2008-2009 United States Supreme Court Term: Cases Affecting Criminal Law and Procedure

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Fourth Amendment Issues

Court Recasts Fourth Amendment's Exclusionary Rule and Rules That Exclusionary Rule Did Not Bar Admission of Evidence Seized Pursuant to an Arrest Based on Officer's Reasonable Belief There Was an Outstanding Arrest Warrant, Although a Law Enforcement Agency Had Negligently Failed to Enter Warrant's Recall in Its Computer Database

Herring v. United States, 129 S. Ct. 695, 172 L. Ed. 2d 496 (14 January 2009). An officer arrested the defendant based on an outstanding arrest warrant listed in a neighboring county sheriff's computer database. A search incident to arrest discovered drugs and a gun, which formed the basis for criminal charges. However, there was a mistake about the arrest warrant. A court had recalled the arrest warrant, but a law enforcement official had negligently failed to record that fact, although the official did not act recklessly or deliberately in doing so. For the purpose of deciding this case, the Court accepted the parties' assumption that a Fourth Amendment violation had occurred. The Court reviewed its prior case law on the Fourth Amendment's exclusionary rule and recast it in the context of this case as follows: (1) The exclusionary rule is not an individual right and applies only when it results in appreciable deterrence. The benefits of deterrence must outweigh the costs. (2) The extent to which the exclusionary rule is justified by deterrence principles varies with the culpability of law enforcement conduct. The abuses that gave rise to the exclusionary rule featured intentional conduct that was patently unconstitutional. An error that arises from nonrecurring and attenuated negligence is thus far removed from the core concerns that led the Court to initially adopt the rule. And since United States v. Leon, 468 U.S. 897 (1984), the Court has never applied the rule to exclude evidence obtained in violation of the Fourth Amendment when law enforcement conduct was no more intentional or culpable than involved in this case. (3) To trigger the exclusionary rule, law enforcement conduct must be sufficiently deliberate that exclusion can meaningfully deter it and sufficiently culpable that such deterrence is worth the price paid by the criminal justice system. The rule serves to deter deliberate, reckless, or grossly negligent conduct or, in some circumstances, recurring or systemic negligence. The error in this case did not rise to that level. The pertinent analysis of deterrence and culpability is objective, not an inquiry into the subjective awareness of law enforcement officers. (4) The Court stated that it did not suggest that all recordkeeping errors by law enforcement are immune from the exclusionary rule. If law enforcement has been reckless in maintaining a warrant system or to have knowingly made false entries to lay the groundwork for future false arrests, exclusion would certainly be justified should such misconduct cause a Fourth Amendment violation. But there was no evidence in this case that errors in the computer database were routine or widespread. (5) The Court, in light of its repeated prior rulings that the deterrent effect of suppression must be substantial and outweigh any harm to the justice system, concluded that when law enforcement mistakes are the result of negligence such as occurred in this case (rather than systemic error or reckless disregard of constitutional requirements), any marginal deterrence does not require application of the exclusionary rule.

Court Rules That Officers May Search Vehicle Incident To Arrest Only If (1) Arrestee Is Unsecured and Within Reaching Distance of Passenger Compartment When Search Is Conducted; or (2) It Is Reasonable To Believe That Evidence Relevant To Crime of Arrest Might Be Found in Vehicle

Arizona v. Gant, 129 S. Ct. 1710, 173 L. Ed. 2d 485 (21 April 2009). The Court ruled that officers may search a vehicle incident to arrest only if (1) the arrestee is unsecured and within reaching distance of the passenger compartment when the search is conducted; or (2) it is reasonable to believe that evidence relevant to the crime of arrest might be found in the vehicle. For an analysis of this ruling, see the online paper available at http://www.sog.unc.edu/programs/crimlaw/arizonagantbyfarb.pdf.

(1) Court Rules That Officers During Routine Traffic Stop May Frisk Driver or Passengers for Whom They Have Reasonable Suspicion To Be Armed and Dangerous; They Need Not Additionally Have Cause to Believe That Any Vehicle Occupant Is Involved in Criminal Activity
(2) Officer's Questions Into Matters Unrelated to Justification for Traffic Stop Do Not Convert Encounter Into Unlawful Seizure As Long As Those Questions Do Not Measurably Extend Duration of Stop

Arizona v. Johnson, 129 S. Ct. 781, 172 L. Ed. 2d 694 (26 January 2009). Three officers, members of a gang task force, were on patrol near a neighborhood associated with the Crips gang. They stopped a vehicle after a license plate check revealed that the vehicle's registration had been suspended for an insurance-related violation, which under Arizona state law was a civil infraction warranting a citation. There were three occupants in the vehicle: the driver, a front-seat passenger, and the defendant, a backseat passenger. When making the stop, the officers had no reason to suspect anyone of criminal activity. Each officer dealt with one of the occupants. The officer involved with the defendant had noticed on the officers' approach to the vehicle that the defendant had looked back and kept his eyes on the officers. She observed that the defendant was wearing clothing that was consistent with Crips membership. She also noticed a scanner in the defendant's back pocket, which she believed that most people would not carry in that manner unless they were involved with criminal activity or trying to evade law enforcement. The defendant answered the officer's questions (he provided his name and date of birth but had no identification; he said that he had served time in prison for burglary) and also volunteered that he was from an Arizona town that the officer knew was home to a Crips gang. The defendant complied with the officer's request to get out of the car. Based on her observations and the defendant's answers to her questions, the officer suspected he might have a weapon and frisked him and discovered a gun. (1) The Court reviewed its case law on stop and frisk beginning with Terry v. Ohio, 392 U.S. 1 (1968), particularly noting Pennsylvania v. Mimms, 434 U.S. 106 (1977) (officer may automatically order driver out of lawfully stopped vehicle); Maryland v. Wilson, 519 U.S. 408 (1997) (applying *Mimms* to passengers); and Brendlin v. California, 551 U.S. 249 (2007) (when vehicle is stopped, passengers as well as driver are seized). The Court stated that the combined thrust of these three cases is that an officer who conducts a routine traffic stop may frisk the driver and any passenger for whom they have reasonable suspicion to be armed and dangerous. They need not additionally have cause to believe that any vehicle occupant is involved in criminal activity. (2) An Arizona state appellate court had ruled that while the defendant initially was lawfully seized, before the frisk occurred the detention had evolved into a consensual conversation about his gang affiliation because the officer's questioning was unrelated to the traffic stop. The Arizona court concluded that the officer did not have the right to frisk the defendant—even if she had reasonable suspicion that he was armed and dangerous—absent reasonable suspicion that the defendant had engaged, or was about to engage, in criminal activity.

The United States Supreme Court rejected that view and concluded that the seizure of the defendant during this traffic stop was continuous and reasonable from the time the vehicle was stopped to when the frisk occurred. A traffic stop of a vehicle communicates to a reasonable passenger that he or she is not free to terminate the encounter with law enforcement and move about at will. Nothing occurred in this case that would have conveyed to the defendant that before the frisk, the traffic stop had ended or that he was otherwise free to depart without the officer's permission. The officer was not constitutionally required to give the defendant an opportunity to depart the scene after he exited the vehicle without first ensuring that, in so doing, she was not permitting a dangerous person to get behind her. Citing Muehler v. Mena, 544 U.S. 93 (2005) (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), the Court stated that an officer's questions about matters unrelated to the justification for a traffic stop do not convert the encounter into an unlawful seizure, as long as the questions do not measurably extend the duration of the stop. [Author's note: The Court's statement means, for example, that an officer's questioning of a vehicle occupant during a traffic stop whether there are drugs or guns in the vehicle is not an unreasonable seizure as long as the questioning does not measurably extend the duration of the stop.]

Although School Officials Had Reasonable Suspicion to Search Middle School Student's Backpack and Outer Clothing for Prescription and Over-The-Counter Pain Relief Pills, They Did Not Have Justification Under Fourth Amendment to Require Student to Pull Out Her Bra and Underpants

Safford Unified School District v. Redding, 129 S. Ct. 2633, 174 L. Ed. 2d 354 (25 June 2009). After learning that a middle school student may have prescription strength and over-the-counter pain relief pills, school officials searched her backpack but did not found any pills. A school nurse then had her remove her outer clothing, pull her bra and shake it, and then pull out the elastic on her underpants. The student's breasts and pelvic area were exposed to some degree by her compliance with these directives. No pills were found. The Court ruled that school officials had reasonable suspicion to search the student's backpack and outer clothing; however, because the facts did not indicate that the drugs presented a danger to students or were concealed in her bra or underpants, school officials did not have sufficient justification under the Fourth Amendment to make the student pull out her bra and underpants. The Court also ruled that school officials were protected from civil liability by qualified immunity because clearly established law when the search was conducted did not show that the search violated the Fourth Amendment.

Interrogation and Confession Issues

Court Overrules *Michigan v. Jackson*, 475 U.S. 625 (1986) (When Defendant Requests Counsel at Arraignment or Similar Proceeding, Officer Is Thereafter Prohibited Under Sixth Amendment from Initiating Interrogation)

Montejo v. Louisiana, 129 S. Ct. 2079, 173 L. Ed. 2d 955 (26 May 2009). The Court overruled *Michigan v. Jackson*, 475 U.S. 625 (1986) (when defendant requests counsel at arraignment or similar proceeding, officer is thereafter prohibited under Sixth Amendment from initiating interrogation).For an analysis of this ruling, see the online paper available at http://www.sog.unc.edu/programs/crimlaw/Montejoruling.pdf.

Defendant's Incriminating Statement to Jailhouse Informant, Assumed to Have Been Obtained in Violation of Defendant's Sixth Amendment Right to Counsel, Was Admissible on Rebuttal to Impeach Defendant's Trial Testimony That Conflicted With Statement

Kansas v. Ventris, 129 S. Ct. 1841, 174 L. Ed. 2d 314 (29 April 2009). The Court ruled that the defendant's incriminating statement to a jailhouse informant, assumed to have been obtained in violation of the defendant's Sixth Amendment right to counsel, was admissible on rebuttal to impeach the defendant's trial testimony that conflicted with statement. [Author's note: The statement would not have been admissible during the state's presentation of evidence in its case-in-chief.]

Sixth Amendment Issues

Defendant's Sixth Amendment Right to Confrontation Was Violated When State Laboratory Drug Analysis Report Was Introduced into Evidence to Prove Substance Was Cocaine and Analyst Did Not Testify

Melendez-Diaz v. Massachusetts, 129 S. Ct. 2527, 173 L. Ed. 2d 955 (25 June 2009). The defendant was on trial for trafficking in and distributing cocaine. The state placed into evidence bags containing a substance seized from the defendant and the police cruiser which he had occupied. It also introduced three certificates of analysis, sworn to before a notary public, reporting that the bags have been examined and the substance in the bags was cocaine. The drug analyst did not testify. The Court ruled, relying on Crawford v. Washington, 541 U.S. 36 (2004), that the certificates of analysis, functionally identical to affidavits, were testimonial evidence under *Crawford* and their introduction to prove the substance was cocaine violated the defendant's Sixth Amendment right to confrontation when the analyst did not testify (nor had the analyst previously testified, been subject to cross-examination, and was now unavailable). The Court rejected various arguments offered by the state for the admissibility of the certificates of analysis, including that they qualified as official or business records or the defendant had the authority to subpoena the analyst if he had wanted to cross-examine the analyst. The Court did, however, approve in general statutory procedures by which the state provides notice to the defendant of its intent to use an analyst's report as evidence at trial, after which the defendant is given a period of time in which he or she may object to the admission of evidence absent the analyst's live appearance at trial. The Court stated that these notice-and-demand statutes simply govern the time within which a defendant must raise a confrontation objection, and states are free to adopt procedural rules governing objections. For an analysis of this ruling, see the online paper available at http://www.sog.unc.edu/programs/crimlaw/menlendez_diaz.pdf.

Delay Caused By Appointed Defense Counsel or Public Defender Is Not Attributable To State in Determining Whether Defendant's Sixth Amendment Right to Speedy Trial Was Violated, Unless Delay Resulted From Systemic Breakdown in Public Defender System

Vermont v. Brillon, 129 S. Ct. 1283, 173 L. Ed. 2d 231 (9 March 2009). The Court ruled that delay caused by appointed defense counsel or a public defender is not attributable to the state in determining whether a defendant's Sixth Amendment right to a speedy trial was violated, unless the delay resulted from a systemic breakdown in the public defender system. Assigned counsel are not state actors in determining the speedy trial issue.

(1) State Court Ruling That Defense Counsel Was Not Ineffective Under Sixth Amendment Was Not Unreasonable Application of Clearly Established Federal Law Under Federal Habeas Standard

(2) Even If Defendant Was Entitled to De Novo Review, Defense Counsel Was Not Ineffective When Counsel Recommended Withdrawal of Defense That Counsel Reasonably Believed Was Doomed To Fail

Knowles v. Mirzayance, 129 S. Ct. 1411, 173 L. Ed. 2d 251 (24 March 2009). The defendant entered pleas of not guilty and not guilty by reason of insanity (NGI) at his first-degree murder trial in state court. State procedure required a bifurcated trial: the guilt phase first and then the NGI issue. During the guilt phase, the defendant sought through medical testimony to show that he was insane and therefore incapable of premeditation and deliberation. However, the jury convicted him of first-degree murder. Before the NGI phase began, the defendant accepted defense counsel's recommendation to abandon the insanity plea. (While the state bore the burden of proof in the guilt phase, the defendant would have had the burden of proof in the NGI phase.) The Court ruled: (1) a state court's ruling that defense counsel was not ineffective under Sixth Amendment was not an unreasonable application of clearly established federal law under the federal habeas standard; and (2) even if the defendant was entitled to de novo review, defense counsel was not ineffective when recommending withdrawal of a defense that counsel reasonably believed was doomed to fail. The defendant's medical testimony had already been rejected in the guilt phase and the defendant's parents' expected testimony in the NGI phase, which counsel believed to be the strongest evidence, was no longer available. The Court stated that the federal appellate court's insistence in this case that counsel was required to assert the only defense available, even one almost certain to lose, was not supported by any prevailing professional norms.

***Apprendi v. New Jersey* and Later Rulings Do Not Provide Sixth Amendment Right to Jury Trial Under Oregon Law That Requires Findings of Fact to Support Judge's Decision to Impose Consecutive Sentences**

Oregon v. Ice, 129 S. Ct. 711, 172 L. Ed. 2d 517 (14 January 2009). The Court ruled that Apprendi v. New Jersey, 530 U.S. 466 (2000), and later rulings do not provide a Sixth Amendment right to jury trial under an Oregon law that requires findings of fact to support a judge's decision to impose consecutive sentences. [Author's note: North Carolina statutory law does not require a judge to make findings of fact to impose consecutive sentences. The Court made clear that states such as North Carolina are not required to provide a defendant with a jury trial concerning a judge's consecutive sentence decision.]

Miscellaneous Issues

Court Rules That Exculpatory Evidence Suppressed by State Did Not Affect Defendant's Murder Convictions But Remands to Trial Court to Determine If Suppressed Evidence Affected Determination of Death Sentence

Cone v. Bell, 129 S. Ct. 1769, 173 L. Ed. 2d 701 (28 April 2009). The defendant was convicted in state court of two counts of murder and sentenced to death. He presented an insanity defense based on his habitual use of an excessive amount of drugs and its affect on his behavior during the commission of the offenses. It was discovered after the trial and sentencing hearing that the state had suppressed exculpatory evidence concerning his use of drugs. The defendant was unsuccessful in obtaining a new trial or sentencing hearing in state postconviction proceedings

and federal habeas litigation. The Court ruled: (1) the defendant's federal habeas claim concerning suppressed evidence under Brady v. Maryland, 373 U.S. 83 (1963), was not procedurally barred; (2) the suppressed evidence was immaterial to the jury's finding of guilt and thus did not affect the defendant's conviction; and (3) the suppressed evidence might have persuaded one or more jurors that the defendant's drug addiction was sufficiently serious to justify a decision to recommend a life sentence rather than a death sentence, and thus a full review of the suppressed evidence and its effect was warranted; the Court remanded the case to the federal habeas trial court for a hearing on this issue.

Due Process Clause Does Not Require Automatic Reversal of Conviction When State Trial Court Committed Good-Faith Error in Denying Defendant's Peremptory Challenge of Juror and All Jurors Seated in Trial Were Qualified and Unbiased

Rivera v. Illinois, 129 S. Ct. 1446, 173 L. Ed. 2d 320 (31 March 2009). During the defendant's state murder trial, the defendant was denied the opportunity to exercise a peremptory challenge against a female juror because the trial judge erroneously, but in good faith, believed that the defendant's use of a peremptory challenge violated Batson v. Kentucky, 476 U.S. 79 (1986), and later cases. The Court ruled that the Due Process Clause does not require an automatic reversal of a conviction when a state trial court committed a good-faith error in denying the defendant's peremptory challenge of a juror and all jurors seated in the trial were qualified and unbiased.

Apparent Inconsistency Between Jury's Verdicts of Not Guilty on Some Charges and Inability to Reach Verdicts (Hung Jury) on Other Charges at Same Trial Does Not Affect Not Guiltys' Preclusive Effect Under Double Jeopardy Clause

Yeager v. United States, 129 S. Ct. 2360, 174 L. Ed. 2d 78 (18 June 2009). A jury at a federal criminal trial acquitted the defendant of fraud charges but failed to reach a verdict (hung jury) on insider-trading and money-laundering charges. The defendant moved to dismiss the insider-trading and money-laundering charges on the ground that the jury, by acquitting him of the fraud charges, had necessarily decided that he did not possess material, nonpublic information, and the issue-preclusion component (commonly known as collateral estoppel) of the Double Jeopardy Clause barred a second trial for the insider-trading and money-laundering charges. (For example, if the possession of insider information was a critical issue of fact in all of the charges against the defendant, a jury verdict that necessarily decided that issue in his favor protects him from prosecution for any charge for which that is an essential element.) The Court ruled, relying on Ashe v. Swenson, 397 U.S. 436 (1970), that the apparent inconsistency between the jury's not guilty verdicts and its inability to reach verdicts on other charges did not affect the not guiltys' preclusive effect under the Double Jeopardy Clause. The Court remanded the case to allow the government an opportunity to argue in the federal court of appeals that a factual analysis of the evidence and verdicts does not support the defendant's double jeopardy argument. [Author's note: The Court's ruling in this case does not affect the United States Supreme Court ruling in United States v. Powell, 469 U.S. 57 (1984) (defendant may not successfully challenge guilty verdicts that may have been inconsistent with not guilty verdicts rendered at same trial).]

No Constitutional Right to Obtain Postconviction Access to State's Evidence for DNA Testing

District Attorney's Office v. Osborne, 129 S. Ct. 2308, 174 L. Ed. 2d 38 (18 June 2009). The Court ruled that, assuming a convicted person's claims can be pursued under § 1983, he had no constitutional right to obtain postconviction access to the state's evidence for DNA testing. [Author's note: G.S. 15A-269 provides a statutory right to postconviction DNA testing.]

Supervisory Prosecutors Were Entitled to Absolute Immunity in § 1983 Lawsuit Claiming Prosecutors Failed to Disclose Impeachment Material Due to (1) Failure to Train Prosecutors, (2) Failure to Supervise Prosecutors, or (3) Failure to Establish Information System Containing Potential Impeachment Material About Informants

Van de Kamp v. Goldstein, 129 S. Ct. 855, 172 L. Ed. 2d 706 (26 January 2009). The plaintiff, convicted of murder that was later reversed, sued prosecutors under § 1983 for various claims involving the alleged suppression of potential impeachment information that the defendant could have used against a state's witness in his murder trial. The conviction was allegedly based in critical part on the testimony of this witness, who was a jailhouse informant and had previously received reduced sentences for providing prosecutors with favorable testimony in other cases. The Court ruled that supervisory prosecutors were entitled to absolute immunity for the plaintiff's claims that the prosecutors failed to disclose impeachment material due to the (1) failure to train prosecutors, (2) failure to supervise prosecutors, or (3) failure to establish an information system in the district attorney's office containing potential impeachment material about informants.

Court Modifies Ruling in Saucier v. Katz, 533 U.S. 194 (2001), and Also Rules That Officers Conducting Search Were Entitled to Qualified Immunity

Pearson v. Callahan, 129 S. Ct. 808, 172 L. Ed. 2d 565 (21 January 2009). Plaintiff sued law enforcement officers under 42 U.S.C. § 1983 for allegedly violating his Fourth Amendment rights by entering his house without a search warrant after their undercover informant (invited into the house by the plaintiff) had purchased drugs from the plaintiff in the house. The Court ruled: (1) the ruling in Saucier v. Katz, 533 U.S. 194 (2001), is modified so a court has discretion to decide whether the plaintiff's constitutional right was clearly established when the alleged misconduct occurred without first deciding whether the plaintiff had adequately alleged a violation of his constitutional rights; and (2) the officers were entitled to qualified immunity because the entry did not violate clearly established law. The officers were entitled to rely on cases approving the "consent once removed" doctrine to support the entry even though their own federal court of appeals had not yet ruled on the doctrine.

State Appellate Court Ruling on Constitutionality of Jury Instruction Was Not Unreasonable Application of Clearly Established Federal Law Under Federal Habeas Statute

Waddington v. Sarausad, 129 S. Ct. 823, 172 L. Ed. 2d 532 (21 January 2009). A criminal defendant was convicted of second-degree murder in state court. He then filed a federal habeas corpus petition to reverse his conviction based on an alleged constitutional error in the state judge's jury instruction on accomplice liability. The Court ruled that the criminal defendant (plaintiff in the federal habeas action) was not entitled to relief because the state appellate court ruling that the jury instruction was not constitutionally erroneous was not an unreasonable application of clearly established federal law.

Court Rules When Judgment Becomes "Final" Under Federal Habeas Law If State Court Grants Defendant the Right to File Out-of-Time Direct Appeal During State Collateral Review

Jimenez v. Quarterman, 129 S. Ct. 681, 172 L. Ed. 2d 475 (13 January 2009). The Court ruled that when a state court grants a criminal defendant the right to file an out-of-time direct appeal during state collateral review, but before the defendant has first sought federal habeas relief, the

judgment is not "final" until the conclusion of the out-of-time direct appeal, or the expiration of the time for seeking certiorari review of that appeal.

Court Rules When Jury Is instructed on Multiple Theories of Guilt, One of Which Is Improper, Error Is Not Structural But Instead Is Subject to Harmless Error Review

Hedgpeth v. Pulido, 129 S. Ct. 530, 172 L. Ed. 2d 388 (2 December 2008). The Court ruled that when a jury is instructed on multiple theories of guilt, one of which is improper, the error is not structural error but instead is subject to review under the harmless error standard set out in Brecht v. Abrahamson, 507 U.S. 619 (1993) (whether the flaw in the instruction "had substantial and injurious effect or influence in determining the jury's verdict").

Double Jeopardy Clause Did Not Bar Ohio Courts From Determining Whether Defendant Was Mentally Retarded That Would Prevent Imposition of Death Penalty

Bobby v. Bies, 129 S. Ct. 2145, 173 L. Ed. 2d 1173 (1 June 2009). The federal habeas corpus petitioner was convicted of murder in state court and sentenced to death. A federal appellate court reversed the death sentence on double jeopardy grounds concerning the defendant's alleged mental retardation. The Court ruled that the Double Jeopardy Clause did not bar Ohio courts from determining whether the defendant was mentally retarded that would prevent the imposition of the death penalty. [Author's note: See the Court's opinion for its discussion of the facts and law and the federal appellate court's "fundamentally misperceived" (Court's description) application of the Double Jeopardy Clause that the Court reversed.]

Federal Law Authorizes Federally-Appointed Counsel in Federal Habeas Action Related to Defendant's Capital Conviction in State Court to Represent Defendant in State Clemency Proceedings and Entitles Them to Compensation for That Representation

Harbison v. Bell, 129 S. Ct. 1481, 173 L. Ed. 2d 347 (1 April 2009). The Court ruled that federal law (18 U.S.C. § 3599) authorizes federally-appointed counsel in a federal habeas action related to a defendant's capital conviction in state court to represent the defendant in state clemency proceedings and entitles them to compensation for that representation.

New York Statute Divesting State Courts of Jurisdiction Over § 1983 Lawsuits Against Correction Officers for Money Damages Violates Supremacy Clause

Haywood v. Drown, 129 S. Ct. 2108, 173 L. Ed. 2d 920 (26 May 2009). The Court ruled that a New York statute divesting state courts of jurisdiction over § 1983 lawsuits against correction officers for money damages violates the Supremacy Clause.

Due Process Clause Required Recusal of State Appellate Justice

Caperton v. A. T. Massey Coal Co., Inc., 129 S. Ct. 2252, 173 L. Ed. 2d 1208 (8 June 2009). The Court ruled that the Due Process Clause required a state appellate court justice to recuse himself from hearing an appeal of a civil case involving a corporate defendant, whose chairman and principal officer had contributed extraordinary sums of money to an independent campaign to support the justice's election while the case was pending before the appellate court. Although there was no proof of actual bias, there was a serious, objective risk of actual bias that required recusal of the justice.