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Supreme Court Watch: Recent Decisions of Selected Criminal Cases

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Supreme Court Watch

Recent Decisions of Selected Criminal Cases | By Glenn Godfrey

Berghuis v. Smith

No. 08-1402

Decided: March 30, 2010

Question Presented:

What is the appropriate test to measure underrepresentation in a jury?

Facts:

In 1993, Diapolis Smith was tried for murder in Kent County, Michigan. Kent County's juror assignment order, which was in effect when Smith's jury was empaneled, assigned prospective jurors first to local district courts, and, only after filling local needs, made the remaining persons available to the countywide circuit court. The circuit court heard felony cases, like Smith's. A large majority of the African-American residents of Kent County live in Grand Rapids, home to a single local court.

Voir dire for Smith's trial took place in September 1993. The venire panel included between 60 and 100 individuals. At most three members of the venire panel were African-American. Smith unsuccessfully objected to the composition of the venire panel. Smith's case proceeded to trial before an all-white jury. Smith was eventually convicted.

The month after voir dire for Smith's trial, Kent County reversed the assignment order. It did so, according to the Circuit Court Administrator, based on "[t]he belief . . . that the respective districts essentially swallowed up most of the minority jurors," leaving the Circuit Court with a jury pool that "did not represent the entire county."

Smith appealed his conviction on the ground that he had been denied his Sixth Amendment right to a jury drawn from a fair cross-section of the community. After the Michigan Supreme Court rejected Smith's arguments, he sought federal habeas relief, which the Sixth Circuit granted.

Decision:

In a unanimous decision written by Justice Ginsburg, the Court reversed the Sixth Circuit Court of Appeals, finding against the Smith. The Court held that Smith had failed to establish that the decision of the Michigan Supreme Court "involved an unreasonable application of clearly established Federal law as determined by the Supreme Court of the United States"–the standard of review for habeas petitions.

Criminal defendants have a Sixth Amendment right to trial by an impartial jury drawn from a fair cross section of the community. See *Taylor v. Louisiana*, 419 U. S. 522 (1975). The Court held that a criminal defendant must establish three things to demonstrate a *prima facie* violation of this right: that (1) a "distinctive" group (2) is not fairly and reasonably represented in jury pools because of (3) "systematic exclusion" from the jury selection process. *Duren v. Missouri*, 439 U.S. 357 (1979).

Smith argued Kent County's juror assignment system siphoned minority jurors away from the countywide circuit court. The resulting being that African Americans were systematically excluded from the circuit court jurors.

The state and lower federal courts focused on the second element of the Duren test, by considering the question of how underrepresentation in the jury is appropriately measured. The courts below and the parties noted federal courts had applied three different methods to measure fair and reasonable representation: the absolute and comparative disparity tests, and the standard deviation test. However, rather than endorse any one test the Court merely observed that neither *Duren* nor any other decision of the Court specifies the method or test courts must use to measure the representation of distinctive groups in jury pools. In any case, the Court found that all available tests for measuring underrepresentation were "imperfect."

Instead, the Court rested its decision on the "systematic exclusion" element of the *Duren* test. To establish systematic exclusion, Smith contended he only needed to show the underrepresentation was persistent and "produced by the method or 'system' used to select [jurors]," rather than by chance. The Court rejected Smith's argument that "siphoning" and other factors constituted a "systematic" cause of underrepresentation

of African-Americans in Kent County's jury pool. Rather, the Court found that "no clearly established precedent of this Court supports Smith's claim that he can make out a *prima facie* case merely by pointing to a host of factors that, individually or in combination, might contribute to a group's underrepresentation." Justice Ginsburg indicated that "Smith's best evidence of systematic exclusion was . . . a decline in comparative underrepresentation, from 18 to 15.1%, after Kent County reversed the assignment order." The Court also found that, although the record established that some officials and others in Kent County believed that the assignment order created racial disparities, Smith's evidence did not substantiate that the the County reversed the order in response to racial disparities.

Bloate v. United States

No. 08-728

Decided: March 8, 2010

Question Presented:

Whether time granted to prepare pretrial motions is automatically excluded from the Speedy Trial Act's 70-day time limit, within which a criminal defendant's trial must commence?

Facts:

The Speedy Trial Act of 1974, 18 U. S. C. §3161, requires that a criminal defendant's trial commence within 70 days after the defendant is charged or makes an initial appearance, whichever is later. If this deadline is not met, the defendant is entitled to a dismissal of the charges. The Act, however, excludes from the 70-day period time lost to certain types of delay.

Petitioner Bloate was indicted on August 24, 2006. After his arraignment, the Magistrate Judge ordered the parties to file pretrial motions by September 13. On September 7, the court granted Bloate's motion to extend that deadline to September 25. On the new due date, Bloate waived his right to file pretrial motions. On October 4, the Magistrate found the waiver was voluntary and intelligent.

Over the next three months, the petitioner's trial was delayed for several reasons. On February 19, 2007—179 days after he was indicted—Bloate moved to dismiss the indictment, claiming that the Act's 70-day limit had elapsed. The district court denied the motion, excluding the time from September 7 through October 4 as pretrial motion preparation time.

Decision:

In a 7-2 opinion written by Justice Thomas, the Court held the time granted to *prepare* pretrial motions is not automatically excludable from the 70-day limit under the Speedy Trial Act. Such time may be excluded only when a district court finds, on the record, that granting the extra time serves the ends of justice.

Subsection (h)(1)(D) renders automatically excludable "delay resulting from any pretrial motion, from the filing of the motion through the conclusion of the hearing on, or other prompt disposition of, such motion." The Court read this to mean that the provision communicates Congress' judgment that delay resulting from pretrial motions is automatically excludable. In other words, delay from pretrial motion preparation is excludable without district court findings, but *only* from the time a motion is filed through the hearing or disposition point. Any other delay due to pretrial motions is excludable when accompanied by district court findings.

As a result, the Court held that the 28-day period from September 7 through October 4, which included the additional time granted by the district court for pretrial motion preparation, is not automatically excludable under subsection (h)(1). Because the Eighth Circuit Court of Appeals did not address whether any portion of that time might have been otherwise excludable, the Court did not consider whether any other exclusion would apply to all or part of the 28-day period.

Justice Ginsburg wrote a concurring opinion expressing that the majority opinion should not be read to bar the Eighth Circuit "from considering, on remand, the Government's argument that the indictment, and conviction under it, remain effective."

The dissent by Justice Alito, joined by Breyer, disagreed with the Majority's interpretation of the text. Alito reasoned that Subsection (h)(1)(D) was not exhaustive and, therefore, the time following pretrial motion deadline could have been excludable.

Florida v. Powell

130 S. Ct. 1195

Decided: February 23, 2010

Question Presented:

Must a suspect be expressly advised of his right to counsel present *during* questioning?

Facts:

Powell, respondent, was arrested by Tampa Police. Before questioning him, an officer read him their standard *Miranda* form, stating, *inter alia*: "You have the right to talk to a lawyer before answering any of our questions" and "[y]ou have the right to use any of these rights at any time you want during this interview." Powell then made some inculpatory statements.

At his trial, Powell moved to suppress the inculpatory statements based on the contention that the *Miranda* warnings he received did not adequately convey that he had a right to the presence of an attorney *during* questioning, not just *before* questioning. The motion was denied, and Powell was convicted.

Decision:

Justice Ginsburg delivered the opinion of the Court, in which six other justices joined which held that the warnings Powell received were constitutionally satisfactory. *Miranda v. Arizona* requires that a suspect "must be clearly informed that he has the right to consult with a lawyer and to have the lawyer with him during interrogation." 384 U.S. 436, 479 (1966). The majority noted that, while the warnings prescribed by *Miranda* are invariable, this Court has not dictated the words in which the essential information must be conveyed. In determining whether police warnings were satisfactory, the inquiry is simply whether the warnings reasonably "conveyed to [a suspect] his rights as required by *Miranda*." *Duckworth v. Eagan*, 492 U.S. 195, 203 (1989).

The Court found the warning communicated to Powell that he (1) could consult with a lawyer before answering any particular question and (2) he could exercise that right while the interrogation was underway. In combination, the two warnings reasonably conveyed Powell's right to have an attorney present, not only at the outset of interrogation, but at all times.

Justice Stevens, joined by Justice Breyer, dissented, concluding that the warnings were inadequate. Justice Stevens argued the warning failed entirely to inform Powell of his right to an attorney's presence *during* the interrogation. Instead, the warnings suggested that he could only consult with a lawyer before questioning began.

Graham v. Florida and *Sullivan v. Florida*

Graham: No. 08–7412

Sullivan: No. 08-7621

Decided: May 17, 2010

Question Presented:

Does the Eighth Amendment's ban on cruel and unusual punishment prohibit the sentence of life without the possibility of parole imposed on a juvenile convicted of a non-homicide offense?

Facts:

Terrance Graham was convicted of armed burglary and attempted armed robbery at the age of 16. After serving a 12-month sentence, Graham was accused of a probation violation for his involvement in an armed burglary. At the probation violation hearing, the judge considered Graham's violent history and sentenced him to life in prison without parole.

At the age of thirteen, Joseph Sullivan was convicted of burglary and raping an elderly woman. At sentencing, the state presented evidence that Sullivan had participated in at least seventeen crimes before the rape and burglary. The judge determined that, given Sullivan's violent past, he should be treated as an adult offender and sentenced Sullivan to life in prison without the chance of parole.

Decision:

Graham

In a 6-3 decision written by Justice Kennedy, the Supreme Court held that the Eighth Amendment prohibits a juvenile offender convicted of a non-homicide offense to be sentenced to life in prison without the chance of parole. The Court further held that the state need not "guarantee the offender eventual release," only that the offender must have some "realistic opportunity to obtain release by the end of that term."

The Court found that a life sentence without the chance of parole upon a juvenile offender who did not commit a homicide served no accepted penological purpose. The Court determined that "the limited culpability of juvenile non-homicide offenders; and the severity of life without parole sentences all lead to the conclusion that the sentencing practice under consideration is cruel and unusual."

Justice Stevens filed a concurring opinion, to which Justices Ginsburg and Sotomayor joined. The concurrence primarily took exception with Justice Thomas' dissenting argument that the majority opinion is not consistent with prior opinions. Stevens argued that society's view of what is "cruel and unusual" evolves as society accumulates knowledge, learns from mistakes, and gains experience.

Chief Justice Roberts wrote a separate concurrence, arguing that, while he agreed that Graham's particular sentence was unconstitutional considering his juvenile status and the nature of his crimes, he did not agree that the Court should create a new categorical rule.

Justice Thomas wrote a dissenting opinion, to which Justices Scalia and Alito joined, arguing that the majority imposed its own moral judgment over the overwhelming legislative majority to implement a categorical rule that was not intended by the founders.

Sullivan

The Court dismissed *Sullivan* as "improvidently granted."

Johnson v. United States

No. 08-6925

Decided: March 2, 2010

Question Presented:

Whether Florida's felony battery statute, which only requires the "actual and intentional touching" of another person, can be said to require the use of "physical force" as an element and thus constitutes a "violent felony" for purposes of the federal Armed Career Criminal Act (ACCA)?

Facts:

Petitioner Johnson pleaded guilty to possession of ammunition by a convicted felon. The Government sought sentencing under the ACCA which authorizes an enhanced penalty for a person who "has three previous convictions" for "a violent felony," § 924(e)(1). The ACCA defines "violent felony" as, *inter alia*, an offense that "has as an element the use . . . of physical force against the person of another." § 924(e)(2)(B)(i).

One of Johnson's prior felony convictions was a Florida conviction for simple battery. Under Florida law, a battery occurs when a person "[a]ctually and intentionally touches" another, no matter how slight.

Decision:

In a 7-2 decision written by Justice Scalia, the Court held that the Florida felony offense of battery by "actually and intentionally touching" another person does not have as an element the use of "physical force" against the person of another. Thus, Johnson's conviction did not constitute a "violent felony" under § 924(e)(1).

The Court considered the meaning of "physical force" in the statutory context of the ACCA. The Court rejected the government assertion that "force", as used here, is a legal term of art describing one of the elements of the common-law crime of battery. At common law, that element was satisfied by even the slightest offensive touching. While Justice Scaila recognized a common-law term of art should be given its established common-law meaning, he noted the Court does not ascribe to a statutory term a common-law meaning where that meaning "plainly do[es] not fit and produces nonsense." Here "physical force" is used in defining not the crime of battery, but rather the statutory category of "violent felony." In that context, the Court deemed "physical force" clearly means *violent* force—*i.e.*, force capable of causing physical pain or injury to another person.

Justice Alito, joined by Justice Thomas, dissented. In his view, because "physical force" can mean "the merest touching," Florida's felony battery statute falls within the scope of the ACCA. Justice Alito emphasized that Congress had explicitly limited the term "force" in other sections to the force capable of causing serious physical harm or bodily injury. Justice Alito maintained that had Congress intended to similarly limit "physical force" in the provision at issue, it could have done so.

Maryland v. Shatzer

No. 08-680

Decided: February 24, 2010

Question Presented:

Whether *Edwards v. Arizona*, which bars police from initiating a questioning after a suspect has invoked a right to counsel, prohibits a police questioning initiated three years after the suspect invoked his right to counsel?

Facts:

In 2003, respondent Shatzer was incarcerated at a Maryland prison. A police detective tried to question Shatzer on a matter unrelated to his incarceration. Shatzer invoked his *Miranda* right to have counsel present during the interrogation, so the detective terminated the interview. Shatzer was released back into the general prison population and the investigation was closed. In 2006, another detective reopened the investigation and attempted to interrogate Shatzer, who was still incarcerated. Shatzer waived his *Miranda* rights and made inculpatory statements.

Decision:

The Court, in an opinion written by Justice Scalia, held that because Shatzer enjoyed a break in custodial interrogation lasting more than two weeks, *Edwards* does not mandate suppression of his inculpatory statements.

Edwards' fundamental purpose is to "[p]reserv[e] the integrity of an accused's choice to communicate with police only through counsel," *Patterson v. Illinois*, 487 U. S. 285, 291 (1988). The Court had previously determined that where a suspect was held in uninterrupted custodial interrogation, cut off from his normal life and isolated in a police-dominated atmosphere, there is a presumption that a suspect's subsequent waiver was coerced. *Illinois v. Perkins*, 496 U. S. 292 (1990).

In this case, however, the Court held that a fourteen-day break in custodial interrogation ends the *Edwards* presumption that a *Miranda* waiver at a subsequent interrogation is obtained through coercion. Where a suspect has been released from custody and "returned to his normal life for some time before the later attempted interrogation, there is little reason to think that his change of heart has been coerced. He has no longer been isolated. He has likely been able to seek advice from an attorney, family members, and friends." The Court settled on a fourteen-day requirement in order to give enforcement officers a clear and certain rule.

Justice Thomas, who concurred in part and concurred in the judgment, took issue with the fourteen day rule, calling it arbitrary.

Justice Stevens concurred in the judgment. He agreed the protections in *Edwards* were not eternal, but expressed concern that the fourteen days might pass without the suspect ever being provided counsel.

Padilla v. Commonwealth of Kentucky

No. 08-651

Decided: March 31, 2010

Question Presented:

Must defense counsel advise a noncitizen client regarding the consequences of a guilty plea upon the client's immigration status?

Facts:

Petitioner Jose Padilla, a lawful permanent resident of the United States for over 40 years, faced deportation after pleading guilty to drug-distribution charges in Kentucky. Padilla maintained that his counsel failed to advise him he might be deported as a consequence of entering a guilty plea. Padilla's counsel, in fact, told him not "to worry about [deportation] since he had been in the country so long." Padilla asserted that he would have gone to trial had he not received this incorrect advice.

Decision:

In a 7-2 opinion by Justice Stevens, the Court found that counsel must inform a client whether his plea carries a risk of deportation. As a result Padilla's counsel was constitutionally deficient.

The Court began by rejecting the reasoning of the Kentucky Supreme Court. The Kentucky Supreme Court denied Padilla's ineffectiveness claim on the ground that the Sixth Amendment's guarantee does not protect defendants from erroneous deportation advice because deportation is merely a "collateral" consequence of a conviction. Justice Stevens noted the Court has never distinguished between direct and collateral consequences in defining the scope of constitutionally effective assistance.

The Court next considered whether Padilla's counsel was effective under the standard set forth in *Strickland v. Washington*. 466 U.S. 668 (1984). To satisfy *Strickland*'s two-prong test counsel's representation must fall "below an objective standard of reasonableness," and there must be "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Applying the *Strickland* test, Justice Stevens found clear deficiency. The consequences of Padilla's plea could easily be determined from reading the removal statute. Padilla's deportation was presumptively mandatory, and his counsel's advice was simply incorrect.

The Court, however, did recognize there will be situations in which the deportation consequences of a plea will be unclear. In those cases the Court held, "a criminal defense attorney need do no more than advise a noncitizen client that pending criminal charges may carry adverse immigration consequences."

Justice Alito, joined by Chief Justice Roberts, wrote a concurring opinion. Justice Alito agreed that Padilla's attorney had failed to provide him effective assistance of counsel as defined by *Strickland*. However, Justice Alito disagreed with the majority's decision that a defense attorney must advise his noncitizen client as to the possible immigration consequences of a guilty plea. Justice Alito argued that, because of the complexity of immigration law and because criminal defense attorneys often lack expertise in immigration law, the Court's "vague, halfway" holding that attorneys must only advise their clients on immigration law that is "succinct and straightforward" would "lead to much confusion and needless litigation."

Justice Scalia, joined by Justice Thomas, filed a brief dissent. In it, Scalia contended the Sixth Amendment only grants a defendant the right to effective assistance of counsel for defense against a criminal prosecution, and not against the "collateral consequences" of that prosecution.

Smith v. Spisak

No. 08-724

Decided: January 12, 2010

Question Presented:

Whether jury instructions may state the jury must find unanimously that each aggravating factor outweighs any mitigating circumstance?

Facts:

Ohio sentenced respondent Spisak to death. Spisak filed a federal habeas petition claiming that the jury instructions unconstitutionally required the jury to consider only those mitigating factors on which the jury could unanimously agree were mitigating.

Decision:

Justice Breyer delivered the opinion of the Court upholding the jury instructions because they were not an unreasonable application of clearly established federal law–the standard of review for habeas petitions.

In *Mills v. Maryland*, the Court held that the jury instructions violated the Constitution because, read naturally, they told the jury that it could not find a particular circumstance to be mitigating unless all twelve jurors agreed that the mitigating circumstance had been proven to exist. 486 U. S. 367, 380–81 (1988).

In this case, however, the Court held that, even assuming that *Mills* sets forth "clearly established Federal law," the instructions met constitutional standards. While the instructions stated the jury had to find unanimously that each of the aggravating factors outweighed any mitigating circumstances, the instructions did not say that the jury had to determine the existence of each individual mitigating factor unanimously. Nor did the instructions say anything about how the jury should

make individual determinations that each particular mitigating circumstance existed. Overall, the Court found the instructions focused on balancing the aggravating and mitigating factors and repeatedly told the jury to consider all relevant evidence.

Justice Stevens, concurring in judgment, found that the jury instructions violated clearly established federal law, but the error did not prejudice Spisak.

Thaler v. Haynes

130 S. Ct. 1171

Decided: February 22, 2010

Question Presented:

Must a trial judge have personally observed the demeanor of a prospective juror before rejecting a demeanor-based explanation for a peremptory challenge?

Facts:

Respondent Rick Thaler was convicted of murder in a Texas state court. During the voir dire, two judges presided at different stages. Judge Harper presided when the attorneys questioned the prospective jurors individually, but Judge Wallace took over when peremptory challenges were exercised. When the prosecutor used a peremptory challenge to attempt to strike a potential juror, Thaler's attorney raised a *Batson* objection, that the prosecutor had dismissed the juror solely on the basis of race. The prosecutor responded that the peremptory challenged was based on the potential juror's demeanor during individual questioning. Judge Wallace accepted the prosecutor's explanation and overruled the objection.

Decision:

In an unanimous decision, the Court held it is was not a violation of clearly established law for a judge to accept a demeanor-based explanation of a peremptory challenge, when the judge did not personally observe and recall the relevant aspect of the prospective juror's demeanor.

The Court noted *Batson v. Kentucky* required judges ruling on objections to peremptory challenges to "tak[e] into account all possible explanatory factors in the particular case," 476 U.S. 79, 95 (1986). Thus, where the explanation for a peremptory challenge is based on a prospective juror's demeanor, the judge should take into account, among other things, any observations the judge was able to make during the voir dire. But, the Court held, "*Batson* plainly did not go further and hold that a demeanor-based explanation must be rejected if the judge did not observe or cannot recall the juror's demeanor."

Wood v. Allen

No. 08-9156

Decided: January 20, 2010

Question presented:

Whether the Anti-terrorism and Effective Death Penalty Act requires that all habeas petitioners show an unreasonable determination of facts by clear and convincing evidence?

Facts:

Holly Wood was convicted and sentenced to death in Alabama. Wood petitioned the state for post-conviction relief, arguing that his trial counsel were ineffective under *Strickland v. Washington*, 466 U. S. 668 (1984), because they failed to investigate and present evidence of his mental deficiencies during the penalty phase of trial. The state court rejected Wood's argument. In so doing, the court made a factual finding that counsel had made a strategic decision not to pursue evidence of Wood's alleged retardation.

Wood subsequently sought federal habeas relief under the Anti-Terrorism and Effective Death Penalty Act, 28 U.S.C. § 2254. Section 2254 has two subsections that govern challenges to state factual findings. Under § 2254(d)(2), a federal court may grant relief if the state court decision was "based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding". Under § 2254(e)(1), "a determination of a factual issue made by a State court [is] presumed to be correct," unless the petitioner rebuts "the presumption . . . by clear and convincing evidence."

Decision:

The Court originally granted certiorari to address the relationship between §§ 2254(d)(2) and (e)(1). The issue was whether subsection (e)(1) modifies all challenges brought under subsection (d)(2), such that every habeas petitioner must show an unreasonable determination of facts by clear and convincing evidence.

However, in the 7-2 decision, written by Justice Sotomayor, the Court did not address the issue. Rather, the Court found that, under either interpretation, the state court's factual determination was not "unreasonable." As such the Court did not reach the question of whether § 2254(e)(1) applies in every case presenting a challenge under § 2254(d)(2).

Justice Stevens, joined by Justice Kennedy, filed a dissenting opinion. Justice Stevens argued that, while Wood's lawyers had decided not to further investigate or present evidence of his mental impairments, this decision was not a "strategic" one. Rather, "the failure to investigate was the product of inattention and neglect by attorneys preoccupied with other concerns and not the product of a deliberate choice between two permissible alternatives."

Granted Certiorari:

Abbott v. United States; *Gould v. United States*

Docket Number: 09-479 and 09-7073

Question Presented:

What is the proper interpretation and application of 18 U.S.C. § 924(c)(I)(A)'s "except" clause for mandatory minimum sentences involving drug and gun crimes?

Facts:

Gould was sentenced to 10 years of imprisonment for possession of a firearm by a convicted felon in violation of 18 U.S.C § 922(g). Abbott was also sentenced to 10 years for conspiracy to possess with the intent to distribute 50 grams or more of cocaine in violation of 21 U.S.C. § 841. In addition, both men were sentenced to an additional 5 years for possession of a firearm in furtherance of a drug trafficking crime in violation of 18 U.S.C. § 924(c)(1)(A). In both cases, the judges ordered these five years to run consecutively.

Section 924(c)(1)(A) provides for a five-year mandatory minimum sentence for possessing a firearm in furtherance of a drug-trafficking crime "except to the extent that a greater minimum sentence is otherwise provided by . . . any other provision of law." Both men now maintain that, because they were sentenced to a 10-year mandatory minimum sentence by "other provisions of law," the 5-year mandatory minimum for possessing a firearm in furtherance of a drug trafficking should not apply.

Belleque v. Moore

Docket Number: 09-658

Question Presented:

Whether *Arizona v. Fulminante*, 499 U.S. 279 (1991), which established that the erroneous admission of a coerced confession at the trial is not harmless, is "clearly established federal law" for the purposes of a federal habeas corpus case where the defendant pleaded guilty or no contest?

Facts:

Randy Moore was suspected of murder. The police obtained Moore's taped confession through unconstitutional means because, although Moore requested the assistance of counsel, the interrogating officers ignored the request and continued questioning. However, Moore's attorney failed to recognize that the confession to the police was inadmissible and never filed a motion to suppress the confession. Moore subsequently entered a guilty plea.

Connick v. Thompson

Docket Number: 09-571

Question Presented:

May a municipality be held liable for a single *Brady* violation when it failed to properly train a local prosecutor?

Facts:

In May, 1985, John Thompson was tried, convicted, and sentenced to death for murder. During the trial, Thompson did not take the stand on his own behalf because of a previous armed robbery conviction. Thompson spent eighteen years in prison, fourteen of which were spent on death row, and was nearly executed by the State. He was exonerated after it was discovered that an assistant district attorney had destroyed exculpatory evidence to obtain the armed robbery conviction.

In 2003, Thompson sued district attorney's office. The jury found that district attorney's office was "deliberately indifferent" to the need to train, monitor, and supervise his prosecutors to comply with the constitutional requirements concerning production of evidence favorable to an accused. The jury awarded Thompson $14,000,000.

Harrington v. Richter

Docket Number: 09-587

Question Presented:

Whether the right to the effective assistance of counsel requires defense counsel to produce expert-opinion testimony?

Facts:

Respondent Joshua Richter was accused of murder. The incident involved multiple gunshots from a variety of weapons and two markedly different stories of events. The prosecution called two expert witnesses to explain the forensic evidence at the scene. However, defense counsel never called his own expert to the stand and never consulted with a forensic expert of any kind.

Michigan v. Bryant

Docket Number: 09-150

Question Presented:

Whether statements made by a wounded citizen concerning circumstances of his shooting are non-testimonial because they were made under circumstances indicating that the primary purpose of the questioning was to assist police in an ongoing emergency?

Facts:

On April 29, 2001 at approximately 3:25 a.m., police officers responded to a radio dispatch indicating that a man had been shot. Police found the victim lying on the ground next to his car. The victim had a gunshot wound in his abdomen and appeared to be in considerable pain. In response to the officers' questioning, the victim indicated that he had been shot at approximately 3:00 a.m. while standing outside of the defendant's back door. The victim stated that before being shot he had a short conversation through a closed door with defendant. He identified defendant as the shooter because, although he did not see the defendant, the victim knew recognized the defendant's voice. The victim died within a few hours after he was transported to the hospital. During the trial, the court admitted the victim's statements to the police identifying the shooter.

Ortiz v. Jordan

Docket Number: 09-737

Question Presented:

May a party appeal an order denying summary judgment after a full trial on the merits if the party did not appeal the order before trial?

Facts:

Michelle Ortiz is a former inmate. She was sexually assaulted by a prison guard on two successive nights and prison officials failed to protect her from the second assault. Ortiz sued several of the prison officials. The district court denied the defendants' motion for summary judgment based on qualified immunity. The defendants did not file an interlocutory appeal of the denial of qualified immunity. **CLB**

About the Author

Glenn Godfrey is a second year law student at American University - Washington College of Law. He graduated in 2005 from Southern Methodist University in Dallas, Texas. He is interested in issues of international tax policy and is currently an intern with Berliner, Corcoran & Rowe working in the area of international tax enforcement.