RUTH BADER GINSBURG AMERICAN INN OF COURT

JANUARY 2019 PUPILLAGE TEAM

"CHANGING ATTITUDES ABOUT THE WAR ON CRIME/JUSTICE REFORM"

WRITTEN MATERIALS

FOURTH AMENDMENT ISSUES

U.S. CONST., AMEND. IV: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

SEARCHES & SEIZURES

***Carroll v. United States*, 267 U.S. 132 (1925):** Prohibition-era liquor case where the Supreme Court created an exception for searches of vehicles because vehicles could be quickly removed to another jurisdiction before a warrant could be obtained. If the officer has probably cause to believe the vehicle contains contraband, the officer can conduct a warrantless search

***Terry v. Ohio*, 392 U.S. 1 (1968):** An officer may perform a search for weapons without a warrant, even without probable cause, when the officer reasonably believes (has "reasonable suspicion") that the person has committed, is committing, or is about to commit a crime and has a reasonable belief that the person "may be armed and presently dangerous."

***Cardwell v. Lewis*, 417 U.S. 583 (1974) (plurality):** The Supreme Court developed a privacy rationale to supplement the "mobility" rationale in *Carroll*. "One has a lesser expectation of privacy in a motor vehicle because its function is transportation and it seldom serves as one's residence or personal effects. . . . It travels public thoroughfares where both its occupants and its contents are in plain view."

***Arkansas v. Sanders*, 442 U.S. 753 (1979):** Absent exigent circumstances, a warrant is generally required to search closed containers removed from an automobile properly stopped in the field and searched for contraband.

***New York v. Belton*, 453 U.S. 454 (1981):** When a police officer has made a lawful custodial arrest of the occupant of an automobile, the officer may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile. Extended the rule from *Chimel v. California*, 395 U.S. 752 (1969), to searches of vehicles.

***Illinois v. Gates*, 462 U.S. 213 (1983):** Courts should look at the "totality of the circumstances" in determining whether probable cause exists to issue a warrant, instead of using the two-pronged test of "veracity/reliability" and "basis of knowledge" from *Spinelli v. United States*, 393 U.S. 410 (1969).

***Michigan v. Long*, 463 U.S. 1032 (1983):** Once a vehicle has been validly stopped, police, using articulable facts warranting a reasonable belief that weapons may be present, can conduct a *Terry*-type protective search of those portions of the passenger compartment in which a weapon could be placed or hidden. In the absence of reasonable suspicion as to weapons, police may seize contraband and suspicious items "in plain view."

***California v. Acevedo*, 500 U.S. 565 (1991):** The police may, without a warranty, search an automobile and the containers within it where they have probable cause to believe contraband or evidence is contained therein. Overruled *Arkansas v. Sanders*.

***Knowles v. Iowa*, 525 U.S. 113 (1998):** The Fourth Amendment prohibits a police officer from further searching a vehicle which was stopped for a minor traffic offense once the officer has written a citation for the offense.

***Arizona v. Gant*, 556 U.S. 332 (2009):** Subsequent to a recent arrest, police may search a vehicle only if the arrested person is within the reaching distance of the passenger compartment at the time of the search or if there is a reasonable belief that crime-related evidence is present in the vehicle. Limited *New York v. Belton*.

***Riley v. California*, 573 U.S. , 134 S. Ct. 2473 (2014):** The police generally may not, without a warrant, search digital information on a cellphone seized from an individual incident to a lawful arrest.

***Carpenter v. United States*, 585 U.S. , 138 S. Ct. 2206 (2018):** The third-party doctrine applied to telephone communications in *Smith v. Maryland*, 442 U.S. 735 (1979), cannot be applied to cellphone location records obtained under the Stored Communications Act, 18 U.S.C.S. § 2703(d). Individuals maintain a legitimate expectation of privacy in the record of their physical movements as captured through cell-site location information. Majority stressed this was a narrow ruling.

MISTAKES OF LAW

***Brinegar v. United States*, 338 U.S. 160 (1949):** "[B]ecause many situations which confront officers in the course of executing their duties are more or less ambiguous, room must be allowed for some mistakes. . . . But the mistakes must be those of reasonable men, acting on facts leading sensibly to their conclusions of probability."

***Michigan v. DeFillippo*, 443 U.S. 31 (1979):** Defendant was arrested and searched under an ordinance later declared to be unconstitutional. However, because at the time the officers arrested the defendant, "there was no controlling precedent that [the] ordinance was or was not

constitutional," the officers reasonably assumed that the law was valid. Therefore, their observations gave them probable cause to arrest (and search) the defendant.

***United States v. Leon*, 468 U.S. 897 (1984):** When a police officer acts in a reasonable manner relying on a search warrant that was issued by a neutral magistrate, but ultimately found to be invalid, the evidence collected from the search should not be barred from trial.

***Illinois v. Rodriguez*, 497 U.S. 177 (1990):** The warrantless search of a premises is permitted when police have a reasonable (though mistaken) belief that voluntary consent was obtained from a party who possesses common authority over the premises.

***Cheek v. United States*, 498 U.S. 192 (1991):** A good faith misunderstanding of the law or a good faith belief that one is not violating the law does not have to be reasonable to negate the element of willfulness in tax crimes.

***Hein v. North Carolina*, 574 U.S. , 135 S. Ct. 530 (2014):** A police officer's reasonable mistake of law can provide the individualized suspicion ("reasonable suspicion") required by the Fourth Amendment to the United States Constitution to justify a traffic stop.

EIGHTH AMENDMENT & MISC. ISSUES

U.S. CONST., AMEND. VIII: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

21 O.S. § 12.1 – Minimum Sentences: "A person committing a felony offense listed in [21 O.S. § 13.1] on or after March 1, 2000, and convicted of the offense shall serve not less than eighty-five percent (85%) of the sentence of imprisonment imposed within the Department of Corrections. Such person shall not be eligible for parole consideration prior to serving eighty-five percent (85%) of the sentence imposed and such person shall not be eligible for earned credits or any other type of credits which have the effect of reducing the length of the sentence to less than eighty-five percent (85%) of the sentence imposed."

21 O.S. § 13.1 – Required Service of Minimum Percentage of Sentence: "Persons convicted of:

1. First degree murder as defined in Section 701.7 of this title;

2. Second degree murder as defined by Section 701.8 of this title;

3. Manslaughter in the first degree as defined by Section 711 of this title;

4. Poisoning with intent to kill as defined by Section 651 of this title;

5. Shooting with intent to kill, use of a vehicle to facilitate use of a firearm, crossbow or other weapon, assault, battery, or assault and battery with a deadly weapon or by other means likely to produce death or great bodily harm, as provided for in Section 652 of this title;

6. Assault with intent to kill as provided for in Section 653 of this title;

7. Conjoint robbery as defined by Section 800 of this title;

8. Robbery with a dangerous weapon as defined in Section 801 of this title;

9. First degree robbery as defined in Section 797 of this title;

10. First degree rape as provided for in Section 1111, 1114 or 1115 of this title;

11. First degree arson as defined in Section 1401 of this title;

12. First degree burglary as provided for in Section 1436 of this title;

13. Bombing as defined in Section 1767.1 of this title;

14. Any crime against a child provided for in Section 843.5 of this title;

15. Forcible sodomy as defined in Section 888 of this title;

16. Child pornography or aggravated child pornography as defined in Section 1021.2, 1021.3, 1024.1, 1024.2 or 1040.12a of this title;

17. Child prostitution as defined in Section 1030 of this title;

18. Lewd molestation of a child as defined in Section 1123 of this title;

19. Abuse of a vulnerable adult as defined in Section 10-103 of Title 43A of the Oklahoma Statutes who is a resident of a nursing facility;

20. Aggravated trafficking as provided for in subsection C of Section 2-415 of Title 63 of the Oklahoma Statutes;

21. Aggravated assault and battery upon any person defending another person from assault and battery; or

22. Human trafficking as provided for in Section 748 of this title,

shall be required to serve not less than eighty-five percent (85%) of any sentence of imprisonment imposed by the judicial system prior to becoming eligible for consideration for parole. Persons convicted of these offenses shall not be eligible for earned credits or any other type of credits which have the effect of reducing the length of the sentence to less than eighty-five percent (85%) of the sentence imposed."

22 O.S. § 305.1 – Deferred Prosecution Programs: "Before the filing of an information against a person accused of committing a crime, the State of Oklahoma, through its district attorney, may agree with an accused to defer the filing of a criminal information for a period not to exceed three (3) years.

The State of Oklahoma may include any person in a deferred prosecution program if it is in the best interests of the accused and not contrary to the public interest. Each district attorney shall adopt and promulgate guidelines which shall indicate what factors shall be considered in including an accused in the deferred prosecution program. The guidelines shall insure that the State of Oklahoma considers in each case at least the following factors:

1. Whether the State of Oklahoma has sufficient evidence to achieve conviction;

2. The nature of the offense with priority given to first offenders and nonviolent crimes;

3. Any special characteristics of the accused;

4. Whether the accused will cooperate and benefit from a deferred prosecution program;

5. Whether available programs are appropriate to the accused person's needs;

6. Whether the services for the accused are more readily available from the community or from the corrections system;

7. Whether the accused constitutes a substantial danger to others;

8. The impact of the deferred prosecution on the community;

9. The recommendations of the law enforcement agency involved in the case;

10. The opinions of the victim; and

11. Any mitigating or aggravating circumstances."

22 O.S. § 305.2 – Agreements to Defer Prosecution: "A. If an accused qualifies for the deferred prosecution program, the accused and the State of Oklahoma, through the district attorney, may execute an agreement whereby the accused agrees to waive any rights to a speedy accusation, a speedy trial, and any statute of limitations, and agrees to fulfill such conditions to which the accused and the State of Oklahoma may agree including, but not limited to, restitution and community services.

B. The accused, as consideration for entering into a deferred prosecution agreement, consents and agrees to a full and complete photographic record of property which was to be used as evidence. The photographic record shall be competent evidence of the property and admissible in any criminal action or proceeding as the best evidence.

C. Property shall be returned to its owner only after the photographic record is made subject to the following conditions:

1. Property, except that which is prohibited by law, shall be returned to its owner after proper verification of title;

2. The return of property to the owner shall be without prejudice to the state or to any person who may have a claim against the property; and

3. When property is returned, the recipient shall sign, under penalty of perjury, a declaration of ownership which shall be retained by the police department or sheriff's office.

D. As additional consideration for the agreement, the State of Oklahoma shall agree not to file an information if the accused satisfactorily completes the conditions of the agreement.

E. The agreement between the accused and the State of Oklahoma may include provisions whereby the accused agrees to be supervised in the community. If the accused is required to be supervised pursuant to the terms of the agreement, the person shall be required to pay a supervision fee to be established by the supervisory agency. The supervision fee shall be paid to the supervisory agency as required by the rules of the supervisory agency. The supervisory agency shall monitor the person for compliance with the conditions of the agreement. The supervisory agency shall report to the district attorney on the progress of the accused, and shall report immediately if the accused fails to report or participate as required by the agreement.

F. The agreement between the parties may require the accused to participate or consult with local service providers, including the Department of Human Services, the Department of Mental Health and Substance Abuse Services, the Employment Security Commission, federal services agencies, other state or local agencies, colleges, universities, technology center schools, and private or charitable service organizations. When the accused is required to participate or consult with any service provider, a program fee may be required unless the fee would impose an unnecessary hardship on the person. The program fee shall be established by the service provider based upon a sliding scale. Any state agency called upon for assistance in a deferred prosecution program by any district attorney shall render services and assistance as available. Any supervision fee or program fee authorized by this section may be waived in whole or in part when the accused is indigent. No person who is otherwise qualified for a deferred prosecution program shall be denied services or supervision based solely on the person's inability to pay a fee or fees.

G. The agreement between the parties may require the accused to pay a victim compensation assessment pursuant to the provisions of Section 142.18 of Title 21 of the Oklahoma Statutes. The amount of the assessment shall be agreed to by the parties and shall be within the amounts specified in Section 142.18 of Title 21 of the Oklahoma Statutes for the offense charged.

H. Any deferred prosecution agreement including, but not limited to, any fee, sliding scale fee, compensation, contract, assessment, or other financial agreement charged or waived by the accused or the State of Oklahoma shall be a record open to the public.

I. 1. On or after the effective date of this act, each office of the district attorney shall, upon request and within a reasonable time, provide the name and other identifying information of an accused entering into a deferred prosecution agreement.

2. A deferred prosecution agreement entered into prior to the effective date of this act shall not be a record open to the public, unless confidentiality was waived as a condition of the agreement."

22 O.S. § 973 – Court May Hear Aggravating or Mitigating Circumstances: "After a plea or verdict of guilty in a case where the extent of the punishment is left with the court, the court, upon the suggestion of either party that there are circumstances which may be properly taken into view, either in aggravation or mitigation of the punishment, may in its discretion hear the same summarily at a specified time and upon such notice to the adverse party as it may direct."

22 O.S. § 1108.1 – Own Recognizance Bonds: "A. Own recognizance bonds set in a penal amount shall be posted by executing an own recognizance indenture contract which shall be executed and maintained by the district court clerk. The indenture shall constitute an inchoate obligation to pay in the event forfeiture proceedings are commenced and result in a final order of forfeiture by the authorizing and issuing judge of the district court.

B. Setting aside of forfeitures shall be governed by the same rules and procedures applicable to cash, property or surety bonds, provided that if the forfeiture is set aside, the district court shall exempt from forfeiture set aside all reasonable costs of recovery to return the defendant to custody, and an administrative fee to be retained by the court fund in a sum not to exceed ten percent (10%) of the total penal bond amount plus all costs incurred in processing the forfeiture proceeding to include costs of notices, warrants, service and execution.

C. The final judgment of forfeiture shall constitute a judgment enforceable through all procedures available for the collection of a civil judgment, provided that the judgment shall be considered a debt in the nature of defalcation as defined by the United States Bankruptcy Code, and shall not be subject to other forms of debtor relief. The judgment shall be subject to collection as costs in the underlying action regardless of final disposition or determination of guilt.

D. The district attorney or the Administrator of the District Court Cost Collection Division as determined by administration order in each judicial district shall initiate the forfeiture action and collection of forfeitures and shall receive one-third (1/3) of all sums collected from the ten percent (10%) premium, not to include costs as defined in subsection B of this section, to offset the costs of administering the program.

E. This section does not apply to traffic or wildlife cases."

***Stack v. Boyle*, 342 U.S. 1 (1951):** Bail set an amount higher than that which would be reasonably calculated to assure the presence of the accused individuals at trial is excessive under the Eighth Amendment.

***Akin v. State*, 1974 OK CR 116, 523 P.2d 1111:** "The trial court is granted substantially more latitude than a jury in factors which may be considered in imposing punishment. The jury, generally, excepting a bifurcated proceeding, may consider only the facts and circumstances of a particular case. The trial court at sentencing, on the other hand, may consider moral character of the accused and such other evidence as it may deem necessary as a guide to determining the punishment to be imposed."

***Powell v. State*, 1951 OK CR 34, 229 P.2d 230:** "Where the court has a discretion as to the character or the amount of punishment, it may be guided in the exercise of such discretion by accused's past record, by the motives actuating the crime, or by the fact that accused previously has been convicted of similar or other offenses."

“Bail Reform Act of 1984”, 18 U.S.C. §§ 3142: “**(f) Detention Hearing.**—The judicial officer shall hold a hearing to determine whether any condition or combination of conditions set forth in subsection (c) of this section will reasonably assure the appearance of such person as required and the safety of any other person and the community—

(1) upon motion of the attorney for the Government, in a case that involves—

(A) a crime of violence, a violation of section 1591, or an offense listed in section 2332b(g)(5)(B) for which a maximum term of imprisonment of 10 years or more is prescribed;

(B) an offense for which the maximum sentence is life imprisonment or death;

(C) an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46;

(D) any felony if such person has been convicted of two or more offenses described in subparagraphs (A) through (C) of this paragraph, or two or more State or local offenses that would have been offenses described in subparagraphs (A) through (C) of this paragraph if a circumstance giving rise to Federal jurisdiction had existed, or a combination of such offenses; or

(E) any felony that is not otherwise a crime of violence that involves a minor victim or that involves the possession or use of a firearm or destructive device (as those terms are defined in section 921), or any other dangerous weapon, or involves a failure to register under section 2250 of title 18, United States Code; or

(2) upon motion of the attorney for the Government or upon the judicial officer’s own motion in a case, that involves—

(A) a serious risk that such person will flee; or

(B) a serious risk that such person will obstruct or attempt to obstruct justice, or threaten, injure, or intimidate, or attempt to threaten, injure, or intimidate, a prospective witness or juror.

. . .

(g) Factors To Be Considered.—The judicial officer shall, in determining whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of any other person and the community, take into account the available information concerning—

(1) the nature and circumstances of the offense charged, including whether the offense is a crime of violence, a violation of section 1591, a Federal crime of terrorism, or involves a minor victim or a controlled substance, firearm, explosive, or destructive device;

(2) the weight of the evidence against the person;

(3) the history and characteristics of the person, including—

(A) the person’s character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and

(B) whether, at the time of the current offense or arrest, the person was on probation, on parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under Federal, State, or local law; and

(4) the nature and seriousness of the danger to any person or the community that would be posed by the person's release. In considering the conditions of release described in subsection (c)(1)(B)(xi) or (c)(1)(B)(xii) of this section, the judicial officer may upon his own motion, or shall upon the motion of the Government, conduct an inquiry into the source of the property to be designated for potential forfeiture or offered as collateral to secure a bond, and shall decline to accept the designation, or the use as collateral, of property that, because of its source, will not reasonably assure the appearance of the person as required."

FWD.us: *Oklahoma's Ongoing Imprisonment Crisis* (2018): "Without additional reform, Oklahoma's prison population will grow by an additional 14 percent in the next ten years. Oklahoma is projected to have 31,000 people in prison by 2028."