"SUPREME COURT UPDATE"
Supplemental Paper

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CHAPTER 6

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***Melendez-Diaz v. Massachusetts*, 2009 WL 1789468**

Issue

When a state laboratory analyst submits a sworn certificate stating material seized by police contains contraband, does the Confrontation Clause require that the analyst appear at trial in order for the sworn certificate to be admissible?

Facts

Melendez-Diaz was arrested after police witnessed him dropping off a man they found to be in possession of a large quantity of cocaine. Nineteen small baggies full of what appeared to be cocaine were found in the backseat of the police cruiser used to transport Melendez-Diaz to the local police station following his initial arrest. Results from analysis performed at a state run laboratory showed the substance to contain cocaine. Sworn certificates from analysts which stated these results were admitted into evidence over Melendez-Diaz's objections. Lower courts found that the use of these reports did not violate the Sixth Amendment's Confrontation Clause.

Holding

The Supreme Court, in an opinion by Justice Scalia, joined by Justices Stevens, Souter, Thomas, and Ginsburg, held that the sworn certificates amounted to affidavits and that they were inadmissible unless the analyst appears at trial or the defendant is given a prior opportunity for cross-examination. Because the sworn certificates are plainly affidavits, they fall into the core class of testimonial statements that SCOTUS deem to trigger the Confrontation Clause. In other words, if the defendant is not given his right to "be confronted with" the analyst at trial, then the work product of the analyst cannot be used as evidence to prove the defendant's guilt. This rule will serve to ensure the reliability of evidence by deterring false testimony from analysts, exposing an analyst's lack of training or deficiency in judgment, and testing the methodology an analyst employs.

The dissenting opinion by Justice Kennedy, with whom Chief Justice Roberts and Justices Breyer and Alito join, argues that the majority has swept away nearly a century of legal precedent by failing to distinguish between laboratory analysts who perform scientific tests and more traditional and conventional witnesses. Because so many persons are involved in the routine testing for the presence of illegal drugs, it is impossible to tell precisely who the "analyst" that must be present at trial is. If every person in the chain of custody must appear in court, then there is effectively no way for scientific tests to be used in criminal trials.

Significance of Decision

This decision will greatly limit the ability of the State to enter scientific reports into evidence when the creator of the report is not available to testify live in court.

***Boyle v. United States*, 129 S. Ct. 2237 (2009)**

Issue

When charged under the Racketeer Influenced and Corrupt Organizations Act (RICO), must an association-in-fact enterprise have an ascertainable structure beyond that inherent in the pattern of racketeering activity in which it engages?

Facts

Boyle and his cohorts took part in a series of bank thefts across several states in the 1990s. The thefts were planned out beforehand and each participant was assigned a specific role to play, such as safecracker or getaway driver. The proceeds were later split between the participants, but no leader or formal hierarchy existed within the group. Boyle was eventually arrested and charged with several federal burglary and conspiracy counts. Over the objections of Boyle, the court included in the jury instructions language which allowed the jury to find an enterprise without a formal hierarchy existed and that an association-in-fact is "oftentimes more readily proven by what it does, rather than by abstract analysis of its structure." Boyle was convicted on 11 of 12 counts, including the RICO counts. The Second Circuit affirmed his conviction.

Holding

The Supreme Court, in an opinion by Justice Alito, joined by Chief Justice Roberts and Justices Scalia, Kennedy, Souter, Thomas, and Ginsburg, held

that a criminal association-in-fact enterprise may exist if three factors are present: 1) the enterprise has a purpose; 2) the enterprise exists with sufficient longevity to accomplish that purpose; and 3) the enterprise requires relationships among those associated with it. Importantly, the relationships among associates within the enterprise can be inferred from the underlying criminal acts and no distinct formal structural hierarchy is required to meet this element. Further, when crafting jury instructions, the judge is not required to use the term "structure" so long as the substance of those three elements are clearly laid out. The judge has great discretion in how to accomplish this when creating the jury instructions. In sum, a pattern of racketeering or other RICO predicate crimes may be used to prove the existence of an enterprise, but these patterns alone are not enough to prove that individuals were members of an enterprise.

In a two person dissent authored by Justice Stevens and joined by Justice Breyer, a much narrower interpretation of "enterprise" is advocated. Stevens argues that Congress intended "enterprise" in the context of RICO "to refer only to business-like entities that have an existence apart from the predicate acts committed by their employees or associates."

***Yeager v. United States*, 129 S. Ct. 2360 (2009)**

Issue

Does the Double Jeopardy Clause preclude the government from retrying defendants acquitted of some charges on factually related counts on which the jury failed to reach a verdict?

Facts

Yeager was charged with securities and wire fraud related to misleading statements he made to the public about fiber-optic telecommunications systems offered by his employer, a subsidiary of Enron. Additionally, he was charged with money laundering and insider trading for selling Enron stock while he was privy to material, nonpublic information about the telecommunication system's performance and value. Yeager was initially acquitted on the fraud counts, but the jury was unable to reach a verdict on the insider trading and money laundering counts. The government recharged him with both these counts, but Yeager moved to dismiss on Double Jeopardy Clause grounds by arguing that his acquittal on the fraud counts meant the jury decided he had not been in possession of material, nonpublic information about the telecommunication system. The District Court denied this motion and was affirmed by the Fifth Circuit.

Holding

In an opinion by Justice Stevens, in which Chief Justice Roberts and Justices Souter, Ginsburg, and Breyer joined (with Kennedy joining in part), the Supreme Court held that an apparent inconsistency between acquittals on some counts and a jury's failure to return a verdict on other factually related counts does not prevent the preclusive force of the Double Jeopardy Clause from barring a retrial. It is well established that the Double Jeopardy Clause prevents the government from retrying a defendant on charges that contain as a necessary element any issue already decided by a jury's acquittal in a prior trial. When determining what issues the previous jury has already determined, only actual decisions by the jury may be examined. This is in contrast to instances where a jury fails to make a decision, such as a hung jury, which cannot be examined for Double Jeopardy purposes. Any failure on the part of a jury to make a decision is a "nonevent" and has no bearing in a collateral estoppels analysis.

The dissent by Justice Scalia, in which Justices Thomas and Alito joined, argues that the Double Jeopardy Clause is based on English common-law which barred only repeated "prosecution for the same identical act and crime." The doctrine that Double Jeopardy bars prosecution on distinct crimes when facts essential to conviction of the second crime have been resolved in the defendant's favor is an overextension of what the Double Jeopardy Clause was originally intended to be.

***District Attorney's Office for the Third Judicial District v. Osborne*, 129 S. Ct. 2308 (2009)**

Issue

Does a criminal defendant have a right under either the Due Process Clause of the Fourteenth Amendment or 42 U.S.C. § 1983 to access a state's biological and DNA evidence post conviction?

Fact Summary

Osborne was convicted of the assault and rape of a young woman who identified him as one of her two attackers. At trial, DNA examination of a condom found near the victim and used by the rapist determined that the condom contained DNA shared by one in every six or seven African-American males, including Osborne. For reasons that remain unclear, Osborne's attorney declined to have a second, more accurate DNA test performed. Osborne was convicted, but sought post conviction relief along two separate avenues: 1) he filed for post conviction review with the Alaska Supreme Court and alleged that he had a due process right to more stringent and accurate DNA tests; and 2) he filed a 42 U.S.C. § 1983 civil rights suit in federal court to compel Alaska to provide him with the genetic material used at trial. The § 1983 suit was dismissed on the grounds that it was an improper method to obtain the evidence and that a habeas petition was the proper route to take.

Holding

Writing for a 5-4 majority, Chief Justice Roberts, joined by Justices Scalia, Kennedy, Thomas, and Alito stated that the question of when a convict may be given access to genetic evidence to prove his innocence is a question for the political branches of the government and not one for the judiciary. Post conviction access to DNA evidence is not guaranteed by the Constitution, so long as the trial was fair. Individuals who are accused but not yet convicted still must be given access to potentially exonerating evidence as per *Brady*. This decision affects only those seeking post conviction relief via non-habeas routes. Because the Supreme Court is leaving this area open for legislatures to act on, rules regarding post conviction access to DNA evidence will likely vary from state to state as legislation is enacted.

Justice Stevens, writing for himself and Justices Ginsburg, Breyer, and Souter, argued that the Brady opinion was primarily concerned with fundamental fairness and that fairness dictates that post conviction access to decisive evidence, such as DNA, be granted to prisoners.

***Safford Unified School District #1 v. Redding*, 2009 WL 1789472**

Issue

Does the Fourth Amendment protection against unreasonable search and seizures prevent public school administrators from strip searching a thirteen year old student suspected of distributing prescription pills in violation of school policy?

Fact Summary

Based on a tip received from another student, the assistant principal of a middle school in Safford, Arizona suspected an eighth grader, Savanna Redding, of being in possession of and distributing ibuprofen pills. Having such pills on school grounds was a violation of the school's policy. The assistant principal searched Savanna's backpack and, after finding nothing, had the girl taken to the nurse's office where two female aides conducted a strip search. The search required Savanna to expose her breasts and pelvic area by pulling her underwear away from her body. No pills were found, however. Savanna's mother, April Redding, filed a 42 U.S.C. § 1983 civil rights suit against the Safford School District alleging that the strip search was a violation of Savanna's Fourth Amendment rights. Summary judgment was granted in favor of the school district and was affirmed by the Ninth Circuit.

Holding

Writing for the majority, Justice Souter, joined by Chief Justice Roberts and Justices Scalia, Kennedy, Breyer, Alito, Stevens, and Ginsburg held that the strip search had indeed violated Savanna's Fourth Amendment rights. Although there is little doubt that the assistant principal had reasonable suspicion to conduct a search of Savanna, a strip search was not justified as the nature of the pills being sought were of a limited threat. Additionally, there was no evidence to suggest that Savanna was hiding pills in her underwear. The scope of a search of a student must be reasonably related to the

original justification for the interference from the school administration. In this case, the scope of the search greatly outweighed the proposed threat. Despite this, the school officials who took part in the search are entitled to qualified immunity because they had no way of knowing at the time that a strip search was unreasonable under the Fourth Amendment.

As the lone dissenter, Justice Thomas argues that the Fourth Amendment guarantees the right against unreasonable searches and seizures and that what is reasonable depends on the context within which the search takes place. Students at a public school retain their Fourth Amendment rights, but these rights are different in school than they would be on the street. The reasonableness inquiry must take into account the responsibility that the school must exercise to ensure the safety and well being of its students.

***Caperton v. A.T. Massey Coal Co., Inc.*, 129 S. Ct. 2252 (2009)**

Issue

When an elected judge refuses to recuse himself from a case in which a major financial contributor to his campaign is a party, has the non-contributing party been denied due process?

Fact Summary

The West Virginia Supreme Court of Appeals is the state's highest court and is made up of judges elected by the people. As in most elections, money is the lifeblood of candidates running for seats on the Court. Justice Benjamin ran and won in a particularly nasty campaign for one of the seats on the bench, thanks in no small part to A.T. Massey Coal Co., which spent upwards of $3 million in direct or indirect contributions to get Benjamin elected in November 2004. Two years prior to the election of Benjamin, A.T. Massey Coal was found to be liable to Caperton and several other companies the tune of $50 million, a decision which Massey appealed. By October of 2005, Massey's appeal had reached the Supreme Court of Appeals and Caperton moved for Benjamin to recuse himself. Benjamin denied the motion and the $50 million verdict against Massey was reversed.

Holding

Writing for the majority, Justice Kennedy, joined by Justices Stevens, Souter, Ginsburg, and Breyer, stated that when taking into account all the circumstances of the case before the Court, disqualification of Benjamin was required and that it was unconstitutional for Benjamin to hear the case of a major campaign contributor. The test the Court employs to determine if there is a risk of actual bias looks at "the contribution's relative size in comparison to the total amount of money contributed to the campaign, the total amount spent in the election, and the apparent effect such contribution had on the outcome of the election." Kennedy goes on to deny that the Caperton decision will lead to a flood of recusal motions because the facts in this case are so extreme.

In his dissent, Chief Justice Roberts, joined by Justices Scalia, Thomas, and Alito, argues that two situations have been identified where recusal will be required: when the judge has a financial interest in the outcome of the case and when the judge is trying a defendant for certain criminal contempt charges. He goes on to criticize the majority's decision as handing down a test and rule that is far too vague and that the issue before the Court is one that should be left to the legislature or to local court rules.