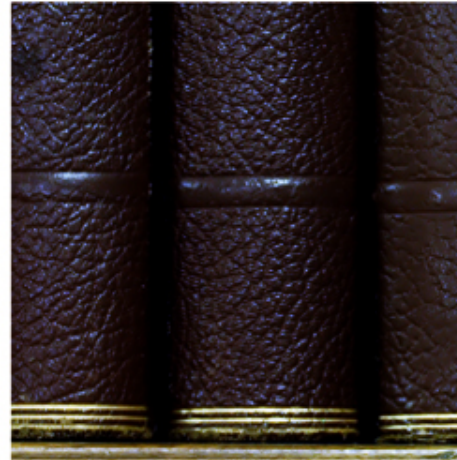


Supreme Court Criminal Law Cases 2015-2016 Term

Justice David Stras

Minnesota Supreme Court



Major Topics

- **Fourth Amendment**
- **Other Constitutional Criminal Procedure Cases**
- **Federal Statutes**
- **Retroactivity**

Fourth Amendment

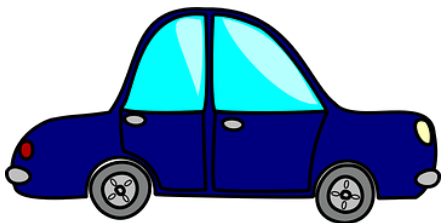


Birchfield v. North Dakota



Facts:

- ❑ Thirteen states make it a crime for an individual to refuse to take a breath, blood, or urine test when the individual is suspected of operating a motor vehicle while intoxicated.
- ❑ Consolidated with *Bernard v. Minnesota* and *Beylund v. Levi*.
- ❑ Three different legal scenarios:
 - Bernard declined to take a breath test.
 - Birchfield declined to take a blood test.
 - Beylund submitted to a warrantless blood test because he was told that refusal would lead to criminal penalties.



Birchfield v. North Dakota

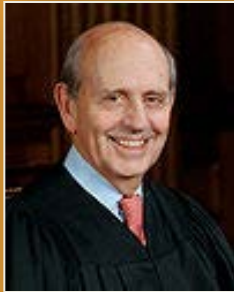
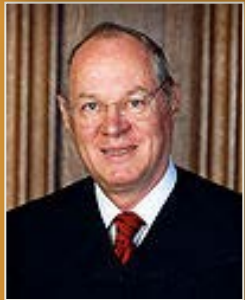


Holdings:

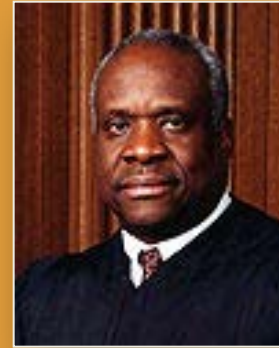
- ❑ **North Dakota Supreme Court:** The statute criminalizing a driver's refusal to submit to a chemical test is constitutional.
 - ▣ *Birchfield*: The test-refusal statute is constitutional because it survives the "general reasonableness requirement of the Fourth Amendment."
 - ▣ *Beylund*: Beylund's consent to a chemical blood test was "voluntary," even though he would have been subject to criminal penalties if he had refused.
- ❑ **Minnesota Supreme Court:**
 - ▣ The majority upheld the test-refusal conviction, concluding that the police officer could have conducted a warrantless search of the defendant's breath under the search-incident-to-arrest exception.
 - ▣ The dissent (Stras, Page, JJ.) would have concluded that the search-incident-to-arrest exception did not apply and that the test-refusal statute, as applied to Bernard, is unconstitutional because it criminalizes the refusal to consent to an illegal search.

Birchfield v. North Dakota

Majority



Concurrence



Concurring in part

Dissenting in part



Birchfield v. North Dakota

HOLDING: The Fourth Amendment permits warrantless breath tests incident to arrest for drunk driving but not warrantless blood tests.

Majority

- When “the founding era does not provide any definitive guidance” on a search incident to arrest, the Court will weigh “the degree to which it intrudes upon an individual’s privacy and . . . the degree to which it is needed for the promotion of legitimate governmental interests.”
- The impact of breath tests on privacy is slight (“almost negligible” physical intrusion) and the need for breath tests is great (the state has a “compelling interest” in deterring drunk driving).
- A blood test implicates significant privacy concerns because it is more intrusive, and it serves the same purpose as the less intrusive breath test.

Concurrence in part, Dissent in Part

- Justice Thomas would have held that the exigent-circumstance exception permits both tests, as alcohol becomes undetectable in the blood over time.
- The Court’s rule draws an “artificial line in the sand between blood and breath tests.”

Concurrence/Dissent

- Justice Sotomayor would have held the Fourth Amendment prohibits both warrantless breath *and* blood tests.
- Search incident to arrest “is particularly ill-suited to breath tests.”

Utah v. Strieff

Facts:

- ❑ An officer observed Strieff leaving a suspected drug house.
- ❑ During an illegal stop, a police officer asked Strieff for identification.
- ❑ The officer discovered that Strieff had an outstanding arrest warrant for a traffic violation.
- ❑ The officer arrested Strieff, searched him incident to the arrest, and discovered methamphetamine and drug paraphernalia.
- ❑ The State charged Strieff with attempted of a controlled substance and possession of drug paraphernalia.
- ❑ Strieff moved to suppress the evidence.

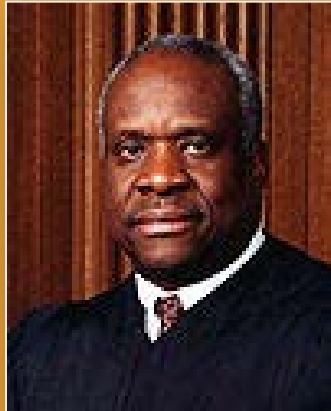
Utah v. Strieff

Holdings:

- ❑ **Utah trial court:** The evidence was admissible because the presence of an arrest warrant was an “extraordinary intervening circumstance” and the officer’s misconduct was not flagrant.
- ❑ **Utah Supreme Court:** Reversed. Only a voluntary act is sufficient to break the connection between an illegal search and the discovery of evidence.

Utah v. Strieff

Majority



Dissents



Joined parts I, II, and III



Utah v. Strieff

HOLDING: The evidence is admissible because the discovery of the warrant attenuated the connection between the stop and the evidence.

Majority

- Discovery of an outstanding arrest warrant was a “critical intervening circumstance.”
- The officer’s illegal stop was not “flagrantly unlawful police misconduct” because the officer sought information about a house whose occupants were legitimately suspected of dealing drugs.

Dissent

- Justice Sotomayor’s dissent: “The officer in this case discovered Strieff’s drugs by exploiting his own illegal conduct.”
- Justice Sotomayor alone: Minorities are disproportionate victims of this type of conduct by police.
- Justice Kagan’s dissent: An officer’s incentive to violate the Constitution increases as a result of the Court’s decision.

Other Constitutional Criminal Procedure Cases



Williams v. Pennsylvania

Facts:

- ❑ In 1984, Terrance Williams was convicted of homicide in Philadelphia and sentenced to death.
- ❑ Then-district attorney Ronald Castille approved the request to pursue the death penalty in Williams' case.
- ❑ Castille was later elected to the Pennsylvania Supreme Court.
- ❑ In 2012, Williams successfully challenged his sentence on postconviction review based on a *Brady* violation at trial.
- ❑ The Commonwealth appealed the decision to the Pennsylvania Supreme Court.
- ❑ Williams filed a motion requesting Chief Justice Castille's recusal, which Castille summarily denied.

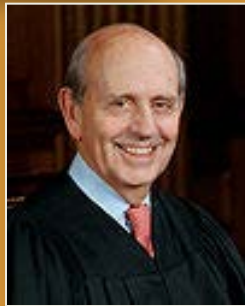
Williams v. Pennsylvania

Facts Continued:

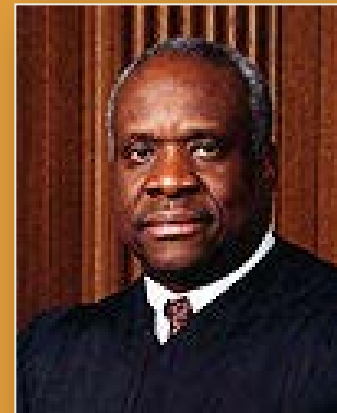
- ❑ Williams filed a motion requesting Chief Justice Castille's recusal, which Castille summarily denied.
- ❑ In a 4-2 decision, the death sentence was reinstated by the Pennsylvania Supreme Court. Chief Justice Castille joined the majority opinion.
- ❑ Chief Justice Castille wrote a separate concurrence as well, stating that the postconviction court had "lost sight of its role as a neutral judicial officer" and had stayed Williams's execution "for no valid reason."
- ❑ He also denounced what he perceived as "the obstructionist anti-death penalty agenda of the Federal Community Defender's Office."

Williams v. Pennsylvania

Majority



Dissents



Williams v. Pennsylvania

HOLDING: There is an impermissible risk of actual bias when a judge had prior, significant personal involvement as a prosecutor in a critical decision regarding a defendant's case.

Majority

- ❑ Chief Justice Castille's failure to recuse violated the Due Process Clause of the 14th Amendment.
- ❑ Without then-DA Castille's approval, "the Commonwealth would not have been able to pursue a death sentence," "a critical choice in the adversary process."
- ❑ "Castille's significant, personal involvement in a critical decision . . . gave rise to an unacceptable risk of actual bias."
- ❑ "[A]n unconstitutional failure to recuse constitutes structural error even if the judge in question did not cast a deciding vote."

Dissent

- ❑ Chief Justice Roberts would have concluded that there was no Due Process violation because Castille's prior knowledge and involvement related to issues not present in his motion for post-conviction relief.
- ❑ Justice Thomas also distinguished between the criminal case, in which Castille participated as DA, and Williams' post-conviction motion, in which Castille had no prior involvement. Justice Thomas said that requiring recusal under these circumstances is out of line with the Court's historical practice, citing Chief Justice Marshall's involvement in *Marbury v. Madison*.

Betterman v. Montana

Facts:

- ❑ Betterman failed to appear in court on domestic assault charges and was therefore charged with bail-jumping.
- ❑ After pleading guilty to the bail-jumping charge, he was jailed for over 14 months, awaiting sentencing.
- ❑ Eventually he was sentenced to 7 years' imprisonment, with 4 of those years suspended.
- ❑ Betterman appealed, arguing that the 14-month gap between conviction and sentencing violated his right to a speedy trial.

Betterman v. Montana

Holdings:

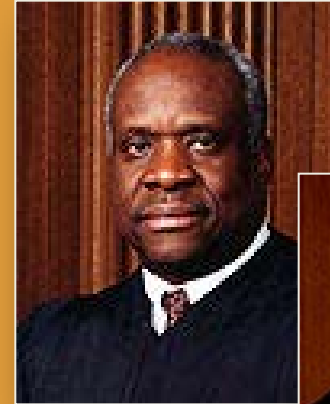
- **Montana Supreme Court:** The Sixth Amendment's Speedy Trial Clause does not apply to postconviction, presentencing delay.

Betterman v. Montana

Majority



Concurrences



Betterman v. Montana

HOLDING: The Sixth Amendment's speedy-trial guarantee does not apply once a defendant has been found guilty at trial or has pleaded guilty to criminal charges.

Majority

- ❑ The Framers understood that the speedy trial right lost force upon conviction.
- ❑ This distinction between “accused” and “convicted” and “trial” and “sentencing” endures today.
- ❑ This holding is consistent with Supreme Court precedent: the speedy-trial right does not apply to the pre-arrest stage.
- ❑ Safeguards against undue delay after conviction are found in statutes and rules, not the Constitution.

Concurrences

- ❑ Justice Sotomayor: The test for Due Process Clause challenges in this context is an open question. In a future case, she would consider using the same four-factor test from *Barker v. Wingo* for due-process challenges.
- ❑ Justice Thomas: The Court correctly reserved judgment on whether sentencing delays might violate the Due Process Clause. He stated that he is unsure whether *Barker* would “translate to the delayed sentencing context.”

United States v. Bryant

Facts:

- ❑ 18 U.S.C. §117(a) created a felony offense for habitual offenders of domestic assault within “Indian country” when the offender has at least 2 prior final convictions for domestic violence from federal, state, or Indian tribal-court proceedings.
- ❑ Bryant was previously convicted multiple times in tribal court for domestic assault.
- ❑ Bryant argued that, because he was indigent and did not have appointed counsel in the prior tribal-court proceedings, the use of those uncounseled proceedings to satisfy the predicate element of §117(a) violated both the Sixth Amendment right to counsel and the Fifth Amendment right to due process.
- ❑ Bryant’s motion to dismiss the indictment was denied, and he entered a conditional guilty plea, reserving the right to appeal.

United States v. Bryant

Holdings:

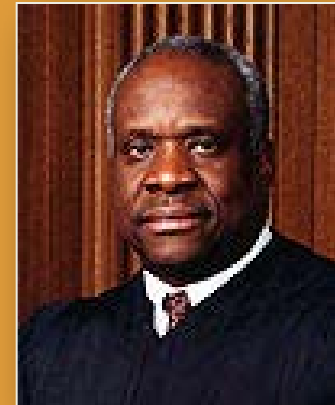
- ❑ **9th Circuit:** Reversed the conviction. Because the Sixth Amendment right to counsel does not apply to tribal-court proceedings, Bryant's uncounseled convictions were valid when entered. However, these convictions could not be used as predicate convictions for §117(a) because they would have violated the Sixth Amendment had they been rendered in state or federal court.
- ▣ **Note:** The right to counsel in tribal proceedings is provided by the Indian Civil Rights Act of 1968 (ICRA), which gives criminal defendants a right to counsel only when the sentence exceeds one year.

United States v. Bryant

Majority



Concurrence



United States v. Bryant

HOLDING: Validly entered tribal-court convictions may be used as predicate offenses in a subsequent §117(a) prosecution.

Majority

- ❑ Convictions that are valid when entered retain that status when invoked in a later proceeding.
- ❑ Bryant had no right to counsel in the tribal-court proceeding, and his Sixth Amendment rights were honored in federal court.
- ❑ There was no Sixth Amendment violation in obtaining the prior convictions *or* in using the convictions in the later §117(a) proceeding.
- ❑ The ICRA sufficiently ensures the reliability of tribal-court convictions, so their subsequent use does not violate Bryant's due-process rights.

Concurrence

- ❑ Justice Thomas joined the opinion.
- ❑ However, he questioned whether the Sixth Amendment generally bars the use, in a later proceeding, of prior convictions that violated the Sixth Amendment, because the text of the amendment provides a right to counsel only for *that* proceeding.
- ❑ He also questioned the longstanding assumption that all tribes have the authority to prosecute their own members, as well as the assumption that Congress has plenary power over tribes allowing it to pass ICRA.

Federal Statutes



Luna Torres v. Lynch

Facts:

- Any alien convicted of an “aggravated felony” is deportable, subject to expedited removal, and ineligible for several forms of discretionary relief.
- 8 U.S.C. §1101(a)(43) defines “aggravated felony” by listing various crimes, most of which are “described in” specified provisions of the federal criminal code.
 - The penultimate sentence of § 1101(a)(43)(U) states that each enumerated crime is an aggravated felony regardless of whether it violates federal, state, or foreign law.
- Luna Torres, a lawful permanent resident, pleaded guilty in a New York state court to attempted third-degree arson.
- Immigration officials then initiated removal proceedings.

Luna Torres v. Lynch

Holdings:

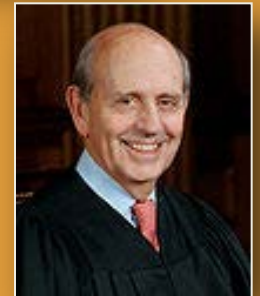
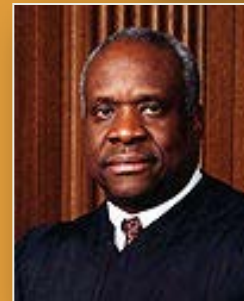
- ❑ **Immigration Judge:** The arson conviction was for an “aggravated felony,” rendering Torres ineligible for discretionary relief.
- ❑ **Board of Immigration Appeals:** Affirmed. The federal and New York arson offenses are identical except for the federal statute’s requirement that the crime be connected to interstate or foreign commerce. Because this element is only jurisdictional, New York’s arson offense is “described in” the federal statute for the purpose of defining an “aggravated felony.”
- ❑ **Second Circuit:** Denied Luna Torres’ petition for review, holding that the state offense does not need to contain the jurisdictional element found in the federal statute to qualify as an “aggravated felony.”

Luna Torres v. Lynch

Majority



Dissent



Luna Torres v. Lynch

HOLDING: A state offense is a §1101(a)(43) “aggravated felony” when it has every element of a listed federal crime except the required connection to interstate or foreign commerce.

Majority

- The plain text and dictionary definitions of the word “described” do not yield a clear answer.
- Two contextual considerations decide it:
 - 1. §1101(a)(43)’s penultimate sentence shows Congress’ intent to capture serious crimes. This intent would be undercut by excluding all state or foreign versions of federal offenses not containing the interstate-commerce element.
 - 2. The “settled practice” of distinguishing between substantive and jurisdictional elements supports reading §1101(a)(43) to include state analogues lacking the interstate-commerce requirement.

Dissent

- Court precedent has always required the state offense to match *every* element of the listed “aggravated felony.”
- Plain language resolves the case: “[E]ven the most general description cannot refer to features that the thing being described does not have.” Thus, the federal offense cannot “describe” the state offense if the latter does not have all of the elements of the former.
- “Jurisdictional” elements are often more than merely technical considerations and can go “to the magnitude and nature of the evil itself.”

Musacchio v. United States

Facts:

- Musacchio accessed his former employer's computer system without authorization for a 2-year period after resigning.
- He was indicted under 18 U.S.C. §1030(a)(2)(C), which criminalizes the acts of an individual who “intentionally accesses a computer without authorization *or* exceeds authorized access.”
 - The statute has a 5-year statute of limitations.
- Four years after the access, he was charged with both types of improper access. Six years after the access, a superseding indictment dropped the second type of improper access.
 - Musacchio did not raise a statute-of-limitations argument.
- The jury instructions (without objection from either side) incorrectly replaced “or” with “and” and therefore added an additional element (exceeding authorization), meaning that, to find him guilty, the jury had to find that he both intentionally accessed a computer without authorization *and* exceeded authorized access.

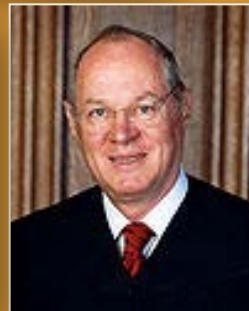
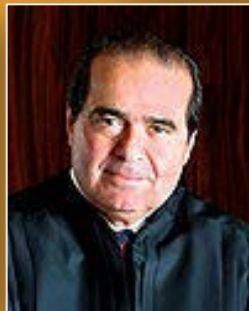
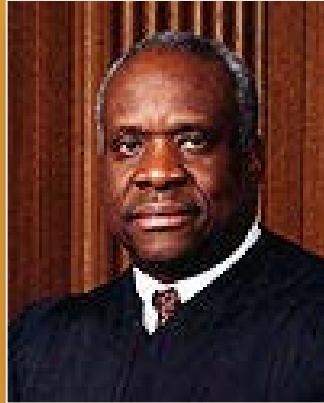
Musacchio v. United States

Holdings:

- **5th Circuit:** Affirmed the conviction: (1) Musacchio's sufficiency challenge must be weighed against the elements of the actual crime, not the incorrect jury instruction; and (2) Musacchio waived his statute-of-limitations defense by failing to raise it at trial.

Musacchio v. United States

Unanimous



Musacchio v. United States

HOLDINGS: (1) A sufficiency challenge should be assessed against the elements of the charged crime, not an erroneous jury instruction; (2) A statute-of-limitations defense is nonjurisdictional and cannot be raised for the first time on appeal.

- Sufficiency review is a limited inquiry and asks only “whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.”
 - This determination thus does not rest on how the jury was instructed, and because Musacchio did not dispute that the evidence was sufficient to convict him of the charged crime, his sufficiency challenge was properly rejected.
- A statute of limitations is jurisdictional only if Congress clearly states that it is, and this provision does not expressly speak in jurisdictional terms, so it is a nonjurisdictional defense that must be raised in the district court.
- The failure to raise the defense is reviewable, if at all, only for plain error.
- A district court’s failure to enforce an unraised limitations defense under this provision cannot be a plain error because, if a defendant fails to press the defense, it does not become part of the case and there is no error to correct.

United States v. Texas

Facts:

- ❑ Over 11 million immigrants live in the United States without legal authorization.
- ❑ In 2012, DHS issued orders to create Deferred Action for Children Arrivals (DACA), a program to temporarily prevent deportation of eligible individuals and extend federal benefits to them. Over 600,000 individuals have applied for DACA status and benefits.
- ❑ In 2014, DHS issued orders to create another program, Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA). An estimated 4-5 million individuals qualify under DAPA.
- ❑ The 2014 DAPA program never went into effect because 26 states, led by Texas, challenged the orders under the APA and the “Take Care” clause of the Constitution.

United States v. Texas

Facts Continued:

- The federal district court in Texas, upheld by the Fifth Circuit on appeal, issued a preliminary injunction staying implementation of the 2014 DAPA orders until the full trial was completed.
- The Supreme Court granted the federal government's petition to review the preliminary injunction.
- The Court agreed to review 4 questions posed by the parties:
 - Do the states have standing to challenge the 2014 DAPA program?
 - Is the 2014 DAPA program arbitrary and capricious or otherwise not in accordance with law?
 - Was the 2014 DAPA program subject to the APA's procedural notice and comment requirements?
 - Does this program violate the President's constitutional duty to "Take Care" that "the laws be faithfully executed" under Article II, §3?

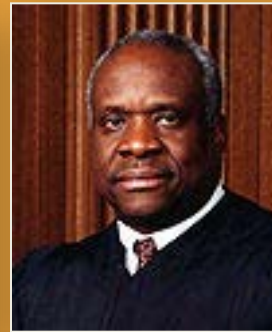
United States v. Texas

Holdings:

- **District court:** Held that Texas had standing, and issued a preliminary injunction to enjoin implementation of 2014 DAPA (and its extension of 2012 DACA), finding that the states were likely to prevail on the APA notice-and-comment claim.
- **5th Circuit:** *Affirmed.* The Fifth Circuit concluded that the order granting an injunction was appropriate, agreeing that the states were likely to prevail on the APA notice-and-comment claim, and also the claim that 2014 DAPA is not authorized by statute.
- **Supreme Court:** *Affirmed.* The Court, by an equally divided vote (4-4), affirmed the order enjoining implementation of the 2014 DAPA program, allowing the trial on the merits to proceed in federal district court.

United States v. Texas

Per Curiam Affirmance



United States v. Texas

HOLDING: The judgment is affirmed by an equally divided Court.

- ❑ The district court's preliminary injunction stands.
- ❑ The trial in the district court will proceed on the merits.

Preview: Manuel v. City of Joliet

Facts:

- ❑ Manuel was a passenger in a car stopped by the police for failing to signal a turn.
- ❑ Without warning, a police officer opened the passenger door, dragged Manuel out of the car, pushed him to the ground, and then punched and beat him.
- ❑ After handcuffing Manuel, the officer found a bottle of pills on him.
- ❑ Officers conducted a field test of the pills, then lied about the results, stating that the pills tested positive for ecstasy.
- ❑ The police continued to maintain that lie until a state police lab report found that the pills were not a controlled substance.
- ❑ Manuel sued the City of Joliet and various police officers alleging malicious prosecution and other civil rights violations.

Preview: Manuel v. City of Joliet

Holdings:

- ❑ **District Court:** The federal district court granted the City's/officers' motion to dismiss, holding in relevant part that "the limitations bar erected by Section 1983 cannot be overcome by a nonviable Illinois-based federal malicious prosecution claim."
- ❑ **7th Circuit:** There is no malicious prosecution claim under federal law because state law provides a similar cause of action, and Manuel has no Fourth Amendment right to be free from groundless prosecution.

Preview: Manuel v. City of Joliet

Issue:

- Is a Fourth Amendment malicious prosecution claim cognizable through Section 1983?
 - The Seventh Circuit, in *Newsome v. McCabe*, held that malicious-prosecution claims are cognizable only if state law does not provide an adequate remedy, which Illinois does.
 - The First, Second, Third, Fourth, Fifth, Sixth, Ninth, Tenth, Eleventh, and D.C. Circuits have all held that a Fourth Amendment malicious-prosecution claim is cognizable through Section 1983.

Oral argument: October 5, 2016

Retroactivity



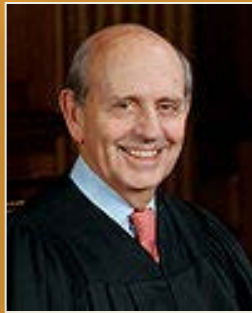
Welch v. United States

Facts:

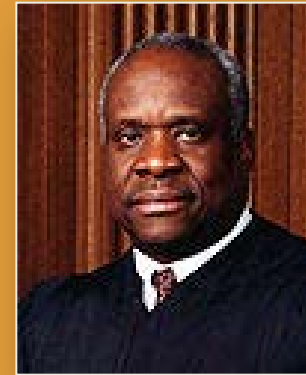
- ❑ The Armed Career Criminal Act (ACCA) prohibits a felon from possessing a firearm. Violators are sentenced to a maximum of 10 years in prison.
- ❑ A “residual clause” increased the maximum sentence to 15 years if the offender had 3 or more convictions for a “serious drug offense” or a “violent felony.”
- ❑ In 2010, Gregory Welch was sentenced under the residual clause to the increased 15-year sentence.
- ❑ Welch unsuccessfully challenged his sentence in district court, then in the court of appeals, as a *pro se* litigant under 28 U.S.C. §2255.
- ❑ In 2015, *Johnson v. United States* held the ACCA’s residual clause was “void for vagueness” under the Fifth and Fourteenth Amendments.
- ❑ Welch filed a *pro se* petition for certiorari to the Supreme Court. The Court granted his petition to address whether *Johnson* should apply retroactively to his claim.

Welch v. United States

Majority



Dissent



Welch v. United States

HOLDING: *Johnson* announced a new substantive rule that must be applied retroactively to cases on collateral review.

Majority

- A new constitutional rule applies retroactively if it is substantive or “watershed,” but not if it is procedural. (*Teague*)
- A new rule is substantive if it “alters the range of conduct or the class of persons that the law punishes.” (*Schriro*)
- *Johnson* announced a *substantive* rule, because the residual clause is now invalid, altering “the range of conduct” that the law punishes.
- *Johnson* is available to challenge sentences on collateral review.

Dissent

- Welch never raised the retroactivity issue, but instead simply challenged the court of appeals’ denial of a certificate of appealability. Thus, the Court should not reach the retroactivity question.
- *Johnson* does not satisfy the criteria to be “substantive” under *Teague* because Congress can still increase punishment for violent offenders under a differently worded statute.
- The Court erodes *Teague*’s meaningful limits on retroactive application of the Court’s rulings.

Montgomery v. Louisiana

Facts:

- Montgomery was 17 years old in 1963 when he killed a deputy sheriff in Louisiana.
- The jury returned a verdict of “guilty without capital punishment,” which carried an automatic sentence of life imprisonment without the possibility of parole.
- In 2012, the Court held in *Miller v. Alabama* that a *mandatory* sentence of life without the possibility of parole on a juvenile homicide offender violates the Eighth Amendment’s prohibition on “cruel and unusual punishments.”
- Montgomery argued that the rule from *Miller* applies retroactively to cases that became final before *Miller*.

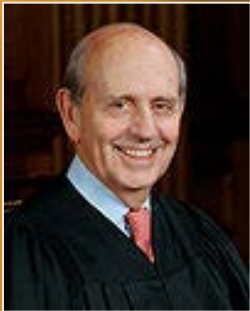
Montgomery v. Louisiana

Holdings:

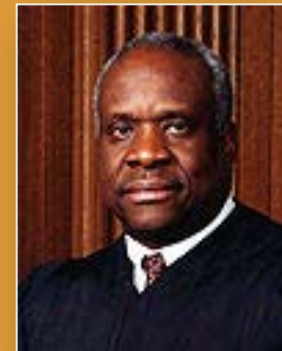
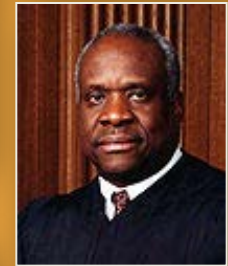
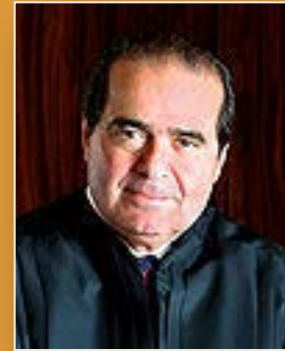
- ❑ **Louisiana trial court:** *Miller* is not retroactive to cases on collateral review.
- ❑ **Louisiana Supreme Court:** Denied Montgomery's request for review, relying on an earlier decision in which it had held that *Miller* is not retroactive.

Montgomery v. Alabama

Majority



Dissents



Montgomery v. Louisiana

HOLDING: *Miller*'s prohibition on mandatory life without parole for juvenile offenders is retroactive.

Majority

- Under the Supremacy Clause, state courts must give retroactive effect to a new substantive rule of constitutional criminal procedure.
- *Miller* announced a new substantive rule of constitutional criminal procedure.
- The *Miller* rule is retroactive because it “necessarily carries a significant risk that a defendant—here, the vast majority of juvenile offenders—faces a punishment that the law cannot impose upon him.”

Dissents

- Justice Scalia: The Court has no jurisdiction to decide the case because “once a conviction has become final, whether new rules or old ones will be applied to revisit the conviction is a matter entirely within the State’s control; the Constitution has nothing to say about that choice.”
- Justice Thomas: Nothing in the Constitution’s text or in constitutional tradition provides a right to a remedy on collateral review. Postconviction relief is a matter of “legislative grace.”

Preview: Beckles v. United States

Facts:

- ❑ The United States Sentencing Guidelines (U.S.S.G.) provides for enhanced sentencing under § 4B1.1 when the defendant is a “career offender.”
- ❑ Beckles was convicted for possession of a sawed-off shotgun.
- ❑ Because he had prior felony convictions for drug offenses, he received an enhanced sentence as a career offender under § 4B1.1.
- ❑ Beckles challenged his enhanced sentence, arguing that his crime was not a “crime of violence” that triggers the career-offender provision in U.S.S.G. § 4B1.1.

Preview: Beckles v. United States

Holdings:

- ❑ **11th Circuit:** Affirmed. Beckles was properly sentenced as a career offender under U.S.S.G. § 4B1.1 because he had at least 2 prior felony convictions for drug offenses, and because his offense of conviction (unlawful possession of a sawed-off shotgun) is expressly defined as a “crime of violence” in the commentary to § 4B1.2.
- ❑ In addition, *Johnson* does not control because Beckles was sentenced not under the ACCA’s residual clause, but based on express language in the Sentencing Guidelines classifying his offense as a “crime of violence.”

Preview: Beckles v. United States

Issues:

- 1. Whether *Johnson* applies retroactively to collateral cases challenging federal sentences enhanced under the residual clause in U.S.S.G. § 4B1.2(a)(2)?
- 2. Whether *Johnson's* constitutional holding applies to the residual clause in U.S.S.G. § 4B1.2(a)(2), thereby rendering challenges to sentences enhanced under it cognizable on collateral review?
- 3. Whether mere possession of a sawed-off shotgun, an offense listed as a “crime of violence” only in the commentary to U.S.S.G. § 4B1.2, remains a “crime of violence” after *Johnson*?

Oral Argument: TBD

Supreme Court Criminal Law Cases 2015-2016 Term

Justice David Stras
Minnesota Supreme Court

