2012-2013
UNITED STATES SUPREME COURT
CRIMINAL PROCEDURE CASES

2013 MACDL
ADVANCED POST-CONVICTION
LITIGATION SEMINAR

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SCOTUS Criminal Procedure Cases

- Major OT 2012 Criminal Procedure Cases
- Preview of Major OT 2013 Criminal Procedures Cases
  - Cases with significant legal issues already in pipeline (e.g., certiorari granted) that you should know about.

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Important OT 2012 SCOTUS Criminal Procedure Cases

- *Florida v. Jardines*, 133 S. Ct. 1409 (2013)
- *Florida v. Harris*, 133 S. Ct. 1050 (2013)

- *Missouri v. McNeely*, 133 S. Ct. 1552 (2013)
- *Maryland v. King*, 133 S. Ct. 1 (2012)
- *Bailey v. United States*, 133 S. Ct. 1031 (2013)
- *Salinas v. Texas*, 133 S. Ct. 2174 (2013)

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Florida v. Jardines, 133 S. Ct. 1409 (2013) Dog Sniffs On the Front Porch

Franky

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Florida v. Jardines, 133 S. Ct. 1409 (2013) Dog Sniffs On the Front Porch

- Police receive unverified tip that Jardines is growing marijuana in his house.
- Police walk Franky, the trained Chocolate Lab drug detection dog, up the sidewalk onto Jardines' front porch.
- Franky explores front porch and sniffs the bottom of front door. Franky sits down at the front door alerting police to scent of marijuana.
- On basis of Franky's alert, police obtain search warrant for Jardines' home.

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Florida v. Jardines, 133 S. Ct. 1409 (2013) Dog Sniffs On the Front Porch

- Scalia Decision
- Held: "The government's use of trained police dogs to investigate the home and its immediate surroundings is a "search" within the meaning of the Fourth Amendment."
- Reliance on "property rights baseline" that "keeps cases easy".
- Intrusion of constitutionally protected area immediately surrounding and associated with the home -- within the curtilage of home.

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Florida v. Jardines, 133 S. Ct. 1409 (2013) Dog Sniffs On the Front Porch

- "It is not the dog that is the problem, but the behavior that here involved the use of the dog. We think a typical person would find it "a great cause for alarm" to find a stranger snooping about his front porch with or without a dog."
- "To find a visitor knocking on the door is routine (even if sometimes unwelcome); to spot that same visitor exploring the front path with a metal detector, or marching his bloodhound into the garden before saying hello and asking permission, would inspire most of us to – well, call the police."

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Florida v. Jardines, 133 S. Ct. 1409 (2013) Dog Sniffs On the Front Porch

- No implied invitation to the police to bring dog to front door for a sniff:
  - Fourth Amendment compliance here does not require "fine-grained legal knowledge".
  - Contrast with Girl Scouts and trick-or-treaters, mail delivery.
  - Police officer not armed with a warrant may approach a home and knock precisely because it is no more than what any private citizen may do.

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Florida v. Jardines, 133 S. Ct. 1409 (2013) Dog Sniffs On the Front Porch

- Is Scalia again stepping back from *Katz v. United States* reasonable expectations of privacy test to a property-based Fourth Amendment analysis (like last term in *United States v. Jones* GPS case?
  - *Katz* reasonable expectations test added to not substituted for traditional property based understanding of Fourth Amendment.
  - *Katz* analysis unnecessary where Government intrusion on constitutionally protected areas.

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Florida v. Harris, 133 S. Ct. 1050 (2013) When Is a Sniff Up to Snuff?

Aldo

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Florida v. Harris, 133 S. Ct. 1050 (2013) When Is a Sniff Up to Snuff?

- Officer Wheetley pulls over Harris's truck because of expired license plate.
- Harris "visibly" nervous and refuses consent search.
- Officer Wheetley brings out Aldo, the German shepherd trained in drug detection , and walks him around the truck for a "free air sniff".
- Aldo alerts at driver's side door handle.
- Officer Wheetley concludes he has probable cause to search the truck; ingredients for crystal methamphetamine lab found in truck.

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Florida v. Harris, 133 S. Ct. 1050 (2013) When Is a Sniff Up to Snuff?

- Kagan decision
- Held: Because training and testing supported Aldo's reliability in detecting drugs and Harris failed to undermine that evidence, police officer had probable cause to search Harris's truck.
- Strict and inflexible evidentiary checklist in determining probable cause is no more for dogs than for human informants.
- Controlled testing environment is better measure of dog's reliability than track record in the field.
- Substantial evidence of Aldo's training and responsibility.

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Florida v. Harris, 133 S. Ct. 1050 (2013) When Is a Sniff Up to Snuff?

- Court relies on *Illinois v. Gates* (adopting totality of circumstances test and rejecting *Aguilar-Spinelli* probable cause test for search based upon informant tips):
  - Test for probable cause to conduct a search – "fair probability" on which "reasonable and prudent [people,] not legal technicians, act .
  - "Finely tuned standards such as proof beyond a reasonable doubt or by a preponderance of the evidence have no place in the [probable cause] decision."
  - Rejecting rigid rules, bright line tests, and mechanistic inquires for more flexible, all things considered approach.
- Δ must have opportunity to challenge evidence of dog's reliability whether by cross-examination of testifying officer or presentation of his own fact or expert witnesses.

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Missouri v. McNeely, 1333 S. Ct. 1552 (2013) Warrantless Involuntary Blood Tests in OUI Cases

- McNeely stopped for speeding and repeatedly crossing centerline at 2:08 AM.
- Bloodshot eyes, slurred speech, smell of alcohol on breadth.
- Poor performance on field sobriety tests.
- Refuses portable breadth test.
- "Routine" OUI arrest; no special circumstances (e.g., auto accident).
- McNeely taken to police station; on the way he says he will again refuse to give breadth sample.
- Police Officer takes him to hospital for blood draw; McNelly refuses to consent to blood draw; forced blood draw taken at 2:35 AM.
- BAC 0.154
- Missouri Supreme Court holds warrant required for nonconsensual blood draw based on *Schmerber v. California*, 384 U.S. 757 (1966)

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Missouri v. McNeely, 1333 S. Ct. 1552 (2013) Warrantless Involuntary Blood Tests in OUI Cases

- *Schmerber v. California* – Body Intrusion Cases
- Δ suffered injuries in auto accident and taken to hospital; Δ arrested at hospital for OUI and police officer ordered a blood test over Δ's objection.
- Holding warrantless blood test in *Schmerber* permissible because officer might reasonably believe he was confronted with an emergency in which the delay necessary to obtain a warrant threatened the destruction of the evidence.
  - Found exigency exception to search warrant requirement based specific facts of case
  - Totality of circumstances analysis
  - In case where time had to be taken to bring Δ to hospital and to investigate scene of accident, there was no time to seek out a magistrate and secure a warrant.

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Missouri v. McNeely, 1333 S. Ct. 1552 (2013) Warrantless Involuntary Blood Tests in OUI Cases

- State sought *per se* exception to warrant requirement for blood alcohol testing in drunk driving cases.
- State argued BAC always an exigent circumstance.
- State did not argue any exigency present other than BAC dissipation over time.
- Held: Consistent with general Fourth Amendment principles, exigency for warrantless BAC testing in OUI cases must be determined on case-by-case basis on the totality of circumstances.
  - No categorical per se exception to search warrant requirement for natural dissipation of alcohol in blood.
  - No showing that police did not have time to seek a warrant; here the elapsed time from stop to blood draw ~ 30 minutes
  - Court noted majority of states allow for search warrant applications by telephone or electronic means.

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Maryland v. King, 133 S. Ct. 1958 (2013) Involuntary DNA Samples

- Maryland DNA collection statute.
  - King's DNA taken after arrest during routine booking procedure.
  - King's DNA entered into DNA database.
  - King's DNA sample matched DNA collected in an unsolved 2003 rape.
  - King charged with rape and convicted of that earlier crime.
- Held: Using buccal swab to obtain King's DNA after arrest for serious crime supported by probable cause was reasonable search under Fourth Amendment.

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Maryland v. King, 133 S. Ct. 1958 (2013) Involuntary DNA Samples

- Taking and analyzing a cheek swab of arrestee's DNA is like fingerprinting and photographing, a legitimate booking procedure that is reasonable under the Fourth Amendment.
- Analysis of King's DNA did not render the DNA identification impermissible under the Fourth Amendment.

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Maryland v. King, 133 S. Ct. 1958 (2013) Involuntary DNA Samples

- Scalia dissent joined by Ginsburg, Sotomayor and Kagan:
  - Fourth Amendment forbids searching a person for evidence of crime when there is no basis for believing the person is guilty of the crime or is in possession of incriminating evidence.
  - Prohibition is categorical and lies at the heart of the Fourth Amendment.
  - Whenever Court has allowed a suspicionless search, it has insisted upon a justifying motive apart from the investigation of crime (e.g., emergency aid/well-being searches).

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Bailey v. United States, 133 S. Ct. 1031 (2013) Detention Incident to Search with Warrant

- No knock warrant to search for gun in basement apartment.
- Police see Bailey leave the apartment.
- Officers then search apartment and find guns and drugs while other officers follow Bailey driving away from the apartment to a location about a mile away.
- Police stop Bailey who makes incriminating statements.
- Baily brought back to apartment; Bailey searched incident to arrest and police found incriminating evidence (key to apartment).
- Baily moves to suppress incriminating statements and key to apartment.

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Bailey v. United States, 133 S. Ct. 1031 (2013) Detention Incident to Search with Warrant

- *Michigan v. Summers* (1981) -- Court held police officers executing search warrant could detain resident of home until search is completed; no requirement that police suspect individual detained is involved in criminal activity or a threat to officer safety.
- *Held: Michigan v. Summers* is limited detaining a resident in the immediate vicinity of the premises searched and not away from premises.
  - In closer cases, courts can consider whether occupant was detained in immediate vicinity of premises to be searched; whether occupant in line of sight of dwelling; ease of re-entry from occupant's location, and other relevant factors.

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Salinas v. Texas, 133 S. Ct. 2174 (2013)
Evidence of Pre-Arrest Silence During Police Questioning

- Non-custodial police questioning of murder suspect; litigated on assumption no *Miranda* rights given and outside the scope of *Miranda*.
- Salinas answered questions for most of the interview but declined to answer question whether shells fired from his shotgun would match the shells recovered at murder scene.
  - Instead, Salinas looked down at floor, shuffled his feet, bit his bottom lip, clenched his hands in his lap, and began to tighten up.
- Salinas then answered additional questions.

Salinas v. Texas, 133 S. Ct. 2174 (2013)
Evidence of Pre-Arrest Silence During Police Questioning

- Over Salinas's objections, prosecutors used his reaction to the officer's questions as evidence of guilt.
- Held: Salinas failed to invoke his right to remain silent in response to the officers' questions and his silence was admissible evidence at trial.
- Rationale: The Fifth Amendment privilege against self-incrimination applies only when it is asserted and merely remaining silent in response to questions is not enough.

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Salinas v. Texas, 133 S. Ct. 2174 (2013) Evidence of Pre-Arrest Silence During Police Questioning

- A suspect who stands mute has not done enough to put the police on notice that he is relying on his Fifth Amendment privilege.
- Popular misconceptions notwithstanding, the Fifth Amendment does not establish an unqualified right to remain silent.
  - Witness's constitutional right to refuse to answer questions depends on his reasons for doing so.
  - Government needs to be put on notice of Fifth Amendment claim in order to argue testimony sought is not incriminating or to cure any incrimination through grant of immunity.
  - The courts need to know those reasons to evaluate the merits of a Fifth Amendment claim.
- Compare *Berghuis v. Thompkins* (2010) (Mirandized Δ failed to invoke *Miranda* privilege against self incrimination when he refused to respond to police questions for 2.75 hours during interrogation).

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Upcoming OT 2013 SCOTUS Criminal Procedure Cases

- *Fernandez v. California* (Argument: 10/8/13)
  - Δ refuses consent to search, arrested and removed from scene; police return to scene and get consent to search from co-tenant.
  - Whether under *Georgia v. Randolph*, Δ must be personally present and objecting when police officers ask a co-tenant for consent to conduct warrantless search or whether Δ's previously stated objection, while physically present, to a warrantless search is a continuing assertion of his Fourth Amendment rights which cannot be overridden by co-tenant?
    - » *Georgia v. Randolph* (2006) – physically present Δ's refusal to permit warrantless search despite co-tenant's consent renders warrantless search unreasonable and invalid as to him.

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Upcoming OT 2013 SCOTUS Criminal Procedure Cases

- *Burt v. Titlow* (Argument: 10/8/13)
- § 2254 AEDPA procedural posture
- Δ turned down plea offer because of IAC and went to trial; Δ convicted of murder
- Question Presented: Whether convicted Δ's subjective testimony that she would have accepted a plea bargain but for IAC is, standing alone, sufficient to demonstrate a reasonable probability that Δ would have accepted the plea bargain?
- *Laffler v. Cooper* (2012)
  - Δ must show but for the ineffective advice re plea bargaining, there is a reasonable probability that Δ would have accepted the offer, the court would have accepted the terms of the offer, and the agreed upon conviction and/or sentence would have been less severe.

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