

CRIMINAL CASES IN THE U.S. SUPREME COURT – 2005 TERM

October 2005 - June 2006

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The purpose of this document is to keep federal court-appointed attorneys abreast of cert. grants, pending decisions, and recent decisions in the U.S. Supreme Court so that they can identify issues that they should challenge and preserve in the district court and/or raise on direct appeal. The document also includes cases relating to habeas corpus law and procedure, as well as other cases that may be of interest to federal criminal practitioners. A companion document addresses cases decided in the 2004 Term (October 2004 - June 2005).

The cases are arranged alphabetically, with a topical index provided below. An asterisk (*) by the case name indicates that the Supreme Court has decided the case.

The information about each case is taken primarily from the Granted/Noted Cases Lists that are maintained by the Supreme Court Clerk's Office; they are available on the Supreme Court's web site, at <http://www.supremecourtus.gov/orders/orders.html>. Slip opinions are available at <http://www.supremecourtus.gov/opinions/opinions.html>. If you are not familiar with the Court's web site, <http://www.supremecourtus.gov>, it is worth spending some time exploring it, as it contains much useful and interesting information.

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BROWN V. SANDERS

Capital punishment, habeas corpus,
structure of sentencing statute

Docket No. 04-980

Case Below: 373 F.3d 1054 (9th Cir. 2004)

Cert. Granted: 125 S. Ct. 1700 (Mar. 28, 2005)

Argument Date: Oct. 11, 2005

Decision:

Questions Presented:

Under California's capital statutory scheme, in the guilt phase of trial, the sentencer determines whether "special circumstances" exist to make a defendant eligible for the death penalty. In a separate penalty phase, the jury considers and weighs a single list of eleven "open-ended" factors including, as one factor, "the circumstances of the crime of which the defendant was convicted in the present proceeding and the existence of any special circumstances found to be true." The factors are not labeled as aggravating or mitigating, but direct the jury's attention to relevant subject matter for the determination of sentence. The jury is required to impose the death penalty only if it is convinced that death is appropriate under all the factors even if aggravation outweighs mitigation.

1. Is the California death penalty statute a "weighing statute" for which the state court is required to determine that the presence of an invalid special circumstance was harmless beyond a reasonable doubt as to the jury's determination of penalty?

2. Was an affirmative answer to the previous question dictated by precedent pursuant to *Teague v. Lane*, 489 U.S. 288 (1989), at the time the conviction in this case was final? (N.B.: cert. was not granted as to this issue)

3. If an affirmative answer to the first question was dictated by precedent, was it necessary for the state supreme court to specifically use the phrases "harmless error" or "reasonable doubt" in determining that there was no "reasonable possibility" that the invalid special circumstance affected the jury's sentence selection?

BUSTILLO V. JOHNSON

International law, advice re.
right to consular assistance

Docket No. 05-51

Case Below: Unreported (Va. Ma. 7, 2005)

Cert. Granted: 2005 WL 2922486 (Nov. 7, 2005)

Argument Date: Winter/Spring 2006 (consolidated for
argument with *Sanchez-Llamas v. Oregon*,
infra)

Decision:

Question Presented:

Whether, contrary to the International Court of Justice's interpretation of the Vienna Convention on Consular Relations, April 24, 1963, 21 U.S.T. 77, 100-101, state courts may refuse to consider

violations of Article 36 of that treaty because of a procedural bar or because the treaty does not create individually enforceable rights.

DAVIS V. WASHINGTON

Docket No. 05-5224

Case Below: 111 P.3d 844 (Wash. 2005)

Cert. Granted: 2005 WL 1671669 (Oct. 31, 2005)

Argument Date: Winter / Spring 2006 (to be argued in tandem with *Hammon v. Indiana, infra*)

Decision:

Question Presented:

Whether an alleged victim's statements to a 911 operator naming her assailant – admitted as “excited utterances” under a jurisdiction's hearsay law – constitute “testimonial” statements subject to the Confrontation Clause restrictions enunciated in *Crawford v. Washington*, 541 U.S. 36 (2004).

DAY V. CROSBY

Habeas corpus, statute of limitations

Docket No. 04-1324

Case Below: 391 F.3d 1192 (11th Cir. 2004)

Cert. Granted: 2005 WL 753908 (Sept. 27, 2005)

Argument Date: Winter 2006

Decision:

Questions Presented:

28 U.S.C. § 2244(d) establishes a one-year limitations period for federal habeas corpus petitions filed by state prisoners. When Patrick Day filed his federal habeas petition, the magistrate judge examined it as required by Habeas Rule 4 and ordered the State to respond. In its answer, the State did not raise a limitations defense. Instead, it expressly conceded that Day's petition was timely. Nevertheless, almost a year after the petition was filed and seven months after the parties finished briefing the merits of Day's claims, the magistrate judge recommended *sua sponte* that the petition be dismissed as untimely. The district court adopted that recommendation and the Eleventh Circuit affirmed. Acknowledging a conflict with decisions of the Sixth and Ninth Circuits, the Eleventh Circuit held that the State's failure to plead limitations was not a waiver and that Rule 4 – contrary to its plain text – authorizes a court to dismiss a habeas petition *sua sponte* after an answer has been filed.

This case presents the following important questions on which the courts of appeals are divided:

1. Does the State waive a limitations defense to a habeas corpus petition when it fails to plead or otherwise raise that defense and expressly concedes that the petition was timely?
2. Does Habeas Rule 4 permit a district court to dismiss a habeas petition *sua sponte* after the State has filed an answer based on a ground not raised in the answer?

*** *DYE V. HOFBAUER***

Habeas corpus, presentation
of claims

Docket No. 04-8384

Case Below: 111 Fed. Appx. 363 (6th Cir. 2004)

Cert. Granted: 2005 WL 2494290 (Oct. 11, 2005)

Argument Date: None

Decision: 2005 WL 2494290 (Oct. 11, 2005)

Question Presented:

Cert. petition not yet available on Westlaw.

Holding (per curiam):

Granting certiorari, vacating judgment, and remanding case where the court of appeals both erred in concluding that petitioner had not framed his claim of prosecutorial misconduct on federal grounds in the state court, and erred in concluding that petitioner presented the same claim in his federal habeas petition in too vague and general a form.

*** *EBERHARDT V. UNITED STATES***

Federal Rules of Criminal Procedure,
timeliness of motions

Docket No. 04-9949

Case Below: 388 F.3d 1043 (7th Cir. 2004)

Cert. Granted: 2005 WL 2838595 (Oct. 31, 2005)

Argument Date: None

Decision: 2005 WL 2838595 (Oct. 31, 2005)

Question Presented:

Cert. petition not yet available on Westlaw.

Holding (per curiam):

The seven-day time limit set forth in Federal Rule of Criminal Procedure 33 is “an inflexible claim-processing rule” that does not deprive a district court of subject-matter jurisdiction to consider a motion for a new trial if that motion is filed late. If the government raises the untimeliness of the motion in the district court, then the court must dismiss the motion. If, however, the government does not raise the untimeliness of the motion in the district court, the district court may consider the merits of the motion. Further, by not raising the timeliness issue in the district court, the government forfeits that claim on appeal, and the court of appeals may also consider the merits.

EVANS V. CHAVIS

Habeas corpus, AEDPA
statute of limitations, tolling

Docket No. 04-721

Case Below: 382 F.3d 921 (9th Cir. 2004)

Cert. Granted: 125 S. Ct. 1969 (May 2, 2005) (*sub nom. Lamarque v. Chavis*)

Argument Date: Nov. 9, 2005

Decision:

Question Presented:

Did the Ninth Circuit contravene this Court's decision in *Carey v. Saffold* when it held that a prisoner who delayed more than three years before filing a habeas petition with the California Supreme Court did not "unreasonably" delay in filing the petition – and therefore was entitled to tolling during that entire period – because the California Supreme Court summarily denied the petition without comment or citation, which the Ninth Circuit construes as a denial "on the merits"?

GEORGIA V. RANDOLPH

Fourth Amendment, warrantless search,
consent, joint occupants,

Docket No. 04-1067

Case Below: 604 S.E.2d 835 (Ga. 2004)

Cert. Granted: 125 S. Ct. 1840 (April 18, 2005)

Argument Date: Nov. 8, 2005

Decision:

Question Presented:

Should this Court grant certiorari to resolve the conflict among federal and state courts on whether an occupant may give law enforcement valid consent to search the common areas of the premises shared with another, even though the other occupant is present and objects to the search?

**GONZALES V. O CENTRO
ESPIRITA BENEFICIENTE
UNIAO DO VEGETAL**

Controlled Substances Act,
Religious Freedom Restoration Act

Docket No. 04-1084

Case Below: 389 F.3d 973 (10th Cir. 2004)

Cert. Granted: 125 S. Ct. 1846 (April 18, 2005)

Argument Date: Nov. 1, 2005

Decision:

Question Presented:

Whether the Religious Freedom Restoration Act of 1993, 42 U.S.C. § 2000bb *et seq.*, requires the government to permit the importation, distribution, possession, and use of a Schedule I hallucinogenic controlled substance, where Congress has found that the substance has a high potential for abuse, it is unsafe for use even under medical supervision, and its importation and distribution would violate an international treaty.

GONZALES V. OREGON

Controlled Substances Act,
physician-assisted suicide

Docket No. 04-623

Case Below: 368 F.3d 1118 (9th Cir. 2004)

Cert. Granted: 125 S. Ct. 1299 (Feb. 2, 2005)

Argument Date: Oct. 5, 2005

Decision:

Question Presented:

Whether the Attorney General has permissibly construed the Controlled Substances Act, 21 U.S.C. § 801 *et seq.*, and its implementing regulations to prohibit the distribution of federally controlled substances for the purpose of facilitating an individual's suicide, regardless of a state law purporting to authorize such distribution.

HAMMON V. INDIANA

Docket No. 05-5705

Case Below: 829 N.E.2d 444 (Ind. 2005)

Cert. Granted: 2005 WL 1914510 (Oct. 31, 2005)

Argument Date: Winter / Spring 2006 (to be argued in
tandem with *Davis v. Washington, supra*)

Decision:

Question Presented:

Whether an oral accusation made to an investigating officer at the scene of an alleged crime is a testimonial statement within the meaning of *Crawford v. Washington*, 541 U.S. 36 (2004).

HARTMAN V. MOORE

Fourth Amendment, First Amendment
Bivens, retaliatory prosecution

Docket No. 04-1495

Case Below: 388 F.3d 871 (D.C. Cir. 2004)

Cert. Granted: 125 S. Ct. 2977 (June 27, 2005)

Argument Date: Jan. 10, 2006

Decision:

Question Presented:

Whether law enforcement agents may be liable under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), for retaliatory prosecution in violation of the First Amendment when the prosecution was supported by probable cause.

HOLMES V. SOUTH CAROLINA

Fifth Amendment, Sixth Amendment,
Fourteenth Amendment

Docket No. 04-1327

Case Below: 605 S.E.2d 19 (S.C. 2004)

Cert. Granted: 2005 WL 770216 (Sept. 27, 2005)

Argument Date: Winter 2006

Decision:

Question Presented:

Whether South Carolina's rule governing the admissibility of [a criminal defendant's evidence of] third-party guilt evidence violates a criminal defendant's constitutional right to present a complete defense grounded in the Due Process, Confrontation, and Compulsory Process Clauses?

HOUSE V. BELL

Habeas corpus, evidence of actual
innocence

Docket No. 04-8990

Case Below: 386 F.3d 668 (6th Cir. 2004)

Cert. Granted: 125 S. Ct. 2991 (June 28, 2005)

Argument Date: Jan. 11, 2006

Decision:

Questions Presented:

1. Did the majority below err in applying this Court's decision in *Schlup v. Delo* [513 U.S. 298 (1995)] to hold that Petitioner's compelling new evidence, though presenting at the very least a colorable claim of actual innocence, was as a matter of law insufficient to excuse his failure to present that evidence before the state courts – merely because he had failed to negate each and every item of circumstantial evidence that had been offered against him at the original trial?

2. What constitutes a “truly persuasive showing of actual innocence” pursuant to *Herrera v. Collins* [506 U.S. 390 (1993)] sufficient to warrant freestanding habeas relief?

HUDSON V. MICHIGAN

Fourth Amendment, inevitable discovery

Docket No. 04-1360

Case Below: 2004 WL 1366947 (Mich. App. 2005)

Cert. Granted: 125 S. Ct. 2964 (June 27, 2005)

Argument Date: Jan. 9, 2006

Decision:

Question Presented:

Does the inevitable discovery doctrine create a *per se* exception to the exclusionary rule for evidence seized after a Fourth Amendment “knock and announce” violation, as the Seventh Circuit and the Michigan Supreme Court have held, or is evidence subject to suppression after such violations, as the Sixth and Eighth Circuits, the Arkansas Supreme Court, and the Maryland Court of Appeals have held?

*** *KANE V. GARCIA ESPITIA***

Sixth Amendment, *pro se* library access
Habeas, cognizable rights

Docket No. 04-1538

Case Below: 113 Fed. Appx. 802 (9th Cir. 2004)

Cert. Granted: 2005 WL 2838601 (Oct. 31, 2005)

Argument Date: None

Decision: 2005 WL 2838601 (Oct. 31, 2005)

Question Presented:

Under 28 U.S.C. § 2254(d), a federal court may grant habeas corpus relief only if the state court judgment was “contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States.” The question presented is:

Whether the Ninth Circuit exceeded its authority under 28 U.S.C. § 2254(d) when it granted habeas relief solely on the basis of its own circuit precedent that an incarcerated defendant who chooses to represent himself has a Sixth Amendment right of access to legal materials to assist him in preparing a defense, even though five other circuits have held that no such right exists and this Court has never addressed the issue.

Holding (per curiam):

Granting certiorari, vacating judgment, and remanding case where the court of appeals erred in concluding that the respondent’s nearly complete lack of access to prison library violated his Sixth Amendment to represent himself. Because the federal appellate courts have split on whether *Faretta v. California*, 422 U.S. 806 (1975), implies a right of a *pro se* defendant to have access to a law library, there is no clearly-established federal law (i.e., Supreme Court decision) as to which the state court decision was either contrary or clearly unreasonable.

KANSAS V. MARSH

Capital punishment, Eighth Amendment
weight of evidence

Docket No. 04-1170

Case Below: 102 P.3d 445 (Kan. 2004)

Cert. Granted: 125 S. Ct. 2517 (May 31, 2005)

Argument Date: Dec. 7, 2005

Decision:

Questions Presented:

Does it violate the Constitution for a state capital sentencing statute to provide for the imposition of the death penalty when the sentencing jury determines that the mitigating and aggravating evidence is in equipoise?

In addition to the question presented by the petition, the parties have been directed to brief and argue the following questions:

1. Does this Court have jurisdiction to review the judgment of the Kansas Supreme Court under 28 U.S.C. § 1257, as construed by *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469 (1975)?

2. Was the Kansas Supreme Court's judgment adequately supported by a ground independent of federal law?

MARYLAND V. BLAKE

Fifth Amendment, interrogation,
invocation of right to counsel

Docket No. 04-373

Case Below: 849 A.2d 410 (Md. App. 2004)

Cert. Granted: 125 S. Ct. 1823 (April 18, 2005)

Argument Date: Nov. 1, 2005

Decision:

Question Presented:

When a police officer improperly communicates with a suspect after invocation of the suspect's right to counsel, does *Edwards* [*v. Arizona*, 451 U.S. 477 (1981)] permit consideration of curative measures by the police, or other intervening circumstances, to conclude that a suspect later initiated communication with the police?

OREGON V. GUZEK

Capital punishment, Eighth Amendment,
residual doubt

Docket No. 04-928

Case Below: 86 P.3d 1106 (Or. 2004)

Cert. Granted: 125 S. Ct. 1929 (April 25, 2005)

Argument Date: Dec. 7, 2005

Decision:

Question Presented:

Does a capital defendant have a right under the Eighth and Fourteenth Amendments to the United States Constitution to offer evidence and argument in support of a residual-doubt claim – that is, that the jury in a penalty-phase proceeding should consider doubt about the defendant's guilt in deciding whether to impose the death penalty?

RICE V. COLLINS

Habeas corpus, presumption of
correctness of state court findings

Docket No. 04-52

Case Below: 348 F.3d 1082 (9th Cir. 2003)

Cert. Granted: 125 S. Ct. 2989 (June 28, 2005)

Argument Date: Dec. 5, 2005

Decision:

Question Presented:

Does 28 U.S.C. § 2254 allow a federal habeas corpus court to reject the presumption of correctness for state fact finding, and condemn a state-court adjudication as an unreasonable determination of the facts, where a rational fact finder could have determined the facts as did the state court?

SAMSON V. CALIFORNIA
Fourth Amendment, suspicionless
search of parolee's person

Docket No. 04-9728
Case Below: 2004 WL 2307111 (Cal. Ct. App. 2004)
Cert. Granted: 2005 WL 619785 (Sept. 27, 2005)
Argument Date: Winter 2006
Decision:

Question Presented:

Does the Fourth Amendment prohibit police from conducting a warrantless search of a person who is subject to a parole search condition, where there is no suspicion of criminal wrongdoing and the sole reason for the search is that the person is on parole?

SANCHEZ-LLAMAS V. OREGON
International law, advice re.
right to consular assistance

Docket No. 04-10566
Case Below: 108 P.3d 573 (Or. 2005)
Cert. Granted: 2005 WL 292248 (Nov. 7, 2005)
Argument Date: Winter/Spring 2006 (consolidated for
argument with *Bustillo v. Johnson, supra*)
Decision:

Questions Presented:

1. Does the Vienna Convention convey individual rights of consular notification and access to a foreign detainee enforceable in the Courts of the United States?

2. Does the state's failure to notify a foreign detainee of his rights under the Vienna Convention result in the suppression of his statements to police?

* ***SCHRIRO V. SMITH***
Habeas corpus, presentation
of claim, Sixth Amendment

Docket No. 04-1475
Case Below: unpublished orders (9th Cir. 2004)
Cert. Granted: 2005 WL 2614879 (Oct. 17, 2005)
Argument Date: None
Decision: 2005 WL 2614879 (Oct. 17, 2005)

Questions Presented:

1. In considering an appeal from the denial of a federal habeas proceeding, did the Ninth Circuit exceed its authority by remanding this case to state court based on a claim that has never been

raised in state court or in the district court below and for which no certificate of appealability has been issued?

2. Did the Ninth Circuit erroneously extend the Sixth Amendment's jury trial guarantee to a determination of whether a capital murder defendant is mentally retarded under *Atkins v. Virginia*, 536 U.S. 304 (2002)?

Holding (per curiam):

Granting certiorari, vacating judgment, and remanding case because the Ninth Circuit preemptively ordered Arizona to conduct a jury trial to resolve the respondent's mental retardation claim before the state had the opportunity to apply the procedures it had determined to be appropriate in light of *Atkins*.

UNITED STATES V. GRUBBS

Fourth Amendment, anticipatory search warrants

Docket No. 04-1414

Case Below: 377 F.3d 1072, *as amended*, 389 F.3d 1306 (9th Cir. 2004)

Cert. Granted: 2005 WL 943674 (Sept. 27, 2005)

Argument Date: Jan. 18, 2006

Decision:

Question Presented:

Whether the Fourth Amendment requires suppression of evidence when officers conduct a search under an anticipatory warrant *after* the warrant's triggering condition is satisfied, but the triggering condition is not set forth either in the warrant itself or in an affidavit that is both incorporated into the warrant and shown to the person whose property is being searched.

WASHINGTON V. RECUENCO

Sixth Amendment, *Apprendi*, appellate review, harmless v. structural error

Docket No. 05-83

Case Below: 110 P.3d 188 (Wash. 2005)

Cert. Granted: 2005 WL 1669366 (Oct. 17, 2005)

Argument Date: Winter / Spring 2006

Decision:

Question Presented:

A single element missing or misdefined in jury instructions can be harmless error if, beyond a reasonable doubt, the error did not contribute to the verdict. *Neder v. United States*, 527 U.S. 1 (1999). In contrast, errors that affect the entire framework within which a trial proceeds, rather than errors in the trial process itself, are "structural" and will always invalidate a conviction. *Sullivan v. Louisiana*, 508 U.S. 275 (1993).

It is undisputed in this assault case that the only weapon used was a firearm, but the verdict form for the enhancement failed to distinguish a “firearm” finding from a more generic “deadly weapon” finding—the “firearm” finding carries a greater sentence.

The question presented here is whether error as to the definition of a sentencing enhancement should be subject to harmless error analysis where it is shown beyond a reasonable doubt that the error did not contribute to the verdict on the enhancement.