

**2018 Annual J. Dean Carro
RECENT DEVELOPMENTS IN CRIMINAL LAW**

**Supreme Court of the United States
2017 Term (Oct. 2017 - Sept. 2018)**

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***Dunn v. Madison*, 138 S.Ct. 9 (2017)**

Nov 6, 2017

Outcome:

Petition for writ of certiorari granted; judgment reversed. Per curiam.

Overview:

[1]-A state court had not unreasonably applied judicial precedent when it determined that a state prisoner was competent to be executed where, notwithstanding his memory loss, he recognized that he would be put to death as punishment for the murder he was found to have committed;

[2]-The state court's decision was not founded on an unreasonable assessment of the evidence before it where testimony from each of the psychologists who examined the prisoner supported the finding that the prisoner understood both that he was tried and imprisoned for murder and that Alabama would put him to death as punishment for that crime;

[3]-Given that the state court's determinations of law and fact were not so lacking in justification as to give rise to error beyond any possibility for

fair-minded disagreement, the prisoner's claim to federal habeas relief failed.

Outcome

***Kernan v. Cuero*, 138 S.Ct. 4 (2017)**

Nov 6, 2017

Outcome:

Petition and motion granted. Judgment reversed and case remanded for further proceedings. Per curiam decision.

Overview:

The appellate court erred when it held that federal law as interpreted by the U.S. Supreme Court clearly established that specific performance of the plea agreement after it was allegedly breached by the State's motion to amend the complaint was constitutionally required because no holding of the Supreme Court required the remedy of specific performance under the circumstances.

***Tharpe v. Sellers*, 138 S.Ct. 545 (2018)**

Jan 8, 2018

Outcome:

Judgment reversed and case remanded for further proceedings. Per curiam decision.

Overview:

Petitioner Keith Tharpe moved to reopen his federal habeas corpus proceedings regarding his claim that the Georgia jury that convicted him of murder included a white juror, Barney Gattie, who was biased against Tharpe because he is black.

The District Court denied the motion on the ground that, among other things, Tharpe's claim was procedurally defaulted in state court. The District Court also noted that Tharpe could not overcome that procedural default because he had failed to produce any clear and convincing

evidence contradicting the state court's determination that Gattie's presence on the jury did not prejudice him.

But SCOTUS found he did because Tharpe produced a sworn affidavit, signed by Gattie, indicating Gattie's view that "there are two types of black people: 1. Black folks and 2. Niggers"; that Tharpe, "who wasn't in the 'good' black folks category in my book, should get the electric chair for what he did"; that "[s]ome of the jurors voted for death because they felt Tharpe should be an example to other blacks who kill blacks, but that wasn't my reason"; and that, "[a]fter studying the Bible, I have wondered if black people even have souls."

At the very least, jurists of reason could debate whether Tharpe has shown by clear and convincing evidence that the state court's factual determination was wrong. The Eleventh Circuit erred when it concluded otherwise.

***District of Columbia v. Wesby*, 138 S.Ct. 577 (2018)**

January 22, 2018

Outcome:

Judgment reversed and case remanded. 9-0 Decision; 2 concurrences in part. Opinion by Justice Thomas on. Concurring opinion in part and in judgment by Justice Sotomayor. Concurring opinion in judgment by Justice Ginsburg.

Overview:

The Court held that based on the "totality of the circumstances" (the condition of the house and the behavior of the partygoers), District police officers had probable cause to arrest partygoers for trespassing.

A reasonable officer could have concluded that there was probable cause to believe the partygoers knew they did not have permission to be in the house, and the officers had probable cause to arrest the partygoers because the officers found a group of people who claimed to be having a bachelor party with no bachelor, in a near-empty house, with strippers in the living room and sexual activity in the bedroom, and who fled at the first sign of police.

***Class v. United States*, 138 S.Ct. 798 (2018)**

February 21, 2018

Outcome:

6-3 Opinion by Justice Breyer on Justice Alito filed a dissenting opinion which Justices Kennedy and Thomas joined. Reversed and remanded.

Overview:

A guilty plea by itself did not bar a federal criminal defendant from challenging the constitutionality of the statute of conviction on direct appeal;

Petitioner did not relinquish his right to appeal the district court's constitutional determinations simply by pleading guilty because petitioner's constitutional claims did not contradict the terms of the indictment or the written plea agreement, and the claims did not focus upon case-related constitutional defects that occurred prior to the entry of the guilty plea. The claims called into question the government's power to constitutionally prosecute him because the claims challenged the government's power to criminalize petitioner's (admitted) conduct.

***Marinello v. United States*, 138 S.Ct. 1101 (2018)**

March 21, 2018

Outcome:

7-2 Opinion by Justice Breyer on. Justice Thomas filed a dissenting opinion in which Justice Alito joined. The Court reversed and remanded.

Overview:

The Court held that to convict a defendant under 26 U. S. C. §7212(a)—which forbids “corruptly or by force or threats of force . . . obstruct[ing] or imped[ing], or endeavor[ing] to obstruct or impede, the due administration of [the Internal Revenue Code]”—the Government must prove the defendant was aware of a pending tax-related proceeding, such as a particular investigation or audit, or could reasonably foresee that such a proceeding would commence.

To secure a conviction under the Omnibus Clause, the government had to show, among other things, that there was a nexus between defendant's conduct and a particular administrative proceeding, such as an investigation, an audit, or other targeted administrative action, but the required nexus did not apply to routine, day-to-day work carried out in the ordinary course by the IRS, such as tax return reviews.

***Ayestas v. Davis*, 138 S.Ct. 1080 (2018)**

March 21, 2018

Outcome:

9-0 Opinion by Justice Alito on. Justice Sotomayor filed a concurring opinion in which Justice Ginsburg joined. Judgment vacated and remanded

Overview:

[1]-The court rejected the argument that the adjudication of the issue for funding for investigative services needed to prove petitioner's entitlement to federal habeas relief was nonadversarial and administrative because resolution of the funding question required the application of a legal standard that demanded an evaluation of petitioner's prospects of obtaining habeas relief;

[2]-The court of appeals' interpretation of 18 U.S.C.S. § 3599(f), which resulted in a substantial need test, was not a permissible reading of the statute because the statutory phrase "reasonably necessary" called for a determination by the district court, in the exercise of its discretion, as to whether a reasonable attorney would regard the services as sufficiently important, guided by certain considerations.

***Kisela v. Hughes*, 138 S.Ct. 1148 (2018)**

Apr 2, 2018

Outcome:

Petition for certiorari granted. Judgment reversed and case remanded for further proceedings. Per curiam decision; Justice Sotomayor filed a dissenting opinion, in which Justice Ginsburg joined.

Overview

Even assuming a Fourth Amendment violation occurred, the police officer was at least entitled to qualified immunity because this was far from an obvious case in which any competent officer would have known that shooting respondent to protect her roommate would have violated the Fourth Amendment because respondent was armed with a large knife, she was within striking distance of her roommate, she ignored the officers' orders to drop the weapon, and the situation unfolded in less than a minute. Not one of the decisions relied on by the court of appeals supported denying the officer qualified immunity.

***Sessions v. Dimaya*, 138 S.Ct. 1204 (2018)**

April 17, 2018

Outcome:

Judgment affirmed; 5-4 decision in parts I, III, IV-B, and V; 1 concurrence; 2 dissents. Opinion by Justice Kagan

Overview:

The Court held that 18 U. S. C. §16(b), which defines “violent felony” for purposes of the Immigration and Nationality Act’s removal provisions, is unconstitutionally vague under the Due Process Clause of the Fifth Amendment. Like the Armed Career Criminal Act's residual clause, 18 U.S.C.S. § 16(b) produced more unpredictability and arbitrariness than the Due Process Clause tolerated where it required a court to picture the kind of conduct that the crime involved in the ordinary case and to judge whether that abstraction presented some not-well-specified-yet-sufficiently-large degree of risk.

***Wilson v. Sellers*, 138 S.Ct. 1188 (2018)**

April 17, 2018

Outcome:

6-3 Opinion by Justice Breyer on. Justice Gorsuch filed a dissenting opinion in which Justices Thomas and Alito joined. Reversed the Eleventh Circuit's judgment and remanded the case for further proceedings.

Overview:

"[A] federal habeas court reviewing an unexplained state-court decision on the merits should 'look through' that decision to the last related state-court decision that provides a relevant rationale and presume that the unexplained decision adopted the same reasoning.

The State may rebut the presumption by showing that the unexplained decision most likely relied on different grounds than the reasoned decision below."

***McCoy v. Louisiana*, 138 S.Ct. 1500 (2018)**

May 14, 2018

Outcome:

6-3 Opinion by Justice Ginsburg on, joined by Justices Roberts, Kennedy, Breyer, Sotomayor, and Kagan. Dissenting opinion by Justice Alito, joined by Justices Thomas and Gorsuch. Reversed and remanded

Overview:

The Court held that the Sixth Amendment guarantees a defendant the right to choose the objective of his defense and to insist that his counsel refrain from admitting guilt, even when counsel's experienced-based view is that confessing guilt offers the defendant the best chance to avoid the death penalty. The client's autonomy, not his counsel's competence, is the issue. The Sixth Amendment rights of defendant, who was charged with three murders, were violated because even though he vociferously insisted that he did not engage in the charged acts and objected to any admission of guilt, the state trial court permitted counsel at the guilt and sentencing

phases of the capital trial to tell the jury that defendant was guilty of committing the charged murders;

Counsel could not admit his client's guilt of a charged crime over the client's intransigent objection to that admission, and violation of a defendant's Sixth Amendment secured autonomy constituted structural error, warranting a new trial, because the admission blocked the defendant's right to make fundamental choices about his own defense.

***Murphy v. NCAA*, 138 S.Ct. 1461 (2018)**

May 14, 2018

Overview:

6-3 Opinion by Justice Alito on, joined by Justices Roberts, Kennedy, Thomas, Kagan, and Gorsuch, and joined in part by Justice Breyer. Justice Thomas filed a concurring opinion. Justice Breyer filed an opinion concurring in part and dissenting in part. Justice Ginsburg filed a dissenting opinion, joined by Justice Sotomayor, and joined in part by Justice Breyer. Judgment reversed

Outcome:

Professional and Amateur Sports Protection Act that prohibit state authorization and licensing of sports gambling schemes violate the anti-commandering rule of the Tenth Amendment because it unequivocally dictated what a state legislature might and might not do, and no other PASPA provisions are severable from the provisions at issue. The prohibition under § 3702(1) of state licensing of sports gambling suffered from the same defect because it issued a direct order to the state legislature States can legalize sports betting.

***Dahda v. U.S.*, 138 S.Ct. 1491 (2018)**

May 14, 2018

Outcome:

Judgment affirmed 8-0 Opinion by Justice Breyer on. Justice Gorsuch took no part in the case. Affirmed.

Overview:

Court held wiretap orders authorized by a judge for the federal district of Kansas in the government's investigation of a suspected Kansas drug distribution ring were not facially insufficient, since they were not lacking any information that the wiretap statute required them to include and since the challenged language authorizing interception outside the court's territorial jurisdiction was surplus.

***United States v. Sanchez-Gomez*, 138 S.Ct. 1532 (2018)**

May 14, 2018

Outcome:

Judgment vacated; case remanded with instructions to dismiss as moot. Unanimous decision.

Overview:

The United States Court of Appeals for the Ninth Circuit erred in finding that civil class action precedents allowed it to review an action filed by four defendants who challenged a policy adopted by the United States District Court for the Southern District of California which allowed the United States Marshals Service to use full restraints, handcuffs connected to a waist chain, with legs shackled, on in-custody defendants produced in court for nonjury proceedings, even though all four defendants' cases had been resolved and they were no longer subject to the policy.

The Federal Rules of Criminal Procedure did not establish a vehicle comparable to a collective action brought under the FLSA, much less a class action, and judicial precedent had never permitted criminal defendants to band together to seek prospective relief in their individual cases on behalf of a class.

***Byrd v. United States*, 138 S.Ct. 1518 (2018)**

May 14, 2018

Outcome:

Judgment vacated; case remanded. Opinion by Justice Kennedy. Justice Thomas filed a concurring opinion, in which Justice Gorsuch joined. Justice Alito filed a concurring opinion.

Overview:

As a general rule, someone in otherwise lawful possession and control of a rental car had a reasonable expectation of privacy in it even if the rental agreement did not list him or her as an authorized driver;

A remand was necessary to address the government's argument that the general rule did not apply to petitioner in the circumstances presented, i.e., an unauthorized driver of a rental car, especially as it was unclear from the record whether the government's inferences painted an accurate picture of what occurred;

On remand, the lower court was not required to assess petitioner's reasonable expectation of privacy before addressing the other aspects of the merits of the Fourth Amendment claim because Fourth Amendment standing was subsumed under substantive Fourth Amendment doctrine and was not a jurisdictional question.

***Collins v. Virginia*, 138 S.Ct. 1663 (2018)**

May 29, 2018

Outcome:

8-1 Opinion by Justice Sotomayor on joined by Justices Roberts, Kennedy, Breyer, Kagan, Ginsburg and Gorsuch. Concurring opinion by Justice Thomas. Dissenting opinion by Justice Alito. Reversed and remanded

Overview:

The Court held that the automobile exception to the Fourth Amendment does not permit the warrantless entry of a home or its curtilage – “the area ‘immediately surrounding and associated with the home’” – in order to search a vehicle therein.

A partially enclosed section of a driveway where a motorcycle was parked constituted curtilage protected by the Fourth Amendment. The driveway enclosure was an area adjacent to a home and to which the activity of home life extended;

The automobile exception did not permit an officer to enter the curtilage without a warrant to search the motorcycle. The automobile exception did not afford the necessary lawful right of access to search a vehicle parked within a home or its curtilage because it did not justify an intrusion on a person's separate and substantial Fourth Amendment interest in his home and curtilage.

***Lagos v. United States*, 138 S.Ct. 1684 (2018)**

May 29, 2018

Outcome:

9-0 Opinion by Justice Breyer; reversed and remanded.

Overview:

The provision of the Mandatory Victims Restitution Act of 1996 that requires certain convicted defendants to reimburse the victim for “expenses incurred during participation in the investigation or prosecution of the offense or attendance at proceedings related to the offense,” 18 U. S. C. §3663A(b)(4) does not include private investigations and civil or bankruptcy proceedings. The words “investigation” and “proceedings” in the Mandatory Victims Restitution Act refer to government investigations and criminal proceedings.

***Koons v. United States*, 138 S.Ct. 1783 (2018)**

June 4, 2018

Outcome:

9-0 Opinion by Justice Alito. Affirmed.

Overview:

Defendants who are subject to mandatory minimum sentences and received lower sentences because they assisted the government are not

eligible for reductions if the sentencing guidelines range is later lowered. The defendants do not qualify for sentence reductions under 18 U.S.C. §3582(c)(2) because their sentences were not “based on” their lowered Guidelines ranges but, instead, were “based on” their mandatory minimums and on their substantial assistance to the Government.

***Hughes v. United States*, 138 S.Ct. 1765 (2018)**

June 4, 2018

Outcome:

6-3 Opinion by Justice Kennedy, joined by Justices Ginsburg, Breyer, Sotomayor, Kagan and Gorsuch on. Justice Sotomayor filed a concurring opinion. Chief Justice Roberts, joined by Justices Thomas and Alito, filed a dissenting opinion. Reversed and remanded.

Overview:

A defendant who pleads guilty in a negotiated plea can benefit from later changes in the sentencing guidelines if the district court relied on the guideline range in imposing the sentence or accepting the plea agreement. A defendant may seek relief under 18 U.S.C. §3582(c)(2) if he entered a plea agreement under Federal Rule of Criminal Procedure 11(c)(1)(C) (Type-C agreement), which permits the defendant and the Government to “agree that a specific sentence or sentencing range is the appropriate disposition of the case,” and “binds the court [to the agreed-upon sentence] once [it] accepts the plea agreement.”

***Rosales-Mireles v. United States*, 138 S.Ct. 1897 (2018)**

June 18, 2018

Outcome:

7-2 Opinion by Justice Sotomayor, joined by Justices Roberts, Kennedy, Ginsburg, Breyer, Kagan and Gorsuch on June 18, 2018. Justice Thomas, joined by Justice Alito, filed a dissenting opinion. Decision reversed and case remanded.

Overview:

A miscalculation of a Federal Guidelines sentencing range that has been determined to be plain error and to affect a defendant's substantial rights calls for a court of appeals to exercise its discretion under Federal Rule of Criminal Procedure 52(b) to vacate the defendant's sentence in the ordinary case.

***Chavez-Meza v. United States*, 138 S.Ct. 1959 (2018)**

June 18, 2018

Outcome:

5-3 Opinion by Justice Breyer, joined by Justices Roberts, Thomas, Ginsburg, and Alito on. Justice Kennedy, joined by Justices Kagan and Sotomayor, filed a dissenting opinion. Justice Gorsuch took no part in consideration or decision of the case. Affirmed.

Overview:

Judge had a reasoned basis for his decision, and therefore the judge's explanation for reducing, under 18 U. S. C. §3582(c)(2), Aducto Chavez-Meza's sentence to the middle rather than the bottom of the amended Federal Guidelines range was adequate.

***Lozman v. City of Riviera Beach, Fla.*, 585 U.S. ___ (2018)**

June 18, 2018

Outcome:

8-1 Opinion by Justice Kennedy, joined by Justices Roberts, Ginsburg, Breyer, Alito, Kagan, Sotomayor and Gorsuch. Justice Thomas filed a dissenting opinion. Vacated.

Outcome:

Court held that a finding of probable cause for Fane Lozman's arrest for disrupting a city council meeting does not bar Mr. Lozman's First Amendment claim of retaliatory arrest under the circumstances of this case.

***Ortiz v. United States*, 138 S.Ct. 2165 (2018)**

Jun 22, 2018

Outcome:

7-2 decision. Opinion by Justice Kagan. Justice Thomas filed a concurring opinion. Justice Alito filed a dissenting opinion, in which Justice Gorsuch joined. Judgment affirmed

Overview:

The jurisdiction and structure of the court-martial system resembled those of other courts whose decisions the United States Supreme Court reviewed. A judge assigned to the United States Air Force Court of Criminal Appeals (AFCCA) to review a service member's conviction for possessing and distributing child pornography was not disqualified for serving as a judge on the AFCCA at the time he reviewed the case because he was appointed to the United States Court of Military Commission Review before he reviewed the case.

***Currier v. Virginia*, 138 S.Ct. 2144 (2018)**

June 22, 2018

Outcome:

5-4 decision. Opinion by Justice Gorsuch, joined by Justices Roberts, Kennedy, Thomas and Alito in Parts I and II, and by Justices Roberts, Thomas and Alito in Part III. Justice Kennedy filed an opinion concurring in part. Justice Ginsburg, joined by Justices Breyer, Sotomayor and Kagan, filed a dissenting opinion. Judgment affirmed.

Overview:

Because Mr. Currier consented to a severance of the charges against him, his trial and conviction on a felon-in-possession charge, following an acquittal on charges of burglary and larceny, did not violate the Double Jeopardy Clause, which provides that no person may be tried more than

once “for the same offence.” A defendant who consents to sequential trials for multiple, overlapping offenses loses double jeopardy protection.

***Carpenter v. United States*, 138 S.Ct. 2206 (2018)**

June 22, 2018

Outcome:

5-4 Opinion by Chief Justice Roberts, joined by Justices Ginsburg, Breyer, Kagan and Sotomayor on. Justice Kennedy, joined by Justices Thomas and Alito, filed a dissenting opinion. Justice Thomas filed a dissenting opinion. Justice Alito filed a dissenting opinion, in which Justice Thomas joined. Justice Gorsuch filed a dissenting opinion.

Judgment reversed.

Overview:

The government's acquisition from wireless carriers of defendant's historical cell-site location information (CSLI) was a search under the Fourth Amendment. When the government accessed defendant's CSLI, it invaded his reasonable expectation of privacy in the whole of his physical movements, and the fact that the government obtained the information from a third party did not overcome defendant's claim to Fourth Amendment protection;

A court order was not a permissible mechanism for accessing historical CSLI because the showing required under the Act fell well short of probable cause. A warrant was necessary to obtain CSLI in the absence of an exception such as exigent circumstances.

***Sexton v. Beaudreaux*, 138 S.Ct. 2555 (2018)**

June 28, 2018

Outcome:

Petition for writ of certiorari granted. Reversed and remanded. Per curiam decision; Justice Breyer dissented.

Overview:

The lower court failed to properly apply the 28 U.S.C.S. § 2254(d) standard to a state court's summary decision that petitioner's trial attorney was not ineffective for failing to file a motion to suppress a witness's identification testimony where it considered arguments against the state court's decision that petitioner had not made in his state petition, and it assessed the ineffectiveness claim de novo instead of with the appropriate amount of deference.

***Sause v. Bauer*, 138 S.Ct. 2561 (2018)**

June 28, 2018

Overview:

Petition for writ certiorari granted; judgment reversed; case remanded.
Per curiam decision.

Overview

Dismissal of a 42 U.S.C.S. § 1983 complaint alleging that two police officers violated petitioner's First Amendment rights was error where petitioner's claim demanded consideration of the ground on which the officers were present in her apartment and the nature of any legitimate law enforcement interests that might have justified an order to stop praying at the specific time in question. Without considering those matters, neither the free exercise issue nor the officers' entitlement to qualified immunity could be resolved, and as a result, petitioner's choice to abandon her Fourth Amendment claim on appeal did not obviate the need to address those matters.