POLICE / PROSECUTOR UPDATE

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We will look at a couple of U.S. Supreme Court opinions issued this year. The first case dealt with a brief seizure of premises to prevent destruction of evidence while police obtained a search warrant. The facts reveal that two police officers accompanied the defendant's wife to their mobile home to keep the peace while she removed her personal belongings. While she did so, the officers remained outside. When the wife exited the home, she spoke with one officer, suggesting that he check the trailer because the defendant "had dope in there," and that she had seen the defendant "slide some dope underneath the couch." The officer knocked on the trailer door, informed the defendant what the wife had said, and asked for permission to search the trailer, which was denied. The officer then sent his companion, with the wife, to obtain a search warrant. The officer then told the defendant, who now was also on the porch, that he could not reenter the trailer unless accompanied by the officer. Within 2 hours the second officer returned with the search warrant, the execution of which uncovered marijuana.

The issue before the Supreme Court was whether the 4th Amendment prohibited the temporary seizure. The Court held it did not. Of course, the general rule is that a search must be authorized and conducted pursuant to a search warrant. But there are exceptions, one of which is "special law enforcement needs." In viewing all the circumstances in the case, the Court found the police actions were not unreasonable.

First, police had probable cause that the trailer contained contraband. Second, they clearly had good reason to fear that the defendant, if left unattended, would destroy the drugs. Third, the police actions were limited. They neither searched the trailer nor arrested the defendant, and imposed the restraint for a reasonable time, two hours.

There's a lesson here. A concurring judge praised the effort of the police to obtain the warrant, noting that "a search with a warrant has a stronger claim to justification on later judicial review than a search without one. The law can hardly raise incentives to obtain a warrant without giving the police a fair chance to take their probable cause to a magistrate and get one." Therefore, if it is at all possible under the circumstances, it is always better for the police to get a search warrant.

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Issue 65 of the PPU discussed the Supreme Court case distinguishing a person's 5th vs. 6th Amendment right to counsel. It held that the 6th Amendment right to counsel is "offense specific." It does not attach until a prosecution is commenced, that is, at or after the initiation of adversary judicial criminal proceedings. Thus, a defendant's statements (if *Mirandized*) regarding offenses for which he had *not been charged* were admissible notwithstanding the attachment of his 6th Amendment right to counsel on other *charged* offenses. Subsequent cases decided by other courts have held that a criminal defendant's 6th Amendment right to counsel attaches not only to the offense with which he is charged but also to other offenses "closely related factually" to the charged offense. The Supreme Court said these courts are wrong.

Briefly, the facts indicate that a residential burglary had occurred and that two of the residents were missing. While jailed on an unrelated matter, the defendant admitted committing the burglary but denied any knowledge of the missing persons. He was then charged with the burglary. While out on bond, the defendant told his father that he had killed the missing persons. The father notified the police. The defendant was taken into custody and, after receiving and waiving his *Miranda* rights, confessed to the murder of the two persons.

The State courts ruled the confession inadmissible. They reasoned that since the two offenses were closely related factually, the defendant's 6th Amendment right to counsel on the charged burglary also attached to the uncharged murder. However, the Supreme Court held that they have to be more than merely “related.” Instead, they ruled that counsel is not required where each of the crimes requires proof of an additional fact which the other does not. Clearly, by statutory definitions and elements, murder and burglary are not the same offense.

Illinois v. McArthur, ___ S.Ct. ___ (2001).
Texas v. Cobb, ___ S.Ct. ___ (2001).