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SCOTUS 2018 Decisions That Could Affect Your Policing

By **DLG Learning Center**

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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.

A summary of the facts of the cases, as well as the reasoning of the Courts of Appeals, is provided below.

Stay tuned for updates and stay safe out there!

Byrd v. United States

679 Fed. Appx. 146 (3rd Cir. 2017-unpublished)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.**

Facts: 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 required 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.

Byrd filed a motion to suppress the evidence discovered in the trunk, challenging the initial stop, the length of the stop, and the search by arguing that it violated the Fourth Amendment. The District Court denied the motion and Byrd appealed to the Third Circuit Court of Appeals. The Court of Appeals affirmed the lower court's decision that once a valid traffic stop is initiated, an officer who develops a reasonable, articulable suspicion of criminal activity may expand the scope of an inquiry beyond the reason for the stop and detain the vehicle and its occupants for further investigation. On the issue of whether Byrd had an expectation of privacy in a rental car even though he was not named in the rental agreement, the Appellate Court recognized that there is a split among the circuits as to whether the sole occupant of a rental vehicle has a Fourth Amendment expectation of privacy when that occupant is not named in the rental agreement. The Court determined, however, that such a person has no expectation of privacy and; therefore, no standing to challenge a search of the vehicle. Byrd appealed to the Supreme Court. The issue before the Supreme Court is: Whether a driver have a reasonable expectation of privacy in a rental car when he is not listed as an authorized driver on the rental agreement.

Carpenter v. United States

819 F.3d 880 (6th 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.**

Facts: 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.

The defendants filed a motion to suppress the records, arguing that the government violated the Fourth Amendment by not obtaining a search warrant based on probable cause to obtain this information. The District Court denied the motion and the defendants were convicted. The defendants appealed the

District Court's judgment to the Sixth Circuit Court of Appeals.

The Court of Appeals affirmed the District Court's decision. In doing so, they stated that the Supreme Court has long recognized a distinction between the content of a communication and the information necessary to convey it. Content is protected under the Fourth Amendment, but routing information is not. Consequently, the court held that the government's collection of cell-site records created and maintained by the defendants' wireless carriers was not a search under the Fourth Amendment. The defendants appealed to the Supreme Court. The before the Court is: Whether the warrantless seizure and search of historical cell phone records revealing the location and movements of a cell phone user is permitted under the Fourth Amendment.

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.

The Court of Appeals reversed the District Court's decision, finding that the Fifth Amendment's Self-Incrimination Clause prohibits the government from compelling officers to make incriminating statements in the course of their employment if they used those statements in a criminal case. The Court noted that there is a split among the circuits on whether a criminal case includes probable cause

hearings. The Third, Fourth, and Fifth Circuits have held that the Fifth Amendment only provides rights at trial, while the Second, Seventh, and Ninth Circuits have held that certain pre-trial uses of compelled statements violate the Fifth Amendment. The Appellate Court then decided that in the Tenth Circuit the phrase “criminal case” includes probable cause hearings as well as trials. As a result, the Appellate Court concluded that Vogt had adequately alleged that the use of his compelled statements in the probable cause hearing violated the Fifth Amendment.

The Government appealed to the Supreme Court. The issue before the Court is: Whether the Fifth Amendment is violated when compelled statements are used at a probable cause hearing.

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.

Collins filed a motion to suppress the VIN information, arguing that the officer violated the Fourth Amendment when he walked up the driveway, without permission or a search warrant, and removed the motorcycle tarp to reveal the VIN. The trial court denied the motion and Collins was convicted. When Collins appealed, both the Court of Appeals and the Supreme Court of Virginia affirmed Collins’ conviction. The Virginia Supreme Court held that the officer’s entry onto Collins’ driveway and lifting the tarp was a valid warrantless search under the automobile exception to the Fourth Amendment’s warrant requirement. The court commented that the United States Supreme Court has “never limited

the automobile exception such that it would not apply to vehicles parked on private property." In addition, the Virginia Supreme Court noted that it "has held that there is no reasonable expectation of privacy in a vehicle parked on private property yet exposed to public view."

Collins appealed to the United States Supreme Court. The issue before the Court is: Whether the Fourth Amendment's automobile exception permits a police officer to, uninvited and without a warrant, enter private property, approach a home, and search a vehicle parked a few feet from the house.

If SCOTUS favors the government's position, the curtilage doctrine might be more confusing. The motorcycle was not completely in plain view. It was mostly covered with a tarp and it was in the driveway of the defendant's residence. The officers had to lift the tarp to look for the VIN information, and they did so without a warrant. Another way to obtain the VIN was to obtain a warrant while another officer conducted surveillance of the house.

Dahda v. United States

853 F. 3d 1101 (10th 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**

Facts: 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.

The Court agreed that the wiretap orders violated the general rule that interception orders must occur within the issuing court's territorial jurisdiction. However, the Court held that while the wiretap orders exceeded the district court's territorial jurisdiction, Dahda's motion to suppress was properly denied. The Court noted that not all deficiencies in wiretap applications and orders require suppression of evidence. The Court stated that Congress' concerns for Title III included the protection of the privacy of oral and wire communications as well as the establishment of a uniform basis for authorizing the

interception of these communications. The Court found that suppression of wiretap evidence in this case was not appropriate because the territorial defect did not directly and substantially affect either of these underlying Congressional concerns. Dahda appealed to the Supreme Court. The issue before the Court is: Whether Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C.§§ 2510-2520, requires suppression of evidence obtained pursuant to a wiretap order that is facially insufficient because the order exceeds the judge's territorial jurisdiction.

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**

Facts: 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.

The Court affirmed the District Court's judgment and denied qualified immunity for the officers, finding that the officers lacked probable cause to arrest the plaintiffs. It was undisputed that the arresting officers knew the Plaintiffs had been invited to the house by a woman that they reasonably believed to be its lawful occupant. Additionally, the evidence failed to show any disturbance of sufficient magnitude to violate local law. The officers appealed to the United States Supreme Court. The issues before the Court are: a) whether the officers had probable cause to arrest under the Fourth Amendment; and b) Even if there was no probable cause to arrest the apparent trespassers, whether the officers were entitled to qualified immunity because the law was not clearly established in this regard.

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**

Facts: 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. Accordingly, the term "warrant" in the Act requires pre-disclosure scrutiny of the requested search and seizure by a neutral third party, and thereby afford privacy protection in the United States. The government appealed to the United States Supreme Court. The issue before the court is: Whether a United States email services provider must comply with a probable-cause-based warrant issued under *§2703* by making disclosure in the United States of electronic communications within that provider's control, even if the provider has decided to store that material abroad.

The facts presented in this case are a recurring problem in criminal investigations. More frequently, email providers are storing their data overseas and are resisting law enforcement efforts when they receive warrants or subpoena requests. While protecting users' privacy is essential, the users' rights should not be absolute. If SCOTUS, affirms the Court of Appeals' decision, it could encourage email providers to storage all their data overseas, hindering law enforcement mission's to bring criminals to justice.

Lozman v. City of Riviera Beach, Florida

681 Fed. Appx. 746 (11th 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."

Lozman sued the City under *42 U.S.C. §1983* alleging that the City arrested him in retaliation for his opposition to the City's redevelopment plan, in violation of the First Amendment.

At trial, the jury found that the officer had probable cause to arrest Lozman for disturbing a lawful assembly. Lozman appealed to the Eleventh Circuit Court of Appeals, and the Court affirmed the District Court's judgment. The Court held that the jury's finding that there was probable cause to arrest Lozman was supported by the evidence. In addition, the Court held that the jury's determination that Lozman's arrest was supported by probable cause defeated Lozman's First Amendment retaliatory arrest claim as a matter of law. Lozman appealed to the United States Supreme Court. The issue before the Court is: Whether the existence of probable cause defeats a First Amendment retaliatory-arrest claim as a matter of law.

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