SUPREME COURT UPDATE*
Breaking Developments in Criminal Practice
ABA Criminal Justice Section Spring CLE Program
San Antonio, Texas
May 15, 2015

PRESENTED BY:

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* Supreme Court case law from October 7, 2013 through March 30, 2015 (October Term 2013 and October Term 2014)
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I. SEARCH AND SEIZURE

Stanton v. Sims, ____ U.S. ____, 134 S. Ct. 3 (2013) (per curiam) (decision below: Sims v. Stanton, 706 F.3d 954 (9th Cir. 2012)) Where police officer pursued a third party (whom he had ordered to stop but who had disregarded that order) into homeowner’s yard, Ninth Circuit erred in holding that police officer was not entitled to qualified immunity in homeowner’s lawsuit, under 42 U.S.C. § 1983, for violation of homeowner’s Fourth Amendment rights; neither the Supreme Court precedent nor the Ninth Circuit precedent relied upon by the Court of Appeals clearly established that there was a Fourth Amendment violation of these facts; moreover, federal and state courts nationwide are sharply divided on the question whether an officer with probable cause to arrest a suspect for a misdemeanor may enter a home without a warrant while in hot pursuit of that suspect; given this state of the law, it could not be said that the police officer's actions violated “clearly established” Fourth Amendment law; accordingly, the Supreme Court reversed the Ninth Circuit’s judgment denying the officer qualified immunity.

Fernandez v. California, ____ U.S. ____, 134 S. Ct. 1126 (2014) (decision below: People v. Fernandez, 208 Cal. App. 4th 100, 145 Cal. Rptr. 3d 51 (Cal. Ct. App. 2012)) Police could validly search defendant’s apartment pursuant to another occupant’s consent, even though defendant had refused consent before he was arrested and removed from the scene; Georgia v. Randolph, 547 U.S. 103 (2006), which found the co-occupant’s consent invalid, is limited to the situation where the defendant is physically present and objecting when the police ask the co-occupant for her consent. (Justice Ginsburg filed a dissenting opinion, in which she was joined by Justices Sotomayor and Kagan.)

Prado Navarette v. California, ____ U.S. ____, 134 S. Ct. 1683 (2014) (decision below: People v. Navarette, No. A132353, 2012 WL 4842651 (Cal. Ct. App. Oct. 12, 2012) (unpublished)) Where defendants were stopped on the basis of an unidentified (for purposes of the litigation) 911 caller’s tip – namely, that a vehicle whose description matched that of defendants' vehicle had nearly run her off the road – the stop of defendants’ vehicle did not violate the Fourth Amendment because, under the totality of the circumstances, the stopping officer had probable cause; an anonymous tip alone seldom demonstrates sufficient reliability for Fourth Amendment purposes, but may do so under appropriate circumstances; here, the 911 call bore adequate indicia of reliability for the officer to credit the caller’s account.
(namely, the fact that the content of the call suggested an eyewitness basis of knowledge; the short time between the reported incident and the 911 call; and the fact that the 911 system is, in large part, no longer truly anonymous); moreover, not only was the tip here reliable, but it created reasonable suspicion of drunk driving; the fact that the officer did not observe additional suspicious conduct during the short time he followed the truck did not dispel the reasonable suspicion of drunk driving, and the officer was not required to surveil the truck for a longer period. (Justice Scalia filed a dissenting opinion, in which he was joined by Justices Ginsburg, Sotomayor, and Kagan.)

Riley v. California, ___ U.S. ___, 134 S. Ct. 2473 (2014) (decisions below: People v. Riley, D059840, 2013 WL 475242 (Cal. Ct. App. Feb. 8, 2013) (unpublished); and United States v. Wurie, 728 F.3d 1 (1st Cir. 2013)) The police generally may not, without a warrant, search digital information on a cell phone seized from an individual who has been arrested. (Justice Alito filed an opinion concurring in part and concurring in the judgment.)

Carroll v. Carman, ___ U.S. ___, 135 S. Ct. 348 (2014) (per curiam) (decision below: Carman v. Carroll, 749 F.3d 192 (3d Cir. 2014)) At a minimum, it is unclear whether the Fourth Amendment requires that police begin a “knock and talk” encounter at the front door of a residence, as opposed to some other entryway that appears to be open to visitors (here, a sliding glass door that the police accessed by going through plaintiffs’ backyard and onto a ground-level deck); this lack of clarity means that the police did not violate clearly established law, and therefore the Third Circuit erred in denying the police officer’s claim of qualified immunity in this action under 42 U.S.C. § 1983; accordingly, the Supreme Court reversed the judgment of the Court of Appeals and remanded for further proceedings.

Heien v. North Carolina, ___ U.S. ___, 135 S. Ct. 530 (2014) (decision below: State v. Heien, 749 S.E.2d 278 (N.C. 2013)) A police officer’s reasonable mistake of law may supply the reasonable suspicion required for a traffic stop; here, it was reasonable for the police officer to conclude that defendant’s nonfunctioning brake light was a violation justifying his stop of defendant’s vehicle; even though the North Carolina Court of Appeals held in this case that the North Carolina statute required only one working brake light (which meant there was no violation here), the police officer’s contrary conclusion was reasonable given the wording of the North Carolina statute and the lack of any case law construing the statute;
accordingly, the stop of defendant did not violate the Fourth Amendment. (Justice Kagan filed a concurring opinion, in which she was joined by Justice Ginsburg; she wanted to emphasize that (1) an officer’s subjective understanding is irrelevant in this inquiry, and (2) the reasonableness inquiry permitted by the Court in this decision is more demanding than the one that courts undertake before awarding qualified immunity. Justice Sotomayor filed a dissenting opinion; she would hold that “an officer’s mistake of law, no matter how reasonable, cannot support the individualized suspicion necessary to justify a seizure under the Fourth Amendment.”).

Grady v. North Carolina, __ U.S. ___, 2015 WL 1400850 (Mar. 30, 2015) (per curiam) (decision below: State v. Grady, 762 S.E.2d 460 (N.C. 2014)) Where North Carolina defendant was subjected to post-conviction satellite-based monitoring (“SBM”) (with an ankle monitor) as a recidivist sex offender, the North Carolina courts erred in holding that SBM did not constitute a Fourth Amendment “search”; under United States v. Jones, 565 U.S. ____ (2012), and Florida v. Jardines, 569 U.S. ____ (2013), a state also conducts a search when it attaches a device to a person’s body, without consent, for the purpose of tracking that person’s movements; the state’s SBM program is plainly designed to obtain information, and since it does so by physically intruding on a subject’s body, it effects a Fourth Amendment search; because the North Carolina courts did not view SBM as a Fourth Amendment search, they did not examine whether SBM was reasonable – when properly viewed as a search, and the Supreme Court declined to do so in the first instance here; accordingly, the Supreme Court granted the defendant’s petition for certiorari, vacated the judgment of the Supreme Court of North Carolina, and remanded for further proceedings.

Rodriguez v. United States, cert. granted, __ U.S. ___, 135 S. Ct. 43 (Oct. 2, 2014) (No. 13-9972) (granting cert. to United States v. Rodriguez, 741 F.3d 905 (8th Cir. 2014)) May a police officer may extend an already-completed traffic stop for a canine sniff without reasonable suspicion or other lawful justification?
II. INTERROGATIONS AND CONFESSIONS

Kansas v. Cheever, ___ U.S. ____, 134 S. Ct. 596 (2013) (decision below: granting cert. to State v. Cheever, 284 P.3d 1007 (Kan. 2012)) Where defendant affirmatively introduced expert testimony that he lacked the requisite mental state to commit capital murder of a law enforcement officer due to the alleged temporary and long-term effects of the defendant’s methamphetamine use, the state did not violate the defendant’s Fifth Amendment privilege against self-incrimination by rebutting the defendant’s mental-state defense (voluntary intoxication) with evidence from a court-ordered mental evaluation of the defendant; under the reasoning of Buchanan v. Kentucky, 483 U.S. 402 (1987), where a defense expert who has examined the defendant testifies that the defendant lacked the requisite mental state to commit a crime, the prosecution may offer evidence from a court-ordered psychological examination for the limited purpose of rebutting the defendant’s evidence; the Kansas Supreme Court erred in holding Buchanan inapplicable to mental-status defenses not amounting to a “mental disease or defect” or that were only temporary; accordingly, the Court vacated the Kansas Supreme Court’s judgment and remanded for further proceedings; the Court acknowledged the defendant’s argument that the Fifth Amendment did put some limits on the state’s ability to introduce rebuttal evidence regarding the defendant’s mental status, but the Court declined to address those questions in the first instance and left them for the state courts to address on remand.

III. OTHER PRETRIAL MATTERS

A. Double Jeopardy

Martinez v. Illinois, ____ U.S. ____ , 134 S. Ct. 2070 (2014) (per curiam) (decision below: People v. Martinez, 990 N.E.2d 215 (Ill. 2013)) Where, after the trial court refused to grant the state a further continuance, (1) a jury was sworn, (2) the state announced that it was not participating in the trial, and (3) the trial court entered a directed finding of not guilty on both counts, the state could not, consistently with double-jeopardy principles, seek to retry defendant through the vehicle of a state appeal of the trial court’s denial of a continuance; jeopardy attached when the jury was sworn, and jeopardy terminated when the trial court granted its
directed finding; because that directed finding was the functional equivalent of an acquittal, defendant could not be retried.

B. Other

Kaley v. United States, ____ U.S. ____, 134 S. Ct. 1090 (2014) (decision below: United States v. Kaley, 677 F.3d 1316 (11th Cir. 2012)) When challenging the legality of a pretrial restraining order to freeze assets under 21 U.S.C. § 853(e)(1), a criminal defendant who has been indicted is not constitutionally entitled to contest a grand jury’s determination of probable cause to believe the defendant committed the crimes charged. (Chief Justice Roberts filed a dissenting opinion, in which he was joined by Justices Breyer and Sotomayor.)

IV. TRIAL

Warger v. Shauers, ____ U.S. ____, 135 S. Ct. 521 (2014) (decision below: Warger v. Shauers, 721 F.3d 606 (8th Cir. 2013)) Federal Rule of Evidence 606(b) precludes a party seeking a new trial from using one juror’s affidavit of what another juror said in deliberations to demonstrate the other juror’s dishonesty during voir dire.

Ohio v. Clark, cert. granted, ____ U.S. ____, 135 S. Ct. 43 (Oct. 2, 2014) (No. 13-1352) (granting cert. to State v. Clark, 999 N.E.2d 592 (Ohio 2013)) (1) Does an individual’s obligation to report suspected child abuse make that individual an agent of law enforcement for purposes of the Confrontation Clause? (2) Do a child’s out-of-court statements to a teacher in response to the teacher’s concerns about potential child abuse qualify as “testimonial” statements subject to the Confrontation Clause?

V. SENTENCING

A. Constitutional Challenges

mentally retarded defendants in capital cases (whose execution is forbidden under the Eighth Amendment as held in Atkins v. Virginia, 536 U.S. 304 (2002)) is unconstitutional; because Florida rigidly bars any further exploration of an Atkins claim if the inmate has an IQ score greater than 70, it runs the risk of improperly excluding claims of intellectual disability that should prevail under Atkins; when a defendant’s IQ test score falls within the test's acknowledged and inherent margin of error, the defendant must be able to present additional evidence of intellectual disability, including testimony regarding adaptive deficits. (Justice Alito filed a dissenting opinion, in which he was joined by Chief Justice Roberts and Justices Scalia and Thomas.)


Warner v. Gross [case name now Glossip v. Gross], cert. granted, ____ U.S. ____, 135 S. Ct. 1173 (Jan. 23, 2015) (No. 14-7955) (granting cert. to Warner v. Gross, 776 F.3d 721 (10th Cir. 2015)) (1) Is it constitutionally permissible for a state to carry out an execution using a three-drug protocol where (a) there is a well-established scientific consensus that the first drug has no pain relieving properties and cannot reliably produce deep, comalike unconsciousness, and (b) it is undisputed that there is a substantial, constitutionally unacceptable risk of pain and suffering from the administration of the second and third drugs when a prisoner is conscious? (2) Does the stay standard articulated by the plurality in Baze v. Rees, 553 U.S. 35 (2008), apply when states are not using a protocol substantially similar to the one that this Court considered in Baze? (3) Must a prisoner establish the availability of an alternative drug formula even if the state’s lethal-injection protocol, as properly administered, will violate the Eighth Amendment?
**Hurst v. Florida,** cert. granted, ____ U.S. ____, 2015 WL 998606 (Mar. 9, 2015) (granting cert. to **Hurst v. State,** 147 So.3d 435 (Fla. 2014) Does Florida's death sentencing scheme violates the Sixth Amendment or the Eighth Amendment in light of the United States Supreme Court's decision in **Ring v. Arizona,** 536 U.S. 584 (2002)?

**Montgomery v. Louisiana,** cert. granted, ____ U.S. ____, 2015 WL 1280236 (Mar. 23, 2015) (granting cert. to **State v. Montgomery,** 141 So.3d 264 (La. 2014)) QUESTION PRESENTED BY THE PETITION: Is the holding of **Miller v. Alabama,** 567 U.S. ____, 132 S.Ct. 2455, 83 L.Ed.2d 407 (2012) – namely that it violates the Eighth Amendment to require lifetime incarceration without the possibility of parole for persons convicted of homicides committed when under age 18 – a new substantive rule which applies retroactively to covered persons whose convictions were final before Miller was handed down? QUESTION ADDED BY THE COURT: Does the United States Supreme Court have jurisdiction to decide whether the Supreme Court of Louisiana correctly refused to give retroactive effect in this case to the United States Supreme Court’s decision in Miller?

**Kansas v. Carr,** cert. granted, ____ U.S. ____, 2015 WL 1400861 & ____ U.S. ____, 2015 WL 1400862 (No. 14-449 c/w No. 14-450) (granting cert. to **State v. Carr,** 329 P.3d 1195 (Kan. 2014) & **State v. Carr,** 331 P.3d 544 (Kan. 2014)) (1) Does the Eighth Amendment require that a capital-sentencing jury be affirmatively instructed that mitigating circumstances “need not be proven beyond a reasonable doubt,” as the Kansas Supreme Court held here, or is the Eighth Amendment instead satisfied by instructions that, in context, make clear that each juror must individually assess and weigh any mitigating circumstances? (2) Did the trial court’s decision not to sever the sentencing phase of the co-defendant brothers’ trial here – a decision that comports with the traditional approach preferring joinder in circumstances like this – violate an Eighth Amendment right to an “individualized sentencing” determination; and was the decision to sever harmless in any event?

beyond a reasonable doubt,” as the Kansas Supreme Court held here, or is the Eighth Amendment instead satisfied by instructions that, in context, make clear that each juror must individually assess and weigh any mitigating circumstances?

B. Statutory Challenges

Paroline v. United States, ____ U.S. ____, 134 S. Ct. 1710 (2014) (decision below: In re Amy Unknown, 701 F.3d 749 (5th Cir. 2012) (en banc)), on remand to In re Amy Unknown, 754 F.3d 296 (5th Cir. 2014) (en banc)  Restitution for child-pornography offenses under 18 U.S.C. § 2259 is proper only to the extent that a defendant’s offense proximately caused a victim's losses; the en banc Fifth Circuit erred in concluding that no proximate-cause requirement applied to the losses set out in § 2259(b)(3) except for the catch-all category of losses set out in § 2259(b)(3)(F); the district court likewise erred in concluding that the proper standard of actual causation/causation-in-fact was but-for causation, which is impossible to show in this context; rather, where it can be shown both that a defendant possessed a child-pornography victims’ images and that a victim has outstanding losses caused by the continuing traffic in her images, but where it is impossible to trace a particular amount of those losses to the individual defendant utilizing a more traditional causal inquiry, a court should order restitution in an amount that comports with the defendant’s relative role in the causal process underlying the victim’s general losses; district courts should use discretion and sound judgment in determining the proper amount of restitution, using a variety of factors as guideposts. (Chief Justice Roberts filed a dissenting opinion, in which he was joined by Justices Scalia and Thomas. Justice Sotomayor filed a dissenting opinion.) (On remand, the en banc Fifth Circuit vacated the defendants’ restitution orders and remanded for further proceedings consistent with the Supreme Court’s opinion.)

Robers v. United States, ____ U.S. ____, 134 S. Ct. 1854 (2014) (decision below: United States v. Robers, 698 F.3d 937 (7th Cir. 2012)) Where defendant was convicted of fraudulently obtaining a loan and thus owed restitution for the loan under 18 U.S.C. § 3663A(b)(1)(B), he was not entitled to have his restitution obligation offset by the date-of-return value of collateral returned to the bank that issued the loan; the statutory phrase “any part of the property” in § 3663A(b)(1)(B) refers only to the specific property lost by the victim, which, in the case of a fraudulently obtained loan, is the money lent; therefore, no “part of the property” is
“returned” to the victim within the meaning of § 3663A(b)(1)(B) until the collateral is sold, and the victim receives money from the sale; thus, a sentencing court must reduce the restitution amount by the amount of money the victim received in selling the collateral, not the value of the collateral when the victim received it. (Justice Sotomayor filed a concurring opinion, in which she was joined by Justice Ginsburg.)


VI. APPEAL

Jennings v. Stephens, ____ U.S. ____, 135 S. Ct. 793 (2015) (decision below: Jennings v. Stephens, 537 Fed. Appx. 326 (5th Cir. 2013) (unpublished)) Where death-sentenced prisoner received federal habeas relief as to his death sentence on the basis of two theories of ineffective assistance of counsel (“IAC”), but not the third, and the state appealed the grant of habeas relief, prisoner could assert the third theory of IAC, on which he was unsuccessful in the court below, in defense of the judgment granting him a new punishment hearing; this did not require the taking of a cross-appeal by the filing of a separate notice of appeal; nor did it require defendant to seek a certificate of appealability (“COA”), as this requirement “assuredly does not embrace the defense of a judgment on alternative grounds”; the Court noted, but did not decide, the question whether the COA requirement applies where a habeas petition seeks to cross-appeal in a case that is already before court of appeals. (Justice Thomas filed a dissenting opinion, in which he was joined by Justices Kennedy and Alito.)
VII. HABEAS CORPUS

A. Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA)

Jennings v. Stephens, ____ U.S. ____, 135 S. Ct. 793 (2015) (decision below: Jennings v. Stephens, 537 Fed. Appx. 326 (5th Cir. 2013) (unpublished)) Where death-sentenced prisoner received federal habeas relief as to his death sentence on the basis of two theories of ineffective assistance of counsel ("IAC"), but not the third, and the state appealed the grant of habeas relief, prisoner could assert the third theory of IAC, on which he was unsuccessful in the court below, in defense of the judgment granting him a new punishment hearing; this did not require the taking of a cross-appeal by the filing of a separate notice of appeal; nor did it require defendant to seek a certificate of appealability ("COA"), as this requirement “assuredly does not embrace the defense of a judgment on alternative grounds”; the Court noted, but did not decide, the question whether the COA requirement applies where a habeas petition seeks to cross-appeal in a case that is already before court of appeals. (Justice Thomas filed a dissenting opinion, in which he was joined by Justices Kennedy and Alito.)

B. Generally

White v. Woodall, ____ U.S. ____, 134 S. Ct. 1697 (2014) (decision below: Woodall v. Simpson, 685 F.3d 574 (6th Cir. 2012)) The federal district court and the Sixth Circuit erred in granting habeas relief based on the trial court’s failure to instruct the jury to draw no adverse inference from Kentucky capital-murder defendant’s failure to testify at his penalty-phase trial; the Kentucky Supreme Court’s decision finding no constitutional violation in failing to give such an instruction was not “contrary to” the United States Supreme Court’s decisions touching on this subject, nor did the Kentucky Supreme Court’s decision unreasonably apply the holdings of the relevant United States Supreme Court decisions; even if it might be appropriate on direct review to extend those holdings to fashion the rule applied by the district court and the Sixth Circuit, the AEDPA provides a remedy for instance in which a state court unreasonably applies United States Supreme Court precedent; it does not require state courts to extend that precedent or license federal courts to treat the failure to do so as error; accordingly, the Supreme Court reversed the Sixth Circuit’s judgment and remanded for further
proceedings. (Justice Breyer filed a dissenting opinion, in which he was joined by Justices Ginsburg and Sotomayor.)

Williams v. Johnson, ____ U.S. ____, 134 S. Ct. 2659 (2014) (per curiam) (decision below: Williams v. Johnson, 720 F.3d 1212 (9th Cir. 2013)) Where the United States Supreme Court had previously reversed the Ninth Circuit's decision granting the writ of habeas corpus to defendant, see Johnson v. Williams, ____ U.S. ____ , 133 S. Ct. 1088 (2013), but did so in a way that the Ninth Circuit panel on remand interpreted as barring them from granting relief on defendant's Sixth Amendment claim, see Williams v. Johnson, 720 F.3d 1212 (9th Cir. 2013), the Supreme Court granted defendant’s petition for certiorari, vacated the Ninth Circuit’s judgment, and remanded the case for consideration of defendant’s Sixth Amendment claim under the standard set forth in 28 U.S.C. § 2254(d).

Lopez v. Smith, ____ U.S. ____, 135 S. Ct. 1 (2014) (per curiam) (decision below: Smith v. Lopez , 731 F.3d 859 (9th Cir. 2013)) The Ninth Circuit erred in affirming the district court’s grant of federal habeas relief to California state murder defendant; no United States Supreme Court decision clearly established the principle – necessary for habeas relief to be granted here – that a defendant, once adequately apprised of the possibility of conviction on an aiding-and-abetting theory by the information charging the murder, could nevertheless be deprived of adequate notice by a prosecutorial decision to focus on another theory of liability at trial; the Supreme Court decisions cited by the Ninth Circuit stood only for the general proposition that a defendant must have adequate notice of the charges against him, and this proposition was far too general and abstract to establish the specific rule defendant needed; that left only a prior Ninth Circuit decision to bolster the Ninth Circuit’s decision in this case, but circuit precedent cannot refine or sharpen a general principle of Supreme Court jurisprudence into a specific legal rule that the Supreme Court has not announced; accordingly, the Supreme Court granted certiorari, reversed the Ninth Circuit’s judgment affirming the grant of habeas relief, and remanded for further proceedings.

Glebe v. Frost, ____ U.S. ____ , 135 S. Ct. 429 (2014) (per curiam) (decision below: Frost v. Van Boening, 757 F.3d 910 (9th Cir. 2014) (en banc)) In Washington state prosecution for armed robberies and related crimes, constitutional error, if any, in forcing defendant to choose between a duress defense and a defense that the state had failed to meet its burden of proving defendant’s guilt, was not
clearly, under United States Supreme Court precedent, a structural error requiring automatic reversal (as opposed to a trial error, subject to review for harmlessness beyond a reasonable doubt); the sole Supreme Court authority cited by the Ninth Circuit for its conclusion that the error was structural (Herring v. New York, 422 U.S. 853 (1975)) was sufficiently different from its case so that it did not compel the conclusion that the error in this case was structural; the Ninth Circuit also erred in drawing support for its conclusion from two Ninth Circuit precedents; circuit precedent does not constitute “clearly established Federal law, as determined by the Supreme Court,” as required for federal habeas relief pursuant to 28 U.S.C. § 2254(d)(1); the Supreme Court also rejected the Ninth Circuit’s characterization of the error here as tantamount to extracting a concession of guilt from the defense, shifting the burden of proof, and directing a verdict of guilt; reasonable minds could differ about whether requiring the defense to choose between alternative theories of the defense constituted any of these errors; accordingly, the Supreme Court reversed the judgment of the Ninth Circuit and remanded for further proceedings; the Supreme Court declined to reach the alternative question of whether the Washington Supreme Court had misapplied the harmless-beyond-a-reasonable doubt standard in finding the error here to be harmless, because the en banc Ninth Circuit had not addressed that question.


Where death-sentenced Missouri defendant’s federal habeas counsel had a conflict of interest in representing him (because their untimely filing of defendant’s federal habeas petition might have been attributable to their culpable abandonment of defendant, which would possibly excuse the late filing under the doctrine of equitable tolling, but which the attorneys could not be expected to raise against themselves), the district court erred in denying, and the Eighth Circuit erred in affirming the denial of, new attorneys’ motion to substitute in; under Martel v. Clair, 565 U.S. ___, 132 S. Ct. 1276 (2012), a motion for substitution of an appointed attorney should be granted when it is in the “interests of justice”; that standard is met when a conflict of this sort is present, and none of the considerations relied upon by the district court justified the decision to deny defendant new counsel; because it was not plain that it would have been futile to appoint substitute counsel, the Supreme Court summarily reversed the Eighth Circuit’s judgment and remanded for further proceedings (which, the Supreme Court suggested, might include a Fed. R. Civ. P. 60(b) motion to reopen the denial of federal habeas relief by showing that he was entitled to equitable tolling due to counsel’s abandonment). (Justice Alito,
joined by Justice Thomas, filed an opinion dissenting from the reversal of the Court of Appeals’ decision without briefing and argument; he “th[ought] that plenary review would have been more appropriate in this case.”

Woods v. Daniel, ____ U.S. ____, 2015 WL 1400852 (Mar. 30, 2015) (per curiam) (decision below: Donald v. Rapelje, 580 Fed. Appx. 277 (6th Cir. 2014) (unpublished)) The Sixth Circuit erred in affirming the district court’s grant of federal habeas relief to Michigan state murder/robbery defendant; no United States Supreme Court decision clearly establishes the rule upon which habeas relief was predicated – namely, that an attorney provides per se ineffective assistance of counsel under United States v. Cronic, 466 U.S. 648 (1984), when he is briefly absent during testimony concerning other defendants; within the contours of Cronic, a fairminded jurist could conclude that a presumption of prejudice is not warranted by counsel’s short absence during testimony about other defendants where that testimony was irrelevant to the defendant’s theory of the case; because the Supreme Court has never held that Cronic applies in the circumstances presented in this case, federal habeas relief based upon Cronic was unavailable; accordingly, the Supreme Court granted certiorari, reversed the Sixth Circuit’s judgment affirming the grant of habeas relief, and remanded for further proceedings.

Chappell v. Ayala [case name now Davis v. Ayala], cert. granted, ____ U.S. ____, 135 S. Ct. 401 (Oct. 20, 2014) (No. 13-1428) (granting cert. to Ayala v. Wong, 756 F.3d 656 (9th Cir. 2013), amended Feb. 25, 2014)) QUESTION PRESENTED BY THE PETITION: Is a state court’s rejection of a claim of federal constitutional error on the ground that any error, if one occurred, was harmless beyond a reasonable doubt is an “adjudicat[i]on” on the merits” within the meaning of 28 U.S.C. § 2254(d), so that a federal court may set aside the resulting final state conviction only if the defendant can satisfy the restrictive standards imposed by that provision? QUESTION ADDED BY THE COURT: Did the Court of Appeal properly apply the standard articulated in Brecht v. Abrahamson, 507 U.S. 619 (1993)?

state court based its decision on an unreasonable determination of facts under 28 U.S.C. § 2254(d)(2)? (2) Where a state court denies funding to an indigent petitioner who has no other means of obtaining evidence of his mental retardation, has that court denied petitioner his “opportunity to be heard,” contrary to Atkins and Ford v. Wainwright, 477 U.S. 399 (1986), and his constitutional right to be provided with the “basic tools” for an adequate defense, contrary to Ake v. Oklahoma, 470 U.S. 68 (1985)?

C. Ineffective Assistance of Counsel/Conflict of Interest

Burt v. Titlow, ____ U.S. ____, 134 S. Ct. 10 (2013) (decision below: Titlow v. Burt, 680 F.3d 577 (6th Cir. 2012)) In holding that defendant’s replacement trial counsel failed to give her effective assistance of counsel when he assisted her in withdrawing her guilty plea after failing to negotiate a better plea agreement than predecessor counsel, the Sixth Circuit failed to give appropriate deference to the Michigan state court under the AEDPA; the state court’s finding that trial counsel advised withdrawal of the plea only after defendant proclaimed her innocence was readily supported by the record; although a defendant’s proclamation of innocence does not relieve counsel of his normal responsibilities under Strickland v. Washington, 466 U.S. 668 (1984), it may affect the advice counsel gives; here, the state court could reasonably conclude that counsel acted within the bounds of Strickland; especially troubling was the Sixth Circuit’s reliance on the fact that the record contained no evidence that counsel gave constitutionally adequate advice about whether to withdraw the guilty plea; under Strickland, counsel is presumed to have rendered adequate assistance; given that presumption of effectiveness, a silent record means that defendant failed to prove that counsel’s performance was deficient; accordingly, the Supreme Court reversed the Sixth Circuit’s judgment granting habeas relief. (Justice Sotomayor filed a concurring opinion. Justice Ginsburg filed an opinion concurring in the judgment.)

Hinton v. Alabama, ____ U.S. ____, 134 S. Ct. 1081 (2014) (per curiam) (decision below: Hinton v. State, ____ So.3d ____, 2013 WL 598122 ( Ala. Crim. App. Feb. 15, 2013)) In capital-murder trial that turned on forensic “firearms and toolmark” evidence, trial attorney’s failure to request additional funding in order to replace an expert he knew to be inadequate because he mistakenly believed he had received all he could get under Alabama law constituted deficient performance under Strickland v. Washington, 466 U.S. 668 (1984); although attorney mistakenly
believed that available funding for experts was capped at $1,000, Alabama law had changed, more than a year before defendant was arrested, to provide for funding of “any expenses reasonably incurred in such defense to be approved in advance by the trial court”; an attorney’s ignorance of a point of law that is fundamental to his case, combined with his failure to perform basic research on that point, is a quintessential example of unreasonable performance under Strickland; because no court had yet evaluate the prejudice question by applying the proper inquiry to the facts of this case, the Supreme Court remanded the case for reconsideration of whether defendant’s attorney’s deficient performance was prejudicial under Strickland.

Woods v. Daniel, ____ U.S. ____, 2015 WL 1400852 (Mar. 30, 2015) (per curiam) (decision below: Donald v. Rapelje, 580 Fed. Appx. 277 (6th Cir. 2014) (unpublished)) The Sixth Circuit erred in affirming the district court’s grant of federal habeas relief to Michigan state murder/robbery defendant; no United States Supreme Court decision clearly establishes the rule upon which habeas relief was predicated – namely, that an attorney provides per se ineffective assistance of counsel under United States v. Cronic, 466 U.S. 648 (1984), when he is briefly absent during testimony concerning other defendants; within the contours of Cronic, a fairminded jurist could conclude that a presumption of prejudice is not warranted by counsel’s short absence during testimony about other defendants where that testimony was irrelevant to the defendant’s theory of the case; because the Supreme Court has never held that Cronic applies in the circumstances presented in this case, federal habeas relief based upon Cronic was unavailable; accordingly, the Supreme Court granted certiorari, reversed the Sixth Circuit’s judgment affirming the grant of habeas relief, and remanded for further proceedings.

VIII. MISCELLANEOUS

Burrage v. United States, ____ U.S. ____, 134 S. Ct. 881 (2014) (decision below: United States v. Burrage, 687 F.3d 1015 (8th Cir. 2012)) For purposes of 21 U.S.C. § 841(b)(1)(C) – prescribing a 20-year mandatory minimum where “death . . . results from the use of [a substance distributed by the defendant],” and at least where the use of the drug distributed by the defendant is not an independently sufficient cause of the victim’s death or serious bodily injury, a defendant cannot be held liable for penalty enhancement under § 841(b)(1)(C) unless such use is a but-for cause of the death; the words “result from” typically imposes a requirement of
but-for causation, and the government pointed to nothing to justify deviating from this background principle; because the Eighth Circuit affirmed defendant’s conviction based on a markedly different understanding of the statute, and because the government conceded that there was no evidence that the decedent would have lived but for his use of the heroin distributed to him by defendant, the Supreme Court reversed the applicable conviction. (Justice Ginsburg filed an opinion concurring in the judgment, in which she was joined by Justice Sotomayor.)

United States v. Apel, ____ U.S. ____, 134 S. Ct. 1144 (2014) (decision below: United States v. Apel, 676 F.3d 1202 (9th Cir. 2012)) For purposes of 18 U.S.C. § 1382 – which prohibits a person from reentering a military installation after a commanding officer has ordered him not to reenter – a “military . . . installation” encompasses everything within the commanding officer’s area of responsibility; in this case, that included Vandenburg Air Force Base’s highways and designated protest area (where defendant had continued to go even after being barred from Vandenburg); the Court did not address defendant’s arguments that § 1382 was unconstitutional as applied to him, because the Court of Appeals had not reached them. (Justice Ginsburg filed a concurring opinion, in which she was joined by Justice Sotomayor. Justice Alito filed a concurring opinion.)

Rosemond v. United States, ____ U.S. ____, 134 S. Ct. 2734 (2014) (decision below: United States v. Rosemond, 695 F.3d 1151 (10th Cir. 2012)) The Supreme Court rejected defendant’s argument that the offense of aiding and abetting the use of a firearm during and in relation to a crime of violence or drug trafficking crime, in violation of 18 U.S.C. §§ 924(c)(1)(A) and 2, requires proof of intentional facilitation or encouragement of the use of the firearm; for aiding and abetting liability under 18 U.S.C. § 2, a defendant’s acts need not advance each and every element of the offense; it is sufficient that he facilitate only one element, provided that he has knowledge extending to the whole crime; thus, the government establishes that a defendant aided and abetted a § 924(c) violation by proving that the defendant actively participated in the underlying drug trafficking or violent crime with advance knowledge that a confederate would use or carry a gun during the crime’s commission; however, the district court’s jury instructions were erroneous because they failed to require the jury to find that defendant knew in advance (i.e., in sufficient time to withdraw from the crime) that one of his co-defendants would be armed; accordingly, the Supreme Court vacated the Tenth Circuit’s judgment and remanded to that court for it to determine whether this objection was properly
preserved and whether any error was harmless. (Justice Alito filed an opinion concurring in part and dissenting in part, in which he was joined by Justice Thomas.)

United States v. Castleman, ____ U.S. ____, 134 S. Ct. 1405 (2014) (decision below: United States v. Castleman, 695 F.3d 582 (6th Cir. 2012)) For purposes of 18 U.S.C. § 922(g)(9) (prohibiting the possession of a firearm by a person previous convicted of a “misdemeanor crime of domestic violence”), the term “force” within the meaning of the definition of a “misdemeanor crime of domestic violence” (see 18 U.S.C. § 921(a)(33)(A)) refers to the type of force that supports a common-law conviction – namely, offensive touching; moreover, the common-law concept of “force” encompasses even its indirect application; because it is impossible to cause bodily injury without applying force in the common-law sense, defendant’s prior Tennessee conviction for intentionally or knowingly causing bodily injury to the mother of his child qualified as a “misdemeanor crime of domestic violence” for purposes of § 922(g)(9). (Justice Scalia filed an opinion concurring in part and concurring in the judgment, in which Justice Alito filed an opinion concurring in the judgment, in which Justice Thomas joined.)

Bond v. United States, ____ U.S. ____, 134 S. Ct. 2077 (2014) (decision below: United States v. Bond, 681 F.3d 149 (3d Cir. 2012)) The provisions of 18 U.S.C. § 229 do not reach the garden-variety poisoning/assault conduct of petitioner, which is typically a matter for state or local authorities to handle, rather than federal authorities; the small quantities of poison used by petitioner do not fit within the normal meaning of a “chemical weapon,” nor do they implicate the concerns addressed by the treaty (the Chemical Weapons Convention) that § 229 was meant to implement; accordingly, the Court reversed petitioner’s conviction without reaching the greater constitutional question of whether a treaty can permit Congress to pass legislation that otherwise lay outside Congress’s enumerated powers. (Justice Thomas filed an opinion concurring in the judgment, in which he was joined in whole by Justice Scalia and in part by Justice Alito. Justice Alito filed an opinion concurring in the judgment.)

Abramski v. United States, ____ U.S. ____, 134 S. Ct. 2259 (2014) (decision below: United States v. Abramski, 706 F.3d 307 (4th Cir. 2013)) A gun buyer’s intent to sell to another lawful buyer in the future is a fact “material to the lawfulness of the sale” of the firearm under 18 U.S.C. § 922(a)(6); furthermore, a gun buyer’s intent to sell a firearm to another lawful buyer in the future is a piece of information
“required . . . to be kept” by a federally licensed firearms dealer under 18 U.S.C. § 924(a)(1)(A); therefore, where defendant purchased a firearm for his uncle (who could have lawfully purchased the firearm himself), but answered, on Form 4473, that he was the actual buyer of the firearm, he violated both §§ 922(a)(6) and 924(a)(1)(A). (Justice Scalia filed a dissenting opinion, in which he was joined by Chief Justice Roberts and Justices Thomas and Alito.)

Loughrin v. United States, _____ U.S. ____ , 134 S. Ct. 2384 (2014) (decision below: United States v. Loughrin, 710 F.3d 1111 (10th Cir. 2013)) In order to prove bank fraud under 18 U.S.C. § 1344(2), the government is not required to prove that the defendant intended to defraud a financial institution; nor is the government required to prove that the defendant exposed the financial institution to a risk of loss. (Justice Scalia filed an opinion concurring in part and concurring in the judgment, in which he was joined by Justice Thomas. Justice Alito filed an opinion concurring in part and concurring in the judgment.)

Whitfield v. United States, _____ U.S. ____ , 135 S. Ct. 785 (2015) (decision below: United States v. Whitfield, 548 Fed. Appx. 70 (4th Cir. 2013) (unpublished)) A bank robber “forces [a] person to accompany him,” for purposes of 18 U.S.C. § 2113(e), when he forces that person to go somewhere with him, even if the movement occurs entirely within a single building or over a short distance, as was the case here; therefore, fleeing bank robber was properly subject to § 2113(e) when he entered an elderly woman’s house and forced her to accompany him from the hallway to a computer room four to nine feet away, where the woman suffered a fatal heart attack.

Yates v. United States, _____ U.S. ____ , 135 S. Ct. 1074 (2015) (decision below: United States v. Yates, 733 F.3d 1059 (11th Cir. 2013)) Under 18 U.S.C. § 1519, which criminalizes the destruction of, and other acts upon, “any record, document, or tangible object,” the term “tangible object” cannot be construed literally, but rather should be limited to objects that are similar to records and documents in that they are used to record or preserve information; thus, defendant was not properly convicted under 18 U.S.C. § 1519 for destroying purportedly undersized, harvested fish from the Gulf of Mexico after a federally-deputized officer had issued him a civil citation and instructed him to bring them back to port. (Per a plurality opinion [authored by Justice Ginsburg and joined by Chief Justice Roberts and Justices Breyer and Sotomayor], and the separate opinion of Justice
Alito, concurring in the judgment. Justice Kagan filed a dissenting opinion, in which she was joined by Justices Scalia, Kennedy, and Thomas.)

**Elonis v. United States, cert. granted, ____ U.S. ____**, 134 S. Ct. 2819 (June 16, 2014) (No. 13-983) (granting cert. to United States v. Elonis, 730 F.3d 321 (3d Cir. 2013)) QUESTION PRESENTED BY THE PETITION: Consistent with the First Amendment and Virginia v. Black, 538 U.S. 343 (2003), does conviction of threatening another person require proof of the defendant’s subjective intent to threaten, as required by the Ninth Circuit and the supreme courts of Massachusetts, Rhode Island, and Vermont; or is it enough to show that a “reasonable person” would regard the statement as threatening, as held by other federal courts of appeals and state courts of last resort? ADDITIONAL QUESTION ADDED BY THE COURT: As a matter of statutory interpretation, does conviction of threatening another person under 18 U.S.C. § 875(c) require proof of the defendant’s subjective intent to threaten?

**McFadden v. United States, cert. granted, 135 S. Ct. 1039** (Jan. 16, 2015) (granting cert. to United States v. McFadden, 753 F.3d 432 (4th Cir. 2014)) In order to convict a defendant of distribution of a controlled substance analogue, must the government prove that the defendant knew that the substance constituted a controlled substance analogue, as held by the Second, Seventh, and Eighth Circuits, but rejected by the Fourth and Fifth Circuits?