

BIBLIOGRAPHY

CASES

Discovery

Ramos v. State, 710 So.2d 380 (Miss. 1998) (Holding that cumulative discovery violations could lead to reversible error if the lower court does not address them adequately to minimize the prejudice caused by late disclosure.)

Warren v. State, 187 So.3d 616 (Miss. 2016) (The defense must clearly articulate discovery requests. In this case, defense did not articulate the expert’s CV or the crime lab protocols in the scope of its discovery request; the adult rule of discovery at the time did not require the CV or protocols be turned over; and because the state did not have a copy of the expert report and the expert in this case did not qualify as a member of the prosecution team, failure to turn it over was not a *Brady* violation. *The key to this case is that it is very fact driven and easily distinguishable – do not let the state claim it means you are not entitled to information on experts or testing information in drug cases; they just weren’t under the facts of this case.*)

State v. Blenden, 748 So.2d 77 (Miss. 1999) (The state committed discovery violations by failing to provide the defense with requested discovery on testing procedures, known standards, calibration methods, and who conducted what procedures in blood-alcohol testing for a DUI case. This failure led to a mistrial, exclusion of evidence in the retrial, and monetary sanctions against the state.)

Jackson v. United States, 768 A.2d 580 (D.C. 2001) (DEA laboratory form providing detailed description of tests performed on controlled substances allegedly possessed by defendant was subject to discovery.)

United States v. Agurs, 427 U.S. 97 (1976) (“In *Brady* [*v. Maryland*] the request was specific. It gave the prosecutor notice of exactly what the defense desired. Although there is, of course, no duty to provide defense counsel with unlimited discovery of everything known by the prosecutor, if the subject matter of such a request is material, or *indeed if a substantial basis for claiming materiality exists*, it is reasonable to require the prosecutor to respond either by furnishing the information or by submitting the problem to the trial judge. When the prosecutor receives a specific and relevant request, the failure to make any response is seldom, if ever, excusable.) (emphasis added.)

Kyles v. Whitley, 514 U.S. 419 (1995) (*Brady* requires the state, not an individual prosecutor, to disclose known exculpatory or potentially exculpatory evidence. Failure of the police to bring the information to the prosecution’s attention, or the prosecution’s failure to ask, does not alleviate the state as a whole of its *Brady* obligations.)

Fourth Amendment Drug Suppression

Minnesota v. Dickerson, 508 U.S. 366 (1993) (When a police officer who is conducting a lawful pat-down search for weapons feels something that immediately recognizable as contraband, the object may be seized even though it is not a weapon. However, the officer may not exceed the bounds of a lawful pat-down search—*i.e.* may not manipulate the item beyond a simple pat—or else the search and the subsequent seizure is unlawful under the Fourth Amendment).

Wong Sun v. United States, 371 U.S. 471 (1963) (Without a proper warrant and where there is no probable cause or reasonable articulable suspicion that the youth committed any crime, the fruit of the illegal seizure is subject to suppression).

Common Challenges to Search Warrants

United States v. Leon, 468 U.S. 897 (1984) (discussing affidavits that contain mere “bare bones” conclusions, those “so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable,” effect of non-neutral and detached magistrates, and effect of non-specific warrants).

Maryland v. Garrison, 480 U.S. 79 (1987) (if the officers knew or should have known that property they describe in the affidavit includes separate units with different occupants, then they are required to limit the application for search warrant to the specific unit for which they have probable cause.)

Franks v. Delaware, 438 U.S. 154 (1978) (There is a presumption of validity for affidavits supporting search warrants, but that presumption may be rebutted where there is proof of deliberate falsehood or reckless disregard for the truth in the affidavit).

Drug-Detection Dogs

Illinois v. Caballes, 543 U.S. 405 (2005) (when a trained drug dog sniffs luggage at an airport or sniffs an automobile, there is no search under the Fourth Amendment). *See also United States v. Place*, 462 U.S. 696 (1983).

Florida v. Harris, 568 U.S. 237 (2013) (While a positive sniff is presumptive probable cause, it may be rebuttable but the defense must raise and challenge the reliability of the dog, just like any other instrument or tool the police may use.)

Drugs as Fruit of Coerced Statement

United States v. Patane, 542 U.S. 630 (2004) (Although physical evidence obtained from un-Mirandized statements may be constitutionally admissible, tangible evidence that is recovered after a statement is forced or coerced by police is not admissible because it is fruit of the poisonous tree.)

Drug Analysis Reports and Cross-Examination

Melendez-Diaz v. Massachusetts, 129 S.Ct. 2527 (2009) (requiring that prosecutors provide testimony from a live witness who certified the drug evidence; the mere admission of a report is insufficient to satisfy the Confrontation Clause.)

Bullcoming v. New Mexico, 131 S. Ct. 2705 (2011) (reaffirmed *Melendez-Diaz* decision and clarified that under Confrontation Clause, the surrogate testimony of a second forensic analyst, who did not observe or review the original blood alcohol content results, was inadmissible. The defendant has the right “to be confronted with the analyst who made the certification....”)

Field Tests not Sufficient for Proof Beyond a Reasonable Doubt

People v. Hagberg, 703 N.E.2d 973 (Ill. App. 2d 1998) (Although the field test may be sufficient to satisfy an arrest for purposes of the Fourth Amendment, the field test is not considered reliable for proof beyond a reasonable doubt that the seized substance is in fact a drug). *See also Callahan v. United States*, 937 A.2d 141 (D.C. 2007).

Anonymous Tips/Informants

Crawford v. Washington, 541 U.S. 36 (2004) (cross-examination is required to admit prior testimonial statements of witnesses that have since become unavailable)

Illinois v. Gates, 462 U.S. 213 (1983) (when determining whether an informant’s tip establishes probable cause for issuance of a warrant, courts should look to the “totality of the circumstances’ approach that traditionally has informed probable-cause determinations)

Breckenridge v. State, 472 So. 2d 373 (Miss. 1985) (applying *Illinois v. Gates* to Mississippi case law.)

Middlebrook v. State, 555 So.2d 1009, 1010 (Miss.1990) (If an informant is with a participant in the crime or an eye witness to the offense, then the confidential informant is a material witness and the trial court must require the prosecution to identify the informant, if the defendant so requests.)

Florida v. J.L., 529 U.S. 266 (2000) (An anonymous tip that an individual at a particular location possessed a gun did not provide the police with adequate basis for stop and frisk that person, even though police found a person matching the description at the precise location. The court reasoned that “an anonymous tip alone seldom demonstrates the information’s basis of knowledge or veracity” without some “sufficient indicia of reliability to provide reasonable suspicion to make the investigatory stop.”)

Challenging Admissibility of Drug Expert Testimony

Ramos v. State, 710 So.2d 380 (Miss. 1998) (holding that an officer providing lay opinions in a drug case must be qualified as an expert in order to provide an opinion about drug smuggling)

JTIP Handout: Lesson 33 – Drug Cases

behaviors and packaging; failure to qualify as an expert but allowing for the admission of such opinion evidence from a lay witness is reversible error.)

Couch v. City of D'Iberville, 656 So.2d 146, 153 (Miss. 1995) (Holding that if the witness must possess some experience or expertise beyond that of the average, randomly selected adult, the opinion is a Rule 702 expert opinion and not a Rule 701 lay opinion.)

Forfeiture of Property Connected to Drugs

Timbs v. Indiana, 586 US __ (2019) (holding that the 8th Amendment to the U.S. Constitution, which prohibits excessive fines, preventing states from imposing civil forfeiture statutes in cases where the assets seized are excessive with respect to the offense – in *Timbs*, the defendant's \$42,000 SUV was unconstitutionally seized; the maximum statutory fine in IN for felony drug dealing was \$10,000.)

Entrapment Defense

Walls v. State, 672 So.2d 1227 (Miss. 1996) (outlining the elements the defense must establish in order to have a valid entrapment defense.)

MISSISSIPPI RULES OF EVIDENCE

Rule 701: Opinion Testimony of Lay Witnesses

If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is:

- (a) rationally based on the witness's perception;
- (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and
- (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

Rule 702: Testimony by Expert Witnesses

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

- (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- (b) the testimony is based on sufficient facts or data;
- (c) the testimony is the product of reliable principles and methods; and
- (d) the expert has reliably applied the principles and methods to the facts of the case.

MISSISSIPPI COURT RULES

Mississippi Uniform Rules of Youth Court Practice, Rule 15 (governs discovery and pretrial motions in youth court.) Available at: <https://www.msbar.org/media/2362/appendix-youth-court-rules.pdf>

Mississippi Rules of Criminal Procedure, Rule 17.2 (governs what the prosecution in adult court must disclose in a criminal cases, which may be useful in influencing judicial discretion under Youth Court Practice Rule 15 or in launching an equal protection claim.) Available at: <https://courts.ms.gov/research/rules/msrulesofcourt/2017-Final%20Version%20of%20Rules%20-%20Clean%20Copy%20121316.pdf>