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Adnan Sultan

American University Washington College of Law

Alex Saiz

American University Washington College of Law

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SUPREME COURT WATCH: RECENT DECISIONS AND UPCOMING CRIMINAL CASES

FOR THE 2008-2009 DOCKET

*Adnan Sultan and Alex Saiz**

Greenlaw v. United States

128 S. Ct. 2559
Decided: June 23, 2008

Question Presented:

May an appellate court, without a motion from the prosecution, increase a sentence when the district court misinterpreted the case law and sentenced the defendant to a term less than the mandatory minimum?

Facts:

Greenlaw was charged in the United States District Court for the District of Minnesota with eight offenses, and was found guilty on seven of those charges. Included were two counts of violating 18 U.S.C. § 924 (c)(1)(A), which prohibits carrying a firearm during and in relation to a crime of violence or drug trafficking crime.

According to the statute, a first conviction for violating § 924(c) carries a mandatory minimum term of five years, if the firearm is simply carried. For a second or subsequent conviction, the mandatory minimum jumps to twenty-five years whether the weapon is discharged or only carried.

At sentencing, the district court, over the Government's objection, held that a § 924(c) conviction does not constitute a "second or subsequent" conviction when it is "charged in the same indictment" as the defendant's first § 924(c) conviction. The district sentenced Greenlaw to a total of 442 months, a little over thirty-five years, for all his convictions. He received a five year sentence for the first § 924(c) conviction and ten years for the second § 924(c) conviction, rejecting the government's request for the twenty-five year minimum for a "second or subsequent" offense.

Greenlaw appealed to the United States Court of Appeals for the Eighth Circuit arguing that his sentence for all of his charges should have been fifteen years. The Government only argued that Greenlaw's sentence should be affirmed. However, the Government also noted the district court's error, and that Greenlaw's sentence should have been fifteen years longer.

The court of appeals vacated Greenlaw's sentence and instructed the district court "to impose the [statutorily mandated] consecutive minimum sentence of 25 years. The court of appeals held that it had discretion to raise and correct the district court's error on its own initiative under the "plain error rule."

Decision:

Justice Ginsburg delivered the opinion of the Court holding that absent a Government appeal or cross-appeal, the sentence Greenlaw received should not have been increased.

The Court reasoned that under the adversarial system, "parties frame the issues for decision and assign to the courts the role of neutral arbiter of matters the parties present." Under the procedural rules for filing appeals and cross appeals parties have fair notice. This allows the parties to evaluate the risks associated with appeals and tailor their arguments accordingly. When a circuit court increases a sentence without notice, it deprives the defendant of the ability to assess his risk. The defendant "essentially appeals at his own peril." The Court suggested that

Greenlaw might have made different strategic decisions "had he known soon after filing his notice of appeal that he risked a 15-year increase in an already lengthy sentence."

The Court also looked at 18 U.S.C. § 3742(b) which articulates the procedure the government must follow to appeal a sentence. Section 3742(b) states: "the Government may not further prosecute [the] appeal without the personal approval of the Attorney General, the Solicitor General, or a deputy solicitor general designated by the Solicitor General." The Court believed that it would "severely undermine Congress' instruction were appellate judges to 'sally forth' on their own motion to take up errors adverse to the Government when the designated Department of Justice officials have not authorized an appeal from the sentence the trial court imposed."

United States v. Santos, Efrain, and Diaz

128 S.Ct. 2020 (2007)
Decided: June 2, 2008

Questions Presented:

Under 19 U.S.C. § 1956(a)(1), the federal money laundering statute, which makes it a crime to engage in a financial transaction using the proceeds from certain illegal activities with the intent of promoting these activities or concealing the proceeds, are proceeds the gross receipts from the illegal activities or only the profits?

Facts:

From the 1970s until 1994, Respondent Santos operated a lottery in Indiana that was illegal under state law. A jury found Santos guilty of one count of conspiracy to run an illegal gambling business, one count of running an illegal gambling business, one count of conspiracy to launder money, and two counts of money laundering. Respondent Diaz pleaded guilty to conspiracy to launder money. The court of appeals affirmed the convictions and sentences.

Respondents filed motions under 28 U.S.C. § 2255, collaterally attacking their convictions and sentences. The district court rejected all of their claims but one, a challenge to their money-laundering convictions based on the Seventh Circuit's subsequent decisions in *United States v. Scialabba*, 249 F.3d 583 (7th Cir. 2001), which held that the federal money laundering statute's prohibition of transactions involving criminal "proceeds" applies only to transactions involving criminal profits, not criminal receipts.

The court of appeals affirmed, rejecting the Government's contention that *Scialabba* was wrong and should be overruled.

Decision:

Justice Scalia announced the judgment of the Court holding that the word "proceeds" in the federal money-laundering statute 18 U.S.C. § 1956(a)(1)(A)(i) applies only to transactions involving criminal profits, not criminal receipts.

18 U.S.C. § 1956(a)(1)(A)(i) criminalizes transactions to promote criminal activity. The provision uses the term "proceeds" in describing two elements the Government must prove of the offense: that a charged transaction "in fact involved the

proceeds of specified unlawful activity” (the proceeds element), and that a defendant knew “that the property involved in” the charged transaction “represented the proceeds of some form of unlawful activity” (the knowledge element).

The Court noted that the federal money-laundering statute does not define “proceeds.” Congress has defined “proceeds” in various criminal provisions, but sometimes has defined it to mean “receipts” and sometimes “profits.”

Under the rule of lenity, ambiguous language in a criminal statute must be interpreted in favor of the defendants subjected to them. Following this rule, the Court found that because the “profits” definition of “proceeds” is always more defendant-friendly than the “receipts” definition, the rule of lenity dictates that the former should be adopted.

The Court went on to state that if “proceeds” meant “receipts,” nearly every violation of the illegal-lottery statute would also be a violation of the money-laundering statute, because paying a winning bettor is a transaction involving receipts that the defendant intends to promote the carrying on of the lottery. Since few lotteries, if any, will not pay their winners, the statute criminalizing illegal lotteries would “merge” with the money-laundering statute.

The Court’s holding was limited to Justice Stevens’ reasons in his concurring opinion because Stevens’ vote gave the Court a majority opinion. Therefore the holding of the cases is limited to “proceeds” means “profits” when there is no legislative history to the contrary.

Justice Alito wrote a dissenting opinion, joined by Chief Justice Roberts and Justices Kennedy Breyer.

Snyder v. Louisiana

128 S.Ct. 1203 (2008)
Decided: March 19, 2008

Question Presented:

Did the state’s dismissal by peremptory challenge of all of the black potential jurors, combined with the prosecution’s comparisons of the case to the O.J. Simpson trial, amount to a violation of the Equal Protection Clause?

Facts:

Petitioner was charged and convicted of first-degree murder and was sentenced to death. Petitioner was found guilty of killing a male whom his estranged wife had been on a date with and wounding his estranged wife.

During jury selection at the trial, eighty-five prospective jurors were questioned as members of a panel. Thirty-six of these survived challenges for cause; five of the thirty-six were black and all five of the prospective black jurors were eliminated by the prosecution through the use of peremptory strikes. The jury found Petitioner guilty of first-degree murder and determined that he should receive the death penalty.

On direct appeal, the Louisiana Supreme Court conditionally affirmed Petitioner’s conviction. The court rejected Petitioner’s Batson claim but remanded the case for a new determination of Petitioner’s competency to stand trial. Two justices dissented and would have found a Batson violation.

On remand, the trial court found that Petitioner had been competent to stand trial, and the Louisiana Supreme Court affirmed that determination. Petitioner appealed to the Supreme Court for a writ of certiorari, and while his petition was pending, the Supreme Court decided *Miller-El v. Dretke*, 545 U.S. 231 (2005). The Supreme Court granted the petition, vacated the judgment, and remanded the case to the Louisiana Supreme Court for further consideration in light of *Miller-El*.

On remand, the Louisiana Supreme Court again reject-

ed Snyder’s Batson claim, this time by a vote of four to three. The Supreme Court granted certiorari.

Decision:

Justice Alito delivered the opinion of the Court holding that the trial court committed clear error in its ruling on a Batson objection.

The Court’s analysis of Petitioner’s Batson claim centered on the prosecution’s strikes of two black jurors, Jeffrey Brooks and Elaine Scott. The Court did not consider the strike of Juror Scott because it found the trial court committed clear error in overruling Petitioner’s Batson objection with respect to Juror Brooks.

In *Batson v. Kentucky*, 476 U.S. 79 (1986), the Court articulated a three-step process for a trial court to use in adjudicating a claim that a peremptory challenge was based on race: 1) a defendant must make a prima facie showing that a peremptory challenge has been exercised on the basis of race; 2) if that showing has been made, the prosecution must offer a race-neutral basis for striking the juror in question and 3) in light of the parties’ submissions, the trial court must determine whether the defendant has shown purposeful discrimination.

In *Miller-El*, the Court held that a court must consider all the circumstances that bear upon the issue of racial animosity when ruling on a Batson objection, or in reviewing a ruling claimed to be Batson error.

During voir dire Juror Brooks initially expressed concern about missing class because he was a student teacher and needed to complete a certain amount of teaching hours. The trial judge’s clerk called the dean of Juror Brooks’ program, who assured the clerk that Juror Brooks would not be in danger of not completing the request hours by serving on the jury. After being informed on this, Juror Brooks did not express any reservation with serving on the jury. Even so, the prosecution still struck Brooks because he appeared nervous and they feared he would return a guilty verdict of a lesser charge so that he could return to his teaching responsibilities quickly. The trial court accepted the prosecution’s explanation and made no finding about Brooks’ demeanor.

The Court found the prosecution’s stated reasons for striking Juror Brooks highly speculative and even more implausible when compared to Juror Laws’, a white juror, personal situation. Laws approached the court and offered strong reasons why serving on the sequestered jury would cause him hardship. Mr. Laws stated that he was a self-employed contractor who had projects that needed his attention. He also informed his court that his wife just had a hysterectomy, that he thus needed to take care of his children. Even given these work and family obligations, which were substantially more burdensome than Juror Brooks’ obligations, the prosecution still attempted to elicit assurances that he would be able to serve despite these obligations.

The Court questioned why the prosecution did not share the same concern that Juror Laws would return a lesser verdict to shorten the trial as they had with Juror Brooks.

The prosecution’s proffer of this pre-textual explanation gave rise to an inference of discriminatory intent. The Court believed that “it was enough to recognize that a peremptory strike shown to have been motivated in substantial part by discriminatory intent could not be sustained based on any lesser showing by the prosecution.”

Justices Thomas and Scalia filed a dissenting opinion.

Begay v. United States

128 S.Ct. 1581 (2008)
Decided: April 16, 2008

QUESTION PRESENTED:

Is a felony driving offense a “violent felony” for the purposes of the Armed Career Criminal Act?

FACTS:

The Armed Career Criminal Act imposes a special mandatory fifteen year prison term upon felons who unlawfully possess a firearm and who also have three or more previous convictions for committing certain drug crimes or “violent felonies.”

In September 2004, New Mexico police officers received a report that Larry Begay, the Petitioner, had threatened his sister and aunt with a rifle. The police arrested him. Begay subsequently conceded he was a felon and pleaded guilty to a federal charge of unlawful possession of a firearm in violation of 18 U.S.C. § 922(g)(1). Begay’s presentence report said that he had been convicted a dozen times for DUI which, under New Mexico’s law, becomes a felony the fourth (or subsequent) time an individual is convicted. The sentencing judge consequently found that Begay had at least three prior convictions for a crime “punishable by imprisonment for a term exceeding one year.” The judge also concluded that Begay’s “three felony DUI convictions involve conduct that presents a serious potential risk of physical injury to another.” The judge consequently concluded that Begay had three or more prior convictions for a “violent felony” and should receive a sentence that reflected a mandatory minimum prison term of fifteen years.

Begay appealed, claiming that DUI is not a “violent felony” within the terms of the statute. The court of appeals panel by a vote of two to one rejected the claim.

DISCUSSION:

Justice Breyer delivered the opinion of the Court holding that for the purposes of § 922(g)(1), “a prior record of DUI, a strict liability crime, differs from a prior record of violent and aggressive crimes committed intentionally such as arson, burglary, extortion, or crimes involving the use of explosives.”

The Court found the provision’s listed examples—burglary, arson, extortion, or crimes involving the use of explosives—illustrate the kinds of crimes that fall within the statute’s scope. “Their presence indicates that the statute covers only similar crimes, rather than every crime that presents a serious potential risk of physical injury to another.”

The Court reasoned that DUI differs from the listed crimes because an offender in a DUI case need not have any criminal intent. “The listed crimes all typically involve purposeful, violent and aggressive conduct.” That conduct is such that it makes more likely that an offender, later possessing a gun, will use that gun deliberately to harm a victim. Crimes committed in such a purposeful, violent, and aggressive manner are potentially more dangerous when firearms are involved, and such crimes are characteristic of the armed career criminal, the eponym of the statute. DUI, however, is comparable to a strict liability crime.

Justices Thomas, Souter, and Alito dissented.

128 S.Ct. 2198 (2008)
Decided: June 12, 2008

Irizarry v. United States

QUESTION PRESENTED:

Must a judge give both the prosecution and the defense advance notice before imposing a criminal sentence that departs from the Federal Sentencing Guidelines?

FACTS:

Petitioner pleaded guilty to one count of making a threatening interstate communication, in violation of 18 U.S.C. § 875(c). Petitioner admitted to sending his ex-wife and new husband threatening e-mails. The presentence report (PSR), in addition to describing the threatening e-mails, reported that Petitioner had asked another inmate to kill his ex-wife’s new husband. The PSR advised against an adjustment for acceptance of responsibility and recommended a Guidelines sentencing range of forty-one to fifty-one months of imprisonment, based on enhancements for violating court protective orders, making multiple threats, and intending to carry out those threats.

After a sentencing hearing, the judge found that Petitioner had deliberately terrorized his ex-wife and intended to carry out one or more of his threats. The judge went on to state that she was disturbed by Petitioner’s conduct and believed the guideline range was not high enough and therefore sentenced him to the statutory maximum.

Petitioner objected on the grounds that he did not have notice of the upward departure. The Court of Appeals for the Eleventh Circuit affirmed Petitioner’s sentence, reasoning that Rule 32(h) of the Federal Rules of Criminal Procedure did not apply because “the above guidelines sentence imposed by the district court in this case was a variance, not a guidelines departure.”

DISCUSSION:

Justice Stevens delivered the opinion of the Court holding that Rule 32(h) does not apply to a variance from a recommended Guidelines range.

In *Burns v. United States*, 501 U.S. 129 (1991), the Court held that “the provision of Rule 32 that allowed parties an opportunity to comment on the appropriate sentence- now Rule 32(i)(1)(C)- would be ‘render[ed] meaningless’ unless the defendant were given notice of any contemplated departure.” At that time, the Sentencing Guidelines were mandatory.

In *United States v. Booker*, 543 U.S. 220 (2005), the Court invalidated the mandatory features of the Guidelines. “Now faced with advisory Guidelines, neither the Government nor the defendant may place the same degree of reliance on the type of ‘expectancy’ that gave rise to a special need for notice in *Burns*.” Indeed, a sentence outside the Guidelines carries no presumption of unreasonableness.

The Court reasoned that because the Guidelines are no longer mandatory, the justification in *Burns* no longer exists. In addition, the Court feared that adding a special notice requirement whenever a judge contemplated a variance would create unnecessary delay; a judge who concludes during the sentencing hearing that a variance is appropriate may be forced to continue the hearing even where the content of the Rule 32(h) notice would not affect the parties’ presentation of argument and evidence.

The Court noted that the record in this case did not indicate that a statement announcing a possible departure would have changed the parties’ presentations in any material way.

Justices Kennedy, Souter, Ginsberg, and Breyer dissented.

Kennedy v. Louisiana

128 S. Ct. 2641 (2008)
Decided: June 25, 2008

QUESTION PRESENTED:

Does the Louisiana statute allowing the death penalty for the rape of a child under the age of twelve violate the Eighth Amendment ban on cruel and unusual punishment?

FACTS:

Petitioner was charged by the State of Louisiana with the aggravated rape of his then-eight-year-old stepdaughter. After a jury trial Petitioner was convicted and sentenced to death under a state statute authorizing capital punishment for the rape of a child under twelve years of age. Louisiana was in the minority of jurisdictions that authorized the death penalty for the crime of child rape. The Supreme Court of Louisiana affirmed the judgment.

DISCUSSION:

Justice Kennedy delivered the opinion of the Court holding that the Louisiana statute was unconstitutional because the Eighth Amendment prohibits the death penalty for the crime of child rape.

In *Coker v. Georgia*, 433 U.S. 584 (1977), the Court held it would be unconstitutional to execute an offender who had raped an adult woman. In *Enmund v. Florida*, 458 U.S. 782 (1982), the Court overturned the capital sentence of a defendant who aided and abetted a robbery during which a murder was committed but did not himself kill, attempt to kill, or intend that a killing would take place.

The Court stated that the Eighth Amendment “draw[s] its meaning from the evolving standards of decency that mark the progress of a maturing society. Evolving standards of decency must embrace and express respect for the dignity of the person, and the punishment of criminals must conform to that rule.”

In light of this evolving standard of decency, the Court pointed to a national consensus opposed to the death penalty for child rapists. Thirty-seven jurisdictions have the death penalty. Only six of those jurisdictions authorize the death penalty for rape of a child. Statistics also confirm a social consensus against the death penalty for the crime of child rape. No individual has been executed for the rape of an adult or child since 1964, and no execution for any other non-homicide offenses have been conducted since 1963.

The Court found a distinction between intentional first degree murder on the one hand and non-homicide crimes against individual persons, including child rape, on the other. “The latter crimes may be devastating in their harm, but in terms of moral depravity and of the injury to the person and to the public, they cannot be compared to murder in their severity and irreversibility.”

The Court concluded that, because it is not evident that the child rape victim’s hurt is lessened when the law permits the death of the perpetrator, the death penalty for child rape not only would not further retributive purposes but also would raise systemic concerns. The problem of unreliable, induced, and even imagined child testimony creates a “special risk of wrongful execution” in some child rape cases.

Justice Alito filed a dissenting opinion joined by Chief Justice Roberts, and Justices Scalia and Thomas.

Baze v. Rees

128 S.Ct. 1520
Decided: April 16, 2008

QUESTION PRESENTED:

Do lethal injections in capital cases create an unnecessary risk of pain and suffering in violation of the Eighth Amendment’s prohibition against cruel and unusual punishment?

FACTS:

Thirty-six states use a three-drug combination in their lethal injection protocol. These drugs are administered in the following order: 1) sodium thiopental, which is a fast acting barbiturate sedate that induces a deep coma-like unconsciousness when given in specified amounts and ensures that the prisoner does not experience any pain; 2) pancuronium bromide which is a paralytic agent that inhibits all muscular and skeletal movements and stops respiration; and 3) potassium chloride which induces cardiac arrest by interfering with the electrical signals that stimulate contractions of the heart. In 1998, Kentucky replaced electrocution with lethal injection as its method of execution. Only one person has been executed in Kentucky since the Commonwealth adopted lethal injection.

Petitioners were convicted of two counts of capital murder and sentenced to death. The Kentucky Supreme Court upheld the convictions and sentences on direct appeal. After Petitioners exhausted all of their state and federal collateral remedies, they sued three state officials and Franklin Circuit Court of Kentucky to challenge the constitutionality of lethal injection. After a seven day bench trial, the state trial court upheld the procedures. The Kentucky Supreme Court affirmed.

DISCUSSION:

Chief Justice Roberts delivered the opinion of the Court holding that the procedures followed by Kentucky were not unconstitutional. The Court believed Kentucky’s protocol was not objectively intolerable because it is widely tolerated. Thirty-six states and the federal government sanction capital punishment and have adopted lethal injection as their method of execution. Thirty states and the federal government use the same three-drug protocol as Kentucky.

Petitioners contend that the method is unconstitutional because there is a significant risk that the procedures used by Kentucky will not be followed. The Court commented that Petitioners did not show that the risk of an inadequate dose of the first drug, sodium thiopental (which renders prisoner unconscious) was substantial. The Court also believed that the State trial court’s finding that if the manufacturer’s instructions for reconstitution of the sodium thiopental are followed, there is a minimal risk of improper mixing, is not clearly erroneous.

The Court further noted that Kentucky had several important safeguards to ensure that an adequate dose of sodium thiopental is delivered to the prisoner. The Court rejected the Petitioners’ proposed barbiturates-only protocol because no findings had been made on the effectiveness of that procedure.

The Court countered the Petitioners’ concern that the Kentucky protocol lacks a systematic mechanism for monitoring the anesthetic depth by arguing that proper dose of thiopental obviates the concern that a prisoner will not be sufficiently sedated. Petitioners agreed that if administered as instructed, the Kentucky protocol would result in painless deaths.

Justices Souter and Ginsberg dissented.

District of Columbia v. Heller

128 S.Ct. 2783
Decided: June 26, 2008

QUESTION PRESENTED:

Do three District of Columbia firearms ordinances: D.C. Code Section 7-2502.02(a)(4) (barring the registration of handguns); D.C. Code Section 22-4504(a) (prohibiting carrying a pistol without a license); and D.C. Code section 7-2507.02 (requiring that all lawfully owned firearms be kept unloaded and either disassembled or trigger locked) violate the Second Amendment rights of individuals who are not affiliated with any state-regulated militia, but who wish to keep handguns and other firearms

for private use in their homes?

FACTS:

D.C. law banned hand gun possession by making it a crime to carry an unregistered firearm and prohibiting the registration of handguns. D.C. authorized the Chief of Police to issue one-year licenses, and required residents to keep unlawfully owned firearms unloaded and disassembled or bound by a trigger lock or similar devices. Respondent Heller, a special police officer, applied to register a handgun he wished to keep at home, but the District refused. He filed suit on Second Amendment grounds, but the district court dismissed the suit. The Court of Appeals for the D.C. Circuit reversed.

DISCUSSION:

Justice Scalia delivered the opinion of the Court holding that the Second Amendment protects an individual's right to possess a firearm unconnected with service in a militia, and to use that arm for traditionally lawful purposes, such as self-defense within the home.

The Court looked to both text and history of the Amendment in reaching its decision. The Court found that based on the historical background of the Second Amendment, the operative clause of the Amendment established an individual right to carry weapons in cases of confrontation. This right, the Court reasoned, like the First and Fourth Amendment is a preexisting right.

The Court found that the prefatory clause of the Amendment announces the purpose for which the right was codified, but does not suggest that preserving the militia was the only reason for the right.

The Court also looked at state constitutions adopted at the same time as the Second Amendment which include an arms-bearing right. These states allow for an arms-bearing right unconnected to militia service. Historic legal scholarship and case law contemporaneous with the Amendment's ratification support the interpretation that the Amendment confers a right to bear arms unconnected to militia service.

The Court did find that "[l]ike most rights, the Second Amendment is not unlimited. It is not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose."

Justices Stevens, Souter, Ginsberg, and Breyer dissented.

2008-2009 Term:

Chambers v. United States

06-11206

Decided: January 13, 2009

7th Circuit

QUESTION PRESENTED:

Does defendant's failure to report for confinement "involve[] conduct that presents a serious potential risk of physical injury to another" such that conviction for escape based on that failure to report is "violent felony" within the meaning of the Armed Career Criminal Act, 18 U.S.C. § 924 (e)?

FACT:

Petitioner Deondry Chambers was sentenced to a fifteen year mandatory prison sentence for being a felon in possession of a firearm. The Court relied on The Armed Career Criminal Act (ACCA) which required a fifteen year sentence for a defendant found guilty of possessing a weapon with a criminal record containing three or more "violent felonies." Petitioner disputed

the claim that his previous conviction for failure to report to weekend confinement, fit the definition of "violent felony" which was defined as a crime that "involves conduct that presents a serious potential risk of physical injury to another," §924(e)(2)(B)(ii). The Illinois statute that Petitioner was found guilty of violating classified failure to report as the legal equivalent of escaping from jail.

DISCUSSION:

Justice Breyer wrote the opinion for a unanimous Court holding that failure to report did not meet the definition of a "violent crime" as defined by the ACCA, because it did not involve "serious potential risk of physical injury to another." § 924(e)(2)(B)(ii). Though the Respondent argued that a suspect who fails to report is more likely to engage in violence the Court found such reasoning unpersuasive. The Respondent's claims that three similar "failure to report" cases ended in violence were statistically insignificant in light of a United States Sentencing Commission report showing no violence in 160 federal failure-to-report cases over two recent years.

Justice Alito authored a concurring opinion, which Justice Thomas joined, imploring Congress to specifically list which crimes it sought to include in the ACCA.

07-513

Decided: January 14, 2009

11th Circuit

QUESTION PRESENTED:

Herring v. United States

Does Fourth Amendment require evidence found during search incident to arrest to be suppressed when arresting officer conducted arrest and search in sole reliance upon facially credible but erroneous information negligently provided by another law enforcement agent?

FACT:

Petitioner was arrested by Officers of Coffee County, Alabama on an arrest warrant issued by police in nearby Dale County. Though the warrant had been recalled, the database had not been updated. The Petitioner was searched incident to the arrest and was found in possession of drugs and a gun. Petitioner was then indicted on federal gun and drug possession charges and moved to suppress the evidence on the ground that his initial arrest had been illegal. Though the district court held that there was a Fourth Amendment violation, the court held that the exclusionary rule did not apply since the officers were acting on good faith when they arrested the Petitioner. The Eleventh Circuit affirmed, finding that the evidence was admissible under the good-faith rule of *United States v. Leon*, 468 U. S. 897 (1984).

DISCUSSION:

The Chief Justice wrote for the majority, and held that when police mistakes leading to an unlawful search are the result of isolated negligence attenuated from the search, rather than systemic error or reckless disregard of constitutional requirements, the exclusionary rule does not apply. The Court relied on *United States v. Leon*, in finding that to trigger the exclusionary rule, police conduct must be sufficiently deliberate that exclusion can meaningfully deter it, and sufficiently culpable that such deterrence is worth the price paid by the justice system. The conduct here was not so objectively culpable as to require exclusion. The marginal benefits that might follow from suppressing evidence obtained in these circumstances would not justify the

substantial costs of exclusion. Since the arrest resulted from outdated information, the arrest was the result of negligence, not a deliberate attempt to violate the Petitioner's civil rights. Thus the use of the exclusionary rule was improper.

Hedgpeth v. Pulido

07-544
9th Circuit
Decided: December 2, 2008

QUESTION PRESENTED:

Did Ninth Circuit fail to conform to "clearly established" Supreme Court law, as required by 28 U.S.C. § 2254(d), when it granted habeas corpus relief by deeming erroneous instruction on one of two alternative theories of guilt to be "structural error" requiring reversal because jury might have relied on it?

FACT:

Respondent was convicted in a California court of felony murder. In providing the jury with instructions, the court permitted the jury to find Respondent guilty of felony murder if he formed the intent to aid and abet the underlying felony before the murder, but they also permitted the jury to find him guilty if he formed that intent only after the murder. The Ninth Circuit classified the mistake as a "structural error" requiring reversal, instead of a "trial error" which could have been found to be harmless.

DISCUSSION:

In a per curiam decision, the Court held that the established case law described in the cases of *Neder v. United States*, 527 U.S. 1 (1999), *California v. Roy* 519 U.S. 2 (1996), *Pope v. Illinois*, 481 U.S. 497 (1987), and *Rose v. Clark*, 478 U.S. 570 (1986), showed that the issue of invalid jury instructions should be classified as "trial error" not a "structural error." As a "trial error" the task of the Appellate Court was to oversee a hearing to determine whether the error may have prejudiced the jury against the defendant. The Court held that the Ninth Circuit misinterpreted Supreme Court law when it simply assumed that the Jury relied on the improper instruction without a proper hearing.

United States v. Hayes

07-608
4th Circuit
Decided: February 24, 2009

QUESTION PRESENTED:

To qualify as "misdemeanor crime of domestic violence" under 18 U.S.C. § 921(a)(33)(A), which defines that term for purposes of Section 922(g)(9), must offense have as element domestic relationship between offender and victim?

FACT:

Respondent was arrested for violating 18 U. S. C. §922 (g)(9), by being in a person convicted of "a misdemeanor crime of domestic violence," while in possession of a firearm. The conviction stemmed from a 1994 case in West Virginia, in which Respondent was arrested for attacking his then-wife. The West Virginia domestic violence statute did not require a domestic relationship to exist between the victim and the accused in order to qualify as a domestic violence case.

DISCUSSION:

Justice Ginsburg wrote for the majority, holding that though a domestic relationship must be established beyond a rea-

sonable doubt in a § 922(g)(9) firearms possession prosecution, it need not be a defining element of the predicate offense. Though § 921(a)(33)(A), does require that the underlying offense contain a "domestic relationship," the definition does not require the predicate-offense statute to include, as an element, the existence of that domestic relationship. Even though the West Virginia statute did not require a domestic relationship to exist between Respondent and his alleged victim, it is not necessary for prosecution under § 922(g)(9). The statute only requires for the Government to make the argument that the underlying conviction was "an offense . . . committed by" the defendant against a spouse or other domestic victim.

Waddington v. Sarausad

07-772
9th Circuit
Decided: January 21, 2009

QUESTION PRESENTED:

(1) In reviewing due process challenge to jury instructions brought under 28 U.S.C. § 2254, must federal courts accept state court determination that instructions fully and correctly set out state law governing accomplice liability? (2) When accomplice liability instructions correctly set forth state law, is it unreasonable application of clearly established federal law to conclude that there was no reasonable likelihood that jury misapplied instructions so as to relieve prosecution of burden of proving all elements of crime?

FACT:

Respondent Sarausad drove the car in a drive by shooting at a high school, in which the front seat passenger killed a student. Respondent, the shooter and another passenger were tried on murder charges. Respondent and the other passenger argued that they were not accomplices to murder because they had not known of the shooters plans. In her closing argument, the prosecutor said of the Respondent that he was "in for a dime, in for a dollar." The jury received two instructions that directly quoted Washington's accomplice-liability law. The jury convicted, and Respondent appealed.

DISCUSSION:

Justice Thomas wrote for the majority, holding since the jury's decision resulted from proper instructions, and because the state-court decision did not result in an "unreasonable application of . . . clearly established Federal law," §2254(d)(1), the Ninth Circuit erred in granting habeas relief to the Respondent.

A defendant challenging the constitutionality of a jury instruction that quotes a state statute must show both that the instruction was ambiguous and that there was "a reasonable likelihood" that the jury applied the instruction in a way that relieved the State of its burden of proving every element of the crime beyond a reasonable doubt. *Estelle v. McGuire*, 502 U. S. 62, 72. In this case the instructions themselves were unambiguous, and thus the Ninth Circuit should have ended its inquiry at that point.

Mr. Sultan received his B.A. from NYU, and is currently a 3L at the American University Washington College of law. Next year he will be working as a Prettyman Fellow at Georgetown University Law Center.

Mr. Saiz recieved his B.A. from Florida International University, and is currently a 3L at the American University Washington College of Law. Next year he will be working as an Assistant Public Defender in Miami-Dade Public Defender's Office.