S. Ct. 1711, 149 L. Ed. 2d 722, 69 Crim. L. Rep. 197 (14 May 2001). The Court ruled that there is no medical necessity defense to offenses of manufacturing and distributing marijuana in the federal controlled substances act.

First Amendment Bars Civil Action Against Radio Broadcasters Who Intentionally Disclosed Contents of Illegally-Taped Cellular Telephone Conversations Involving Matters of Public Concern, When Radio Broadcasters Did Not Participate in Illegal Taping

Bartnicki v. Vopper, 121 S. Ct. 1753, 149 L. Ed. 2d 787, 69 Crim. L. Rep. 218 (21 May 2001). The Court ruled that the First Amendment bars a civil action against radio broadcasters who intentionally disclosed the contents of an illegally-taped cellular telephone conversation involving matters of public concern, when the radio broadcasters did not participate in the illegal taping.

Indian Tribal Court Does Not Have Jurisdiction to Adjudicate State Law Enforcement Officer's Alleged Tortious Conduct in Executing Search Warrant for Crime Committed Off Indian Reservation

Nevada v. Hicks, 121 S. Ct. 2304, 150 L. Ed. 2d 398, 69 Crim. L. Rep. 385 (25 June 2001). The Court ruled that an Indian tribal court does not have jurisdiction to adjudicate a state law enforcement officer's alleged tortious conduct in executing a search warrant for a crime committed off the Indian reservation.

Qualified Immunity Ruling Concerning Excessive Use of Force Under Fourth Amendment Requires Analysis Not Susceptible of Fusion With Question Whether Unreasonable Force Was Used in Making Arrest

Saucier v. Katz, 121 S. Ct. 2151, 150 L. Ed. 2d 272, 69 Crim. L. Rep. 352 (18 June 2001). The Court ruled that a qualified immunity ruling concerning the excessive use of force under the Fourth Amendment requires an analysis not susceptible of fusion with the question whether unreasonable force was used in making an arrest. (See the Court's opinion for its detailed analysis.)