

2014-2015
UNITED STATES SUPREME COURT
CRIMINAL PROCEDURE CASES

2016 MACDL
ADVANCED POST-CONVICTION
LITIGATION SEMINAR

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Important 2014-2015 SCOTUS Constitutional Criminal Procedure Cases

- ◆ *Rodriguez v. United States*, 135 S. Ct. 1609 (2015)
 - Fourth Amendment: Traffic Violations and Delay for Dog Sniffs
- ◆ *Ohio v. Clark*, 135 S. Ct. 2173 (2015)
 - Sixth Amendment: Narrowing the Scope of the Confrontation Clause under *Crawford*
- ◆ *Maryland v. Kulbicki*, 136 S. Ct. 2 (2015)
 - Sixth Amendment: Right to Counsel Does Not Require Perfect Advocacy
- ◆ *Utah v. Strieff*, No. 14-1373 *COMING ATTRACTIONS*
 - Future of Exclusionary Rule

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

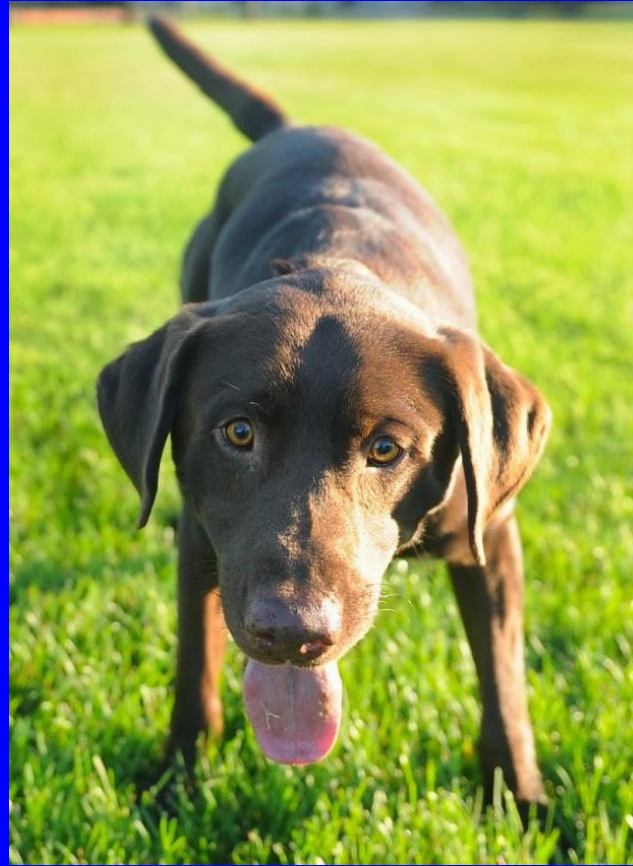
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Rodriguez v. United States, 135 S. Ct. 1609 (2015)
Fourth Amendment: Traffic Violations & Delay for Dog Sniffs

Canine
Floyd



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Rodriguez v. United States, 135 S. Ct. 1609 (2015)

Fourth Amendment: Traffic Violations & Delay for Dog Sniffs

- ◆ After midnight, K-9 Officer Strubble with Floyd observes Mercury Mountaineer veer onto shoulder of state highway for one or two seconds and then jerk back onto road.
- ◆ Nebraska law prohibits driving on highway shoulders.
- ◆ Police stop car, run records checks (license, registration, insurance, warrants); requests backup officer; issues oral and written warning by ~12:07, 12:08 AM.
- ◆ Officer Strubble asks Rodriguez for permission to walk dog around car; Rodriguez declines.
- ◆ 12:33 AM, after second officer arrives, Officer Strubble walks Floyd around car. Floyd alerts to presence drugs.

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Rodriguez v. United States, 135 S. Ct. 1609 (2015)

Fourth Amendment: Traffic Violations & Delay for Dog Sniffs

- ◆ Held: Police stop exceeding the time needed to handle the matter for which the stop was made violates Fourth Amendment shield against unreasonable seizures.
- ◆ Held: Seizure justified only by police-observed traffic violation becomes unlawful if seizure prolonged beyond the time reasonably required to complete the mission to issue the ticket for the violation.
- ◆ Remanded to determine whether reasonable suspicion for dog sniff.



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Rodriguez v. United States, 135 S. Ct. 1609 (2015)

Fourth Amendment: Traffic Violations & Delay for Dog Sniffs

- ◆ Opinion by Justice Ginsburg.
- ◆ Routine traffic stop more analogous to *Terry* stop based on reasonable suspicion than an arrest based on probable cause.
- ◆ Seizure’s “mission” is to address the traffic violation.
- ◆ Addressing the traffic infraction is the purpose of the stop, so stop may last no longer than is necessary to effectuate that purpose.
- ◆ Absent reasonable suspicion to justify detaining an individual, authority for seizure ends when tasks tied to traffic infraction are or reasonably should have been completed.
 - Related tasks include ordinary inquiries incident to the traffic stop.
 - Checks on license, registration, insurance, warrants.
 - These checks serve same objective as traffic law enforcement – ensuring vehicles on the road are operated safely and responsibly.

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Rodriguez v. United States, 135 S. Ct. 1609 (2015)

Fourth Amendment: Traffic Violations & Delay for Dog Sniffs

- ◆ *Illinois v. Caballes* (2005) held dog sniff during lawful traffic stop does not violate Fourth Amendment proscription on unreasonable seizures.
 - *Caballes* cautioned traffic stops become unlawful if prolonged beyond time reasonably required to issue the ticket.
 - » Dog sniffs are not part of traffic enforcement
 - » Dog sniffs are to detect “ordinary” criminal wrongdoing
 - Seizure remains lawful so long as unrelated inquiries do not measurably extend the duration of the stop
- ◆ No “bonus time” for expeditiously completing traffic-related tasks in order to pursue unrelated criminal investigations.
- ◆ So traffic stops cannot last too long, go too far, and no *extra* dog sniffs.

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Rodriguez v. United States, 135 S. Ct. 1609 (2015)

Fourth Amendment: Traffic Violations & Delay for Dog Sniffs

- ◆ Significance – Is SCOTUS walking away from *United States v. Place* (1985) holding dog sniffs are not searches under Fourth Amendment?
- ◆ Are dog sniffs different for Fourth Amendment purposes from cell phones, thermal heat imagers, GPS locators, wiretapping, dogs sniffing on front porches, all of which have been deemed searches and may or may not be reasonable depending on the circumstances.
- ◆ Result for now: Dog sniffs *before* traffic tickets are issued.



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Ohio v. Clark, 135 S. Ct. 2173 (2015)

Narrowing The Scope of Confrontation Clause Under *Crawford*

- ◆ Child identifies Defendant as his abuser when questioned by preschool teacher who observed obvious injuries.
- ◆ Preschool teacher is mandated reporter who informs police.
- ◆ Defendant argues non-testifying child's statements inadmissible under *Crawford* because child was unavailable to testify under Ohio law.

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Narrowing The Scope of Confrontation Clause Under *Crawford*

- ◆ Previous *Crawford* Cases – Statements made to law enforcement.
- ◆ SCOTUS reserved question whether statements made to individuals other than law enforcement officers would raise similar issues under Confrontation Clause.
- ◆ Held: Because neither the child nor the teachers had the “primary purpose” of assisting in Defendant’s prosecution, the child’s statements do not implicate the Confrontation Clause and therefore were admissible at trial.

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Narrowing The Scope of Confrontation Clause Under *Crawford*

◆ *Crawford v. Washington* (2004):

- Sixth Amendment prohibits introduction of testimonial statements by non-testifying witness unless (1) the witness is unavailable to testify and (2) defendant had a prior opportunity for cross-examination.
- No exhaustive definition of “testimonial” but stationhouse questioning is testimonial.
- At a minimum, “testimonial” includes prior testimony at preliminary hearing, grand jury testimony, testimony at former trial, and police interrogation.

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Narrowing The Scope of Confrontation Clause Under *Crawford*

- ◆ *Davis v. Washington* and *Harmon v. Indiana* (2006)
 - Davis: Statements to 911 emergency operator before and shortly after boyfriend’s attack.
 - Harmon: After being isolated from abuser, victim made statements to police that were memorialized in “battery affidavit”
- ◆ Whether “testimonial” depends on objective view of primary purpose of interrogation.
- ◆ Held in *Davis*: Statements are non-testimonial when made under police interrogation under circumstances objectively indicating primary purpose was to meet an on-going emergency.
- ◆ Held in *Harmon*: Statements testimonial where under circumstances objectively indicate no ongoing emergency and primary purpose of the interrogation to establish or prove past events potentially relevant to criminal prosecution.

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Narrowing The Scope of Confrontation Clause Under *Crawford*

- ◆ *Michigan v. Bryant* (2011) – further explanation of primary purpose test – must consider all relevant circumstances.
- ◆ May be circumstances other than responding to ongoing emergency where primary purpose is not to create an out-of-court substitute for trial testimony
- ◆ Additional factor is “the informality of the situation and interrogation”.
 - More formal – more likely to provoke testimonial statements
 - Less formal – less likely to reflect primary purpose of obtaining testimonial evidence against the accused.
- ◆ In *Bryant*, non-testimonial where dying declaration by victim about assailant primarily to quell an ongoing emergency.

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Ohio v. Clark, 135 S. Ct. 2173 (2015)

Narrowing The Scope of Confrontation Clause Under *Crawford*

◆ *Clark* Legal Analysis:

- Statements were made by 3 year old child to preschool teacher and not to the police.
- Statements not made for purpose of creating evidence for Clark's prosecution.
- Statements made in context of an ongoing emergency involving suspected child abuse, similar to the 911 call in *Davis*; teachers asked child about his injuries in preschool lunchroom immediately upon discovering them.

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Ohio v. Clark, 135 S. Ct. 2173 (2015)

Narrowing The Scope of Confrontation Clause Under *Crawford*

◆ More *Clark* Legal Analysis:

- Immediate concern was to protect a vulnerable child who needed help.
- Child's answers aimed at identifying and ending a threat to the child.
- Whether teachers thought this would be done by apprehending the abuser or by some other means is irrelevant.
- Statements made to someone who is not principally charged with uncovering and prosecuting criminal behavior are significantly less likely to be testimonial than statements given to police.

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Ohio v. Clark, 135 S. Ct. 2173 (2015)

Narrowing The Scope of Confrontation Clause Under *Crawford*

- ◆ And More *Clark* Legal Analysis:
 - Mandatory reporting statutes alone do not convert conversations between concerned teacher and student into a law enforcement mission aimed primarily at gather evidence for prosecution.
 - Irrelevant that duty to report had the tendency to result in Defendant’s prosecution.
- ◆ 3 Justices agreed with outcome but not the rationale of Alito opinion focusing on controversial dicta: Primary purpose test is necessary but not always sufficient condition for the exclusion of out of court statements under the Confrontation Clause.
 - Attacked by Scalia and Ginsburg in their dissent as undermining the reasoning of *Crawford*.
 - Shades of old “indicia of reliability” test under *Ohio v. Roberts*.
 - » “Prosecutors, past and present, love that flabby test.”
 - Primary purpose test controls; no other mysterious requirements for exclusion of testimonial statements that the majority opinion declines to name.

Maryland v. Kulbicki, 136 S. Ct. 2 (2015)

Right to Counsel Does Not Require Perfect Advocacy

- ◆ Defendant convicted of M1 in 1995 in part based on Comparative Bullet Lead Analysis (CBLA) testimony by FBI expert.
- ◆ In 1995 CBLA evidence widely accepted and regularly admitted until 2003; today thoroughly discredited.
- ◆ Maryland Court of Appeals reverses conviction on IAC grounds based on a 1991 publicly available report co-authored by testifying FBI expert that “presaged the flaws in CBLA evidence.”
 - IAC based on failure of lawyers to find report and use it to cast doubt on CBLA.

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Maryland v. Kulbicki, 136 S. Ct. 2 (2015)

Right to Counsel Does Not Require Perfect Advocacy

- ◆ Held: No deficient attorney performance under *Strickland v. Washington*
 - Counsel did not perform deficiently by dedicating their time and focus to elements of defense that did not involve poking methodological holes in then uncontroversial mode of ballistics analysis.
 - Effect of state court judgment is to demand that lawyers go “looking for a needle in a haystack even when they have “reason to doubt there is any needle there.” *Rompilla v Beard* (2005)
- ◆ Here “natural tendency to speculate as to whether a different trial strategy might have been more successful.” *Lockhart v. Fretwell* (1993)
 - IAC requires contemporary assessment of counsel’s conduct.
 - Reasonableness of counsel’s challenged conduct must be viewed as of the time of counsel’s conduct.
- ◆ State court demanded something close to “perfect advocacy”, far more than the “reasonable competence” the Sixth Amendment right to counsel guarantees.
- ◆ Significance: What is and is not deficient attorney performance under *Strickland*?

Utah v. Strieff, No. 14-1373

Future of the Exclusionary Rule

- ◆ Anonymous tip to police that particular house being used to sell drugs.
 - Cop watches house on and off from his car for about 3 hours over a week looking for suspicious activity.
 - Cop observes occasional short term foot traffic in and out of house; modestly suspicious stuff, but nothing big.
- ◆ Cop decides to stop the next person out of the house to ask some investigatory questions.
- ◆ Cop stops Δ , asks for identification, and runs warrant check. Cop discovers outstanding arrest warrant for minor traffic offense and arrests Δ .
- ◆ Δ searched incident to arrest and cop finds drugs.

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Utah v. Strieff, No. 14-1373

Future of the Exclusionary Rule

- ◆ Δ charged with drug offenses. Δ moves to suppress evidence. Conditional guilty plea.
- ◆ SCOTUS grants certiorari:
 - Should evidence seized incident to a lawful arrest on an outstanding warrant be suppressed because the warrant was discovered during an investigatory stop later found to be unlawful?
- ◆ State concedes no individualized reasonable suspicion to stop Δ under *Terry v. Ohio*.
- ◆ State argues exclusionary rule does not apply.
 - Arrest warrant was intervening event that broke chain of causation between illegal stop and discovery of drugs during search incident to arrest pursuant to valid warrant.
 - State claims Δ arrested based on lawful warrant rather than based on the unlawful investigatory stop.

Utah v. Strieff, No. 14-1373

Future of the Exclusionary Rule

- ◆ Will SCOTUS apply exclusionary rule or use this case to limit exclusionary rule?
 - Traditional *Wong Sun* fruit of the poisonous tree doctrine, a proximate cause inquiry.
 - » Direct connection between unlawful stop and contraband obtained from search incident to arrest.
 - » Initial stop unlawful so that taints the fruits of search incident to arrest.
 - But attenuation doctrine exception to exclusionary rule – focusing on proximity of time and place – did valid arrest warrant break the chain of causation between unlawful stop and contraband seized from search incident to arrest?
 - SCOTUS recently said in *Davis v. United States* (2011) exclusionary rule is a “bitter pill” applied only “when necessary,” as a “last resort” when “the deterrence benefits of suppression” will “outweigh its heavy costs”. Court applying cost/benefit analysis.
 - Exclusionary Rule Argument: Police most culpable and most easily deterred about reasonably foreseeable consequences of their acts that are proximately caused by them
 - But consider police incentives if attenuation excuses unlawful stop in many communities with large numbers of outstanding warrants , e.g., Ferguson, Missouri (population 21,000 & 16,000 people with warrants), NYC, Baltimore, Massachusetts (cited in Δ brief).

◆ WHAT RESULT? ARGUED FEBRUARY 22, 2016,; STAY TUNED!
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