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Supreme Court Cases: 2010-2011 Term

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Each year, the U.S. Supreme Court decides cases that impact the everyday operations and management of law enforcement agencies. The 2010 to 2011 term was no different. It included case decisions covering a variety of constitutional and statutory issues that will affect how departments conduct business.

In this term, the Court decided two Sixth Amendment Confrontation Clause cases and one municipal liability case of interest. It also addressed the protection afforded speech in a case involving a government employee. In the criminal genre, there was a case centering on the emergency exception to the Fourth Amendment search warrant requirement, along with a juvenile case addressing the relevance of age and Miranda warnings.

The Court also addressed the scope of retaliation protection under the Fair Labor Standards Act (FLSA) and in a traditional claim of discrimination in a Title VII case. The Court also decided a bias case involving the Uniformed Services Employment and Reemployment Rights Act (USER-RA). The final case involved alleged government retaliation for an employee's exercise of the First Amendment right to petition grievances against the government.

This article provides brief synopses of these cases. As always, law enforcement agencies must ensure that their own state laws and constitutions have not provided greater protections than those offered by U.S. constitutional standards.

Michigan v. Bryant, 131 S. Ct. 1143 (2011)

In this case, the U.S. Supreme Court decided that statements made during an ongoing emergency by an unavailable witness are not barred from admission at trial and that their admission does not violate the Sixth Amendment Confrontation Clause. On April 29, 2001, at approximately 3:30 a.m., Detroit police officers responding to a radio dispatch found a man critically wounded in the parking lot of a gas station. The man, Anthony Covington, was questioned as to what happened, who shot him, and where the shooting had occurred.

He responded that he had been shot by respondent Bryant at Bryant's house and that he had driven himself to the gas station. Covington died hours later. His statements were used by the police in Bryant's murder trial where Bryant was convicted of second degree murder. Bryant's conviction was reversed by the Michigan Supreme Court, which held that the Sixth Amendment Confrontation Clause rendered Covington's statement's inadmissible testimonial hearsay.[1]

The case was appealed to the U.S. Supreme Court, which held that testimony by police officers at a murder trial regarding the dying victim's identification of the defendant did not violate the defendant's rights under the Confrontation Clause. Because the primary purpose of the victim's statements was to enable police to respond to an ongoing emergency -- a shooting -- they were admissible at Bryant's trial.[2]

The Court provided two rules to guide the inquiry as to whether the Confrontation Clause would bar a statement. First, the primary purpose test considers the perspectives of both interrogators and the interrogated. In other words, a witness can answer even questions asked in good faith in a way that makes their primary purpose testimonial. Second, the test is objective; to determine primary purpose, courts should look at the purpose that reasonable people would have in eliciting or giving the statement, rather than at the actual motives of the parties.

If the statement was made to meet an ongoing emergency, its primary purpose usually will be innocent. Whether the emergency is ongoing even after the crime is completed turns largely on the extent of the continuing public danger -- an assessment that could depend on the weapon used in the crime, the likelihood that the assailant will strike again, the medical condition of the victim, and other case-specific circumstances.' The Supreme Court determined that the statements at issue were obtained primarily for investigative purposes, and, thus, their use at trial did not violate the Sixth Amendment.

Bullcoming v. New Mexico, 131 S. Ct. 2705 (2011)

The Court decided that the testimony of a lab analyst who had no role in the testing of trial evidence would not satisfy the Sixth Amendment Confrontation Clause requirements. The petitioner, Donald Bullcoming, was arrested for drunk driving. Tests revealed that his blood-alcohol level was three times the legal limit. Prior to Bull-coming's trial, the lab analyst who had conducted the tests and signed the lab reports had been placed on unpaid leave, so another lab analyst was called to the stand to testify concerning the report. The analyst who testified had neither participated in nor observed the performed tests. The Supreme Court of New Mexico decided that it was not necessary for the lab analyst who conducted the tests to testify as long as a lab analyst testified that the Sixth Amendment Confrontation Clause would be satisfied.[4]

The U.S. Supreme Court disagreed. In 2009, it had decided in Melendez-Diaz v. Massachusetts that a lab report was a form of testimony; as such, the Confrontation Clause required the authors of the report to take the stand for cross-examination.[5] Here, the question was whether another lab analyst could testify in place of the one who actually performed the tests. In a 5 to 4 decision, the Court determined that testimony by a substitute witness does not satisfy the Confrontation Clause. The Court reasoned that given the nature of the examination, a defendant must have an opportunity to dissect the examiner's work by way of confrontation.[6]

Connick v. Thompson, 131 S. Ct. 1350 (2011)

In this case, the Court decided that the district attorney's office should not be held liable under Section 1983 for failure to train its prosecutors based on a single Brady violation.[7] Thompson was convicted of murder, sentenced to death, and served 17 years in prison, where he came within a month of his execution date. He had chosen not to testify at his trial because of his fear that the prosecution would bring up an earlier conviction for armed robbery to try to make him look less believable.

However, unbeknownst to Thompson and his attorneys, the prosecutor had blood evidence that would have exonerated him from guilt in the armed robbery case. Had he not been convicted of armed robbery, he could have testified in his own defense in the murder case, and the outcome could have been different. In fact, he was acquitted in a new trial once the blood evidence came to light. After his release from prison, Thompson filed a federal civil rights lawsuit pursuant to Title 42, Section 183, U.S. Code against the district attorney's office, alleging that a Brady violation involving the failure to disclose the exonerating blood evidence was caused by the office's deliberate indifference to an obvious need to train its prosecutors to avoid such constitutional errors.

The U.S. Supreme Court found that although the prosecutors should have given Thompson the blood evidence, when misconduct by prosecutors leads to a wrongful conviction, the agency can be held liable for its employee's actions only if the policy maker for the agency was aware of a pattern of similar bad behavior in the office, yet still did not start a training program for prosecutors. In City of Canton, Ohio v. Harris, the Court noted that it had, in fact, left open the possibility that the unconstitutional consequences of a single incidence of failure to train could be so patently obvious that a city could be held liable under Section 1983 without proof of a preexisting pattern of violations.[8]

However, the Court noted that this was not such a case as lawyers are equipped with the tools to seek out, interpret, and apply legal principals prior to obtaining their positions with the government, so additional training would not necessarily be required for them to do their jobs within the confines of the Constitution.[9] Thus, a single Brady violation would not constitute deliberate indifference; a pattern of similar violations would be

necessary to establish that a "policy of inaction" constituted the functional equivalent of a decision by the city itself to violate the Constitution.

Snyder v. Phelps, 131 S. Ct. 1207 (2011)

According to the U.S. Supreme Court, political picketing at a military funeral, even if offensive in its content and manner, is constitutionally protected if it addresses matters of public concern. Fred Phelps, the founder of the Westboro Baptist Church in Topeka, Kansas, and six of his followers picketed the funeral of Marine Lance Corporal Mathew Snyder, an Iraq War veteran. The protest centered on their belief that God hates the United States for its tolerance of homosexuality. The protestors verbally conveyed their message of intolerance and used signs with messages, such as "Thank God for Dead Soldiers" and "America is Doomed." The protest was regarded as peaceful and occurred on public property approximately 1000 feet from the church holding the service.

Snyder's father sued Phelps and his church under state tort law, alleging intentional infliction of emotional distress and invasion of privacy. A jury found Phelps and his church liable for millions of dollars in compensatory and punitive damages.

Phelps appealed, arguing that the First Amendment is violated when a state law allows for infringement on First Amendment protected speech. The Fourth Circuit Court of Appeals reversed the jury determination, granting First Amendment protection for the speech because it centered on matters of public concern, was not provably false, and consisted of participants expressing it solely through hyperbolic rhetoric.[10]

The case also was appealed to the U.S. Supreme Court, which recognized that the contours of what constitutes protected speech is not well defined. However, speech still is protected despite its repugnant nature when it addresses a matter of public concern. The Court has determined that speech relating to matters of political, social, or general interest, value, or concern to the community generally is a matter of public concern. The Court advised that an examination of a statement's content, form, and context decides a matter of public concern, not its inappropriate or controversial character.

The Court decided that the content of the speech in this case related to public matters, such as the moral conduct of the United States and its citizens, not private concerns. The context was on social issues and did not involve personal attacks upon Snyder. The speech occurred on public property in a peaceful manner and did not disrupt the funeral. The Court stated that even hurtful speech on public matters is protected to ensure that public debate is not stifled.[11]

Kentucky v. King, 131 S. Ct. 1849 (2011)

The Court determined that an exigent circumstance created by the arrival of law enforcement officers at a residence does not negate the emergency warrant exception. A search of an apartment in Lexington, Kentucky, took place after the controlled purchase of crack cocaine outside the complex. The suspect dealer walked into the apartment breezeway and entered a residence. The pursuing police officers did not receive the radio call with the information as to which apartment the suspect entered. The officers stood between two apartments, not knowing which one the suspect had entered, smelled burning marijuana, knocked on the suspect's apartment door, and announced their presence.

The residents of the apartment did not respond, but the officers heard noises indicating that the occupants were in the process of destroying the drug evidence. The police officers announced their intentions to enter; made a warrantless, forced entry; and found three individuals smoking marijuana, as well as, in plain view, cocaine. The officers subsequently found crack cocaine, cash, and drug paraphernalia. The original drug suspect later was apprehended in another apartment.

The respondent, Mr. King, one of the three occupants of the first apartment, was convicted of distribution charges and sentenced to 11 years imprisonment. He appealed his conviction. The Kentucky Court of Appeals affirmed his conviction, stating that the entry into the home was justified under the emergency search warrant exception because the police reasonably believed that the drug evidence would be destroyed and that they did not impermissibly create the exigency because they had not deliberately evaded the warrant requirement.

The Supreme Court of Kentucky reversed, stating that the police could not rely on the exigent circumstances exception if it was reasonably foreseeable that the investigative technique used would result in the exigent circumstances.[12] Hence, knocking and announcing inevitably would induce the destruction of the evidence.

The U.S. Supreme Court assumed that exigent circumstances existed in this case, meaning there was a reasonable belief that evidence would be destroyed unless entry was made. Because exigent circumstances existed, the only question was whether the actions of the police were allowable. The Court decided that as the officers had not violated or threatened to violate the Fourth Amendment prior to the exigency, the warrantless entry was justified. The likelihood that the police notifying suspects of their presence will result in the individuals destroying the evidence, thus creating exigency, has no bearing on the validity of a warrantless entry.

J.D.B. v. North Carolina, 131 S. Ct. 2394 (2011)

In this case, the Supreme Court advised that age is a factor when deciding whether to provide the Miranda advice of rights to a juvenile suspect, but clarified that age is not a determining factor. J.D.B., a [13] year old, was pulled out of class and taken to a conference room at his school, where school administrators and a uniformed police officer questioned him about some items stolen from neighborhood homes. J.D.B. eventually confessed to stealing the items.

His attorney later argued that his confession could not be used because he had not received Miranda warnings. The North Carolina Supreme Court rejected that argument.[14] J.D.B. then filed a petition for certiorari in which he argued that because he was a minor, he would not reasonably believe that he was free to leave when confronted by a police officer and, therefore, must receive Miranda warnings prior to being interrogated.

The U.S. Supreme Court reversed the North Carolina Supreme Court. In a 5 to 4 opinion authored by Justice Sotomayor, the Court held that a minor's age can be a relevant factor when determining whether he or she is in custody. The Court reasoned that while the determination of custody is still an objective one, including consideration of a minor's age in that objective determination is appropriate given the psychological differences between adults and juveniles.

This is not to say that age is the decisive factor, but it recognizes that age is to be considered given that a reasonable adult may view the circumstances differently than a reasonable juvenile.[15] The case was remanded back to the North Carolina Supreme Court to determine whether the factoring of age into the analysis occurred while J.D.B. was in custody.

Kasten v. Saint Gobain Performance Plastics Corp., 131 S. Ct. 1325 (2011)

The FLSA contains an anti-retaliation provision protecting employees who complain of unfair labor practices. However, some question arose as to what kind of complaint qualifies for protection under the act. The FLSA refers to filing a complaint. The act does not specify how this must be done, leaving the Court to determine whether a written complaint is necessary or if an oral complaint satisfies the FLSA. The Court held that a complaint could be filed orally.

Kevin Kasten alleged unlawful retaliation from his employer, Saint Gobain Performance Plastics Corp., which fired him for orally complaining to company officials concerning the location of time clocks, which prevented workers from claiming donning and doffing time for protective gear required for work. The company claimed that it dismissed Kasten after repeated warnings for failing to properly record his comings and goings on the time

clock. The district court granted summary judgment in favor of the employer, holding that the act did not allow protection for oral complaints. The Seventh Circuit Court of Appeals affirmed the district court's decision.[16]

The U.S. Supreme Court granted certiorari, holding that an oral complaint is protected under the FLSA anti-retaliation provision. The Court used several different tools of statutory interpretation to reach that result. It pointed out that the dictionary definitions of the word filed varied, but that the purpose of the act -- to protect employees with legitimate complaints -- would be undermined if the act required all complaints to be in writing[17] The Court also noted that many state legal systems allow for oral filings and that the agency charged with administering the FLSA regarded oral complaints as falling under the act.

The Court concluded that the Seventh Circuit Court of Appeals erred in determining that oral complaints do not fall within the scope of the act's anti-retaliation provision and left the question of whether Kasten could meet the act's notice requirement for the lower courts to decide. The case was vacated and remanded to the Seventh Circuit Court of Appeals. This ruling lessened the need for a high degree of formality when seeking protection from retaliation based on conduct protected by the FLSA.

Staub v. Proctor Hospital, 131 S. Ct. 1186 (2011)

An employer can be liable for discrimination under the USERRA if a decision detrimental to an employee is influenced by bias, even if the person who actually makes the detrimental decision is not the biased party. Staub was fired after his two immediate supervisors, who were hostile to him in regard to his military reserve status, mandated additional reporting requirements for him, which they later claimed he did not do. This failure to follow the requirements was forwarded to his supervisor's superior who made the decision to fire Staub.

In turn, Staub filed a grievance claiming the underlying reason for his disciplinary warning was that his supervisors were hostile toward his military obligations as a U.S. military reservist. Staub cited a history of work-scheduling conflicts requiring him to take leave or work additional shifts to fulfill his reservist obligations, as well as numerous derogatory comments concerning the military and his duties as a reservist.

This claim was brought under a "cat's paw" theory alleging that Proctor Hospital was liable for the animus of Staub's supervisors who did not make the actual decision to fire him, but did induce the decision maker to fire him based on the animosity they had towards Staub and his reservist status.[18] A jury found in favor of Staub and awarded him $57,740 in damages. On appeal, the Seventh Circuit determined that the cat's paw theory applies only to impute the animosity of a nondecision maker with "singular

influence" over a decision maker and remanded to enter judgment in favor of Proctor Hospita1.[19]

The U.S. Supreme Court granted certiorari and rejected the circuit court's reasoning. It examined the question of under what circumstances an employer is liable for the unlawful intent of supervisors who cause or influence yet do not make the ultimate employment decision. In so doing, the Court considered both tort and agency law while focusing on the statutory term "motivating factor in the employer's action" found in the USERRA.

Principles of tort law instruct that for intentional torts it is the intended consequences of an act, not simply the act, that determines the state of mind required for liability. Further, principles of agency law provide that both the supervisor and the ultimate decision maker, if both acting within the scope of their employment, are agents of the employer, and, thus, their wrongful conduct may be imputed to the employer.

The Court concluded that the evidence suggested that a reasonable jury could have inferred that the actions of the supervisor were motivated by hostility toward Staub's military obligations and that these actions were causal factors underlying the ultimate decision to fire Staub.[20] The Court reversed the Seventh Circuit opinion and remanded for further proceedings to determine whether a new trial was warranted. This decision has the potential to affect liabilty issues in other federal acts, such as Title VII and the American with Disabilities Act (ADA), which has language similar to the USERRA.

Thompson v. North American Stainless, 131 S. Ct. 863 (2011)

This case continued the Supreme Court's broad interpretation of the anti-retaliation provision within federal antidiscrimination law.[21] Eric Thompson, an engineer at North American Stainless, a stainless steel manufacturer, was fired after his then-fiancee (now wife) filed a gender-discrimination complaint with the Equal Employment Opportunity Commission (EEOC).

Thompson argued that because the company could not legally fire his fiancee in retaliation for her complaint, it fired him instead. At question in the case is whether Title VII -- a federal antidiscrimination law -- protects close family members and friends of a complaining employee or only the employee from retaliatory employer action.

The U.S. District Court for the Eastern District of Kentucky granted summary judgment to North American Stainless, finding that Title VII does not permit third-party retaliation claims. The Sixth Circuit Court of Appeals met en banc after a panel of the Sixth Circuit reversed the district court decision and affirmed the district court ruling.[22]

The case then was appealed to the U.S. Supreme Court, which advised that Title VII protects any employee who has made a charge under the act from employer discrimination.[23] Title VII also allows any person claiming to be aggrieved by an unlawful employment practice to file charges with the EEOC or even sue the employer if the EEOC declines to do so.[24] The Court then looked to the two issues presented by this case: First, if Thompson's firing by his employer was unlawful retaliation and, second, if so, if Thompson was entitled to relief under Title VII. The Court stated that if Thompson's statement of fact was true, then he was the subject of unlawful retaliation.[25]

The Court went on to say that Thompson was covered under Title VII due to the retaliation provision, which prohibits any employer action that "well might have dissuaded a reasonable worker from making or supporting a discrimination charge."[26] In regard to the issue of the proverbial "slippery slope" as to where protection against retaliation begins and ends and who is covered, the Court stated that no general rule should be made as any such rule would restrict the number of claimants unduly but that common sense should prevail because "the significance of any given act of retaliation will depend upon the particular circumstances."[27]

Borough of Duryea, Pennsylvania v. Guarnieri, 131 S. Ct. 2488 (2011)

Embedded within the First Amendment is an individual's right to "petition the Government for a redress of grievances."[28] The parameters of this right were tested with the result being similar to what is seen in speech cases involving government employees.

Police Chief Charles J. Guarnieri was fired by the Borough of Duryea, Pennsylvania, in 2003 and subsequently filed a grievance to fight the firing. After arbitration, Chief Guarnieri was reinstated. Upon returning to his job, he found that the council had issued a number of directives limiting the tasks he could and could not do as chief. He then filed a second grievance, which resulted in the modification of the directives. He also sued the borough, alleging retaliation over his having filed the first grievance in 2003.

Chief Guarnieri did so on the basis that the retaliation was a violation of his First Amendment right to petition. A jury found for Chief Guarnieri, and the borough appealed to the U.S. Third Circuit Court of Appeals, citing that only matters of public concern were protected under the First Amendment. The Third Circuit held that the First Amendment right to petition protects public employees concerning any manner, public or personal.[29]

The U.S. Supreme Court granted certiorari to determine the limitations of retaliation protection under the First Amendment right to petition. The Court long has held that for speech by a government employee to be protected under the First Amendment, it must

address a matter of public concern.[30] Even if it addresses a matter of public concern before it is afforded protection, the Court must undergo a balancing-of-interests test between the government's need to manage its internal affairs and the interests of the individual in expressing matters of public concern to determine if the speech truly is protected. In this case involving the right to petition, the Court reasoned that a similar rubric should apply.

The Court determined that to do otherwise in petition cases would undermine government efficiency and cause undue lawsuits in federal courts dealing with internal management issues better left to internal resolution procedures, the states, or appropriate federal statutes that deal with employment issues.[31] The Court decided that a public employee's right to petition is a right to participate as a citizen in the democratic process, but not a right to transform everyday employment disputes into constitutional issues for federal litigation. For a public employee to bring a case involving the right to petition, there must be a matter of public concern.

Cases of Interest in the 2011-2012 Term

The U.S. Supreme Court has placed a number of cases of interest to law enforcement agencies on next year's docket. One of particular interest is United States v. Jones, where the court will decide whether the warrantless prolonged use of a global positioning system (GPS) tracking device to monitor a vehicle's movement on public streets violates the Fourth Amendment protection against unreasonable searches and seizures.[32] The second case of interest is Messerschmitt v. Millender, where the court will consider whether police officers are entitled to qualified immunity where they execute search warrants later deemed invalid[33]

In Florence v. Board of Freeholders, the Court has been asked to determine whether the Fourth Amendment permits strip searches by jailors for all offenses, including minor ones, without acting out of suspicion.[34] The final case of interest is Howes v. Fields, which involves Miranda and prison inmates[35] The Court will determine whether a prisoner always is considered in custody for purposes of Miranda when the prisoner is isolated from the general prison population and questioned concerning conduct occurring outside the facility.

Endnotes

1. 768 N.W.2d 65 (Mich. 2009).

2. 131 S. Ct. 1143, at 1168.

3. Id. at 1150.

4. 226 P.3d 1 (N.M. 2010).

5. 129 S. Ct. 2527 (2009).

6. 131 S. Ct. 2705, at 2716.

7. Brady v. Maryland, 88 S. Ct. 1194 (1963).

8. 109 S. Ct. 1197 (1989).

9. 131 S. Ct. 1350, at 1361.

10. 131 S. Ct. 1207, at 1210. “

11. Id. at 1220.

12. 302 S.W.3d 649 (2010). 131d. at 1863.

14. 686 S.E.2d 135 (2009).

15. 131 S. Ct. 2394, at 2404.

16. 570 F.3d 834 (2009).

17. 131 S. Ct. 1325, at 1331.

18. “Cat’s paw” comes from Jean de la Fontaine’s The Monkey and the Cat, a fable involving a devious monkey who persuades an unsuspecting cat to take chestnuts from a fire. The cat burns its paws, while the monkey eats the chestnuts unscathed. Although it was the cat that was burned, the monkey induced the cat to take such action, making the cat an agent of the monkey’s devious purpose. The cat’s paw theory applied in the context of employment discrimination imputes liability to an employer for an adverse employment action taken by a non-discriminating decision maker (the cat) induced into taking such action by the discrimination of another employee (the monkey).

19. 560 F.3d 647 (2009)

20. 131 S. Ct. 1186, at 1194.

21. See also Crawford v. Metropolitan Government of Nashville and Davidson County, 129 S. Ct. 846 (2009); and Burlington Northern and San.....ta Fe Railway Co. v. White, 126 S. Ct. 2405 (2006).

22. 567 F.3d 804 (2009).

23. Title 42 U.S.C. § 2000e-3(a).

24. Id. at 2000e-5(b), (f)(1).

25. 131 S. Ct. 863, at 866.

26. Id. at 869.

27. See Burlington N. & S.F.R. Comp. v. White, 548 U.S. 59, at 69.

28. First Amendment of the U.S. Constitution.

29. 364 Fed. Appx. 749 (C.A.3 2010).

30. See Connick v. Myers, 461 U.S. 138 (1983); and City of San Diego v. Roe, 125 S. Ct. 521 (2004).

31. 131 S. Ct. 2488, at 2497.

32. U.S. v. Maynard, 615 F.3d 544 (2010)

33. Millender v. County of Los Angeles, 620 F.3d 1016 (2010).

34. Florence v. Board of Chosen Freeholders of County of Burlington, 621 F.3d 296 (2010).

35. Fields v. Howes, 617 F.3d 813 (2010).

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Law enforcement officers of other than federal jurisdiction who are interested in this article should consult their legal advisors. Some police procedures ruled permissible under federal constitutional law are of questionable legality under state law or are not permitted at all.