2009-2010 United States Supreme Court Term: Cases Affecting Criminal Law and Procedure

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Fourth Amendment Issues

Officer's Warrantless Entry Into House Did Not Violate Fourth Amendment

Michigan v. Fisher, 130 S. Ct. 546, 175 L. Ed. 2d 410 (7 December 2009). Officers responded to a disturbance call. A couple directed them to a house where a man was "going crazy." Officers saw a pickup truck in the driveway with its front smashed, damaged fence posts along the side of the property, and three broken windows, the glass still on the ground outside. The officers also saw blood on the pickup's hood and on clothes inside the pickup, as well as on one of the doors to the house. Through a window to the house, they could see the defendant screaming and throwing things. The back door was locked, and a couch had been placed to block the front door. The officers knocked, but the defendant refused to answer. They saw that he had a cut on his hand, and they asked him whether he needed medical attention. The defendant ignored these questions and demanded, with accompanying profanity, that the officers get a search warrant. One of the officers pushed the front door and entered the house. The Court ruled that a straightforward application of the emergency aid exception, as in Brigham City v. Stuart, 547 U.S. 398 (2006) (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), dictates that the officer's entry into the house was reasonable under the Fourth Amendment. The court stated that the state appellate court in this case erred in replacing the objective injury under *Brigham City* into what appeared to the officers with its hindsight determination that there was in fact no emergency. "It does not meet the needs of law enforcement or the demands of public safety to require officers to walk away from a situation like the one they encountered here. Only when an apparent threat has become an actual harm can officers rule out innocuous explanations for ominous circumstances. . . . It sufficed to invoke the emergency aid exception that it was reasonable to believe that [the defendant] had hurt himself (albeit nonfatally) and needed treatment that in his rage he was unable to provide, or that [the defendant] was about to hurt, or had already hurt, someone else."

Assuming Without Deciding That Government Employee Had Reasonable Expectation of Privacy in Text Messages Sent on Government-Provided Pager, Court Rules That Government Employer's Review of Text Messages Was Reasonable Under Fourth Amendment

City of Ontario v. Quon, 130 S. Ct. 2619, 177 L. Ed. 2d 216 (17 June 2010). A California police department provided pagers to some of its officers to assist the SWAT team in responding to emergencies. Under its contract with a private wireless service provider, each pager was allotted a limited number of characters sent or received each month. Usage in excess of that amount would result in an additional fee. When two officers (Quon, the plaintiff in this case, and another officer) consistently exceeded the character limit, the police chief ordered a supervisor to request transcripts of text messages for two consecutive months. The chief wanted to determine whether the existing character limit was too low or if the overages were for personal messages. The supervisor reviewed the transcripts and discovered that many of the messages sent and received

on Quon's pager were not work related and some were sexually explicit. After further investigation, Quon was allegedly disciplined. He then sued the city and several officers, alleging that his Fourth Amendment rights were violated. The Court stated that it would decide this case on narrow grounds and assumed, without deciding: (1) Quon had a reasonable expectation of privacy in the text messages sent on the city-provided pager; (2) the city officials' review of the transcripts constituted a search under the Fourth Amendment; and (3) the principles applicable to a government employer's search of an employee's physical office also apply when the employer intrudes on the employee's privacy interest in electronic communications. The Court ruled that under the standards set out by either the plurality opinion or concurring opinion in O'Connor v. Ortega, 480 U.S. 709 (1987), the search of the text messages did not violate the Fourth Amendment. The search was justified at its inception because there were reasonable grounds for suspecting that the search was necessary for a non-investigatory work-related purpose (checking whether the character limit was sufficient). Reviewing the transcripts was reasonable because it was an efficient and expedient way to determine whether Quon's overages were the result of work-related messaging or personal use. A reasonable employee would be aware that sound management principles might require the audit of messages to determine whether the pager was being appropriately used. The search was permissible in scope; that the search revealed intimate details of Quon's life did not make it unreasonable, for under the circumstances a reasonable employer would not expect that such a review would intrude on these details.

Fifth Amendment Issues

(1) When Prisoner Serving Sentence Asserts Right to Counsel At Custodial Interrogation, Officer May Reinitiate Custodial Interrogation After There Has Been Break in Custody for 14 Days or More

(2) Prisoner's Return to General Prison Population After Officer's Custodial Interrogation at Prison Began Running of 14-Day Break in Custody

Maryland v. Shatzer, 130 S. Ct. 1213, ___ L. Ed. 2d ___ (24 February 2010). In 2003 a detective went to a Maryland prison to question the defendant about his alleged sexual abuse of his son, for which he then was not charged. The defendant was serving a prison sentence for a conviction of a different offense. The defendant asserted his right to counsel under *Miranda*, and the detective terminated the custodial interrogation. The defendant was released back to the general prison population to continue serving his sentence, and the child abuse investigation was closed. Another detective reopened the investigation in 2006 and went to another prison where the defendant was still serving his sentence. The detective gave *Miranda* warnings to the defendant, he waived his *Miranda* rights, and then he gave a statement that was introduced at his child sexual abuse trial. The United States Supreme Court in *Edwards v. Arizona*, 451 U.S. 477 (1981), had ruled that once a defendant has asserted his or her right to counsel at a custodial interrogation, an officer may not conduct custodial interrogation of the defendant until a lawyer is made available for the interrogation or the defendant initiates further communication with the officer. The Court in *Shatzer* ruled that when a break in custody lasting 14 days or more has occurred after a defendant had previously asserted his right to counsel at a custodial interrogation, an officer may reinitiate custodial interrogation after giving *Miranda* warnings and obtaining a waiver of *Miranda* rights. The Court also ruled that although the defendant remained in prison after asserting his right to counsel, there was a break in custody under its ruling. The Court reasoned that when a prisoner is released after an officer's interrogation to return to the general prison population, the prisoner returns to his or her accustomed routine and regains the degree of control over his or her life that existed before the interrogation. Sentenced prisoners, in contrast to defendants being subjected to custodial interrogation under *Miranda*, are not isolated with their accusers (law enforcement officers). They live among other inmates, guards, and workers, and

often can receive visitors and communicate with people on the outside by mail or telephone. The "inherently compelling pressures" of custodial interrogation ended when this defendant returned to his normal life in prison.

(1) Court Recasts *Miranda v. Arizona* Concerning Waiver of *Miranda* Rights
(2) Defendant Must Make Unambiguous Assertion of Right to Remain Silent to Require Officer to Stop Custodial Interrogation

Berghuis v. Thompkins, 130 S. Ct. 2250, ___ L. Ed. 2d ___ (1 June 2010). The Court ruled that: (1) the defendant impliedly waived his rights under *Miranda v. Arizona*, 384 U.S. 436 (1966); and (2) a defendant must make an unambiguous assertion of the right to remain silent to require an officer to stop custodial interrogation.

Facts. Officers were investigating a murder. Before beginning a custodial interrogation, one of the officers presented the defendant with a *Miranda* form. The form included the four warnings required by *Miranda v. Arizona*, 384 U.S. 436 (1966) (right to remain silent; use of statements in court; right to have lawyer present; right to have appointed lawyer if indigent), and an additional warning not required by *Miranda*: "You have the right to decide at any time before or during questioning to use your right to remain silent and your right to talk with a lawyer while you are being questioned." The officer asked the defendant to read the fifth warning aloud so he could ensure that the defendant understood English, which he did. The officer then read the other four *Miranda* warnings aloud and asked the defendant to sign the form to demonstrate that he understood his rights. The defendant declined to sign the form. There was conflicting evidence whether the officer verbally confirmed that the defendant understood the rights listed on the form. The officer did not discuss or obtain a waiver of *Miranda* rights from the defendant.

During the interrogation, the defendant never stated that he wanted to remain silent, did not want to talk with the officers, or wanted a lawyer. About two hours and forty-five minutes into the interrogation, during which the defendant was mostly silent, an officer asked the defendant, "Do you believe in God?" The defendant said "yes." The officer asked, "Do you pray to God?" The defendant said "yes." The officer then asked, "Do you pray to God to forgive you for shooting that boy down?" The defendant said "yes" and looked away, and the interview ended shortly thereafter. At trial, the defendant moved to suppress these statements. The issue before the United States Supreme Court was the admissibility of these statements under *Miranda v. Arizona* and later *Miranda*-related cases.

Court's Ruling on Waiver of Miranda Rights. The Court noted that some language in *Miranda v. Arizona* could be read to indicate that a waiver of *Miranda* rights is difficult to establish absent an explicit written waiver or a formal, explicit oral statement. However, the Court discussed its rulings since *Miranda*, particularly *North Carolina v. Butler*, 441 U.S. 369 (1979) (valid waiver when defendant read *Miranda* rights form, said he understood his rights, refused to sign waiver at bottom of form, but said, "I will talk to you but I am not signing any form"), indicating that its later decisions made clear that a waiver of *Miranda* rights may be implied through the defendant's silence, coupled with an understanding of his or her rights and a course of conduct indicating waiver. The Court in effect disavowed the language in *Miranda* suggesting that it is difficult to establish a *Miranda* waiver without an explicit written waiver or a formal, explicit oral statement.

The Court concluded that if the prosecution shows that a defendant was given *Miranda* warnings and understood them, a defendant's uncoerced statements establish an implied waiver of *Miranda* rights. A defendant's explicit waiver need not precede custodial interrogation. Any waiver, explicit or implied, may be withdrawn by a defendant's invocation at any time of the right to counsel or right to remain silent.

Turning to the case before it, the Court ruled that the defendant waived his right to remain silent and his statements were admissible at trial. The Court found that there was no basis

to conclude that the defendant did not understand his *Miranda* rights, and he chose not to invoke or rely on those rights when he made his uncoerced statements.

Court's Ruling on Assertion of Right to Remain Silent. The Court rejected the defendant's argument that he invoked his right to remain silent by not saying anything for a sufficient time period during the interrogation. The Court noted it had ruled in *Davis v. United States*, 512 U.S. 452 (1994), that in the context of invoking the *Miranda* right to counsel, a defendant must do so unambiguously. If a defendant makes a statement concerning the right to counsel that is ambiguous or equivocal or makes no statement, officers are not required to end the interrogation or ask questions whether the defendant wants to invoke his or her *Miranda* rights. The Court concluded that there was no principled reason to adopt different standards for determining when a defendant has invoked the *Miranda* right to remain silent and the *Miranda* right to counsel. The Court noted that the defendant did not say that he wanted to remain silent or that he did not want to talk with the officers, and therefore the Court ruled that he did not invoke the right to remain silent to require the officers to stop their interrogation.

Custodial Interrogation by Officers After Berghuis v. Thompkins. The Court effectively ruled that a court may find a legally sufficient waiver of *Miranda* rights following the giving of warnings without an officer's explicitly discussing a waiver with the defendant, if other factors show an implied waiver. Although the Court specifically focused on the waiver of the right to remain silent, its broader ruling and rationale applies to the waiver of all *Miranda* rights. In effect, after giving *Miranda* warnings that are understood by the defendant, officers may interrogate a defendant who has neither invoked nor explicitly waived his or her *Miranda* rights.

Despite the Court's ruling, cautious officers may want to continue obtaining an explicit waiver of *Miranda* rights as reflected in many existing *Miranda* forms. A properly obtained explicit waiver will increase the likelihood—compared to an implied waiver—that a court will find a valid waiver. And even if there are deficiencies in obtaining an explicit waiver, there still may be sufficient evidence that a court will find a legally sufficient implied waiver.

If an officer does not seek to obtain an explicit waiver, it would be beneficial to add to the *Miranda* warning a statement similar to the one given in *Berghuis*: "You have the right to decide at any time before or during questioning to use your right to remain silent and your right to talk with a lawyer while you are being questioned." The Court noted that this warning made the defendant aware that his right to remain silent would not dissipate over time, and the officers would be required to honor that right as well as the right to counsel during the entire interrogation. Some existing *Miranda* forms in North Carolina already contain a similar statement. For example, the Greensboro Police Department form includes the following: "You may decide now or at any later time to exercise these rights and not answer any questions or make any statement."

Miranda Warning Concerning Presence of Lawyer During Interrogation Was Sufficient

Florida v. Powell, 130 S. Ct. 1195, ___ L. Ed. 2d ___ (23 February 2010). A Florida law enforcement officer, when advising a defendant of his *Miranda* rights, told the defendant: "You have the right to remain silent. If you give up the right to remain silent, anything you say can be used against you in court. You have the right to talk to a lawyer before answering any of our questions. If you cannot afford to hire a lawyer, one will be appointed for you without cost and before any questioning. You have the right to use any of these rights at any time you want during this interview." The Court stated, noting its rulings in *California v. Prysock*, 453 U.S. 355 (1981), and *Duckworth v. Eagan*, 492 U.S. 195 (1989), that it has not dictated the words in which the essential information of a *Miranda* warning must be conveyed. Although the officer's warning concerning the presence of a lawyer during interrogation did not track the language in the *Miranda* ruling, the Court ruled that the warning satisfied the requirement that a defendant must

be clearly informed that he has the right to consult with a lawyer and to have the lawyer with him during interrogation. Thus, the warning complied with the *Miranda* ruling.

Sixth Amendment Issues

Court Rules That Defense Counsel's Advice About Conviction's Immigration Consequences to Defendant Pleading Guilty Was Not Objectively Reasonable Under Sixth Amendment and Remands to State Court to Determine Prejudice

Padilla v. Kentucky, 130 S. Ct. 1473, 176 L. Ed. 2d 284 (31 March 2010). The defendant, a native of Honduras who was a lawful permanent resident of the United States, pled guilty in a Kentucky state court to transportation of a large amount of marijuana. He later sought to set aside his guilty plea, asserting that his lawyer not only failed to advise him of the deportation consequence of his guilty plea, but also told him that he need not worry about his immigration status because he had been in the United States so long (over 40 years). The lawyer's advice was erroneous because his guilty plea made his deportation virtually mandatory. The defendant also alleged that he would have insisted on a trial if he had not received this erroneous advice. The Court ruled that the defendant sufficiently alleged constitutionally deficient counsel because when the deportation consequence was truly clear, as it was in this case, the duty to give correct advice was equally clear. The Court remanded the case to state court to determine prejudice under *Washington v. Strickland*, 466 U.S. 668 (1984).

Court Rules That Defense Counsel's Representation at Death Penalty Hearing Was Neither Deficient Nor Prejudicial Under Sixth Amendment

Bobby v. Van Hook, 130 S. Ct. 13, 175 L. Ed. 2d 255 (9 November 2009). The defendant was convicted of murder in state court and sentenced to death. The court ruled that that defense counsel's representation at the death penalty hearing was neither deficient nor prejudicial under the Sixth Amendment. (See the Court's opinion for its analysis of the facts and law.) The Court also criticized the manner in which the federal court of appeals in this case had utilized American Bar Association (ABA) guidelines on the representation of defendants in death penalty cases in determining whether the defendant's Sixth Amendment right to counsel had allegedly been violated.

Court Rules Defendant Failed to Prove That Defense Counsel's Representation at Death Penalty Hearing, Assuming Without Deciding It Was Deficient Under Sixth Amendment, Showed Reasonable Probability That Result (Death Sentence) Would Have Been Different

Wong v. Belmontes, 130 S. Ct. 383, 175 L. Ed. 2d 328 (16 November 2009). The defendant was convicted of murder in state court and sentenced to death. The court ruled that the defendant failed to prove that defense counsel's representation at the death penalty hearing, assuming without deciding it was deficient under the Sixth Amendment, showed a reasonable probability that the result (the death sentence) would have been different. (See the Court's opinion for its analysis of the facts and law.)

Court Rules That Defense Counsel at Death Penalty Hearing: (1) Provided Ineffective Assistance Under Sixth Amendment in Failing to Properly Investigate Defendant's Background for Mitigation Evidence; and (2) Ineffectiveness Prejudiced Defendant

Porter v. McCollum, 130 S. Ct. 447, 175 L. Ed. 2d 398 (30 November 2009). The defendant was convicted of two murders in state court and sentenced to death for one of them. The Court ruled

that defense counsel at the death penalty hearing: (1) provided ineffective assistance under the Sixth Amendment in failing to properly investigate the defendant's background for mitigation evidence; and (2) the ineffectiveness prejudiced the defendant (thus, he would be entitled to a new death penalty hearing). The state appellate court's rejection of the prejudice issue was an unreasonable application of Strickland v. Washington, 466 U.S. 668 (1984). (See the Court's opinion for its analysis of the facts and law.)

Court Rules That State Trial Court on Post-Conviction Review Incorrectly Applied Prejudice Standard Under *Strickland v.* Washington Concerning Ineffective Assistance of Counsel

Sears v. Upton, 130 S. Ct. 3259, ___ L. Ed. 2d ___ (29 June 2010). The defendant was convicted in a state court of a capital offense and sentenced to death. On post-conviction review of the death penalty proceeding, the state trial court determined that the performance of defendant's counsel in presenting mitigating evidence had been constitutionally inadequate under Strickland v. Washington, 466 U.S. 668 (1984), but the defendant had not been prejudiced to require a new death penalty proceeding. The Court ruled that the state court had incorrectly applied the prejudice standard to the facts in this case (see the Court's opinion for its analysis of the facts and law). The Court reversed the judgment denying post-conviction relief to the defendant and remanded the case to state court for a new determination whether the defendant had been prejudiced.

Defendant's Sixth Amendment Right to Public Trial Was Violated When Trial Court Closed Jury Voir Dire to Public

Presley v. Georgia, 130 S. Ct. 721, ___ L. Ed. 2d ___ (19 January 2010). The Court ruled that the trial court violated the defendant's Sixth Amendment right to a public trial when the court excluded the public from the voir dire of prospective jurors. The trial court must consider reasonable alternatives to closure even if none are offered by the parties.

Court Rules That State Appellate Court's Ruling That Rejected Fair-Cross-Section Claim (Jury Pool Was Not Drawn From Fair Cross-Section of Community) Was Consistent With *Duren v. Missouri*, 439 U.S. 357 (1979), and Was Not Unreasonable Application of Clearly Established Federal Law

Berghuis v. Smith, 130 S. Ct. 1382, 176 L. Ed. 2d 249 (30 March 2010). The defendant (and later federal habeas petitioner) was convicted in state court of second-degree murder and his conviction was affirmed by a state appellate court. He alleged on appeal in state court and in federal court a violation of his Sixth Amendment right to be tried by an impartial jury drawn from sources reflecting a fair cross section of the community. The Court ruled that the appellate court's ruling that rejected the petitioner's fair-cross-section claim was consistent with *Duren v. Missouri*, 439 U.S. 357 (1979), and was not an unreasonable application of clearly established federal law under the standard set out in 28 U.S.C. § 2254(d)(1).

Court Rules That Defendant's Sixth Amendment Right to Trial by Impartial Jury Was Not Violated Because of Pretrial Publicity

Skilling v. United States, 130 S. Ct. 2896, ___ L. Ed. 2d ___ (24 June 2010). The defendant, Enron's chief executive officer, was convicted in federal court of multiple white collar crimes. The Court extensively reviewed the facts in this case and ruled: (1) pretrial publicity did not

warrant a presumption of prejudice to have required the trial court to grant the defendant's motion for a change of venue; and (2) actual prejudice did not infect the jury that tried the defendant.

Eighth Amendment Issues

Eighth Amendment Prohibits Sentence of Life Imprisonment Without Parole For Conviction of Non-Homicide Offense Committed When Defendant Had Not Yet Reached His or Her Eighteenth Birthday

Graham v. Florida, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (17 May 2010). The defendant was sentenced in a Florida state court to life imprisonment without parole for a conviction of a non-homicide offense. The defendant was less than eighteen years old when he committed the offense. The Court ruled that the Eighth Amendment (which bars cruel and unusual punishments) prohibits a sentence of life imprisonment without parole for a conviction of a non-homicide offense committed when a defendant had not yet reached his or her eighteenth birthday.

[Author's note: Statutes affected in part by this ruling include: (1) G.S. 15A-1340.16B(a) (life imprisonment without parole for conviction of Class B1 felony when committed against victim who was thirteen years old or younger at time of offense and defendant had one or more prior B1 felony convictions; however, statutory provision is inapplicable if there are mitigating factors under G.S. 15A-1340.16(e)); (2) G.S. 15A-1340.17(c) (life imprisonment without parole for defendant sentenced for Class B1 felony in aggravated range with Prior Record Levels V or VI); (3) G.S. 14-7.12 (sentencing of violent habitual felon to life imprisonment without parole); and (4) G.S. 14-288.22(a) (life imprisonment without parole for injuring another by using nuclear, biological, or chemical weapon of mass destruction). The appendix to the Court's opinion only cites G.S. 15A-1340.16B(a). Slip opinion at 34. It is highly unlikely that a defendant who was under eighteen years old when the offense was committed would qualify to be sentenced to life imprisonment without parole under the statutes discussed in (1), (2), and (3), above.]

Miscellaneous Issues

Court Rules That Second Amendment Applies to the States

McDonald v. City of Chicago, 130 S. Ct. 3020, ___ L. Ed. 2d ___ (28 June 2010). In District of Columbia v. Heller, 128 S. Ct. 2783 (2008), the Court ruled that the Second Amendment guarantees an individual's right to possess a firearm unconnected to service in a militia and to use a firearm for traditionally lawful purposes, such as self-defense in a home. The *Heller* Court also ruled unconstitutional the District of Columbia's ban on handgun possession in a home as well as its prohibition against rendering operable for immediate self-defense any lawful firearm in a home. Plaintiffs in *McDonald* challenged under the Second Amendment the constitutionally of city ordinances in Illinois that effectively barred the possession of handguns by private citizens. The Court ruled that the Second Amendment right to possess a handgun in a home for self-defense applies to the states. [Author's note: The *Heller* ruling applied only to the federal government.] The Court stated that it had made clear in *Heller* that the ruling did not cast doubt on such longstanding regulatory measures as prohibitions on the possession of firearms by felons and the mentally ill, laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms. The Court stated that it repeats those assurances in this case.

(1) State Appellate Court's Upholding Capital Sentencing Hearing's Mitigation Jury Instructions and Forms Was Not Contrary to, Or Unreasonable Application of, Clearly Established Federal Law
(2) State Appellate Court's Rejection of Defendant's Ineffective Assistance of Counsel Claim Was Not Contrary to, Or Unreasonable Application of, Clearly Established Federal Law

Smith v. Spisak, 130 S. Ct. 676, ___ L. Ed. 2d ___ (12 January 2010). The defendant was convicted in a state court of three murders and sentenced to death. He filed a habeas corpus petition in federal court alleging that constitutional errors occurred at his trial. The Court ruled: (1) the state appellate court's upholding of the capital sentencing hearing's mitigation jury instructions and forms [see Mills v. Maryland, 486 U.S. 367 (1988)] was not contrary to, or an unreasonable application of, clearly established federal law; and (2) the state appellate court's rejection of defendant's ineffective assistance of counsel claim concerning defense counsel's jury argument was not contrary to, or an unreasonable application of, clearly established federal law; the Court alternatively ruled that even if the deferential standard of review under 28 U.S.C. § 2254(d(1) was inapplicable, it would reject the defendant's claim.

State Appellate Court's Rejection of Defendant's Claim That State's Evidence Was Insufficient to Convict Defendant Was Not Unreasonable Application of Clearly Established Federal Law

McDaniel v. Brown, 130 S. Ct. 665, ___ L. Ed. 2d ___ (11 January 2010). The defendant was convicted of sexual assault in a state court. The Court ruled the state appellate court's rejection of the defendant's claim that the state's evidence was insufficient to convict the defendant [see the standard in Jackson v. Virginia, 443 U.S. 307 (1979)] was not an unreasonable application of clearly established federal law.

Court Rules That Its Prior Rulings Were Not "Clearly Established" (Federal Habeas Review Standard) That Judge Must Reject Demeanor-Based Explanation for Peremptory Challenge Unless Judge Personally Observed and Recalled Aspect of Juror's Demeanor on Which Explanation Was Based

Thaler v. Haynes, 130 S. Ct. 1171, ___ L. Ed. 2d ___ (22 February 2010). The defendant was tried in a Texas court and convicted of murder. Two judges presided at different stages of the defendant's trial. One judge presided when the attorneys questioned the prospective jurors individually, but another judge took over when peremptory challenges were exercised. The defendant filed a federal habeas petition challenging the second judge's ruling that the prosecutor did not violate *Batson v. Kentucky*, 476 U.S. 79 (1986), when making a demeanor-based explanation for a peremptory challenge of an African-American juror. The Court ruled that its prior rulings were not "clearly established" (federal habeas standard of review) that a judge must reject a demeanor-based explanation for a peremptory challenge unless the judge personally observed and recalled the aspect of the juror's demeanor on which the explanation was based.

State Court's Conclusion That Defendant's Counsel Made Strategic Decision in Capital Sentencing Hearing Not to Pursue or Present Evidence of Defendant's Mental Deficiencies Was Not Unreasonable Determination of Facts

Wood v. Allen, 130 S. Ct. 841, ___ L. Ed. 2d ___ (20 January 2010). The defendant was convicted in state court of murder and sentenced to death. The Court ruled in the defendant's federal habeas action that the state court's conclusion that his counsel made a strategic decision in

the capital sentencing hearing not to pursue or present evidence of his mental deficiencies was not an unreasonable determination of the facts in light of the evidence presented in the state court proceedings.

State Appellate Court Ruling That Trial Court Did Not Err in Declaring Mistrial Due to Hung Jury Was Not Unreasonable Application of Clearly Established Federal Law

Renico v. Lett, 130 S. Ct. 1855, 176 L. Ed. 2d 678 (3 May 2010). A state appellate court ruled the trial court did not err in declaring a mistrial due to a hung jury, and thus a retrial was permissible under the Double Jeopardy Clause. The defendant then challenged that ruling in a federal habeas action. The Court ruled that the state appellate court's ruling was not an unreasonable application of clearly established federal law, as determined by the United States Supreme Court.

Court Remands Federal Habeas Action to Federal Court of Appeals

Wellons v. Hall, 130 S. Ct. 727, ___ L. Ed. 2d ___ (19 January 2010). The defendant was convicted in state court of murder and sentenced to death. He raised an issue in a federal habeas action that there were improper ex parte contacts between the trial judge and jury. The Court remanded the case to the federal court of appeals for further consideration of the defendant's claims.

Defendant's Federal Habeas Application Was Not Barred as "Second or Successive" Application

Magwood v. Patterson, 130 S. Ct. 2788, ___ L. Ed. 2d ___ (24 June 2010). The defendant was convicted in state court of murder, sentenced to death, and the conviction and sentence were affirmed by a state appellate court. He sought federal habeas corpus relief, which granted a new sentencing hearing. He then was sentenced to death again in state court. He filed a federal habeas corpus application challenging the new death sentence. The Court ruled that the second habeas application was not barred under federal law as a "second or successive" application.

Court Rules That Federal District Court Erred in Dismissing Prisoner's Excessive Force Civil Claim Against Correction Officer Based Entirely on Its Determination That Prisoner's Injuries Were "De Minimis"

Wilkins v. Gaddy, 130 S. Ct. 1175, ___ L. Ed. 2d ___ (22 February 2010). The Court ruled that a North Carolina federal district court erred in dismissing a prisoner's excessive force civil claim against a correction officer based entirely on its determination that prisoner's injuries were "de minimis." The Court noted, however, that the absence of serious injury is not irrelevant to the Eighth Amendment inquiry whether there is a valid excessive force claim (see the Court's discussion of this issue.)