1998-99 U.S. SUPREME COURT TERM: CASES AFFECTING CRIMINAL LAW & PROCEDURE

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Search and Seizure Issues

Existence of Probable Cause to Search Vehicle Allows Officer to Search Without Search Warrant All Containers in Vehicle Capable of Concealing Object of Search, Regardless of Owner of Container

Wyoming v. Houghton, 119 S. Ct. 1297, 143 L. Ed. 2d 408, 65 Crim. L. Rep. 23 (5 April 1999). An officer stopped a vehicle that was occupied by the driver (a male) and two female passengers (one of the female passengers was the defendant in this case). Thereafter, the officer developed probable cause to search the vehicle for illegal drugs, based on information learned from the driver. After the three occupants had been removed from the car, the officer found a purse on the back seat—which was claimed by one of the female passengers—and searched it without a search warrant. She was prosecuted for illegal drugs found in her purse. Relying on United States v. Ross, 456 U.S. 798, 102 S. Ct. 2157, 72 L. Ed. 2d 572 (1982) and other cases, the Court ruled that an officer who has probable cause to search a vehicle may search without a search warrant a container in a vehicle that is capable of concealing the object of the search, regardless of the owner of the container. [Notes: (1) The purse in this case was in the vehicle when it was seized, not in the defendant's physical possession. (2) This case only involved the issue of probable cause to search a container in a vehicle. A separate Fourth Amendment justification for searching a container in the interior of a vehicle exists under the search-incident-to-arrest theory of New York v. Belton, 453 U.S. 454, 101 S. Ct. 2860, 69 L. Ed. 2d 768 (1981). See Farb, *Arrest, Search, and Investigation in North Carolina*, p. 104 (2d ed. 1992)]

People Who Were in Home Briefly for Commercial Transaction Did Not Have Reasonable Expectation of Privacy in Home to Challenge Officer's Alleged Illegal Search

Minnesota v. Carter, 119 S. Ct. 469, 142 L. Ed. 2d 373, 64 Crim. L. Rep. 158 (1 December 1998). The defendants came to an apartment, with the lessee's consent, for the sole purpose of packaging cocaine. They had never been to the apartment before and were only in the apartment for about two-and-one-half hours. The defendants made a motion to suppress evidence based on an officer's allegedly illegal search of the apartment by looking through a gap in the closed blind of the apartment's window. The court ruled, distinguishing Minnesota v. Olson, 495 U.S. 91, 110 S. Ct. 1684, 109 L. Ed. 2d 85 (1990) (overnight guest in house had reasonable expectation of privacy there), that the defendants did not have a reasonable expectation of privacy in the apartment to challenge the officer's alleged illegal search. The court stated that the defendants were obviously not overnight guests, but were in the home essentially for a business transaction that lasted a few hours. They did not have a prior relationship with the lessee nor any other purpose for their visit. There was nothing similar to the overnight guest relationship in *Olson* to suggest a degree of acceptance into the household. While the apartment was a dwelling place for

the lessee, it was simply a place to do business for the defendants. [Note: The Court did not decide whether the officer's observation was a search under the Fourth Amendment.]

Officer Who Stopped Vehicle for Speeding and Issued Citation Instead of Arresting Driver Was Not Authorized to Conduct Full Search of Vehicle; Court Rejects Search Incident to Issuance of Citation

Knowles v. Iowa, 119 S. Ct. 484, 142 L. Ed. 2d 492, 64 Crim. L. Rep. 187 (8 December 1998). An officer stopped a vehicle for speeding and issued a citation to the driver, even though the officer could have arrested him under Iowa state law. The officer—without consent or probable cause to search—then conducted a full search of the vehicle. The Court ruled that the officer's search violated the Fourth Amendment, rejecting the theory of a search incident to the issuance of a citation.

Warrantless Seizure in Public Place of Vehicle Subject to Forfeiture Under State's Drug Forfeiture Law Did Not Violate Fourth Amendment, Even Though Seizure Occurred Several Months After Probable Cause Existed to Seize Vehicle for Forfeiture

Florida v. White, 119 S. Ct. 1555, 143 L. Ed. 2d 748, 65 Crim. L. Rep. 185 (17 May 1999). Officers developed probable cause to believe that the defendant's car was subject to forfeiture under Florida's drug forfeiture law, but they did not arrest the defendant or seize his car then. Several months later, officers arrested the defendant for unrelated charges and without a search warrant seized his car from his employer's parking lot; the car was seized for forfeiture, based on the probable cause that had existed months earlier. The court ruled, relying on G.M. Leasing Corp. v. United States, 429 U.S. 338, 97 S. Ct. 619, 50 L. Ed. 2d 530 (1977) and other cases, that the officers' warrantless seizure of the defendant's car in a public place did not violate the Fourth Amendment. [Note that G.S. 90-112(b) provides that property subject to forfeiture may be seized by a law enforcement officer with court process, except that it may be seized without court process when (1) the seizure is incident to an arrest or search with a search warrant; or (2) the property subject to seizure has been the subject of a prior judgment in the state's favor.]

Court Reaffirms Its Prior Rulings That Probable Cause to Search a Vehicle Permits a Warrantless Search of Vehicle; Showing of Exigent Circumstances Is Not Required

Maryland v. Dyson, 119 S. Ct. 2013, 144 L. Ed. 2d 442, 65 Crim. L. Rep. 2070 (21 June 1999). Officers developed probable cause to search a vehicle for drugs. About thirteen hours later, the officers stopped and searched the vehicle without a search warrant. The Court reaffirmed its prior rulings, United States v. Ross, 456 U.S. 798, 102 S. Ct. 2157, 72 L. Ed. 2d 572 (1982) and Pennsylvania v. Labron, 518 U.S. 938, 116 S. Ct. 2485, 135 L. Ed. 2d 1031 (1996), that probable cause to search a vehicle permits a warrantless search of the vehicle; a showing of exigent circumstances is not required.

(1) Officers Violate Fourth Amendment When They Bring News Media or Other Third Parties into Home During Execution of Warrant When Third Parties' Presence Is Not Aiding Warrant's Execution
(2) Officers Were Entitled to Qualified Immunity Because Fourth Amendment Right Was Not Clearly Established When Violation Occurred

Wilson v. Layne, 119 S. Ct. 1692, 143 L. Ed. 2d 818, 65 Crim. L. Rep. 211 (24 May 1999). Law enforcement officers invited news media representatives to accompany them during the execution of an arrest warrant in a home. The Court ruled that officers violate the Fourth Amendment when they bring news media or other third parties into a home during the execution of a warrant when the third parties' presence is not aiding the warrant's execution. The news media clearly were not aiding the execution of the arrest warrant in this case. The court noted that third parties may properly aid the execution of a search warrant, such as the identification of stolen property.

The Court also ruled that the officers in this case were entitled to qualified immunity because the Fourth Amendment right set out in this opinion was not clearly established when the violation occurred in 1992. The Court issued a similar ruling in Hanlon v. Berger, 119 S. Ct. 1706, 143 L. Ed. 2d 978, 65 Crim. L. Rep. 218 (24 May 1999), which involved officers' allowing the news media to come with them during the execution of a search warrant for a ranch and its outbuildings.

Due Process Clause Does Not Require Officers Who Have Seized Property To Provide Property Owner With Notice of State Law Remedies To Apply For Return of Property

City of West Covina v. Perkins, 119 S. Ct. 678, 142 L. Ed. 2d 636, 64 Crim. L. Rep. 297 (13 January 1999). The Court ruled that the Due Process Clause does not require law enforcement officers who have seized property to provide the property owner with notice of state law remedies to apply for the return of the property.

Evidence

Admission of Nontestifying Accomplice's Confession at Defendant's Trial as Declaration Against Penal Interest Violated Confrontation Clause of Sixth Amendment

Lilly v. Virginia, 119 S. Ct. 1887, 144 L. Ed. 2d 117, 65 Crim. L. Rep. 327 (10 June 1999). In the trial of the defendant, the state introduced a police-obtained confession of a nontestifying accomplice (he had asserted his Fifth Amendment privilege when the state called him as a witness) under Virginia's hearsay exception for a statement made against one's penal interest. The confession inculpated both the accomplice and the defendant. The Court (in a four-Justice plurality opinion) ruled that the admission of the confession violated the Confrontation Clause of the Sixth Amendment: (1) the hearsay exception for a statement made against one's penal interest, as used in this case, is not a firmly-rooted hearsay exception under White v. Illinois, 502 U.S. 346, 112 S. Ct. 736, 116 L. Ed. 2d 848 (1992); and (2) the hearsay statement (the confession) did not contain particularized guarantees of trustworthiness, based on the facts in this case.

Miscellaneous

Defendant Did Not Prove There Was "Reasonable Probability" That Result of Trial or Capital Sentencing Hearing Would Have Been Different Had Suppressed Exculpatory Evidence Been Disclosed to Defense

Strickler v. Greene, 119 S. Ct. 1936, 144 L. Ed. 2d 286, 65 Crim. L. Rep. 363 (17 June 1999). The defendant was convicted of murder and sentenced to death. At trial witness A gave detailed eyewitness testimony about the murder and the defendant's role as one of the perpetrators. The prosecutor failed to disclose exculpatory information contained in police files (although the prosecutor apparently did not know of the information in the files, knowledge is imputed by law to the prosecutor). The information consisted of notes taken by a detective during interviews with witness A and letters written by witness A to the detective. This information cast serious doubt on significant portions of witness A's testimony. The Court first ruled that the defendant had established cause for failing to raise the *Brady* issue (disclosing materially exculpatory evidence to the defense) before the filing of the federal habeas petition because (a) the state had withheld exculpatory evidence; (b) the defendant had reasonably relied on the prosecution's open file policy as fulfilling the prosecution's duty to disclose such evidence; and (c) the state confirmed the defendant's reliance on the open file policy by asserting during state habeas proceedings that the defendant had already received "everything known to the government." The Court then ruled, after examining all the evidence introduced at the trial and capital sentencing hearing, that the defendant had failed to meet his burden to show that there was a "reasonable probability" that the result of the trial or sentencing hearing would have been different if the suppressed evidence had been disclosed to the defense.

Eighth Amendment Does Not Require Jury Instruction About Consequences of Capital Sentencing Jury's Failure to Agree on Verdict

Jones v. United States, 119 S. Ct. 2090, 144 L. Ed. 2d 370, 65 Crim. L. Rep. 376 (21 June 1999). The Court ruled that the Eighth Amendment does not require a jury instruction about the consequences of a capital sentencing jury's failure to agree on a verdict. [Note: The North Carolina Supreme Court has previously ruled improper a jury instruction explaining the consequences of its failure to unanimously agree to a recommendation within a reasonable time. See, for example, State v. Johnson, 298 N.C. 355, 259 S.E.2d 752 (1979).]

In Federal Criminal System, Defendant's Guilty Plea Does Not Waive Fifth Amendment Privilege Against Self-Incrimination in Defendant's Sentencing Hearing

Mitchell v. United States, 119 S. Ct. 1307, 143 L. Ed. 2d 424, 65 Crim. L. Rep. 28 (5 April 1999). The Court ruled that in the federal criminal system, a defendant's guilty plea does not waive the defendant's Fifth Amendment privilege against self-incrimination in the defendant's sentencing hearing. Thus, the sentencing judge in this case erred in drawing an adverse inference from the defendant's silence in determining facts relating to the circumstances of the crime for which the defendant was being sentenced.

Street Gang Loitering Ordinance Is Unconstitutionally Vague

City of Chicago v. Morales, 119 S. Ct. 1849, 144 L. Ed. 2d 67, 65 Crim. L. Rep. 305 (10 June 1999). The Court ruled, in two separate opinions constituting a majority of the Court, that a street gang loitering ordinance was unconstitutionally vague. The elements of the offense were: (1) an officer must reasonably believe that at least one of the two or more people in a "public place" (defined in the ordinance) is a "criminal street gang member" (defined in the ordinance); (2) the people must be loitering, which is defined as remaining in any one place with no apparent purpose; (3) the officer must order all of the people to disperse and remove themselves from the area; and (4) a person must disobey the officer's order.

Prosecutor Does Not Violate Attorney's Fourteenth Amendment Right to Practice Attorney's Profession by Executing Search Warrant on Attorney While Attorney's Client Is Testifying Before Grand Jury

Conn v. Gabbert, 119 S. Ct. 1292, 143 L. Ed. 2d 399, 65 Crim. L. Rep. 37 (5 April 1999). In a § 1983 action by an attorney against two prosecutors, the Court ruled that a prosecutor does not violate an attorney's Fourteenth Amendment right to practice the attorney's profession by executing a search warrant on the attorney while the attorney's client is testifying before a grand jury.

Federal Carjacking Statute Establishes Three Separate Offenses That Must Be Charged and Proven Beyond Reasonable Doubt; Court States in Dicta That Government's Proffered Construction of Statute Would Raise Serious Constitutional Questions

Jones v. United States, 119 S. Ct. 1215, 143 L. Ed. 2d 311, 64 Crim. L. Rep. 512 (24 March 1999). The federal carjacking statute, as it existed for this case, provided that a person possessing a firearm who takes a motor vehicle from another by force and violence or by intimation must (1) be imprisoned for not more than 15 years, (2) if serious bodily injury results, be imprisoned for not more than 25 years, and (3) if death results, be imprisoned for any number of years up to life. The Court ruled that this statute establishes three separate offenses—one offense for each level of punishment. Thus, the government—in order to obtain a maximum punishment of more than 15 years—must charge "serious bodily injury" or "death," as the facts may exist, and prove that element beyond a reasonable doubt before the trier of fact (jury or judge in the federal system). The court rejected the government's proffered construction that the statute does not require that "serious bodily injury" or "death" be charged and proven before the trier of fact (that is, the sentencing judge could find by a preponderance of evidence whether serious bodily injury or death occurred and sentence the defendant accordingly). The Court stated in dicta that the government's proffered construction of the statute would raise serious constitutional questions concerning the Fifth Amendment's Due Process Clause and the Sixth Amendment's notice and jury trial guarantees.

In Federal Prosecution of Continuing Criminal Enterprise, Jury Must Unanimously Agree Not Only That Defendant Committed Continuing Series of Violations, But Also Which Specific Violations Constitute Continuing Series

Richardson v. United States, 119 S. Ct. 1707, 143 L. Ed. 2d 985, 65 Crim. L. Rep. 237 (1 June 1999). The Court ruled that in a federal prosecution of the offense of continuing criminal enterprise, the jury must unanimously agree not only that the defendant committed a continuing series of violations, but also which specific violations constitute the continuing series of violations. [Note: Although this ruling only applies to federal prosecutions (because the United States Constitution does not require unanimity of verdict in state prosecutions), a North Carolina appellate court may, if it finds this ruling persuasive, rule in the same manner concerning G.S. 90-95.1, which is the North Carolina offense of continuing criminal enterprise.]

To Satisfy Federal Habeas Exhaustion Requirement, State Prisoner Must Present Claims to State Supreme Court in Discretionary Review Petition

O'Sullivan v. Boerckel, 119 S. Ct. 1728, 144 L. Ed. 2d 1, 65 Crim. L. Rep. 263 (7 June 1999). The Court ruled that to satisfy federal habeas exhaustion requirement, a state prisoner must present claims to a state supreme court in a petition for discretionary review when that review is part of the state's ordinary appellate review procedure.

Court Rules That Court of Appeals in Federal Habeas Case Failed to Apply Proper Test in Determining Whether Unconstitutional Jury Instruction Was Harmless Error

Calderon v. Coleman, 119 S. Ct. 500, 142 L. Ed. 2d 521, 64 Crim. L. Rep. 2099 (14 December 1998). The Court ruled that a federal court of appeals in a federal habeas case failed to apply the proper test in determining whether an unconstitutional jury instruction was harmless error. The Court noted that its ruling in Brecht v. Abrahamson, 507 U.S. 619, 113 S. Ct. 1710, 123 L. Ed. 2d 353 (1993), requires a federal court to determine whether the error "had a substantial and injurious effect or influence in determining the jury's verdict," and the court of appeals had not applied that standard in this case.

Harmless Error Rule Applies to Jury Instruction That Omits Element of Offense

Neder v. United States, 119 S. Ct. 1827, 144 L. Ed. 2d 35, 65 Crim. L. Rep. 293 (10 June 1999). The Court ruled that the harmless error rule of Chapman v. California, 386 U.S. 18, 87 S. Ct. 824, 17 L. Ed. 2d 189 (1966), applies to a jury instruction that omits an element of an offense.