1994-95 U.S. SUPREME COURT TERM: CASES AFFECTING CRIMINAL LAW & PROCEDURE

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Search and Seizure

Fourth Amendment's Exclusionary Rule Does Not Require Suppression of Evidence Obtained by Arrest Based on Erroneous Information That There Was an Outstanding Arrest Warrant, If Error Was Made By Court Employees and Not Law Enforcement Officials

Arizona v. Evans, 115 S.Ct. 1185, 131 L.Ed.2d. 34, 56 Crim. L. Rep. 2175 (1 March 1995). An officer stopped the defendant for a traffic violation. The officer was informed by a computer message that there was an outstanding arrest warrant for the defendant, which—unknown to the officer—was incorrect because the warrant had already been dismissed. The officer arrested the defendant based on the information about the warrant, discovered marijuana, and charged the defendant with possession of marijuana. The defendant moved to suppress the marijuana evidence. The Arizona Supreme Court ruled that the evidence should be suppressed regardless of whether the error about the arrest warrant was the fault of court employees or law enforcement personnel. The United States Supreme Court ruled that if the error was the fault of court employees, then the exclusionary rule should not bar the admission of the marijuana evidence. Relying on its rulings in United States v. Leon, 468 U.S. 897 (1984), Massachusetts v. Sheppard, 468 U.S. 981 (1984), and Illinois v. Krull, 480 U.S. 340 (1987), the court noted that the exclusionary rule was historically designed to deter law enforcement misconduct, not errors by court employees. There was no evidence that court employees are inclined to violate the Fourth Amendment to require that the exclusionary rule be invoked. Most importantly, there is no basis for believing that the application of the exclusionary rule would have a significant deterrent effect on court employees who are responsible for informing law enforcement when a warrant has been dismissed.

[Note: Since the North Carolina Supreme Court strongly indicated in State v. Carter, 322 N.C. 709, 370 S.E.2d 553 (1988) that a good-faith exception to the exclusionary rule did not exist under the North Carolina Constitution, thereby not adopting the *Leon* and *Sheppard* rulings that were decided under the United States Constitution, it is unclear whether this ruling would apply in North Carolina state courts. For a post-*Carter* case, see State v. Garner, 331 N.C. 491, 417 S.E.2d 502 (1992).

Note carefully that the United States Supreme Court in this case did not decide (because the issue was not before it) whether or not the arrest was unreasonable under the Fourth Amendment. See, e.g., Hill v. California, 401 U.S. 797, 91 S.Ct. 1106, 28 L.Ed.2d 484 (1971); Maryland v. Garrison, 480 U.S. 79, 107 S.Ct. 1013, 94 L.Ed.2d 72 (1987) ; State v. Harvey, 281 N.C. 1, 187 S.E.2d 706 (1972).]

Officer's Unannounced Entry Into a Home Must Be Reasonable Under the Fourth Amendment

Wilson v. Arkansas, 115 S.Ct. 1914, 131 L.Ed.2d. 976, 57 Crim. L. Rep. 2122 (22 May 1995). Officers made an unannounced entry into a home to execute a search warrant. The Arkansas Supreme Court ruled that the Fourth Amendment does not require officers to knock and announce before entering a home. The Court, rejecting the state court's ruling, ruled that an officer's unannounced entry into a home must be reasonable under the Fourth Amendment. Whether an officer announced his or her presence and authority before entering a home is among the factors to be considered in determining whether the entry was reasonable (along with the threat of physical harm to the officer, pursuit of a recently escaped arrestee, and the likely destruction of evidence if advance notice was given). The Court specifically stated that it will leave to lower courts the task of determining whether an unannounced entry was reasonable, and remanded this case to the Arkansas Supreme Court for that purpose.

[Note: G.S. 15A-249 sets standards in entering private premises to execute a search warrant and G.S. 15A-401(e) sets standards in entering private premises to arrest.]

Random Urinalysis Testing of Public School Students Participating in Interscholastic Athletics Was Reasonable Under Fourth Amendment, Based on the Facts in This Case, Even Though Testing Was Not Based on Reasonable Suspicion

Vernonia School District 47J v. Acton, 115 S.Ct. 2386, 132 L.Ed.2d. 564, 57 Crim. L. Rep. 2200 (26 June 1995). The court ruled that random urinalysis testing of public school students participating in interscholastic athletics was reasonable under Fourth Amendment, based on the facts in this case, even though the testing was not based on reasonable suspicion.

Constitutional Duty to Provide Discovery

State Violated Due Process by Failing to Provide Materially Favorable Evidence to Defendant

Kyles v. Whitley, 115 S.Ct. 1555, 131 L.Ed.2d. 490, 57 Crim. L. Rep. 2003 (19 April 1995). The defendant was convicted of first-degree murder and sentenced to death, and his conviction and sentence were affirmed on direct appeal. It was revealed on state collateral review that the state had never disclosed certain favorable evidence to the defendant. The court reviewed its prior rulings on the state's constitutional duty to provide materially favorable evidence to a defendant. It noted that United States v. Bagley, 473 U.S. 667 (1985) had ruled that regardless of a defendant's request for favorable evidence, constitutional error occurs when the government suppresses favorable evidence "if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." The court made four points about this standard: (1) The defendant does not need to prove that more likely than not (i.e., by a preponderance of evidence) he or she would have received a different verdict with the undisclosed evidence, but whether in its absence the defendant received a fair trial—"a trial resulting in a verdict worthy of confidence." A "reasonable probability" of a different verdict is shown when the suppression of evidence "undermines confidence in the outcome of the trial."

(2) The *Bagley* materiality standard is not a sufficiency-of-evidence test. A defendant need not prove that, after discounting inculpatory evidence in light of the undisclosed favorable evidence, there would not have been enough left to convict. Instead, one must only show that favorable evidence could reasonably place the whole case in such a different light as to undermine confidence in the verdict. (3) Once a reviewing court finds constitutional error under *Bagley*, there is no harmless error analysis. The defendant is entitled to a new trial. (4) The suppressed favorable evidence must be considered collectively, not item-by-item. In discussing this issue, the court rejected the state's argument that it should not be held accountable for favorable evidence known only to law enforcement officers and not to the prosecutor. The prosecutor has a duty to learn of favorable evidence known to others acting on the state's behalf in the case, including law enforcement officers.

The court reviewed the undisclosed favorable evidence in this case and ruled that its disclosure to competent counsel would have made a different result reasonably probable: (1) prior inconsistent statements of eyewitnesses identifying the defendant as the killer, which could have been used to impeach their trial testimony; (2) statements of a police informant, which were self-incriminating and could also be used to question the probative value of crucial physical evidence; and (3) a computer printout of license numbers of cars parked at the murder scene, which did not list the number of the defendant's car.

Miscellaneous

Court Clarifies Step Two of *Batson v. Kentucky* Ruling

Purkett v. Elem, 115 S.Ct. 1769, 131 L.Ed.2d. 834, 57 Crim. L. Rep. 3044 (17 May 1995). The Court stated that under its ruling in Batson v. Kentucky, 476 U.S. 79 (1986), the three steps in assessing whether a party has improperly exercised a peremptory challenge for racial discriminatory reasons are as follows: step one—the party challenging the peremptory challenge must establish a prima facie case of racial discrimination; step two—the burden of production shifts to the proponent of the peremptory challenge to provide a race-neutral explanation for the exercise of the peremptory challenge; and step three—the party challenging the peremptory challenge must prove racial discrimination. In the trial of this case, the prosecutor under step two stated that he exercised the peremptory challenge against the prospective black juror because he had long, unkempt hair, a mustache, and a beard. The Court ruled that the prosecutor's proffered explanation in this case was race neutral and satisfied step two's burden of articulating a nondiscriminatory reason for the exercise of the peremptory. The Court rejected the ruling of the federal court of appeals in this case that required that the reason given under step two must be minimally persuasive. The Court stated that it is only in step three that the persuasiveness of the reason becomes relevant.

Double Jeopardy Was Not Violated By Using Uncharged Criminal Misconduct to Increase Sentence for Conviction of Another Crime and Then Prosecuting for That Uncharged Criminal Misconduct

Witte v. United States, 115 S.Ct. 2199, 132 L.Ed.2d. 351, 57 Crim. L. Rep. 2160 (14 June 1995). In 1990 the defendant was involved in a cocaine offense (no charge was brought then). In

1991 the defendant was involved in a marijuana offense, for which he was charged and convicted. In calculating his sentence under the federal sentencing guidelines, the amount of drugs involved in the 1990 cocaine offense was considered and effectively increased his sentence. When the defendant was later charged with the 1990 cocaine offense, he moved to dismiss this charge on the ground that punishment for it would violate the multiple punishment prohibition of the double jeopardy clause. The Court ruled that the defendant's double jeopardy rights were not violated by the prosecution for the 1990 cocaine offense. First, the later prosecution did not violate the *Blockburger* test [Blockburger v. United States, 284 U.S. 299 (1932)] because each offense required proof of an element that the other did not. Second, relying on its ruling in Williams v. Oklahoma, 358 U.S. 576 (1959) (defendant pled guilty to murder and later was convicted of kidnapping arising out of same incident; no double jeopardy violation when trial judge considered, in imposing sentence for kidnapping, that the kidnapping victim was murdered), the Court rejected the defendant's argument that double jeopardy barred a later prosecution and punishment for criminal activity that already had been considered in sentencing for a separate crime. The Court also noted its rulings upholding recidivist statutes against double jeopardy challenges [see, e.g., Gryger v. Burke, 334 U.S. 728 (1948)]; under such a statute, a defendant is punished for the offense of conviction, which is rendered more severe because of the defendant's prior criminal convictions. The Court ruled that when a legislature has authorized a particular punishment range for an offense, the resulting sentence within that range constitutes punishment only for the offense of conviction under double jeopardy principles.

Federal Rules' Provisions Making Inadmissible Defendant's Statements During Plea Discussions May Be Waived By the Defendant

United States v. Mezzanatto, 115 S.Ct. 797, 130 L.Ed.2d. 697, 56 Crim. L. Rep. 2114 (18 January 1995). The defendant was convicted of federal drug charges after being cross-examined, over his counsel's objections, about inconsistent statements that he had made during earlier plea discussions with the government. Before the defendant had entered plea discussions with the prosecutor (his attorney was present then), the defendant had agreed that any statements he made could be used to impeach any contradictory testimony he might give at a later trial. The Court ruled that the defendant may properly waive the provisions of Rule 410 of the Federal Rules of Evidence and Rule 11(e)(6) of the Federal Rules of Criminal Procedure, which exclude from admission into evidence against a criminal defendant statements made during plea discussions.

[Note: North Carolina's Rule 410 and G.S. 15A-1025 are similar to the federal rules involved in this ruling. However, North Carolina appellate courts are not bound to interpret North Carolina's rule and statute the same way.]

Change in Frequency of Parole Hearings Did Not Violate Ex Post Facto, Based on Facts in This Case

California Dep't of Corrections v. Morales, 115 S.Ct. 1597, 130 L.Ed.2d. 624, 57 Crim. L. Rep. 2022 (25 April 1995). A change in the frequency of parole hearings did not violate the Ex Post Facto Clause, based on the facts in this case.

Court Interprets Federal Evidence Rule on Prior Consistent Statements, But Court's Ruling Is Not Applicable to North Carolina State Courts

Tome v. United States, 115 S.Ct. 696, 130 L.Ed.2d. 574, 56 Crim. L. Rep. 2104 (10 January 1995). A testifying witness's prior out-of-court statement is not admissible under Federal Rule of Evidence 801(d)(1)(B), which provides that prior statements consistent with the witness's testimony are not hearsay if offered to rebut a charge of recent fabrication or improper influence or motive, unless the statement was made before the alleged fabrication or improper influence or motive. [Note: This ruling has no application to North Carolina state courts, because North Carolina evidence rules do not specifically permit the substantive use of prior consistent statements.]

Prisoner Was Not Entitled to Due Process Protections in Disciplinary Hearing to Impose Segregation for Misconduct, Based on the Facts in This Case

Sandin v. Conner, 115 S.Ct. 2293, 132 L.Ed.2d. 418, 57 Crim. L. Rep. 2172 (19 June 1995). The court ruled that the prisoner in this case was not entitled to due process protections in a disciplinary hearing to impose segregation for misconduct, based on the facts in this case. The court disavowed the liberty interest inquiry it had used in Hewitt v. Helms, 442 U.S. 460 1983); the court stated that such an inquiry should focus on the nature of the deprivation, not the language of a particular prison regulation. Inmates asserting a due process violation must show that they suffered an "atypical, significant deprivation."

§ 1983 Defendant, Who Is Entitled to Invoke a Qualified Immunity Defense, May Not Appeal District Court's Summary Judgment Order Insofar As That Order Determines Whether or Not Pretrial Record Sets Forth "Genuine" Issues of Fact for Trial

Johnson v. Jones, 115 S.Ct. 2151, 132 L.Ed.2d. 238, 57 Crim. L. Rep. 2152 (12 June 1995). The court ruled that a § 1983 defendant, who is entitled to invoke a qualified immunity defense, may not appeal a district court's summary judgment order insofar as that order determines whether or not a pretrial record sets forth "genuine" issues of fact for trial.

Federal Habeas Corpus

Standard for Second Federal Habeas Petition

Schlup v. Delo, 115 S.Ct. 851, 130 L.Ed.2d. 808, 56 Crim. L. Rep. 2123 (23 January 1995). The standard of Murray v. Carrier, 477 U.S. 478 (1986), which requires a habeas petitioner to show that "a constitutional violation has probably resulted in the conviction of one who is actually innocent," rather than the more stringent standard in Sawyer v. Whitley, 505 U.S. 1070 (1992), governs the miscarriage-of-justice inquiry when a petitioner who has been sentenced to death raises a claim of actual innocence to avoid a procedural bar to the consideration of the merits of constitutional claims.

Error Is Not Harmless When There Is "Grave Doubt"

O'Neal v. McAninch, 115 S.Ct. 992, 130 L.Ed.2d. 947, 56 Crim. L. Rep. 2144 (21 February 1995). When a federal habeas court finds a constitutional trial error and has grave doubt whether the error had a "substantial and injurious effect or influence in determining the jury's verdict," the error is not harmless, and a new trial must be granted.

Failure to Exhaust State Remedies

Duncan v. Henry, 115 S.Ct. 887, 131 L.Ed.2d. 245, 56 Crim. L. Rep. 3159 (23 January 1995). Criminal defendant failed to exhaust state remedies before filing federal petition for writ of habeas corpus when he failed to raise federal constitutional ground in state court on evidentiary issue he attempted to raise in federal petition. The Court relied on rulings in Picard v. Connor, 404 U.S. 270 (1971) and Anderson v. Harless, 459 U.S. 4 (1982).

Federal Habeas Corpus Available Even Though First Sentence of Two Consecutive Sentences Had Already Been Served

Garlotte v. Fordice, 115 S.Ct. 1948, 132 L.Ed.2d. 36, 57 Crim. L. Rep. 2136 (30 May 1995). The Court ruled that a prisoner could file a petition for a writ of habeas corpus to challenge the conviction of the first sentence of two consecutive sentences, even though the prisoner had already served the first sentence.