1996-97 U.S. SUPREME COURT TERM: CASES AFFECTING CRIMINAL LAW & PROCEDURE

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Arrest, Search and Seizure

Fourth Amendment Does Not Require That Lawfully-Seized Defendant Must Be Advised That Defendant Is Free to Go Before Consent to Search Will Be Recognized As Voluntary

Ohio v. Robinette, 117 S. Ct. 417, 136 L. Ed. 2d. 347, 60 Crim. L. Rep. 2002 (18 November 1996). An officer stopped the defendant for speeding. The defendant gave his driver's license to the officer, who ran a computer check that revealed that the defendant had no prior violations. The officer then asked the defendant to step out of his car, issued a verbal warning to the defendant, and returned his license. The officer then asked the defendant if he had any illegal contraband in his car. The defendant said no. The officer then asked the defendant if he could search his car, and the defendant consented. The Court rejected a lower court ruling that an officer must advise a lawfully-seized defendant that the defendant is free to go before a consent to search will be recognized as voluntary. The Court noted that the Fourth Amendment requires that a consent to search must be voluntary, and voluntariness is a question of fact that must be determined from all the circumstances. An officer's warning before obtaining consent to search is not required by the Fourth Amendment for a consent to search to be valid.

Officer Who Has Lawfully Stopped Vehicle May Order Passengers Out of Vehicle Without Showing Reason to Do So Under Fourth Amendment

Maryland v. Wilson, 117 S. Ct. 882, 137 L. Ed. 2d. 41, 60 Crim. L. Rep. 2077 (19 February 1997). The Court ruled that an officer who has lawfully stopped a vehicle may order the passengers out of the vehicle without showing a reason to do so under the Fourth Amendment. [Note: The Court previously had ruled in Pennsylvania v. Mimms, 434 U.S. 106, 98 S. Ct. 330, 54 L. Ed. 2d 331 (1977) that an officer could automatically order a driver out of a vehicle.]

(1) There Is No Automatic Exception in Felony Drug Investigations to Excuse Fourth Amendment Requirement That Officers Knock and Announce Presence Before Entering Home
(2) Officers Are Not Required to Knock and Announce Presence Before Entering Home If They Have Reasonable Suspicion That Doing So Would Be Dangerous or Futile [But See G.S. 15A-251(2) and G.S. 15A-401(e)(1)c.]
(3) Officers' Entry After Failing to Announce Their Presence and Authority Was Reasonable Under Fourth Amendment, Based on Facts in This Case

Richards v. Wisconsin, 117 S. Ct. 1416, 137 L. Ed. 2d 615, 61 Crim. L. Rep. 2057 (28 April 1997). Officers obtained a search warrant to search a hotel room for drugs. Several officers went

to the hotel room to execute the warrant. One officer, dressed as a maintenance man, was the lead officer. Among the other officers was at least one uniformed officer. The lead officer knocked on the hotel room door and, responding to a query from inside the room, stated that he was a maintenance man. The defendant cracked open the door with the chain still on it. The defendant saw a uniformed officer among the officers outside the door. The defendant quickly slammed the door shut. After waiting two or three seconds, the officers began kicking and ramming the door to gain entry. The officers identified themselves as officers while they were kicking the door in. (1) The Court rejected a lower court ruling in this case that officers executing a search warrant involving felony drug crimes are never required to comply with the knock-and-announce rule under the Fourth Amendment. The Court stated that Wilson v. Arkansas, 514 U.S. 927, 115 S. Ct. 1914, 131 L. Ed. 2d976 (1995) did not support the lower court's ruling. (2) The Court ruled that officers are not required to knock and announce their presence before entering a home if they have reasonable suspicion that doing so would be dangerous or futile, or that it would inhibit the effective investigation of crime by, for example, allowing the destruction of evidence. The Court stated that this standard—as opposed to the probable cause requirement—strikes the appropriate balance between legitimate law enforcement concerns in executing a search warrant and the individual privacy interests affected by no-knock entries. (3) The Court ruled that, based on the facts in this case (the defendant's apparent recognition of the officers and the easily disposable nature of drugs), the officers were justified in entering the hotel room without first announcing their presence and authority.

[Note: G.S. 15A-251 requires an officer, before executing a search warrant and entering premises without giving notice, to have *probable cause* to believe that giving notice would *endanger the life or safety of any person*. Thus, this statute imposes a more stringent standard on officers than the Fourth Amendment. See also G.S. 15A-401(e)c., which requires an officer, before entering premises to make an arrest without giving notice of the officer's authority and purpose, to have *reasonable cause* to believe that the giving of such notice would present a *clear danger to human life*.]

Georgia Statute Requiring Candidate for Public Office to Take and Pass Urinalysis Drug Test Is Unreasonable Search Under Fourth Amendment

Chandler v. Miller, 117 S. Ct. 1295, 137 L. Ed. 2d 513, 61 Crim. L. Rep. 2010 (15 April 1997). The Court ruled that a Georgia statute requiring candidates for designated state offices to certify that they have taken a urinalysis drug test and that the test result was negative violated the Fourth Amendment. The urinalysis drug test required by this statute, which was not based on reasonable suspicion or any other standard, is an unreasonable search under the Fourth Amendment.

Miscellaneous

(1) Court Upholds Constitutionality of Kansas Statute Providing For Involuntary Commitment of Person Convicted of or Charged With Sexually Violent Offense
(2) Court Rules That Involuntary Commitment Under Kansas Statute Did Not Implicate Ex Post Facto and Double Jeopardy Clauses

Kansas v. Hendricks, 117 S. Ct. 2072, 138 L. Ed. 2d 501, 61 Crim. L. Rep. 2183 (23 June 1997). (1) The Court upheld the constitutionality of a Kansas statute providing for the involuntary commitment of a person convicted of or charged with a sexually violent offense and who suffers from a mental abnormality or a personality disorder that makes the person likely to engage in predatory acts of sexual violence. (2) The Court also ruled that involuntary commitment under the Kansas statute was not punitive and did not implicate the Ex Post Facto and Double Jeopardy clauses.

***Wainwright v. Witt* Is Not Controlling Authority as to Standard of Review to be Applied by State Appellate Courts Reviewing Trial Judges' Rulings on Jury Selection**

Greene v. Georgia, 117 S. Ct. 578, 136 L. Ed. 2d. 507, 60 Crim. L. Rep. 3111 (16 December 1996). The court ruled that Wainwright v. Witt, 469 U.S. 412 (1985), is not controlling authority as to the standard of review to be applied by state appellate courts reviewing trial judges' rulings on jury selection, because *Witt* was a federal habeas review, when deference to state court findings is mandated by federal statute. Thus, a state appellate court is not bound by *Witt* to accord a presumption of correctness to state trial judges' findings of juror bias, but it may choose to do so if it wishes.

In Federal Sentencing Hearing, Jury's Verdict of Not Guilty Does Not Prevent Sentencing Judge from Considering Conduct Underlying the Charge As Long As that Conduct Is Proved by Preponderance of Evidence

United States v. Watts, 117 S. Ct. 633, 136 L. Ed. 2d. 554, 60 Crim. L. Rep. 3130 (6 January 1997). The court ruled that in a federal sentencing hearing, a jury's verdict of not guilty does not prevent the sentencing judge from considering conduct underlying the charge for which the defendant was found not guilty, as long as that conduct is proved by preponderance of evidence. The Double Jeopardy Clause is not violated by considering such conduct.

In Federal Prosecution of Possession of Firearm by Convicted Felon, Trial Judge Abused Discretion in Refusing Defendant's Offer to Stipulate to Prior Felony Conviction to Avoid Prejudicing Defendant Before Jury

Old Chief v. United States, 117 S. Ct. 644, 136 L. Ed. 2d. 574, 60 Crim. L. Rep. 2010 (7 January 1997). The court ruled that in a federal prosecution for possession of a firearm by a convicted felon, the trial court abused its discretion in refusing the defendant's offer to stipulate to a prior felony conviction to avoid prejudicing the defendant before the jury.

State Statute Canceling Provisional Release Credits for Prisoners Violated Ex Post Facto Clause

Lynce v. Mathis, 117 S. Ct. 891, 137 L. Ed. 2d. 63, 60 Crim. L. Rep. 2081 (19 February 1997). The court ruled that a state statute canceling provisional release credits for prisoners violated the Ex Post Facto Clause.

Oklahoma Preparole Release Program Was Sufficiently Like Parole Release to Entitle Parolee to Procedural Protections Set Out in *Morrissey v. Brewer*

Young v. Harper, 117 S. Ct. 1148, 137 L. Ed. 2d 270, 60 Crim. L. Rep. 2122 (18 March 1997). The Court ruled that an Oklahoma preparole release program was sufficiently like parole release to entitle a parolee to the procedural protections set out in Morrissey v. Brewer, 408 U.S. 471 (1972).

New Federal Habeas Standard Does Not Apply Retroactively to Habeas Actions Filed Before Effective Date of New Standard

Lindh v. Murphy, 117 S. Ct. 2059, 138 L. Ed. 2d 481, 61 Crim. L. Rep. 2173 (23 June 1997). The Court ruled that the new standard embodied in 28 U.S.C. § 2254(d), as amended by the 1996 Antiterrorism and Effective Death Penalty Act (generally governing the granting of federal habeas corpus based on claims adjudicated in state courts), does not apply to habeas actions that were filed before Act became effective.

Ruling in *Simmons v. South Carolina* Announced "New Rule" Under *Teague v. Lane* and Therefore Inapplicable in Federal Habeas to Already-Final Death Sentence

O'Dell v. Netherland, 117 S. Ct. 1969, 138 L. Ed. 2d 351, 61 Crim. L. Rep. 2164 (19 June 1997). The Court ruled that its ruling in Simmons v. South Carolina, 512 U.S. 154 (1994) (capital defendant must be allowed to inform sentencing jury that he is parole-ineligible if state argues that he presents future danger) announced "new rule" under Teague v. Lane, 489 U.S. 288 (1988) and therefore was inapplicable in federal habeas to already-final death sentence.

Lawyer's Continued Questioning in Jury's Presence About Punishment For Offense Being Tried, In Violation of Judge's Order Not To Refer to Punishment, Was Sufficiently Disruptive to Support Criminal Contempt Finding

Pounders v. Watson, 117 S. Ct. 2359, 138 L. Ed. 2d 976, 61 Crim. L. Rep. 3084 (27 June 1997). The Court ruled that a lawyer's continued questioning in jury's presence about punishment for offense being tried, in violation of judge's order not to refer to punishment, was sufficiently disruptive to support a criminal contempt finding.

Court Sets Out Standard for Determining Whether Particular Conduct Falls Within Range of Criminal Liability Under 18 U.S.C. § 242

United States v. Lanier, 117 S. Ct. 1219, 137 L. Ed. 2d 432, 61 Crim. L. Rep. 2002 (31 March 1997). In this case the Court set out standard for determining whether particular conduct falls within range of criminal liability under 18 U.S.C. § 242.

Court Restates Standard for Civil Liability Under 42 U.S.C. § 1983 For Negligent Hiring of Law Enforcement Officer

Bryan County v. Brown, 117 S. Ct. 1382, 137 L. Ed. 2d 626, 61 Crim. L. Rep. 2060 (28 April 1997). The Court ruled that a county was not liable for a sheriff's isolated decision to hire an officer without adequate screening because the plaintiff (who was injured by the officer) did not prove that the decision reflected a conscious disregard for a high risk that the officer would use excessive force in violation of the plaintiff's constitutional rights.

Alabama Sheriffs Represent State When Executing Law Enforcement Duties and Therefore Are Not County Policymakers for County Liability Under 42 U.S.C. § 1983

McMillan v. Monroe County, 117 S. Ct. 1734, 138 L. Ed. 2d 1, 61 Crim. L. Rep. 2146 (2 June 1997). The court ruled that Alabama sheriffs represent the state when executing their law enforcement duties and therefore are not county policymakers for purposes of county liability under 42 U.S.C. § 1983.

Privately-Employed Prison Guards Were Not Entitled to Qualified Immunity Under 42 U.S.C. § 1983 For Alleged Mistreatment of Prisoners

Richardson v. McKnight, 117 S. Ct. 2100, 138 L. Ed. 2d 540, 61 Crim. L. Rep. 2198 (23 June 1997). The Court ruled, based on the facts in this case, that privately-employed prison guards were not entitled to qualified immunity under 42 U.S.C. § 1983 for the alleged mistreatment of prisoners.