

Criminal Procedure Outline Fall 2012

- I. **Habeas:** holding in violation of rights.
 - must file this to say something was defective in the claim. Occasionally, statutory changes can lead people back to court.

- II. **Incorporation and Right to Counsel:**
 - A. *Powell v. Alabama*: in order to get this case up to the Supreme Court, they used the 14th Amendment, 6th Amendment, and 7th Amendment because they jury was all white.
 - a. Alabama figured this was fair because they were given a trial instead of just getting lynched.
 - B. *Patterson v. Former Chicago Police Lt. and Jon Burge*: case demonstrates the need for procedure. Hence, the procedures violated were: no physical injury, no providing of attorney, improper interrogation techniques and procedure, they KNEW who actually murdered the victims.
 - C. Incorporation: requiring the states to follow the specific amendments, as per the due process clause of the 14th amendment.
 - D. *Duncan v. Louisiana*: had a right to the jury, but was not given one.
 - Decisions of the Supreme Court do not apply retroactively.
 - E. Appointment of Counsel: actual imprisonment gives the right to counsel. (*Gideon v. Wainwright*)

The Fourth Amendment

- I. **Defining a Search:**
 - A. Unreasonable Search by whom?
 - a private actor becomes held by the 4th amendment if he is acting on the behest of the government.
 - B. *Katz v. United States*:
 - brought a directed appeal.
 - Government could only listen to his conversation. And they argue that this was not a search because the phone booth was public and they could only hear him.
 - We use Harlan's test now.
 1. Person has exhibited an actual (subjective) expectation of privacy?
 2. The expectation be one that society is prepared to recognize as reasonable.
 - Under this test, *Katz* does not have an expectation of privacy—since he closes the door.

- II. **Open Fields Doctrine:**
 - A. Habeas claim is a claim by the prisoner. Usually here, there is another naïve because he sues the warden.

B. *In a directed claim, the government is the plaintiff or defendant.*

C. *Oliver v. United States:*

- police thought they didn't need a warrant because of the open fields doctrine. Issue is whether or not 4th amendment even applies here.
- Oliver's attorney's argued that Katz test was applicable. Because of the fence and Do Not Enter signs.
- Court says Katz doesn't control. Society doesn't recognize this field as a place with reasonable expectation of privacy. (Bright Line Rule). Entry onto an open field is not a search and 4th amendment does not apply.

III. Defining a Search within curtilage:

A. *US v. Dunn:*

- D argues that barn was curtilage. P argues the first fence was but the second fence was an open field.
- Court says that the officers were not in the curtilage. *Fact intensive inquiry.*
- Put out a 4 part test.
 1. proximity of area claimed to be curtilage to the home
 2. is the area included within an enclosure surrounding the house
 3. nature of uses to which area is put
 4. steps taken to protect area from people observing.

B. *California v. Cirado:*

>*interlocutory appeal: issue at trial that is highly contested*

> Issue: is an aerial search a violation of the 4th amendment? (already know it's the curtilage. Questions is whether it was a search.

> Court says it is not a search.

> Dissent says no reasonable expectation that you'd have to hide from the ceiling.

C. *Dow Chemical v. US:* EPA has administrative right as the authority

- court says as long as the technology is available to the general public is just a camera/ you don't need a warrant.

D. *Florida v. Riley:* (helicopter search case)

- P argues that he had a reasonable expectation to privacy because he had a top on that people couldn't look into.
- Court says it wasn't reasonable under FAA regulation.
- O'Connor doesn't think that the FAA regulations should matter here.

E. *US v. Jones:* warrant on car. On his wife's car, and one day late. Put it on in the Maryland area.

F. *Kyllo v. United States:*

- obtaining information via sense enhancing technology
- This technology is not in general public use, so it's a search
- Dissent says to use off-the-wall surveillance. Just a measurement of the heat in the home. Every activity in the home is an intimate activity.
- Stevens says it may be too narrow: homes more protected than cars, cars more protected than open fields, etc.

G. CA v. Greenwood: (search of garbage)

- is going through garbage a search?
- Court says there is no expectation.
- Greenwood's said that town mandates they put their trash there.

H. US v. Knotts: (observation of public behavior)

- the issue was whether or not they could follow the car with the beeper inside of it?
- Person trading on public roads has no expectation of privacy.

I. US v. Karo:

- not using the public roadways to follow the truck. Here, they used it to track it down to someone's house.
- O'Connor's concurrence: narrower test.
- Stevens: state has seized the car by putting the beeper in but says that it didn't.

J. Smith v. Maryland:

- Pen registers do not record conversations, just the numbers in and out. Not constitutional.

IV. Probable Cause (defined)

A. Jones v. United States: There was a trespass

- There was a physical seizure, unlike in previous cases.
- Cannot install a GPS without a warrant.
- Scalia: no Katz violation. Could not seize conversations.
- Sotomayor: Katz (there was an actual expectation of privacy) It may be commonly available but that does not mean that it makes it public knowledge.
- Alito: important to distinguish whether it is a search or a seizure. Technology needs to adapt to Katz.

B. Illinois v. Caballes: use of dogs is not a search. Only provide probable cause.

- Dissent: dogs are so unreliable, why are we allowed to use them?

C. Defining Probable Cause:

- Must have probable cause to believe that something is occurring.

- “facts and circumstances” - no precise degree of certainty required, but NOT more likely to be true.
- Probable cause someone committed a crime for an arrest warrant or probable cause that there is info/weapon related to a crime.

D. United States v. Draper:

- Reliability of the informant plays a big role here
- Accuracy of anonymous tipsters.

E. Illinois v. Gates: unlike Draper, don't know who the tipster is. But tipster knows a lot of details.

- Strong evidence of one prong can make up for the weakness of another
- Probable cause: corroboration, level of detail, whether the tipster was paid.

F. What does the Supreme Court provide for the lower courts then?

- Substantial basis for the magistrate to believe theirs is probable cause.
- We should give deference in those questions.

G. Maryland v. Pringle: found drugs in the backseat arm rest while stopping the car for a speeding ticket.

- Defendant: since the arrest is not constitutional, nothing that follows is constitutional.
- Probable cause is very fluid.
- Pringle illustrates the amount of leverage we want to give to the police.

H. Whren v. United States: stop the for not signaling when turning at a stop sign. Pull them over and the passenger has a bag of cocaine in his lap.

- First had probable cause when they saw the drugs.
- Would a reasonable police officer have made this stop and search?
- A lot of room for discretion at stop signs because there are so many mistakes that can be made.
- Officer's don't need to identify the crime—just need probable cause.

V. Warrants:

A. Defined: some have read this to mean that a search is unreasonable unless there is a warrant.

- Framers didn't want people to be able to get general warrants that would allow the police to just take whatever they want. This limits police discretion.

- B. *Andreson v. Maryland*: all files pertaining to the evidence of/relating to lot 13T.
- Court says this is okay because of the complexity of the crime. No way to know exactly what they are looking for.
 - Greater degree of ambiguity will be tolerated if the police have done the best they can. It is okay to be more general when it relates to contraband.
 - Must categorize what is valid/invalid in any warrant. If a warrant touches on first amendment, must be immensely precise.
- C. *Groh v. Ramirez*: wrote the description of the house instead of what was supposed to be searched.
- Warrant was invalid
 - Thomas: draws conclusions that it would have been reasonable if they hadn't made a clerical error.
- D. *US v. Grubb*: Anticipatory warrants are okay
- No obligation to show or handover a warrant, just a way of requiring officers to have probable cause to search someone.
 - Must be executed within a certain period of time
 - Must be executed during the day, unless it says otherwise
 - No requirement that the occupants must be home: almost always have to provide an inventory of what has been taken. (The Patriot Act overrules this)
- E. *Meuhler v. Mena*:
- Court says this is ok because it minimizes the risk to the officers.
 - Interrogation about her immigration status was not a search.

VI. Knocking Before Entering With a Warrant:

- A. *Wilson v. Arkansas*: can always ask for a waiver of knock and announce.
- Acceptable here because it was reasonable for the police to enter since the plaintiff had a gun.
 - Idea of no-knock warrant is very available.
- B. *Richards v. Wisconsin*:
- Police argue that when drugs are involved- they don't have to knock and announce. Lower courts all agree
 - SC: Cannot have a blanket rule, must decide on case-by-case basis.
 - Police must be reasonable suspicion that it would be dangerous/inefficient to knock and announce.
- C. *US v. Banks*: police waited 15-20 seconds. It was said they didn't wait long enough.
- Okay because cocaine would most likely be gone if they waited longer

VII. Unforeseen Circumstances:

- A. Maryland v. Garrison: found drugs, even if it was the wrong apartment. Technically, warrant was not valid.
 - Court allows it
- B. LA County v. Rettele:
 - Civil rights were violated
 - Court finds that it was reasonable based on the claims.

VIII. Exceptions to Warrant Requirements:

- A. Chimel v. California: very thorough search for coins.
 - State says that because they were arresting him, they had probable cause and should be allowed to search the entire home (this was the area in his control)
 - Court says that searching his whole was unreasonable. Can only search
 1. His person
 2. Any area he can go to quickly to his, in his “control.”
 - Only two exception to this rule are
 1. safety of law enforcement
 2. destruction of evidence.
- B. US v. Robinson: no indication that he needs to be searched for stopping a person for an expired license.
 - Says can search for any sort of arrest.
- C. Knowles v. Iowa:
 - Because Iowa statute says can be arrested for traffic violation, he can be searched
 - BRIGHT LINE RULE: search incident to arrest.

IX. Automobile Exceptions:

- A. Definition: Police can search a car without probable cause under this exception.
 - Can search anywhere they have probable cause to believe that there is contraband.
 - Court has held that containers in car need warrants unless there are exigent circumstances (higher expectation of privacy in these containers)
- B. CA v. Acevedo: search of paper bag reveals drugs.
 - Court says that they do not need a warrant because there are exigent circumstances.

- Search of bag is bounded by probable cause.
- Scalia: there is no reason for a warrant. Not a search where the 4th Amendment would protect it.

C. *New York v. Belton*: if there is probable cause, can search the passenger department. And any containers that are in it.

D. *Thornton v. US*: doesn't really have probable cause because the plates are incorrect.

- Officers need simple brightline rule so that evidence is not destroyed.
- Scalia: all based on what is reasonable to believe that car/container contain evidence of the crime.

D. *Arizona v. Gant*: Could they search the car?

- Court says that they could search the car because they had arrested him. He was sitting in his car (technically, not his area of control)
- Acevedo: already got the evidence of their arrest, cannot keep searching. (they already knew he was driving with a suspended license.)
- Dissent: stare decisis should control.

X. Terry Stops:

A. *Terry v. Ohio*: didn't have probable cause to arrest him. McFadden had limited training in these circumstances.

B. Search: a reasonable person expects that there is a search occurring. 1. Actual expectation 2. Reasonable expectation.

- No actual expectation if you pat down the outside of their clothes
- D argues that our person is an actual and reasonable expectation.
- Court says 4th Amendment is implicated as soon as a search occurs. However, if your instinct says that they could be armed and dangerous then it is reasonable.
- Balance between safety and privacy.

B. Section 1 of Opinion:

- Power of exclusionary rule shapes and almost invalidates the 4th Amendment.
- In this case, a stop based on reasonable suspicion could lead to an arrest.
- Reasonably prudent man would think that his life, of someone else', was in danger.

C. Terry Rule: reasonable suspicion is enough to briefly stop and frisk (limited) an individual for safety purposes.

- Dissent from Douglas: Terry gives police the power to act where they could not get a warrant to act. Wrong source of control from magistrate to officer.
- Even applies if the act of crime has already occurred.
- New limited basis for a new limited investigation.

D. Just a hunch -----→ need consent
 Reasonable suspicion -----→ stop/frisk
 Probable cause -----→ arrest/search

E. *Dunaway v. New York*:

- Defendant going to argue this was an arrest because he was taken to the station and put into interrogation
- State going to argue that it was just a brief stop that was just based on reasonable suspicion. He voluntarily went down to the station and sat in the interrogation room. Could have left anytime.
- Concurrence: police conduct is similar enough to an arrest, that probable cause is necessary.

F. *Florida v. Royer*: taken from public area of an airport into a small room. Took about 15 minutes. Police said they only had reasonable suspicion.

- This was a search and needed probable cause.
- Consent is not valid if it wasn't free and voluntary.
- Length exceeded what was allowed based on reasonable suspicion (Case by case basis)

XI. Reasonable Suspicion:

A. *Terry v. Ohio* said that police can use reasonable suspicion to stop and frisk an individual.

B. *US v. Sharpe*: did detaining him violate his constitutional rights?

- Concerned with length, what happened during the detention, how did both parties act.

Standards for seizure: Can a person walk away or feel like they are free to leave?

B. *Hiibel v. Nevada*: Can a person be arrested without probable cause simply because he did not provide ID?

- Assault: no reasonable suspicion, No ID: probable cause
- Dissent: What are the bounds of the Terry Stop?

C. *US v. Arizu*:

- Enough probable reasonable suspicion. While each individual circumstance may not be weird, all of these put together could be enough.

- D. Alabama v. White (similar to Draper and Gates)
 - There was enough information given that the evidence could be substantiated.
- E. Florida v. JL: there is no reasonable suspicion. In White, the police could corroborate the tip to get more reasonable cause. Here, there wasn't anything besides the identical description of JL that could be corroborated.
- F. Illinois v. Wardlow: Flight and high crime area= reasonable suspicion.

XII. Exclusionary Rule:

- A. Hudson v. Michigan: Theoretically, the benefit of this is exclusion.
 - Police officers don't consider their jobs well done if evidence is thrown out and he/she cannot get a conviction out of it.
- B. Mapp v. Ohio:
 - Issue: does evidence discovered during a search/seizure in violation of 4th Amendment be admissible in State Court?
 - Exclusionary rule applies here. States now have to apply these rules, as well.

XIII. Standing:

- A. Rakas v. Illinois: don't have standing, because it is not their case.
 - Dissent says they cannot argue for this because people will have passengers. Should still have rights.
- B. Minnesota v. Carter: seeing them is a search is what Defendant's would argue.
 1. Is there a search? (Plain view)
 - a. ok to be there
 - b. immediately apparent
 2. Does Defendant have standing?
 - In MN v. Olson: Olson had been staying in a home (not living there) Here, they court says that an overnight guest has standing.
 - Nature of commercial transaction is important here, as well.
 - Kennedy: Court should pay more respect to the owner of the home.
- C. Brenlin v. California:
 - He has standing in his seizure because he is what is being seized.
 - State can argue that there was probable cause because of the fact presented. (parolee, almost expired plates)

XIV. Independent Source:

A. *Murray v. United States*:

- Agents see car going away from warehouse and find marijuana.
- Other agents go into warehouse with warrant and find more. Also, find a notebook with list information about customers but nothing about the police officer.
- When does independent source doctrine apply?
 1. if it was genuinely an independent source and gotten during the warrant (no info. From illegal entry used in the warrant, so it should be okay for them to use everything that was found via the warrant)

XV. Inevitable Discovery:

- A. *Nix v. Williams*: case of missing girl from YMCA. Detective “asks” questions and tries to get him to tell where the body is.
- Would have found the body anyway, so the source should be allowed.

XVI. Exceptions to Exclusionary Rule:

1. Standing
2. Independent Source
3. Inevitable Discovery
4. Attenuation (Fruit of the Poisonous Tree)
5. Good Faith
6. *Hudson* (knock and announce)

Fruit of the Poisonous Tree: government shouldn’t benefit from illegal activities. Anything that comes from that “poisonous fruit” then cannot be used in the case.

I. *Wong Sun*:

- Cannot use anything because everything was fruit of poisonous tree since the initial entry was unlawful and everything came from there.
- The relationship between the heroin and unlawful entry is too attenuating.

II. *Brown v. Illinois*: only gets his Miranda in the interrogation room. But nothing before that was unlawful.

- State says that the fruit doctrine doesn’t apply because it was attenuated and when he confessed he’d already been given his Miranda
- Court says that the first set of violations are 4th amendment violations and the Miranda question is a 5th amendment violation.

III. *US v Ceccolini*: can you exclude a witness’ testimony?

- Could have decided to confess a different way—no idea what was going on in her head so cannot make a statement on it.

- IV. Good Faith Exception to Fruit: US v Leon (have a magistrate issued warrant)
- Plaintiff says warrant wasn't valid because it lacked sufficient probable cause. The probable cause was too general
 - Issue: if a warrant is defective, can the police use good faith to pursue and move forth with the warrant?
 - Yes because it offends the basic concept of justice for guilty people to go free.
 - Deterrence: the majority says the police are supposed to be deterred from bad seizures and the dissent says the whole process should be held responsible.
- V. Herring v. US: Defense counsel argues that this "drugs in pocket" should be excluded. In Leon, SC says that searches, etc. are okay if relied upon in good faith. Same thing here. If the officer thinks the warrant is valid, it's ok.

XVII. Exceptions to the Warrant Requirement:

1. Search incident to arrest (Chimel)
2. Hot pursuit of felon (Hayden)
3. Plain view (Coolidge, Hicks, Dickenson)
4. Automobile Exception (Carroll, Carney, Acevedo)
5. Search of Automobile, Incident to Arrest (Gant)
6. Inventory (Opperman, Lafayette)
7. Borders (Flores-Montano, Ramsey, Montoya-Hernandez)
8. Checkpoints (Sitz, Edmond)
9. Consent
10. Emergency/Danger
11. Destruction of Evidence
12. Special Needs (Schools, etc)

A. Inventory Searches: a detailed list of items in a particular place.

- I. Opperman: found marijuana in glove compartment where it was at impound lot. Typical inventory taken here.
- Issue: is this kind of inventory search in violation of the 4th amendment? (this is ok because its not part of a criminal investigation)
 - When car has been impounded, the inventory search protects both the police and person/public.
 - Dissent: what would keep police from impounding cars regularly?
- II. IL v. Lafayette: L's bag was searched. He brought it to the police station. Searched there for inventory. Similar to Opperman.

B. Borders:

- I. US v. Flores-Montano: entered US in his car. Searched his gas tank. Found drugs.
 - Expectation of privacy is less at the border. Country has interest in protecting border.
 - II. US v. Ramsey: custom inspector became suspicious. Suspected letters contained heroine. Found it, Ramsey arrested.
 - Issue: can postal service search international mail?
 - Right of sovereign to decide who and what can enter the country.
- C. Checkpoints and Roadblocks: if checkpoint is operated in a way that doesn't offer discriminating profiling, its ok.
- I. DE v. Prouse: random stops of vehicles is ok
 - II. MSP v. Sitz: Balancing test: interest in stopping drunk drivers vs intrusion for people.
 - Checkpoints are fine. Intrusion is minimal.
 - MI courts were wrong to evaluate effectiveness of program.
 - III. City of IN v. Edmond: roving checkpoint "trying to find drugs", no immediate balancing test: too broad.

XVIII. Consent

- I. Schnecklot v. Bustamonte: brother gave consent.
 - Person has to know that he doesn't have to give consent
 - Consent looks at the totality of circumstances
 - II. US v Prayton: riding in bus subject to search mid-ride
 - Gave consent to be patted down?
 - Is consent voluntary? Court says it is.
 - Dissenters say he was seized. Couldn't turn it down.
 - III. US v. Matloch: wife allowed them in.
 - Court says one who possesses property or common authority (rests on joint use of property) So this was okay
 - Occupants assume risk one of their number might give consent.
 - IV. Georgia v. Randolph: wouldn't give permission. Janet gave permission though.
- .V. Consent defined:
- Consent justifies a warrantless search even when police doesn't have PC/

- Consent must be voluntary, but need not be knowing
- Voluntariness is question of fact to be determined from totality of circumstances
- One co-occupant may give consent to search for all occupants BUT a physically present co-occupants refusal will prevail.

B. Schools:

I. NJ v. TLO- special needs

C. Drug Testing: suspicionless drug testing is often, not always, constitutional.

- Drug testing of railroad personnel involved in train accidents
- Random drug testing of federal officers who carry weapons
- Cannot screen candidates for office
- Random urine testing of students in athletics.

XIX. Custodial Arrests:

A. All custodial arrests must be based on probable cause.

I. US v. Watson: police don't need a warrant to make a public arrest

- Arrest: to take or keep in custody by authority of law
- Seize: to take hold of
- Stop: to arrest the progress of (probable cause)

II. US v. Mendenhall: she was told she could not give them consent. Found heroin on her.

III. CA v. Hodari D.: actual obtaining of dominion physical authority, or an actual showing of arrest.

Fifth Amendment

A. Voluntary Confessions:

I. Hector: beat until he says money is in someone's house. And they don't find it there.

- As a matter of law, we do not admit confessions that are not voluntary.

II. Bram v. MS: stripped him of clothing. In process, he confessed. Admissible?

- No improper influence, no violence, etc. in order to be free and voluntary (here there was humiliation)

III. Brown v. MS: Deputies testifies to the torturous behavior. "would have done more but we got tired" Argue that state has the ability to regulate in that way.

- State cannot do this because it offends the basic traditions of justice
 - Basic requirement for admission of a confession: must be free and voluntary.
- III. Ashcroft v. TN: didn't allow suspect to sleep for 36 hours. Could the confession still be admitted? (he was fed, etc)
- SCOTUS: so inherently coercive that it is irreconcilable. Cannot be allowed
- IV. Arizona v. Fulminate: alleged coercion: threat of violence from other prisoners if he didn't get protection from fellow jailmate. Court says this is coercion.
- Dissent: says that he didn't know the jailmate was an informer, voluntarily confessed.
- V. Spano v. New York: because his friend coerced—voluntary confession? No.
- His “will was overborn”- techniques, time, Bruno's manipulation.
 - Contrast with Fulminate—there being experienced and a violent criminal means it is more difficult to have your will overborn.
 - In Spano's case—could have made the case without his confession.
- VI. Colorado v. Connelly: Plaintiff confessed his crime, himself. The prosecution here says there was coercion but it wasn't the state's coercion.
- SCOTUS: Clearly, this man was not fit to give a confession.
- VII. Types of coercion:
1. confession where victims isolated for prolonged time
 2. sleep deprivation for a long time
 3. forced nudity
 4. restriction/deprivation of solid food
(fundamentals of our rights to free will)
- I. What is Custody?**
- Deprived of freedom of movement.
 - What happens if Miranda is required but not followed? Anything obtained from that can be excluded
 - What must the state show to prove waiver?
- A. Oregon v. Mathiason: went voluntarily and was told he could leave. Was lied to for a part of it, however, and told there was evidence against him.
- For criminal tax issues, don't need to give Miranda
- B. Yarborough v. Alvarado: Here, state argues that he wasn't in custody. Should the fact that he's young, be a block that says he is in custody?
- Does his age matter? (In JDB, the circumstances indicate he was in custody)

- This is an objective inquiry, a reasonable person can say that children are to be regarded differently.
- C. Berkemer v. McCarty: does this apply to misdemeanors?
- Not a risk of huge consequence at a traffic stop.
 - When is roadside questioning a custodial arrest?
(based on duration, low risk of coercive domination, okay to blur brightline rule)
- D. Look at circumstances following incident. Would a reasonable person have felt they were free and able to leave in this situation?
- E. Rhode Island v. Innis: he's in handcuffs and in the back of the car.
- Court says however this is not an interrogation
 - Nothing says that the conversation was supposed to illicit a response
- E. Illinois v. Perkins: an undercover officer doesn't need to give warnings
- F. CA v. Prysock: How do you know if the rights are adequate?
- Reasonably convey the rights to the suspect under Miranda?
- F. Oregon v. Elstad: For confession #1L does Miranda apply? (is he in custody? Is he interrogated?)
- Does his first confession taint the second one?
 - O'Connor says there is not due process warning (5th Amendment)
 - Miranda is not like the 4th amendment. A violation of Miranda is not necessarily a violation of the 5th Amendment.
- G. North Carolina v. Butler: Not going to sign waiver but will talk.
- Waiver is not indispensable, but doesn't need to be express.
 - Can be implied by the totality of circumstances.
 - Behavior of suspect can help infer waiver of rights.
 - Burden on state to prove suspect meant to waive, suspect can both waive and invoke.
- H. Michigan v. Mosley: When discussing two different crimes, its ok to waive.
- Can reproach because chain of custody was essentially broken.
- I. Edwards v. Arizona: cannot reproach with new Miranda warnings if the witness asks for counsel.
- J. Maryland v. Shatzer:
- 14 days is enough time to break the chain of custody and reproach the witness.
 - Enough time to get reacclimated to life again.

- K. Davis v. United States: must ask for counsel without any confusion that he did.
- L. Berghis v. Thompson: Ambiguous behavior is enough to establish waiver.
 - Answering once again, however, is enough to establish that he was waiving that right.

Sixth Amendment

- A. Government may not deliberately elicit information from the witness.
- B. Legal basis for due process claim is whether the confession is coerced/voluntary.
- C. No matter how intertwined the facts are in a case, so long as they are two different offenses, the Sixth Amendment right to counsel does not apply.
- D. Sixth Amendment rights only apply to crimes that one has already been indicted for.