2005-2006 United States Supreme Court Term: Cases Affecting Criminal Law and Procedure

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Evidence

(1) Court Rules, in Case from State of Washington, Statements Identifying Assailant Made in 911 Call by Non-Testifying Assault Victim Were Not Testimonial Under *Crawford v. Washington*, 541 U.S. 36 (2004)

(2) Court Rules, in Case from State of Indiana, Statements at Crime Scene by Non-Testifying Assault Victim in Response to Interrogation by Law Enforcement Officer During Investigation of Assault Were Testimonial Under *Crawford v. Washington*, 541 U.S. 36 (2004)

(3) Court States That Indiana Courts May, on Remand, Determine Whether State Properly Raised Claim of Defendant's Forfeiture by Wrongdoing That Would Forfeit Defendant's Sixth Amendment Right to Confrontation, and If So, Whether Claim Was Meritorious

Davis v. Washington, 126 S. Ct. 2266, 165 L. Ed. 2d 224 (19 June 2006). This case, decided under the name Davis v. Washington, involved appeals from two separate state criminal prosecutions, one from the state of Washington (Davis v. Washington) and the other from the state of Indiana (Hammon v. Indiana). In Davis v. Washington, a 911 operator conversed with an alleged assault victim who reported an assault and other ongoing events and, in response to the operator's questioning, named her assailant. In Hammon v. Indiana, law enforcement officers responded to a reported domestic disturbance at the home of Hershel Hammon (defendant) and Amy Hammon (alleged assault victim). Amy Hammon appeared frightened but told the officers that nothing had occurred. The defendant told the officers there had been an argument but it had never become physical. The officers noticed a gas heating unit with flames emanating from the glass front and pieces of glass on the floor. After officers separated them, Amy Hammon told an officer that Hershel had assaulted her. She also completed an affidavit at the scene that described the incident. The Court stated that, without attempting to produce an exhaustive classification of all statements as testimonial or nontestimonial under Crawford v. Washington, 541 U.S. 36 (2004), it sufficed to decide these two cases with the following definitions: "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." (1) In Davis v. Washington, the Court ruled that the early statements in the 911 call in which the assault victim identified her assailant were not testimonial. The 911 operator's questions objectively indicated their primary purpose was to enable law enforcement assistance to meet an ongoing emergency. The Court indicated that statements in a 911 call after an emergency has ended may be testimonial. (2) In Hammon v. Indiana, the Court ruled that Amy Hammon's statements to the officer after she was separated from Hershel Hammon were testimonial. The officer was not seeking to determine "what is happening," but rather "what happened." Objectively viewed, the primary, if not the sole, purpose of the interrogation was to investigate a possible crime. The Court indicated that not all questions at a crime scene will be testimonial. Exigencies—such as officers' needing to know whom they are dealing with to assess the situation, the threat to their own safety, and possible danger to the potential victim—may often mean that initial inquires produce nontestimonial statements. [Author's note: The Court's analysis and ruling that Amy Hammon's statements were testimonial cast doubt on the analysis and ruling in State v. Lewis, 360 N.C. 1, 619 S.E.2d 830 (2005), that the victim's statements to the initial responding officer

were not testimonial.] (3) The Court stated that Indiana state courts in Hammon v. Indiana may, on remand, determine whether the state properly raised a claim of the defendant's forfeiture by wrongdoing that would forfeit the defendant's Sixth Amendment right to confrontation, and if so, whether the claim was meritorious.

State Supreme Court's Rule on Admissibility of Proposed Defense Evidence of Third Party Guilt Was Arbitrary and Violated Defendant's Right to Present Defense

Holmes v. South Carolina, 126 S. Ct. 1727, 164 L. Ed. 2d 503 (1 May 2006). The defendant was convicted of f murder and other offenses and sentenced to death. The state relied heavily on forensic evidence: DNA, palm print, and fiber evidence. The defendant offered evidence that sought to undermine the state's forensic evidence. The trial judge prohibited the defendant from introducing evidence that a third party (White) had murdered the victim: several witnesses placed White in the victim's neighborhood on the morning of the murder and White acknowledged that the defendant was innocent or had actually admitted to committing the offenses. The state supreme court, in affirming the trial judge's ruling, applied a rule that when there is strong evidence of a defendant's guilt, such as strong forensic evidence, the defendant's proffered evidence of a third party's guilt may be excluded. The United States Supreme Court categorized this rule as focusing solely on the strength of the state's evidence in determining whether to admit the defense evidence. The Court ruled that the rule was arbitrary and violated the defendant's right to present a defense.

Arrest, Search, and Confession Issues

Court Rules That When Physically-Present Occupant Refuses to Consent to Search of Dwelling Even Though Co-Occupant Has Consented to Search, Fourth Amendment Prohibits Search of Dwelling Based on Co-Occupant's Consent

Georgia v. Randolph, 126 S. Ct. 1515, 164 L. Ed. 2d 208 (22 March 2006). The defendant's wife called law enforcement about a domestic dispute with her husband, the defendant. She told law enforcement about the defendant's drug use and that there was drug evidence in the house. The defendant, who was physically present, unequivocally refused to consent to a search of the house. She then consented to a search. Officers relied on her consent and entered the house. They found drug evidence that was used to prosecute the defendant. The Court ruled, distinguishing United States v. Matlock, 415 U.S. 164 (1974) (valid consent of co-occupant with common authority over premises against absent occupant), and Illinois v. Rodriguez, 497 U.S. 177 (1990) (valid consent by person whom officer reasonably, but erroneously, believed to possess shared authority as an occupant), that when a physically-present occupant refuses to consent to a search of a dwelling even though another co-occupant has consented to a search, the Fourth Amendment prohibits a search of the dwelling based on the co-occupant's consent.

The Court made clear that its ruling applies only to a physically-present occupant who refuses to consent, as long as officers do not remove a potentially-objecting occupant from the entrance to the residence to avoid a possible refusal to consent. The Court stated that when officers have obtained consent from a co-occupant, they have no obligation to seek out any other occupants to determine if they want to refuse to allow consent.

The Court noted that the issue of consent is irrelevant when an occupant on his or her own initiative brings evidence from a residence to law enforcement, citing Coolidge v. New Hampshire, 403 U.S. 443 (1971). The Court also noted that an occupant can tell law enforcement what he or she knows, which in turn can lead to the issuance of a search warrant. In footnote six, the Court stated that the exchange of this information in the presence of the non-consenting occupant may render consent irrelevant by creating an exigency that justifies immediate action. If the occupant cannot be prevented from destroying easily disposable evidence during the time required to get a search warrant, Illinois v. McArthur, 531 U.S. 326

(2001) (preventing suspect's access to residence while law enforcement sought search warrant), a fairly perceived need to act then to preserve evidence may justify entry and search under the exigent circumstances exception to the warrant requirement. The Court also stated that additional exigent circumstances might justify warrantless searches: hot pursuit, protecting officers' safety, imminent destruction to a residence, or likelihood that suspect will imminently flee.

The Court stated that this case has no bearing on the authority of law enforcement to protect domestic violence victims. The issue in this case is about an entry to search for evidence. The Court stated that no question could reasonably be made about law enforcement authority to enter a residence without consent to protect an occupant from domestic violence: as long as officers have a good reason to believe such a threat exists, officers could enter without consent to give an alleged victim the opportunity to collect belongings and get out safely, or to determine whether violence or a threat of violence has just occurred or is about to (or soon will) occur. And because officers would be lawfully on the premises, they could seize any evidence in plain view or take further action supported by consequent probable cause.

[Author's note: When an occupant has a superior privacy interest over another occupant of a residence, such as most living arrangements involving a parent and child, the parent's consent would override any expressed refusal to consent by a physically-present child.]

Law Enforcement Officers May Enter a Home Without a Search Warrant When They Have an Objectively Reasonable Basis for Believing That an Occupant Is Seriously Injured or Imminently Threatened With Such Injury

Brigham City v. Stuart, 126 S. Ct. 1943, 164 L. Ed. 2d 650 (22 May 2006). About 3:00 a.m., four law enforcement officers responded to a call concerning a loud party at a residence. They heard shouting from inside and entered the driveway to investigate. They saw two juveniles drinking beer in the backyard. They entered the backyard, and saw—through a screen door and windows—four adults attempting with some difficulty to restrain a juvenile. The juvenile eventually broke free, swung a fist and struck one of the adults in the face. One of the officers saw the victim of the blow spitting blood into a nearby sink. The other adults continued to attempt to restrain the juvenile, pressing him against a refrigerator with such force that the refrigerator began moving across the floor. An officer opened the screen door and announced the officers' presence. Amid the tumult, nobody noticed the officer. The officer entered the kitchen and again spoke, and as the occupants slowly became aware that the officers were there, the altercation stopped. The Court ruled that law enforcement officers may enter a home without a search warrant when they have an objectively reasonable basis for believing that an occupant is seriously injured or imminently threatened with such injury. The Court found that the officers' entry in this case was reasonable under the Fourth Amendment. The officers had an objectively reasonable basis for believing that the injured adult might need help and the violence in the kitchen was just beginning. Also, the manner of the officers' entry was also reasonable. Once they made an announcement, they were free to enter. They were not required to await a response while those within fought, oblivious to their presence. The Court, relying on its prior Fourth Amendment cases, rejected an inquiry into the officers' subjective motivation in entering the residence. An action is reasonable under the Fourth Amendment, regardless of an officer's state of mind, as long as the circumstances, viewed objectively, justify the action. It did not matter whether the officers entered the kitchen to make an arrest and gather evidence against those inside or to assist the injured and prevent further violence. The circumstances, viewed objectively, supported the entry based on a belief that an occupant was seriously injured or imminently threatened with such injury.

Fourth Amendment's Exclusionary Rule Does Not Apply to Bar Admission of Evidence Seized Pursuant to Valid Search Warrant for Home Even Though Officers Violated Fourth Amendment's Knock-and-Announce Requirement

Hudson v. Michigan, 126 S. Ct. 2159, 165 L. Ed. 2d 56 (15 June 2006). Officers with a valid search warrant entered the defendant's home in violation of the Fourth Amendment's knock-and-announce

requirement. The officers seized drugs and a firearm. The Court ruled that the Fourth Amendment's exclusionary rule did not apply to bar the admission of the seized evidence even though the officers violated the knock-and-announce requirement. The Court reasoned that because the privacy interests violated in this case had nothing to do with the seizure of the evidence, the exclusionary rule was inapplicable. The Court rejected the defendant's argument that there would be no deterrence without suppression of the seized evidence. The Court noted that misconduct by law enforcement officers is subject to a civil lawsuit under 42 U.S.C. § 1983 and by discipline of officers by their law enforcement agencies. [Author's note: A substantial violation of state law that requires notice of identity and purpose before executing a search warrant (G.S. 15A-249, with an exception in G.S. 15A-251(2)) would subject the seized evidence to suppression under North Carolina's statutory exclusionary rule set out in G.S. 15A-974(2).]

(1) Anticipatory Search Warrants Do Not Categorically Violate Fourth Amendment
(2) Fourth Amendment Does Not Require Conditions Precedent to Execution of Anticipatory Search Warrant Be Set Out in Warrant Itself

United States v. Grubbs, 126 S. Ct. 1494, 164 L. Ed. 2d 195 (21 March 2006). Federal postal inspectors planned a controlled delivery of a child pornography videotape purchased by the defendant for delivery at his home. They obtained a search warrant to search the defendant's home contingent on the delivery of the videotape and its being taken into the residence. The contingency language was contained in the affidavit to the search warrant, but the affidavit was not incorporated into the search warrant. [Author's note: North Carolina's search warrant form, AOC-CR-119, incorporates the application for a search warrant, which includes the affidavit. See State v. Carrillo, 164 N.C. App. 204, 595 S.E.2d 219 (2004) (anticipatory search warrant was valid under Fourth Amendment when contingency language for executing the search warrant was set out in affidavit and warrant incorporated the affidavit by reference).] (1) The Court ruled that anticipatory search warrants do not categorically violate the Fourth Amendment. Two prerequisites must be satisfied, however. There is a fair probability (probable cause) that contraband or evidence of a crime will be found in a particular place, and probable cause to believe that the triggering condition will occur. (2) The Court also ruled that the Fourth Amendment does not require that the conditions precedent to the execution of an anticipatory search warrant must be set out in the warrant itself. In this case, the conditions precedent to the warrant's execution were set out in the affidavit to the search warrant. [Author's note: For a discussion of anticipatory search warrants under North Carolina case law, see page 140 of Robert L. Farb, *Arrest, Search, and Investigation in North Carolina* (3d ed. 2003), and the *Carrillo* ruling, discussed above, that was decided after the book's publication.

Fourth Amendment Did Not Prohibit Law Enforcement Officer from Conducting Suspicionless Search of Parolee as Permitted Under California Law

Samson v. California, 126 S. Ct. 2193, 165 L. Ed. 2d 250 (19 June 2006). A California law requires every prisoner eligible for release on parole to agree in writing to be subject to a search or seizure by a parole officer or law enforcement officer without a search warrant and with or without cause. The Court ruled that the Fourth Amendment did not prohibit a law enforcement officer from conducting a suspicionless search of a parolee as permitted under this California law. The Court noted that California law prohibits such a search if it is arbitrary, capricious, or harassing.

Suppression of Statement Taken in Violation of Vienna Convention on Consular Relations (International Treaty Requiring Law Enforcement to Inform Arrested Foreign National of Right to Consular Notification) Is Not Remedy for Violation of Treaty

Sanchez-Llamas v. Oregon, 126 S. Ct. 2669, 165 L. Ed. 2d 557 (28 June 2006). The Court ruled, assuming without deciding that the Vienna Convention on Consular Relations (an international treaty

requiring law enforcement to inform an arrested foreign national of the right to consular notification) creates judicially enforceable rights, (1) suppression of a defendant's statements to law enforcement is not a remedy for a violation of the treaty; and (2) a state may subject claims of treaty violations to the same procedural default rules that apply generally to other federal law claims. [Author's note: For a discussion of law enforcement obligations under the treaty, see the text on page 44 and note 347 on page 63 of Robert L. Farb, *Arrest, Search, and Investigation in North Carolina* (3d ed. 2003).]

Miscellaneous

Blakely v. Washington, 542 U.S. 296 (2004), Error Is Not Structural Error and Is Subject to Standard of Harmless Error Beyond Reasonable Doubt

Washington v. Recuenco, 126 S. Ct. 2546, 165 L. Ed. 2d 466 (26 June 2006). The Court ruled that Blakely v. Washington, 542 U.S. 296 (2004), sentencing error is not structural error and thus is subject to review by the standard of harmless error beyond a reasonable doubt. [Author's note: In State v. Norris, 360 N.C. 507, 630 S.E.2d 915 (2006), the North Carolina Supreme Court recognized that its ruling in State v. Allen, 359 N.C. 425, 615 S.E.2d 256 (2005) (*Blakely* error is structural error automatically requiring reversal of sentence), is in direct conflict with *Recuenco*.]

Erroneous Deprivation of Defendant's Counsel of Choice Is Structural Error

United States v. Gonzalez-Lopez, 126 S. Ct. 2557, 165 L. Ed. 2d 409 (26 June 2006). The Court ruled that the erroneous deprivation of the defendant's counsel of choice is a structural defect requiring the automatic reversal of the defendant's conviction.

Arizona's Narrowing of M'Naghten Test on Issue of Insanity Did Not Violate Due Process Clause

Clark v. Arizona, 126 S. Ct. 2709, 165 L. Ed. 2d 842 (29 June 2006). The Court ruled that the Arizona's narrowing of the M'Naghten test on the issue of insanity did not violate the Due Process Clause.

Assigning Burden of Proof to Defendant on Duress Defense in Federal Firearms Prosecution Did Not Violate Due Process

Dixon v. United States, 126 S. Ct. 2437, 165 L. Ed. 2d 299 (22 June 2006). The Court ruled that requiring a defendant charged with firearms offenses to prove her defense of duress by a preponderance of the evidence instead of requiring the government to prove beyond a reasonable doubt that she did not act under duress did not violate her due process rights.

Court Rules That Death Sentence Remained Valid When Some But Not All of The Factors Qualifying Case For Death Penalty Were Later Found Invalid

Brown v. Sanders, 126 S. Ct. 884, 163 L. Ed. 2d 723 (11 January 2006). The court ruled that a death sentence remained valid when some but not all of the factors qualifying the case for the death penalty were later found invalid. An invalidated sentencing factor will not render a death sentence unconstitutional if another sentencing factor enables the sentencing body (jury or judge) to give similar aggravating weight to the facts and circumstances of the case.

Eighth and Fourteenth Amendments Do Not Grant Defendant Constitutional Right To Present At Capital Sentencing Hearing New Evidence That He Was Not Present At The Murder Scene That Was Inconsistent With Defendant's Conviction Of That Murder

Oregon v. Guzek, 126 S. Ct. 1226, 163 L. Ed. 2d 1112 (22 February 2006). The Court ruled that the Eighth and Fourteenth amendments do not grant a defendant a constitutional right to present at a capital sentencing hearing new evidence that he was not present at the murder scene that was inconsistent with the defendant's conviction of that murder.

Kansas Death Penalty Statute Is Not Unconstitutional When It Imposes Death Penalty When Aggravating and Mitigating Facts Are in Equipose

Kansas v. Marsh, 126 S. Ct. 2516, 165 L. Ed. 2d 429 (26 June 2006). The Court ruled that the Kansas death penalty stature is not unconstitutional when it imposes the death penalty when aggravating and mitigating factors are in equipoise.

Court Rules That Death Row Inmate May Sue State Correction Officials Under 42 U.S.C. § 1983 to Challenge Particular Method of Execution by Lethal Injection as Cruel and Unusual Under Eighth Amendment

Hill v. McDonough, 126 S. Ct. 2096, 165 L. Ed. 2d 44 (12 June 2006). The Court ruled that a death row inmate may sue state correction officials under 42 U.S.C. § 1983 to challenge a particular method of execution by lethal injection as cruel and unusual under the Eighth Amendment.

Court Rules That State Prison Inmate Could Bring Federal Habeas Corpus Petition Challenging Conviction Under Actual Innocence Exception to Procedural Bar Rule

House v. Bell, 126 S. Ct. 2064, 165 L. Ed. 2d 1 (12 June 2006). The Court ruled that a state prison inmate could bring a federal habeas corpus petition challenging his conviction under the actual innocence exception to the procedural bar rule. (See the Court's opinion for a detailed discussion of the facts that supported its ruling.)

Court Rules That Federal Controlled Substances Act Does Not Allow U.S. Attorney General to Prohibit Doctors from Prescribing Regulated Drugs for Use in Physician-Assisted Suicide Under State Law Permitting Procedure

Gonzales v. Oregon, 126 S. Ct. 904, 163 L. Ed. 2d 748 (17 January 2006). The Court ruled that the federal Controlled Substances Act does not allow the Attorney General of the United States to prohibit doctors from prescribing regulated drugs for the use in physician-assisted suicide under state law permitting such a procedure..

Prison's Denial of Access to Magazines and Newspapers by Inmates in Long-Term Segregation Unit Was Not Unlawful

Beard v. Banks, 126 S. Ct. 2572, 126 L. Ed. 2d 697 (28 June 2006). The Court ruled that Pennsylvania prison officials set forth adequate legal support for a policy restricting access to newspapers, magazines, and photographs by inmates in the most restricted level of the prison's long-term segregation unit.

PLRA's Requirement That Prisoner Exhaust Administrative Remedies Is Not Satisfied When Prisoner Files Untimely or Otherwise Procedurally Defective Administrative Grievance or Appeal

Woodford v. Ngo, 126 S. Ct. 2378, 165 L. Ed. 2d 368 (22 June 2006). The Court ruled that the Prison Litigation Reform Act's requirement that a prison inmate exhaust all available administrative remedies before challenging prison conditions in federal court, 42 U.S.C. §1997(e)(a), is not satisfied where the prisoner filed an untimely or otherwise procedurally defective administrative grievance or appeal.