

Recent Major Cases of Interest- 4th and 5th Amendment
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Heien v. North Carolina
Decided by the United States Supreme Court
12/15/2014

Issue:

A mistake of fact does not automatically invalidate a stop, so long as the mistake was reasonable. Conversely, the law has always been that a mistake of law cannot be reasonable, and any stop it spawned would be illegal. This case changes the law; the United States Supreme Court held that a mistake of law is not fatal to a stop if the mistake was objectively reasonable. In other words the US Supreme Court treats mistake of law in the same manner it treats mistake of fact.

Facts:

The police observed a vehicle passing by and could observe that the vehicle's driver appeared stiff and very nervous. The police began to follow the vehicle and noticed that when the vehicle braked, only the left brake light came on as the right brake light had apparently burned out. The police feeling that both brake lights had to be in working order stopped the vehicle. Eventually the police found cocaine inside the vehicle.

The police sincerely believed that the applicable law required both brake lights to be in working order; however, the statute only required that one light work, so long as it provided sufficient light, which was the case in this situation.

The Defendant's Argument:

The defendants argued that the police improperly stopped his vehicle, since the stop was based on a mistake of law, and all mistakes of law by the police are per se unreasonable.

The State's Argument:

The state argued that the applicable statute was ambiguous and that the police sincerely believed that both brake lights had to be working. The state reasoned that the police mistake of law was objectively reasonable and that there is no reason to treat a reasonable mistake of law differently than the way reasonable mistakes of fact are treated.

The United States Supreme Court Holding:

The Supreme Court agreed with the state and held that an objectively reasonable mistake of law should be treated similarly to the way a reasonable mistake of fact is treated. The high court reasoned that the touchstone of 4th amendment jurisprudence is reasonableness. The court stressed that the subjective knowledge of the police is irrelevant; in other words a police officer can sincerely make a mistake of law, but the mistake will be fatal unless it can be shown that the mistake was objectively reasonable. In this case the Supreme Court opined that the mistake of law about both brake lights being operational was an objectively reasonable one since the statute was ambiguous, and there was no case law suggesting that only one light was sufficient.

Cautionary Notes:

This case should not change the way police do business; it is always the police objective to make no mistakes, either of fact or of law. Moreover, most mistakes of law will be deemed objectively unreasonable, unless the statute is ambiguous and there is no existing case law contra to the officer's interpretation of the law. The police cannot seek to benefit from this new doctrine by deliberately keeping themselves ignorant of the law, as the officer's subjective knowledge is irrelevant.

An interesting look at this change in the law is its application to a recent Wisconsin case where the court invalidated a stop because the officer mistakenly believed that "good working order" meant that that all taillights had to be in good working order. If this new law had been in effect then, it is likely the stop would have been endorsed because the statute was ambiguous and there was no case law clarifying the situation. However any such stop in the future would be an objectively unreasonable mistake of law, since the police should have known of the recent case which clarified what is meant by "good working order."

"Burnt out Bulb Does not Mean the Taillights are not in Good Working Order" State v. Antonio Brown Decided by the Wisconsin Supreme Court 7/16/14

Issue:

The police stopped a vehicle for an alleged violation of Wisconsin Statute 347.13(1) –tail lamp violation. Specifically the police noted that one of the tail light bulbs was burned out. The statute requires the taillights to be in good working order and to emit a red light plainly visible from a distance of 500 feet. The police made the stop reasoning that a burnt out bulb means the tail lamp was not in good working order. The court rejected this notion, opining that good working order means that the light is clearly visible from 500 feet, even if one the bulbs were burnt out.

Key to Case:

The key to the case is what is meant by the term “good working order”. The high court determined that the phrase “good working order” does not mean perfect working order- rather it means that the lamp, whatever its defects, fulfills its statutory requirement of emitting a light clearly visible for a distance 500 feet to the rear. Since that was the case here, the stop was deemed improper.

Key Distinction:

The reason this case went the way it did, is because of the murky nature of the phrase “good working order”. Some statutes are clearer cut. For example, 347.07(2)(b) prohibits any color of light other than red being emitted from the rear; the statute is clear. Therefore, if an officer notes white light coming from the rear they can make a lawful stop regardless of visibility of 500 feet.

Interesting Remaining Point:

The Supreme Court felt the officer made a mistake of law; mistakenly believing that one burnt out bulb automatically meant the lamp was not in good working order. To date, in Wisconsin, a police officer stop can be based on a reasonable mistake of fact, but cannot be based on a reasonable mistake of law. This issue is before the United States Supreme Court right now, and it might be that this principle could change in the future.

Indeed, this principle has changed as can be seen in the next case, State v. Houghton

State v. Houghton

Decided by the Wisconsin Supreme Court July 14, 2015

Issue:

This case dealt with several issues. 1) Whether reasonable suspicion or probable cause is the standard for a traffic stop, for observed behavior. The high court ruled that reasonable suspicion was sufficient. 2) Whether Wisconsin would adopt the reasonable mistake of law exception to the exclusionary rule, adopted federally in *Heien v. North Carolina*. The court adopted the federal standard. 3) Do statutes prohibit having any object which obstructs vision from the front wind shield? The Wisconsin Supreme court ruled that not any object that might affect a perfect view from the windshield triggers a stop- rather the obstruction must be material.

Facts:

The police pulled over the defendant's vehicle for traveling a highway without a front plate, and for also having an air freshener and a GPS unit visible in the front windshield. Upon making contact with the driver the police officer detected the odor of marijuana, which ultimately led to a search of the defendant's vehicle. The vehicle search revealed approximately 240 grams of marijuana as well as various paraphernalia commonly used for the packaging and distribution of marijuana.

The Defendant's Argument:

The defendant argued that his stop was unlawful because he was from Michigan and by Michigan law he was not required to have a front plate. He also argues that neither the GPS unit nor the air freshener materially obstructed his vision through the front windshield.

The State's Argument:

The state agreed that the officer should not have presumed that a Michigan based vehicle needs to have a front plate. But the state argued that the stop was proper because the officer had reasonable suspicion that the defendant was violating statutes that prohibited having any items, which obstructs in any way the driver's vision. Finally, the state argued that even if there was no statutory violation, the officer feeling that there was a violation in regards to the air freshener and GPS unit, was a reasonable mistake of law and therefore should not trigger suppression.

The Wisconsin Supreme Court Holding:

The high court held that the officer should know that not every driver in Wisconsin is required to have 2 plates, and that drivers from some neighboring states often times need only one plate. So, they found this mistake not be a reasonable mistake of fact or law. The court also held that not every object that obstructs vision is unlawful, citing an oil change notice as a routine item affixed on a windshield that might obscure vision, but not in any kind of meaningful way. The court determined that the GPS unit and the air freshener in this case did not obstruct vision in any meaningful way, and therefore the officer was mistaken in thinking there was a violation. But the court felt the mistake of law was a reasonable one as the statutes seem unclear as to whether or not they prohibit any obstructions or only material ones. In their holding the court adopted the federal standard that a reasonable mistake of law does not trigger suspicion, and also held that reasonable suspicion is the proper basis for any vehicle stop, whether if it is for observed behavior, or investigative purposes. Accordingly, the Wisconsin Supreme court held the stop was lawful as it was based on a reasonable mistake of law that it was illegal to have a gps unit and/or air freshener placed in the field of the driver's vision. The evidence was deemed admissible.

Note:

Keep in mind that reflex stops of vehicle for air fresheners hanging on the rear view mirror are no longer permissible. A stop could be permitted if the air freshener by either its size or placement materially effects

State v. Blatterman

Decided by the Wisconsin Supreme Court (May 5, 2015)

Issue:

This case involved the probable cause necessary for arresting a subject for a P.A.C. violation, when the subject has a .02 threshold. The case also dealt with the community caretaker doctrine. The Supreme Court held there was sufficient probable cause for a P.A.C. arrest as a stand-alone charge. The court also reprised its earlier holdings that the community caretaker doctrine can be applicable even when the officer has a concurrent investigatory objective.

Facts:

The police received a dispatch that the defendant was bringing gas into his house to apparently try to blow up the home. The complainant was the defendant's wife. While the police were responding to this call, they received an updated dispatch advising that the defendant was leaving his home in a white minivan with a specifically described license plate number. Dispatch further informed that the defendant was possibly intoxicated and had, in the past, mentioned "suicide by cop".

Soon after receiving the second dispatch the police observed the defendant's vehicle approaching, and the police performed a high-risk stop. The police directed the defendant to turn off his vehicle, to open the driver's side window, and to put his hands outside. Instead the defendant opened the driver's side door, exited the vehicle and began walking toward the police. The police told the defendant to stop and advised that if he continued walking they would use their taser. Eventually the defendant stopped and he was brought to the ground and handcuffed.

The defendant complained to the police that his chest hurt and the police called for EMS. Though it was a very cold March day the defendant was wearing only a short sleeve shirt and jeans. The officers smelled alcohol on the defendant's breath and noticed that his eyes were watery. The police also became aware that the defendant had three prior O.W.I. convictions and consequently had a .02 PAC threshold.

The EMS arrived and the defendant refused their services. The police were concerned that the defendant might have been over exposed to carbon monoxide and based on all the circumstances they encountered decided to transport the defendant to a hospital ten miles away. At the hospital the defendant was checked out and also submitted to a blood sample showing his blood alcohol concentration to be .11. The defendant was charged with a P.A.C. violation- a fourth offense of the O.W.I. law.

The Defendant's Argument:

The defendant argued that he was unlawfully transported to the hospital and therefore all the evidence gathered at the hospital should be suppressed. The defendant argued that the police did not have probable cause; only reasonable suspicion, which does not justify a transport of ten miles.

The State's Argument:

The state argued that the transport was permissible because the police had probable cause to arrest the defendant for a P.A.C.02 violation and that the transport was also permissible under the community caretaker doctrine.

The Wisconsin Supreme Court Holding:

The court agreed with the state and endorsed the transport on both the probable cause and the community caretaker theories.

Probable cause: The court held that there was probable cause to arrest because of the defendant's prior record, his .02 threshold, and the officer's observations of the defendant.

Community Caretaker: The court held that the police also had a sufficient basis for the community caretaker doctrine as the police had valid concerns for the defendant's well-being based on his wife's initial complaint, the defendant's erratic behavior, and the defendant's chest pain complaint.

Key Points:

- 1) 3 justices ruled that mere odor is sufficient for the formulation of probable cause for arrest for a PAC violation when the PAC threshold is .02. While this is not a majority, it is important to note that none of the justices ruled out this possibility for future cases; they just did not have to find so here when there were watery eyes and the defendant's erratic behavior to add with the odor to the probable cause calculus. It is clear that when it comes to a PAC .02 arrest, the police do not need much more than the odor to have probable cause.
- 2) The police can arrest a person for a PAC violation as a stand-alone charge, without also arresting for OWI, and can do so before getting a test result. However, this is likely only going to occur in a .02 case.
- 3) The court reminds us that the police can have an investigatory agenda and also have a bona fide community caretaker motivation. The key is that the caretaker instinct is reasonable and that the police act consistently with this motivation.
- 4) Also, it is important to recognize that the transport could not be justified under a *Terry* detention, as it was a ten mile distance. The court did not opine how long a distance would be too long but we now know ten miles is too long.

State v. Dumstrey**Decided by the Wisconsin Court of Appeals (December 2014)****Issue:**

Whether a person has a reasonable expectation of privacy in a private, remote control operated, communal underground parking garage. The court of appeals held that this area was not curtilage and therefore a police warrantless entry into the area was not a 4th amendment intrusion.

Facts:

An off-duty police officer was driving home for a Brewer game. During this ride the officer observed the defendant driving very erratically, speeding and tailgating, and lane hopping. Based on these observations the off duty officer called the police department and reported his observations. At a traffic light the officer stopped his vehicle right alongside the defendant's vehicle and made eye contact with the defendant. The defendant appeared very sleepy looking and his eyes appeared glassy. The officer showed the defendant his badge and told the defendant to pull over. Initially the defendant complied and pulled over but then he took off and the off-duty officer pursued. The ensuing pursuit took the parties to an apartment complex and through a parking lot before the defendant entered his parking garage through the remote controlled door. The officer parked his car partway through the remote controlled door opening so that the door could not close. The officer entered the garage and made contact with Dumstrey at which point an on duty officer, who had been dispatched in response to the off- duty officer notifications, arrived on the scene and eventually the defendant was arrested for OWI.

The Defendant's Argument:

The defendant argued that he had a privacy interest in his remote controlled underground parking garage. He argued that it constituted curtilage to his apartment and therefore the officer's warrantless non-consensual entry into the garage was a violation of his 4th amendment rights. The defendant also argued that the officer's entry into his garage area was a trespass and therefore automatically should result in the suppression of any evidence the trespass generated.

The State's Argument:

The state argued that the garage was not curtilage since there were 29 other parking stalls. Therefore despite the remote controlled entry, such a communal area is not a privacy zone within the meaning of the 4th amendment. Also, the state argued that a trespass only triggers suppression if the trespass is to a 4th amendment privacy zone.

The Court of Appeal's Opinion:

The Court of Appeals agreed with the state and held that the off-duty officer's entry into the garage area did not violate the 4th amendment. The court held that a communal underground parking area is not curtilage, and not an area where a person would reasonably feel they have an expectation of privacy. The court further held that a trespass does not trigger 4th amendment protections unless the trespass occurred on a privacy interest.

Cautionary Note:

This opinion does not mean that the police could smash down the garage door or somehow tamper with the security mechanisms; as such conduct would not be viewed as reasonable. Also, keep in mind that this case was not viewed as a fleeing scenario, as it is unreasonable to expect someone to pull over merely over the presentation of a badge by a non-uniformed officer in his personal vehicle. Accordingly, the officer only had reasonable suspicion of OWI to justify an intrusion and that would not be sufficient to make entry into a home or its curtilage. Here, the police did not need a 4th amendment justification as the entry into the communal parking lot was not a 4th amendment event.

Rodriquez v. UNITED STATES

Decided by the United States Supreme Court (April 21, 2015)

Issue:

This case involved the use of a dog sniff, without reasonable suspicion, during a traffic stop. The United States Supreme Court held that a traffic stop cannot be extended for any period of time, no matter how slight, to accommodate a "fishing expedition" canine sniff of a vehicle. This case effectively overrules our Supreme Court holding in *State v. Arias*, which allowed the police to extend an existing traffic stop a short period time to allow for a dog sniff to take place.

Facts:

A K-9 officer stopped the defendant for driving on the highway shoulder, a violation of Nebraska law. The officer conducted the traffic stop and after attending to everything associated with the stop, he asked Rodriquez for permission to walk his dog around the defendant's vehicle. When the defendant refused the officer

detained him until a second officer arrived. When the second officer arrived, a canine sniff was performed and the canine alerted to the presence of drugs in the vehicle. Seven or eight minutes elapsed from the time the police issued the defendant a warning until the dog alerted.

The Defendant's Argument:

The defendant argued that the police unreasonably extended a traffic stop to investigate a matter that was unconnected to the stop, and did so without reasonable suspicion.

The State's Argument:

The state argued that the delay and the intrusion were minimal and therefore the dog sniff was permissible.

The United States Supreme Court Holding

The Supreme Court agreed with the defendant and found that the defendant had been unconstitutionally detained to accommodate a dog sniff, without reasonable suspicion, for a dog sniff had no connection to the original traffic stop. This case has great impact in Wisconsin as it overruled *State v. Arias*, and by implication *State v. House*; two cases that allowed the police to extend a traffic stop for an unrelated dog sniff and without reasonable suspicion.

Synopsis of this Significant Holding:

- 1) *State v. Arias* is clearly dead law- there can be no wait, no matter how slight, during traffic stop to accommodate a "fishing expedition" dog sniff. The police must stay on task in executing their traffic stop mission.
- 2) There is no bonus rule- in other words a police officer cannot claim that a normal traffic stop takes 8 minutes, and that he/she rushed it so it only took 6 minutes and therefore has earned a two minute coupon to go fishing.
- 3) The opinion provides virtually no wiggle room- this is evident by the forcefulness of its language and by the desperate laments of the dissents.
- 4) We have a virtual bright line rule- no canine sniffs, without reasonable suspicion, during a traffic stop. When I say there is a virtual bright line rule that there is no dog sniffing without reasonable suspicion during a traffic stop, I am speaking from a practical standpoint and not from a constitutional one. The court is not against the sniff without suspicion per se, they are against the delay such olfactory gymnastics inevitably cause. So, if a drug interdiction is set up in advance, so that a dog arrives during a traffic stop and does its thing while the stopping officer is staying on task, then I think that will work. The key is that at all times one officer is working purposely and exclusively on the traffic stop mission.
- 5) So, it is possible, though unlikely, that a dog sniff can properly occur during the stop, if it can be showed that there was no delay to accommodate the sniff. This would require a fact situation similar to *Illinois v. Caballes* where another officer hears of the stop and goes to it with a dog while the stopping officer remains on task, never delayed. I suppose it is arguable that an officer

could call for a dog while pulling over the suspect, claiming a multi task that is not a delay.

- 6) The key is to avoid any situation where the stopping officer is sitting around or stalling just to accommodate a dog sniff.
- 7) This is a decision of constitutional import so it is immediately effective and is likely to have retroactive applicability with those cases in the pipeline. But, good faith (police acting under *Arias*) should save these cases under *State v. Dearborn* and the recently decided *State v. Scull*.

The Good News

- 1) I guess clarity is a good thing.
- 2) The court makes it clear that the police asking for licenses, insurance, doing criminal history checks, are permissible because they are part of the traffic stop mission, as they are designed for safety purposes, which is part and parcel of any police contact.

The Vague

- 1) The repartee issue. No problem with a quick query or so about where a person is coming from or going to, and about weapons, as that can be finessed to be under the “mission tent”. Questions about drugs or the popular “anything illegal in the car gambit” are more awkward but again these are lightning quick, don’t really delay things, particularly if the officer asks these questions while engaging in “mission activity”.

The Unchanged

- 1) The law remains unchanged that if the police have reasonable suspicion they can detain a subject a reasonable time waiting for a canine. With reasonable suspicion, the *Rodriquez* concerns are gone.
- 2) The “Badger stop” routine is unaffected by *Rodriquez*. So, you can ask for consent to search a car, after you first end the traffic stop. This is set up as a consensual encounter and not as part of a 4th amendment seizure. Therefore, this process is unaffected by *Rodriquez*.

State v. Hogan

Decided by the Wisconsin Supreme Court (July 10, 2015)

Issue:

This case involved a traffic stop that morphed into a drugged driving investigation. The case dealt with whether it is a 4th amendment seizure if, 16 seconds after releasing a defendant, the police re-approach the defendant and ask for consent to search the vehicle. The case also dealt with the reasonable suspicion necessary for a Terry stop for suspecting a driver has a controlled substance in his/her system. The

Wisconsin Supreme Court first held that the Terry stop was unlawful as the police did not have the requisite reasonable suspicion. Nevertheless, the high court held that the consent to search the vehicle was valid since the police had released the defendant from the improper Terry seizure and the subsequent consent was incident to a “consensual encounter” and not the product of an illegal seizure.

Facts:

The police stopped the defendant for a seat belt violation. The officer observed what he believed to be indicia of drug activity and called for back-up. The officer then wrote out a seat belt citation for the defendant and for his wife. Before the officer had finished the citation paper work, a local officer who knew the defendant arrived on the scene.

The arriving officer advised that his department had received tips that the defendant had a drug issue and was a “shake and bake” methamphetamine cooker. The police officer who had stopped the defendant then asked him to perform a series of field sobriety tests. The defendant passed all the tests. At this point, 24 minutes after the original stop, the officer told the defendant that he was free to leave. The defendant then started to leave and after 16 seconds, the officer re-approached the defendant and asked the defendant if he would consent to a search of his trunk. The defendant granted consent and the police found in the truck, methamphetamine, equipment and supplies commonly associated with manufacturing methamphetamine, and two loaded handguns.

The Defendant’s Argument:

The defendant argued that his traffic stop was unlawfully extended to last 24 minutes. He argued that the police did not have reasonable suspicion to hold him for anything other than a seat belt violation. Therefore, his eventual consent only occurred because of the unlawful detention.

The State’s Argument:

The state argued that the detention was permissible because the police had reasonable suspicion that the defendant had engaged in “drugged driving”. And the state argued that consent was granted after the defendant was released and therefore was the product of a consensual encounter and not the product of an unlawful seizure.

The Wisconsin Supreme Court Holding:

The high court agreed with the defendant to the extent that it opined that the police did not have the requisite reasonable suspicion to extend the traffic stop beyond the time necessary to process the seatbelt violations. It is important to note that the police might have had the reasonable suspicion but since it was not properly testified to, it was not considered as part of the record. But the court agreed with the state that the consent to search the vehicle was the product of a consensual encounter. In other words, the court reasoned that the unlawful stop was no longer

relevant, once the stop was ended and the police told the suspect that he was free to go. Therefore, the evidence was admissible.

Key Points:

- 1) Proving driving with a controlled substance in your system does not require impairment, and thus the reasonable suspicion standard can be rather easily met. Here, the only real thing on the record to support the suspicion was the fact that the defendant was shaking. Other factors, including the defendant's prior record, would have been relevant but these facts did not make it into the record. This case highlights the importance of courtroom testimony in evaluating the propriety of a defendant's motion to suppress.
- 2) No matter the constitutional infirmity, once a defendant is released and the 4th amendment contact is concluded, subsequent police conduct is viewed under a new lens. In other words, once the defendant was released the impropriety of the original seizure was no longer relevant.
- 3) This case reminds us that the recent United States Supreme Court ruling in *Rodriguez v. US* (not allowing an extension of a traffic stop to accommodate a dog sniff) did not alter the law about ending a traffic stop and then re-initiating contact with the defendant as a consensual encounter.

State v. Delebreau

Decided by the Wisconsin Supreme Court (June 6, 2015)

Issue:

This case involved the reading of the Miranda warning to a subject, who has an attorney, but who has not invoked the Miranda right to counsel. Specifically, the Wisconsin Supreme Court dealt with whether it wished to adopt the *Louisiana v. Montejo* rule. The *Montejo* rule is that the hiring of an attorney is not an invocation of the Miranda right to an attorney; the Miranda right is only invoked when a subject is read his/her rights and then says they want a lawyer. Ultimately, in this case, the Wisconsin Supreme Court adopted the *Montejo* rule.

Facts:

The defendant was taken into custody on a probation hold. The defendant sent a note to jail officials requesting an opportunity to speak with a narcotics investigator. A few days later, while still in continuous custody, the defendant was charged with the delivery of heroin, made his initial appearance in court, and was represented by an attorney with the Public Defender's office. The next day, still in custody, the defendant met with a police investigator.

The investigator read the defendant his Miranda rights and the defendant waived his rights and did not ask for counsel. In this interview the defendant admitted to selling illegal drugs. The investigator returned three days later to again interview the defendant. Again the rights were read and were waived and during this

interview the defendant said that since he was going to end up in prison, he might as well just cooperate with law enforcement.

The two custodial interviews where the defendant made incriminating statements were used as evidence in the defendant's trial.

The Defendant's Argument:

The defendant argued that his statements should be suppressed since he had retained counsel before either interview was conducted. So, since he had already been charged with a crime, and was represented by counsel, the police should be barred from approaching him and trying to initiate an interrogation.

The State's Argument:

The state argued that the fact that the defendant had retained counsel prior to the interviews was irrelevant; the key is that the defendant had not yet invoked his Miranda right to counsel as he had not yet been read his rights.

The Wisconsin Supreme Court Holding:

The high court agreed with the state. The court reasoned that the filing of a charge and the retention of the attorney are not invocations of the Miranda right to attorney. This invocation only occurs when a defendant is read the Miranda form and submits that he wants counsel, or while in custody clearly advises the police that he wants a lawyer during police questioning. Otherwise he is fair game for a police approach. In reaching this holding the high court definitively adopted the *Montejo* rule for Wisconsin.

Caution:

Once a person is in custody, and invokes his right to counsel by responding to the warning or preemptively telling the police that he wants a lawyer for questioning, he/she is "off limits" unless he/she reinitiates the police contact or is released from custody for 14 continuous days.

State v. Raheem Moore

Decided by the Wisconsin Supreme Court June 16, 2015

Issue:

This case dealt with the mandatory recording statute relevant to juvenile interrogations. In this case Moore, a juvenile, expressed reservations about being recorded during the course of an interrogation, and the police stopped the recording for a short period of time. In this period Moore changed his earlier fabrications into a confession. The police surreptitiously recorded Moore after this confession, and while recorded he gave more details. The Wisconsin Supreme Court had to deal with whether Moore had refused to cooperate with the recording, which would, under the statute, validate the shutting off of the recorder, or if Moore had not refused to cooperate, meaning his statements should be suppressed. Ultimately the high court

opined that Moore had not refused to cooperate and that the police had wrongly shut off the recorder for a period of time and the statements made during that time should be suppressed. But the court found this error to be harmless error and affirmed the conviction.

Facts:

The police responded to a homicide and the investigation in short order led them to Moore, who was 15 years old. Moore was questioned for 5 and half hours over a nine hour period. There was no dispute that Moore was properly Mirandized throughout the interrogation. During the course of the interview Moore was fed, and given rest and bathroom breaks. The interview was recorded pursuant to the mandates of *Jerrell* and statute.

At first Moore denied any involvement in the shooting, putting the blame on an individual named Jevonte. Moore said Jevonte was 15 and then later upped his age to 18, and when told that nobody previous questioned about the incident had ever heard about Jevonte, Moore claimed they were lying. Moore then said that he might have been present when Jevonte did the shooting but all he really saw was a flash. Eventually Moore asked for the recorder to be turned off, but when told that it was in everybody's best interest to keep it on, Moore didn't protest and the recording continued.

Moore then said maybe Jevonte was not involved and he pinned the blame on another person, who was familiar to the police. Eventually Moore mentioned the recorder again and said he would like the police to turn it off. The police tried to make a record that Moore wanted the recording turned off, but Moore never indicated that he would not proceed until the recording was shut off. The police shut off the recorder. After the recording was stopped, the interrogation continued and soon thereafter Moore admitted that he was the shooter. Shortly after the confession the police surreptitiously turned on the recorder and Moore affirmed his confession and gave more details. Moore's case was handled in adult court and he pled to party to a crime of second degree reckless homicide.

The Defendant's Argument:

The defendant argued that his confession should be suppressed since he had not refused to cooperate and therefore the recording never should have stopped.

The State's Argument:

The state argued that Moore had refused to cooperate and therefore the recording was properly stopped under the statute. Also the state argued that though Moore was a juvenile, the matter was handled in adult court where it is not an absolute requirement that the statements be recorded.

State v. Cordarol Kirby
Court of Appeals 2013

Issue:

This case deals with a warrantless entry into an apartment. The court opined the entry was permissible for officer safety/ exigent circumstances reasons.

Facts:

An officer was dispatched to investigate a report of a large group fighting. Upon arrival, the officer did not notice any active fighting and so she drove around the area. While doing this "area check" the officer received a phone call from an investigator with information from an informant, that the main aggressor in the fight had been a black male wearing a Chicago Bulls hat, and the informant had further advised that the man wearing the Bulls hat, had threatened to come back to the area with a gun.

Then the officer got a second dispatch telling her that the landlord of a nearby apartment building thought that some of the earlier "fighters" had gone into his building. The officer was joined by another, and the two officers, went to speak to the landlord. The two officers responded to the apartment building and inside they stopped a man who agreed to show them the apartment he came from. The door to the apartment was wide open and there were five men inside, and one man standing in the doorway. One of the people inside the apartment was wearing a Bulls hat. The police asked the man wearing the Bulls hat to step into the hallway and he complied. One officer talked to the man wearing the hat, the defendant, while the other officer interviewed the rest of the men in the apartment.

The one interviewing the defendant stood in the hallway while the other officer stood in the doorway of the apartment. During the process of asking the men inside the apartment to identify themselves the officer "broke the threshold of the apartment", so she could hear better. Three men were on the couch, while one stood in front of the couch. During the contact one of the men called his mother, and the mother asked to speak to the police. The officer also told the men in the apartment to knock it off and behave and was about to leave, when she received another phone call with more information about the fight. This call advised that the informant now claimed that there was a black backpack involved which contained a sawed off shotgun and a handgun. Then the officer looked around and saw the black backpack in the middle of a love seat and she decided the safest thing to do was to place everybody in handcuffs and then check out the backpack. She was short one handcuff so she let the one man continue to talk to his mother on the phone.

Everybody denied ownership of the backpack. She opened up the backpack and found the shotgun. Ultimately the defendant was convicted of carrying a concealed weapon and disorderly conduct.

The Defendant's Argument:

The defendant argued that the evidence should be suppressed because of the police illegal entry into the apartment.

The Holding:

The court began by stating that the defendant "makes much of the fact that the officer stepped over the threshold of the apartment during the initial discussion with the men". The court was not troubled by the entry because it felt the police had exigent circumstances to enter the apartment. The information about the gun provided the exigent circumstances. The court felt that it was immaterial that the officer had already stepped into the apartment when the exigent circumstance arose. The court reasoned the search was permissible, although perhaps the court too easily dismissed the issue as to the original entry into apartment. It is likely this search could have been validated by the inevitable discovery doctrine but the exigent circumstance justification used by the court is a bit problematic since the exigency occurred after the entry was made.