2005-2006 United States Supreme Court Term: Cases of Interest to Law Enforcement

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FOURTH AMENDMENT CASES

Brigham City v. Stuart, ___ U.S. ___, 126 S.Ct. 1943, 164 L.Ed.2d 650 (2006)

Responding to a loud party call, officers hear loud noises from inside the house. Going around to the back, they see juveniles drinking alcohol in the back yard. Entering the yard, they see a fight ongoing in the kitchen, where a group of adults are attempting to control a teenager. The youth breaks free and hits one of the adults in the mouth, causing his mouth to bleed. At this point, officers announce themselves and, getting no response, enter the kitchen and stop the fight.

According to the Supreme Court, the issue was "whether police may enter a home without a warrant when they have an objectively reasonable basis for believing that an occupant is seriously injured or imminently threatened with such injury." The Court answers the question in the affirmative, treating the question as a settled principle of law. This is a standard exigent circumstance entry. As the court notes, "the role of a peace officer includes preventing violence and restoring order, not simply rendering first aid to casualties."

Georgia v. Randolph, ___ U.S. ___, 126 S.Ct. 1515, 164 L.Ed 2d 208 (2006)

Janet Randolph took her son, left her husband and went to stay with her parents in late May of 2001. She returned in July. On July 6th, she called for police assistance, saying that following an argument her husband had left with her son. When police arrived, she told them that her husband was a cocaine user. Scott Randolph returned to the house, explained that he had taken his son because he was afraid his wife was going to leave with the child again, denied using cocaine and instead said Janet was the drug user. Police and Janet went to retrieve the boy. On returning to the house, police asked Scott for consent to search the house, which he denied. Police then asked Janet for permission, which she gave. She then led officers to the bedroom where suspected cocaine residue was located. The sergeant took the evidence outside and contacted the prosecutor, who advised him to get a search warrant. When the sergeant returned to the house, Janet withdrew her consent for the search. Officers then sought and received a warrant, which they executed, finding additional evidence of drug use.

Scott was indicted for possession of cocaine and moved to suppress the evidence, arguing that the search was based on consent that he had denied and that his wife could not override. The Georgia Supreme Court agreed with him, finding that his refusal to grant consent could not be overridden by the consent of another person with common authority over the property.

The United States Supreme Court agreed. After discussion of the origins of the rule that allows one co-tenant to consent to a search of the common areas of residential property, the court holds that the consent of one co-tenant cannot

override the refusal of a "physically present resident." According to the Court: "a physically present inhabitant's express refusal of consent to a police search is dispositive as to him, regardless of the consent of a fellow occupant."

The Court made it clear that this rule does not require the police to seek other co-tenants to ask them for consent, even if they are nearby. However, police may not remove the potentially objecting tenant for the sole purpose of making sure that he or she is not present to object to the search.

***Hudson v. Michigan*, ___ U.S. ___, 126 S.Ct. 2159 (2006)**

With a warrant authorizing a search for weapons and drugs at Hudson's home, police knocked and announced, waited three to five seconds, entered and searched. They found both drugs and weapons. Arguing that the police had not waited long enough to enter and had therefore violated the knock and announce rule, Hudson moved to suppress all of the evidence. His motion was granted by the trial court, a decision that was reversed by the Michigan Court of Appeals. The Court of Appeals ruled that, even if the entry made pursuant to the warrant violated the Fourth Amendment's knock and announce requirement, the exclusionary rule did not apply to the evidence that had been seized. The Michigan Supreme Court refused to hear the case and the matter was appealed to the United States Supreme Court.

The Court held, 5-4, that the exclusionary rule is inapplicable to violations of the knock-and-announce rule, and the evidence is therefore admissible at trial. The Court reviewed the history of the exclusionary rule, finding that it is applied only when "the interest protected by the constitutional guarantee that has been violated would not be served by suppression of the evidence obtained." In this case, the protected interests (the protection of life and limb, one's privacy and dignity that are impacted by the sudden entry of police), are interests that "have nothing to do with the seizure of evidence" and therefore the exclusionary rule is inapplicable.

The Court also noted the significant progress made by police forces in deterring civil rights violations. According to Justice Scalia:

> …[W]e now have increasing evidence that police forces across the United States take the Constitutional rights of citizens seriously. There have been wide-ranging reforms in the education, training, and supervision of police officers. Numerous sources are now available to teach officers and their supervisors what is required of them under this Court's cases, how to respect constitutional guarantees in various situations, and how to craft an effective regime of internal discipline. Moreover, modern police forces are staffed with professionals; it is not credible to assert that internal discipline, which can limit successful careers, will not have deterrent effect." *(citations omitted).*

In those situations where a person believes his or her rights under the knock and announce requirement have been violated, the Court suggested that the proper remedy is civil rights litigation.

***United States v. Grubbs*, ___ U.S. ___, 126 S.Ct. 1494, 164 L.Ed.2d 195 (2006)**

In this case, the Court upheld an anticipatory search warrant. Jeffrey Grubbs ordered a child pornography videotape from an undercover postal officer. An anticipatory search warrant was applied for and received (conditioned on acceptance of delivery of the tape). Following delivery of the tape, the warrant was served. Grubbs sought to suppress the evidence, failed and pleaded guilty, reserving his right to appeal.

On appeal, the Ninth Circuit Court of Appeals struck down the warrant, repeating Circuit precedent that an anticipatory search warrant must contain the triggering clause (the contingent event – in this case, the delivery of the pornographic tape) in order to meet the Fourth Amendment's particularity requirement. The warrant in this case did not include that information. According to the Ninth Circuit, this failure could be cured only if the contingency was included in the original search warrant affidavit and given to the person whose property is being searched, prior to the commencement of the search, which had not happened either.

The Supreme Court reversed. The Court first clarified that anticipatory search warrants are themselves constitutional, as long as they meet the requirements that apply to all warrants. The Court then looked to the plain language of the Fourth Amendment to find that the particularity requirement applies only to the "place to be searched" and the "persons or things to be seized." The Court reversed the Ninth Circuit's effort to apply that requirement to the conditions precedent to an anticipatory search warrant, making it clear that the warrant itself need not include the triggering condition in order to be valid.

***Samson v. California*, ___U.S. ___, 126 S.Ct. 2193 (2006)**

Samson was a California inmate released on parole. California law requires every parolee to "agree in writing to be subject to search or seizure by a parole officer or other peace officer at any time of the day or night, with or without a search warrant and with or without cause." Under this provision, and for no other reason, an officer stopped and searched Samson, finding him in possession of methamphetamine. The Supreme Court upheld the search, finding that a parolee such as Samson, who had notice of the plain terms of the parole search condition "did not have an expectation of privacy that society would recognize as legitimate." Finding that California law protected against searches that were

arbitrary, capricious or harassing, the Court found that the search was reasonable under the Fourth Amendment.

SIXTH AMENDMENT (CONFRONTATION CLAUSE)

Davis v. Washington, ___ U.S. ___, 126 S.Ct. 2266 (2006)

This decision resolved appeals in two separate cases. In *Davis*, the victim called 911 to report an assault. Officers responded and made an arrest. The victim did not appear at trial; the trial court admitted the recording of the 911 call and Davis was convicted. In the second case, *Hammon*, officers responded to the report of a domestic disturbance. When they arrived, the victim denied that anything was wrong. The victim and suspect were separated and the victim completed and signed a battery affidavit. When she did not appear at trial to testify, her affidavit and the officer's testimony concerning her statements were admitted and the defendant was convicted.

In each case, the defendant objected to the admission of the victim's statements. Arguing that admitting the statements violated the Confrontation Clause of the 6th Amendment, the defendants cited the Supreme Court's recent ruling in *Crawford v. Washington,* 541 U.S. 36 (2004). In *Crawford*, the Supreme Court made it clear that the Confrontation Clause bars "admission of testimonial statements of a witness who did not appear at trial unless he was unavailable to testify, and the defendant had had a prior opportunity for cross-examination."

Under *Crawford,* the issue then becomes whether the statements given to police in these two cases are to be considered testimonial or non-testimonial. Without trying to provide an "exhaustive classification of all conceivable statements," the Court holds:

> Statements are nontestimonial when made in the course of police interrogation under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency. They are testimonial when the circumstances objectively indicate that there is no such ongoing emergency, and that the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution.

Applying this criteria, the Court found the first part (but probably not the second) of the 911 call to be nontestimonial and therefore admissible. During that portion of the call, the victim was: speaking about events as they happened; facing an ongoing emergency; providing information necessary to be able to resolve the present emergency; and responding to questions asked in an informal rather than a formal setting (rather than in an interrogation room following *Miranda*, for example*).*

On the other hand, the Court found the written battery affidavit to be testimonial and therefore not admissible at trial in the absence of the availability of the victim for cross examination. The Court described the written statement as prepared after the emergency had resolved, when there was no immediate emergency, and for the purpose of prosecution.

***Holmes v. South Carolina*, ___ U.S. ___, 126 S.Ct. 1727 (2006)**

In this murder case, the defendant sought to introduce evidence, including witnesses, whose testimony would have asserted that another man committed the murder. The trial judge refused to admit the evidence; the South Carolina Supreme Court affirmed, holding "[i]n view of the strong evidence of appellant's guilt--especially the forensic evidence-- ... the proffered evidence ... did not raise 'a reasonable inference' as to appellant's own innocence" and was therefore inadmissible.

The U.S. Supreme Court disagreed, finding the rule applied by the South Carolina Supreme Court to be arbitrary, in that it interfered with the defendant's meaningful opportunity to present a complete defense. The defendant's conviction was reversed and the case remanded.

VIENNA CONVENTION ON CONSULAR NOTIFICATION

***Sanchez-Llamas v.* Oregon, ___ U.S. ___, 126 S.Ct. 2669 (2006)**

Two cases were resolved in this decision. In each case, the defendant was a citizen of another country at the time he was arrested by police for a violent crime, gave an incriminating statement to the police and then sought to have that statement suppressed because he was not provided his "rights" under the Vienna Convention on Consular Notification.

Without deciding whether the Convention creates judicially enforceable rights, but assuming for purposes of these cases that it does, the Supreme Court decided that the exclusionary rule was not the appropriate remedy for violation of the treaty's provisions and refused to suppress the statements.

OTHER CASES OF INTEREST

***Beard v. Banks*, ___ U.S. ___, 126 S. Ct. 2572 (2006)**

In the context of a civil rights claim alleging violation of the First Amendment, Pennsylvania prison officials set forth adequate legal justification for withholding access to newspapers, magazines, and photographs from its most "dangerous and recalcitrant" inmates.

***Brown v. Sanders*, ___ U.S. ___,126 S. Ct. 884 (2006)**

The Court "clarifies" the proper way to determine whether a death sentence remains valid after a factor which was considered by the sentencer is reversed on appeal, as follows: "An invalidated sentencing factor (whether an eligibility factor or not) will render the sentence unconstitutional by reason of its adding an improper element to the aggravation scale in the weighing process unless one of the other sentencing factors enables the sentencer to give aggravating weight to the same facts and circumstances."

***Burlington Northern and Santa Fe Railroad Company v. White*, ___ U.S. ___, 126 S.Ct. 2405 (2006)**

Resolving a conflict among the Circuit Courts of Appeals, the Supreme Court make it clear that Title VII's anti-retaliation provisions are not limited to those actions by an employer that affect only terms and conditions of employment. At the same time, the Court holds that retaliation is not to be found in trivial events; it will be found only in those actions that would be considered materially adverse by a reasonable employee or applicant. In this case, transfer to a less desirable job, even at the same pay and benefits, is upheld as retaliation. Similarly, a finding that a suspension without pay for 37 days, even if ultimately reversed with back pay returned, was retaliatory is also sustained.

***Clark v. Arizona*, ___ U.S. ___, 126 S. Ct. 2709 (2006)**

Arizona's insanity statute, which tests insanity solely in terms of the capacity to tell whether the act charged as a crime was right or wrong, does not violate due process. In addition, Arizona's decision to limit testimony of a professional psychologist or psychiatrist to the insanity defense, and to prohibit the consideration of such testimony on the element of mens rea, was also permissible.

***Dixon v. United States*, ___ U.S. ___, 126 S. Ct. 2437 (2006)**

Shifting the burden of proof, by a preponderance of the evidence, to the defendant to prove her duress defense in a firearms case does not violate due process.

***Garcetti v. Ceballos*, ___ U.S. ___, 126 S.Ct. 1951 (2006)**

When public employees make statements pursuant to their official duties, they are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline.

***Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, ___ U.S.___, 126 S.Ct. 1211, 163 L.Ed.2d 1017 (2006)**

The religious group known as UDV may, under the Religious Freedom Restoration Act, import the Schedule I substance hoasca for religious use even if the importation violates international treaties, at least until the government demonstrates in further litigation that there is a compelling governmental interest in denying the importation of the drug in question. The Court does not further define what consequences might rise to the level of establishing a compelling governmental interest.

***Gonzales v. Oregon,* ___U.S. ___,126 S. Ct. 904, 163 L. Ed. 2d 748 (2006)**

Federal drug laws do not provide a basis for the federal government to stop doctors from proceeding under the Oregon physician-assisted suicide law.

***Hill v. McDonough*, ___U.S.___, 126 S. Ct. 2096 (2006)**

42 U.S.C. § 1983 may be used by an inmate to raise an 8th amendment challenge to the method of execution, this one based on the order of injection and effect of the chemicals to be used.

***House v. Bell*, ___U.S. ___,126 S. Ct. 2064 (2006)**

The actual innocence exception that permits a state prison inmate to bring a federal habeas petition despite a state procedural default requires that the inmate establish that, in light of new evidence: "it is more likely than not that no reasonable juror would have found petitioner guilty beyond a reasonable doubt." The Court found that this state inmate had done so and permitted the inmate to proceed with procedurally defaulted constitutional claims on remand.

***Kansas v. Marsh*, ___ U.S. ___, 126 S. Ct. 2516 (2006)**

The Kansas death penalty statute is not unconstitutional merely because it imposes the death penalty when aggravating and mitigating factors are equal.

***Oregon v. Guzek*, ___ U.S. ___, 126 S. Ct. 1226 (2006)**

A defendant does not have the right, under either the 8th or the 14th Amendment, to present new live alibi evidence at a capital sentencing hearing, when that evidence is inconsistent with his prior conviction, sheds no light on the manner in which he committed the crime, and is not new evidence that was unavailable to him at the time of trial.

***United States v. Georgia*, ___U.S. ___, 126 S.Ct. 877, 163 L.Ed.2d 650 (2006)**

In a case involving a paraplegic inmate allegedly assigned to a cell too small to permit him to turn his wheelchair around, the Court finds that suits filed under Title II (accessibility in public programs and services) of the Americans with Disabilities Act, may be brought against states, at least for conduct that *actually* violates the Fourteenth Amendment (here, the ban on cruel and unusual punishment of the 8th Amendment).

***United States v. Gonzalez-Lopez*, ___ U.S. ___, 126 S. Ct. 2557 (2006)**

It is structural error requiring reversal to deny a defendant the right to paid counsel of the defendant's choice.

***Washington v. Recuenco*, ___ U.S. ___, 126 S. Ct. 2546 (2006)**

Sentencing errors under *Blakely v. Washington*, 542 U.S. 296 (2004), are not structural errors that require automatic reversal. "…[T]he commission of a constitutional error at trial alone does not entitle a defendant to automatic reversal. Instead, most constitutional errors can be harmless, " including sentencing errors under *Blakely.*

***Woodford v. Ngo*, ___U.S.___. 126 S. Ct. 2378 (2006)**

The Prison Litigation Reform Act requires a prisoner to exhaust administrative remedies before resorting to federal court. 42 U. S. C. §1997e(a). After consideration of both habeas law and general principles of administrative law, the Court determined that "exhaustion" means actual use of the administrative procedures and compliance with the deadlines within those processes. To rule otherwise, according the Court, would make the exhaustion requirement meaningless, allowing a prisoner to exhaust administrative remedies solely by ignoring those remedies prior to filing suit.