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# Around the Nation

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# AROUND THE NATION

## Supreme Court

- *Rodriguez v. United States*, No. 13-9972, slip op. (Apr. 21, 2015). Without reasonable suspicion, police cannot extend a traffic stop to conduct a dog sniff. After being issued a warning for a traffic violation, Mr. Rodriguez refused to consent to a dog sniff. The police officer then detained Mr. Rodriguez for eight minutes until the dog alerted the officer to drugs in the vehicle, and the officer found methamphetamine. The Supreme Court held that the extended stop was an unreasonable search and seizure under the Fourth Amendment. Justices Kennedy, Thomas, and Alito dissented.

- *Heien v. North Carolina*, 135 S.Ct. 530 (2014). The Supreme Court ruled that a mistake of law could give rise to reasonable suspicion. The Court held that officers did not violate the Fourth Amendment when they conducted a traffic stop pursuant to a mistaken interpretation of the traffic laws. The Court equated a reasonable mistake of law with a reasonable mistake of fact to conclude that a reasonable mistake of law is not inconsistent with reasonable suspicion. The Court stressed the importance of implementing an objectively reasonable standard to prevent willful ignorance of the law.

- *Whitfield v. United States*, No. 13-9026, slip op. (Jan. 13, 2015). The unanimous Court ruled that, for purposes of 18 U.S.C. § 2113(e), a bank robber forces an individual to accompany him when he forces that person to go somewhere with him, even if it is just a short distance. The Court reasoned that the severity of the penalty does not require that the person is moved a substantial distance since the danger of forced movement does not change with the distance travelled.

- *Grady v North Carolina*, No. 14-493, slip op. (Mar. 30, 2015). In *Grady v. North Carolina*, Grady was convicted of taking indecent liberties with a child. Following his sentence, Grady was ordered to wear a GPS bracelet as a penalty for being a recidivist sex offender. The Court ruled that this constitutes a Fourth Amendment search, but remanded for a determination on the reasonableness of the search.

## Circuit Courts

## 1st Circuit

- *United States v. Gray*, 780 F.3d 458 (1st Cir. 2015). Judge Thompson penned a fun opinion in *United States v. Gray*. Gray appealed her conviction for "willfully and maliciously" making a fake bomb threat on a plane in violation of 49 U.S.C. § 46507(1). The First Circuit found reversible error in the lower court's definition of malice, which required "evil purpose or improper motive." The Court of Appeals found that improper motive lowers the burden of proof for malice, and defined malice as "evil purpose or motive."

- *United States v. Starks*, 769 F.3d 83 (1st Cir. 2014). In another Judge Thompson opinion, the First Circuit ruled that an unlicensed and unregistered driver of a vehicle has standing to challenge the lawfulness of a search. In United States v. Starks, the district court denied Starks' motion to suppress for lack of standing. Starks was driving his son's girlfriend's rental car, but had no license. The court remanded the case for an evidentiary hearing.

## 2nd Circuit

- *United States v. Raymonda*, 780 F.3d 105 (2d Cir. 2015). Viewing 76 images of child pornography over a period of seventeen seconds does not, by itself, show that a person deliberately or willfully accessed the images. Importantly, the evidence established that the defendant had not clicked on any thumbnails to view the full-size images. The Government needed to show that the suspect was an intentional collector because law enforcement sought the warrant nine months after the images were accessed. The Government meets this burden when it establishes that the person deliberately or willfully accessed the images. The warrant was not supported by probable cause because the Government failed to meet its burden; however, the court held that the evidence should

not be suppressed because the officer relied in good faith on a magistrate's warrant.

## 3rd Circuit

- *Chavez-Alvarez v. AG United States*, No. 14-1630, 2015 U.S. App. LEXIS 6189 (3d Cir. Apr. 16, 2015). The Board of Immigration Appeals (BIA) committed legal error when it held that a general sentence of eighteen months for committing five crimes makes an alien deportable under 8 U.S.C. § 1227(a)(2)(A)(i)(II) (committing a crime of moral turpitude for which the sentence is one year or longer makes an alien deportable). The Court of Appeals for the Third Circuit held that the Government failed to prove by clear and convincing evidence that any crime resulted in a sentence of one year or more.

## 4th Circuit

- *Lee v. Clarke*, No. 13-7914, 2015 U.S. App. LEXIS 4573 (4th Cir. Mar. 20, 2015). The Court of Appeals for the Fourth Circuit sustained an ineffective assistance of counsel claim. In *Lee v. Clarke*, the court held that Defendant's trial lawyer's failure to request a jury instruction for the definition of heat of passion since there was ample evidence that suggested heat of passion. The court found prejudice and remanded the case for further proceedings.

## 5th Circuit

- *Trent v. Wade*, 776 F.3d 368 (5th Cir. 2015). In *Trent v. Wade*, the Fifth Circuit held that the district court had correctly denied a police officer's claim of qualified immunity arising from the officer's entry into a home without first knocking and announcing because the officer's hot pursuit of a family member was not a per se exception to the knock and announce requirement. The officer was entitled to qualified immunity with respect to his warrantless seizure of an ATV on the premises because he did not violate clearly established law.

## 6th Circuit

- *United States v. Winters*, No. 13-6349, 2015 U.S. App. LEXIS 5143, (6th Cir. Mar. 31, 2015). A police officer had reasonable suspicion to extend a traffic stop four minutes to retrieve his drug sniffing dog when the driver displayed nervous behavior, inconsistent and implausible travel plans, and a suspicious rental agreement. The Court of Appeals for the Sixth Circuit distinguished this case from the Supreme Court Jardines opinion. The court found that there was a clear difference between a dog sniff at a home, and a dog sniff of a vehicle on the side of the road. The court found that the search was reasonable because the driver had a diminished expectation of privacy.

## 7th Circuit

- *United States v. Grady*, 746 F.3d 846 (7th Cir. 2014). In *United States v. Grady*, the Court of Appeals for the Seventh Circuit adopted the Fourth and Eleventh Circuits' definition of malicious in the context of arson. There, the court defined malicious as "[acting] intentionally or with deliberate disregard of the likelihood of damage or injury will result."

## 8th Circuit

- *United States v. Thurmond*, No. 14-1944, 2015 U.S. App. LEXIS 5932 (8th Cir. Apr. 13, 2015). On appeal, Thurmond challenged the search warrant that led to a number of criminal charges. Law enforcement sought a search warrant two days after the officers found two leftover marijuana cigarettes (roaches) in Thurmond's trash. The Court of Appeals for the Eighth Circuit found that the two roaches, in addition to the suspects prior criminal history, sufficiently established probable cause.

## 9th Circuit

- *Doe v. Harris*, 772 F.3d 563 (9th Cir. 2014). The Court of Appeals for the Ninth Circuit concluded that the district court did not err in granting appellees' motion to preliminarily enjoin portions of the Californians Against Sexual Exploitation Act (CASE Act). The CASE Act required all sex offenders to provide law enforcement written notice of all internet identifiers within 24 hours. First, the court noted that sex offenders who have

completed their terms of probation and parole retain First Amendment protections. Second, the court found that the CASE Act directly and exclusively burdens speech, but engaged in intermediate scrutiny because the CASE Act is content neutral. The court concluded that the CASE Act unnecessarily chills protected speech in three ways: (1) that the Act is ambiguous as to what sex offenders are required to report; (2) there are insufficient safeguards to prevent public access to the information; and (3) the 24 hour reporting requirement is onerous and overbroad.

## 10th Circuit

- *United States v. Wheeler*, 776 F.3d 736 (10th Cir. 2015). Exhortations to injure another may constitute a true threat, but there must be a subjective intent for the remarks to be threatening. In United States v. Wheeler, the Court of Appeals for the Tenth Circuit reversed a defendant's conviction where the district court failed to instruct the jury that the Government needed to prove the defendant had a subjective intent to make threatening remarks. The court rejected defense counsel's sufficiency of the evidence argument. Defense counsel relied on the theory that Wheeler's "threats" instructed his religious followers to make attacks, but Wheeler had no religious followers. The court found that a reasonable juror could consider Wheeler's posts to be true threats, so it remanded the case for a retrial.

## 11th Circuit

- *United States v. Castor*, No. 13-13951, 2015 U.S. App. LEXIS 1682 (11th Cir. Feb. 3, 2015). In United States v. Castor, the Eleventh Circuit ruled that an officer violated the Fifth Amendment when he assured a suspect that he could not charge him with additional crimes if he confessed. The defendant decided to waive his right to remain silent as a result of this deception. The evidence was suppressed as fruit of a coerced confession because the evidence could not have been seized without the confession.

## D.C. Circuit

- *United States v. Williams*, 773 F.3d 98 (D.C. Cir. 2014). The Court of Appeals for the District of Columbia upheld a search stemming from officer's mistaken belief that a driver was not wearing a seatbelt. The court found that there was probable cause for the officer to believe that the driver was violating a traffic law, and that the mistake was objectively reasonable.

### Federal District Courts

## Local Policy

- *Washington v. United States*, No. 13-CM-1331, slip op. (D.C. Mar. 19, 2015). The District of Columbia Court of Appeals ruled that the Marijuana Decriminalization Amendment does not apply retroactively. The court relied on the general savings statute and held that because the act does not expressly or implicitly state or imply that its provisions should apply retroactively.

## Nationwide Policies

- **Civil Asset Forfeiture.** Attorney General Eric Holder has curbed the government's use of civil asset forfeiture laws. State and local police may no longer use federal law to seize money or property without warrants or criminal charges, unless the federal authorities were involved in the case. To seize bank accounts, federal prosecutors must now develop clear evidence of a crime other than structuring. A supervisor must approve the action after clear evidence is presented.

# About the AUTHOR

**Jonathan Yunes** is a 2L at American University Washington College of Law where he serves as the Managing Editor for the Criminal Law Practitioner. Jonathan also serves as a teaching fellow for the Marshall Brennan Constitutional Literacy Project; a Staffer for the Journal of Gender, Social Policy and the Law; and is Vice-President of the Criminal Law Society. Prior to law school, Jonathan graduated from University of Miami, where he first became interested in criminal defense. Since then, he has solidified this interest by maintaining internships with The Public Defender Service for the District of Columbia and the D.C. Superior Court.