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CRIMINAL CASE UPDATE ADDENDUM

STATE CASES

State v. Brennan COA09-1362 (4 May 2010) –

Substitute chemical analyst's testimony inadmissible under *Melendez-Diaz*. The substitute analyst testified that she reviewed the results of the analyst who performed the testing and formed an opinion that the substance was cocaine. The opinion notes that the testifying agent "did no independent research to confirm Agent Knott's results; in fact, she saw the substance for the first time in open court[.]"

NOTE: This case appears to be factually indistinguishable and in direct conflict w/ *State v. Hough*, 690 S.E.2d 285 (2010).

State v. Braswell COA09-1477 (4 May 2010) –

A defendant may not be convicted of failing to return the sex offender address verification form if he did not actually receive the form in the mail.

State v. Samuel COA09-1230 (4 May 2010) –

New trial ordered in an armed robbery case where the trial court allowed the State to introduce evidence of a firearm found in the defendant's possession the day after the robbery which was not the firearm allegedly used in the robbery.

State v. Johnson COA09-966 (4 May 2010) –

Double jeopardy principles do not protect a defendant from receiving two separate convictions for possessing a single pill that contains two different controlled substances.

State v. Kilby, 679 S.E.2d 430 (2009) –

A Static-99 test showing the defendant to be a "moderate" level risk cannot, by itself, support a finding that the defendant requires "the highest level of supervision and monitoring." (ie satellite-based monitoring).

CASES FROM OTHER JURISDICTIONS

United States v. Comprehensive Drug Testing, Inc., 579 F.3d 989 (9th Cir. 2009) (*en banc*)

The opinion starts with: "This is a case about a federal investigation into steroid use by professional baseball players. More generally, however, it's about the procedures and safeguards that federal courts must observe in issuing and administering search warrants and subpoenas for electronically stored information."

The critical point of this case is that when a law enforcement officer has probable cause to believe that some evidence is contained on a computer, and gets a search warrant to seize the computer and search it for the evidence, this does not allow the LEO to search all of the files stored on the computer. The Ninth Circuit creates all sorts of prophylactic rules for warrants to search computer files including (1) LEO waiving plain view doctrine as to other files on the computer, and (2) that the search protocol must create a firewall between the person actually searching the computer and the case investigator, so that the case investigator gets ONLY the files specified in the warrant.

Under this case, a warrant simply authorizing LEO to seize and search a computer, based on probable cause to believe that some file(s) on the computer constitute evidence of crime, would be overbroad.