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Criminal Procedure: Confession, Search, and Seizure

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CRIMINAL PROCEDURE: CONFESSION, SEARCH, AND SEIZURE

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TABLE OF CONTENTS

THIS Article reviews significant cases during the Survey Period on the subject of search and seizure, as well as confessions, from the Texas Court of Criminal Appeals, the Texas courts of appeals, the United States Court of Appeals for the Fifth Circuit and the United States Supreme Court. The Article is intended as a summary of decisions published during the Survey Period. The Article is not intended as an in-

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depth treatment of the subject matter and will not discuss all aspects of each case cited.

I. TEXAS CASES

A. EXCEPTIONS TO THE WARRANT REQUIREMENT

During the Survey Period, several courts of appeals addressed the recognized exceptions to the Fourth Amendment's warrant requirement. The Fourth Amendment and Article I, Section 9, of the Texas Constitution provide protection not against all searches and seizures, but only against unreasonable searches and seizures.[1] A search or seizure conducted without a warrant is per se unreasonable, subject to a few specifically established and well-delineated exceptions.[2] Each of the cases decided during the Survey Period examined or expanded the exceptions recognized by Texas courts including the community-caretaking function, the plain feel exception, warrantless searches of vehicles and administrative searches.

1. Community-Caretaking Function

Courts have recognized various exceptions to the warrant requirement including exigent circumstances, searches incident to arrest, and inventory searches. In *Ortega v. State*, the San Antonio Court of Appeals was presented with the question of whether to recognize the community-caretaking function exception.

In *Ortega*, the defendant was arrested for driving while intoxicated. He entered a no-contest plea after the trial court denied his motion to suppress. A police officer observed the defendant driving at a very slow rate of speed in the early hours of the morning. The officer monitored Ortega's speed for a time and then began to follow his vehicle. When the defendant's speed did not increase, the officer decided to stop Ortega to see if he was having vehicle problems. After approaching the vehicle, the officer observed that Ortega was intoxicated, administered a field sobriety test and arrested him for DWI.

The defendant argued that the officer's reason for stopping him, (to see whether he was in need of assistance) even if reasonable, did not justify the stop. The State responded that the officer stopped Ortega based upon a well-founded suspicion that he needed help and under the community-caretaking function exception the stop was constitutional. The defendant urged the San Antonio court not to adopt the exception on the basis that the Court of Criminal Appeals had been presented with several opportunities to do so and had declined.

The court of appeals relied upon the following statement by the Supreme Court in *Cady v. Dombroski*,[3] to describe the community-care-

1. *See* Ortega v. State, 974 S.W.2d 361 (Tex. App.—San Antonio, 1998, pet. filed).
2. *See id.* at 362.
3. 413 U.S. 433 (1973).

taking function exception:

> Local police officers, unlike federal officers, frequently investigate vehicle accidents in which there is no claim of criminal liability and engage in what, for want of a better term, may be described as community caretaking functions, totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of criminal statute.[4]

The San Antonio court then discussed the Fort Worth and Beaumont opinions relying upon this exception.[5] In *McDonald v. State*, the Fort Worth court adopted the *Cady* rationale and held that when a police officer has a demonstrable reason to believe that a particular individual may be unfit to drive for medical or other reasons, a temporary stop is justified for the limited purpose of investigating that person's well-being.[6] The San Antonio court, while recognizing the disagreement among the Texas courts of appeals,[7] agreed with the public policy behind the exception and joined the Fort Worth and Beaumont courts. The court stated that "This exception enables officers to fulfill their roles as protectors of our general safety and welfare. . . ."[8] The court further held that evaluating the exception under an objective standard would ensure that Article I, Section 9's reasonableness standard is met.[9] Based upon the exception and its own evaluation of the Ortega stop, the San Antonio court affirmed the trial court's denial of the motion to suppress.[10]

2. *Custodial Searches*

During the Survey Period, the Houston Court of Appeals addressed an issue of first impression in Texas courts: whether police may test the clothing of a person lawfully arrested for one offense in order to investigate his involvement in another.[11] Finding that the defendant had no legitimate expectation of privacy in his clothing while in custody, the appeals court affirmed the trial court's denial of the motion to suppress.[12]

In *Oles*, the defendant was detained for questioning as a witness to a murder. During his detention, a routine NCIC search revealed an outstanding warrant for a probation violation and he was arrested. The defendant was not arrested in connection with the murder investigation. After he surrendered his shoes and clothing, the Sheriff's Department—without a warrant—sent the clothing, which had no visible bloodstains, to

4. *Id.* at 441.
5. *See* McDonald v. State, 759 S.W.2d 784 (Tex. App.—Fort Worth 1988, no pet.); Cunningham v. State, 966 S.W.2d 811 (Tex. App.—Beaumont 1998, no pet. h.).
6. *McDonald*, 759 S.W.2d at 785. The Beaumont Court of Appeals followed the *McDonald* court's recognition of the exception in Cunningham v. State.
7. *See* Wright v. State, 959 S.W.2d 355 (Tex. App.—Austin 1998, pet. granted) (refusing to recognize the exception absent direction from the Court of Criminal Appeals).
8. *Ortega*, 974 S.W.2d at 364.
9. *Id.*
10. See id.
11. Oles v. State, 965 S.W.2d 641 (Tex. App.—Houston [1st Dist.] 1998, pet. granted).
12. *Id.* at 642, 645.

the Medical Examiner's Office for testing. Testing by a forensic serologist revealed blood on the defendant's shoes. These bloodstains were later matched to the victim's blood.

On appeal, the defendant argued that the search of his clothing was illegal because it was in furtherance of an investigation for a different offense than the one for which he was in custody. The appeals court reviewed the motion to suppress *de novo* per *Guzman* because it involved questions of law based upon undisputed facts.[13]

The Houston Court of Appeals first discussed the various exceptions to the warrant requirement which have been recognized by the courts during the evolution of Fourth Amendment jurisprudence.[14] Those exceptions include searches incident to custodial arrest and warrantless seizure of personal items while a defendant is in custody.[15] Both exceptions have historically been justified by the need to search for weapons, instruments of escape or further evidence of the particular offense.

The State argued that *United States v. Edwards*[16] authorized the seizure and examination of Oles' clothing and shoes. The Houston court rejected that reliance and distinguished the case because the seized clothing in *Edwards* was material evidence in the crime for which the defendant was arrested.[17] Instead, the Houston court was faced with the question of whether the defendant's Fourth Amendment rights had been violated when the clothes were examined for evidence of an unrelated crime.

Accordingly, the court evaluated whether defendant had a legitimate expectation of privacy that the clothing would not be examined for evidence of unrelated crimes while he was in custody. The test for legitimate expectation of privacy requires the following evaluation: "(1) whether the individual, by his conduct, has exhibited an actual (subjective) expectation of privacy and (2) whether the individual's subjective expectation of privacy is one that society is prepared to recognize as (objectively) reasonable."[18]

Based upon these inquiries, the court held that the defendant had not exhibited a subjective expectation of privacy because any such expectation of privacy disappeared when he was arrested. Additionally, he took no actions to safeguard his clothing from testing, such as asking that it be released to his family.[19] The court further held that even if defendant had a subjective expectation, society was not prepared to recognize that expectation. Based upon its finding that the defendant had not established a legitimate expectation of privacy, the court upheld denial of the

13. *Id.* (citing Guzman v. State, 955 S.W.2d 85 (Tex. Crim. App. 1997)).
14. *See id.* at 643.
15. *See id.*
16. *Id.* at 644; United States v. Edwards, 415 U.S. 800 (1974), *overruled on other grounds*, United States v. Chadwick, 433 U.S. 1 (1977).
17. *Oles*, 965 S.W.2d at 644.
18. *Id.* (quoting Smith v. Maryland, 442 U.S. 735 (1979)).
19. *Oles*, 965 S.W.2d at 644.

motion to suppress.[20]

3. Administrative Searches

Revisiting an opinion from last year's Survey Period,[21] the Austin Court of Appeals re-examined its decision in *Woods v. State*,[22] after an en banc Texas Court of Criminal Appeals remanded the case for proceedings consistent with its opinion.

In *Woods v. State*,[23] the defendant entered a courthouse carrying a gun. Upon discovering she would be required to put her purse through the X-ray machine, she began to exit the building. The security officer stopped her and asked if he could be of assistance. She informed him that she was going to the fifth floor, but needed to get something from her car. The security guard would not allow her to leave until her purse had gone through the X-ray machine. When the defendant left anyway, the security guard brought her back inside the building to put her purse through the X-ray machine. The defendant's loaded handgun was found in her purse. At trial, the court denied the defendant's motion to suppress. The Austin Court of Appeals held that the detention and search were not supported by reasonable suspicion and reversed.[24] After granting the State's petition for discretionary review, the Texas Court of Criminal Appeals reversed and remanded.[25]

The Texas Court of Criminal Appeals granted the petition in order to address the continued use of the "as consistent with innocent activity as with criminal activity" test.[26] In its review of the Austin court's opinion, the Court specifically rejected that test and expressly overruled the line of Texas cases applying the rule.[27]

Analyzing the development of the doctrine of reasonable suspicion by the Supreme Court, the Court noted that: "The lower standard of reasonable suspicion is derived from the probable cause standard and applies only to those brief detentions which fall short of being full-scale searches and seizures."[28]

Quoting *Terry v. Ohio*,[29] the Court observed that "a police officer may stop and briefly detain a person for investigative purposes if the officer has a reasonable suspicion supported by articulable facts that criminal activity 'may be afoot,' even if the officer lacks probable cause."[30] The

20. *Id.* at 645.
21. *See* Thomas M. Melsheimer & David Finn, *Confession, Search and Seizure*, 51 SMU L. REV. 839, 845-46 (1997).
22. Woods v. State, 933 S.W.2d 719 (Tex. App.—Austin 1996), *rev'd* 956 S.W.2d 33 (Tex. Crim. App. 1997) [hereinafter *Woods I*].
23. 956 S.W.2d at 33 (Tex. Crim. App. 1997) [hereinafter *Woods II*].
24. *Woods I*, 933 S.W.2d at 725-26.
25. 956 S.W.2d at 33, 38.
26. *Id.* at 33-34.
27. *Id.* at 38 & n.3-5.
28. *Id.* at 35.
29. 392 U.S. 1 (1968).
30. 956 S.W.2d at 35.

Court went on to discuss the development of the "as consistent with innocent activity as with criminal activity" test in Texas jurisprudence.[31] After a discussion of the test and the inherent difficulty in its proper application, the court opined that the test could not be harmonized with the rule that a reasonable suspicion of involvement in criminal activity justifies a temporary stop or detention.[32]

The Court of Criminal Appeals, relying upon the Supreme Court opinions in *United States v. Sokolow*[33] and *United States v. Cortez*,[34] formulated the following test:

> [T]he reasonableness of a temporary detention must be examined in terms of the totality of the circumstances and will be justified when the detaining officer has specific articulable facts, which taken together with rational inferences from those facts, lead him to conclude that the person detained actually is, has been, or soon will be engaged in criminal activity.[35]

The Court of Criminal Appeals thereupon reversed and remanded the case to the Austin Court of Appeals for further analysis in light of its opinion.

In *Woods III*, the Austin Court of Appeals, after applying the new test to the facts articulated above, held that the detention was proper and affirmed the trial court.[36] The court stated that it did not understand the new test to be satisfied when presented with any articulable facts to rationalize any suspicion.[37] Instead, "The articulable facts relied on by the officer must support a reasonable suspicion that activity out of the ordinary is occurring or has occurred, that the detainee is connected to the unusual activity, and that the unusual activity is related to crime."[38] Consequently, "if there are no facts that would make the conduct . . . anything but innocuous, if there does not exist even a significant possibility that the person . . . is engaged in criminal conduct, a detention . . . is not constitutionally warranted."[39]

4. Plain Feel Exception

The Supreme Court has recognized various exceptions to the warrant requirement of the Fourth Amendment including the "plain sight" exception and the "plain feel" exception.[40] Although the Texas Court of Criminal Appeals has adopted the "plain sight"[41] exception, it has not

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31. *Id.* at 35-6.
32. *Id.* at 36.
33. 490 U.S. 1 (1989).
34. 449 U.S. 411 (1981).
35. *Woods II*, 956 S.W.2d at 38.
36. Woods v. State, 970 S.W.2d 770 (Tex. App.—Austin 1998, pet. ref'd.) [hereinafter *Woods III*].
37. *Id.* at 773.
38. *Id.*
39. *Id.*
40. *See* Minnesota v. Dickerson, 508 U.S. 366 (1993).
41. *See* Clark v. State, 548 S.W.2d 888 (Tex. Crim. App. 1977).

addressed the analogous "plain feel" exception. The "plain feel" exception recognizes that contraband detected through the officer's sense of touch during a pat-down search may be admissible.[42] In *Garcia v. State*, the Austin Court of Appeals joined the Houston, Dallas and Waco Courts of Appeals[43] in recognizing the "plain feel" exception.[44]

In *Garcia*, officers stopped defendant's car because it matched the description of a vehicle involved in an armed robbery earlier in the evening. After defendant exited the vehicle, the officer handcuffed him and performed a pat-down search for weapons and contraband. During this search, the officer identified a crack pipe in the defendant's pocket.

The defendant argued that the officer's search did not come within the "plain feel" exception because he had to feel the object twice in order to determine it was a crack pipe. The Austin court rejected the defendant's argument that the officer had to manipulate the object based upon his testimony that he felt something hard and grabbed on to it.[45] The officer testified that at the time he touched the top and bottom of the object he knew it was a crack pipe based on his previous experience. Accordingly, the Austin court found that because the character of the object was immediately apparent when the officer touched the object, the confirming touch did not exceed the scope of the "plain feel" exception.[46]

5. *Warrantless Searches of Vehicles*

The protection of the Fourth Amendment varies in different settings based upon the surrounding circumstances.[47] Individuals generally have a lesser expectation of privacy in their cars as they travel along the public highways.[48] Consequently, if probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search. Warrantless searches of vehicles are permissible so long as they are based upon probable cause. During the Survey Period, an *en banc* panel of the Texas Court of Criminal Appeals addressed the continued viability of Texas' requirement that a warrantless search of a car must be justified not only by probable cause, but also exigent circumstances.[49]

In *State v. Guzman*, a Department of Public Safety trooper searched the defendant's vehicle after observing facts that created probable cause the vehicle contained contraband. The trooper moved the truck to a nearby service station. After removing the truck bed, the trooper found a

42. *Dickerson*, 508 U.S. at 377.
43. *See* Graham v. State, 893 S.W.2d 4 (Tex. App.—Dallas 1994, no pet.); Strickland v. State, 923 S.W.2d 617 (Tex. App.—Houston [1st Dist.] 1995, no pet.); Campbell v. State, 864 S.W.2d 223 (Tex. App.—Waco 1993, pet. ref'd).
44. 967 S.W.2d 902, 906 (Tex. App.—Austin 1998, no pet. h.).
45. *Id.*
46. *Id.*
47. *See* United States v. Johns, 469 U.S. 478 (1985).
48. *See* South Dakota v. Opperman, 428 U.S. 364 (1976).
49. *See* State v. Guzman, 959 S.W.2d 631 (Tex. Crim. App. 1998) [hereinafter *Guzman II*).

bondo patch on the gas tank. Further search of the tank revealed thirty-nine pounds of marijuana. The trial court held that the search violated the Fourth Amendment because it exceeded the scope of the defendant's consent.[50]

On appeal, the State argued that the search was justified by the officer's determination of probable cause irrespective of any consent issues. The Corpus Christi Court of Appeals held that the search could not be upheld because the warrantless search of an automobile requires both probable cause and exigent circumstances.[51] Since the trooper lacked exigent circumstances the search violated the Fourth Amendment.[52]

The Texas Court of Criminal Appeals granted the petition for discretionary review to determine whether Texas law regarding the automobile exception to the Fourth Amendment conflicted with Supreme Court precedent.[53]

In *Guzman I*, the court of appeals relied upon *Gauldin v. State*[54] and *Maldonado v. State*[55] which held that vehicles in police custody could not be subject to warrantless searches based upon the automobile exception. After a review of Supreme Court precedent, the Court of Criminal Appeals found that the Texas cases directly conflicted with a line of cases which culminated in *United States v. Johns*.[56] In that case the Supreme Court held that "A vehicle lawfully in police custody may be searched on the basis of probable cause to believe that it contains contraband, and there is no requirement of exigent circumstances to justify such a warrantless search."[57]

When the Texas Court of Criminal Appeals addresses issues involving the United States Constitution, it is bound by Supreme Court precedent.[58] Accordingly, because the Texas case law directly conflicted with the relevant precedent, the Texas requirement of exigent circumstances had to be overruled.[59]

6. *Medical Records Searches*

The Texas Court of Criminal Appeals also addressed the issue of whether an individual has a reasonable expectation of privacy in the contents of his medical records with regard to drug and alcohol testing. To enjoy the protections of the Fourth Amendment, a defendant must show

50. *Id.*
51. *See* State v. Guzman, 942 S.W.2d 41, 45 (Tex. App.—Corpus Christi 1997) [hereinafter *Guzman I*].
52. *Id.*
53. *Guzman II*, 959 S.W.2d at 633. The court noted that whether the exigent circumstances requirement survived in the context of a challenge based upon Article I, Section 9 of the Texas Constitution was not before the Court. *Id.* at 632, n.2.
54. 683 S.W.2d 411 (Tex. Crim. App. 1984).
55. 528 S.W.2d 234 (Tex. Crim. App. 1975).
56. 469 U.S. 478 (1985).
57. *Id.* at 484.
58. *Guzman II*, 959 S.W.2d at 633.
59. *Id.* at 634.

not only that he has a subjective expectation of privacy, but also that his expectation of privacy would be viewed as reasonable by society as a whole.

In *State v. Hardy*,[60] the defendant was involved in an automobile accident and sustained life-threatening injuries. As a result, he was "life flighted" to a hospital where attendants drew blood to conduct blood alcohol tests for medical purposes. While the defendant was in the hospital, the DPS trooper who had investigated the accident obtained a grand jury subpoena for any drug or alcohol information contained in the blood tests. The records revealed the defendant's blood alcohol content to be .239. Subsequently, prosecutors charged the defendant with misdemeanor driving while intoxicated.

Before trial, the defendant moved to suppress the blood test results based upon violations of his reasonable expectation of privacy under the Fourth Amendment and the physician-patient privilege. The trial court granted the motion to suppress on other grounds because the trooper had violated the "defendant's right to a reasonable expectation of privacy."[61] After the court of appeals reversed, the Court of Criminal Appeals granted defendant's petition for discretionary review to evaluate the reasonable expectation of privacy in his blood tests.[62]

In determining whether society views an expectation of privacy as "reasonable," the court must focus, under the Fourth Amendment, on American society as a whole rather than a particular state or geographic area.[63] Drawing blood from a person's body implicates a fundamental privacy interest recognized by society.[64] Recognizing this fundamental interest, the court framed the issue as whether the government's acquisition of the written report of the blood tests infringed upon a societally-recognized expectation of privacy.[65]

Lacking direct guidance from the Supreme Court on the issue, the Court of Criminal Appeals looked to analogous cases and the stated policies of other states. Looking first to the Supreme Court, the court noted that the case of *United States v. Miller* addressed society's expectations with regard to records held by a third party.[66] In *Miller*,[67] the Supreme Court held that a depositor possessed no reasonable expectation of privacy in his bank records.[68] The Court of Criminal Appeals also cited four Texas courts of appeals opinions which had held that society does not recognize a reasonable expectation of privacy in medical records contain-

60. 963 S.W.2d 516 (Tex. Crim. App. 1997).
61. *Id.*
62. *Id* at 517.
63. *Id.* at 523.
64. Skinner v. Railway Labor Executives' Ass'n, 489 U.S. 602, 616 (1989).
65. *Hardy*, 963 S.W.2d at 524.
66. *See* United States v. Miller, 425 U.S. 435 (1976).
67. *Id.*
68. *Id.* at 440-43.

ing blood test results.[69] Despite these citations, the court conducted further analysis because the issue must be reviewed based upon the policies and expectations of American society as a whole.

An examination of the statutes and policies of other states related to blood test results revealed that no consensus existed among the states even in the context of searches of medical records for DWI cases. The court examined cases from Pennsylvania,[70] Michigan,[71] Alabama,[72] and Tennessee.[73] Based upon its review, the Court of Criminal Appeals followed the Michigan and Alabama approach that focused on the unique circumstances of the DWI-accident scenario.

From this narrow starting point, the court analyzed the defendant's reasonable expectation of privacy. When a third party reveals confidential information to a government official, an individual's privacy interests may be compromised.[74] In *Hardy*, three separate invasions occurred which could have implicated the defendant's expectation of privacy: (1) drawing the blood; (2) removing and testing the blood sample; and (3) obtaining the test results.[75] But in the first two instances, third-party agents had already compromised defendant's expectation of privacy. Accordingly, the court focused its analysis only on the third invasion, obtaining the test results.

By tailoring the question so narrowly, the court easily found that society refused to recognize a defendant's expectation of privacy in alcohol and drug test results in his medical records in the context of a DWI accident. The court relied not only upon the cases discussed earlier, but also on the implied consent policies state legislatures have enacted with regard to traffic accidents. These policies provide that any person operating a motor vehicle has given consent to warrantless chemical testing.[76] Indeed, such policies often allow officers to conduct a warrantless chemical test on unconscious individuals on the theory that consent has not been withdrawn.[77] Accordingly, the court held that whatever interests society has in safeguarding the privacy of medical records, they are not strong enough to require protection of blood alcohol results from tests

69. *Hardy*, 963 S.W.2d at 524 (citing Thurman v. State, 861 S.W.2d 96, (Tex. App.—Houston [1st Dist.] 1993, no pet.); Corpus v. State, 931 S.W.2d 30 (Tex. App.—Austin), *pet. dism'd, improvidently granted*, 962 S.W.2d 590, (Tex. Crim. App. 1998); Clark v. State, 933 S.W.2d 332 (Tex. App.—Corpus Christi 1996, no pet.); Knapp v. State, 942 S.W.2d 176 (Tex. App.—Beaumont 1997, no pet.)).

70. Commonwealth v. Riedel, 651 A.2d 135 (Pa. 1994) (reasonable expectation of privacy exists).

71. People v. Perlos, 462 N.W. 2d 310 (Mich. 1990) (no reasonable expectation of privacy exists).

72. Tims v. State, 711 So. 2d 1118 (Ala. Crim. App. 1997) (no reasonable expectation of privacy exists).

73. State v. Fears, 659 S.W.2d 370 (Tenn. Crim. App. 1983), *cert. denied* 465 U.S. 1082 (1984) (no reasonable expectation of privacy exists).

74. *Hardy*, 963 S.W.2d at 526.

75. *See id.*

76. *See id.*

77. *See id.*

performed solely for medical purposes after a traffic accident.[78]

B. CONFESSIONS

1. Voluntary Nature of Confessions

During the Survey Period, an en banc panel of the Texas Court of Criminal Appeals addressed the issue of whether a confession given in response to alleged promises by a federal agent would be considered involuntary and therefore suppressed. In *Henderson v. State*,[79] the defendant argued that promises by federal agents induced her confession, making it involuntary.

In *Henderson*, the FBI arrested the defendant in Kansas City, Missouri, on a charge of kidnapping the infant son of a couple whom she worked for as a baby-sitter. During the interview, the defendant offered to reveal information regarding the child's location if she could remain in Missouri. After this statement, the agent continued with the interrogation, but informed the defendant that he could not make any bargains, deals or promises. After a series of leading questions by the agent, the defendant confessed to killing the infant and burying him near Waco.

The defendant offered various challenges to the admission of the confession including that the agent used impermissible influence in violation of article 38.21,[80] that her due process rights were violated in obtaining the confession[81] and that her confession was obtained in violation of the Texas Constitution.[82] The en banc panel dispensed with all of the defendant's points of error by finding unequivocally that the FBI agent used neither coercive tactics nor impermissible promises to obtain the confession.[83]

In order to evaluate whether a promise constitutes an impermissible inducement under article 38.21, the Court must determine if (1) the promise was a positive one; "(2) made or sanctioned by someone in authority and (3) of such an influential nature that it would cause a defendant to speak untruthfully."[84]

The Court found that the defendant failed to show that a promise ever existed. The defendant herself "initiated the idea of a 'deal' for staying in

78. *Id.*

79. 962 S.W.2d 544 (Tex. Crim. App. 1997), *cert. denied*, 119 S. Ct. 437 (1998).

80. Article 38.21 provides that: "A statement of an accused may be used in evidence against him if it appears that the same was freely and voluntarily made without compulsion or persuasion, under the rules hereafter prescribed." TEX. CODE CRIM. PROC. ANN. § 38.21 (Vernon 1979).

81. *Henderson*, 962 S.W.2d at 565.

82. *Id.* The defendant also urged the court to adopt the federal test for voluntariness of confessions as stated in Ornelas v. United States, 517 U.S. 690 (1996). That test provides a deferential review of the trial court's determination of historical facts and a *de novo* review of the law's application to those facts. The Court of Criminal Appeals applied the *Ornelas* test, but refused to decide that it was the correct standard. *Id.* at 564.

83. *Id.* at 564-65.

84. *Id.* at 564 (citing Janecka v. State, 937 S.W.2d 456, 466 (Tex. Crim. App. 1996), *cert. denied*, 118 S. Ct. 86 (1997)).

Missouri."[85] The Court refused to find any implied promises in the agent's ambiguous statements, especially in light of his clear statement that he was in no position to make bargains or deals. Absent such a promise, the defendant's challenges to the voluntary nature of her confession failed to make the required showing for a statutory or constitutional violation.

2. When is a Defendant in Custody

Police must advise the subject of a custodial interrogation of his right against self-incrimination regardless of whether he has formally been arrested.[86] Statements which result from custodial interrogations may only be admitted if a defendant received the admonitions and advisories codified at Texas Code of Criminal Procedure article 38.22. During the Survey Period, Texas courts analyzed the issue of when a defendant is in custody for the purposes of requiring admonitions regarding his *Miranda*[87] rights.[88] Both cases addressed the necessary level of restraint on a defendant's freedom of movement to result in a custodial interrogation.

In *Blanks v. State,*[89] a co-defendant contacted the Houston Police Department to discuss a pending murder investigation. Officers met the defendant and the co-defendant the next day at a local bar. At the officer's request, the co-defendant agreed to provide a statement at the station. Both defendants were taken to the station by the police. Upon arrival, the co-defendant was interviewed by deputies who asked if he would give a further statement at the Sheriff's Department. The co-defendant agreed and volunteered that the defendant had been with him when he last saw the victim. At that time, the defendant was also asked to give a statement. Both defendants were transported to the Sheriff's Department by deputies.

The defendant's first statement was recorded on a form entitled "Voluntary Statement" which did not contain any *Miranda* warnings. As a result of inconsistencies in a polygraph test and continued interviews, the defendant's recorded statement changed three times. During the third statement, the investigators informed him that his co-defendant had admitted involvement in the murder. Thereupon, the defendant made oral statements implicating himself in the murder.

At this time, the deputy testified, he read the defendant his *Miranda* rights. The deputy also transferred the defendant's "Voluntary Statement" to the "Statement of Person in Custody" form which included *Miranda* warnings. The transfer was accomplished by cutting the statement from one form, pasting it on the *Miranda* form and photocopying it. The

85. *Id.*

86. Jordy v. State, 969 S.W.2d 528, 530 (Tex. App.—Fort Worth 1998, no pet. h.) (citing Oregon v. Mathiason, 429 U.S. 492, 495 (1977)).

87. Miranda v. Arizona, 384 U.S. 436 (1966).

88. *See* Blanks v. State, 968 S.W.2d 414 (Tex. App.—Texarkana 1998, pet. ref'd); *Jordy*, 969 S.W.2d 528.

89. 968 S.W.2d 414.

officer testified he then typed the rest of the confession on the *Miranda* form.

On appeal, the defendant challenged the admission of the confession because officers did not read him his *Miranda* rights prior to the oral confession which was a result of a custodial interrogation. He based his argument on his testimony regarding his subjective belief that he was not free to leave and evidence that the entire statement had been cut and photocopied, not just the first paragraph.

The Court began its analysis with the Supreme Court test stated in *Stansbury v. California,*[90] which provides: "A person is in custody only if, under the circumstances, a reasonable person would believe that his freedom of movement was restrained to the degree associated with a formal arrest."[91] The test is based upon objective circumstances, such as the focus of the investigation and whether probable cause exists to arrest, and presupposes a reasonable innocent person.[92] The subjective intent of police or the defendant's subjective belief will only become relevant if manifested by words or actions of the officers.[93]

While the court agreed that an interrogation's tone may change as the result of police conduct which escalates a consensual inquiry into a custodial interrogation,[94] the court did not find that the failed polygraph test created probable cause.[95] The court held that the consensual inquiry became custodial not when Blanks failed the polygraph, but when his oral statements created probable cause for his arrest and he became the investigation's focus.[96] The court also upheld the trial court's factual determinations regarding the deputy's testimony concerning the timing of the *Miranda* warnings.[97]

Further, the Court rejected Blanks's claim that the "cut-and-copy" procedure was an illegal act. Blanks argued that an analysis by the Texas Department of Public Safety concluded that the entire confession had been copied, not simply the first paragraph. Blanks argued that the entire confession was initially done on the Voluntary Statement form; consequently, the Court should presume he was not Mirandized because the form has no warnings.

The Court found that even if the deputy cut and copied the entire confession onto the form with warnings, this fact did not overcome his testimony that he stopped the interrogation and orally gave Blanks the warnings.[98] Although not approving the cut-and-copy procedure, the Court deferred to the trial court's findings and conclusions that Blanks

90. 511 U.S. 318, 321-24 (1994).
91. *Blanks*, 968 S.W.2d at 419.
92. *See id.*
93. *Id.*
94. *Id.* at 420 (citing Ussery v. State, 651 S.W.2d 767, 770 (Tex. Crim. App. 1983)).
95. *Blanks*, 968 S.W.2d at 420.
96. *Id.*
97. *Id.*
98. *Id.*

was warned and that he knowingly and intelligently waived his rights.[99]

In another case involving custodial interrogations,[100] the Fort Worth Court of Appeals found that a defendant's response to the question, "How much have you been drinking?" was the result of a custodial interrogation and should not have been admitted by the trial court.[101] The defendant argued that admission of his statements made in response to police questions near the scene of an accident should have been excluded because the officer did not read him his *Miranda* rights. Defendant was convicted of felony driving while intoxicated as the result of an accident. During the investigation, the officer observed the defendant on foot near the accident scene. When he approached defendant, he noticed a strong odor of alcohol. The officer twice asked the defendant how much he had to drink. Initially, the defendant lay down on the ground and said he needed medical attention. The second time, defendant responded "A lot." When the ambulance arrived, defendant refused to go to the hospital. At that time, the officer attempted to administer field sobriety tests. When the defendant refused, he was arrested for public intoxication.

In reviewing the trial court's findings and conclusions on the admissibility of the statement, the appeals court applied the recent decision of the Texas Court of Criminal Appeals, *Guzman v. State*, and the Supreme Court opinion, *Ornelas v. United States*.[102] Accordingly, since the issue presented mixed questions of law and fact not turning on credibility and demeanor determinations, the appeals court reviewed the decision *de novo* and found that the trial court erred.[103]

The appeals court applied the *Dowthitt*[104] test which provides that custody will be established if: "(1) an officer has probable cause to arrest a suspect and does not tell him that he is free to leave; (2) the officer manifests this knowledge to the suspect; and (3) a reasonable person in the suspect's position would believe he is under restraint to the degree associated with an arrest."[105]

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99. *Id.*

100. Jordy v. State, 969 S.W.2d 528 (Tex. App.—Fort Worth 1998, no pet. h.).

101. *Id.* at 532.

102. *Id.* at 531-32. (citing Guzman v. State, 955 S.W.2d 85, 87 (Tex. Crim. App. 1997); Ornelas v. United States, 517 U.S. 690, 696-98 (1996)).

103. *Jordy*, at 531-32. The *Guzman* and *Ornelas* standards are applied by Texas courts in determining reasonable suspicion and probable cause only for searches and seizures. *See supra* note 87.

104. Dowthitt v. State, 913 S.W.2d 244 (Tex. Crim. App. 1997). In *Dowthitt*, the Texas Court of Criminal Appeals rejected Texas' historical four-part test used to determine whether an individual is in custody. That test provided that the factors to be examined included "(1) probable cause to arrest; (2) subjective intent of the police; (3) focus of the investigation; and (4) subjective belief of the defendant." *Id.* at 254. The Court of Criminal Appeals held that based upon the Supreme Court case of Stansbury v. California, 1114 S. Ct. 1526 (1994), factors two and four were no longer necessary inquiries unless officials reveal them through their own words or actions. Accordingly, the Court of Criminal Appeals expressly adopted the current test that "[t]he determination of custody must be made on an ad hoc basis, after considering all of the (objective) circumstances." *Dowthitt*, 913 S.W.2d at 255.

105. *Jordy*, 969 S.W.2d at 532.

The appeals court found that the officer had probable cause to arrest because he had personally observed the defendant commit the offense of public intoxication. The officer manifested that knowledge when he did not tell the defendant he was free to leave, attempted to perform field sobriety tests and asked him how much he had had to drink. Finally, the Court held that a reasonable person in defendant's position would have believed he was under restraint to the degree associated with an arrest.[106]

Based upon its analysis, the Court found that the trial court erred in admitting the statement, "A lot." However, the Court went on to analyze the error to determine whether or not it contributed to the conviction or punishment.[107] In light of the overwhelming evidence supporting the finding that the defendant was indeed intoxicated, the court held that the admission of the statement was harmless error.[108]

3. Statements of Juveniles

Generally, the admission of a defendant's statements to law enforcement officers is governed by Article 38.21. However, statements by juveniles are controlled by Texas Family Code section 51.095, which states, in pertinent part:

(a) [T]he statement of a child is admissible in evidence . . . if:
  (A) the statement shows that the child has at some time before the making of the statement received from a magistrate a warning that:
    (i) the child may remain silent and not make any statement at all and that any statement that the child makes may be used in evidence against the child;
    (ii) the child has the right to have an attorney present to advise the child either prior to any questioning or during the questioning;
    (iii) if the child is unable to employ an attorney, the child has the right to have an attorney appointed to counsel with the child before or during any interviews with peace officers or attorneys representing the state; and
    (iv) the child has the right to terminate the interview at any time;
  (B) and:
    (i) the statement must be signed in the presence of a magistrate by the child with no law enforcement officer or prosecuting attorney present . . . .; and
  (C) the child knowingly, intelligently, and voluntarily waives these rights before and during the making of the statement and signs the statement in the presence of a magistrate . . . .[109]

106. *Id.*
107. *Id.* at 532-33.
108. *Id.* at 533.
109. TEX. FAM. CODE ANN. § 51.095 (Vernon Supp. 1999).

In *Rodriguez v. State*,[110] the Houston Court of Appeals addressed the strictness with which section 51.095 must be applied.

In *Rodriguez*, the defendant, a 16-year-old student, was arrested at school for allegedly threatening other students. While in custody, he was questioned regarding a pending murder investigation. The officer gave the defendant the required juvenile warnings and questioned him about statements made by other witnesses. After the defendant orally confessed, he was taken to a magistrate to receive the necessary warnings again. The defendant then prepared a written statement with an officer and later returned to sign the statement before the magistrate. At trial, the court denied his motion to suppress.

On appeal, the defendant challenged the admissibility of the confession on two points: (1) the written statement was tainted by the prior illegal oral statement; and (2) the statement was signed outside the presence of the magistrate when he initialed each paragraph while in the officer's custody.

The appeals court, relying on *Griffin v. State*[111] found that the illegality of the initial oral statement to the investigator did not taint the subsequent written statement. Rather than find that the written confession was tainted, the court evaluated the voluntariness of the defendant's written confession based upon the totality of the circumstances.[112] The court found that the defendant received the required warnings before he gave the written statement and that the magistrate admonished him again prior to signing the statement.[113]

The defendant also attacked the confession's technical compliance with TEX. FAM. CODE § 51.095. The defendant argued that he had signed the confession outside the presence of a magistrate in violation of section 51.095 when he initialed each paragraph of the confession. The Court of Appeals held that section 51.095 only requires that the written statement be actually executed before the magistrate outside the presence of law enforcement. Consequently, initialing the individual paragraphs prior to execution before a magistrate would not render the confession inadmissible.[114]

C. STANDARD OF REVIEW

1. Application of Guzman v. State

In 1997, the Texas Court of Criminal Appeals revised the standard of review for evaluation of a trial court's determinations of probable cause and reasonable suspicion. In *Guzman v. State*[115] the court stated that

110. Rodriguez v. State, 968 S.W.2d 554 (Tex. App.—Houston [14th Dist.] 1998, no pet. h.).
111. 765 S.W.2d 422 (Tex. Crim. App. 1989).
112. *Rodriguez*, 968 S.W.2d at 558.
113. *Id.*
114. *Id.*
115. 955 S.W. 2d 85 (Tex. Crim. App. 1997).

generally a trial court's determination of probable cause is a question of law to be reviewed *de novo*.[116] The *Guzman* court provided the following guidelines on the appropriate standard of review:

> [A]s a general rule, the appellate courts . . . should afford almost total deference to a trial court's determination of the historical facts . . . especially when the . . . findings are based on an evaluation of credibility and demeanor. [The same deference should be given] to [a] trial court's rulings on [the] 'application of law to fact questions' . . . if the resolution of those ultimate questions turns on an evaluation of credibility and demeanor. [Otherwise,] appellate courts may review *de novo* 'mixed questions of law and fact' not falling within this category.[117]

During the Survey Period, the various courts of appeals were presented with numerous opportunities to apply *Guzman* and explore the limits of the new standard of review.[118] In *State v. Bradley*, the Austin Court of Appeals analyzed Guzman's application to the review of a trial court's decision on the sufficiency of an affidavit supporting a search warrant.[119]

In *Bradley*, the trial court seemingly applied a *de novo* review to analyze the sufficiency of the affidavit. Apparently, the trial court found that it did not provide probable cause to issue the search warrant, because it did not state when the affiant had obtained the included information.[120]

The Austin court acknowledged that the *Guzman* opinion held that a trial court's finding of probable cause should generally be reviewed *de novo*.[121] However, the court distinguished *Guzman* on the basis that it reviewed a warrantless search and seizure, not a magistrate's determination of probable cause.[122] Based upon *Guzman's* reliance upon *Ornelas v. United States*,[123] which drew a careful distinction between the review of magistrate's decision to issue a warrant and the review of a warrantless search, the Austin court stated that *Guzman* did not overrule previous holdings by the Texas Court of Criminal Appeals that a magistrate judge's determination is not subject to *de novo* review.[124]

2. *Review of the Adequacy of Search Warrant Descriptions*

A search warrant must describe the target location in sufficient detail that the officer can locate and distinguish it from other places in the community.[125] However, minor discrepancies will not vitiate a warrant if it

116. *Id.* at 88-89.
117. *Id.* at 89. The Court expressly overruled Dubose v. State, 915 S.W.2d 493 (Tex. Crim. App. 1996), State v. Carter, 915 S.W.2d 501 (Tex. Crim App. 1996), and Arcila v. State, 834 S.W.2d 357 (Tex. Crim. App. 1992). *Id.* at 90.
118. *See* State v. Bradley, 966 S.W.2d 871 (Tex. App.—Austin 1998, no pet. h.) and Smith v. State, 962 S.W.2d 178 (Tex. App.—Houston 1998, pet. ref'd)
119. *Bradley*, 966 S.W.2d 871.
120. *Id.* at 875.
121. *Id.* at 874.
122. *Id.*
123. 517 U.S. 690 (1996).
124. *Bradley*, 966 S.W.2d at 874.
125. Etchieson v. State, 574 S.W.2d 753, 759 (Tex. Crim. App. 1978).

sufficiently describes the premises.[126] In *Smith v. State*, the Houston Court of Appeals resolved a conflict in case authority regarding whether a court may look outside the four corners of the search warrant to the knowledge of the officer executing the warrant.[127]

In *Smith*, a confidential informant told a law enforcement officer that the defendant sold cocaine from his house at 2400 Brooks Street. Based upon the tip, the officer observed the informant make a controlled buy at the location. The officer then executed an affidavit, obtained a search warrant and executed the warrant the next day. The warrant contained the following description: "2400 Brooks, Houston, Harris County, Texas . . . . a one story white woodframed residence. . . . [It is] positioned on the south side of Brooks facing north . . . . [The] target residence is located on the west side of the last residence positioned on the south side of Brooks Street."[128]

Despite this description, trial testimony revealed that 2400 Brooks was a nonexistent address and the directions given regarding its physical location and appearance were inadequate. The defendant argued that the inaccuracies caused the warrant to be constitutionally defective. While the trial court found that these errors could have substantially impaired an officer's ability to locate the correct target residence, it nonetheless denied the motion to suppress based upon the executing officer's personal knowledge of the location.[129]

In its review of the trial court's decision, the Houston Court of Appeals also recognized that a split in authority existed regarding the evidence which may be evaluated to determine the sufficiency of a search warrant.[130] Recent Texas courts of appeals decisions, relying on an older line of Courts of Criminal Appeals cases, held that the description contained in the warrant is constitutional or not based on the warrant itself, and errors cannot be cured by reference to the executing officer's personal knowledge.[131] In contrast, more recent Court of Criminal Appeals decisions, and several courts of appeals and decisions of the federal courts of appeals, hold that descriptive errors may be cured if the officer who executed the warrant actually knew from his investigation the correct house to search and searched only that house.[132]

The Houston Court of Appeals evaluated both lines of cases and elected to follow the authority which allows defective descriptions to be cured if the executing officer had personal knowledge of the house to be searched and searched that location. The court was persuaded that this was the correct reasoning to follow for several reasons. For instance, other circuit courts have adopted this same rationale including the

126. *Id.*
127. 962 S.W.2d 178 (Tex. App.—Houston [1st Dist.] 1998, pet. ref'd).
128. *Id.* at 179.
129. *Id.* at 180-81 (citing United States v. Gordon, 901 F.2d 48 (5th Cir. 1990)).
130. *Id.* at 181.
131. *See id.*
132. *See id.*

Eighth, Ninth and Eleventh Circuits. Furthermore, this rule is apparently followed in Idaho, Kentucky, Louisiana, Massachusetts, Minnesota and South Dakota.[133] The Houston court stated that no Court of Criminal Appeals decision prohibits consideration of the executing officer's personal knowledge of the target location nor does the Court of Criminal Appeals require that the description be sufficient to allow "any" officer to locate the premises.[134] Additionally, the Houston court cited three Court of Criminal Appeals cases that applied the rule and specifically considered the personal knowledge of the executing officers.[135] The Houston court concluded that the rule acknowledges the reality that virtually all search warrants are executed with the presence of officers who have knowledge of the underlying investigation.[136] Furthermore, the realities of the development of probable cause and issuance of search warrants necessitates that any decision on the sufficiency of the description will depend on evidence outside the warrant.[137]

II. FIFTH CIRCUIT AND SUPREME COURT CASES

A. KNOCK AND ANNOUNCE SEARCHES

The "knock and announce" rule requires that law enforcement officials announce their presence and intent before entering a residence to execute a search warrant. 18 U.S.C. section 3109 requires that federal officers comply with this rule before executing a search warrant.[138] State law enforcement searches are subject to the common law knock-and-announce principle which forms part of the Fourth Amendment's reasonableness inquiry.[139] During the Survey Period, the Fifth Circuit addressed, as a matter of first impression, the required length of time that officers must wait before entering a residence after knocking and announcing their presence.

In *United States v. Jones*,[140] police officers executed a search warrant at the defendant's residence. The officers knocked on the apartment door and shouted, "Police. Search Warrant." After receiving no response after fifteen or twenty seconds, the officers entered the apartment. The subsequent search revealed crack cocaine, ammunition and a revolver. After the denial of his motion to suppress, the defendant was convicted of possession of crack cocaine and other offenses.[141]

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133. *See id.* at 183.
134. *Id.* at 184.
135. *Id.* (citing Morales v. State, 640 S.W.2d 273 (Tex. Crim. App. 1982); Aguirre v. State, 109 Tex. Crim. 584, 7 S.W.2d 76 (1928); Bridges v. State, 574 S.W.2d 560 (Tex. Crim. App. 1978)).
136. *Smith*, 962 S.W.2d at 185.
137. *Id.*
138. *See* 18 U.S.C. § 3109 (1985).
139. *See* United States v. Jones, 133 F.3d 358, 361 (5th Cir. 1998).
140. *Id.*
141. *See id.*

On appeal, the defendant argued that fifteen or twenty seconds was an insufficient amount of time to wait before entering a residence. The defendant contended that the short amount of time made the search unreasonable under the Fourth Amendment.

The Fifth Circuit first noted that the federal statute did not apply to the search at issue because the search was conducted by state officials. The court observed that neither the Supreme Court nor a panel of the Fifth Circuit had specifically addressed the length of time officers must wait before entering. Although noting that other circuits had held that generally a delay of five seconds or less violated 18 U.S.C. section 3109, the panel declined to create a bright-line standard for all knock-and-announce cases.[142] Accordingly, the court evaluated the case based upon its particular circumstances and held that in drug cases where destruction of evidence may occur quickly or easily, fifteen to twenty seconds is long enough to wait before making a forced entry.[143]

B. Co-defendant Confessions—Expansion of the Bruton Rule

Under the Federal Rules of Criminal Procedure, the joint trial of co-defendants routinely occurs absent a showing of prejudice by the defendant.[144] Often a co-defendant may have confessed or provided statements to law enforcement officials which implicate not only himself, but also another co-defendant who did not confess. In order to prevent the clear prejudice which would result from the admission of a co-defendant's confession, the Supreme Court created what is known as the *Bruton* rule.[145] The *Bruton* rule forbids the use of a co-defendants' confession which implicates another defendant in a joint trial.

In *Gray v. Maryland*,[146] the Supreme Court evaluated the permissibility of using a redacted confession which substituted either a blank or the word "deleted" for the defendant's name. Evaluating the practical effect of admitting the confession, Justice Breyer, writing for the majority, expanded the *Bruton* rule and held that the redacted confession should have been excluded.[147]

In *Gray*, the defendant was charged with murder. A co-defendant gave a confession in which he admitted to participating in the beating death and implicated Gray. After denying the motion for separate trial, the trial court admitted the co-defendant's redacted confession into evidence. During testimony, the detective who read the confession into the record said the word "deleted" or "deletion" whenever the defendant's name appeared. After the redacted confession was read, the prosecutor asked the detective, "[A]fter [he] gave you that information, you subsequently

142. *Id.* at 361.
143. *Id.* at 361-62.
144. *See* Fed. R. Crim. P. 14.
145. Bruton v. United States, 391 U.S. 123 (1968).
146. 118 S. Ct. 1151 (1998).
147. *Id.*

were able to arrest . . . [the defendant]?" The officer responded affirmatively.[148]

The court evaluated the admission of the redacted statement under *Bruton* and *Richardson v. Marsh*[149] in order to determine whether the admission of the redacted confession was constitutionally impermissible. *Richardson v. Marsh*, unlike *Bruton*, involved a redacted confession. However, in *Richardson*, the redaction was such that the confession deleted all references to the co-defendant while preserving the integrity of the confession. In other words, the confession, as read, made sense while omitting all reference or suggestion that another person was involved in the crime. In that case, the court held that the confession was outside the scope of *Bruton*, and was admissible with appropriate limiting instructions.

Justice Breyer held that use of the confession at issue in *Gray* was impermissible because the mode of redaction allowed the jury to make the inference that the defendant's name had been deleted from the statement.[150] Redactions using symbols or deletions leave statements that, "considered as a class, so closely resemble *Bruton's* unredacted statements" that the law requires that they be excluded.[151] Additionally, unless a co-defendant's confession may be altered in such a way as to remove all reference or indications of another's presence, that confession must be excluded in a joint trial.

C. Exclusionary Rule in Parole Proceedings

The Exclusionary Rule is a judicially created means of deterring illegal searches and seizures.[152] Consequently, the rule does not forbid the admission of illegally obtained evidence in all proceedings or against all persons.[153] Further, because the rule is not constitutionally mandated, it should only be applied when its deterrence benefits outweigh the substantial social costs.[154]

In *Pennsylvania Board of Probation and Parole v. Scott*,[155] the Supreme Court confronted the question of whether the Exclusionary Rule should be expanded to parole proceedings. In *Scott*, the defendant, a convicted felon released on parole, was sentenced to thirty-six months backtime by the Pennsylvania Board of Probation and Parole for violation of his parole conditions. Based upon information that the defendant had violated the conditions of his release, parole officers arrested him. Before being taken to jail, the defendant gave the officers the keys to his home. The officers entered the residence and waited for the defendant's mother to

148. *Id.*
149. 481 U.S. 200 (1987).
150. *Gray*, 118 S. Ct. at 1155.
151. *Id.*
152. *See* United States v. Calandra, 414 U.S. 338 (1974).
153. *See* Stone v. Powell, 428 U.S. 465 (1976).
154. *See* United States v. Leon, 468 U.S. 897 (1984).
155. 118 S. Ct. 2014 (1998).

return. At that time, they searched defendant's room without requesting or receiving consent to do so. The defendant moved to exclude the evidence found in the search of his room at the parole violation hearing. Although the Parole Board admitted the evidence, Pennsylvania state courts held that the evidence should have been excluded.

Justice Thomas, writing for the majority, held that the Exclusionary Rule did not apply to parole revocation proceedings.[156] In so holding, the court extended its line of cases declining to expand the Exclusionary Rule outside the criminal trial context.[157] The court cited three past opinions which refused to extend the rule including *United States v. Janis*,[158] *United States v. Calandra*,[159] and *INS v. Lopez-Mendoza*.[160]

In *Scott*, the court re-emphasized its previous reasoning that the Exclusionary Rule should be limited in its application due to its significant social costs and detrimental effect on the truth finding process.[161] The court found that application of the Exclusionary Rule in this context would hinder the functions of state parole systems and alter the flexible, administrative nature of the proceedings. Additionally, the rule would have limited deterrence benefits in parole hearings.[162]

156. *Id.* at 2019-20.
157. *Id.*
158. 428 U.S. 433 (1976) (refusing to extend Exclusionary Rule to grand jury proceedings).
159. 414 U.S. 338 (1974) (refusing to extend rule to civil tax proceedings).
160. 468 U.S. 1032 (1984) (refusing to extend Exclusionary Rule to deportation proceedings).
161. *Scott*, 118 S. Ct. at 2020.
162. *Id.* at 2021.