

## Supreme Court Watch: Recent Decisions of Selected Criminal Cases

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# SUPREME COURT WATCH

RECENT DECISIONS OF SELECTED CRIMINAL CASES | BY MICHAEL YELLOTT

## ABBOTT v. UNITED STATES

Docket Number: 09-479

**Decided:** November 15, 2010

### Question Presented:

What is the proper interpretation and application of 18 U.S.C. § 924(c)(1)(A)'s "except" clause for mandatory minimum sentences involving drug trafficking and gun crimes?

### Facts:

Petitioners Abbott and Gould were charged in unrelated prosecutions with drug and firearm violations of 18 U.S.C. § 924(c), which prohibits using, carrying, or possessing a deadly weapon in connection with any drug trafficking or violent crime. They were convicted and each sentenced to an additional five years under this section.

Both Abbott and Gould claimed they could not be sentenced to any additional prison time due to the "except" clause in §924(c)(1)(A), which states that a minimum term of five years shall be imposed "except to the extent that a greater minimum sentence is otherwise provided by [this section] or by any other provision of law."

Both claimed that this clause was triggered by other penalties arising out of other felonies. Gould argued that any greater minimum sentence on a different count of conviction would suffice to trigger the except clause, while Abbott argued a "transactional approach" (so long as the sentence triggering the except clause was part of the same criminal transaction that triggered §924(c) in the first place). The arguments were rejected by the Fifth and Third Circuit Courts, respectively. Both appealed and the cases were consolidated.

### Decision:

In a unanimous opinion (Justice Kagan took no part in the opinion, recusing herself) written by Justice Ginsburg, the Court affirmed the lower courts' rulings, holding that the "except" clause only applies when a greater minimum sentence is otherwise provided for §924(c) offenses. While the only other statute besides §924(c) that falls within this exception is §3559(c), future statutes could fall within the exception if it covers the same conduct. It does not apply broadly to any other offense a defendant commits.



The Court refers to the legislative intent of adding the "except" clause, which was not part of the statute as originally enacted. Congress added the language as part of reforms to stiffen penalties for gun and drug-related offenses, therefore it is unlikely the clause was added to act as an escape mechanism for any defendant charged and convicted of any other crime carrying more than a five-year penalty.

Moreover, the language referencing greater minimums provided by "any other provision of law" was simply a way for Congress to direct sentencing judges not to "stack" punishments (for example, punishing for possessing, brandishing, and discharging a weapon separately even though it was all part of the same transaction).

## GRANTED CERTIORARI: *BELLEQUE v. MOORE*; *PREMO v. MOORE*

Docket Number: 09-658

**Argued:** October 12, 2010

### Questions Presented:

1) Does the standard in *Arizona v. Fulminante*, 499 U.S. 279 (1991), commanding a court to "exercise extreme caution" before determining that a failure to move to suppress a coerced confession was nonprejudicial, apply in this case because no record of trial is available for review?

2) Is the standard set forth in *Arizona v. Fulminante* clearly established federal law?

3) Did the Ninth Circuit err in granting a petition for federal *habeas corpus* relief because petitioner confessed to two people and offered no evidence that had his trial counsel suppressed his confession he would have insisted on going to trial?

**Facts:**

Randy Moore pleaded no-contest to felony murder in an Oregon trial court and was sentenced to twenty-five years imprisonment. After exhausting all post-conviction state court remedies, Mr. Moore petitioned for *habeas corpus* relief in an Oregon federal district court, arguing that his trial counsel was ineffective for failing to recognize that his taped confession was obtained unconstitutionally. The district court denied the petition.

On appeal, the U.S. Court of Appeals for the Ninth Circuit reversed and granted the petition. The court held that counsel’s failure to suppress the confession was both constitutionally deficient and prejudicial under the standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). The court noted that even the state conceded that police ignored Mr. Moore’s request for counsel and, therefore, the means by which the state elicited Mr. Moore’s confession were unconstitutional.

**BOND v. UNITED STATES**

Docket Number: 09-1227

**Granted Cert:** October 12, 2010

**Question Presented:**

Whether a criminal defendant convicted under a federal statute has standing to challenge her conviction on grounds that, as applied in this case, the statute is beyond the federal government’s enumerated powers and inconsistent with the Tenth Amendment.

**Facts:**

Carol Bond was found guilty of trying to poison her husband’s mistress with toxic chemicals multiple times over the course of several months.

Bond stole the chemical potassium dichromate from the company where she was employed as a lab technician. Haynes had contacted police and postal authorities after finding the chemicals at her home. Haynes was not injured from any of Ms. Bond’s 24 attempts to poison her.

A grand jury in the Eastern District of Pennsylvania charged Bond with two counts of possessing and using a chemical weapon in violation of a criminal statute implementing the treaty obligations of the United States under the 1993 Chemical Weapons Convention, in addition to two counts of mail theft.

Bond’s attorneys argue that the statute was intended to deal with “rogue states” and terrorists and that their client should have been prosecuted under state law instead.

In September 2009, the U.S. Court of Appeals for the Third Circuit held that Bond lacked standing to challenge the constitutionality of the statute on the basis of the Tenth Amendment.

**CONNICK v. THOMPSON**

Docket Number: 09-571

**Argued:** October 6, 2010

**Question Presented:**

1) Does imposing failure-to-train liability on a district attorney’s office for a single *Brady*, 373 U.S. 83 (1963), violation contravene the rigorous culpability and causation standards of *Canton*, 489 U.S. 658 (1978), and *Bryan County*, 520 U.S. 397 (1997)?

2) Does imposing failure-to-train liability on a district attorney’s office for a single *Brady* violation undermine prosecutors’ absolute immunity, which was recognized in *Van de Kamp v. Goldstein*, 129 S. Ct. 855 (2009)?

**Facts:**

Prosecutors in the Orleans Parish District Attorney’s Office hid exculpatory evidence, violating John Thompson’s rights under *Brady v. Maryland*, 373 U.S. 83 (1963). Despite no history of similar violations, the office was found liable under § 1983 for failing to train prosecutors.

A pattern of violations is usually necessary to show culpability and causation, but in exceptional cases one violation may suffice. *Bryan County*, 520 U.S., at 409. However, the Court has to-date hypothesized only one example justifying single-incident liability: a failure to train police officers on the use of deadly force. See *Canton*, 489 U.S., at 390 n.10.

**DAVIS v. UNITED STATES**

Docket Number: 09-11328

**Granted Cert:** November 1, 2010

**Question Presented:**

Whether the good-faith exception to the exclusionary rule applies to a search that was authorized by precedent at the time of the search but is then subsequently ruled unconstitutional.

**Facts:**

Police arrested Mr. Davis after a traffic stop. The officers asked Davis his name, to which he responded with a false name. After discovering his correct name the officers arrested him,

handcuffed him and put him in the police car for giving false information to a police officer. They then searched the vehicle and found a gun in his jacket. He was charged and convicted for possession of an illegal weapon.

Following a jury trial, Davis was convicted and sentenced to 220 months in prison. The U.S. Court of Appeals for the Eleventh Circuit found that, while the search was in fact illegal, the evidence found in the vehicle was still admissible because the officers believed in good faith that it was permissible to search the car.

## DEPIERRE v. UNITED STATES

Docket Number: 09-1533

**Granted Cert:** October 10, 2010

### Question Presented:

Whether the term “cocaine base” includes every form of cocaine that is classified chemically as a base or is the term limited to “crack” cocaine.

### Facts:

In April of 2008, a jury found Mr. DePierre guilty of distributing cocaine. He was also found guilty of distributing more than 50 grams of cocaine base, carrying a 10-year minimum sentence. He was sentenced to 10 years in prison, followed by five years of supervised release.

In March of 2010, the 1st U.S. Circuit Court of Appeals upheld the sentence, citing its past precedent. The opinion also notes that the 2d, 3rd, 4th, 5th and 10th Circuits (but not all Circuits) interpret the statute the same way.

Due to the circuit split on the interpretation of “cocaine base,” the Supreme Court needs to resolve the discrepancy and has agreed to hear the case.

## FOWLER v. UNITED STATES

Docket Number: 10-5443

**Granted Cert:** November 15, 2010

### Question Presented:

What kind of proof must prosecutors offer to obtain a conviction for murdering a person with intent to prevent him from communicating information about a federal offense?

### Facts:

Mr. Fowler shot and killed Mr. Horner for trying to interfere with his plan to rob a bank with four other men. Horner had approached Fowler’s accomplices as they sat in a stolen car, wearing black clothes and gloves. Fowler, who had stepped

out of the car, snuck up behind Horner, grabbed his gun, forced him to get on his knees and shot him in the back of the head, killing him.

One of Fowler’s accomplices later implicated him in the murder, and a jury convicted Fowler of killing Horner with the intent to prevent him from communicating information about a federal offense. He was sentenced to life in prison, plus 10 years.

Fowler argues the government failed to prove that a federal investigation would have been probable, and that Horner was likely to have transferred the information to a federal officer or judge. The U.S. Court of Appeals for the Eleventh Circuit affirmed the lower court ruling.

## HARRINGTON v. RICHTER

Docket Number: 09-587

**Argued:** October 12, 2010

### Question Presented:

1) Whether the Ninth Circuit impermissibly enlarged the Sixth Amendment’s right to effective counsel by elevating the value of expert testimony to virtually always require defense counsel to produce such testimony.

2) Does the Antiterrorism and Effective Death Penalty defence apply to a state court’s summary disposition of a claim, including a claim under *Strickland v. Washington*, 466 U.S. 668 (1984)?

### Facts:

A California trial court convicted Mr. Richter of murder and burglary. After he exhausted his state court remedies, he filed for *habeas corpus* relief in a California federal district court. Mr. Richter argued that he was denied effective assistance of counsel in violation of the Sixth Amendment by failing to introduce expert testimony. The district court denied the petition and was affirmed by the U.S. Court of Appeals for the Ninth Circuit.

However, upon rehearing the Ninth Circuit granted the petition, holding that the state court’s determination that Mr. Richter was not denied effective assistance of counsel was unreasonable. The court reasoned that under *Strickland v. Washington*, 466 U.S. 668 (1984), the defendant must show that “counsel’s performance was deficient.” The defendant must also show that “the deficient performance prejudiced the defense.” Both of these requirements of *Strickland* were met, the Ninth Circuit concludes, when Mr. Richter’s counsel failed to conduct pre-trial investigations to determine what forensic evidence or experts would be useful in countering the prosecution’s foreseeable evidence.

## J.D.B. v. NORTH CAROLINA

Docket Number: 09-11121

**Granted Cert:** November 1, 2010

### Question Presented:

Whether a court may consider a juvenile's age in a *Miranda* custody analysis when evaluating the totality of the circumstances and determining whether a reasonable person in the accused's position would have felt he was not free to terminate police questioning and leave?

### Facts:

J.D.B., a seventh-grade student in Chapel Hill, N.C., was taken from a special education class and questioned by a police investigator and the assistant principal about a series of burglaries in the area after the police had learned that J.D.B. was in possession of an item that had been reported stolen.

J.D.B. was escorted to a private school conference room, where he was interrogated by the juvenile crimes investigator in the presence of several school officials, but not his parents. The student's parents were not contacted and he was not read his *Miranda* rights at any time during the interrogation.

After being confronted with the evidence and with a school official urging him to "do the right thing," J.D.B. confessed to the burglaries and wrote a statement to that effect. The police then obtained a search warrant and recovered the stolen items at J.D.B.'s home.

Counsel for J.D.B. sought to suppress his confession in a juvenile-delinquency proceeding charging him with two counts each of breaking and entering and larceny, but J.D.B. lost in lower courts and before the North Carolina Supreme Court.

The state's highest court rejected J.D.B.'s claim that he was in custody during the school interrogation and should have been given a *Miranda* warning. The court said it could not consider the boy's age or special education status in determining whether he was in custody. Since he was not in custody, he was not entitled to *Miranda* warnings.

## MICHIGAN V. BRYANT

Docket Number: 09-150

**Argued:** October 5, 2010

### Question Presented:

Are inquiries of wounded victims considered non-testimonial when they objectively indicate that the purpose of the questioning is to enable police to meet an immediate and ongoing emergency, and, thus, are not afforded heightened protection under *Crawford v. Washington*, 541 U.S. 36 (2004)?

### Facts:

A Michigan trial court convicted Mr. Bryant of second-degree murder, being a felon in possession of a firearm, and possession of a firearm during commission of a felony. On appeal, Mr. Bryant challenged the admission of the victim's statements at trial for violating his Sixth Amendment right of confrontation. The victim stated that Mr. Bryant shot him, but died shortly thereafter, thus was unavailable for cross-examination by Mr. Bryant's counsel.

The Michigan Court of Appeals affirmed the trial court. The Michigan Supreme Court reversed, holding that the statements that the victim made to police before his death were testimonial and their admission violated Mr. Bryant's right to confrontation. The court reasoned that the victim's statements were made in the course of a police interrogation whose primary purpose was to establish or prove events that had already occurred, not to enable police to meet an immediate and ongoing emergency. Therefore, the statements were "testimonial" for the purposes of the heightened protections afforded in *Crawford v. Washington* and should not have been admitted against Mr. Bryant at trial.

## TOLENTINO v. NEW YORK

Docket Number: 10-11556

**Granted Cert:** November 15, 2010

### Question Presented:

Can an individual's motor vehicle records be used as evidence against him when the police consulted those records only after making an illegal stop of the individual's vehicle?

### Facts:

Jose Tolentino was pulled over for playing his music too loudly. The officer ran Tolentino's DMV files and discovered that not only was his license currently suspended, but it had also been suspended at least 10 times prior. Tolentino was arrested and charged with first-degree aggravated unlicensed operation of a motor vehicle. He pleaded guilty in exchange for five years' probation.

He later appealed, arguing his driving record should have been suppressed because the police stop and subsequent DMV record search were illegal. The Court of Appeals of New York disagreed and upheld his sentence.

## ABOUT THE AUTHORS

**Michael Yellott** received his B.A. from University of Massachusetts Amherst in Political Science, and is currently a 3L at the American University Washington College of Law.