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**OFFICE OF THE PUBLIC DEFENDER**

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STATE OF DELAWARE



**COMPENDIUM OF RECENT CRIMINAL-LAW  
DECISIONS FROM THE UNITED STATES SUPREME  
COURT AND THE DELAWARE SUPREME COURT**

**Cases Summarized and Compiled by  
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## UNITED STATES SUPREME COURT CASES

### **HUDSON V. MICHIGAN, (6/15/06): KNOCK AND ANNOUNCE RULE/ EXCLUSIONARY RULE**



In executing a “knock and announce” search warrant, police, as conceded by the State, violated the knock and announce rule. The only issue before the Court was whether the exclusionary rule is appropriate for violation of the K&A rule. Held: K&A rule is designed to protect human life because an unannounced entry may provoke violence in supposed self defense by a surprised resident. The rule is not designed to protect one’s interest in preventing the government from seeing or taking evidence described in a warrant. Since the interests violated have nothing to do with seizure of the evidence, the exclusionary rule is inapplicable.

**Concurrence:** The Court’s decision does not trivialize K&A violations and the principles of the exclusionary rule are not in doubt.

**Dissent:** Compliance with K&A rule is an integral part of making execution of search warrant legal. The search warrant was not a “no knock” warrant, thus K&A required.

### **DAVIS V. WASHINGTON, (6/19/06): CONFRONTATION CLAUSE**

The court addressed 2 separate cases in clarifying what constitutes a “testimonial statement” for purposes of the holding in *Crawford v. Washington*. *Crawford* bars the admission of testimonial statements of available witnesses who do not testify. 1) 911 call by a victim identifying her assailant and providing other information is not testimonial. The statement by the victim and questioning was designed “to resolve the present emergency, rather than simply to learn what had happened in the past.” Thus, admissible without the victim's presence; 2) A victim's write up in an affidavit, after the crime, describing what happened in a domestic dispute was clearly testimonial. The statement was made in the course of police interrogation and not to relieve an immediate threat. Thus, it was not admissible.

## **SAMSON V. CALIFORNIA, (6/19/06): SEARCH/SEIZURE OF PAROLLEE**

The Court addressed California's statute whereby all parolee's sign a form saying they can be searched by a peace officer at anytime. Here, a cop walked down a street, recognized the defendant as on parole and thought he had an outstanding warrant. Defendant was stopped, did not have a warrant, was in good standing with parole so of course the cop searched him. A cigarette box with methamphetamine was found. The court extended its holding in *U.S. v. Knights*, 534 U.S. 112 (2001), where search of a probationer's home by a police officer was permissible even though it was only based on reasonable suspicion. Now a search may commence even when there is no suspicion. Probationers enjoy fewer rights than the average citizen. This serves the "interest of reducing recidivism, in a manner that aids, rather than hinders, the reintegration of parolees into productive society."

**Dissent:** Search of parolee/probationer should be based on reasonable suspicion, this accounts for a lesser degree of rights as citizens without completely abrogating the Fourth Amendment.

## **DELAWARE SUPREME COURT CASES**

### **BROWN V. STATE, (4/6/06): PROBABLE CAUSE FOR ARREST/ BRADY/ MISSING EVIDENCE INSTRUCTION**



Police received a tip that an African American man would be attempting to sell at a store items from the tipster's home. Police observed the transaction, defendant matched the description of one involved in prior illegal sales; items were similar as well and police knew the tipster. Police had probable cause to arrest.

Late disclosure by police of a laptop found in the possession of another, and not defendant, did not require a mistrial because it only went to one of the charges and the State mitigated the problem by locating the appropriate witnesses to testify at trial. Presentation of these witnesses was an appropriate alternative to a mistrial.

**BERRYMAN V. STATE, (4/11/06): PLEA AGREEMENTS/ LESSER INCLUDED OFFENSES**



Trial court did not abuse its discretion by denying the defendant the opportunity to plead to a lesser included offense after the final case review. The request for the plea was made to the administrative judge and was denied. It was then made to the trial judge on the day of trial and was again denied. Defendant does not have a constitutional right to accept a plea agreement and the trial court has discretion in managing their dockets.

The trial court properly denied defendant's request for a lesser included offense instruction of theft based on defendant's same conduct but not on the victim's age (a senior). There was no evidence presented at trial to contradict the victim's testimony that she was 72, thus no basis for lio charge.

**CHAO V. STATE, (4/13/06): FELONY MURDER/ RETROACTIVITY**

In defendant's appeal from her first trial, the court held that the term "in furtherance" in "felony murder" only required that the murder "need only accompany the commission of the underlying felony." This language was expressly rejected in the court's 2003 ruling in *Williams v. State* which was "that the murder occur to facilitate the commission of the felony." Defendant filed a motion for post-conviction relief and the trial court abused its discretion when it summarily rejected it. The trial court provided no rationale as to why *Williams* could not be applied retroactively. Thus, the matter was remanded for the trial court to address the issues involved.

**MILLS V. STATE, (4/17/06): AUTO SEARCH&SEIZURE/ SPEEDY TRIAL**



Defendant challenged, for the first time on appeal, his unlawful detention as a passenger of a vehicle and the unlawful search of the vehicle. The trial court held that he had no standing with respect to search of car and that his detention and subsequent questioning was permissible under *Terry*.

The trial court conducted a *Barker* analysis for a speedy trial issue and found: 15 month delay weighed in favor of defendant; reason for delay weighed in favor of the defendant based on State's second continuance request because no prosecutor was available; Despite defendant's many assertions of his right to speedy trial- this factor neither favored the State or defendant because he did not directly assert his right in response to the State's requests for continuance. The final factor- prejudice - not only weighed against defendant, but outweighed the other factors in defendant's favor. This is because he would have been held on other matters anyway. Thus, no speedy trial violation.

**SMITH V. STATE, (4/27/06): SELF DEFENSE/IMPROPER PROSECUTORIAL REMARKS/IMPROPER ILLICITATION OF D'S PRIOR INCARCERATION/ DISCOVERY VIOLATION/EVIDENCE/ACCOMPLICE LIABILITY**

In a Murder case which involved lengthy facts, the defendant raised 9 issues:

1. Trial court did not error by failing to grant defendant's request for a self - defense instruction. The standard for giving such an instruction is that there be some credible evidence presented to support such a defense. If the jury believed defendant, they would not be able to conclude that he was not an accomplice to the murder. At best, it would be self defense to a charge of offensive touching during the circumstances surrounding the planned murder.
2. Comment by State that jury was required to "**find the truth**" was distinguishable from *Thompson v. State*, as the comment in this case was folded in to a lengthy correct explanation of the "reasonable doubt" standard. The jury was not told to "disregard reasonable doubt." Prosecutor's comment in closing, "the defense had the **gall** to..." was improper. Applying the *Hughes Hunter* test the Court found that this isolated comment did not prejudicially affect defendant's rights.
3. No error in denying mistrial motion based on State's elicitation of the fact that defendant was incarcerated after instructed by the court. It was not intentional and court gave a curative instruction.
4. State committed a discovery violation when it failed to inform defendant that a bullet had been retested after co-defendant's trial even though State had not requested the retesting. However, a stipulation was reached regarding striking testimony that was based on the new results. Thus, the trial court did not err in denying motion for mistrial.
5. Assuming the *Clayton* test applied and that the judge erred in denying defendant to use the word "lie" or liar" it was harmless beyond reasonable doubt.

6. The trial court did not err in denying defendant's request to admit evidence of co-defendant's prior arrest for armed robbery: 1) not relevant since it would not make it more or less probable that defendant was the witness' accomplice in this case; 2) did not show that he made up a story in this case that was similar to that in the other in which he received a *nolle pros*; 3) did not go to untruthfulness regarding ownership of a gun. No confrontation clause errors because defendant had obtained admissions from witness that he had been untruthful.
7. Evidence underlying another witness' arrest prior to trial and former juvenile adjudications was properly excluded. The trial court reviewed the evidence himself and determined that there was no *Brady* material contained therein. Witness did admit on stand to having made several untrue statements.
8. Cross examination by State of defendant regarding his financial status was permissible because defendant opened the door by asking questions about work.
9. The trial court did not err in providing a jury instruction regarding guilt as a "principal" in addition to the standard accomplice liability instruction. This instruction was given even though it was stipulated that the co-defendant caused the victim's death.

#### **STATE V. FISHER, (5/17/06): EXPUNGEMENT OF JUVENILE'S RECORD**



The Family Court did not abuse its discretion and properly weighed the State's interest in determining that defendant's juvenile record should be expunged. Defendant had been 17 when he was charged with rape fourth degree. The victim had been 12 and admitted there was no force involved. The court found defendant was not a continued risk and expungement was requested so that defendant could be recertified as an emergency medical technician.

#### **TOLSON V. STATE, (5/18/06): INFORMANT TIP AND PROBABLE CAUSE/ MIRANDA/SCIENTIFIC EVIDENCE**

Criminal informant set up a drug deal with defendant because he had purchased drugs from him in the past and he could set up a sale. He also told police that when defendant arrived on the scene he usually parked at another location and would approach buyer on foot. Tolson arrived with two men for the sale at a hotel that was across the street from Kent Christian Academy. Two men knocked on the criminal informant's room and police immediately arrested them. Tolson then got in the car and drove the car

to a parking lot across the street then returned on foot. Police arrested him when he got of the elevator. Sufficient probable cause because CI predicted defendant's behavior; defendant arrived as instructed on phone thus sufficient for informant tip.

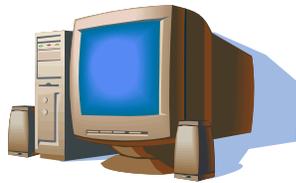
In the holding cell, without *Miranda*, defendant admitted drugs on him were his. This was after police told him his charges upon his request. Without more, it was not interrogation, thus not analogous to *Wainwright*.

The State relied on no expert testimony to introduce the distance between the sale and the school measured by a scientific instrument, a rangefinder. However, admission of this evidence was harmless as officer's independent testimony regarding his observations of the distance was sufficient to establish that element.

### **MANLOVE V. STATE, (6/9/06):JURY INSTRUCTIONS/ACCOMPLICE LIABILITY**

Held that the trial court erred when it responded to the jury's question regarding whether they could consider accomplice liability with respect to defendant's robbery 1 charge by reading the accomplice liability statute. Defendant, at a prior trial, had been acquitted on conspiracy. Also, the State indicted him on the robbery as a principle. Finally, the jury inconsistently acquitted him of assault (which was part of the robbery). Thus, it was clear that the jury reached the conclusion that defendant did not actually rob the victim but was an accomplice.

### **SISSON V. STATE, (6/19/06): COMPUTER SEARCH WARRANT/WARRANT MULTIPLICITY/EQUAL PROTECTION DUE PROCESS/SEXUAL EXPLOITATION OF A CHILD**



**Search Warrant:** In a child porn case, police executed search warrant based, in part, on police representation that there was little likelihood that the search warrant would be considered stale because collectors and traders keep their collections for a long time. Defendant's computer was seized and contained pictures of children engaged in sex with adults.

The affidavit was not stale because probable cause is based on: type of property, the incriminating nature of the property and how consumable the property is. The fact that affidavit stated that an email was discovered by AOL and didn't indicate the date the item was transmitted did not render the information stale. Also, cops not reckless by leaving out of affidavit the fact that "spoofing" exists: when a computer user receives

email that appears to be from one source but is from another. An AOL username provides a sufficient nexus between the image AOL discovered and defendant's residence, even though IP address information was available to determine precise point email sent because of totality of information police possessed.

**Multiplicity:** Charging defendant with 10 counts of sexual exploitation of a child under 11 *Del.C.* §1108 was not multiplicitious. "Visual depiction" of children, the target of the offense, does not criminalize a course of conduct (ie one photo session) but the act of creating each visual depiction. The statute is targeted at eliminating the proliferation of child porn. So, even though a videographer would make one video in the time that a photographer could make 30 still photographs, the purpose is met. This is because it is easier to circulate 30 still photos than to circulate one 30 - minute video.

**Equal Protection:** The statute does not treat two classes of individuals, the photographer v. videographer, differently based on the method of filming. The statute is rationally related to a legitimate state interest.

### **WIGGINS V. STATE, (6/26/06): LIO INSTRUCTION**

Trial court provided a lesser included instruction of Assault First Degree for defendant's charge of attempted murder. Defendant had opposed this LIO instruction arguing the State had failed to prove that defendant was the shooter and the instruction would impermissibly allow for a compromise verdict. Two part test: 1) the LIO must be included in the greater-charged offense; and 2) there must be a rational basis in the evidence for a verdict acquitting the defendant of the offense charged and convicting him of the included offense. The trial court rationally accepted that evidence suggested LIO because: there was no apparent motive; the victim and defendant were strangers; no animus between the two; occurred during general bar room style brawl; and the victim was not shot in any vital areas.

### **DONALD V. STATE, (6/27/06): ADMINISTRATIVE SEARCH OF HOME/CONSENT TO SEARCH**



Cop stopped an individual for motor vehicle violations and learned the driver was on probation. After finding illegal substances on him, cop called probation officers for assistance. Driver told police that he lived with the defendant who was not on probation. P.O.'s obtained supervisor permission for an administrative search of the house. Defendant did not object to search and consented to cop helping the P.O.'s. They then found evidence in plain view. Held: there was the requisite reasonable grounds necessary

to search a probationer's home. Also, when one co-occupant objects to a search of the property, despite consent from the other party, there can be no search. However, police are not required to affirmatively seek consent from the co-tenant. The evidence would have been found even if police officer was not involved. Thus, the issue of his involvement at the house was not addressed.

**STAATS V. STATE, (6/29/06): FLIGHT INSTRUCTION**



Court held that defendant's immediate running from the scene of a murder was sufficient to warrant a flight instruction even though defendant did not later attempt to flee from arrest in anyway. In other words, it is not required for a defendant to evade arrest or attempt to avoid prosecution in order to warrant a flight instruction.

**CARLSON V. STATE, (6/29/06): EXPERT LEGAL TESTIMONY/VAGUENESS**

Defendant was convicted of several counts of selling unregistered securities as an unregistered agent. Trial Court allowed the State to put on an experienced and well-educated securities attorney to define for the jury the legal term "security" under the Uniform Securities Act. In so doing, the witness cited case law. Held: defense counsel's failure to object demonstrated a strategic decision as the defense at trial was not whether instruments were securities but whether defendant did not know whether the instruments were securities. Also, the term "securities" was not vague simply because a legal expert was necessary to define the term.