2014 Utah Prosecution Council Fall Conference

SUPREME COURT UPDATE[1]

MATTHEW BATES
PROSECUTING ATTORNEY
SUMMIT COUNTY ATTORNEY'S OFFICE
mbates@summitcounty.org

*****

CIVIL RIGHTS ____ 1

Officers entitled to qualified immunity from excessive force claim for shooting and killing driver and passenger during chase. ____ 1

***Plumhoff v. Rickard*, 12-1117 (Alito)** ____ 1

DOUBLE JEOPARDY ____ 1

Jeopardy attached when jury was empaneled even though state had asked for continuance and consciously chose to present no evidence. ____ 1

***Martinez v. Illinois*, 13-5967 (per curiam).** ____ 1

EIGHTH AMENDMENT ____ 1

Florida death-penalty scheme that required an IQ score 70 or less before allowing additional evidence of intellectual disability violates the Eighth Amendment Cruel and Unusual Punishment clause. ____ 1

***Hall v. Florida*, 12-10882 (Kennedy).** ____ 1

FIFTH AMENDMENT—SELF INCRIMINATION ____ 2

Kentucky court's decision not to give a no-adverse-inference instruction at the penalty phase of a capital murder trial was not an unreasonable application of existing United States Supreme Court precedent. ____ 2

***White v. Woodall*, 12-794 (Scalia)** ____ 2

FIRST AMENDMENT ____ 2

Michigan statute prohibiting consideration of race in state university admissions process does not violation Equal Protection Clause. ____ 2

***Schuette v. Coalition for Affirmative Action*, 12-682 (Kennedy).** ____ 2

Opening town board meeting with prayer offered by various local clergy does not violate the Establishment Clause of the First Amendment ____ 2

***Town of Greece v. Galloway*, 12-696 (Kennedy).** ____ 2

Massachusetts law that prohibits standing on a public road or sidewalk within thirty-five feet of an abortion clinic violates the First Amendment. ____ 3

***McCullen v. Coakley*, 12-1168 (Roberts)** ____ 3

FOURTH AMENDMENT ____ 3

Secret Service Agents are entitled to qualified immunity from viewpoint discrimination claim for placing supports of president in more visible area than protestors. ____ 3

***Wood v. Moss*, 13-115 (Ginsberg).** ____ 3

---

1 Thanks to Dan Schweitzer, Supreme Court Counsel, National Association of Attorneys General, for his synopses of U.S. Supreme Court decisions.

Warrant is required before searching arrestee's cell phone. 3
***Riley v. California*, 13-132 (Roberts).** 3

Anonymous 911 call provided reasonable suspicion that truck driver was intoxicated. 4
***Prado Naverette v. California* 12-9490 (Thomas)** 4

RESTITUTION 4

Victim depicted in child pornography can recover restitution from Defendant only to the extent that he proximately caused her losses. 4
***Paroline v. United States*, 12-8561 (Kennedy)** 4

CERT GRANTS TO WATCH 4

***Heien v. North Carolina*, 13-604** 4

***Alabama Legislative Black Caucus v. Alabama*, 13-895** 5

***Reed v. Town of Gilbert, Arizona*, 13-502** 5

***Holt v. Hobbs*, 13-6827** 5

CIVIL RIGHTS

Officers entitled to qualified immunity from excessive force claim for shooting and killing driver and passenger during chase.

***Plumhoff v. Rickard*, 12-1117 (Alito).** The Court unanimously held that the Sixth Circuit erred when it denied qualified immunity to "police officers who shot the driver of a fleeing vehicle to put an end to a dangerous car chase." Relying on *Scott v. Harris*, 550 U.S. 372 (2007), the Court held that the officers acted reasonably in using deadly force, and therefore did not violate the Fourth Amendment. The Court further held that even if the officers' conduct had violated the Fourth Amendment, they would be entitled to qualified immunity because no case around the time of the incident "clearly established the unconstitutionality of using lethal force to end a high-speed car chase."

DOUBLE JEOPARDY

Jeopardy attached when jury was empaneled even though state had asked for continuance and consciously chose to present no evidence.

***Martinez v. Illinois*, 13-5967 (per curiam).** Through a unanimous *per curiam* opinion, the Court summarily reversed an Illinois Supreme Court decision that rejected petitioner's double jeopardy claim. Because the state's counsel was not prepared, the state declined to present any evidence after the court swore in the jury; the trial court rejected the state's motion for a continuance and instead granted petitioner's motion for a directed verdict. The Illinois Supreme Court held that jeopardy had not attached because petitioner "was never at risk of conviction." Reversing, the U.S. Supreme Court held that (1) "jeopardy attaches when the jury is empaneled and sworn"; and (2) jeopardy terminated when the judge ruled that the evidence against him was insufficient.

EIGHTH AMENDMENT

Florida death-penalty scheme that required an IQ score of 70 or less before allowing additional evidence of intellectual disability violates the Eighth Amendment Cruel and Unusual Punishment clause.

***Hall v. Florida*, 12-10882 (Kennedy).** Under *Atkins v. Virginia*, 536 U.S. 304 (2002), the Eighth Amendment bars execution of persons with an intellectual disability. By a 5-4 vote, the Court held that Florida law – which "defines intellectual disability to require an IQ test score of 70 or less" – is unconstitutional because it "creates an unacceptable risk that persons with intellectual disability will be executed." The Court faulted the Florida law for "tak[ing] an IQ score as final and conclusive evidence of a defendant's intellectual capacity, when experts in the field would consider other evidence"; and for failing to recognize that an IQ score, "on its own terms, [is] imprecise." Finding that there is a strong consensus among the states *not* to use that strict cutoff and that the cutoff "goes against the unanimous . . . consensus" of medical experts, the Court held "that when a defendant's IQ test score falls within the test's acknowledged and inherent margin of error, the defendant must be able to present additional evidence of intellectual disability, including testimony regarding adaptive deficits." This

opinion is also notable because it marks the first opinion in which the Supreme Court rejects the term "mental retardation" in favor of "intellectual disability."

FIFTH AMENDMENT—SELF INCRIMINATION

Kentucky court's decision not to give a no-adverse-inference instruction at the penalty phase of a capital murder trial was not an unreasonable application of existing United States Supreme Court precedent.

***White v. Woodall*, 12-794 (Scalia).** During a voluntary interview with a police officer regarding a murder, petitioner answered many questions but declined to answer a specific accusatory question. The prosecution argued at trial that petitioner's failure to answer suggested he was guilty. The Court held that the Fifth Amendment's Self-Incrimination Clause did not bar the prosecution from using petitioner's silence against him. A three-Justice plurality reasoned that, as a general matter, a person who wishes to rely on the privilege against self-incrimination must expressly invoke it; and neither of the exceptions to that general rule applied here. Two Justices (Scalia and Thomas) concurred in the judgment based on their view that *Griffin v. California*, 380 U.S. 609 (1965), was wrongly decided and that prosecutors and judges are entitled to comment on defendants' exercise of their Fifth Amendment privilege.

FIRST AMENDMENT

Michigan statute prohibiting consideration of race in state university admissions process does not violation Equal Protection Clause.

***Schuette v. Coalition for Affirmative Action*, 12-682 (Kennedy).** By a 6-2 vote, the Court held that a constitutional amendment adopted by Michigan voters that prohibits the use of race-based preferences as part of the admissions process for state universities does not violate the Equal Protection Clause. The Court therefore reversed an 8-7 decision by the en banc Sixth Circuit which held that the amendment denies minorities a "fair political process" by reallocating political power so as to "place[] special burdens on a minority group's ability to achieve its goals through [the political] process." A three-Justice plurality opinion and a concurring opinion by Justice Breyer distinguished the principal decision upon which the Sixth Circuit and respondents relied, *Washington v. Seattle School Dist. No. 1*, 458 U.S. 457 (1982); a concurring opinion by Justice Scalia (joined by Justice Thomas) would have overruled that decision.

Opening town board meeting with prayer offered by various local clergy does not violate the Establishment Clause of the First Amendment

***Town of Greece v. Galloway*, 12-696 (Kennedy).** By a 5-4 vote, the Court held that the Town of Greece does not violate the Establishment Clause by opening its monthly town board meetings with a prayer delivered by volunteer clergy, most of which have been delivered by Christian clergy and many of whom invoked explicitly Christian themes. In *Marsh v. Chambers*, 463 U.S. 783 (1983), the Court upheld the practice of starting legislative sessions with a religious invocation. The Court here held that neither *Marsh* nor the historical tradition upon

which it relied requires that legislative prayer be "generic or nonsectarian." And the Court rejected the plaintiffs' contention that the town's practice coerced participation by non-adherents.

Massachusetts law that prohibits standing on a public road or sidewalk within thirty-five feet of an abortion clinic violates the First Amendment.

***McCullen v. Coakley*, 12-1168 (Roberts)**. Without dissent, the Court held that a Massachusetts law that bars persons from entering or remaining "on a public way or sidewalk" within 35 feet of an abortion clinic violates the First Amendment. The five-Justice majority opinion held that, although the statute is content- and viewpoint-neutral, it violates the First Amendment because it "burden[s] substantially more speech than is necessary to further the government's legitimate interests." After pointing to the serious burdens on speech imposed by the law, which limits one-on-one conversations and leafleting on public sidewalks, the Court found that the state had various less-speech-restrictive alternatives available to it. These include laws making it a crime to obstruct entry to a reproductive health care facility, laws similar to the federal FACE Act, laws (like New York City's) that make it a crime "to follow and harass another person within 15 feet of the premises of a reproductive health care facility," ordinances "requir[ing] crowds blocking a clinic entrance to disperse when ordered to do so by the police," and targeted injunctions.

FOURTH AMENDMENT

Secret Service Agents are entitled to qualified immunity from viewpoint discrimination claim for placing supporter of president in more visible area than protestors.

***Wood v. Moss*, 13-115 (Ginsberg).** The Court unanimously reversed a Ninth Circuit decision that had affirmed the denial of qualified immunity to Secret Service agents who allegedly violated the First Amendment by requiring a group of 200 to 300 anti-President Bush demonstrators to "be moved away from an alley next to an outdoor patio where the President was making a last-minute unscheduled stop to dine." After they were moved, the anti-Bush demonstrators were one to two blocks further from the President than a group of pro-Bush demonstrators. The Court held that no decision "would alert the Secret Service agents engaged in crowd control that they bear a First Amendment obligation 'to ensure that groups with different viewpoints are at comparable locations at all times.'" "Nor," held the Court, "would the maintenance of equal access make sense in the situation the agents confronted." The Court found that legitimate security concerns supported the agents' actions, which defeats the protestors' claim that the agents acted solely to inhibit the expression of disfavored views.

Warrant is required before searching arrestee's cell phone.

***Riley v. California*, 13-132 (Roberts).** The Court unanimously held that the police may not, without a warrant, search digital information on a cell phone seized from an individual who has been arrested. The Court held that the search-incident-to-arrest exception to the warrant requirement does not apply "with respect to digital content on cell phones" because the governmental interests that support the doctrine – harm to officers and destruction of

evidence – are rarely implicated "when the search is of digital data," while the privacy interests at stake are high given the immense amount of personal information contained on cell phones. The Court rejected various "fallback arguments" proposed by California and the United States as "flawed" and instead noted that the exigent circumstances exception could justify the warrantless search of a particular cell phone.

Anonymous 911 call provided reasonable suspicion that truck driver was intoxicated.
***Prado Naverette v. California* 12-9490 (Thomas).** By a 5-4 vote, the Court held that the police, consistent with the Fourth Amendment, may stop a vehicle based on an anonymous tip about reckless driving even where the police did not personally observe reckless driving. The Court found that "under the totality of circumstances, the officer had reasonable suspicion that the driver was intoxicated." In reaching that conclusion, the Court pointed to various "indicia of reliability" in the anonymous call: it described wrongdoing by a specific vehicle based on first-hand observation; it was made shortly after the incident; and the caller used the 911 emergency system, which can be recorded. And, the Court added, the alleged behavior objectively suggested drunk driving, a serious offense.

RESTITUTION

Victim depicted in child pornography can recover restitution from Defendant only to the extent that he proximately caused her losses.
***Paroline v. United States*, 12-8561 (Kennedy).** The Court addressed how much restitution a possessor of child pornography must pay to the victim under the Crime Victims Rights Act, 18 U.S.C. §2259, where the defendant was one of thousands of individuals who possessed and viewed the images. A 5-Justice majority held that in such a case, a federal district court "should order restitution in an amount that comports with the defendant's relative role in the causal process that underlies the victim's general losses. The amount would not be severe in a case like this," but it "would not be a token or nominal amount." The Court explained that a district "court must assess as best it can from available evidence the significance of the individual defendant's conduct in light of the broader causal process that produced the victim's losses," and listed various "factors" ("rough guideposts") "that bear" on the issue.

CERT GRANTS TO WATCH

***Heien v. North Carolina*, 13-604**. The question presented is "[w]hether a police officer's mistake of law can provide the individualized suspicion that the Fourth Amendment requires to justify a traffic stop." In this case, an officer stopped petitioner's car for having one brake light that did not work and then found drugs in the car. The North Carolina Supreme Court assumed that, as the North Carolina Court of Appeals had held, North Carolina law requires only one working brake light (meaning petitioner had not broken the law). The court held, however, that the stop was reasonable because the officer's mistake of the law was reasonable, for the state courts had not previously interpreted the traffic law in question.

***Alabama Legislative Black Caucus v. Alabama*, 13-895**. The Court noted probable jurisdiction to address whether Alabama's state legislative redistricting plan, which the Department of Justice approved, constitutes an unconstitutional racial gerrymander. The appellants allege that the state "intentionally 'packed' large numbers of black voters into black-majority districts." The district court rejected that argument, holding that race was not the predominant factor motivating the legislature and that, even if strict scrutiny applied, the legislature permissibly considered race to comply with the Voting Rights Act by creating districts that allow compact racial minorities to elect candidates of their choice. The Court will also review the district court's holding that the Alabama Democratic Conference and its members lack standing to assert the racial gerrymandering claim because the "record does not clearly identify the districts in which the individual members . . . reside under the" plan.

***Reed v. Town of Gilbert, Arizona*, 13-502**. The Town of Gilbert has a Sign Code that limits the size of temporary signs displayed outdoors and how long the signs may be displayed. Under the ordinance, a sign displayed by petitioners – a church and its pastor – promoting church services must be smaller (6 square feet) and displayed for a shorter period of time (12 hours before, and one hour after, the event) than signs posted for political or ideological purposes or by homeowners' associations. The question presented is whether the town's "mere assertion of lack of discriminatory motive render[s] its facially content-based sign code content-neutral and justify the code's differential treatment of Petitioners' religious signs?"

***Holt v. Hobbs*, 13-6827**. A Muslim inmate in an Arkansas prison wishes to grow a beard in observance of his religion, but Arkansas Department of Corrections policy prohibits facial hair other than mustaches. At issue is whether that policy, which is based on security concerns, violates the Religious Land Use and Institutionalized Persons Act, which provides that "no state or local government shall impose a substantial burden on the religious exercise of a person residing or confined in an institution" unless the government shows that the burden furthers "a compelling governmental interest" and does so by "the least restrictive means."