

SEARCH & SEIZURE UPDATE

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OVERVIEW OF TEXAS AND FEDERAL CASES

- **RENTAL AGREEMENTS**
- **TITLE III INTERCEPTS**
- **BOOKING QUESTIONS & “IN CUSTODY” ANALYSIS**
- **“TRESPASSES”**
- **COLLECTIVE KNOWLEDGE**
- **LOCATION INFORMATION**

RENTAL AGREEMENT WITH UNLISTED DRIVER

- **LATASHA REED RENTS A CAR IN NEW JERSEY. AFTER RENTING THE CAR, PROVIDES THE KEYS TO TERRENCE BYRD AND DEPARTS IN A SEPARATE VEHICLE. BYRD IS LATER STOPPED BY LAW ENFORCEMENT AS THE SOLE OCCUPANT OF THE VEHICLE. BYRD ADMITS TO HAVING A “BLUNT” IN THE CAR OFFICERS SEARCH THE VEHICLE BECAUSE HE IS NOT LISTED ON THE RENTAL AGREEMENT, WHICH STATED:**
- **“I UNDERSTAND THAT THE ONLY ONES PERMITTED TO DRIVE THE VEHICLE OTHER THAN THE RENTER ARE THE RENTER’S SPOUSE, THE RENTER’S CO-EMPLOYEE (WITH THE RENTER’S PERMISSION, WHILE ON COMPANY BUSINESS), OR A PERSON WHO APPEARS AT THE TIME OF THE RENTAL AND SIGNS AN ADDITIONAL DRIVER FORM. THESE OTHER DRIVERS MUST ALSO BE AT LEAST 25 YEARS OLD AND VALIDLY LICENSED.**
- **“PERMITTING AN UNAUTHORIZED DRIVER TO OPERATE THE VEHICLE IS A VIOLATION OF THE RENTAL AGREEMENT. THIS MAY RESULT IN ANY AND ALL COVERAGE OTHERWISE PROVIDED BY THE RENTAL AGREEMENT BEING VOID AND MY BEING FULLY RESPONSIBLE FOR ALL LOSS OR DAMAGE, INCLUDING LIABILITY TO THIRD PARTIES.”**

RENTAL AGREEMENT WITH UNLISTED DRIVER

- **“THE MERE FACT THAT A DRIVER IN LAWFUL POSSESSION OR CONTROL OF A RENTAL CAR IS NOT LISTED ON THE RENTAL AGREEMENT WILL NOT DEFEAT HIS OR HER OTHERWISE REASONABLE EXPECTATION OF PRIVACY”**
- **COURT LEFT FOR REMAND THE GOVERNMENT ARGUMENTS OF WHETHER ONE WHO INTENTIONALLY USES A THIRD PARTY TO PROCURE A RENTAL CAR BY A FRAUDULENT SCHEME FOR THE PURPOSE OF COMMITTING A CRIME IS NO BETTER SITUATED THAN A CAR THIEF; AND THAT PROBABLE CAUSE JUSTIFIED THE SEARCH IN ANY EVENT**
- ***BYRD V. UNITED STATES*, 138 S.C.T. 1518 (2018)**

FACIALLY INVALIDITY & TITLE III ORDERS

- **THE STATUTE PROVIDES FOR THE SUPPRESSION OF “THE CONTENTS OF ANY WIRE OR ORAL COMMUNICATION” THAT A WIRETAP “INTERCEPT[S]” ALONG WITH ANY “EVIDENCE DERIVED THEREFROM” IF**
 - **“(I) THE COMMUNICATION WAS UNLAWFULLY INTERCEPTED;**
 - **“(II) THE ORDER OF ... APPROVAL UNDER WHICH IT WAS INTERCEPTED IS INSUFFICIENT ON ITS FACE; OR**
 - **“(III) THE INTERCEPTION WAS NOT MADE IN CONFORMITY WITH THE ORDER OF AUTHORIZATION OR APPROVAL.”**

FACIAL INVALIDITY & TITLE III ORDERS

- **UNDER FEDERAL LAW, A JUDGE NORMALLY MAY ISSUE A WIRETAP ORDER PERMITTING THE INTERCEPTION OF COMMUNICATIONS ONLY “WITHIN THE TERRITORIAL JURISDICTION OF THE COURT IN WHICH THE JUDGE IS SITTING.”**
- **HERE, A JUDGE FOR THE DISTRICT OF KANSAS AUTHORIZED NINE WIRETAP ORDERS AS PART OF A GOVERNMENT INVESTIGATION OF A SUSPECTED DRUG DISTRIBUTION RING IN KANSAS. FOR THE MOST PART, THE GOVERNMENT INTERCEPTED COMMUNICATIONS FROM A LISTENING POST WITHIN KANSAS. BUT EACH ORDER ALSO CONTAINED A SENTENCE PURPORTING TO AUTHORIZE INTERCEPTION OUTSIDE OF KANSAS. BASED ON THAT AUTHORIZATION, THE GOVERNMENT INTERCEPTED ADDITIONAL COMMUNICATIONS FROM A LISTENING POST IN MISSOURI.**

FACIAL INVALIDITY & TITLE III ORDERS

- **DAHDAS CANNOT SEEK SUPPRESSION UNDER SUBPARAGRAPH (I) GIVEN THAT THE UNLAWFULLY INTERCEPTED COMMUNICATIONS FROM THE MISSOURI LISTENING POST WERE NOT INTRODUCED AT TRIAL.**
- ***DAHDA V. UNITED STATES*, 138 S.CT. 1491 (2018)**

“ROUTINE BOOKING” EXCEPTION

- **ARELLANO-BANUELOS WAS INTERVIEWED BY ICE WHILE IN STATE CUSTODY. DURING THE INTERVIEW IN PRISON, THE ICE OFFICER FAILED TO PROVIDE COMPLETE MIRANDA WARNINGS. ARELLANO-BANUELOS WAS ASKED ABOUT HIS COUNTRY OF CITIZENSHIP, PLACE OF BIRTH, WHETHER HE HAD BEEN DEPORTED, WHEN HE LAST ENTERED THE UNITED STATES, AND WHETHER HE APPLIED FOR PERMISSION TO ENTER THE UNITED STATES.**

“ROUTINE BOOKING” EXCEPTION

- “THE TERM ‘INTERROGATION’ UNDER ***MIRANDA*** REFERS NOT ONLY TO EXPRESS QUESTIONING, BUT ALSO TO ANY WORDS OR ACTIONS ON THE PART OF THE POLICE (OTHER THAN THOSE NORMALLY ATTENDANT TO ARREST AND CUSTODY) THAT THE POLICE ***SHOULD KNOW*** ARE REASONABLY LIKELY TO ELICIT AN INCRIMINATING RESPONSE FROM THE SUSPECT.”
- THIS INQUIRY IS “FOCUSED PRIMARILY UPON THE PERCEPTIONS OF THE SUSPECT, RATHER THAN THE INTENT OF THE POLICE.” ALTHOUGH AN OFFICER’S SUBJECTIVE INTENT MAY BE RELEVANT TO WHAT AN OFFICER ***SHOULD KNOW*** IT IS NOT REQUIRED TO ESTABLISH THAT AN INTERROGATION OCCURRED.
- BOOKING QUESTIONS RELATE TO NAME, ADDRESS, HEIGHT, WEIGHT, EYE COLOR, DATE OF BIRTH AND AGE

“ROUTINE BOOKING” EXCEPTION

- **REMANDED TO DETERMINE WHETHER ARELLANO-BANUELOS WAS “IN CUSTODY”**
- ***U.S. V. ARELLANO-BANUELOS*, 912 F.3D 862 (2019)**

TRESPASS CONSIDERATIONS

- **OFFICER ATTEMPTED TO STOP A MOTORCYCLIST FOR A TRAFFIC VIOLATION AND THE DRIVER EVADES. WEEKS LATER A SEPARATE OFFICER ATTEMPTS TO STOP A MOTORCYCLIST, WHO ALSO EVADES. THE OFFICERS COMPARE NOTES AND DETERMINE IT IS THE SAME MOTORCYCLIST.**
- **DURING AN INVESTIGATION OFFICERS LEARN THE MOTORCYCLE WAS STOLEN AND LIKELY IN THE POSSESSION OF THE DEFENDANT. OFFICERS FIND THE RESIDENCE THAT THE DEFENDANT IS STAYING AT AND APPROACH THE DRIVEWAY AND LIFT A TARP COVERING THE MOTORCYCLE TO TAKE A PICTURE.**

TRESPASS CONSIDERATIONS

- **CURTIAGE IS THE AREA ADJACENT TO THE HOME AND TO WHICH THE ACTIVITY OF HOME LIFE EXTENDS, WHICH INCLUDES A DRIVEWAY**
- **THE SCOPE OF AN AUTOMOBILE EXCEPTION EXTENDS NO FURTHER THAN THE AUTOMOBILE ITSELF**
- ***COLLINS V. VIRGINIA, 138 S.CT. 1663 (2018)***

TRESPASS CONSIDERATIONS

- **WHILE PATROLLING, A STATE TROOPER NOTICED THAT THE TIRES IN RICHMOND'S TRUCK WERE "SHAKING," "WOBBLY," AND "UNBALANCED." HE WAS CONCERNED THAT THE TIRES WERE A POTENTIAL DANGER TO THE PUBLIC. AFTER THE TRUCK DROVE ACROSS THE FOG LINE, THE TROOPER INITIATED A TRAFFIC STOP.**
- **THE TROOPER ASKED RICHMOND TO EXIT THE TRUCK. AS THE TROOPER WALKED TO THE REAR OF THE TRUCK, HE LOOKED AT THE PASSENGER SIDE REAR TIRE AND OBSERVED THAT THE BOLTS HAD BEEN STRIPPED. THE TROOPER THEN PUSHED THE TIRE WITH HIS HAND, RESULTING IN AN ABNORMAL SOUND INDICATING THAT SOMETHING BESIDES AIR WAS INSIDE OF IT. THE TROOPER BECAME SUSPICIOUS THAT THE TIRES CONTAINED DRUGS. EVENTUALLY RICHMOND GAVE CONSENT TO SEARCH THE TRUCK, LEADING TO THE DISCOVERY OF SECRET COMPARTMENTS IN THE TIRES WHICH CONTAINED METHAMPHETAMINE**

TRESPASS CONSIDERATIONS

- **TAPPING OF THE TIRES IS A SEARCH UNDER COMMON-LAW TRESPASSORY TEST SET FORTH IN JONES**
- **SEARCH WAS REASONABLE BECAUSE WOBBLY TIRES GAVE OFFICER REASON TO BELIEVE THAT IT WAS A SAFETY RISK**

COLLECTIVE KNOWLEDGE

- **TWO OFFICERS WITNESS THE DEFENDANT PUBLICLY INTOXICATED. A THIRD OFFICER ARRESTS THE DEFENDANT. ALL OFFICERS ARE ON THE SCENE AND COMMUNICATE WITH THE DEFENDANT.**

COLLECTIVE KNOWLEDGE

- **UNDER THE FACTS OF THIS CASE, OFFICER QUINN'S KNOWLEDGE IS NOT DETERMINATIVE. WHATEVER HIS KNOWLEDGE OF THE FACTS MAY HAVE BEEN, THAT INFORMATION, IN COMBINATION WITH THE KNOWLEDGE OF OFFICERS GUERRERO AND RAMIREZ, SHOWED PROBABLE CAUSE TO ARREST APPELLEE FOR PUBLIC INTOXICATION.**
- **IN THIS CASE, ALL OF THE OFFICERS WERE RESPONDING TO THE SAME CALL, ALL WERE PRESENT AT THE SCENE, ALL HAD SOME DEGREE OF COMMUNICATION WITH APPELLEE, AND ALL WERE PRESENT AT THE TIME OF THE ARREST. THEREFORE, IT IS APPARENT THAT OFFICER QUINN WAS COOPERATING WITH OFFICERS GUERRERO AND RAMIREZ, AND ALL OF THE OFFICERS PRESENT WERE WORKING AS A TEAM RESPONDING TO THE CALL. WE HOLD THAT EVIDENCE OF COMMUNICATION BETWEEN OFFICERS IS NOT ALWAYS A NECESSARY REQUIREMENT TO APPLY THE COLLECTIVE KNOWLEDGE DOCTRINE**
- **STATE V. MARTINEZ, 2019 WL 137754**

LOCATION INFORMATION

- ***U.S. V. CARPENTER*, 138 S.CT. 2206**
- ***SIMS V. STATE*, NO. PD-0941-17, 2019 WL 20836 (TEX. CRIM. APP. JAN. 16, 2019)**

LOCATION INFORMATION

- **WARRANT NEEDED FOR CELL SITE HISTORICAL INFORMATION EXCEEDING 7 DAYS**
 - **COURT DECLINES TO ANSWER WHETHER A WARRANT IS NEEDED FOR TOWER DUMPS**
 - **COURT DECLINES TO ADDRESS EXIGENT CIRCUMSTANCES**
- **SIMS V. STATE SAYS NO EXPECTATION OF PRIVACY IN EMERGENCY PING FOR LESS THAN 3 HOURS**

LOCATION INFORMATION

- **STANDING CONCERNS**
- **BROAD IMPLICATIONS**
- **UNADDRESSED CIRCUMSTANCES**