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# SCOTUS 2018: A Glimpse on the Cases That Will Affect Law Enforcement

By **DLG Learning Center**

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**DAIGLE LAW GROUP**

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The United States Supreme Court has an ambitious agenda on law enforcement topics for 2018. While some of the cases waiting to be decided may assist law enforcement when conducting criminal investigations, others may pose challenges to their efforts if decided the wrong way.

The topics to be decided include:

1. Whether an expectation of privacy exists when the sole occupant of a rental car is not authorized to operate the car under the rental contract;
2. The definition of a criminal case in terms of the Fifth Amendment;
3. Whether a warrant is needed to obtain cell site information from cell phone providers; and
4. Recurrent topics, such as: searches in accordance with the Fourth Amendment; Fifth Amendment's Self-Incrimination Clause; and probable cause.

## **Byrd v. United States**

679 Fed. Appx. 146 (3<sup>rd</sup> Cir. 2017-unpublished)

***Issue:* Whether petitioner had a reasonable expectation of privacy in a rental car when petitioner was not an authorized driver under the rental agreement.**

Officers stopped Byrd for a traffic violation (illegal use of the left lane). The officer noticed that Byrd was driving a rental car. When Byrd produced the documents requested by the officer, the officer noticed that Byrd was not an authorized driver under the rental agreement. Byrd also provided an interim license from New Jersey with no picture and a different name. The officers also discovered an outstanding warrant against Byrd, but it did not require arrest from other jurisdictions for extradition purposes. The officers' discovery prompted them to call New Jersey to confirm that they did not want them to arrest Byrd for extradition purposes. Then, wanting to conduct a search of the vehicle, the officers told Byrd that they did not need his consent because he was not an authorized driver of the rental car. The officers found heroin and body armor in the trunk and arrested Byrd.

## **Carpenter v. United States**

819 F.3d 880 (6<sup>th</sup> Cir. 2016)

**Issue: Whether the warrantless seizure and search of historical cell-phone records revealing the location and movements of a cell-phone user over the course of 127 days is permitted under the Fourth Amendment.**

The government charged Carpenter and Sanders with several counts of armed robbery. At trial, the government's evidence included transactional records from the defendants' wireless carriers that included cell site information for the defendant's telephones for incoming and outgoing calls. The records revealed the defendants Carpenter and Sanders used their cell phones within a half-mile to two miles of several robbery locations during the time robberies occurred. The government obtained these records with a court order issued by a magistrate judge pursuant to *Section 2703(d)* of the Stored Communications Act(SCA), which does not require a finding of probable cause.

**City of Hays, Kansas v. Vogt**

844 F. 3d 1235 (10 Cir. 2017)

**Issue: Whether statements used at a probable cause hearing, but not at a criminal trial, violate the Fifth Amendment.**

*Facts:* With this case, the Supreme Court will have the opportunity to define the meaning of the phrase "criminal case" for Fifth Amendment purposes; and, in turn, will give more context to the case of *Garrity v. New Jersey*, 385 U.S. 483 (1967).

Vogt was a police officer with the City of Hays, Kansas. During an internal investigation, the Chief of Police compelled Vogt to provide a statement describing how he had come into possession of a knife. Based on Vogt's compelled statement, as well as other evidence, Vogt was charged in Kansas state court with two felony counts related to his possession of the knife. The state district court determined that probable cause was lacking and dismissed the charges.

Vogt filed a lawsuit under *42 U.S.C. § 1983* against the City of Hays claiming that the use of his compelled statements to support the prosecution during the probable cause hearing violated his Fifth Amendment right against self-incrimination. The District Court dismissed his complaint because the incriminating statements were never used at the trial. Vogt appealed to the Tenth Circuit Court of Appeals.

**Collins v. Virginia**

790 S.E. 2d 611 (Va. 2016)

***Issue:* Whether the Fourth Amendment’s automobile exception permits a police officer, uninvited and without a warrant, to enter private property, approach a home, and search a vehicle parked a few feet from the house.**

On two occasions, two police officers working independently attempted to stop a motorcycle after the driver committed traffic violations. However, in both cases, the driver eluded the officers by speeding over 100 miles per hour. The motorcycle was orange and black and had distinct modifications to it, including chrome accents, and a “stretched out” rear wheel, indicating that it had been modified for drag racing.

In the last incident, a camera in the officer’s patrol car was able to record the license plate number of the motorcycle, which eventually led them to Collins. After locating his address, one of the officers drove to his residence and saw a motorcycle with an extended frame covered with a tarp parked in the driveway. The officer walked up the driveway, lifted the tarp, and uncovered the motorcycle. A computer search of the vehicle identification number (VIN) revealed the motorcycle had been stolen several years before. The officer arrested Collins for receiving stolen property.

### **Dahda v. United States**

853 F. 3d 1101 (10<sup>th</sup> Cir. 2017)

***Issue:* Whether Title III requires suppression of evidence obtained pursuant to wiretap orders that were invalid because the orders exceeded the issuing judge’s territorial jurisdiction**

Mr. Los Dahda was convicted of conspiracy to distribute marijuana. The evidence against Dahda included wiretaps of cell phones used by Dahda and four co-conspirators. The wiretap orders were issued by the United States District Court for the District of Kansas and authorized interception of cell phones located outside the District of Kansas, using listening posts that were stationed outside the court’s jurisdiction.

Dahda filed a motion to suppress the wiretaps because the wiretap orders allowed the government to use stationary listening posts located outside the District of Kansas, in violation of Title III. The District Court denied the motion to suppress and Dahda was convicted. He appealed to the Tenth Circuit Court of Appeals.

### **District of Columbia v. Wesby**

765 F. 3d 13 (D.C. Cir. 2014)

**Issue: Whether police officers had probable cause to arrest for trespassing when the owner of a vacant home tells the officers that he had not authorized entry, but the suspects claimed they had permission to be in the house**

Twenty-one people responded to a friend's invitation to gather at a home in the District of Columbia. The host had told some friends she was moving into a new place and they should come by for a party. Metropolitan Police Department ("MPD") officers responded to a neighbor's complaint of illegal activity. When the police arrived, the host was not there. The officers reached her by phone, and then called the person she identified as the property owner, only to discover that the host had not finalized any rental agreement and so lacked the right to authorize the party. The officers arrested everyone present for unlawful entry. When the charges were dismissed, sixteen out of twenty-one people sued the officers for false arrest. The District Court found in plaintiffs' favor, and the officers appealed to the District of Columbia Court of Appeals.

### **United States v. Microsoft Corporation**

829 F. 3d 197 (2d Cir. 2016)

**Issue: Whether a warrant issued under § 2703 of the Stored Communications Act required Microsoft to produce the contents of a customer's email account stored on a server outside the United States**

The District Court issued a warrant directing Microsoft to produce the contents of an email account after finding probable cause to believe that the account was being used in furtherance of narcotics trafficking. Microsoft produced its customer's data that was stored in the United States, but not the data that they had stored in Ireland. Microsoft then filed a motion to quash the warrant, alleging that Congress' use of the term "warrant" in the Stored Communications Act (SCA), carries territorial limitations to United States. The government, on the other hand, alleged that the warrant requires the recipient to deliver records, physical objects, and other materials to the government" no matter where those documents are located, so long as they are subject to the recipient's custody or control. The District Court denied Microsoft's motion to quash and found it in civil contempt. Microsoft appealed to the Court of Appeals for the Second Circuit, where the Court reversed the District Court's judgment. The Court found that when Congress passed the SCA, it did not explicitly nor implicitly envision the application of its warrant provisions overseas

## **Lozman v. City of Riviera Beach, Florida**

681 Fed. Appx. 746 (11<sup>th</sup> Cir. 2017- unpublished)

***Issue:* Whether the existence of probable cause defeats a First Amendment retaliatory-arrest claim as a matter of law**

*Facts:* In June 2006, Lozman filed a lawsuit against the City of Riviera Beach attempting to invalidate the City's approval of a redevelopment plan, which affected his residence. In November 2006, the City Council held a regular public meeting and Lozman was granted permission to speak during the "public comments" portion of the meeting. When Lozman began to speak about the recent arrest of a Palm Beach County Commissioner on corruption charges, one of the City Council members told Lozman that he could not speak about that incident. After Lozman told the council member, "Yes, I will," the council member directed a City police officer to remove Lozman from the meeting. After Lozman refused to the officer's request to walk outside, the officer arrested Lozman and charged him with disorderly conduct and resisting arrest. The charges were dismissed because, although there was probable cause to effect the arrest, there was "no reasonable likelihood of a successful prosecution."

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