

TEXAS COURT OF CRIMINAL APPEALS

Ex parte Ryan Edward Schuller

Ex parte Schuller · No. PD-1153-15 · Decided October 7, 2015

SUMMARY

This document is a Petition for Discretionary Review filed by Ryan Edward Schuller in the Texas Court of Criminal Appeals. It challenges the Fifth Court of Appeals' reversal of habeas corpus relief concerning a warrantless canine sniff at the curtilage of a residence and argues that *Florida v. Jardines* made the search unconstitutional. The filing also contends that the claim could be raised in habeas proceedings because the controlling legal basis was unavailable when Schuller entered his guilty plea.

CASE DETAILS

COURT	Texas Court of Criminal Appeals
JURISDICTION	Texas
DECIDED	October 7, 2015
DOCKET	PD-1153-15
DISPOSITION	other
PROCEDURAL POSTURE	Petition for discretionary review from a memorandum opinion of the Fifth Court of Appeals in Dallas, Texas. The court of appeals reversed the trial court's grant of habeas corpus relief under Texas Code of Criminal Procedure article 11.072 and reinstated the order of deferred adjudication.
STANDARD OF REVIEW	Not stated as a definitive standard by the issuing court in the supplied document. The petition seeks review of the court of appeals' treatment of preservation, waiver, and cognizability of a constitutional search-and-seizure claim in article 11.072 habeas proceedings.
PRECEDENTIAL VALUE	Not determinable from the supplied document; it is a party-filed petition rather than a judicial opinion.
PARTIES	Ryan Edward Schuller v. The State of Texas

TOPICS

appellate procedure

habeas corpus

fourth amendment

search and seizure

suppression of evidence

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether an article 11.072 habeas applicant may raise an unlawful-search claim that was not reasonably available at the time of the plea because then-controlling Texas law treated a free-air dog sniff of a residence's curtilage as lawful.
2. Whether the Texas 'right not recognized' exception or related habeas principles permitted Schuller to challenge the search after *Florida v. Jardines* changed the governing Fourth Amendment law.
3. Whether the right to be free from an unreasonable search of one's home is a fundamental or absolute constitutional right that could not be waived by the guilty plea under the circumstances presented.

KEY QUOTATIONS

“The government’s use of trained police dogs to investigate the home and its immediate surroundings is a “search” within the meaning of the Fourth Amendment.” (at 1417-18)

“... an applicant’s failure to raise a claim at trial may be excused if the basis of the claim was not reasonable available at the time of trial.” (at 136)

*“The “right not recognized” exception to the contemporaneous-objection rule relates to a kind of fundamental error that is contrary to a specific act of the legislature, that *Marin* generally eliminated from our jurisprudence. ...” (at 367)*

“Some rights are widely considered so fundamental to the proper functioning of our adjudicatory process as to enjoy special protection in the system.” (at 278)

“But when it comes to the Fourth Amendment, the home is first among equals.” (at 19)

FACTUAL BACKGROUND

On June 15, 2011, a Carrollton police officer obtained and executed a search warrant for a residence after a trained narcotics dog alerted during a free-air sniff of the bottom seam of the garage door. Schuller was arrested and indicted for possession of more than four ounces of marijuana. He pleaded guilty on July 20, 2012, when Texas appellate precedent treated such residential free-air dog sniffs as not constituting Fourth Amendment searches. After *Florida v. Jardines* held that use of trained police dogs to investigate a home and its immediate surroundings is a search, Schuller sought article 11.072 habeas relief, which the trial court granted.

PROCEDURAL HISTORY

Schuller pleaded guilty to possession of more than four ounces of marijuana and received three years of deferred community supervision. After *Florida v. Jardines*, he filed an article 11.072 habeas application challenging a warrant based on a narcotics-dog sniff at the garage door of his residence. The trial court granted relief on December 31, 2014. On June 15, 2015, the Fifth Court of Appeals reversed and reinstated deferred adjudication. The supplied document is Schuller's petition for discretionary review; it does not contain the Court of Criminal Appeals' disposition.

DISPOSITION

other

CASES CITED

- Florida v. Jardines, 133 S. Ct. 1409 (2013)
- Ex parte Banks, 769 S.W.2d 539, 540 (Tex. Crim. App. 1989)
- Ex parte Grigsby, 137 S.W.3d 673 (Tex. Crim. App. 2004)
- Ex parte Kirby, 492 S.W.2d 579 (Tex. Crim. App. 1973)
- Ex parte Goodman, 816 S.W.2d 383, 384 n.4 (Tex. Crim. App. 1991)
- Ex parte Maxwell, 424 S.W.3d 66 (Tex. Crim. App. 2014)
- Ex parte Michael Keith Boyd, 58 S.W.3d 134, 136 (Tex. Crim. App. 2001)
- Marin v. State, 851 S.W.2d 275, 278-80 (Tex. Crim. App. 1993)
- Rivas v. State, 411 S.W.3d 920, 921 (Tex. Crim. App. 2013) (per curiam)
- Sanchez v. State, 120 S.W.3d 359, 367 (Tex. Crim. App. 2003)
- Romo v. State, 106 S.W.3d 565, 573 (Tex. App.—Fort Worth 2003, pet. ref'd)
- Rodriguez v. State, 106 S.W.3d 224 (Tex. App.—Houston [1st Dist.] 2003, pet. ref'd)
- Porter v. State, 93 S.W.3d 342, 346-47 (Tex. App.—Houston [14th Dist.] 2002, pet. ref'd) (op. on reh'g)
- Cain v. State, 947 S.W.2d 262, 264 (Tex. Crim. App. 1997)
- Teague v. Lane
- Silverman v. United States, 365 U.S. 505, 511 (1961)
- Oliver v. United States, 466 U.S. 170, 180, 182 n.12 (1984)
- Brosseau v. Haugen, 543 U.S. 194, 198 n.3 (2004) (per curiam)
- Arkansas v. Sullivan, 532 U.S. 769, 771 (2001) (per curiam)
- California v. Caballes
- Penry v. Lynaugh, 492 U.S. 302 (1989)