GILBERT LAW SUMMARIES
Criminal Procedure
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CHAPTER TWO

The Fourth Amendment

Reasonable Expectation of Privacy Requirement

§ B. 3.

[p. 33 – before section on Standing, add:]

In **United States v. Tuggle**, 4. F.4th 505 (7th Cir. 2021), the court considered whether the government's use of cameras attached to poles located on public property that observed Tuggle's private residence for an extended period was a Fourth Amendment search. Together the three cameras captured nearly eighteen months of video footage. Held: No. The cameras only captured the outside of Tuggle's home and "Tuggle knowingly exposed the areas captured by the three cameras." The court distinguished **Jones** in which technology helped police capture "the whole of his physical movements" or his "public movements."

CHAPTER THREE

Fifth Amendment Privilege Against Self-Incrimination Approach

§ B. 3.

[p. 94, end of first paragraph, before Warnings – add:]

Although the decision in **Miranda** appeared to demand exclusion of any statement taken in violation of its directives, the U.S. Supreme Court has often described the decision as merely "prophylactic." As a result, despite the Court's apparent recognition in **Dickerson v. United States**, 530 U.S. 428 (2000), that **Miranda** is a "constitutional rule," members of the Court continue to disagree about Miranda's constitutional bona fides and to recognize exceptions to its fairly broad holding. [*See, e.g.*, **New York v. Quarles** and **Missouri v. Seibert**, *infra*]. In **Vega v. Tekoh**, 597 U.S. __ (Jun. 23, 2022), in the context of a lawsuit pursuant to 42 U.S.C. § 1983, the Court reiterated that Miranda warnings are merely "additional procedural protections" for core Fifth Amendment rights.

> In *Miranda*, the Court concluded that additional procedural protections were necessary to prevent the violation of this important right when suspects who are in custody are interrogated by the police. To afford this protection, the Court required that custodial interrogation be preceded by the now-familiar warnings . . . and it directed that statements obtained in violation of these new rules may not be used by the prosecution in its case-in-chief. *Miranda* itself and our subsequent cases make clear that *Miranda* imposed a set of prophylactic rules. Those rules, to be sure, are "constitutionally based," *Dickerson*, 530 U.S. at 440, 120 S. Ct. 2326, but they are prophylactic rules nonetheless.
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> . . .
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> [I]n the words of the *Dickerson* Court, the *Miranda* rules are "constitutionally based" and have "constitutional underpinnings." But the obvious point of these formulations was to avoid saying that a *Miranda* violation is the same as a violation of the Fifth Amendment right.
>
> …

After *Miranda* was handed down, the Court engaged in the process of charting the dimensions of these new prophylactic rules. As the Court would later spell out, this process entailed a weighing of the benefits and costs of any clarification of the rules' scope. *See* Shatzer, 559 U. S., at 106 ("A judicially crafted rule is 'justified only by reference to its prophylactic purpose,' . . . and applies only where its benefits outweigh its costs").

CHAPTER FIVE

The Trial

Right to Jury Trial

§ C. 6. c.

[page 145, add as an example]

In **Love v. Texas**, 596 U.S. __ (Apr. 18, 2022), the Court denied *certiorari* in a death penalty habeas case in which defense counsel had moved to exclude a prospective juror for cause on behalf of Love, a Black man, based on the juror's stated beliefs "that . . . non-whites commit more violent crimes than whites," "are statistically more violent than the white race," and "I believe in statistics." The trial court rejected defense counsel's argument. Defendant was convicted and sentenced to death. Over the dissent of Justices Sotomayor, Breyer and Kagan, the Court summarily denied *certiorari*.

[page 147 following section D. and before section E. add]

Venue

The Sixth Amendment guarantees the accused "the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law . . . ." In **Smith v. United States**, 599 U.S. __ (Jun. 15, 2023), the Court held that the remedy for a conviction in the wrong venue is to vacate the conviction and retry the defendant in the proper venue. The majority noted: "[T]he appropriate remedy for prejudicial trial error, in almost all circumstances, is simply the award of a retrial, not a judgment barring reprosecution."

CHAPTER SIX

Punishment

§ C. The Death Penalty

3. Limitations on Death Penalty

[page 189, add after d.]

It likely violates federal law, specifically the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), for a state prison system to deny a death penalty inmate's request for a religious advisor to "lay hands" on the inmate and "pray over" him. In **Ramirez v. Collier**, 595 U.S. __ (Mar. 24, 2022), the Court granted injunctive relief to a prisoner facing the death penalty who requested that his long-time pastor be present in the execution chamber. The Court found the inmate "likely to prevail on the merits of his RLUIPA claims."

CHAPTER EIGHT

Post-Conviction Issues

Collateral Attack on Convictions—Habeas Corpus

§ B. 6. c.

[page 208, add to the end of c. Failure to Comply with State Procedural Rules:]

To ensure that federal courts do not infringe on state sovereignty, the availability of federal habeas relief is narrow. In **Shinn v. Martinez Ramirez**, 596 U.S. __ (May 23, 2022), the Court refused to excuse a prisoner's failure to develop the state habeas record which was caused by postconviction counsel's negligence, continuing to ensure that it is very difficult for a habeas petitioner to obtain relief in federal court. Likewise, in **Shoop v. Twyford**, 596 U.S. __ (Jun. 21, 2022), the Court held it error for the federal habeas court below to grant the habeas petitioner's request to travel to a medical facility to undergo neurological testing in hopes of establishing that he suffered a brain injury as a teenager. Twyford had been convicted of aggravated murder and sentenced to death. The Supreme Court majority found the travel order erroneous because the inmate had not established that the results of such testing could be admissible in the habeas proceedings.

Nevertheless, "in exceptional cases where a state-court judgment rests on a novel and unforeseeable state-court procedural decision lacking fair or substantial support in prior state law, the decision is not adequate to preclude review of a federal question." [**Cruz v. Arizona** 598 U.S. __ (Feb. 22, 2023)]. In **Cruz**, the defendant was sentenced to death after conviction for murdering a police officer. During trial, he contended that his Due Process rights were violated because he was precluded from telling the jury that a life sentence in Arizona made him ineligible for parole. After his death sentence was final, the U.S. Supreme Court in an unrelated case clarified that Arizona law precluding arguments such as the defendant's was unconstitutional. Held: Defendant Cruz should have been able to pursue a habeas claim in federal court notwithstanding the "adequate and independent state grounds doctrine."

§ B. 8

[Page 214, add]:

In **Jones v. Hendrix**, 599 U.S. __ (Jun. 22, 2023), the U.S. Supreme Court rejected Jones's attempt to challenge, via a habeas petition, his conviction for unlawfully possessing a firearm as a felon. After Jones's federal conviction became final, the Court ruled in **Rehaif v. United States**, 139 S. Ct. 2191 (2019), that "the Government must prove both that the defendant knew he possessed a firearm and that he knew he belonged to the relevant category of persons barred from possessing a firearm." Jones sought habeas relief, based on statutory innocence, relying on **Rehaif**, because he had admitted to his felon status but believed that his record had been expunged. Despite the favorable Rehaif decision, in rejecting Jones's habeas petition, the Court reiterated that a federal prisoner may not "file a second or successive §2255 motion based solely on a more favorable interpretation of statutory law adopted after his conviction became final and his initial §2255 motion was resolved." The Court reasoned that the holding in *Rahaif* "satisfied neither of §2255(h)'s gateway conditions for a second or successive §2255 motion: It was neither 'newly discovered evidence,' . . . nor 'a new rule of constitutional law[.]"

CHAPTER ELEVEN

DOUBLE JEOPARDY

§ B 1. c. (1) Appeal by Defendant for Trial Error

[Page 233, add after c. (1)]

Double Jeopardy does not bar re-prosecution of a defendant tried in the wrong venue, only the conviction is vacated. "[T]he mere burden of a second trial has never justified an exception from the [usual] retrial rule." **Smith v. United States**, 599 U.S. __ (June 15, 2023).

§ B. 2. c. Dual Sovereignties

[Page 241, add to end of (2) Tribal Courts:]

Denezpi v. United States, 596 U.S. __ (Jun. 13, 2022) (Double Jeopardy does not prohibit successive prosecutions when the first prosecution is in a CFR court for a defendant's violation of the Code of the Ute Mountain Ute Tribe, and the subsequent prosecution is in the District of Colorado for violation of the federal Major Crimes Act, because they constitute separate offenses).