

FLORIDA BAR LUNCHEON

October Term 2020

Noteworthy Fourth Amendment Decisions

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OCTOBER TERM 2020

Borden v. United States (19-5410; Argued 11/3/2020). Of course, there is an Armed Career Criminal Act case – can a crime qualify under the “use of force” clause if the *mens rea* for the offense is “mere” recklessness?

Jones v. Mississippi (18-1259; Argued 11/3/2020). In a case involving a conviction of a juvenile, is the sentencing authority required to make a finding that the juvenile is “permanently incorrigible” before imposing a sentence of life without parole? The Court granted cert in this case after the *Malvo* case from last term was dismissed because of a change in state law in Virginia.

Edwards v. Vannoy (19-5807; Argued 12/2/2020). Does the decision in *Ramos* (requiring a unanimous verdict in a serious felony case) apply to cases on collateral review?

Van Buren v. USA (19-783; Argued 11/30/2020) (See below)

Greer v. USA (19-8709): Whether, when applying plain-error review based on an intervening SCOTUS decision, (*Rehaif*), an appellate court may review matters outside the record (e.g., the record at sentencing) to determine whether the error affected a defendant's substantial rights or impacted the fairness, integrity or public reputation of the trial?

USA v. Gary (20-444): Whether defendant who pleaded guilty to possessing a firearm as a felon (§ 922(g)(1) and 924(a)), is automatically entitled to plain error relief if the district court did not advise him that one element of that offense is knowledge of his status as a felon, regardless of whether he can show that the district court's error affected the outcome of the proceedings. Only the Fourth Circuit, the lower court in this case, provides for automatic reversal (structural error) when there is a *Rehaif* error during the Rule 11 colloquy.

FOURTH AMENDMENT CASES

Torres v. Madrid (What is a seizure)

Caniglia v. Strom (entering house for non-emergency community caretaking)

Lange v. California: hot pursuit of person who committed misdemeanor

USA v. Van Buren

[Whoever] intentionally accesses a computer without authorization or exceeds authorized access, and thereby obtains--

- (A) information contained in a financial record of a financial institution, or of a card issuer as defined in section 1602(n) of title 15, or contained in a file of a consumer reporting agency on a consumer, as such terms are defined in the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.);*
- (B) information from any department or agency of the United States; or*
- (C) information from any protected computer;*

USA v. VAN BUREN

USING AN OFFICE COMPUTER TO CHECK THE WEATHER, OR THE MARCH MADNESS SCORES, OR TO WATCH THE SECOND IMPEACHMENT.

IS THE FEDERAL GOVERNMENT STRETCHING THE LAW ... AGAIN:

1. KELLY v. USA
2. *ARTHUR ANDERSEN*
3. *SKILLING*
4. *McDONNELL*
5. *YATES*

TORRES V. MADRID

Hodari D. held that a "command" to stop (if the suspect does not stop) is not a seizure, so no need to evaluate basis for the detention. (Fleeing suspect ignores command to stop and abandons heroin).

What if the police shoot the suspect, but the suspect does not stop?

Is there a difference in determining what is a "seizure" between a "command" to stop and shooting the suspect.

TORRES V. MADRID

How to determine what is the fruit of the poisonous tree if this were a criminal case?

Drugs abandoned while fleeing *after* being shot?

Confession obtained after fleeing but later apprehended?

LANGE V. CALIFORNIA

Can the police follow a person who committed a misdemeanor in hot pursuit into the house. What is a misdemeanor? (First DUI, but second is a felony)

Compare exigent circumstances

Danger

Necessity

Possible lost evidence

Knock and Announce

1. Categorically, all fleeing misdemeanants
2. Categorically, all felons, but only misdemeanants with exigent circumstances (not rabbits)
3. No categorical rule: just exigent circumstances

CANIGLIA V. STROM

Compare Exigent Circumstances

Evidence destruction (Kentucky v. King)

Danger to somebody inside (Brigham v. Stuart)

Fire Scene (Michigan v. Tyler)

Community Caretaking? (non investigative).

OT 2019: KANSAS V. GLOVER

What constitutes reasonable basis to stop a car?

Police observe a car and a license check shows that it is registered to a person who had his license revoked?

The police did not see the driver.

1. Not a single fact was known about the driver (what gender, what age), or anything about him/her.
2. How many drivers are there for most cars?
3. How often does the non-registered owner drive the car, if the registered owner had license revoked?
4. How often do revoked drivers drive their car?
5. Relevance of police officer's experience regarding prior stops of cars with registered owners with no license?
6. If not the "experience" of the officer, what about training?
7. Is "common sense" the answer? (What if Court splits 5-4 or 6-3)?
8. What about teenagers who aren't allowed to drive at night, can all cars registered to teenagers be stop after sunset?
9. What percentage = reasonable suspicion?
10. What about stopping all cars registered to teenagers, because the majority of teenagers text while driving.
11. Can the same principles apply to all drug courier profile cases? Common sense? 10% - 15% accuracy?
12. There are no "totality of the circumstances" in this case. There is one fact.
13. Does the constitution require the police officer to see who the driver is before stopping?
14. Once the car is stopped, if the driver is the "wrong" gender or age, can the police still do a license check and insurance and registration and check for warrants?

TERRY STOPS

USA v. Johnson, 921 F.3d 991 (11th Cir. 2019) – when an officer reached in a pocket and retrieve a bullet during a frisk?

USA v. Weaver, 975 F.3d 94 (2d Cir. 2020) – Was there a basis for frisking the defendant where all that was seen by the police was he “fumbled in his pants” when stopped for traffic violation?

USA v. Curry, 965 F.3d 313 (4th Cir. 2020) – Was there sufficient basis to stop the defendant who was walking away from the sound of gunfire?

UNITED STATES v. JOHNSON

Police arrest Johnson, suspecting he is involved in burglary. He is frisked. Police feel what they believe is one round of ammunition in his pocket. Can they take the bullet out of his pocket? Is it a “weapon”?

1. 4:00 a.m.
 2. High Crime Area
 3. Burglars often have guns
 4. Unsecured scene
- 1. No report of a weapon
 - 2. No accomplice
 - 3. Armed officers were present
 - 4. Suspect was handcuffed

UNITED STATES v. CURRY

50 pages of acrimonious opinions with judges all but accusing each other of being racist on the one hand, or “insensitive” to the plight of urban dwellers living in crime-filled neighborhoods (and who desperately want the police to protect them).