Robert L. Farb
Institute of Government
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1991-92 U.S. SUPREME COURT: CASES AFFECTING CRIMINAL LAW & PROCEDURE

Equal Protection Clause and Jury Discrimination

Defendant May Not Exercise Peremptory Based on Racial Discrimination

Georgia v. McCollum, 112 S. Ct. 2348, 120 L.Ed.2d 33, 51 Crim. L. Rep. 2167 (18 June 1992). Equal protection clause prohibits a criminal defendant from engaging in purposeful racial discrimination in exercising peremptory challenges.

Sixth Amendment

Confrontation Clause Does Not Require Showing of Witness's Unavailability When Evidence Admitted Under Firmly-Rooted Hearsay Exception

White v. Illinois, 112 S. Ct. 736, 116 L.Ed.2d 848, 50 Crim. L. Rep. 2033 (15 January 1992). At defendant's trial for sexual assault of four-year-old girl, evidence of the girl's statements to babysitter, mother, investigating officer, emergency room nurse, and doctor were admitted under either "spontaneous utterance" or "statement made in course of medical examination" exceptions to the hearsay rule. The girl never testified at trial, and trial judge did not find that she was unavailable as a witness. Relying on United States v. Inadi, 475 U.S. 387 (1986) and clarifying the ruling in Ohio v. Roberts, 448 U.S. 56 (1980), the Court ruled that when proffered hearsay is admissible within a firmly-rooted exception to the hearsay rule (both hearsay exceptions in this case are firmly-rooted exceptions), the confrontation clause is satisfied and therefore a showing of unavailability of the hearsay declarant as a witness at trial is not required. [For a North Carolina case consistent with this ruling, see State v. Stager, 329 N.C. 278, 406 S.E.2d 876 (1991).]

[The Court's ruling effectively overruled State v. Kerley, 87 N.C. App. 240 (1987), which had ruled that evidence admissible under Rule 803(2) as excited utterance was inadmissible because prosecution had failed to produce hearsay declarant or show reasonable efforts to produce declarant.]

Involuntary Medication Of Defendant During Trial Violated Sixth Amendment And Due Process Rights

Riggins v. Nevada, 112 S. Ct. 1810, 118 L.Ed.2d 479, 51 Crim. L. Rep. 2099 (18 May 1992). Involuntary medication (with antipsychotic drugs) of defendant for his mental condition during his capital trial violated his Sixth Amendment and due process rights (the drugs may have impaired his demeanor, content of his testimony, ability to follow trial proceedings, and substance of communication with counsel) when trial judge failed to make findings of need to administer medication or to determine reasonable alternatives to medication.

Right to Speedy Trial Violated

Doggett v. United States, 112 S. Ct. 2686, 120 L.Ed.2d 520, 51 Crim. L. Rep. 2244 (24 June 1992). Based on facts in this case, delay (eight and one-half years) between defendant's indictment and his arrest violated his right to a speedy trial.

Double Jeopardy

Double Jeopardy Does Not Bar Prosecution Of Acts Used As Evidence In Earlier Prosecution; *Grady v. Corbin* Distinguished

United States v. Felix, 112 S. Ct. 1377, 118 L.Ed.2d 25, 50 Crim. L. Rep. 2120 (25 March 1992). Defendant operated a facility in Oklahoma at which he illegally manufactured methamphetamine. The facility was raided and shut down by law enforcement officers. Defendant then attempted to set up a similar operation in Missouri. Defendant was tried and convicted in Missouri federal court of attempting to manufacture methamphetamine in Missouri; the government used as Rule 404(b) evidence the defendant's activities in Oklahoma. In a later prosecution in Oklahoma federal court, he was tried and convicted of both conspiracy and substantive drug offenses in connection with operating the facility in Oklahoma; evidence of the defendant's Missouri activities were introduced to prove both the conspiracy (two of the nine overt acts alleged in the indictment concerned the Missouri activities) and substantive offenses. The Court ruled, distinguishing Grady v. Corbin, 495 U.S. 508, 110 S. Ct. 2084, 109 L.Ed.2d 548 (1990) and relying on Dowling v. United States, 493 U.S. 342, 110 S. Ct. 668, 107 L.Ed.2d 708 (1990), that the prosecution of the defendant for the substantive drug offenses in Oklahoma federal court was not barred by the introduction of evidence of those offenses in the prior Missouri prosecution; mere overlap in proof between two prosecutions does not constitute a double jeopardy violation. The Court also ruled, clarifying and limiting Grady v. Corbin, that conspiracy and substantive offenses are separate offenses [see Garrett v. United States, 471 U.S. 773 (1985)] and evidence of a previously prosecuted substantive offense may be used to prove an overt act of a subsequently prosecuted conspiracy offense without violating the double jeopardy clause.

Miscellaneous

Commitment Of Insanity Acquittees Until They Prove That They Are No Longer Dangerous Is Unconstitutional

Foucha v. Louisiana, 112 S. Ct. 1780, 118 L.Ed.2d 437, 51 Crim. L. Rep. 2084 (18 May 1992). Louisiana statute violates due process clause because it allows insanity acquittees to remain involuntarily committed to mental institutions until acquittees demonstrate that they are not dangerous to themselves or others, even though they do not suffer from any mental illness. The Court indicated (although it does not rule) that to justify continued involuntary commitment of insanity acquittees, state must prove (civil commitment standard) by clear, cogent and convincing evidence that acquittee is mentally ill and dangerous. The initial commitment immediately after insanity acquittal may be ordered without complying with civil commitment standard, Jones v. United States, 463 U.S. 354 (1983).

Burden of Proving Defendant's Incompetence

Medina v. California, 112 S. Ct. 2572, 120 L.Ed.2d 353, 51 Crim. L. Rep. 2204 (22 June 1992). Due process clause permits state to require that defendant asserting incompetence to stand trial bears burden of proving so by preponderance of evidence.

Defendant Entitled to Inquire About Jurors' Belief in Automatic Death Penalty

Morgan v. Illinois, 112 S. Ct. 2222, 119 L.Ed.2d 492, 51 Crim. L. Rep. 2145 (15 June 1992). Due process clause requires that defendant in capital case must be permitted to inquire whether prospective jurors would automatically impose the death penalty if the defendant is convicted of a capital offense.

Defendant's Group Membership Irrelevant In Capital Sentencing Hearing, Based On Facts In This Case

Dawson v. Delaware, 112 S. Ct. 1093, 117 L.Ed.2d 309, 50 Crim. L. Rep. 2088 (9 March 1992). Defendant killed victim while on escape from a Delaware prison. The Court ruled that evidence of defendant's membership in Aryan Brotherhood, a white racist prison gang, was irrelevant in defendant's capital sentencing hearing and its introduction violated his First Amendment rights concerning beliefs and associations. Although one's beliefs may be admissible under some circumstances, they were inadmissible in this case because: (1) state's evidence did not offer any information about the beliefs of the Delaware chapter of this group; (2) any racist beliefs of the group were not tied to the murder because the defendant and victim were white; and (3) there was no evidence that the group had committed or endorsed unlawful or violent acts.

Rule 804(b)(1): Must Show Similar Motive to Develop Testimony

United States v. Salerno, 112 S. Ct. 2503, 120 L.Ed.2d 255, 51 Crim. L. Rep. 2180 (19 June 1992). Former testimony (in this case, grand jury testimony of witnesses that the defendant sought to offer against the government) may not be introduced under Rule 804(b)(1) without evidence that the party against whom it is being offered had a similar motive to develop the testimony; there are no exceptions to the similar-motive requirement.

Federal Prosecutor Has No Duty To Present Exculpatory Evidence To Grand Jury

United States v. Williams, 112 S. Ct. 1735, 118 L.Ed.2d 352, 51 Crim. L. Rep. 2060 (4 May 1992). Federal prosecutor has no duty to present exculpatory evidence to grand jury, and federal courts have no authority to dismiss indictments when prosecutors fail to do so.

Forcible Abduction From Foreign Country Does Not Prohibit Prosecution

United States v. Alvarez-Machain, 112 S. Ct. 2188, 119 L.Ed.2d 441, 51 Crim. L. Rep. 2154 (15 June 1992). Defendant's forcible abduction from Mexico to the United States does not prohibit criminal prosecution.

No Due Process Violation When Inadequate Evidence Supporting One Object In Multi-Object Conspiracy

Griffin v. United States, 112 S. Ct. 466, 116 L.Ed.2d 371, 50 Crim. L. Rep. 2006 (3 December 1991). Due process clause of Fifth Amendment is not violated when, in federal prosecution, there is a general guilty verdict in a multi-object conspiracy when inadequate evidence supports conviction as to one of the objects of the conspiracy.

Entrapment Existed As A Matter Of Law In Child Pornography Case

Jacobsen v. United States, 112 S. Ct. 1535, 118 L.Ed.2d 174, 51 Crim. L. Rep. 2003 (6 April 1992). Based on facts of this case, the Court ruled that government failed, as a matter of law, to produce evidence that defendant was predisposed to violate law by receiving child pornography through the mail.

First Amendment

Cross-Burning Ordinance Facially Invalid Under First Amendment

R. A. V. v. City of St. Paul, 112 S. Ct. 2538, 120 L.Ed.2d 305, 51 Crim. L. Rep. 2225 (22 June 1992). Ordinance, which prohibits display of symbol that one knows or has reason to know "arouses anger, alarm or resentment in others on the basis of race, color, creed, religion or gender," is facially invalid under First Amendment because it represents content-based discrimination.

Parade Permit Fee Unconstitutional

Forsyth County v. Nationalist Movement, 112 S. Ct. 2395, 120 L.Ed.2d 101, 51 Crim. L. Rep. 2195 (19 June 1992). Ordinance was unconstitutional because it gave county administrator unbridled discretion in setting amount, if any, of parade permit fee and also because administrator is to consider content of parade, and public response to that content, in setting fee amount.

First Amendment Violated When Criminal's Monies From Book About Crime Must Go To Escrow Account

Simon & Shuster v. New York State Crime Victims Board, 112 S. Ct. 501, 116 L.Ed.2d 476, 50 Crim. L. Rep. 2020 (10 December 1991). New York statute requires entity contracting with person accused or convicted of crime for book or other work describing crime must pay to crime victims board any monies owed to person under contract; escrow account must be established for payment to victim obtaining civil judgment against person. The Court ruled that statute is unconstitutional

because it impermissibly imposes burden on content of person's speech; statute is significantly overinclusive.

Ban On Solicitation At Airports

International Society for Krishna Consciousness v. Lee, 112 S. Ct. 2701, 120 L.Ed.2d 541, 51 Crim. L. Rep. 2253 (26 June 1992). Airport terminal operated by public authority is a non-public forum, and thus ban on solicitation must only satisfy a reasonableness standard. Ban on solicitation in this case was reasonable.

Civil Liability Issues

Secret Service Agents' Arrest For Presidential Threat Entitled to Qualified Immunity

Hunter v. Bryant, 112 S. Ct. 534, 116 L.Ed.2d 589, 50 Crim. L. Rep. 3110 (16 December 1991). The Court ruled that Secret Service agents were entitled to qualified immunity for arrest of person for threatening life of President Reagan because reasonable officer could have believed that probable cause existed to make arrest, based on facts in this case.

Absolute Judicial Immunity For Ordering Officers To Bring Attorney In Court

Mireles v. Waco, 112 S. Ct. 287, 116 L.Ed.2d 9, 50 Crim. L. Rep. 3050 (21 October 1991). When public defender failed to appear at calendar call, trial judge ordered law enforcement officers to forcibly seize him and to bring him into the judge's courtroom, which they did. The Court ruled that the judge, when sued by the public defender under § 1983, was entitled to absolute immunity for his actions.

State Official Personally Liable When Sued In Individual Capacity Under § 1983

Hafer v. Melo, 112 S. Ct. 358, 116 L.Ed.2d 301, 50 Crim. L. Rep. 2002 (5 November 1991). State official may be sued in individual capacity and held personally liable under § 1983. [Note: (1) immunity defenses, absolute or qualified, may apply to these officials when sued in their individual capacity; (2) a lawsuit against State official in his or her official capacity is a suit against the State that is barred by the Eleventh Amendment, Will v. Michigan Dept. of State Police, 491 U.S. 58 (1989).]

Serious Injury Not Required For Eighth Amendment Violation When Assault On Prisoner

Hudson v. McMillian, 112 S. Ct. 995, 117 L.Ed.2d 156, 50 Crim. L. Rep. 2052 (25 February 1992). Prison guards' use of excessive physical force against inmate may constitute cruel and unusual punishment under Eighth Amendment even when the inmate does not suffer serious injury.

Federal Habeas Corpus

Scope Of Federal Habeas Corpus Review Of Evidentiary Matters In State Prosecution

Estelle v. McGuire, 112 S. Ct. 475, 116 L.Ed.2d 385, 50 Crim. L. Rep. 2012 (4 December 1991). Defendant was convicted in California state court of second-degree murder of his infant daughter, based partly on evidence that the child suffered from "battered child syndrome" (hereafter, BCS evidence). Federal appellate court granted him federal habeas relief based on constitutional error in admitting that evidence. The Court ruled: (1) federal habeas review does not permit a federal court to reexamine state law questions (federal appellate court had concluded that BCS evidence had been incorrectly admitted under California law); (2) BCS evidence was relevant to show child's death was intentional, not accidental, and due process clause does not require the state to refrain from introducing relevant evidence simply because the defense does not contest an element of a crime (court did not decide whether admission of irrelevant evidence would violate due process); and (3) jury instruction on its use of BCS evidence in determining defendant's guilt did not permit jury to convict based on defendant's propensity to commit crime and therefore did not violate due process clause (court did not decide whether use of "prior crimes" evidence to show propensity to commit charged crime would violate due process).

Federal Habeas Corpus: Decision Was Not A New Rule Under *Teague v. Lane*

Stringer v. Black, 112 S. Ct. 1130, 117 L.Ed.2d 367, 50 Crim. L. Rep. 2094 (9 March 1992). Defendant, sentenced to death based on three aggravating factors, one of which was unconstitutionally vague (especially heinous, atrocious, or cruel) under Maynard v. Cartwright, 486 U.S. 356 (1988) and Clemons v. Mississippi, 494 U.S. 738 (1990) [defendant's conviction became final before these decisions], was entitled to habeas corpus review because these two decisions did not announce a new rule under Teague v. Lane, 489 U.S. 288 (1989).

Federal Habeas Corpus: Cause-and-Prejudice Standard

Keeney v. Tamayo-Reyes, 112 S. Ct. 1715, 118 L.Ed.2d 318, 51 Crim. L. Rep. 2069 (4 May 1992). Federal habeas petitioner is not entitled to federal evidentiary hearing on a claim for which petitioner failed to develop a factual basis in state court by merely showing that he or she did not deliberately bypass opportunity to do so in state court; instead, petitioner must satisfy cause-and-prejudice test of Wainwright v. Sykes, 433 U.S. 72 (1977).

"Actual Innocence" Standard

Sawyer v. Whitley, 112 S. Ct. 2514, 120 L.Ed.2d 269, 51 Crim. L. Rep. 2213 (22 June 1992). To show "actual innocence" one must show by clear and convincing evidence that but for a constitutional error, no reasonable juror would have found the defendant eligible for the death penalty under applicable state law.

Sufficient Evidence to Sustain Conviction on Habeas Review

Wright v. West, 112 S. Ct. 2482, 120 L.Ed.2d 225, 51 Crim. L. Rep. 2184 (19 June 1992). Without deciding the standard of review habeas court should use in reviewing sufficiency of evidence to sustain state court conviction, the Court found that the evidence was sufficient in this case.