June 11, 2014

FOURTH AMENDMENT:SUPPRESSION
STANDING
REASONABLE SUSPICION ANONYMOUS TIPS AND FLIGHT

Matthews v. State, No. PD-1341-13, Publish, Cochran, 6-11-14, Anonymous 911 call, call screen did display phone number and address[1] , this call gave great detail, high crime area known for drug and weapons arrests, the client was in a van that he borrowed , officer approached, the client did not show his hands fast or well enough, made to exit van, frisked, was clean, client refused permission to search van so they were gonna put him in the back of the squad car to wait more than 15 minutes for a dog, client declined invitation to sit in cop car and took off running. Dog arrived, sniffed, alerted and cops searched finding marijuana and crack cocaine. [2] Brief investigatory stop implicates the Fourth Amendment and must be justified by reasonable suspicion. Reasonable suspicion is—Specific, articulable facts that, combined with rational inferences from those facts, would lead an officer to reasonably conclude that the person detained is, has been, or soon will be engaged in criminal activity. The officers' subjective intent is to be disregarded.[3] Anonymous tips seldom get them there must be some indicia of reliability. Reasonable suspicion is not carte blanche for a prolonged detention scope of detention must be reasonably related in scope to the circumstances. Waiting for drug dog reasonable. In this case, high crime area, known for drugs and weapons, looked just like the guy described in the 911 call, was sitting in van with engine off but with key in ignition, refused to show his hands and did so in a suspicious manner and then he fled which is a separate offense. Wait for K9 in this case was gonna take 15-25 minutes and the TCCA tacitly holds that it is reasonable under these facts to detain someone for that period of time while waiting on the dog. Someone driving a borrowed car has a subjective and reasonable expectation of privacy in that vehicle but a borrower who abandons a car no longer has a reasonable expectation of privacy in it. He abandoned vehicle when he ran off instead of waiting nicely in the cop car for the dog. Abandonment is not voluntary if induced by police misconduct and for that they do look at the subjective intent of the police.

Eighth Amendment
Juvenile sentence life without parole
Error preservation

Garza v. State, NO. PD-1596-12, Keasler, concurrences Price, Cochran, Dissent Keller. Cap murder life without parole, juvenile at the time of the cap murder. No sentencing hearing because automatic life sentence and no objection to that. A good discussion of *Marin*[4] which discusses three separate categories of a defendant's rights (1) ABSOLUTE RIGHTS: fundamental and cannot be forfeited by inaction (2) WAIVABLE but only if the waiver is affirmatively, plainly, freely and voluntarily made (3) FORFEITABLE must be requested by the defendant. *Ex parte Maxwell,* 424 S. W. 3d 66 (Tex. Crim. App. March 12, 2014) held that

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[1] *Interestingly enough this helpful tipster showed up later just to assist the cops and they reciprocated by arresting her on her open warrants. Nice!*
[2] *Renaissance man.*
[3] *Unless they have good intentions –in which case the TCCA is on that like white on rice.*
[4] Marin v. State*, 851 S. W. 2d 275 (Tex. Crim. App. 1993).*

Miller v. Alabama[5] applied retroactively. Therefore by implication it held that a claim asserting an 8th Amendment violation under *Miller* was not subject to procedural default. *Maxwell's* result decided the issue before us today: substantive status-based or individualized-sentencing claims are not forfeited by inaction. Only hold today that the claim was not forfeited by failure to object declines to decide which of the three *Marin* categories this claim falls.

SPANISH LANGUAGE INTERPRETER
OPINION DISSENTING TO DENIAL OF REHEARING

Garcia v. State, NO. PD-0646-13, Publish, 6-11-14, Alcala joined by Johnson and Cochran. Assuming that the same proportion of non-English speakers will appear as criminal defendants in Texas state courts, that means that this Court's majority opinion will likely affect tens of thousands of defendants who, like Irving Magana Garcia, are unable to speak or understand the English language and are entirely dependent on courts to provide language translators for them. The opinion is further faulted for failing to address the real issue—whether the waiver of an interpreter was valid when made by his lawyer –not by him. This Court should grant rehearing to answer the question it left unanswered previously, namely whether the communication from counsel representing to the TCT that appellant did not desire an interpreter could be characterized as an intelligent, knowing and voluntary waiver of appellant's federal constitutional rights. A synopsis of the opinion follows.

WAIVER OF RIGHT TO AN INTERPRETER
Defense counsel can waive if he finds the interpreter to be distracting

Garcia v. State, No. PD-0646-13, Keller, Alcala Dissent. 4-9-14, The record must affirmatively reflect that an interpreter was waived but does not have to contain a waiver colloquy between the defendant and the TCT. Notably in this case defense counsel told the prosecutor that he did not want an interpreter and that he did not really want his client to know what is going on. Trial counsel testified that he is fully bilingual, he told appellant he did not want an interpreter because it would be distracting for the jury and for him, he provided a brief summary of what the witnesses said on break, and the client told him to do whatever he wanted. The right to an interpreter must be waived. Presuming waiver from a silent record is impermissible. The record here contains evidence that trial counsel told appellant he had a right to an interpreter, that appellant agreed with counsel not to request an interpreter, and that appellant and counsel communicated their desire not to have an interpreter to the trial judge –albeit in the off the record bench conference. Alcala's dissent (joined by Johnson and Cochran) disagrees that the record shows that appellant waived his federal constitutional right to have an interpreter. By asking merely a single question whether appellant wanted an interpreter, the TCT failed to satisfy his burden to ascertain whether appellant's waiver was voluntary or whether it was rather the product of coercion. Further, the record conclusively shows that appellant was coerced by his attorney into declining an interpreter. Appellant assented to his atty's suggestion that he decline an interpreter because counsel presented him with an untenable choice of moving forward either with (1) an interpreter and counsel being unable to concentrate, or (2) no interpreter and counsel being able to concentrate. This choice between implementation of one constitutional right, the right to confront witnesses and[1] , versus abandonment of another constitutional right the right to

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[5] *132 S. Ct. 2455 (2012) (holding that the mandatory imposition of life without parole sentence upon a juvenile is unconstitutional).*

[1] *The right to an interpreter is actually the right to confront witnesses.*

effective assistance of counsel, renders the resulting choice involuntary. The issue of trial strategy is immaterial[2] this is an issue of voluntariness of waiving a constitutional right to confront the witnesses against one. Alcala further notes it is an unreasonable trial strategy to decline the services of an interpreter. A defendant should personally waive an interpreter—not his lawyer. Janet's thoughts: This is a case of a direct appeal paving the way for an excellent ineffective assistance of counsel writ. This was a murder charge. Since reading this case I am requesting the name of the interpreter on the record and usually the TCT pipes up at that point and opines just how good that interpreter is which even further protects the record and my license.

[2] *For purposes of this appeal but wait for the IAC writ which will be a clear winner.*