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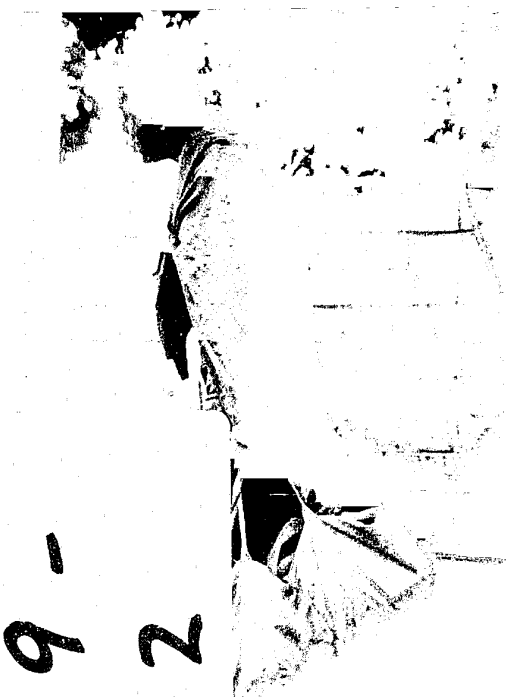

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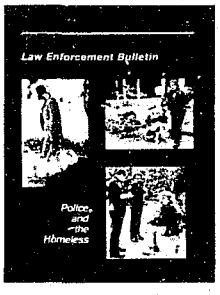

The Cover: *As the number of homeless in this country continues to grow, public policy must address the problems they present to law enforcement. Cover photos courtesy of Victor Alferos, Santa Monica, California, Police Department.*

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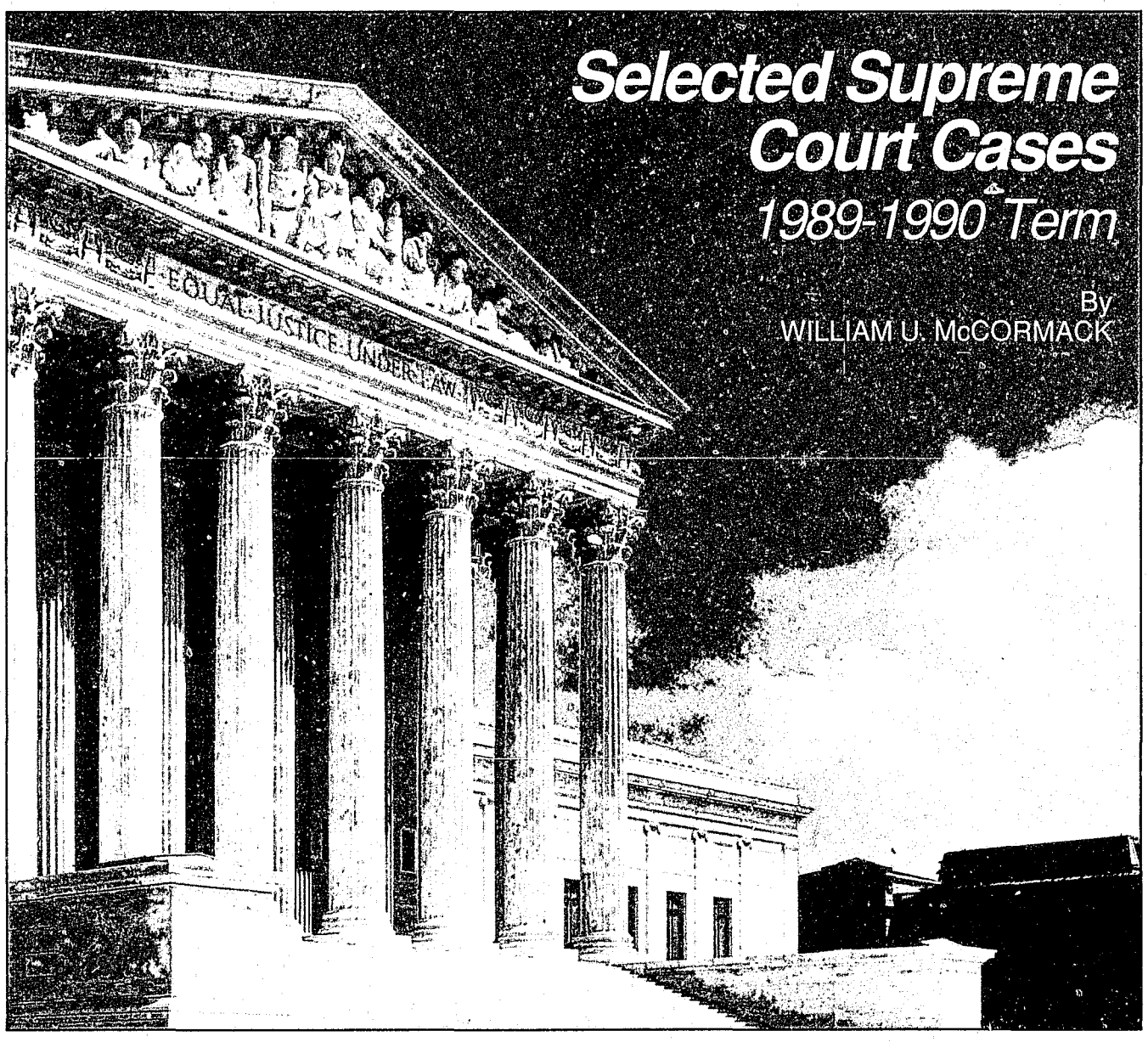

Selected Supreme Court Cases 1989-1990 Term

By
WILLIAM U. McCORMACK

During its 1989-1990 term, the U.S. Supreme Court ruled on several cases that are of particular interest to law enforcement. Specifically, the Court decided cases involving the fourth amendment that clarified the scope of a protective sweep, ruled that inadvertence is not a requirement of a plain view seizure, and upheld the validity of a highway checkpoint designed to deter drunk driving. In other fourth amendment cases, the Court found that a search based on a police officer's reasonable belief in the apparent authority of a person to consent to the search is valid, ruled that an overnight guest in a residence has an expectation of privacy in that residence, and held that the fourth amendment does not apply to a search in a foreign country of the home of a foreign national being tried in the United States.

In the fifth amendment area, the Court ruled that an incarcerated inmate's incriminating statements to an undercover police officer were admissible at trial, despite the lack of *Miranda* warnings, and that an illegal warrantless arrest of a suspect in his home does not require

the suppression of an incriminating statement given by the suspect outside his home. The Court also decided cases involving first and sixth amendment issues, which upheld the criminal prosecution of child pornographers and the admission into evidence of child abuse victim-witness testimony in child abuse trials using a one-way, closed-circuit television system.

These and other cases of particular interest to law enforcement officers are summarized below.

FOURTH AMENDMENT

Maryland v. *Buie*, 110 S.Ct. 1093 (1990)

In *Buie* the Court ruled that police may conduct a protective sweep of closets and adjoining spaces of a home after an arrest in the home without any reason or suspicion to believe others are present who pose a threat. Also, according to this decision, police may conduct a protective sweep of other rooms or spaces in the home if they have reasonable suspicion someone is present who poses a threat.

In the case, two men committed an armed robbery, one of whom was wearing a red running suit. Police obtained an arrest warrant for the defendant charging him with the robbery and went to his house to arrest him. Once inside the house, the police fanned out through the first and second floors, while one officer covered the basement. The officer covering the basement twice shouted into the basement ordering anyone down there to come up. After the defendant eventually answered, he emerged from the basement and was arrested. Thereafter, another officer went down into the basement to see if there was anyone else there. While in the basement, the officer saw a red running suit in plain view, which he seized. The Maryland trial court admitted the running suit into evidence, but the Court of Appeals of Maryland overturned that ruling, concluding that the police needed probable cause to believe there was someone posing a danger before they could lawfully enter the basement. The U.S. Supreme Court reversed.

The Court ruled first that incident to an in-home arrest, the police may look in closets and other spaces immediately adjoining the place of arrest without probable cause or reasonable suspicion that anyone is in those spaces. Beyond the adjoining spaces, however, the Court ruled that there must be articulable facts that would warrant a reasonably prudent police officer in believing that the area to be swept harbors an individual posing a danger to those on the arrest scene. In addition, the Court noted that the sweep may only be a cursory inspection and may last no longer than it takes to dispel the reasonable suspicion of danger.

Horton v. *California*, 110 S.Ct. 2301 (1990)

In *Horton* the Court ruled that the fourth amendment does not prohibit the warrantless seizure of evidence in plain view, even though the discovery of the evidence is not inadvertent.

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In the case, the defendant became a suspect in an armed robbery of a coin dealer. The police obtained a warrant to search only for the proceeds of the robbery, despite also having probable cause to search for weapons used during the robbery. During the course of the search, the police seized weapons located in plain view, which they believed were used during the robbery. The trial court refused to suppress the weapons seized in plain view, even though their discovery was not inadvertent. The Supreme Court upheld the trial court's decision.

The Court stated that a plain view seizure of evidence only serves to supplement a prior legitimate reason for being in a particular location, and police have little or no reason to intentionally omit items from a search warrant when they have probable cause to believe

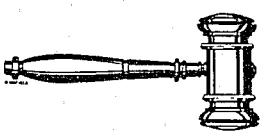
the items are in a particular location. Thus, inadvertence is not a requirement of a plain view seizure.

Michigan Department of State Police v. *Sitz*, 110 S.Ct. 2481 (1990)

In *Sitz* the Court ruled that the fourth amendment does not forbid the initial stop and brief detention of all motorists passing through a highway checkpoint established to detect and deter drunk driving.

In the case, the Michigan State Police established a sobriety checkpoint program in which all vehicles passing through a checkpoint would be stopped and their drivers briefly examined for signs of intoxication. Sitz and others filed a lawsuit seeking declaratory and injunctive relief from potential subjection to the checkpoints, and the Michigan courts held that the program violated the fourth amendment. The Supreme Court reversed.

The Court stated that the balancing analysis appropriate for determining the legality of highway checkpoints should consider the magnitude of the drunk driving problem and the slight intrusion on motorists caused by such checkpoints. Balancing these factors with the fact the checkpoints reasonably advanced Michigan's interest in preventing drunk driving, the Court held that the checkpoints were consistent with the fourth amendment.

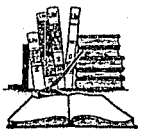


Illinois v. *Rodriguez*, 110 S.Ct. 2793 (1990)

In *Rodriguez* the Court ruled that a warrantless entry into a residence based upon the consent of a third party is legal if police, at the time of entry, reasonably believe that the third party possesses common authority over the premises, even if the third party in fact does not.

In the case, a woman advised police that she was severely beaten by the defendant earlier that day in an apartment where the defendant was then sleeping. During her conversation with police, she referred to the apartment as "our" apartment and said that she had clothes and furniture there. She consented to travel to the apartment with police and unlock the door with her key so the defendant could be arrested. Based on her consent, police entered the apartment without an arrest or search warrant and observed drugs and drug paraphernalia in plain view and arrested the defendant. The trial court concluded that this woman did not have common authority over the apartment and suppressed the drug evidence.

The U.S. Supreme Court reversed and ruled that for consent searches to be reasonable, the authority of a person to consent to a search must be judged against an objective standard; that is, would the facts available to the officer at the moment of the consent cause someone of reasonable caution to believe that the consenting party had authority over the premises. The Court remanded the case to determine if, at the time of the entry, the officers had established facts supporting a reasonable belief that the woman had authority to consent.



Minnesota v. *Olson*, 110 S.Ct. 1684 (1990)

In *Olson* the Court ruled that overnight guests in a residence have an expectation of privacy and are protected by the fourth amendment against warrantless police intrusions into that residence.

In the case, police had identified the defendant as a suspect in an armed robbery and received a telephone call from a woman who stated that he had been involved in the robbery and was planning to leave town. The woman called again and told police that the defendant had told two other women who resided at a particular address about his participation in the armed robbery. The police went to that residence and determined that the two women lived in the upper unit. Another woman who resided in the lower unit told police the defendant had been staying in the upper unit, and she promised to call police when he returned. The defendant was arrested in the residence without a warrant. An hour later, at police headquarters, he provided an inculpatory statement that the Minnesota courts ruled inadmissible as the fruit of an illegal arrest. The Supreme Court affirmed.

The Court found that the defendant's status as an overnight guest in another's home was,

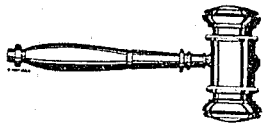
standing alone, enough to show he had an expectation of privacy in the home that society is prepared to accept as reasonable. Moreover, the warrantless entry to arrest was not justified by exigent circumstances because, as the State court correctly noted, even though the crime was serious, the residence was surrounded by police, there was no suggestion that others in the dwelling were in danger, and it was evident that the defendant was going nowhere.

***United States* v. *Verdugo-Urquidez*, 110 S.Ct. 1056 (1990)**

In *Verdugo-Urquidez* the Court ruled that the fourth amendment does not apply to the search and seizure by U. S. agents of property owned by a nonresident alien which is located in a foreign country.

In the case, the defendant, a resident and citizen of Mexico, was arrested on drug charges by U.S. Marshals, after which DEA agents and Mexican police conducted searches of his residences in Mexico. Certain documents that were seized in those searches were suppressed at the defendant's trial in U.S. district court, and the Ninth Circuit Court of Appeals affirmed. The Supreme Court reversed.

The Court first looked at the text of the fourth amendment and concluded that its reach extends only to "the people." The Court then determined that "the people" is a term of art employed in the Constitution to mean persons who are part of a national community or who have otherwise developed sufficient connection with the United States to be considered part of that community. The Court found that the defendant did not have any substantial connection with this country when the search of his residences in Mexico took place, such that he would be considered part of "the people" as used in the fourth amendment. The Court concluded that the fourth amendment does not apply in a situation such as this, where at the time of the searches in Mexico, the defendant was a resident and citizen of Mexico with no voluntary attachment to the United States.



***Alabama* v. *White*, 110 S.Ct. 2412 (1990)**

In *White* the Court ruled that an anonymous tip, which is corroborated by independent police work, can in some cases exhibit sufficient indicia of reliability to provide reasonable suspicion for an investigatory stop.

In the case, a police officer received an anonymous call that the defendant would be leaving a certain apartment at a particular time in a brown Plymouth station wagon with the right taillight lens broken and that she would be going to a particular motel with cocaine inside a brown attaché case. The police observed the defendant leave that apartment without an attaché case and enter a brown Plymouth station wagon with a broken right taillight. The police followed that car as it travelled the most direct route to the motel. Just before the defendant arrived at the motel, police stopped the car, obtained consent to search, and found in the car a brown attaché case containing marijuana and also cocaine in the defendant's purse. The Alabama courts suppressed this drug evidence holding that the officers did not have sufficient reasonable suspicion to stop the defendant. The Supreme Court reversed.

The Court stated that reasonable suspicion to temporarily detain a person must be established based on the totality of the circumstances and held that sufficient indicia of reliability were established by the police verifying the information provided by the anonymous caller. The Court stated that because only a small number of people are generally privy to an individual's itinerary, it is reasonable for police to believe that a person with access to such information is likely to also have access to reliable information about the individual's illegal activities.

***Florida* v. *Wells*, 110 S.Ct. 1632 (1990)**

In *Wells* the Court held that the opening of a closed container by a Florida Highway Patrol trooper for inventory purposes was illegal, be-

cause the Florida Highway Patrol had no policy concerning the opening of closed containers encountered during an inventory search.

In the case, a Florida Highway Patrol trooper stopped the defendant for speeding, and after smelling alcohol on his breath, arrested him for driving under the influence. The defendant's car was later impounded, and an inventory turned up two marijuana cigarettes in the ashtray and a locked suitcase in the trunk. The locked suitcase was opened, and a garbage bag with marijuana was found. The Florida Supreme Court ruled that the trial court erred in not suppressing the evidence found in the locked suitcase. The Supreme Court affirmed.

The Court ruled that standardized criteria or an established routine must regulate the opening of containers found during inventory searches, and because the Florida Highway Patrol had no policy whatsoever concerning the opening of closed containers encountered during an inventory search, the search of the suitcase violated the fourth amendment. The Court added that it is not necessary for an inventory policy concerning closed containers to be all or nothing and that a department policy may allow a police officer sufficient latitude to determine whether a particular container should be opened in light of the nature of the search and characteristics of the container.

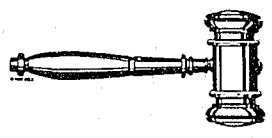
FIFTH AMENDMENT

Illinois v. *Perkins*, 110 S.Ct. 2394 (1990)

In *Perkins* the Court ruled that an undercover law enforcement officer posing as a fellow inmate need not give *Miranda* warnings to an incarcerated suspect before asking questions that may elicit an incriminating response.

In the case, the defendant was incarcerated pending trial on an aggravated assault charge. Police suspected him of a murder and placed an undercover police officer in his cellblock who suggested to the defendant that they escape, promised to be responsible for any murder that occurred during that escape, and then asked the defendant if he had ever "done" anybody. The defendant replied that he had and then proceeded to describe at length the events of the murder for which he was a suspect. The Illinois courts suppressed this confession given to the undercover officer. The Supreme Court reversed.

The Court concluded that *Miranda* warnings were designed to preserve an individual's fifth amendment right against compelled self-incrimination during questioning in a "police-dominated atmosphere" and that the essential ingredients of a "police-dominated atmosphere" and compulsion are not present when an incarcerated person voluntarily speaks to a fellow inmate. The Court, therefore, held that the statement given by the defendant to a person he thought was a fellow inmate was not in violation of *Miranda* and should be admissible at trial.



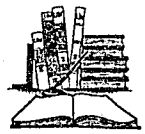
New York v. *Harris*, 110 S.Ct. 1640 (1990)

In *Harris* the Court ruled that an illegal warrantless arrest of a suspect in his home does not require the suppression of an incriminating statement given by the suspect outside his home.

In the case, police developed probable cause to arrest the defendant for murder, but then arrested him in his apartment without an arrest warrant. After officers read him his *Miranda* rights, he admitted to the murder and was taken to the station house where he was again informed of his *Miranda* rights, which he waived, and then signed an inculpatory statement. The New York Court of Appeals ruled that this second statement was a fruit of the illegal entry into the defendant's apartment, and therefore, should have been suppressed. The U.S. Supreme Court reversed.

The Court ruled that even if the warrantless arrest of the defendant in his home was illegal, his continued custody at the station house was lawful, and the second statement was not the fruit of the fact the defendant was arrested in his house rather than someplace else. The Court noted that any evidence seized or statements obtained from a defendant in his

home after an illegal arrest will be inadmissible.



***James* v. *Illinois*, 110 S.Ct. 648 (1990)**

In *James* the Court held that the impeachment exception to the exclusionary rule, which allows the prosecution to introduce illegally obtained evidence to impeach the defendant's testimony, should not be extended to allow impeachment of all defense witnesses.

In the case, police arrested the defendant for murder and questioned him about a suspected change in his hair color, and he admitted to changing it to a different color from the color the previous evening when the murder was committed. These statements about his hair color were later ruled inadmissible as the fruit of a fourth amendment violation because the detectives lacked probable cause to arrest. However, the trial court permitted the prosecution to use these illegally obtained statements to impeach the credibility of a defense witness, which the Illinois Supreme Court affirmed. The U.S. Supreme Court reversed.

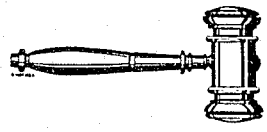
The Court concluded that expanding the impeachment exception to the exclusionary rule to include all defense witnesses would chill some defendants from presenting their best defense through the testimony of others and would significantly weaken the exclusionary rule's deterrent effect on police misconduct. The Court determined that the current exception, which allows impeachment of the defendant's own testimony with illegally obtained evidence, should remain unchanged.

***Pennsylvania* v. *Muniz*, 110 S.Ct. 2638 (1990)**

In *Muniz* the Court ruled that videotaped evidence of an arrestee's slurred speech in response to routine booking questions and of his performance of sobriety tests is nontestimonial and not within the scope of the fifth amendment privilege against compelled self-incrimination.

In the case, the defendant was arrested for driving while intoxicated, and while at the police station, his actions and words were recorded by videotape, including his slurred speech in response to routine booking questions and his performance of various sobriety tests. During the course of taking the sobriety tests, he made several unsolicited incriminating statements, but was not advised of his *Miranda* rights until after he answered the routine booking questions and took the sobriety tests.

The Supreme Court held that all of the defendant's videotaped words and actions at the police station were admissible at trial, except his response to a question during booking concerning the date of his sixth birthday. The Court stated that while his inability to articulate words in a clear manner in response to routine booking questions was not testimonial, his response to the sixth birthday question was testimonial because from the content of the response, it could be inferred that his mental state was confused. The Court also found that his performance of the sobriety tests was nontestimonial and that the incriminating statements he made while performing the tests were not elicited in response to interrogation.



SIXTH AMENDMENT

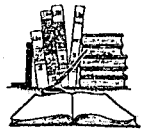
***Michigan* v. *Harvey*, 110 S.Ct. 1176 (1990)**

In *Harvey* the Court held that the prosecution may use a defendant's statement to impeach the defendant's testimony at trial, even when the statement is taken in violation of the defendant's sixth amendment right to counsel.

In the case, the defendant was arrested for first-degree criminal sexual conduct in connection with a rape. On the day of his arrest, he made a statement to police and was later arraigned and had counsel appointed for him. More than 2 months later, he told a police officer he wanted to make a statement, but did not know whether he should talk to his lawyer. The officer told him that he did not need to speak with his attorney, because his attorney would get a copy of the statement anyway. After being advised of his *Miranda* rights, he gave a statement concerning his version of the alleged rape. The trial court allowed this statement to be used to impeach

the defendant's testimony, but the Michigan Court of Appeals reversed. The U.S. Supreme Court reversed the Michigan Court of Appeals.

The Court concluded that there was no reason to treat a sixth amendment violation of the right to counsel differently than a fifth amendment *Miranda* violation. The Court ruled that if a statement is taken voluntarily, it may be used for impeachment purposes.



***Maryland* v. *Craig*, 110 S.Ct. 3157 (1990)**

In *Craig* the Court ruled that the sixth amendment does not invariably require face-to-face confrontation between a defendant and a child abuse victim-witness at trial, if the child abuse victim-witness will suffer emotional trauma by testifying in the presence of the defendant. The case involved child sexual abuse offenses in which the trial court permitted testimony of child abuse victims outside the presence of the defendant through the use of a one-way, closed-circuit television.

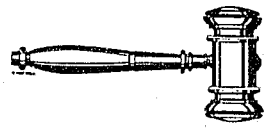
The Supreme Court held that the right to face-to-face confrontation with witnesses who testify against an accused is not absolute and may be denied when necessary to further an important public policy and where the reliability of the testimony is otherwise assured. The Court held that if a State makes an adequate showing of necessity, the State's interest in protecting child witnesses from the trauma of testifying in a child abuse case is sufficiently important to justify the use of a special procedure that permits a child witness in such cases to testify at trial against the defendant in the absence of a face-to-face confrontation with defendant.

***Idaho* v. *Wright*, 110 S.Ct. 3139 (1990)**

In *Wright* the Court held that an out-of-court statement by an alleged victim of child sexual abuse did not possess sufficient guarantees of trustworthiness to be admitted at trial, but ruled that an out-of-court statement may be admitted if it is determined that the child making the statement was particularly likely to be telling the truth when the statement was made.

In the case, a 2 1/2-year-old girl was interviewed by a pediatrician after it was alleged that the girl was being sexually abused. Incriminating statements made by the victim about the defendants were introduced at trial through the testimony of the pediatrician. The Supreme Court of Idaho held that the admission of the hearsay testimony of the pediatrician at trial violated the defendants' sixth amendment right to confront the witnesses against them. The U.S. Supreme Court affirmed.

The Court held that for hearsay testimony of this nature to be admitted, "particularized guarantees of trustworthiness" must be shown from the totality of circumstances. The Court ruled that hearsay statements by a child witness in a child abuse case may be admitted at trial if the child was particularly likely to be telling the truth when the statement was made. The Court concluded that because the pediatrician in this case conducted the interview of the 2 1/2-year-old child abuse victim in a suggestive and unreliable manner, the hearsay testimony should not be admitted.



FIRST AMENDMENT

***Osborne* v. *Ohio*, 110 S.Ct. 1691 (1990)**

In *Osborne* the Court held that an Ohio statute prohibiting the possession and viewing of child pornography does not violate the first amendment.

In the case, the defendant was convicted of violating an Ohio statute designed to combat child pornography. The conviction was based on photographs depicting a nude male adolescent posed in a sexually explicit position, which were seized from the defendant's home.

The Court distinguished this case from its earlier decision in *Stanley* v. *Georgia*, 394 U.S. 557 (1969), which struck down a law outlawing the private possession of obscene material. The Court ruled that States' interests in prohibiting the possession of child pornography are compelling and that States may constitutionally proscribe the possession and viewing of child pornography without violating the first amendment.

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