

# RECENT THIRD CIRCUIT AND SUPREME COURT CASES

---

April 2, 2015  
Christofer Bates, EDPA

## SUPREME COURT

### **I. Sarbanes-Oxley Act / Destruction of Tangible Object to Obstruct a Federal Investigation**

*Yates v. United States*, --- S. Ct. ---, 2015 WL 773330 (Feb. 25, 2015).

- (1) A tangible object, within the meaning of the Sarbanes-Oxley Act's anti-shredding provision, 18 U.S.C. § 1519, covers objects that one can use to record or preserve information.
- (2) Disposal of an undersized fish did not involve the destruction of a tangible object for purposes of criminal liability under 18 U.S.C. § 1519.

### **II. Electronic Monitoring of Sex Offenders / Fourth Amendment / Searches**

*Grady v. North Carolina*, --- S. Ct. ---, 2015 U.S. LEXIS 2124 (Mar. 30, 2015)

A state conducts a search when it attaches a device to a person's body, without consent, for the purpose of tracking that individual's movements, whether the monitoring is civil or criminal in nature.

Grady had previously been ordered by a state court to submit to satellite-based monitoring as a recidivist sex offender. The Supreme Court remanded this case to the North Carolina courts to determine whether the monitoring was a reasonable search.

### **III. Cert. Granted – Conspiracy to Commit Extortion**

*Ocasio v. United States*, No. 14-361 (Cert. Granted Mar. 2, 2015).

**ISSUE:** Whether a conspiracy to commit Hobbs Act extortion requires that the conspirators agree to obtain property from someone outside the conspiracy.

**NOTE:** It appears only the Fourth and Sixth Circuits have considered this issue.

## THIRD CIRCUIT

### I. Facially Invalid Search Warrant / Exclusionary Rule / Officer Culpability

*United States v. Wright*, --- F.3d ---, 2015 WL 507169 (3d Cir. Feb. 6, 2015).

The agent in this case violated the Fourth Amendment's particularity requirement by executing a search warrant for Wright's home that lacked the list of items to be searched for and seized. That list was in a probable cause affidavit presented to, and approved by, the magistrate, but was removed before execution and placed under seal to protect an ongoing investigation. However, the Third Circuit held that the agent's conduct did not warrant suppression of the evidence because it did not rise to the level of gross negligence.

The Third Circuit has synthesized the Supreme Court's opinions in *United States v. Leon*, 468 U.S. 897 (1984) and *Herring v. United States*, 555 U.S. 135 (2009), explaining that when a warrant is so facially deficient that it fails to particularize the things to be seized, the officers are *usually* at least grossly negligent and cannot rely on the good faith exception to save the search. However, this is not a categorical rule. The district court must evaluate the totality of the circumstances and consider any defects in the warrant, as well as the officer's conduct in obtaining and executing the warrant and what the officer knew or should have known. The court should also consider the extent to which the violation undermined the purposes of the Fourth Amendment and what the government gained from the violation, which are both relevant to the deterrence rationale underlying the exclusionary rule. The Third Circuit defined "gross negligence" as the lack of "even scant care and the failure to exercise even that care which a careless person would use."

The Fourth Amendment's particularity requirement provides written assurance that the magistrate judge actually found probable cause to search for and seize every item mentioned, prohibits general searches, and informs the subject of the search of the lawful authority of the executing officers and the limits on their power to search. The search here was properly supervised by the case agent, who assured that the other officers confined their search in accordance with the warrant's limits. Second, it was clear the magistrate judge found probable cause as to each item to be searched for and seized, because when the warrant was approved, the affidavit was attached and incorporated a detailed list of items to be searched for and seized.

Although the third purpose of the particularity requirement was undercut by the agents' actions, the Court explained it is "unclear" how Wright was harmed by his inability to read the list of items the agents sought to search for and seize. Thus, the government gained nothing from this Fourth Amendment violation. The Third Circuit noted that only if mistakes like this one "recur with some frequency" will a defendant be in a position to argue that suppression is warranted.