

**SUMMARY OF DECISIONS
UNITED STATES SUPREME COURT
OCTOBER TERM 2011**

CRIMINAL, HABEAS, AND LAW-ENFORCEMENT-RELATED CIVIL CASES

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This is a summary of decisions by the United States Supreme Court during its October 2011 term (October 2011 to June 2012) in criminal cases, habeas corpus cases, and civil cases against law enforcement officers or agencies. “LE win” indicates that the ruling was in favor of the “law enforcement side,” i.e., the prosecution or law enforcement officer or agency. “Def win” indicates a ruling in favor of the criminal defendant, suspect, or prisoner.

FREEDOM OF SPEECH

Def win: *United States v. Alvarez* (6-3; June 28, 2012)

The Stolen Valor Act, prohibiting lying about having received a military medal, violates the First Amendment.

INVESTIGATION PROCEDURE – Search and Seizure, Interrogation, Pretrial Identification

Def win: *Smith v. Cain* (8-1; January 10, 2012)

Another New Orleans *Brady* violation.

LE win: *Perry v. New Hampshire* (8-1; January 11, 2012)

Reliability of eyewitness testimony claimed to be tainted, but not by police conduct, is governed by regular rules of evidence, not the due process requirement of judicial screening applicable to police-suggestive identifications.

Def win: *United States v. Jones* (9-0; January 23, 2012)

Attaching GPS device to vehicle + monitoring is a “search.”

LE win: *Ryburn v. Huff* (9-0; January 23, 2012) (*per curiam*)

Qualified immunity for officers entering home to prevent school shooting.

LE win: *Howes v. Fields* (6-3 on merits, 9-0 on AEDPA; February 21, 2012)

All-circumstances inquiry for when a prison inmate is “in custody” for the purpose of *Miranda*; also AEDPA deference.

LE win: *Messerschmidt v. Millender* (6-1-2; February 22, 2012)

Qualified immunity for officers sued for search pursuant to overbroad warrant.

LE win: *Reichle v. Howards* (6-2-0; June 4, 2012)

Qualified immunity for retaliatory arrest claim.

See also in Habeas section: *Bobby v. Dixon* (confession).

TRIAL PROCEDURE – Evidence, Juries, Counsel, and Other In-Court Issues

Narrow Def wins: *Missouri v. Frye & Lafler v. Cooper* (5-4; March 21, 2012)

Defendant has right to effective assistance during plea bargaining, violation of which is redressable even if he subsequently gets a fair trial or enters a knowing, voluntary plea. However, remedy is not necessarily reinstatement of the plea bargain but is discretionary with the trial judge, who *may* grant no remedy at all and restore the prior sentence.

LE win: *Rehberg v. Paulk* (9-0; April 2, 2012)

Immunity for grand jury witness.

LE win: *Blueford v. Arkansas* (6-3; May 24, 2012)

Jury’s informal report of vote to acquit on greater offense before mistrial declared due to deadlock on lesser offense was not an acquittal for purpose of the Double Jeopardy Clause.

Narrow, confusing LE win: *Williams v. Illinois* (4-1-4; June 18, 2012) No majority opinion (plurality by Alito, lone concurrence in judgment by Thomas)

Confrontation Clause: Testimony by expert relying on report of analysis by others was admissible, but little if any common ground between plurality and concurrence on why.

Def win: *Southern Union Co. v. United States* (6-3; June 21, 2012)

Jury trial right (*Apprendi*) is not limited to cases of incarceration but also applies to facts increasing the maximum fine.

See also cases in Habeas section: *Cavazos v. Smith & Coleman v. Johnson* (sufficiency of evidence); *Hardy v. Cross* (prior testimony of missing witness); *Wetzel v. Lambert* (materiality for *Brady* disclosure requirement); *Parker v. Matthews* (burden of proof and prosecutor argument).

SENTENCING – Sentence Imposed and Collateral Consequences

Def win: *Reynolds v. United States* (7-2; January 23, 2012)

Pre-SORNA sex offenders not required to register until AG specifies that the act applies to them.

LE win: *Setser v. United States* (6-3; March 28, 2012)

Federal sentencing court has discretion to make term consecutive to state sentence.

Def win: *Dorsey v. United States* (5-4; June 21, 2012)

Congress's reduction of mandatory minimums for crack cocaine applies to post-act sentencing of pre-act offenders.

Def wins: *Miller v. Alabama & Jackson v. Hobbs* (5-4; June 25, 2012)

Discretion required before sentencing juvenile to life-without-parole.

HABEAS CORPUS – Cases where the habeas remedy and its limitations are the main issues:

LE win: *Cavazos v. Smith* (6-3; October 31, 2011) (*per curiam*)

Federal habeas court failed to defer to jury's assessment of conflicting evidence and to state court's review of that judgment.

LE win: *Bobby v. Dixon* (9-0; November 7, 2011) (*per curiam*)

Sixth Circuit failed to give correct §2254(d) deference to state court decision on confession.

LE win: *Greene v. Fisher* (9-0; November 8, 2011)

Reasonableness of state court decision under §2254(d) is judged as of the date of the state court decision on the merits, not finality on direct review (as with *Teague*).

LE win: *Hardy v. Cross* (9-0; December 12, 2011) (*per curiam*)

Seventh Circuit failed to give proper §2254(d) deference to state holding that the government had looked hard enough for a disappeared witness before introducing prior testimony.

Partial LE win: *Gonzalez v. Thaler* (8-1; January 10, 2012)

Failure of the court to specify the issues in certificate of appealability (§2253(c)) is not a jurisdictional defect, and the state can forfeit the objection by failure to raise it. A case becomes "final" on direct appeal for statute of limitation (§2244(d)) purposes when the time to seek review in the next higher court expires, not when the deciding court issues its mandate.

Def win: *Maples v. Thomas* (7-2; January 18, 2012)

Abandonment (as distinguished from negligence) by state collateral counsel can be cause for a default, allowing federal habeas court to reach merits of defaulted claim.

LE win: *Wetzel v. Lambert* (6-3; February 21, 2012) (*per curiam*)

Third Circuit failed to properly consider state court holding on whether undisclosed evidence was material for purpose of *Brady* disclosure requirement.

Mixed: *Martel v. Clair* (9-0; March 5, 2012)

Habeas petitioner's motion to substitute counsel is judged on "interest of justice" standard (as defense argued) but review is deferential, timeliness counts, and denial of motion in this case was clearly within district court's discretion (as state argued).

Narrow Def win: *Martinez v. Ryan* (7-2; March 20, 2012)

Court creates a "narrow" exception to *Coleman v. Thompson*, allowing ineffective assistance of state collateral counsel to excuse a default of a claim of ineffective assistance of trial counsel in those states that categorically forbid ineffective assistance claims to be made on direct appeal. Court declines to extend constitutional right to effective assistance to state collateral review.

Def win: *Wood v. Milyard* (9-0; April 24, 2012)

Federal habeas courts may, but need not, raise timeliness defense waived by state, and in this case it was an abuse of discretion to do so.

LE win: *Coleman v. Johnson* (9-0; May 29, 2012) (*per curiam*)

Third Circuit "failed to afford due respect to the role of the jury and the state courts" on sufficiency of evidence claim.

LE win: *Parker v. Matthews* (9-0; June 11, 2012) (*per curiam*)

Sixth Circuit erroneously overturned state court judgment on burden of proof of emotional disturbance and prosecutor's argument "based on the flimsiest of rationales ... a textbook example of what (AEDPA) proscribes...."

See also *Howes v. Fields* in Investigation Procedure section

PRISONERS – Civil Cases Involving Treatment of Prisoners

LE win: *Florence v. Board of Chosen Freeholders of Burlington County* (5-4; April 2, 2012)

Jail can strip-search all arrestees, even for minor offenses.

LE win: *Minnecci v. Pollard* (6-2-1; January 10, 2012)

No *Bivens* suits against private prison employees