

Recent Fourth Amendment Cases: Issues & Opportunities

Federal Criminal Practice Seminar, April 13, 2018

Framing Fourth Amendment Claims

- Retail vs. wholesale enforcement.
- Personal standing vs. regulatory conception of exclusion.
- Protecting privacy vs. deterring police misconduct.
- Excluding evidence vs. closing pathways to violence.

Utah v. Strieff:
Some
Recurring
Themes

- “Good faith” and official misconduct.
- Escalating stops.
- Warrant saturation and predatory policing.

Fourth Amendment Places and Cases

- *Terry* patdowns.
- Traffic stops.
- Probable cause to arrest.
- The home.
 - At the threshold.
 - Third-party consent.
 - The adequacy of warrants.
- Digital privacy and big data.

Terry and the Content of Reasonable Suspicion

“A particularized and objective basis”:

- *United States v. Foster*, 824 F.3d 84 (4th Cir. 2016).
- *United States v. Slocumb*, 804 F.3d 677 (4th Cir. 2015).

Justifying and Prolonging Traffic Stops

- *Rodriguez v. United States*, 135 S. Ct. 1609 (2015).
- *Heien v. North Carolina*, 135 S. Ct. 530 (2014).
- *Navarrette v. California*, 134 S. Ct. 1683 (2014).
- *United States Bowman* (4th Cir. 2018),
<http://www.ca4.uscourts.gov/opinions/164848.P.pdf>.
- *United States v. Williams*, 808 F.3d 238 (4th Cir. 2015).

Probable Cause to Arrest

“A practical and nontechnical conception”:

- *District of Columbia v. Wesby* (2018).
- *Florida v. Harris*, 133 S. Ct. 1050 (2013).
- *Santos v. Frederick Cty. Bd. Of Comm’rs*, 725 F.3d 451 (4th Cir. 2013).

Residential Encounters

At the threshold:

- *Florida v. Jardines*, 133 S. Ct. 1409 (2013).

Third-party consent:

- *Fernandez v. California*, 134 S. Ct. 1126 (2014).

The adequacy of warrants:

- *United States v. Lull*, 824 F.3d 109 (4th Cir. 2016).
- *United States v. Wharton*, 840 F.3d 163 (4th Cir. 2016).

Emerging Digital Privacy Doctrines

- *Jones v. United States*, 132 S. Ct 945 (2012).
- *Riley v. California*, 134 S. Ct. 2473 (2014).
- *United States v. Graham*, 824 F.3d 421 (4th Cir. 2016) and *Carpenter v. United States* (argued 11/29/17).
- The Fourth Amendment and big data policing.