

## **Criminal Procedure**

### **Sentencing**

[\*Alleyne v. United States\*](#), 570 U.S. \_\_\_ (June 17, 2013). The Court overruled *Harris v. United States*, 536 U.S. 545 (2002), and held that any fact that increases a mandatory minimum sentence must be submitted to the jury. The defendant was charged with several federal offenses, including using or carrying a firearm in relation to a crime of violence under § 924(c)(1)(A). The statute provided in part that anyone who “uses or carries a firearm” in relation to a “crime of violence” shall be sentenced to a term of imprisonment of not less than 5 years and that if the firearm is “brandished,” the term of imprisonment is not less than 7 years. The jury convicted the defendant of the offense and indicated on the verdict form that he had “[u]sed or carried a firearm during and in relation to a crime of violence”; it did not indicate a finding that the firearm was brandished. The trial court applied the “brandishing” mandatory minimum and sentenced the defendant to seven years’ imprisonment. The Court of Appeals affirmed, noting that the defendant’s objection to the sentence was foreclosed by *Harris*, which had held that judicial fact-finding that increases the mandatory minimum sentence for a crime is permissible under the Sixth Amendment. The Court reversed.

## **Evidence**

### **Use of Defendant’s Silence at Trial**

[\*Salinas v. Texas\*](#), 570 U.S. \_\_\_ (June 17, 2013). Use at trial of the defendant’s silence during a non-custodial interview did not violate the Fifth Amendment. Without being placed in custody or receiving *Miranda* warnings, the defendant voluntarily answered an officer’s questions about a murder. But when asked whether his shotgun would match shells recovered at the murder scene, the defendant declined to answer. Instead, he looked at the floor, shuffled his feet, bit his bottom lip, clenched his hands in his lap, and began “to tighten up.” After a few moments, the officer asked additional questions, which the defendant answered. The defendant was charged with murder and at trial prosecutors argued that his reaction to the officer’s question suggested that he was guilty. The defendant was convicted and on appeal asserted that this argument violated the Fifth Amendment. The Court took the case to resolve a lower court split over whether the prosecution may use a defendant’s assertion of the privilege against self-incrimination during a non-custodial police interview as part of its case in chief. In a 5-to-4 decision, the Court held that the defendant’s Fifth Amendment claim failed. Justice Alito, joined by the Chief Justice and Justice Kennedy found it unnecessary to reach the primary issue, concluding instead that the defendant’s claim failed because he did not expressly invoke the privilege in response to the officer’s question and no exception applied to excuse his failure to invoke the privilege. Justice Thomas filed an opinion concurring in the judgment, to which Justice Scalia joined. In Thomas’s view the defendant’s claim would fail even if he had invoked the privilege because the prosecutor’s comments regarding his pre-custodial silence did not compel him to give self-incriminating testimony.