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Lots of Interesting Cases

Grounds to Stop

- *S v. Fields* (p. 1)
 - If you can't weave in your own lane, where can you weave?
- *S v. Peele* (p. 1), *S v. Allen* (p. 2),
S v. Hudgins (p. 2), *S v. Maready* (p. 2)
 - It depends on what the meaning of "is" is (or how "anonymous" is anonymous)

Actions after Stop

- *Arizona v. Johnson* (p. 3)
 - On traffic stop, driver and passengers are seized per recent USSC decision in *Brendlin*
 - Traffic stop (whether on reasonable suspicion or probable cause) is like *Terry* stop
 - Officers are therefore authorized to take *Terry*-like actions

Arizona v Johnson (cont'd)

- Officers may frisk driver and passengers if they have reasonable suspicion that they're armed and dangerous
- Officers may engage in inquiry unrelated to justification for stop if inquiry does not "measurably" extend stop
- *See also S v. Williams* (p. 5)
- *But see S v. Washington* (p. 6)

Actions after Arrest

- *Arizona v. Gant* (p. 6)
 - Before *Gant*, officers could search passenger compartment, including containers within passenger compartment, incident to arrest of occupant

Arizona v Gant (cont'd)

- Now, officers may search passenger compartment incident to arrest of occupant only if
 - Arrestee is unsecured and within reaching distance of passenger compartment at time of search, or
 - It is “reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle”

Most traffic offenses?

NO

Impaired driving?

Maybe

Traffic stop that reveals drug offense?

Yes

Outstanding arrest
warrant?

NO

Exclusionary Rule

- *Herring v. U.S.* (p. 7)
 - “What if an officer reasonably believes there is an outstanding arrest warrant, but that belief turns out to be wrong because of a negligent bookkeeping error by another police employee?”

Herring v. U.S. (cont'd)

- In prior decisions finding exclusion not required, officer had relied on
 - Subsequently invalidated search warrant
 - Statute authorizing warrantless search
 - Incorrect entry in judicial database
 - Search warrant based on incorrect information

S v. Byrd (p. 7)



Chronology

- 3/11/03—physical altercation
- 3/13/03—DVPO issued
- 7/10/03—DVPO set aside
- 11/?/03—unreported physical altercation
- 3/11/04—civil action filed, TRO issued ex parte
 - General allegations of repeated abuse to date
 - But, most recent specific allegation was 3/11/03
- 3/15/04—initial hearing continued to 3/24/04
- 3/23/04—Billy Ray shoots Carrie

Enhancement

- Class C felony, prior record level 1
 - 120 months (10 years)
- Violation of DVPO enhances offense by one class to Class B₁ felony, prior record level 1
 - 245 months (20 years)

Court's Holding

- TRO under Rule 65(b) is not same as DVPO under Ch. 50B, and a violation does not support Ch. 50B crimes or enhancements
 - Concern about potentially laxer standards?
- Ex parte DVPO is not same as DVPO after hearing or consent, and a violation does not support Ch. 50B crimes or enhancements
 - Concern about severity of consequences without opportunity to be heard?

Practical Consequences for You

- Violation of Ch. 50B ex parte DVPO is not a misdemeanor
 - But, violation is still probably punishable as criminal contempt by Order to Show Cause
- If the statute is revised to cover ex parte DVPOs, will the NCSC act on its Due Process concerns?

Case Notes

- Assault is not lesser of sexual battery (p. 9)
- Initials of rape or sexual offense victim are sufficient to identify victim in pleading (p. 9)
- Officer may not give opinion that white powder is cocaine (p. 10)
 - What about crack? Marijuana?

Right to Counsel Strengthened . . .

- *Rothgery v. Gillespie*
 - Right to counsel attaches at initial appearance before magistrate
 - Implication # 1
 - Under *Michigan v. Jackson*, once a defendant asserts the right to counsel, law enforcement may not initiate questioning of the defendant about offenses for which he or she has asserted the right

But not for interrogations . . .

- *Kansas v. Venstris* (p. 13)
 - If State obtains statement from defendant in violation of 6th Amendment, State may still use the statement to impeach
- *Montejo v. Louisiana* (p. 13)
 - Even if defendant asserts right to counsel in court, officers may still approach and question him or her thereafter, subject to *Miranda* warnings if the defendant is in custody

But, maybe for appointment

- Implication # 2 of *Rothgery*
 - Counsel must be appointed within reasonable time after right to counsel attaches at initial appearance before magistrate
 - For felonies for in-custody defendants, appointment must be within 96 hours (time limit on first appearances) and is usually is less
 - For misdemeanors, ???

G.S. 7A-453

- “[T]he authority having custody of a person who is without counsel for more than 48 hours after being taken into custody shall so inform the . . .
 - designee of the Office of Indigent Defense Services [that is, the public defender in public defender districts] . . .
 - clerk of superior court [in all other districts].”

Waiver of Counsel

- *Indiana v. Edwards*
 - A state may refuse to permit a person to represent himself or herself at trial if the person, although capable of standing trial, suffers from severe mental illness to the point where the person cannot conduct trial proceedings without counsel
- *State v. Lane* (p. 14)
 - NC is going to follow *Edwards*

PJCs: *S v. Popp* (p. 15)

- 17-year old defendant pled guilty to bringing bb gun and pistol to school in trunk of car
- Trial judge entered “PJC” with several conditions
- Thereafter, another judge added more conditions
- After completion of conditions, first judge “dismissed” case

What Went Wrong in *Popp*

- Initial “PJC” was a final judgment
- Because it was a final judgment, additional conditions could not be imposed
- Case could not be dismissed on compliance with conditions