2004-2005 United States Supreme Court Term: Cases Affecting Criminal Law and Procedure

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Fourth Amendment Issues

Walking Drug Dog Around Vehicle While Driver Was Lawfully Detained for Officer's Issuance of Warning Ticket for Speeding Did Not Violate Fourth Amendment

Illinois v. Caballes, 125 S. Ct. 834, 160 L. Ed. 2d 842 (24 January 2005). The defendant was lawfully stopped for speeding. While the stopping officer was writing a warning ticket, another officer arrived and walked a drug detection dog around the defendant's vehicle. The dog alerted to the trunk and a search discovered marijuana. The entire incident lasted less than ten minutes. The Court stated that the issue in this case was a narrow one: whether the Fourth Amendment requires reasonable, articulable suspicion to justify using a drug detection dog to sniff a vehicle during a legitimate traffic stop. The Court noted that a seizure justified solely by the interest in issuing a warning ticket can become unlawful if it is prolonged beyond the time reasonably required to complete that mission. The Court stated that the state court had reviewed the stopping officer's conversations with the defendant and the precise timing of his radio transmissions to the dispatcher to determine whether the officer had improperly extended the duration of the stop to enable the dog sniff to occur. The Court accepted the state court's conclusion that the duration of the stop in this case was entirely justified by the traffic offense and the ordinary inquiries incident to such a stop. The Court noted that the state appellate court had ruled, however, that the use of the drug detection dog converted the encounter from a lawful traffic stop into a drug investigation, and because the shift in purpose was not supported by reasonable suspicion that the defendant possessed illegal drugs, it violated the Fourth Amendment. The Court rejected this analysis and ruling. It stated that conducting a dog sniff would not change the character of a traffic stop that is lawful at its inception and otherwise conducted in a reasonable manner, unless the dog sniff itself violated the defendant's Fourth Amendment right to privacy. The Court ruled that the dog sniff did not do so, relying on United States v. Jacobsen, 466 U.S. 109 (1984), United States v. Place, 462 U.S. 696 (1983), and City of Indianapolis v. Edmond, 531 U.S. 32 (2000), and distinguishing Kyllo v. United States, 533 U.S. 27 (2001). The Court stated that a dog sniff conducted during a lawful traffic stop that reveals no information other than the location of a substance that a person had no right to possess does not violate the Fourth Amendment.

[Author's note: (1) *See also* State v. Branch, 177 N.C. App. 104, 627 S.E.2d 506 (2006) (after United States Supreme Court's remand for further consideration of prior ruling in this case, court rules that walking drug dog around defendant's car when defendant was lawfully detained on reasonable suspicion of driver's license violation and failure to appear in court did not require additional justification under Fourth Amendment). (2) The United States Supreme Court in City of Indianapolis v. Edmond, 531 U.S. 32 (2000), ruled that a checkpoint whose primary purpose was drug detection violated the Fourth Amendment. The *Caballes* ruling did not change the *Edmond* ruling. For example, if officers walked a drug dog around all vehicles initially stopped at a DWI or license checkpoint (in contrast to walking a drug dog around a car after the driver had been lawfully detained at the checkpoint for further investigation for a valid reason), then a court would likely rule that the primary purpose of the checkpoint was drug detection, not DWI or license checks. (3) The detention in *Caballes* took about ten minutes. Absent the driver's consent to remain at the location of the traffic stop or an officer's reasonable suspicion of criminal activity to justify a further detention, the duration of a typical traffic stop would likely become unconstitutionally long if the driver was detained solely because the officer was waiting for

a drug dog to arrive and the officer had already completed the necessary actions related to the traffic stop.]

Fourth Amendment Requires Only That Officer Make Arrest Based on Probable Cause That Crime Was or Is Being Committed; Court Rejects Requirement That Offense Establishing Probable Cause Must Be Closely Related To, and Based on Same Conduct as, Offense Officer Identified When Arrest Occurred

Devenpeck v. Alford, 125 S. Ct. 588, 160 L. Ed. 2d 537 (13 December 2004). Based on information that the plaintiff had impersonated a law enforcement officer while using his vehicle to stop a motorist, an officer stopped the plaintiff's vehicle to investigate. The officer's suspicions about the plaintiff's impersonating an officer increased based on information learned after the stop. Another officer joined the stopping officer and discovered that the plaintiff had been taping his conversations with the two officers. They arrested the defendant for what they believed was an unlawful taping violation.. However, a state appellate court ruling at the time of this arrest had clearly established that the plaintiff's taping was not unlawful. There were two other offenses for which the officers could possibly have made an arrest: (1) impersonating an officer, and (2) obstructing a law enforcement officer. The plaintiff sued the officers for making an arrest without probable cause under the Fourth Amendment. A federal appellate court ruled that the officers did not have probable cause to arrest. It rejected the officers' claim that there was probable cause to arrest the plaintiff for impersonating an officer and obstructing a law enforcement officer, because those offenses were not "closely related" to the offense (illegal taping) identified by the officers when they arrested him. The Court reversed the federal appellate court's ruling. The Court ruled, relying on Whren v. United States, 517 U.S. 806 (1996), and Arkansas v. Sullivan, 532 U.S. 769 (2001), that the Fourth Amendment requires only that an officer arrest a person based on probable cause that crime was or is being committed. The Court rejected a requirement that an offense establishing probable cause must be closely related to, and based on same conduct as, the offense that the arresting officer identified when the arrest occurred. The Court stated that an officer's subjective reason for making an arrest need not be the criminal offense for which the known facts provide probable cause. The Court remanded the case for a determination whether there was probable cause for the two offenses for which the officers could have made an arrest. [Author's note: The Court's ruling effectively overrules the "sufficiently related" analysis in Glenn-Robinson v. Acker, 140 N.C. App. 606, 617 (2000).]

(1) Detention of House Occupant in Handcuffs for Two to Three Hours During Execution of Search Warrant Concerning Gang Shooting Was Reasonable Under Fourth Amendment
(2) Questioning Concerning Immigration Status of House Occupant Detained During Execution of Search Warrant Concerning Gang Shooting Did Not Violate Fourth Amendment When Questioning Did Not Prolong Length of Detention

Muehler v. Mena, 125 S. Ct. 1465, 161 L. Ed. 2d 299 (22 March 2005). Officers obtained a search warrant for a house and premises to search for deadly weapons and evidence of gang membership related to an investigation of a gang-related drive-by shooting. A SWAT team and other officers (a total of 18 officers altogether) executed the warrant. Aware that the gang was composed primarily of illegal immigrants, an INS officer accompanied the officers. One or two officers guarded four occupants detained at the scene, who were handcuffed for about two to three hours while the warrant was executed. In addition, an INS officer questioned the occupants about their immigration status while the warrant was executed. One of the occupants (the plaintiff in this case) sued the officers for allegedly violating her Fourth Amendment rights during the execution of the search warrant. (1) The Court ruled that the detention of the plaintiff in handcuffs was reasonable under the Fourth Amendment. The two to three hour detention in handcuffs in this case did not outweigh the officers' continuing safety interests. (2) The Court ruled that the questioning of the plaintiff about her immigration status did not violate the Fourth Amendment because the plaintiff's detention during the execution of the search warrant was not

prolonged by the questioning. Mere questioning by law enforcement does not constitute a seizure. [Author's note: This ruling appears to affirm the validity of cases that have ruled that law enforcement questioning during a traffic stop is not limited by the Fourth Amendment, even though the questioning is unrelated to the traffic stop, when the questioning does not prolong the detention of the motorist during the stop. See cases in note 163 on page 55 of Robert L. Farb, *Arrest, Search, and Investigation in North Carolina* (3d ed. 2003).]

Officer Was Entitled to Qualified Immunity in Civil Lawsuit Alleging Officer's Improper Use of Deadly Force Under Fourth Amendment

Brosseau v. Haugen, 125 S. Ct. 596, 160 L. Ed. 2d 583 (13 December 2004). The Court ruled that a law enforcement officer was entitled to qualified immunity in the defense of a civil lawsuit alleging the officer's improper use of deadly force under the Fourth Amendment. The Court stated that the issue in this case involved the officer's shooting a disturbed felon set on avoiding capture through vehicular flight, when people in the immediate area were at risk from that flight. (See the detailed facts set out in the Court's opinion.) The Court concluded that the case law at the time of the shooting did not "clearly establish" that the officer's conduct violated the Fourth Amendment.

Sixth Amendment Issues

Defense Counsel's Strategic Decision to Concede to Jury, Without Defendant's Explicit Consent, Defendant's Guilt of First-Degree Murder at Guilt/Innocence Phase of Capital Trial and to Present Evidence and Argue for Life Imprisonment at Penalty Phase, Was Not Per Se Ineffective Assistance of Counsel

Florida v. Nixon, 125 S. Ct. 551, 160 L. Ed. 2d 565 (13 December 2004). The Court ruled that a defense counsel's strategic decision to concede to the jury, without defendant's explicit consent, defendant's guilt of first-degree murder at the guilt/innocence phase of a capital trial and to present evidence and argue for life imprisonment at the penalty phase, was not per se ineffective assistance of counsel under the Sixth Amendment. Defense counsel had attempted to explain this proposed strategy to the defendant at least three times, but the defendant was generally unresponsive; he never verbally approved or protested the strategy. At trial, defense counsel conceded the defendant's guilt of first-degree murder during the opening statement, cross-examined some of the state's witnesses and objected to the introduction of some of the state's evidence, contested aspects of the jury instructions, and in closing argument conceded the defendant's guilt but reminded the jury of the importance of the penalty phase. At the penalty phase, the defense counsel presented eight witnesses, including two mental health experts, and argued for life imprisonment. The Court rejected a state appellate court's ruling that defense counsel's concession of guilt was per se ineffective assistance of counsel. The Court instead ruled that the issue of ineffective assistance of counsel must be judged under the standard set out in Strickland v. Washington, 466 U.S. 668 (1984). The Court stated that a presumption of prejudice is not appropriate based solely on a defendant's failure to provide express consent to a tenable strategy that counsel has adequately disclosed to and discussed with the defendant. [Author's note: Compare the Court's ruling with the legal standard set out in State v. Harbison, 315 N.C. 175, 337 S.E.2d 504 (1985) (there is ineffective assistance of counsel per se under the Sixth Amendment when defendant's counsel admits the defendant's guilt to the jury without the defendant's consent).]

Miscellaneous

Eighth Amendment Prohibits Death Sentence for Defendant Who Is Convicted of Capital Offense That Defendant Committed Before His or Her Eighteenth Birthday

Roper v. Simmons, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (1 March 2005). The Court ruled that the Eighth Amendment prohibits a death sentence for a defendant who is convicted of a capital offense that the defendant committed before his or her eighteenth birthday. [Author's note: This ruling affects G.S. 14-17 by barring a death sentence for a defendant who is convicted of first-degree murder that the defendant committed before his or her eighteenth birthday. The only authorized punishment for such a defendant is life imprisonment without parole.]

Defendant Proved That State Used Peremptory Challenges in Racially Discriminatory Manner and Was Entitled to New Trial

Miller-El v. Dretke, 125 S. Ct. 2317, 162 L. Ed. 2d 196 (13 June 2005). The Court ruled that the defendant proved that the state used peremptory challenges in a racially discriminatory manner in violation of Batson v. Kentucky, 476 U.S. 79 (1986), so the defendant was entitled to a new trial. The evidence showed that the state: (1) used peremptory challenges to exclude 91 percent of the prospective black jurors; (2) engaged in disparate questioning of white and black prospective jurors and did not offer racially neutral reasons in exercising peremptory challenges; and (3) used the Texas jury practice of shuffling juror cards in a racially discriminatory manner.

Court Rejects California State Court's Standard Concerning *Batson's* Prima Facie Evidence Standard

Johnson v. California, 125 S. Ct. 2410, 162 L. Ed. 2d 129 (13 June 2005). The Court ruled that a California state court's standard of "more likely than not" is inappropriate to measure the sufficiency of a prima facie case of purposeful discrimination in jury selection under Batson v. Kentucky, 476 U.S. 79 (1986). Instead, the prima facie evidence standard means evidence sufficient to permit a trial judge to draw an inference that discrimination has occurred.

Due Process Clause Prohibits Use of Physical Restraints Visible to Jury Absent Trial Court's Determination That They Are Justified By State's Interest Specific to Particular Trial or, in this Case, Capital Sentencing Hearing

Deck v. Missouri, 125 S. Ct. 2007, 161 L. Ed. 2d 953 (23 May 2005). The Court ruled that the Due Process Clause prohibits the use of physical restraints visible to a jury absent a trial court's determination, in the exercise of its discretion, that the visible physical restraints are justified by a state interest specific to the particular trial or, as in this case, a capital sentencing hearing. [Author's note: For North Carolina statutory law on the use of restraints, see G.S. 15A-1031.]

(1) Due Process Requirements Were Satisfied When Defendant Entered Guilty Plea and Had Been Properly Informed By His Attorneys of Elements of Aggravated Murder
(2) Prosecutor's Post-Plea Use of Inconsistent Theories Concerning Whether Defendant or Accomplice Was Triggerman Did Not Affect Knowing, Voluntary, and Intelligent Nature of Defendant's Guilty Plea, But May Have Affected His Death Sentence

Bradshaw v. Stumpf, 125 S. Ct. 2398, 162 L. Ed. 2d 143 (13 June 2005). The defendant and his accomplice robbed a husband and wife during which the wife was shot and killed and the husband was shot and seriously injured. The defendant plead guilty to aggravated murder and sentenced to death. Later,

his accomplice was tried before a jury, convicted of aggravated murder, and sentenced to life imprisonment. The prosecutor argued during the capital sentencing hearing for the defendant that the defendant shot and killed the wife. At the accomplice's trial, the same prosecutor with some new evidence argued that the accomplice shot and killed the wife. The Court ruled: (1) due process requirements were satisfied when the defendant entered his guilty plea and had been properly informed by his attorneys of elements of aggravated murder; the elements need not be explained by the judge in such a case —see Henderson v. Morgan, 426 U.S. 637 (1976); and (2) the prosecutor's post-plea use of inconsistent theories concerning whether the defendant or accomplice was the triggerman did not affect the knowing, voluntary, and intelligent nature of defendant's guilty plea, but may have affected his death sentence. The Court remanded the case to the lower courts for resolution of this issue.

Defendant in Capital Sentencing Hearing Was Provided With Ineffective Assistance of Counsel Based on Counsel's Lack of Diligence in Examining Readily-Available Prosecution File (Which Contained Useful Mitigation Evidence for Defendant) Concerning Prior Conviction to Be Used by State in Proving Aggravating Factor

Rompilla v. Beard, 125 S. Ct. 2456, 162 L. Ed. 2d 360 (20 June 2005). The Court ruled that the defendant in a capital sentencing hearing was provided with ineffective assistance of counsel based on counsel's lack of diligence in examining a readily-available prosecution file (which contained useful mitigation evidence for the defendant) concerning a prior conviction that was to be used by the state in proving an aggravating factor. (See the facts set out in the Court's opinion.)

After State Had Rested, Trial Judge's Entry of Judgment of Acquittal With No Reservation of Right to Reconsider Ruling or Indication That Ruling Was Not Final, and Once Trial Proceeded With Defendant's Introduction of Evidence, Trial Judge Under Double Jeopardy Clause Was Barred from Reconsidering Ruling After Defendant Had Rested

Smith v. Massachusetts, 125 S. Ct. 1129, 160 L. Ed. 2d 914 (22 February 2005). The Court ruled that after the state had rested, the trial judge's entry of a judgment of acquittal with no reservation of the right to reconsider the ruling or an indication that the ruling was not final, and once the trial proceeded with the defendant's introduction of evidence, the trial judge under Double Jeopardy Clause was barred from reconsidering the ruling after the defendant had rested.

Strict Standard of Review Under Equal Protection Clause Applied to California Department of Corrections' Policy of Placing New or Transferred Inmates with Cellmates of Same Race During Initial Evaluation

Johnson v. California, 125 S. Ct. 1141, 160 L. Ed. 2d 949 (23 February 2005). The Court ruled that the strict standard of review under the Equal Protection Clause applied to the California Department of Corrections' policy of placing new or transferred inmates with cellmates of the same race during initial evaluation. The Court rejected the "reasonably related to legitimate penological interest" standard of review adopted by a federal appellate court.

Due Process and Equal Protection Clauses Require Appointment of Counsel for Defendants Who Have Been Convicted Based on Pleas of Guilty or No Contest and Then Seek Review at First Level of Michigan Appellate Courts

Halbert v. Michigan, 125 S. Ct. 2582, 162 L. Ed. 2d 552 (23 June 2005). The Court ruled that the Due Process and Equal Protection clauses require the appointment of counsel for defendants who have been convicted based on pleas of guilty or no contest and then seek review at the first level of Michigan appellate courts.

Plaintiff Suing Law Enforcement Did Not Have Property Interest Under Due Process Clause in Enforcement of Colorado Domestic Violence Restraining Order

Castle Rock v. Gonzales, 125 S. Ct. 2796, 162 L. Ed. 2d 658 (27 June 2005). The Court ruled that the plaintiff suing law enforcement did not have a property interest under the Due Process Clause in the enforcement of a Colorado domestic violence restraining order.