2006-2007 U. S. Supreme Court Term: Cases of Interest to Law Enforcement

International Association of Chiefs of Police
Legal Officers Section Annual Conference
New Orleans 2007

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UNITED STATES SUPREME COURT
2006-2007 Term

FOURTH AMENDMENT

Scott v. Harris, 127 S.Ct. 1769 (2007)

This case involves a police pursuit that started when an officer tried to stop the defendant's car for speeding. After an extensive pursuit, the lead pursuit officer sought and received the permission of his sergeant to end the pursuit, and did so by ramming the vehicle, resulting in a crash that rendered the driver a quadriplegic. The driver sued the officer and the officer's agency, alleging excessive force under the Fourth Amendment.

The pursuit was videotaped (the video is available at http://www.supremecourtus.gov/opinions/video/scott_v_harris.rmvb). The Court's majority relied heavily on its viewing of that video, finding that it demonstrated "a Hollywood-style car chase of the most frightening sort, placing police officers and innocent bystanders alike at great risk of serious injury." In large part relying on the video, the Court found the officer's decision to ram the vehicle to end the chase to be a reasonable use of force. The Court adopted what it describes as a "sensible rule:"

> A police officer's attempt to terminate a dangerous high-speed car chase that threatens the lives of innocent bystanders does not violate the Fourth Amendment, even when it places the fleeing motorist at risk of serious injury or death.

Officers and attorneys alike should pay close attention to the Supreme Court's discussion of the use of force. The Court essentially steps aside from the three step analysis established in *Tennessee v. Garner,* 471 U.S. 1 (1985) which it describes as "simply an application of the Fourth Amendment's reasonableness" test to the use of a particular type of force in a particular situation."

> Whatever *Garner* might have said about the factors that *might have* justified shooting the suspect in that case, such "preconditions" have scant applicability to this case, which has vastly different facts.
> * * *
> …in the end we must still slosh our way through the factbound morass of "reasonableness." Whether or not Scott's actions constituted application of deadly force, all that matters is whether Scott's actions were reasonable.

The Court concludes that they must consider the risk of bodily harm that the defendant's actions posed in light of the threat to the public that the officer was trying to eliminate. In weighing those facts, the Court finds it:

> …appropriate to take into account not only the number of lives at risk, but also their relative culpability. It was the [plaintiff], after all, who intentionally placed himself and the public in danger by unlawfully engaging in the reckless, high-speed flight that ultimately produces the choice between two evils that [the officer] faced…By contrast, those who might have been harmed had [the officer] not taken the action he did were entirely innocent. We have little difficulty in concluding it was reasonable for Scott to take the action that he did.

Brendlin v. California, 127 S.Ct. 1989 (2007)

In *Brendlin*, officers stopped a vehicle admittedly without a lawful reason to do so. The passenger, Brendlin, was arrested as a parole violator and searched pursuant to the arrest. He was found to have a syringe cap in his possession. A further search of the car revealed material used to make methamphetamine, and he was charged with possession and manufacture of methamphetamine. Brendlin sought to suppress the evidence found on him and in the car, arguing that the evidence was fruit of an unconstitutional seizure, since the officers had neither probable cause nor reasonable suspicion to make the traffic stop.

The California Supreme Court held that Brendlin could not assert that he had been unlawfully seized because he had never been seized prior to his arrest. According to the California Supreme Court, a passenger at a traffic stop is free to leave the scene of the stop and, therefore, has not been seized under the Fourth Amendment.

The United States Supreme Court reversed. It is clearly not the case, according to the Court, that a reasonable person who was a passenger in a car at a traffic stop would feel free to leave the scene of the stop. In fact, the Court acknowledged that a police officer is unlikely to allow people to move around at a traffic stop in ways that could endanger the officer's safety. Rather, a passenger in such a situation experiences sufficient restriction of freedom movement to have been lawfully seized. As such, the passenger has the right to bring a Fourth Amendment challenge to the legality of the traffic stop.

The case was returned to the lower courts to determine whether suppression was appropriate.

***LA County v. Retelle*,** 127 S.Ct. 2400 (2007)

Deputies executed a valid search warrant on a house. They expected to find several African American fraud suspects and evidence related to the fraud, and unaware that the house had been sold months before to a Caucasian male who now lived there with two other Caucasians. Upon entering the house, the deputies encountered the residents and ordered two of them out of bed, even though they were naked. Deputies held them for a couple of minutes, then allowed them to cover-up. Within five minutes, the deputies realized their error and apologized, leaving the premises. The entire episode took less than 15 minutes.

The residents sued, alleging a violation of their Fourth Amendment right to be free from unreasonable searches and seizures. The trial court dismissed the suit; the Ninth Circuit reversed, ordering that the suit be allowed to go forward.

The Court reversed. The Court noted that officers had no way of knowing, when they ordered the persons to get out of bed, that the suspects they were looking for were not in the house, nor did they know that the residents were not armed. The "Constitution," said the Court, "does not require an officer to ignore the possibility that an armed suspect may sleep with a weapon within reach." At the same time, the Court recognized that the deputies had a responsibility to allow the residents to cover themselves up within a reasonable period of time – a prolonged detention standing naked might well cause a court to find the search unreasonable. In this case however, deputies quickly realized their mistake, and both of the naked persons were allowed to dress or cover-up within a couple of minutes.

The Court found no Fourth Amendment violation, stating:

> Valid warrants will issue to search the innocent, and people like [these] unfortunately bear the cost. Officers executing search warrants on occasion enter a house when residents are engaged in private activity; and the resulting frustration, embarrassment, and humiliation may be real, as was true here. When officers execute a valid warrant and act in a reasonable manner to protect themselves from harm, however, the Fourth Amendment is not violated.

SIXTH AMENDMENT

***Carey v. Musladin*,** 127 S.Ct. 856 (2006)

Tom Studer was shot and killed by Mathew Musladin. Tom's family attended Mathew's trial wearing buttons with Tom's picture on them. The defendant's attorney filed a motion to exclude the buttons from the courtroom, alleging

violations of the defendant's rights under the Sixth and Fourteenth Amendments. The motion was denied and the defendant was convicted; his conviction was upheld by the California Court of Appeal.

Musladin then filed a writ of habeas corpus in federal court, which was denied. On review, the Ninth Circuit Court of Appeals reversed. Applying the standard required by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), under which the defendant had filed his habeas petition, the Ninth Circuit noted that relief may be granted under the Act only if the state court's prior decision is contrary to or an unreasonable application of prior U.S. Supreme Court decisions. The court of appeals reviewed applicable Supreme Court precedent on the question of courtroom conduct which may be so prejudicial as to affect the right of the defendant to a fair trial, and found that the California court's decision was contrary to clearly established federal law, as determined by the Supreme Court.

The United States Supreme Court disagreed, reversing the opinion of the Ninth Circuit. The Court reviewed the two cases relied upon by the Ninth Circuit: *Holbrook v. Flynn*, 475 U.S. 560 (1986)(four troopers were seated with defendant; found not to be a violation of the defendant's right to a fair trial) and *Estrelle v. Williams*, 425 U.S. 501 (1976)(defendant was forced to wear prison garb to trial; found to be a violation of his 14th Amendment rights). The Court noted that both of these cases involved government conduct, whereas the conduct in the case under consideration involved conduct solely by private citizens. Finding the cases to be inapplicable to the case at bar, and finding no Supreme Court decisions regarding such conduct by private persons, the Court held that the Ninth Circuit had misapplied the standard under the AEDPA. The Ninth Circuit's decision was vacated and the case remanded.

***Cunningham v. California*,** 127 S.Ct. 856 (2006)

California uses a determinate sentencing scheme in which there are three possible sentences for each crime – upper, middle, and lower - with the presumed sentence to be the one in the middle. The judge is permitted to raise or lower the sentence based upon facts found by the judge following a sentencing hearing.

The Supreme Court reviewed this sentencing scheme in light of its prior decisions in *Apprendi v. New Jersey,* 530 U.S. 466 (2000), *Blakely v. Washington*, 542 U.S. 296 (2004) and *U.S. v. Booker*, 543 U.S. 220 (2005), and found that it violates the defendant's rights under the Sixth and Fourteenth Amendments.

Rita v. U.S., 127 S.Ct. 2456 (2007)

The defendant, convicted of perjury, making false statements and obstructing justice, was sentenced within the United State Sentencing Guidelines. On appeal, the Fourth Circuit held that a sentence that is properly calculated within the Sentencing Guidelines is presumed to be reasonable. On appeal, the Supreme Court affirmed, holding both that a properly determined sentence within the Guidelines range is reasonable, and that the use of the Guidelines does not violate the Sixth Amendment.

Whorton v. Bockting**,** 127 S. Ct. 1173 (2007)

In this case, the Supreme Court held that its prior decision in *Crawford v. Washington,* 541 U.S. 36 (2004), which overruled prior Supreme Court decisions and severely limited the use of testimonial statements from victims who are unavailable for cross-examination, is ***not*** retroactive. This decision is based on and consistent with the criteria for retroactivity set forth in the Court's prior decision in *Teague v. Lane*, 489 U.S. 288 (1989).

CIVIL RIGHTS

Wallace v. Kato, 127 S.Ct. 1091 (2007)

"On January 17, 1994, John Handy was shot to death in the city of Chicago." Two days later, Wallace was picked up by police. Fifteen years old, he was held at the station and interrogated until early the next day, when he confessed. At trial, he moved to suppress his confession, arguing that his arrest was without probable cause and therefore illegal. His motion was denied; following trial he was convicted of first degree murder.

On direct appeal, the state courts held that he had been arrested without probable cause and suppressed his confession. In April of 2002, prosecutors dropped the charges against him.

A year later, Wallace brought suit under 42 U.S.C. §1983 against the city and the involved officers. The case was dismissed on statute of limitations grounds, when the reviewing courts determined that his cause of action accrued at the time of his illegal arrest and not later, when his conviction had been set aside.

On appeal, the Supreme Court agreed. In a §1983 action, the applicable statute of limitations is borrowed from the state's limitations period for personal injury torts (in Illinois, that is two years). Though the limitations period is borrowed from state law, the Court first makes it clear that the question of when the statute begins to run under §1983 is a federal, not a state, question.

The Court then notes that the standard rule is that a statute accrues "when the plaintiff has a complete and present cause of action." The Court then considers the torts of false arrest and false imprisonment and determines that, for purposes of limitations of actions, it is the false imprisonment tort (imprisonment without legal process) that most closely applies. "Limitations begin to run against an action for false imprisonment when the alleged false imprisonment ends," which is, according to the Court, the point at which the imprisonment becomes lawful – in this case when the person becomes held pursuant to legal process. The arrestee was held pursuant to legal process when bound over by the magistrate for trial; the statute of limitations therefore began to run upon the plaintiff's arraignment, and was well past by the time he filed suit, some nine years later.

The Court also notes that its decision is in no way affected by its prior holding in *Heck v. Humphrey,* 512 U.S. 477 (1994), because at the time that the statute of limitations begins to accrue, there is no prior conviction that would bar the commencement of the suit.

Ledbetter v. The Goodyear Tire & Rubber Co, Inc.**,** 127 S.Ct. 2162 (2007)

After filing a pay discrimination claim against the company, Lilly Ledbetter took early retirement from Goodyear Tire & Rubber. At the time of her retirement, she was the only female area manager at the plant at which she worked; the other 15 managers were male. Her final salary was $3,727 per month, the lowest paid male made $4,286 and the highest paid male made $5,236. Lilly blamed the discrepancy in her pay on poor evaluations made years earlier by supervisors who intentionally discriminated against her because she was a woman. Following trial, a jury found in her favor.

On appeal, Goodyear argued that Ledbetter's pay discrimination claim was barred with regard to all pay decisions made prior to 180 days before the filing of her EEOC questionnaire. The 11th Circuit agreed and reversed the decision of the trial court. The Supreme Court granted review to resolve a disagreement between the Circuits on this issue.

The Supreme Court affirmed the 11th Circuit's opinion, holding that Title VII forbids discriminatory "employment practices," that an employment practice is a discrete act or single occurrence occurring at a particular point of time, and concluding that a Title VII plaintiff can only file a charge to cover employment practices that occurred during the 180 time period limitation.

The fact that the paychecks issued to Ledbetter during that 180 day period may have reflected prior uncomplained of discrimination does not matter. "…[C]urrent effects alone cannot breathe life into prior, uncharged discrimination; …such effects in themselves present no present legal consequences." Because Ledbetter could prove no discriminatory acts occurred within the 180 days prior

to the filing of her EEOC questionnaire, there was no cognizable claim under Title VII.

Parents Involved in Community Schools v. Seattle School District No.1*,* 127 S.Ct. 2738 (2007) and ***Meredith v. Jefferson County Board of Education*****,** 127 S.Ct. 2738 (2007)

This is a 4-1-4 decision, leaving the issue of some use of race in the assignment of students to schools (and school admission? and in affirmative action?) largely unresolved. This much is clear: school districts may not distribute students among schools based on a system in which race is the determining factor.

This case is probably a preview of coming attractions, as it seems clear that the Court will revisit this issue in both college admission plans and employment affirmative action plans in the future.

FIRST AMENDMENT CASES

Morse v. Frederick**,** 127 S.Ct. 2681 (2007)

Joseph Frederick, along with his classmates, stood by the side of the street awaiting the arrival of the Olympic Torch Relay passing through Juneau, Alaska. They had been released from their high school classes and permitted to stand by the street to view the relay as part of a school sponsored "class trip."

As the torchbearers and cameras went by, Frederick and his friends unfurled a 14-foot banner which read: BONG HITS 4 JESUS. The principal immediately directed them to take the banner down; Frederick refused. He was subsequently suspended from school. He brought suit; on appeal from a dismissal by the District Court, the Ninth Circuit Court of Appeals held that the principal had violated Frederick's First Amendment rights and that the principal was not entitled to qualified immunity for doing so. The Ninth Circuit remanded the case for trial.

On appeal to the Supreme Court, the Court split 5-4 on the issue, with several concurring and dissenting opinions issued. There was majority agreement that the message BONG HITS 4 JESUS was a message that supported the use of illegal drugs, and that schools may lawfully under the First Amendment "take steps to safeguard those entrusted to their care from speech that can reasonably be regarded as encouraging illegal drug use."

Davenport v. Washington Education Association, 127 S.Ct. 2372 (2007)

The State of Washington may require a union to get authorization from a nonmember who is required to pay union dues before the union spends those monies on electioneering.

OTHER CASES OF INTEREST

PUNITIVE DAMAGES

Philip Morris USA v. Williams**,** 127 S.Ct. 1057 (2007)

Mr. Williams died as a result of smoking cigarettes and his estate sued the manufacturer for negligence and deceit. The jury awarded his widow $821,000 in compensatory damages and $79.5 million in punitive damages. The trial judge reduced the punitive award to $32 million.

This appeal, limited to the punitive damage award, sought to have that damage award reversed as a result of both its ratio to the compensatory damages (roughly 100 to 1) and the failure of the trial court to instruct the jury that it could not "seek to punish Philip Morris for injury to other persons not before the court,"

The Court did not reach the ratio issue, instead deciding the case on due process grounds. The Court found that failing to properly instruct the jury on the punishment issue deprived Philip Morris of due process. According to the Court, in the absence of appropriate instruction, the lower court deprived Philip Morris of the right to present every available defense (specifically against those who were claimed to be harmed but were not parties to the action), and by adding a "standardless dimension" to the punitive damage award.

The jury in a case involving punitive damages must be instructed that they may consider harm to others when considering the reprehensibility of the conduct in question, but that they may not base their damage award upon harm done to persons who are not parties to the action.

The remaining question for future cases, and the one unanswered by the Supreme Court, is precisely how juries are to be instructed.

ANTI-TRUST

Leegin Creative Leather Products, Inc. v. PSKS, Inc., 127 S.Ct. 2705 (2007)

Vertical price restraints, considered since 1911 to be a per se violation of Section 1 of the Sherman Act, are no longer per se violations but are to be judged instead by the rule of reason.

DEATH PENALTY CASES

***Abdul-Kabir v. Quarterman*, 127 S. Ct. 1654 (2007)**
***Brewer v. Quarterman,* 127 S. Ct. 1706 (2007)**
***Smith v. Texas*, 127 S.Ct. 1686 (2007)**

These cases all deal with a previous Texas law, since replaced with a new statute. This sentencing scheme was not adopted by any other state, and therefore these decisions are of limited applicability outside of Texas. In *Adbul* and *Brewer,* the Court held that the previous death penalty statute did not provide a jury with sufficient ability to apply mitigating evidence, and that prior Texas decisions to the contrary were unreasonable applications of clearly established federal law under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). In the *Smith* case, the Supreme Court found that the defendant had preserved his claim of error with regard to jury instructions at the death penalty stage, and remanded the case for further proceedings.

Ayers v. Belmontes, 127 S.Ct. 469 (2006)

The instructions to the jury in this death penalty case included an instruction pursuant to California's "factor (k)," which allows the jury to consider "any other circumstance which extenuates the gravity of the crime even though it is not a legal excuse for the crime." The defendant had introduced forward-looking mitigating evidence (his intention to rededicate himself to Christianity and to positively contribute to society as a prison inmate). He was sentenced to death, and on appeal claimed that the instruction pursuant to factor (k) violated the 8th Amendment by preventing the jury from evaluating his mitigation evidence.

The Ninth Circuit agreed, reversing and remanding the case for resentencing. The Supreme Court reversed, holding in a 5-4 decision that the language of the factor (k) instruction would not lead a reasonable juror to believe that he or she could not consider the forward looking mitigating evidence.

***Panetti v. Quarterman*,** 127 S.Ct. 2842 (2007)

At the time of his trial, for killing his wife's parents in front of his wife and their daughter, the defendant represented himself – his defense was that he was not guilty by reason of insanity. He was found guilty and was unsuccessful in subsequent appeals.

By the time his execution date was set, Panetti's mental state had allegedly deteriorated to the point where, in the opinion of counsel, he had become incompetent to be executed. Allegedly, he believed that he was to be executed for preaching the gospel.

The question of whether his execution would violate the 8th Amendment as applied by the Supreme Court in *Ford v. Wainwright*, 477 U.S. 399 (1986) (prohibiting the execution of an insane prisoner), was considered on a habeas petition by the District Court. The court denied the petition under Fifth Circuit precedent, which permits execution if the prisoner knows he will be executed and knows that the justification is that he murdered another person. The Supreme Court reversed, finding that the Fifth Circuit's precedent was too limiting an interpretation of its decision in the *Ford* case, especially insofar as it limited consideration of the defendant's delusional state. The Court declined, however, to set forth any further guidelines for competency determinations, given the "peculiar" nature of the record in this case.

FEDERAL CRIMINAL STATUTORY INTERPRETATION

Jones v. Bock, 127 S.Ct. 1586 (2007)

The Sixth Circuit has adopted three "rules" in its adjudication of complaints filed under the Prisoner Litigation Reform Act of 1995: 1) prisoners must plead exhaustion of administrative remedies in their complaints, and attach grievance procedure paperwork to the complaint; 2) prisoners are required to name all defendants in all administrative complaints; 3) prisoners are required to separate out grievances so that only those for which administrative procedures have been exhausted are included in one complaint. Failing to meet any one of these requirement will result in dismissal of the complaint.

On appeal, the Court reversed all three requirements, holding that none of them are required by the Prisoner Litigation Reform Act.

James v. United States**,** 127 S.Ct. 1586 (2007)

In another 5-4 decision, the Court determines that attempted burglary qualifies as a violent felony under the federal Armed Career Criminal Act.

FEDERAL HABEAS CORPUS

Lawrence v. Florida*,* 127 U.S. 1079

Filing of a petition for certiorari does not toll the one year statute of limitations for habeas petitions under the Antiterrorism and Effective Death Penalty Act of 1996.

Bowles v. Russell, 127 S.Ct. 2360

When a time limit for an appeal is established by statute, the Supreme Court is without the authority to extend those time limits. (Prior cases which appear to hold differently are expressly overruled). An appellate court therefore lacks jurisdiction to hear an appeal filed outside of the statutory time limit, *even when*

the District Court has advised the party of the extended time limit for filing the notice of appeal.

ABORTION

Gonzales v. Carhart*,* 127 U.S. 1610 (2007)

The Court upholds the Partial Birth Abortion Ban Act of 2003, holding that the Act is not void for vagueness and that it does not place an undue burden on the right of a woman to have an abortion.

PREVIEWS OF COMING ATTRACTIONS:

Constitutionality of lethal injections;

Whether a tough federal law to combat child pornography unfairly targets those who merely talk about or promise to distribute the indecent material, without actually doing so.

Gun rights under the Second Amendment;

Whether a prosecutor who urged the all-white jury (which remained after he struck all African Americans) to sentence the African American defendant to death, may argue to the jury that this case is like the O.J. case, and he 'got away with it;'

The military detention of enemy combatants;

Whether photo ID requirements for voters discriminate against poor and minority citizens;

The right of political parties to choose their own candidates, and the right of a candidate to choose a political party for endorsement (Washington and New York);

The right of an investor to hold a third party (read, attorneys, accountant, banks), responsible for their part in assisting companies to commit securities fraud;

The right of the President to require a State to comply with a decision of the International Court of Justice;

Whether a judge may consider the crack v. cocaine sentencing disparities to sentence below the U.S. Sentencing Commission Guidelines;

Whether a defendant "uses" a firearm under federal drug laws when the defendant furnishes drugs in exchange for an unloaded firearm.