

2008-09 Supreme Court Updates

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A detailed summary of each of these cases may be found on the DOCJT Web site at <http://docjt.ky.gov/legal>. Full text of the cases may be found at <http://www.supremecourtus.gov> under "Recent Decisions."

Search and Seizure – Arrest Warrant

Herring v. U.S.

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

HOLDING: The Court noted that "[w]hen a probable-cause determination was based on reasonable but mistaken assumptions, the person subjected to a search or seizure has not necessarily been the victim of a constitutional violation.

The Court concluded the exclusion of the evidence would not deter police misconduct, since the officers directly involved

had done nothing wrong. Herring's conviction was affirmed.

Qualified Immunity

Pearson v. Callahan

ISSUE: Are the courts required to use the two-pronged Saucier analysis in deciding qualified-immunity cases?

HOLDING: The Court in *Harlow v. Fitzgerald* reviewed the doctrine of qualified immunity, which protects government officials "from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Further, the Court agreed that the "protections afforded by qualified immunity" ... "appl[y] regardless of whether the government official's error is a 'mistake of law, a mistake of fact, or a mistake based on mixed questions of law and fact.'"

In *Saucier v. Katz*, the "Court mandated a two-step sequence for resolving government officials' qualified immunity claims." "First, a court must decide whether the facts that a plaintiff has alleged or shown make out a violation of a constitutional right. Second, if the plaintiff has satisfied this first step, the court must decide whether the right at issue was 'clearly established' at the time of defendant's alleged misconduct. Qualified immunity is applicable unless the official's conduct violated a clearly established constitutional right."

The Court concluded that "while the sequence set forth [in *Saucier*] is often ap-

propriate, it should no longer be regarded as mandatory." Instead, the lower courts should decide which of the two prongs of the qualified immunity analysis should be addressed first in light of the circumstances in each case.

With respect to the case at bar, the Court concluded that the conduct of the officers did not violate clearly established law. The decision of the Tenth Circuit Court of Appeals was reversed and the officers granted qualified immunity.

Search and Seizure – Passenger Frisk

Arizona v. Johnson

ISSUE: If a vehicle is stopped for a minor traffic violation, may a passenger be frisked when the officer has an articulable basis to believe the passenger might be armed and presently dangerous, but has no reasonable grounds to believe that the passenger is committing, or has committed, a criminal offense?

HOLDING: The Court concluded that a lawful roadside stop begins when a vehicle is pulled over for investigation of a traffic violation. The temporary seizure of driver and passengers ordinarily continues, and remains reasonable, for the duration of the stop. Normally, the stop ends when the police have no further need to control the scene, and inform the driver and passengers they are free to leave. An officer's inquiries into matters unrelated to the justification for the traffic stop, do not convert the encounter into something other than a

lawful seizure, so long as those inquiries do not extend the duration of the stop.

A traffic stop "communicates to a reasonable passenger that he or she is not free to terminate the encounter with the police and move about at will." As such, under the facts of the case, the frisk of the passenger was appropriate.

The judgment of the Arizona Court of Appeals was reversed and the case remanded for further proceedings.

Absolute Immunity

Van de Kamp v. Goldstein

ISSUE: Does a prosecutor enjoy absolute immunity for failing to disclose informant information in violation of *Brady and Giglio*?

HOLDING: The Court analyzed the difference between prosecutorial functions and administrative functions and made it "clear that absolute immunity may not apply when a prosecutor is not acting as 'an officer of the court,' but is instead engaged in other tasks, say, investigative or administrative tasks." To determine the nature of a particular task, the Court "must take account of the 'functional' considerations" of that task. In the years since *Imbler*, the court had decided that, for example, "absolute immunity does not apply when a prosecutor gives advice to police during a criminal investigation," but that it does apply when a prosecutor "appears in court to present evidence in support of a search warrant application."

The Court agreed "purely for argument's sake, that *Giglio* imposes certain obligations as to training, supervision or information-system management." However, the Court concluded that prosecutors enjoyed absolute immunity for such claims because they are "directly connected with the conduct of a trial," and that an "individual prosecutor's error in the plaintiff's specific criminal trial constitutes an essential element of the plaintiff's claim."

Although the Court acknowledged that "sometimes such immunity deprives a

plaintiff of compensation that he undoubtedly merits," that such immunity was essential for the functioning of the prosecutor's office.

The Court reversed the decision of the Ninth Circuit Court of Appeals and remanded the case for further proceedings.

NOTE: Law enforcement officers, however, have only qualified immunity, and thus may be sued for withholding evidence under *Brady*.

Federal Law – Domestic Violence/Weapons

U.S. v. Hayes

ISSUE: Must a federal charge under 18 U.S.C. §922(g)(9) be based upon a state charge that includes, specifically, as part of the statute, that the victim be in a domestic relationship with the perpetrator?

HOLDING: The Court agreed that 18 U.S.C. §922(g)(9) "imposes two requirements." First, the crime must include "as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon." Second, it must be committed by a "person who has a specified domestic relationship with the victim." The Court ruled that "in a §922(g)(9) prosecution, it suffices for the government to charge and prove a prior conviction that was, in fact, for "an offense ... committed by the defendant against a spouse or other domestic victim."

The decision of the Fourth Circuit Court of Appeals was reversed and the case remanded for further proceedings consistent with the opinion.

Interrogation – Confession

Corley v. U.S.

ISSUE: Is a confession made more than six hours after an arrest (by federal authorities) presumptively inadmissible?

HOLDING: The Court noted that the government's argument focused on 18 U.S.C. §3501(a), "which provides that any confession 'shall be admissible in evidence'

in federal court 'if it is voluntarily given.'" The government essentially ignored, however, the rulings in *McNabb v. U.S.* and *Mallory v. U.S.*, the *McNabb* ruling provided that confessions obtained after an "unreasonable presentment delay" will be inadmissible. Rule 5(a) (Federal Rules of Criminal Procedure) was enacted shortly thereafter and stated that individuals under arrest must be taken before a magistrate without undue delay. A few years later, *Mallory* applied Rule 5(a) and held that a confession given seven hours after arrest, when the suspect was held "within the vicinity of numerous committing magistrates" constituted unnecessary delay and was thus inadmissible. (Specifically, the Court noted that "delay for the purpose of interrogation is the epitome of 'unnecessary delay.'" In 1968, Congress enacted 18 U.S.C. §3501, which codified *McNabb-Mallory* to some extent. It held that a pre-presentment confession made within six hours of arrest, that is otherwise found to be voluntary, will be admissible. (Those made after the six hours may also be admitted, depending upon the circumstances.)

The Court ruled that a court faced with a "suppression claim must find whether the defendant confessed within six hours of arrest (unless a longer delay was 'reasonable considering the means of transportation and the distance to be traveled to the nearest available [magistrate]')." A confession made during those six hours that is voluntary will be admissible, so long as it meets other applicable evidentiary rules. "If the confession occurred before presentment and beyond six hours, however, the court must decide whether delaying that long was unreasonable or unnecessary under the *McNabb-Mallory* cases, and if it was, the confession is to be suppressed."

The Court vacated the Third Circuit's decision and remanded it back for a determination as to whether the delay was justifiable.

Search and Seizure – Search Incident To Arrest
Arizona v. Gant





ISSUE: Does the Fourth Amendment require law enforcement officers to demonstrate a threat to their safety or a need to preserve evidence related to the crime of arrest in order to justify a warrantless vehicular search incident to the arrest, conducted after the vehicle's recent occupants have been arrested and secured?

HOLDING: The Court concluded, "officers may search a vehicle when genuine safety or evidentiary concerns encountered during the arrest of a vehicle's recent occupant justify a search" and "[c]onstruing *Belton* broadly to allow vehicle searches incident to any arrest would serve no purpose except to provide a police entitlement, and it is [derogatory] to the Fourth Amendment to permit a warrantless search on that basis." The Court stated that police may search a vehicle incident to a recent occupant's arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of arrest. When these justifications are absent, a search of the arrestee's vehicle will be unreasonable unless police obtain a warrant or show that another exception to the warrant requirement applies.

The Court upheld the decision of the Arizona Supreme Court.

(Note: For an in depth review of the *Gant* decision, see page 52.)

Federal Trial Procedure – Habeas Corpus

Cone v. Bell

ISSUE: Is a claim under federal law (habeas corpus) "procedurally defaulted" because it has been presented twice to the state courts?

HOLDING: The "State of Tennessee offered two different justifications for denying review of the merits of [the petitioner's] *Brady* claim." First, the Court addressed the claim that the "repeated presentation of a claim in state court bars later federal review," and concluded that it does not create a "bar to federal habeas review." The Court stated that

a "claim is procedurally barred when it has not been fairly presented to the state courts for their initial consideration – not when the claim has been presented more than once."

The Court remanded the case back to Tennessee to determine if the suppressed evidence may have made a difference in [the petitioner's] sentencing, "with instructions to give full consideration to the merits of [the] *Brady* claim."

Trial Procedure/Evidence – Sixth Amendment

Kansas v. Ventris

ISSUE: May a defendant's voluntary statement, obtained in violation of their right to counsel, be admitted for impeachment purposes?

HOLDING: The Court stated that an investigator would have to anticipate both that the defendant would choose to testify at trial (an unusual occurrence to begin with) and that he would testify inconsistently despite the admissibility of his prior statement for impeachment. Not likely to happen – or at least not likely enough to risk squandering the opportunity of using a properly obtained statement for the prosecution's case.

The Court concluded that the statement "was admissible to challenge [the petitioner's] inconsistent testimony at trial" and reversed the decision of the Kansas Supreme Court. The case was remanded back to Kansas for further proceedings.

Federal Law – Identity Theft

Flores-Figueroa v. U.S.

ISSUE: Does the federal crime of identity theft require that a subject know that a Social Security number they are using actually belongs to another individual?

HOLDING: The Court concluded that it was the intent of Congress to require "the government to show that the defendant knew that the means of identification at issue belonged to another person." (The Court distinguished this case from those where the defendant used the identification to commit

overt fraud or theft upon the person whose identity the card or number portrays.) The decisions of the lower courts were reversed and the case remanded for further proceedings.

NOTE: This case involves federal identity theft, rather than state identity theft. Kentucky may rule differently in a similar situation, based upon state law.

Federal Law – Drug Trafficking

Abuelhawa v. U.S.

ISSUE: Does the use of a telephone in a federal drug misdemeanor cause it to become a felony offense?

HOLDING: The Court noted that "history drives home what is already clear in the current statutory text: Congress meant to treat purchasing drugs for personal use more leniently than the felony of distributing drugs, and to narrow the scope of the communications provision to cover only those who facilitate a drug felony." The Court found it "impossible to believe that Congress intended 'facilitating' to cause [the] 12-fold quantum leap in punishment for simple drug possessors."

The Court reversed the conviction and remanded the case back to the trial court for further proceedings.

Interrogation – Sixth Amendment

Montejo v. Louisiana

ISSUE: When an indigent defendant's right to counsel has attached and counsel has been appointed, must the defendant take additional affirmative steps to "accept" the appointment in order to secure the protections of the Sixth Amendment and preclude police-initiated interrogation without counsel present?

HOLDING: The Court initially noted that the issue was complicated by the fact that some states do not appoint counsel for an eligible defendant until that individual actually requests counsel, while other states do so automatically. In *Michigan v. Jackson*, the

defendant had properly requested counsel, but in this case, the defendant had said nothing at the first appearance at all. It also would mean that "[d]efendants in states that automatically appoint counsel would have no opportunity to invoke their rights and trigger *Jackson*, while those in other states, effectively instructed by the court to request counsel, would be lucky winners."

The court then addressed whether a *Miranda* warning and waiver was sufficient to also waive the right to counsel and agreed "that typically does the trick, even though the *Miranda* rights purportedly have their source in the Fifth Amendment." Under *Edwards v. Arizona*, the Court had "decided that once 'an accused has invoked his right to have counsel present during custodial interrogation ... [he] is not subject to further interrogation by the authorities until counsel has been made available,' unless he initiates the contact."

Further, the Court noted the *Edwards* rule is "designed to prevent police from badgering a defendant into waiving his previously asserted *Miranda* rights." It does this by presuming his post-assertion statements to be involuntary, "even where the suspect executes a waiver and his statements would be considered voluntary under traditional standards." This prophylactic rule thus "protect[s] a suspect's voluntary choice not to speak outside his lawyer's presence."

School Search

Safford Unified School District #1 v. Redding

ISSUE: Does the Fourth Amendment prohibit public school officials from conducting a search of a student suspected of possessing and distributing a prescription drug on campus in violation of school policy?

HOLDING: The Court concluded that the public interest is best served by a Fourth Amendment standard of reasonableness that stops short of probable cause." We have thus applied a standard of reasonable suspicion to determine the legality of a school administrator's search of a student,

and have held that a school search "will be permissible in its scope when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction."

The Court reviewed the evidence available to the Vice Principal about prescription drug trafficking in the school and agreed that the evidence available justified a search of the student's belongings.

From this point, however, the Court noted that the student was subjected to a search that violated "both subjective and reasonable societal expectation of personal privacy," and required "distinct elements of justification on the part of school authorities for going beyond a search of outer clothing and belongings."

The Court noted that the "content of the suspicion failed to match the degree of intrusion" of the search. The vice principal knew that the suspected drugs were the equivalent of taking two Advil (ibuprofen) or one Aleve (naproxen). As such, "[h]e must have been aware of the nature and limited threat of the specific drugs he was searching for, and while just about anything can be taken in quantities that will do real harm, he had no reason to suspect that large amounts of the drugs were being passed around, or that individual students were receiving great numbers of pills."

The Court made it clear that such searches "require the support of reasonable suspicion of danger or of resort to underwear for hiding evidence of wrongdoing before a search can reasonably make the quantum leap from outer clothes and backpacks to exposure of intimate parts."

However, the Court further concluded that given the divergence of court opinions on the meaning of T.L.O. and its authority for such searches, that it was appropriate to require a grant of immunity for the individual school officials in this case. The school district, however, remained as a defendant in the case. 📌