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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 STEPHANIE CANNULI AND MONICA TRIGOSO

## MARTINEZ v. RYAN

Docket Number: 10-1001

**Argument:** October 4, 2011

### Issue:

Whether a Defendant in a state criminal case who is prohibited by state law from raising on direct appeal has any claim of ineffective assistance of trial counsel, but who has a state-law right to raise such a claim in a post-conviction counsel with respect to their ineffective-assistance of trial counsel claim?

### Facts:

The Petitioner, Luis Martinez seeks to overturn his conviction on the ineffective assistance of trial counsel ground. Martinez pursued a direct appeal on several grounds but was not allowed to raise this particular claim because Arizona law provides that ineffective assistance of counsel claim in a state collateral proceeding, but has failed to file a timely petition. Since the petition was not filed on time, Arizona considered the claim to have been waived. Due to running out of chance in Arizona, Martinez filed a habeas petition in federal court with his underlying claim being the ineffective assistance of counsel. Federal courts will not consider the merits of the claim raised in a habeas petition if it is in regards to failure to follow state procedural rules. A petitioner's "procedural default" can be excused if they show "cause" and ineffective assistance of counsel may constitute as "cause." Martinez claimed that his appellate counsel was also ineffective and failed to file state collateral review petition. The Court granted certiorari, to whether the Petitioner had a constitutional right to counsel in the state proceeding.

## HOWES v. FIELDS

Docket Number: 10-680

**Argument:** October 4, 2011

### Issue:

(1) Whether the right against self-incrimination requires that a prisoner always be Mirandized before being interviewed in isolation about conduct that occurred outside the prison.

(2) Whether the Court in *Mathis* clearly established such a per se rule.

### Facts:

Randall Lee Fields was incarcerated at the Lenawee County Sheriff's Department, when a corrections officer escorted him from his cell to a locked conference room in the main area of the sheriff's department. In the conference room, two deputy sheriffs questioned him. Neither sheriff read Fields his Miranda rights, but told him that if he did not want to cooperate, he was free to leave the room at any time. Fields did not ask for an attorney or to go back to his cell, however he told the officers more than once that he did not want to speak with them anymore. Fields was not handcuffed or restrained in any way during the questioning, which lasted seven hours.

During the questioning, Fields made incriminating statements, leading to his conviction on two counts of third-degree criminal sexual conduct. Fields filed a pro se petition, pursuant to 28 U.S.C. §2254, for a writ of habeas corpus on three grounds. The relevant ground to the instant appeal was a violation of Mr. Fields' due process rights by the admission of his alleged custodial statement. The district court conditionally granted Fields' habeas petition, holding that the state court unreasonably applied *Mathis v. United States*, 391 U.S. 1 (1968) (holding that Miranda warnings must be administered when law enforcement officers remove an inmate from the general prison population and interrogate him regarding criminal conduct that took place outside the jail or prison). The court further held that the state court's error was not harmless. The Sixth Circuit affirmed, noting that because Fields was removed from the general prison population for interrogation about an offense unrelated to the one for which he was incarcerated, *Mathis* is the applicable law. Therefore, the failure to suppress Fields' confession was not harmless error.

## **FLORENCE v. BOARD OF FREEHOLDERS**

Docket Number: 10-945

**Argument:** October 12, 2011

### **Issue:**

Whether the Fourth Amendment permits a jail to conduct a suspicionless strip search whenever an individual is arrested and admitted to the general population, including for minor offenses.

### **Facts:**

After being stopped for a traffic infraction, the petitioner, Albert W. Florence, was arrested on an outstanding warrant for a noncriminal offense. He was taken to the Burlington County Jail (BCJ). Pursuant to intake policy, he was subjected to a strip and visual body-cavity search. After being held for six days, Florence was sent to Essex County Correctional Facility (ECCF), where he was again subject to a strip search upon his arrival. Florence sued BCJ, ECCF, and various individuals and municipal entities (collectively, the Jails) under 42 U.S.C. § 1983. On appeal is his Fourth Amendment challenge to the strip search procedures at BCJ and ECCF.

The court of appeals reversed the district court, holding that the Fourth Amendment permits a general policy of suspicionless strip searches upon admission to jail, whatever the circumstances, and that evidence that such a policy would detect or deter illegal activity was not necessary. Both courts' decisions were based off of contrasting sides on a widely acknowledged eight-to-three circuit split, which is rooted in irreconcilable interpretations of the Supreme Court's decision in *Bell v. Wolfish*, 441 U.S. 520 (1979). The petitioner argues that the court's decision cannot be reconciled with the Court's Fourth Amendment precedents, which hold that such an intrusive search is reasonable only if there is some basis to suspect that the individual is engaging in some form of illegality, such as smuggling contraband.

The petitioner argues on appeal to the Supreme Court that in so holding, the Sixth Circuit has created a bright-line rule that prisoners isolated from the general prison population must always receive a Miranda warning before interrogation commences when asked about conduct that occurred outside the facility. The petitioner argues that such a per se rule is contrary to precedent, which mandates a context-specific analysis. Further, because a federal court may grant habeas relief to a state prisoner only if the earlier state court decision was contrary to or an unreasonable application of this Court's precedent, 28 U.S.C. § 2254(d)(1), the petitioner argues that Sixth Circuit's grant of habeas relief should be reversed.

## **GREENE v. FISHER**

Docket Number: 10-637

**Argument:** October 11, 2011

### **Issue:**

For purposes of adjudicating a state prisoner's petition for federal habeas relief, what is the temporal cutoff for whether a decision from this Court qualifies as clearly established Federal law under 28 U.S.C. § 2254(d) as amended by the Antiterrorism and Effective Death Penalty Act of 1996?

### **Facts:**

Eric Greene was found guilty of second-degree murder and other crimes and was sentenced to life imprisonment. Greene was tried with four other co-defendants but two of them had made pretrial statements which connected Greene to the robbery/murder. The statements were redacted but Greene was unable to cross-examine to challenge the statements made by the co-defendants since they did not testify in court.

Greene later appealed his conviction to the Superior Court of Pennsylvania claiming he was not given his rights under the Confrontation Clause. The Pennsylvania Superior Court affirmed the conviction since the statements had been redacted. Greene again presented his claim to the Pennsylvania Supreme Court which granted the petition, but was later dismissed as being having "been improvidently granted."

## ***LAFLER v. COOPER***

Docket Number: 10-209

**Argument:** October 31, 2011

### **Issue:**

(1) Whether a defendant seeking habeas is entitled to relief based on ineffective assistance of counsel where counsel's deficient advice caused the defendant to reject a plea bargain where the defendant had no vested right and the rejection did not deny the defendant a fair trial.

(2) What remedy, if any, should be provided for ineffective assistance of counsel during plea bargain negotiations if the defendant was later convicted and sentenced pursuant to constitutionally adequate procedures?

### **Facts:**

Cooper was on trial for assault with intent to murder. The prosecution offered Cooper two plea deals with lesser sentences than he would have had received under the sentencing guidelines. Cooper's counsel advised Cooper that the state would not be able to prove assault with intent to murder since Cooper shot the victim below the waist. Cooper's counsel believed Cooper would get a better plea deal later. Cooper rejected both of the offers due to his counsel's advice and received a sentence longer than what was offered in either of the plea deals. Cooper argues that effective assistance of counsel is critical in all stages of a criminal proceeding. Therefore, Cooper argues that his trial counsel's ineffective assistance prejudiced his trial, and he is entitled to reinstatement of the plea offer. Petitioner, Lafler, argues that rejection of a plea bargain is not a critical state contends that Cooper is not entitled to relief because Cooper received a fair trial and there was no Sixth Amendment violation.

## ***REHBERG v. PAULK***

Docket Number: 10-788

**Argument:** November 1, 2011

### **Issue:**

Whether a government official who acts as a complaining witness by presenting perjured testimony against an innocent citizen is entitled to absolute immunity from a § 1983 claim for civil damages.

### **Facts:**

Rehberg sent anonymous faxes to Putney Memorial Hospital to bring awareness of the suspicious billing and accounting practices. The Dougherty County District Attorney's Office began investigation on Rehberg and his actions. Rehberg claimed that Paulk started the investigation against him without probable cause. Rehberg was indicted three times due to

the investigations, for separate but similar grounds and were widely publicized. After the third indictment Rehberg filed a federal civil rights claim under § 1983 alleging that Paulk's activities constituted retaliatory investigation and malicious prosecution. The United States District Court for the Middle District of Georgia denied Paulk's claim and Paulk appealed to the Eleventh Circuit. The Eleventh Circuit overturned the district court's decision concluding that Paulk was entitled to absolute immunity.

## ***PERRY v. NEW HAMPSHIRE***

Docket Number: 10-8974

**Argument:** November 2, 2011

### **Issue:**

Whether the due process safeguards against the use of unreliable identification evidence at trial require court to inquire into the reliability of all identifications that arise from suggestive circumstances, or only to those identifications that are the product of improper state action.

### **Facts:**

Petitioner was convicted of one class B felony count of theft by unauthorized taking. At the suppression hearing, Nashua Police Officer Nicole Clay was the sole testifying witness. On the date of the incident, Officer Clay had been sent to a parking lot to investigate a report about a black male looking through vehicles and attempting to gain entry into vehicles. She saw the petitioner carrying two amplifiers and walking toward her from between two vehicles. A resident of the apartment building overlooking the parking lot, Nubia Blandon, said that she had seen a tall, black man walk through the parking lot, look into all the cars, circle one car, and then open the trunk and remove a large box. She then identified the petitioner, who was standing with another officer in the parking lot. When Blandon was shown a photographic array a month later, she was unable to identify the petitioner.

Petitioner argues that the identification procedure had been "unnecessarily suggestive" because Blandon had identified the petitioner only after she had seen the police cruisers, and had seen the petitioner being arrested and put in handcuffs by police officers. Under these circumstances, states the Petitioner, the identification was unreliable. Accordingly, the petitioner argues, under *Neil v. Biggers*, 409 U.S. 188 (1972), the court must exclude the identification. The State contends that no due process violation occurred because the identification was not facilitated by the police in any fashion, and was not suggestive. The New Hampshire Supreme Court agreed with the State. It determined that the admission in a criminal trial of a pretrial identification cannot violate due process where no im-

proper state action has caused the circumstances under which the identification was made. On appeal to the Supreme Court, the petitioner specifically argues that the Due Process Clause does not require a criminal defendant to show improper state action by the police in order to challenge the admissibility of an identification arising from suggestive circumstances.

### **KAWASHIMA v. HOLDER**

Docket Number: 10-577

**Argument:** November 7, 2011

**Issue:**

Whether the Ninth Circuit erred in holding that Petitioner's convictions of filing, and aiding and abetting in filing, a false statement on a corporate tax return in violation of 26 U.S.C. §§ 7206(1) and (2) were aggravated felonies involving fraud and deceit under 8 U.S.C. § 1101(a)(M)(i), and Petitioners were therefore removable.

**Facts:**

Kawashima was convicted of filing false corporate tax returns, and his wife was convicted of helping him file. Immigration laws allow for deportation of persons who are convicted of an "aggravated felony. It used to be a term to define crimes like murder, but now has changed to include offenses which "(i) involves fraud or deceit" where the victim losses exceed \$10,000 or some form of tax evasion where the "revenue loss to the government exceeds \$10,000." The question presented is whether Congress intended on this broad definition of the term. The Kawashimas argue that Congress intended to leave other types of tax violations by limiting the subsection to tax evasion. The government argues that tax evasion is a form of "fraud or deceit" so it falls within the subsection.

### **U.S. v. JONES**

Docket Number: 10-1259

**Argument:** November 8, 2011

**Issue:**

(1) Whether the warrantless use of tracking device on respondent's vehicle to monitor its movements on public streets violated the Fourth Amendment.

(2) Whether the government violated the respondent's Fourth Amendment rights by installing the Global Positioning System (GPS) tracking device on his vehicle without a valid warrant and without his consent.

**Facts:**

In 2004, D.C. police had installed a GPS tracking device to Antoine Jones' vehicle to track his locations over time to monitor cocaine-selling operation. The warrant needed the GPS to be placed on Jones' car within ten days and the installation to occur within D.C., but it took eleven days for it to be installed while the car was in Maryland. The warrant had expired. The police monitored Jones for a month and subsequently he was convicted of drug offenses and sentenced to life in prison. In 2010, the U.S. Court of Appeals for D.C. held that federal agents do not have unfettered right to install GPS devices without a search warrant since it required monitoring over the course of the day. The government's main argument is on the private facts model focusing on the car being on public streets and therefore should not be protected.

### **SMITH v. CAIN**

Docket Number: 10-8145

**Argument:** November 8, 2011

**Issue:**

(1) Whether the undisclosed pre-trial statements of the prosecution's key witness in a criminal trial would have led to a different result for the defendant.

(2) Whether the state courts violated the Due Process Clause by rejecting the defendant's *Brady* and *Giglio/Napue* claims.

**Facts:**

After a jury trial, petitioner was convicted in Louisiana State Court on five counts of first-degree murder. The testimony at trial established that a group of men burst into a house, ordered the occupants to lie down on the floor, and opened fire, resulting in five deaths. Petitioner was the only person tried for the crime.

Petitioner was tried in Orleans Parish, Louisiana, a jurisdiction whose district attorney's office has a history of allegations of failing to produce exculpatory evidence to criminal defendants. The key evidence linking him to the crime was identification by one of the survivors. At trial, this witness testified he was certain about his identification. Materials disclosed by the state after trial, however, revealed that the prosecution withheld materials arguably relating to the issue of the defendant's guilt—specifically materials showing the witness had made numerous conflicting statements to the police concerning his ability to identify any of the perpetrators.

Petitioner applied for state post-conviction relief, contending, inter alia, that the Orleans Parish district attorney's office had withheld material evidence in violation of his right to due process under *Brady v. Maryland*, 373 U.S. 83 (1963), *Giglio v. United States*, 405 U.S. 150 (1972), and *Napue v. Illinois*, 360

U.S. 264 (1959). The petitioner argued that together, these cases establish a violation of a defendant's right to due process when the state withholds favorable evidence that is material to a defendant's guilt or punishment, or knowingly to use false evidence to procure a conviction or sentence. The trial court summarily denied petitioner's application for post-conviction relief from the bench. The Louisiana Court of Appeals denied petitioner's application for discretionary review without comment, as did the Louisiana Supreme Court. The petitioner argues that if these materials had been disclosed, there is a reasonable probability that the result of petitioner's trial would have been different. Respondent counters that the petitioner failed to satisfy the threshold requirements of *Brady*, and further, that petitioner suffered no prejudice from any such failure to disclose the statements.

## ABOUT THE AUTHOR

**Stephanie Cannuli** graduated from Union College, Schenectady, New York with a Bachelor of Arts in Political Science in 2008. She will earn her Juris Doctor degree from American University, Washington College of Law in 2013. She has worked as a corporate paralegal at Cleary Gottlieb Steen & Hamilton in New York, and this summer, she worked as a law clerk in the Office of the Attorney General of Maryland, specifically within the Courts & Judicial Section. Currently, she is the Executive Editor of the Criminal Law Brief.

**Monica Trigoso** graduated from the University of California, Irvine with a Bachelor of Arts in Sociology in 2009. She will earn her Juris Doctor degree from American University, Washington College of Law in 2012. During the summer she worked in the Los Angeles District Attorney's Office-Victim Impact Program, in Compton, California. This year she is a student-attorney with the WCL Domestic Violence Clinic. Currently is the Editor-in-Chief of the Criminal Law Brief. After graduation she intends to pursue a career in criminal law.