SIGNIFICANT DECISIONS
UNITED STATES SUPREME COURT AND THE COURT OF CRIMINAL APPEALS
FROM SEPTEMBER 2021 TO MAY 2022

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JUDGE, PLACE 9
Court of Criminal Appeals

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Acknowledgement

So, my law clerk is responsible for this paper. She overcame great adversity to bring this to you. My research attorney came onboard after she was hired and left before Christmas. Still, she persevered. All while also trying to draft opinions and do the work of two attorneys. But what do you expect from someone who graduated at the top of her class at Baylor Law? Anything smart comes from her. Any commentary comes from me. Don't blame her, she could not stop me.

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SCOTUS/CCA Update

Significant Decisions from September 2021 to May 2022.

I. INTRODUCTION

This paper covers the published opinions issued by the Court of Criminal Appeals between September 1, 2021, and May 20, 2022. It also includes the significant criminal cases from the United States Supreme Court that have broad applicability, issued between September 1, 2021, and May 20, 2022. However, we continue to update the paper as the respective court terms roll on. If you would like a copy of the complete paper at the end of the respective terms, please email me through Nichole Reedy at nichole.reedy@txcourts.gov and we'll do our best to get you a copy this summer. Because that's when the respective terms end. Not because we are sitting around or anything. Nichole is very busy you know.

Oh, and one more thing. I've tried a little something new on this paper and it may or may not work. If it doesn't work, then you aren't in any different position than you were reading last year's version of the paper so don't worry. But this year I have included hyperlinks to the related opinions online. So if you click on a case citation in this paper, hopefully, Google Chrome will pull up a link to the related opinions. Cases from the CCA and SCOTX have separate PDF files for majority and side opinions, so for those summaries I have tried to incorporate separate hyperlinks for corresponding opinions. United States Supreme Court opinions consist of only one file that has all opinions on it so there was no way for me to separate them out. For those cases you just get one hyperlink if you are interest. Of course, I can't guarantee that the version of the paper you receive at whatever CLE you choose to attend will have working functionality on this point. So, if you get a copy of this paper and it looks like there's a hyperlink, but it doesn't work when you click it, I'm sorry.

Of course, my sorrow does not translate into a license to email me or Nichole to ask how to make it work. I'm not volunteering to be your personal IT person and neither is Nichole. Nevertheless, if you want a copy of *our* PDF version of the paper so you can see if that does work, you can reach out to us and we will send our master PDF copy to you. I know, master PDF sounds so serious. I just mean the original PDF we send out to be included in CLE material. It's not that serious. In any event, I wish you way more than luck.

II. MOTIONS TO SUPRESS

A. Search Warrants

1 Boilerplate language may be used in an affidavit for a search warrant, but to support probable cause, the language must also be coupled with other facts and reasonable inferences that establish a nexus between the device and the offense. John Wesley Baldwin became a suspect for the murder of Adrianus Kusuma after his white sedan was identified as the vehicle witnesses saw leaving the victim's house the day of the murder. After being stopped by police while driving the white sedan, Baldwin consented to a search of the sedan, and a cell phone was found inside. He refused to consent to a search of the phone, so investigators obtained a search warrant. The affidavit for the search warrant recited that multiple witnesses observed two Black men fleeing the victim's house or leaving the neighborhood at a high rate of speed in a white, 4-door sedan on the day of the murder; the neighborhood only had one point of ingress and egress; the same white sedan had also been observed repeatedly circling the neighborhood in the days before the murder; one of the witnesses recorded the vehicle's license plate number, which police used to connect the vehicle to Baldwin; Baldwin was pulled over while driving the white sedan days after the murder, and a cell phone was found inside the vehicle; and cell phones are commonly used to communicate about crimes and can often provide an approximate location of a suspect at or near the time of an offense.

A grand jury later indicted Baldwin for capital murder for murdering Adrianus Kusuma in the course of robbing him. Baldwin filed a pre-trial motion to suppress the evidence found on the phone. The trial court concluded that the search warrant affidavit was insufficient to connect either Baldwin or his cell phone to the murder and suppressed the evidence from the phone. The State appealed, and an en banc court of

appeals affirmed. The court of appeals held that the affidavit did not establish a nexus between Baldwin's car and the murder, nor did it show a nexus between the cell phone and the offense.

The Court of Criminal Appeals affirmed. ***State v. Baldwin*, --- S.W.3d ---, 2022 WL 1499508 (Tex. Crim. App. May 11, 2022) (5:0:4).** Writing for the Court, Judge McClure explained that there was a nexus between Baldwin's car and the offense. It was reasonable for the magistrate to infer that Baldwin's car, which he was driving days after the murder, was linked to the offense based on the information included in the affidavit. In concluding otherwise, the court of appeals failed to give deference to the magistrate's implied findings with respect to the nexus between the sedan and murder, and it applied an overly demanding standard for probable cause. However, the Court agreed with the court of appeals that the affidavit failed to establish a nexus between the cell phone and the offense. For the magistrate to reasonably determine probable cause, the search warrant affidavit must contain specific facts connecting the items to be searched to the alleged offense. In this case, the affidavit contained generic, conclusory statements regarding the use of cell phones in criminal activity in general, but it did not allege any particular facts tying Baldwin's phone to the offense. Such boilerplate language was alone insufficient to establish a fair probability that evidence of the murder would be found on the cell phone.

Presiding Judge Keller filed a dissenting opinion, joined by Judges Yeary, Keel, and Slaughter. Presiding Judge Keller agreed that boilerplate language in a probable-cause affidavit for the search of a cell phone had to be coupled with other facts and reasonable inferences to establish a nexus between the device and the offense. But she disagreed that the affidavit in this case failed to establish a nexus. In Presiding Judge Keller's view, the affidavit sufficiently connected the cell phone to the offense because (1) the cell phone was found in Baldwin's car, which was linked to the crime; and (2) the offense was committed by two people and would have required coordination, so cell phone use could be expected.

Judge Yeary filed a dissenting opinion. Judge Yeary clarified that he understood the Court's use of "boilerplate" to mean "generic." He also agreed with Presiding Judge Keller that the affidavit established a sufficient nexus to search the phone. But even if he did not agree, Judge Yeary would have considered whether the affidavit contained sufficient facts to at least search certain applications on the phone to identify the name of the service provider, which could have led to more facts tying Baldwin to the offense. Judge Yeary also faulted the Court for not strictly limiting its opinion to the specific grounds granted for review. Though he would not have joined a narrower opinion either, he would have found it favorable to the Court's opinion.

[**Commentary:** It will be interesting to see if the State seeks review from the United States Supreme Court. It's rare that state prosecutors have the opportunity to argue a case before SCOTUS and this case might be a good ticket. Not sure how it will go, but it's a search of a cell phone in a capital murder case, which makes it "sexy" for lack of a better word. So far, SCOTUS has only taken cases rejecting cell phone searches, this might be a good one to take if they want practitioners to know how a cell phone can be searched constitutionally. And on a smaller note, the officer in the affidavit noted that a small search of the phone could have led to information regarding the cell phone provider and that could have led to an order for cell site location information. Does there have to be probable cause to believe the phone was involved in the crime to perform a limited search of the phone for provider information? Time will tell. Oh, and PS, the "boilerplate" labeling is unfortunate because it's just putting a new name on an old area of law that has already been thoroughly mined. This is really just an opinion about "conclusory" language in the warrant affidavit even though the court of appeals tried to re-brand the language it as "boilerplate." Everything gets a reboot these days. First Spiderman, now this.]

2. In a case involving a warrant that described the place to be searched as a fraternity house but did not specifically identify the rooms to be searched within the fraternity house, the particularity requirement of the Fourth Amendment was satisfied because the warrant incorporated an affidavit, which included a specific description of the rooms to be searched. Samuel Crawford Patterson was a member of a fraternity and was living in the fraternity house in 2016, when one of

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