Case Law to Support Specific Racial Justice Arguments

RACIAL JUSTICE TOOLKIT: CASE ADVOCACY RESOURCE

*The cases in each section are arranged in reverse chronological order by year.

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Capital Punishment/Life Without Parole/Illegal Sentencing

State of Connecticut v. Keith Belcher, (SC 20531) January 21, 2022

- The Connecticut Supreme Court held that the trial court abused its discretion when it denied the youth's motion to correct an illegal sentence of sixty years, finding the trial court substantially relied on false information about a mythical group of teenage "superpredators" and labeled the youth a "charter member" of the group. ***The court concluded that the "superpredators" myth is a baseless, discredited theory that disproportionately demonized Black teens.*** Moreover, the reliance on the false "superpredator" myth in sentencing a Black teenager was detrimental to the integrity of sentencing. The myth invokes racial stereotypes and calls into question whether the youth would have received a lengthy sentence if he was not Black. Furthermore, the trial court's reliance on the "superpredator" myth ran afoul on the Constitutional mandate in *Roper* because it supported treating the characteristics of youth like impulsivity, deficient judgment,

and submission to peer pressure as aggravating factors rather than mitigating factors, thus justifying a harsher punishment. ***In invoking the "superpredator" theory in sentencing a young Black male, the court relied on materially false racial stereotypes that perpetuate systemic inequalities, demanding harsher sentences that date back to the founding of our nation.*** The trial court's judgment is reversed, and the case is remanded.

State v. Burke, 843 S.E.2d 246 (2020)

- The North Carolina Supreme Court ruled that the defendant, Rayford Lewis Burke, a Black man convicted of first-degree murder and sentenced to death by an all–white jury can challenge his death sentence under the North Carolina Racial Justice Act (RJA). In 1993, Mr. Burke was convicted of first-degree murder and sentenced to death. Mr. Burke appealed and the trial court denied review stating the defendant's claims were "without merit and procedurally barred." The North Carolina Supreme Court held that the trial court abused its discretion by summarily denying the claims without an evidentiary hearing. RJA allows defendants to seek relief from a death sentence if race played a significant role in the decision. Mr. Burke presented ***"significant evidence that race was a large factor in the jury selection, sentencing, and capital charging decisions in the relevant jurisdictions at the time of his trial and sentencing."*** Mr. Burke used studies, statistical evidence, from Michigan Law School, expert testimony, voir dire, and jury questionnaires from capital cases to bolster his argument. ***The defendant also showed a pattern of race-based strikes the state used in the same office in connection with other litigation. This case opened the door for other Black death row defendants to challenge their sentence on the bases of race under the RJA statute.*** The Supreme Court vacated the judgment of the trial court and remanded the case.

State v. Ramseur, 347 N.C. 658 (2020)

- The North Carolina Supreme Court retroactively applied the Racial Justice Act [hereinafter RJA] and reversed Andrew Ramseur's conviction. In 2010, Andrew Ramseur, a Black man was convicted of two counts of first-degree murder and sentenced to death. During jury selections the trial court denied two defense objections to the prosecutor's peremptory challenges excluding Black jurors. During trial Mr. Ramseur renewed his motion for a venue change citing an all-White jury would lead to an unfair verdict. He filed additional race-based motions stating the rows behind the defense table were blocked off with yellow crime scene tape and the area was effectively segregated by race. The yellow crime tape forced his Black family members to sit in the back behind the tape, while the victim's White family members sat in the front. The trial court denied every motion. Mr. Ramseur then filed a post-conviction motion seeking relief under North Carolina RJA, which was amended in 2012 and repealed in 2013. ***RJA provides "no person shall be subjected to or given a sentence of death or shall be executed pursuant to any judgement that was sought or obtained on the basis of race."*** The trial court concluded the repeal of the RJA rendered Mr. Ramseur's motion void.

- On appeal, the Supreme Court evaluated the constitutionality of whether applying repeal of the RJA retroactively violates the prohibition on *ex post facto* laws. The Supreme Court held that based on the plain language in the RJA appeal, the General Assembly intended for RJA to have retroactive application. "This section is retroactive and applies to any motion for appropriate relief filed, prior to the effective date of this act." The Court declined to address whether the

"retroactive application of the Amended RJA's waiver provision violates the prohibition against *ex post facto* laws because the trial court erred in its ruling." ***Mr. Ramseur showed race was a significant factor in the prosecutor's use of peremptory challenges, the imposition of the death penalty, the prejudicial pre-trial publicity, racial tension in the community, use of yellow crime tape in the court room, removing Black jurors without cause, and not conducting an evidentiary hearing on the RJA claims.*** Accordingly, the trial court erred in denying defendant's motions on the pleadings. The Court reversed and remanded for further proceedings consistent with the ruling.

Ramos v. Louisiana, 590 US 140 S.Ct. 1390 (2020)

- The U.S. Supreme Court held that the Sixth Amendment right to jury trial requires a unanimous verdict to convict a defendant of a serious crime. Mr. Evangelisto Ramos was convicted of second-degree murder and sentenced to life without the possibility of parole in Louisiana based on 10- to-2 jury verdict. The Court ruled that the Sixth Amendment "trial by an impartial jury has one such requirement that a jury must reach a unanimous verdict in order to convict." In 48 states and federal courts, juror unanimity is the standard for criminal conviction. Accordingly, ***"Ramos would have received a mistrial almost anywhere else."*** The Court rejected Louisiana's suggestion to perform a cost-benefit/government interest analysis, preserving precedent. The Court also rejected Louisiana's reliance interest of maintaining the security of their final criminal judgments, stating both Louisiana and Oregon may need to retry pending appellate felony convictions by non-unanimous verdicts. *"**This case is significant because it eliminated an old Jim Crow law that allowed for racial discrimination in juries by allowing white jurors to outvote Black jurors and diminish the power of Blacks on juries."***

Challenging In/Out-of-Court Identifications

Bernal v. People, 44 P.3d 184 (2002)

- Bernal argued that his due process rights were violated with the Court's admission of testimony concerning an impermissibly suggestive photo array. Of the six men shown, Bernal was the only obviously Hispanic man. The Court held that when few photographs are used by officers in a photo array, the array must be scrutinized for suggestive irregularities, and ***found that the photo array was impermissibly suggestive because Bernal's ethnicity stood out as clearly different from the others pictured***.

United States v. Gidley, 527 F.2d 1345 (5th Cir. 1976)

- Gidley argued that the District Court erred in allowing in-court identifications that were allegedly an impermissibly suggestive photographic display. ***Court held that certain features of the suspects ("long black hair and dark complexions") stood out in the photographs in comparison to other suspects in the photograph***—and under the circumstances were impermissibly suggestive.

Descriptions

Commonwealth v. Warren, 475 Mass. 530 (Mass. 2016)

*The cases in each section are arranged in reverse chronological order by year.

Referenced in Flight Section

- The Supreme Judicial Court of Massachusetts held that Warren's race alone was insufficient to give officers reasonable articulable suspicion that he was the suspect of an earlier crime when ***the description lacked any information about facial features, hairstyles, skin tone, height, weight, or other physical characteristics separate from race.*** The Court also noted that the police had no justifiable cause to arrest Warren for running away; it was within his legal right to run from the police, and the act of doing so did not imply guilt and was not grounds for arrest. Black men in Boston were disproportionately and repeatedly targeted to the extent that flight from police should not necessarily indicate consciousness of guilt. Rather, Black men have "reason for flight totally unrelated to consciousness of guilt," such as the desire to avoid the recurring indignity of being racially profiled.

In re T.L.L., 729 A.2d (D.C. 1999)

- T.L.L. was found guilty of armed robbery and on appeal argued that the police lacked reasonable articulable suspicion to detain him for purposes of a show-up identification. ***The description of two black teenagers wearing dark clothing could have fit many, if not most, black young men in the area at the time.*** The D.C. Court of Appeals reversed the conviction and found that reasonable articulable suspicion for the seizure did not exist when T.L.L. was stopped. The Court found that the complainant's **"general description without additional identifying information like height, weight, facial hair, or other distinguishing features" was lacking in the requisite particularity.** The Court further noted that T.L.L.'s detention was not temporally or spatially close to the robbery and that the admission of the show up identification was constitutional error—**in violation of the Fourth Amendment**—that could not be considered harmless beyond a reasonable doubt. The Court determined that the motion to suppress the identification should have been granted.

In re A.S., 614 A.2d 534 (D.C. 1992)

- The D.C. Court of Appeals reversed the trial Court's finding that A.S. was delinquent because the search and seizure of A.S. violated the **Fourth Amendment.** ***Because the only description given to the police was "a black male, with blue jacket, gray sweatshirt, dark jeans with a black skull cap," the Court granted A.S.'s motion to suppress on the grounds that the police lacked particularized articulable suspicion when they stopped him.*** On appeal the Court held that: "(1) the police lacked reasonable suspicion to stop the minor; (2) there were at least five individuals in the area that fit the broadcast description, and the police knew that the minors in the area wore similar clothing; (3) there was no evidence of flight; and (4) the police lacked particularized articulable suspicion when they arrested the minor and seized the $20 bill."

United States v. Hawthorne, 982 F.2d 1186 (8th Cir. 1992)

- The Court held that reasonable articulable suspicion ***will not be met if the officer's suspicion is based solely on racial incongruity—when a person is seen in a particular geographic area that is predominantly populated with people of a different race***.

Davis v. Mississippi, 394 U.S. 721 (1969)

- When the only description of an assailant was that he was a Black youth, the Supreme Court held that it was illegal to detain, question, and fingerprint 24 Black youth. Davis' seizure was unreasonable because it was not supported by probable cause and ***the probable cause for arrest***

and search was based on a vague description resting on age and race alone. The Supreme Court held that since Davis' detention by the police was unlawful, his fingerprints were obtained in violation of the **Fourth and Fourteenth Amendments**, and inadmissible at his trial.

Flight

Commonwealth vs. Tykorie Evelyn, 485 Mass. 691 152 N.E.3d 108 (2020)

- The Massachusetts Supreme Judicial Court upheld the denial of Tykorie Evelyn's motion to suppress. Thirteen minutes after a shooting, and one half-mile away, two police officers encountered Mr. Evelyn walking on the sidewalk and drove slowly beside him for approximately one hundred yards, while he repeatedly rebuffed their attempts to speak with him. When one of the officers started to get out of the cruiser, Mr. Evelyn ran away. The officers found a firearm on the ground along the route on which he had run. Mr. Evelyn was indicted on charges including murder in the first degree. In a motion to suppress, Mr. Evelyn argued that the officers stopped him without reasonable suspicion at the moment that one of the officers opened the door of the cruiser. Mr. Evelyn also argued that his race and age should form part of the totality of the circumstances in the determination of whether he was seized. The Court concluded that Mr. Evelyn was indeed seized when the officer in the front passenger's seat opened the cruiser door after having trailed Mr. Evelyn and repeatedly tried to talk with him. ***The court acknowledged the troubled history of policing in African American communities, but declined to decide here whether the race of a defendant properly informs the seizure inquiry and feared that a bright line rule that race is always relevant to the seizure analysis might "do more harm than good."*** The Court held that the Court should consider age in the totality of the circumstances as part of the seizure analysis going forward, if the suspect's age is known to the officer or objectively apparent to the officer. In the present case, the Court found that Mr. Evelyn's age would not have been apparent to the officer based on the facts of the case.
- The Court also concluded that the officers had reasonable articulable suspicion to stop Mr. Evelyn due largely to the proximity of gunshots to Mr. Evelyn and Mr. Evelyn's body language and positioning that suggested he was carrying a weapon. Although it agreed that the police had reasonable articulable suspicion, the court reiterated its previous holding in ***Commonwealth v. Warren*** **that flight of an African-American man from police "is not necessarily probative of . . . consciousness of guilt" based on the history and present reality of policing African Americans. In Mr. Evelyn's case, the Court extended that reasoning to other types of nervous or evasive behavior in addition to flight to conclude that the weight of the defendant's nervous and evasive behavior should be significantly discounted in the reasonable suspicion analysis.**

United States v. Brown, 2019 U.S. App. V 16886 (9th Cir. 2019)

Editorial Note: Judge McKeown in her opinion highlights the significance of Wardlow, a case decided on almost 20 years ago. She shares that since Wardlow, the coverage of racial disparities in policing has increased, which has justifiably amplified concerns for people of color. ***"Given that racial dynamics in our society—along with a simple desire not to interact with police—offer an 'innocent'***

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explanation of flight…we are particularly hesitant to allow flight to carry the day in authorizing a stop."

- After an anonymous tip that a black man was carrying a gun—which is not a criminal offense in the state of Washington—police spotted Brown (who was on foot), activated their lights and pursued him by car. Before flashing their lights, the police did not order or signal Brown to stop. Brown ran for about a block before the officers stopped him at gunpoint. Upon review, the Court found that "[w]ith no reliable tip, no reported criminal activity, no threat of harm, no suggestion that the area was known for high crime or narcotics, no command to stop, and no requirement to even speak with the police," Brown's flight from the officers was not enough to find reasonable suspicion that criminal activity was afoot. The Court additionally found that, the metro officers took an anonymous tip that a young, black man had a gun and "jumped to an unreasonable conclusion" that Brown's later flight indicated criminal activity." ***Noting that flight can be evaluated for reasonable suspicion, the Court states that we cannot totally discount the issue of race, and that there is little doubt that uneven policing practices affect the reaction of certain individuals—including those who are innocent—to flee law enforcement.***

Everett Miles v. United States, 181 A.3d 633 (2018)

- The D.C. Court of Appeals held that an anonymous tip describing a man "shooting a gun in the air," together with the defendant's flight from the police, did not establish reasonable suspicion to justify detention. In March 2013 officers stopped Everett Miles, a Black man, acting on a tip from a "concerned citizen" who reported "a Black male with a blue army jacket shooting a gun in the air and location." Officers stopped Mr. Miles a few blocks away from the reported location. Mr. Miles fled on foot, officers eventually detained him, and retrieved a gun. Mr. Miles was found guilty of unlawful possession of a firearm by a convicted felon, possession of an unregistered firearm, unlawful possession of ammunition, and carrying a firearm outside a home or place of business. ***Relying heavily on race-based empirical research and data, the Court held Mr. Miles did not exaggerate his fear of police brutality based on "the proliferation of visually documented police shootings of African-Americans that has generated the Black Lives Matter protests." Mr. Miles' flight was provoked and not probative of guilt.*** The officers' actions towards Mr. Miles during the stop were startling and possibly frightening to many reasonable people, providing a reason other than consciousness of guilt for Mr. Miles to have fled. There was also no sufficient evidence to conclude the tip was a "reliable assertion of illegality." The tip in this case did not indicate that the caller observed a crime. Therefore, Mr. Miles' flight was too equivocal to reasonably corroborate the anonymous tip that the man had a gun. The police did not have enough evidence to justify a Terry stop. Mr. Miles' convictions were reversed and the case remanded.

Commonwealth v. Warren, 475 Mass. 530 (Mass. 2016)

Referenced in Descriptions Section

- The Supreme Judicial Court of Massachusetts held that Warren's race alone was insufficient to give officers reasonable articulable suspicion that he was the suspect of an earlier crime when the description lacked any information about facial features, hairstyles, skin tone, height, weight, or other physical characteristics separate from race. The Court also noted that the police had no justifiable cause to arrest Warren for running away from them; it was within his legal

right to run from the police, and the act of doing so did not imply guilt and was not grounds for arrest. Black men in Boston were disproportionately and repeatedly targeted to the extent that flight from police should not necessarily indicate consciousness of guilt. Rather, ***Black men have "reasons for flight totally unrelated to consciousness of guilt," such as the desire to avoid the recurring indignity of being racially profiled.***

Illinois v. Wardlow, 528 U.S. 119 (2000)
Editorial Note: ***This case has been included for its dissent in which Justice Stevens breaks down possible reasons that people, particularly people of color, might run when encountering police officers.***

- In Justice Stevens **dissent** he argues that ***"flight" can be attributed to other considerations. For some, particularly "minorities" and those "residing in high crime areas," there is the possibility that the fleeing person is entirely innocent, but with or without justification believes that contact with the police itself can be dangerous. For such a person, unprovoked flight is neither aberrant nor abnormal.***
- Majority opinion: The Supreme Court found that nervous, evasive behavior was a pertinent factor in determining reasonable suspicion for a Terry stop, and that headlong flight was the consummate act of evasion. The Court found that the determination of reasonable suspicion had to be based on common sense judgments and inferences about human behavior, and that officers were justified in suspecting that Wardlow was involved in criminal activity based on his presence in an area of heavy narcotics trafficking and his unprovoked flight upon noticing the police. The Court concluded that Wardlow's presence in an area of heavy narcotics trafficking and his unprovoked flight upon noticing police created a reasonable suspicion justifying a Terry stop.

Jury Selection (*Improper Race-Based Exclusion of Prospective Juror for Cause*)

State v. Edwin Andujar, 462 N.J. Super. 537 (App. Div. 2020)

- The NJ Superior Court of Appeals held that a prosecutor inappropriately conducted a criminal history check on a prospective Black male juror and the juror was improperly excluded from the jury.
  During voir dire, the juror shared that he has family members in law enforcement and friends involved with the justice system, either as victims or defendants. The prosecution requested that the juror be removed for cause, arguing that "he had an awful lot of background, he uses all the lingo about the criminal justice system, and it is very concerning that his close friends hustle and are engaged in criminal activity. Defense counsel objected, noting that under the circumstances raised by the state, "no Black man would be able to sit on a jury in Newark!" and initially, the court found no reason to remove the juror for cause. After the court's ruling, the state ran a criminal background check on the juror, found a municipal warrant, and notified the judge. Then, the court removed the juror for cause on a renewed motion by the prosecution.

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- The Appellate court held going forward, prosecutors could not unilaterally decide to conduct criminal history checks on prospective jurors without obtaining permission from the judge and presenting a reasonable, individualized, good-faith basis for the request. In this case, the prosecutor did not offer any characteristic that caused concern to remove the juror other than "where he lived exposed him to violence so the juror must have done something wrong himself and lacks respect for the criminal justice system." The court explained, this argument impermissibly stems from racial stereotypes about Black Americans. Moreover, the criminal history check did not reveal any history that would disqualify the juror from jury service under the applicable Batson/Gilmore standard. The state evaded Baston by running the background check and putting the arrest on the record.

- Furthermore, the record reveals by a preponderance of the evidence that the juror's removal and background check stemmed from implicit or unconscious bias by the state, thereby violating Mr. Andujar's constitutional right to be tried by an impartial jury, selected free from discrimination. Additionally, the court also recognized that "implict basis is no less real and no less problematic than inetntional bias because they both lead to jury selection tainted by discrimination. Reversed and remanded for a new trial.

Flowers v. Mississippi, 588 U.S. 1 (2019)

- The Supreme Court held that the trial court at Flowers' sixth trial committed clear error in concluding that the State's peremptory strike of a black prospective juror was not motivated in substantial part by discriminatory intent. The Court reversed the judgment of the Supreme Court of Mississippi and remanded the case. Relying on Batson v. Kentucky, in which the Court ruled that "***a State may not discriminate on the basis of race when exercising peremptory challenges against prospective jurors in a criminal court,"*** Flowers v. Mississippi reinforces several evidentiary and procedural issues raised in Batson about prosecutorial bias in jury selection. Here, the Court determined that four categories of evidence loomed large in assessing the Batson issue: "(1) the history from Flowers' six trials, (2) the prosecutor's striking of five or six black prospective jurors at the sixth trial, (3) the prosecutor's dramatically disparate questioning of black and white prospective jurors at the sixth trial, and (4) t***he prosecutor's proffered reasons for striking one black juror while allowing other similarly situated white jurors to serve on the jury at the sixth trial."*** In sum, the ***State's pattern of striking the prospective black jurors through all of Flowers' trials was motivated by discriminatory intent.*** In the six trials combined, the State struck 41 of the 42 black prospective jurors it could have struck. In the majority opinion, written by Justice Kavanaugh, he laments that the ***"State's relentless, determined effort to rid the jury of black individuals strongly suggests that the State wanted to try Flowers before a jury with as few black jurors as possible, and ideally before an all-white jury."***

Commonwealth v. Williams, 481 Mass. 443(2019)

- The Supreme Judicial Court of Massachusetts affirmed the conviction of Mr. Quinton Williams, an African-American man charged with a Class B possession of substance with intent to distribute. Mr. Williams challenged his conviction claiming the judge abused his discretion in

dismissing a prospective juror for cause. During voir dire the juror expressed her opinion that ***"the criminal justice system was rigged against young African-American males."*** After further questioning by the judge to determine the juror's impartiality to serve as a juror for an African- American male defendant, the judge ultimately dismissed the juror for cause.

- The court held that a juror may not be excused for cause, based solely on the belief that the criminal justice system is rigged against African-American males. Actually, in this case ***"the jurors' belief is shared by many in our community including most African-Americans" and excusing jurors for this reason runs the "risk of disproportionately excusing African-American" jurors.*** The court concluded that during the colloquy the judge erred when he asked the juror "if she can put aside" her feelings about the system being rigged against African-American males. The court explained ***"a judge should not require a prospective juror to disregard his or her human life experiences and resulting beliefs in order to serve." In doing so, it mistakenly equates an inability to disregard one's life experiences with a task that is "arguably impossible" with an inability to be "impartial."***
- The court held although the voir dire was improper, it did not prejudice Mr. Williams, because the Commonwealth would have likely utilized its peremptory challenge against the juror. The court rejected Mr. Williams' arguments that he was denied the right to a fair and impartial jury from a fair cross section of his community by eliminating an African- American who held his viewpoints about the criminal justice system, because the juror was not excused for solely having the belief itself. Judgment affirmed.

Presumed Dangerousness

In re L.B., 73 A.3d 1015 (D.C. 2013)

Editorial Note: Numerous social studies indicate that racial bias causes people to interpret the behavior of black youth as more aggressive, criminal, and threatening than other people. The elements of the offense require the court to examine the subjective experience of the victim and whether it was reasonable to interpret what was said to them as a threat in context.

- L.B. was adjudicated delinquent for making threats to do bodily harm to an officer. L.B. admitted to making the threat, but testified that the threat had instead been directed at the individual standing behind the officer.

Proximity to Crime Scene/ Presence in High Crime Area

United States v. Montero-Camargo, 208 F.3d 1122 (9th Cir. 2000)

- Montero-Camargo was stopped and arrested by Border Patrol agents near a Border Patrol checkpoint in El Centro, California. The agents in this case relied on the following factors in stopping the vehicle: "apparent avoidance of a checkpoint, tandem driving, Mexicali license plates, the Hispanic appearance of the vehicles' occupants, the behavior of [a passenger], the agent's prior experience during stops after similar turnarounds, and the pattern of criminal activity at the remote spot where the two cars were stopped." ***The Court held that "the likelihood that in an area in which the majority—or even a substantial part—of the population is Hispanic…is not enough to make Hispanic appearance a relevant factor in the reasonable suspicion calculus."*** The Court further noted that "the citing of an area as 'high-crime' requires careful examination by the Court, because such a description, unless properly limited and factually based, can easily serve as a proxy for race or ethnicity."

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Commonwealth v. Cheek, 413 Mass. 492 (1992)

- The Massachusetts Supreme Court granted Cheek's motion to suppress evidence because his rights were violated under the **Fourth Amendment** as the police did not have sufficient specific and articulable facts to establish a reasonable suspicion that he had committed the crime. ***The suspect was described as a "black male with a black ¾ goose known as Angelo of the Humboldt group." The Court reasoned that that description alone did not provide reasonable articulable suspicion to stop a black male, ½ mile from the scene, wearing a black ¾ length goose down jacket. The description "could have fit a large number of men who reside[d] in the Grove Hall section of Roxbury, a predominantly black neighborhood of the city"*** and the police had no other physical description of the suspect, that would have distinguished him from other men, such as height, weight, presence of facial hair, unique markings on his face or clothes or other characteristics. Furthermore, the Court rejected the government's argument that Cheek was walking at midnight in a "high crime area" because there was no evidence that he was fleeing or engaged in suspicious activity. That factor did not contribute to the officers' ability to distinguish Cheek from any other black male in that area and there was no suspicious activity of the defendant observed by the police.

Qualified Immunity

Estate of Jones v. City of Martinsburg, 961 F. 3d 661 (4th Cir. 2020)

- The U.S. Court of Appeals for the Fourth Circuit rejected qualified immunity for the Martinsburg officers responsible for shooting and killing Wayne Jones, a Black man. The Court found that Mr. Jones was stopped from walking on the street instead of using the sidewalk. The officer immediately escalated the encounter and five officers assaulted Mr. Jones. Mr. Jones was tased multiple times, struck in the neck, and placed in a chokehold. The police obstructed Mr. Jones' breathing and collectively tackled him to the ground. Reportedly, one of the officers was injured by a knife Mr. Jones was carrying under his sleeve. Mr. Jones was completely unresponsive on the ground and the officers fired 22 shots into his body. He posed no threat to the officers and was not welding the knife. In the opinion, Judge Floyd stated ***"[a]lthough we recognize that our police officers are often asked to make split-second decisions, we expect them to do so with respect for the dignity and worth of black lives. The officers crossed the "bright line" in shooting Mr. Jones after he was not moving. …This has to stop."*** Accordingly, the court held that the officers were not protected by qualified immunity and should be held liable because Mr. Jones was secured and incapacitated before he was shot. The officers testified to observing that Mr. Jones did not move after he was tackled to the ground. It is clearly established that even armed suspects can be secured without handcuffs, for example, when they are pinned to the ground, and the use of force against incapacitated suspects violates the Fourth Amendment. Additionally, the Court held that simply being armed is insufficient to justify deadly force. The Court affirmed the lower court's ruling that the city was not subject to liability for failure to train its officers under §1983, reversed the District Court's summary judgement granting qualified immunity for the officers, and vacated the dismissal of Mr. Jones' estate claim.

Clarence Jamison v. Nick McClendon, F.Supp.3d 2020 WL 4497723(2020)

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- The United States District Court concluded that a Mississippi police officer's search of a car violated the Fourth Amendment, but granted summary judgement in favor of the officer based on qualified immunity. In July 2013, a White Mississippi police officer stopped Clarence Jamison, a Black man driving a Mercedes convertible for having "folded" temporary tags. After the officer cleared Mr. Jamison, the officer relentlessly tried to extend the traffic stop. The officer repeatedly lied about receiving a phone call that Mr. Jamison had 10 kilos of cocaine in his car. At some point the officer put his arm inside the threshold of the passenger door and patted the interior of the vehicle. Mr. Jamison repeatedly declined consent but reluctantly agreed after five badgering requests from the officer. The stop lasted for one hour and fifty minutes and nothing was recovered. Mr. Jamison filed suit against the officer under §1983 for violating his rights under the Fourth and Fourteenth Amendments. The officer filed a motion for summary judgement on qualified immunity grounds. The District Court held that the officer's insertion of his arm into the vehicle was an intrusion and constituted an unreasonable search in violation of the Fourth Amendment. Although it was reasonable for the officer to question Mr. Jamison during the stop there was no reasonable basis for the officer's conduct thereafter. Moreover, Mr. Jamison's consent was the product of an unconstitutional search. Mr. Jamison's consent was involuntary because he surrendered only after the officer put his arm in his car. ***Finally, race was a factor for extending the stop, also violating the Fourth Amendment.***
- Judge Reeves stated, ***"This stop cannot be separated from the clear historical and current racial disparities in our country. Black people have endured problems with the police since the states replaced slave patrols with police officers who enforced Black codes. There are no exemptions to Black people being stopped by the police. Black people are acutely aware of the danger traffic stops pose to Black lives." The majority of these traffic stops are fruitless and Black people are disproportionately killed at higher rates. In America, Black skin is considered dangerous and consequently Black male teens report "fear of the police" as their greatest safety concern. Against this backdrop "who can say Mr. Jamison felt free on the side of Interstate 20 or to say no to the armed officer?" Accordingly, the search of the vehicle violated the Fourth Amendment.***
- However, the District Court held that the officers' conduct was protected by qualified immunity and thus shielded from liability. In its analysis, the Court noted that "[i]f a court denies Summary Judgement based on qualified immunity that decision is immediately appealable, reaching SCOTUS before a trial judge or jury hears the facts of the case." SCOTUS has given qualified immunity "sweeping procedural advantages." The origins of qualified immunity protected officers acting in good faith; now the doctrine protects officers no matter how egregious their conduct is. Qualified Immunity is not "exoneration" and there must be some accountability for officers who violate citizen's constitutional rights. "Just as SCOTUS swept away the doctrine of separate but not equal, so too should it eliminate the doctrine of qualified immunity." The officer's motion is granted and the damage to property claim will be set for trial.

Racial Profiling

United States v. Warfield, 727 F. App'x 182 (6th Cir. 2018)

- Warfield was stopped by a police officer, after driving under the speed limit, sitting upright, staring straight ahead, with both hands on the steering wheel. After the stop, the officer asked

Warfield if he had been drinking (he had not). He questioned him about his travel plans and asked about the visible cigarette cartons in his backseat. The officer conducted a sobriety test, which Warfield passed. The officer then asked both Warfield and the passenger for identification—which revealed no outstanding warrants or prior convictions. Then, the officer called a trooper and a drug dog to the scene, even though drug dogs were not routinely used during DUI investigations. The dog was led around the car twice and did not indicate the presence of narcotics. After returning Warfield his license, the officer asked Warfield about the cigarettes in his car and asked if he could look in the trunk and passenger compartment. Warfield obliged, and the officer found multiple cigarette cartons in the trunk of his car and many debit cards, credit cards and gift cards in the passenger compartment. Warfield was charged with possessing counterfeit or unauthorized access devices.

- The United States Court of Appeals for the Sixth Circuit held that there was no probable cause to stop Warfield for a marked lane violation nor reasonable suspicion of intoxicated driving, and that the police officers violated Warfield's **Fourth amendment** rights. The Court ruled that "three instances of lawful driving cannot, when viewed together, transform into illegal conduct," and that this case "involve[d] a suspicionless traffic stop where the officer initiated his interactions with Warfield based on legal driving." Warfield argued that he was stopped because of race, and in response the Court found that ***"[w]hile the law allows pretextual stops based on minor traffic violations, no traffic law prohibits driving while black. The protections of the Fourth Amendment are not so weak as to give officers the power to overpolice people of color under a broad definition of suspicious driving."*** The Court reversed the district court's denial of the defendant's motion to suppress and remanded for further proceedings.

Commonwealth v. Buckley, 478 Mass. 861 (Mass. 2018)

Editorial Note: This case is included for its reference to race and acknowledgement of how pretextual traffic stops can fuel racially discriminatory policing.

- In this case, Buckley challenged a pretextual stop, and asked the Court to overturn Whren. The Court declined to overturn Whren, but invited challenges to racial profiling pursuant to the **Fourteenth Amendment** stating ***"[a]lthough we certainly do not dispute, as a general matter, the enormity or relevance of the problem of racial profiling, it is not an appropriate basis for overturning our general Article 14 standard governing the reasonableness of traffic stops where the defendant has expressly disavowed any such argument that race was a factor in the stop at issue.*** At the same time, the defendant and the concurring Justice raise considerable, legitimate concerns regarding racial profiling and the impact of such practices on communities of color."

United States v. Smith, 794 F.3d 681 (7th Cir. 2015)

Referenced in Seizure and Consent to Search Section

- The United States Court of Appeals for the Seventh Circuit held that officers' encounter with a Black defendant in a dark alley at night in a minority-dominated urban area, the threatening presence of multiple officers, the aggressive nature of the questioning, and the fact that Smith's freedom of movement was physically obstructed was a seizure under the **Fourth Amendment**, as a reasonable person would not have felt at liberty to leave. The Court further acknowledged that ***race was relevant in everyday police encounters with citizens in Milwaukee and around***

the country, and that there existed empirical data demonstrating the existence of racial profiling, police brutality, and other racial disparities in the criminal justice system.

Floyd v. City of New York, 959 Supp. 2d 540 (S.D.N.Y. 2013)

- The New York Southern District Court found that the city violated the **Fourth and Fourteenth Amendment** rights of the plaintiff class because of the way the City of New York conducted stops and frisks over the past decade. The District Court additionally found that ensuring people were not seized and searched by police without a legal basis was an important interest meriting judicial protection and that specifically eliminating the threat that blacks and Hispanics will be targeted for stops and frisks was an important interest. Noting that ***"targeting racially defined groups for stops — even when there is reasonable suspicion — perpetuates the stubborn racial disparities in our criminal justice system."***

Commonwealth v. Lora, 451 Mass. 425 (2008)

- Lora (the passenger) and a friend (the driver) were stopped one evening by a state trooper; at the time the driver traveled within the speed limit, did not swerve, and made no erratic movements. The state trooper observed that two occupants of the vehicle were dark skinned (Lora is Hispanic) and activated his blue lights to stop the vehicle for traveling in the left lane while the center and right lanes were unoccupied. During the stop, the state trooper approached the vehicle from the passenger's side and asked the driver for his license and registration. The driver explained that his license had been suspended and stated that the vehicle belonged to Lora. The state trooper asked the driver to step out the vehicle and placed him in the back of the cruiser. As Lora exited the car to take a phone call, the state trooper instructed him to get back into the vehicle. Lora returned, and the state trooper then directed a flashlight inside the car, where he saw a small glassine bag on the driver's side. Lora was asked to exit the car, and he was frisked. The state trooper retrieved the glassine bag of cocaine and called for backup. After proceeding with a search of the vehicle the troopers discovered substantially more cocaine in the car.
- Lora was charged with drug trafficking and later filed a motion to suppress the cocaine as the fruit of an unconstitutional search violating his **Fourteenth Amendment** rights and Articles 1 and 10 of the Massachusetts Declaration of Rights. He argued that the trooper stopped the occupants as a result of racial profiling—because they were dark skinned—and not because of any traffic violation. Though the Massachusetts State Supreme Court reversed the appellate court's order to suppress the evidence, the Court held that ***evidence of racial profiling was relevant in determining whether a traffic stop was the product of selective enforcement violative of the equal protection guarantee of the Massachusetts Declaration of Rights***; and that evidence seized in the course of a stop violative of equal protection should, ordinarily, be excluded at trial. The Court also held that statistical evidence demonstrating disparate treatment of persons based on their race may be offered to meet a defendant's burden to present sufficient evidence of impermissible discrimination so as to shift the burden to the Commonwealth to provide a race neutral explanation for such a stop.

State v. Maryland, 167 N.J. 471 (2001)

- Marlon Maryland and two other individuals were stopped by transit police on graffiti patrol. The initial police account of the event, which changed at the suppression hearing, was that

Maryland was observed stuffing a brown paper bag, later found to contain drugs, into his waistband. The New Jersey Supreme Court held that in light of the contradictory nature of police accounts, ***including indications that the youths were stopped because of their age and race ("presence of three young black males at the station a second time in a week")***, the State had the burden to show a permissible basis for the initial field inquiry in order to support a subsequent investigatory stop and protective search. The State failed to meet that burden given that a field inquiry for questioning is impermissible if it is race-based, and the police action here cannot reasonably be understood as anything but a proscribed race-based inquiry. Therefore, the stop and search violated the **Fourteenth Amendment** and was thus an unreasonable search and seizure within the **Fourth Amendment.**

United States v. Brignoni-Ponce, 422 U.S. 873 (1975)

- Border patrol agents stopped Brignoni-Ponce's car because the occupants appeared to be of Mexican descent. Upon questioning Brignoni-Ponce and his passengers, the officers learned that the passengers had entered the country illegally. Brignoni-Ponce was charged with knowingly transporting illegal immigrants. He filed a motion to suppress the testimony of the passengers and claimed that the evidence was fruit of an illegal seizure violating his **Fourth Amendment** rights. The Supreme Court held that except at the border and its functional equivalents, officers on roving patrol cannot stop vehicles unless they are aware of specific articulable facts, together with rational inferences from those facts, that reasonably warranted suspicion that the vehicles contained illegal aliens. ***Mexican ancestry, standing alone, did not justify the officers' stop, according to the Court.***

Seizure and Consent to Search

State v. Nyema, Superior Court of New Jersey Appellate Division Docket No. A-0891-18T4 (2020)

- The New Jersey Appellate Division Court ruled in favor of Appellant, Peter Nyema, an African- American man who was subjected to an illegal Terry stop in May 2011. The Court of Appeals vacated Mr. Nyema's conviction and sentence, holding that the state failed to establish reasonable articulable suspicion for stopping Mr. Nyema's motor vehicle and that the subsequent seizure of physical evidence was unlawful. The Court of Appeals concluded that the state did not provide sufficient evidence the car was stolen; therefore, Mr. Nyema had a reasonable expectation of privacy in his father's car. Additionally, the officer acted on a hunch and did not have any reasonable and articulable suspicion to stop the vehicle. The officer had no physical description of the suspects at the time he made the stop; he had no description of the vehicle, and in fact, the officer was told the suspects fled on foot. The only information the officer had was that the 7-Eleven had been robbed by two-black men who fled on foot and a vehicle with three black men driving from the 7-Eleven had been reported. When the officer spotlighted Mr. Nyema's car, he shined his police car spotlight on the vehicle and observed three African- American males. Allegedly none of the males flinched or had any reaction to the spotlight being shined into their vehicle. The men's non reaction to the spotlight was not enough to conduct an investigatory stop. Further, ***"[k]nowledge of the race and gender of criminal suspects, without more, is insufficient suspicion to effectuate a seizure. A random stop based on nothing more than a non-particularized racial description of the person sought is especially subjected to abuse."***

*The cases in each section are arranged in reverse chronological order by year.

State v. Clinton-Aimable, No. 2018-355 (Vt. 2020)

- The Vermont Supreme Court ruled that the trial court erred in denying Henry M. Clinton-Aimable, a Black man, a motion to suppress evidence. In July 2016, officers stopped Mr. Aimable's vehicle for failure to use a directional signal and acting on an unreliable tip. The officers contended that Mr. Aimable's "extreme nervousness and smell of marijuana" justified extending the traffic stop and seizing the vehicle. Following the traffic stop, Mr. Aimable was charged and convicted of possession of cocaine. The Vermont Supreme Court held: (1) The facts did not provide probable cause to seize Mr. Aimable's vehicle based on the suspicion that it contained illicit drugs or related items. (2) The totality of the circumstances was insufficient to provide probable cause that the vehicle contained drugs and seized it. (3) The tip did not meet the standards of Vt. Criminal Procedure whereby the tip was vague and unreliable, the officer testified he did not believe the tipster information, and the facts from the tipster were not used to support the warrant to seize the vehicle. Justice Reiber issued a concurring opinion highlighting how race played a role in the traffic stop. ***"Black drivers are four times more likely to be searched, subsequent to a stop, than White drivers. A Black driver, impacted by the entirety of the Black American experience, may likely become extremely nervous when face–to-face with a police officer while stopped on the side of the road. I question whether nervous behavior exhibited by a person of color should ever be used as a factor in determining whether police have reasonable suspicion or probable cause."*** The order denying Mr. Aimable's motion is reversed and his conviction is vacated.

State v. Jones, No. 2019-0057, N.H. LEXIS 4 (2020)

- Jones appealed an order of the Superior Court denying his motion to suppress evidence that led to his conviction on one count of possession of a controlled drug. Jones argued that the trial court erred by 1) concluding that he was not seized during his encounter with two police officers and 2) refusing to consider his race in its seizure analysis. The Supreme Court of New Hampshire reversed and remanded the case finding that the State failed to meet its burden of showing that Jones was not seized. Of importance in this case is the court's consideration of race. ***Specifically, the court ruled, "[a]lthough we reach our conclusion irrespective of the defendant's race… we observe that race is an appropriate circumstance to consider in conducting the totality of the circumstances seizure analysis." Citing the Seventh Circuit, the court concluded that race is not irrelevant to the question of whether a seizure occurred, but it is not dispositive either.***

Dozier v. United States, 220 A.3d 933 (D.C. 2019)

- The District of Columbia Court of Appeals reversed Dozier's conviction for one count of possession of cocaine with intent to distribute, ruling that the officers did not have reasonable, articulable suspicion to seize Dozier and the pat-down conducted was in violation of the **Fourth Amendment.** Applying the totality-of-the-circumstances analysis, the court concluded that Dozier's encounter with the police was nonconsensual. They further concluded "even assuming that the officers' interaction with appellant began in a consensual manner, there was a Fourth Amendment seizure by the time appellant submitted to the officers' request to a pat-down." The court emphasized that an innocent person in Dozier's situation would not have felt free to decline the request to speak after approached by "two uniformed and armed police officers who engaged in repeated questioning and escalating requests, culminating with a request to put his hands on the wall for a pat-down, at a time when he was alone, at night, in a

secluded alley partially blocked by a police cruiser with two additional offers standing by." The court noted other factors, *including race*, that they believed "relevant in evaluating the coercive character of the overall setting of the encounter. First, that it took place in a 'high crime area' and involved an African-American man." ***The court explained that even an innocent person might fear that he is perceived with particular suspicion by hyper-vigilant police officers expecting to find criminal activity in a particular area; and that fear is particularly justified for persons of color, who are more likely to be subjected to this type of surveillance ("An African-American man facing armed policemen would reasonably be especially apprehensive").***

Utah v. Strieff, 136 S. Ct. 2056 (2016)

Editorial Note: This case is included for its fabulous dissent by Justice Sotomayor which touches on the racial dimension of suspicionless stops and unconstitutional searches.

- Majority opinion: The U.S. Supreme Court held that where an officer made an unconstitutional investigatory stop, learned during the stop that the suspect was subject to a valid arrest warrant (unpaid parking ticket), arrested the suspect, and seized incriminating evidence during a search incident to that arrest, the evidence the officer seized as part of the search incident to the arrest was admissible under the **Fourth Amendment** because the officer's discovery of the arrest warrant attenuated the connection between the unlawful stop and the evidence seized incident to arrest.
- In Justice Sotomayor's **dissent**, however, she less forgivingly laments that "this case allows the police to stop you on the street, demand your identification, and check it for outstanding warrants—even if you are doing nothing wrong." She argues that the existence of a warrant not only gives an officer legal cause to arrest a person, but it also forgives the officer who, with no knowledge of the warrant at all, unlawfully stops the person on a "whim or hunch." More importantly, Justice Sotomayor's dissent ***touches on the racial dimension of suspicionless stops and unconstitutional searches, contending that people of color are disproportionately victims of suspicionless stops.*** ("For generations, black and brown parents have given their children 'the talk'—instructing them never to run down the street; always keep your hands where they can be seen; do not even think of talking back to a stranger—all out of fear of how an officer with a gun will react to them.")

United States v. Smith, 794 F.3d 681 (7th Cir. 2015)

Referenced in Racial Profiling Section

- The United States Court of Appeals for the Seventh Circuit held that ***officers' encounter with a Black defendant in a dark alley at night in a minority-dominated urban area was a seizure under the Fourth Amendment, and that he was not free to leave***. The Court further acknowledged that race was relevant in everyday police encounters with citizens in Milwaukee and around the country, and that there existed empirical data demonstrating the existence of racial profiling, police brutality, and other racial disparities in the criminal justice system.

State of North Carolina v. Twanpree Newshawn Ivey, 633 S.E.2d 459 (2006)

- The North Carolina Supreme Court held that the officer did not have probable cause to believe the defendant violated any traffic law and therefore was not justified in stopping and searching his vehicle. In September 2002, an officer stopped Twanpree Newshawn Ivey, a Black man, for

failing to use a turn signal. The officer's description of the vehicle is relevant in this summary because it reinforces Mr. Ivey's argument that he was stopped for "driving while black." The vehicle was a "white Chevrolet Tahoe sport utility with tinted windows and expensive fancy chrome wheels, in an urban area." Mr. Ivey consented to the search, a firearm was recovered, and he was later convicted of possession of a firearm by a felon and carrying a concealed weapon. The Court ruled that police must have "probable cause to believe a traffic violation occurred" to stop a vehicle. In North Carolina. failing to give a signal during a turn is not a violation unless some other vehicle or pedestrian is affected by such movement. Accordingly, Mr. Ivey did not violate the traffic law because there were no other cars in the intersection or pedestrians. Therefore, the officer lacked probable cause to stop Mr. Ivey's vehicle. Since there was no probable cause for the stop, the subsequent search was unconstitutional and the fruit that arose from the illegal stop should have been excluded. Mr. Ivey's convictions were vacated and the case reversed and remanded.

United States v. Bellamy, 619 A.2d 515 (1993)

- The District of Columbia Court of Appeals found in favor of four young African-American appellees, suppressing evidence seized in an unjustified Terry stop. In 1991, four young men pulled up next to an undercover police car. Tommy Murray, one of the young men in the car made a gun gesture with his hand looking at the officer and mouthed the word "pow." When the light changed the young men drove away. The officers followed the young men for five blocks. No traffic laws were violated but the officers called for backup. Eventually the officers stopped the vehicle, ordered the young men out of the car and forced them to the ground. One officer recovered a gun in "plain view." All of the young men were charged with possession of an unlicensed firearm, carrying a pistol without a license, and unlawful possession of ammunition. The Court of Appeals affirmed the trial court's decision granting the motion to suppress. The government argued the officer felt threatened and the "finger gun" gesture was objectively indicative there was a gun in the car and justified a *Terry* stop.
- The Court held that Mr. Murray's gesture did not give the officers reasonable articulable suspicion to justify a *Terry* stop. "SCOTUS clearly established that an officer must have more than a hunch, can point to specific and articulable facts, taken together with rational inferences to warrant intrusion." The gesture was rude and childish, but it was not threatening, and "there is an understanding that police officers must have thicker skin than others because they are subjected to rude treatment." Moreover, there was no flight or traffic violation that gave rise to the stop and Mr. Murray likely had no idea the plain clothed officers were cops. The officer testified that the incident occurred in a high crime area known for prostitution, not drugs and violence. The Court held that this argument was insignificant to justify stopping the young men. Additionally, ***there was discussion from the government regarding racial animosity in support of the officer feeling threatened by "four African-American men and two White officers." The trial court did not give this argument much credence, "I'm very sorry, it's another sad day for race relations."*** Accordingly, the Court of Appeals affirmed the order granting the motions to suppress.

Warrantless Searches

In re Edgerrin J. 57 Cal.App.5th 752 (2020)

- The California court of appeals held that three minors were detained and not free to leave when four officers approached their vehicle, blocked each door preventing the boys from leaving, and ran a check on all three minors. The detention was not supported by reasonable suspicion when the boys were legally parked in a residential neighborhood and a white woman flagged down the police and reported that there were ***"black males in a parked black Mercedes on her street who were acting shady."*** The woman's tip alone was not enough to support the officers' detention and the allegation of "shady" behavior was far too vague to suggest criminal activity. Although the officers learned during their check that Mr. Edgerrin was on probation and subject to a "Fourth Amendment waiver" as a condition of that probation, the court held that the officers did not know about the waiver before the stop and did not know that Mr. Edgerrin was a "known gang member." As the court noted, "[a]fter-acquired knowledge of a probation search condition cannot justify an otherwise unlawful detention or search."
- The concurring opinion noted that judges and courts must be compelled to acknowledge and confront issues of racial injustices when they arise. Here, "three Black male teenagers sitting in a legally parked vehicle were detained by four police officers, based on an unreliable tip from a white woman that the minors were acting shady." ***"Officers and judges must be vigilant about how implicit biases may have influenced the perception that the Black males were a threat." As our society continues to grapple with "racial inequalities that have resulted in state-sanctioned violence, including lethal violence, against Black people throughout our history to this very day;" and "it is no secret that people of color are disproportionate victims of this type of scrutiny in suspicion less stops.***" There are many ways "in which racial perceptions and biases might surface in a given criminal case, as in everyday life. As such, our opinion in this case ***"appropriately highlights the dangers of relying solely on this type of report as a basis to detain."*** Accordingly, the lower court judgments denying Mr. Edgerrin's motion to suppress a firearm and other evidence recovered from the vehicle was reversed, and the matters were remanded to juvenile court.

People v. Rubio, 43 Cal.App.5th 342 (2019)

- The California court of appeals held that the police could not avail themselves of the emergency aid exception to enter the defendant's (Mr. Rubio's) home because they had no evidence that someone in his home was injured or in danger. The officers also could not rely on exigent circumstances because they had no evidence that a shooter was inside the residence or that evidence would be destroyed before or after Mr. Rubio's arrest. In October 2016, a shot spotter alerted the police about gunfire near Mr. Rubio's home. The officers observed shell casings on the ground near the garage of the home and arrested another male walking from the backyard of Mr. Rubio's property. The officers banged on Mr. Rubio's garage door, thought they heard someone inside trying to block the entrance, and eventually kicked down the door to Mr. Rubio's apartment and seized a pistol. The lower court denied Mr. Rubio's motion to suppress evidence based on the warrantless entry.
- In reversing the lower court and holding that the police had no justification for kicking down Mr. Rubio's door, the court noted that "***we cannot ignore that as a practical matter neither society nor our enforcement of the laws is yet color-blind, and the resulting uneven policing may reasonably affect the reaction of certain individuals-including those who are innocent-to law enforcement."*** As such, although the shot spotter led the officers outside Mr. Rubio's home, there was no evidence that the gunfire was directly from his home, and "evidence that two people in this high-crime neighborhood were antagonistic towards the police" was not enough to justify a warrantless entry. "Mr. Rubio, as much as any American,

has the right to retreat into his own home and be free from unreasonable governmental intrusion, and he should not need a barricade to fortify that right." The judgment is reversed, and the case is remanded for further proceedings.

Selective Prosecution

United States v. Armstrong, 517 U.S. 456 (1996)

Editorial Note: Even when discriminatory intent is hard to prove, defenders may file selective prosecution motions anyway to educate the judge about the presence of bias even if the legal standard will ultimately be difficult to meet.

- After defendants were indicted on charges of conspiring to possess and distribute cocaine, and federal firearms offenses, they ***filed a motion for dismissal alleging that they were selected for federal prosecution because they were African-American.*** The defendants supported their claim of selective prosecution with a study showing that all 24 crack-cocaine cases closed by the district's federal public defender in the preceding year involved Black defendants. The United States Supreme Court denied the defendant's claim of selective prosecution because they failed to show that the government declined to prosecute similarly situated suspects of other races.

Transfer/Waiver

State v. Quijas, 457 P.3d 1241 (Wash. Ct. App. 2020)

- Quijas, a 15-year-old Hispanic male, was charged with murder in the second degree. After a hearing on the State's motion for a discretionary decline of juvenile court jurisdiction, he was transferred to adult court, where he pled guilty and was sentenced to confinement for 180 months. Quijas appealed the juvenile court's decision for discretionary decline contending (1) that the juvenile court based its decision solely on the seriousness of the crime and (2) that the court did not rule on his claim that the declination process was tainted by racial prejudice. In his briefing for the motion on discretionary decline, he alleged that in ***"Washington State, and locally in Skagit County, Hispanic youth [we]re being declined and tried in adult court at a rate disproportionate to their percentage of the population. This should be a concern to the court, as it raises both equal protection and due process concerns."*** The Court of Appeals of the State of Washington denied Quijas first claim, but on his second claim ruled that the ***transfer of his case to adult court was done improperly because his claim of racial bias was never addressed by the juvenile court***. "Our Supreme Court has made clear that ***trial courts must be vigilant in addressing the threat of explicit or implicit racial bias that affects a defendant's right to a fair trial***… [w]hen confronted by such a claim…the trial court must rule." The Court reversed in part and remanded the matter to superior court for further proceedings.