Supreme Court of the United States

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Batson v. Kentucky

- For making prima facie case of purposeful discrimination under *Batson v. Kentucky*, 476 U.S. 79 (1986),
  - Defense must show member of racial group peremptorily challenged and facts raise inference that prosecutor used challenge to exclude on account of race
  - Burden then shifts to state to provide race neutral explanation
  - Trial court must "assess the plausibility of" the prosecutor's reason for striking the juror "in light of all evidence with a bearing on it." *Miller-El v. Dretke*, 545 U.S. 231, 252 (2005)

- "If a prosecutor's proffered reason for striking a black panelist applies just as well to an otherwise-similar nonblack who is permitted to serve, that is evidence tending to prove purposeful discrimination to be considered at Batson's third step." *Id.* at 241.

- "The credibility of the prosecutor's explanation goes to the heart of the equal protection analysis." *Hernandez v. New York*, 500 U.S. 352, 367 (1991).

- When evaluating a Batson claim, "determinations of credibility and demeanor lie peculiarly within a trial judge's province," and this Court has stated that "in the absence of exceptional circumstances, we would defer to [the trial court]." *Snyder v. Louisiana*, 552 U.S. 472, 477 (2008).

Right to self-representation

- A criminal defendant has a Sixth Amendment right to represent himself when he voluntarily, knowingly, and intelligently chooses to do so. *Faretta v. California*, 422 U.S. 806 (1975)

- But "the Constitution permits States to insist upon representation by counsel for those competent enough to stand trial under Dusky but who still suffer from severe mental illness to the point where they are not competent to conduct trial proceedings by themselves." *Indiana v. Edwards*, 554 U.S. 164, 178, 128 S. Ct. 2379, 2388 (2008)

- In *State v. Dean*, 127 Ohio St.3d. 140 (2010), Supreme Court of Ohio reversed and remanded for new capital trial -- trial court abused its discretion by finding that Dean's request for self-representation was involuntary, refusing request to proceed pro se: "Dean understood the choices before him regarding representation, he was fully advised about the potential dangers of proceeding pro se, and he rejected repeatedly the attorneys assigned to represent him." *Id.* at 153.

Visible shackling/stun belts

- In *Deck v. Missouri*, 544 U.S. 622, 626 (2005), Court addressed the use of visible shackles. "The law has long forbidden routine use of visible shackles during the guilt phase; it permits a State to shackle a criminal defendant only in the presence of a special need." *Id.* at 626.
- "[T]he Constitution forbids the use of visible shackles during the penalty phase, as it forbids their use during the guilt phase, unless that use is justified by an essential state interest -- such as the interest in courtroom security -- specific to the defendant on trial." *Id.* at 624.
- A determination to use shackles "must be case specific; that is to say, it should reflect particular concerns, say, special security needs or escape risks, related to the defendant on trial." *Id.* at 633.
- Ohio courts appear to give much deference to trial judge, even when there was no hearing:
  - "The trial court provided limited reasoning as to why it found a compelling need to keep Neyland shackled. Yet the trial judge was in a position to consider Neyland's actions inside and outside the courtroom and voiced his concerns about Neyland's potential for disruptive courtroom behavior.... Thus, we hold that the trial court did not abuse its discretion in ordering Neyland to wear a leg restraint." *State v. Neyland*, 139 Ohio St. 3d 353, 369 (2014)

Right to public trial

- *In re Oliver*, 333 U.S. 257 (1948): accused has a Sixth Amendment right to public trial
- *Press-Enterprise Co. v. Superior Court of Cal., Riverside Cty.*, 464 U.S. 501 (1984): also have right to public trial under First Amendment; it extends to voir dire
- *Waller v. Georgia*, 467 U.S. 39 (1984): accused's Sixth Amendment right to public trial extends to pretrial suppression hearing
  - "the party seeking to close the hearing must advance an overriding interest that is likely to be prejudiced, the closure must be no broader than necessary to protect that interest, the trial court must consider reasonable alternatives to closing the proceeding, and it must make findings adequate to support the closure." *Waller*, 467 U.S. at 48.
- *Presley v. Georgia*, 558 U.S. 209 (2010): the Sixth Amendment right to public trial extends to voir dire

Right to public trial – prejudice presumed

- Violation of the right to a public trial is a structural error -- No showing of prejudice necessary

- But keep in mind that the remedy will be fashioned to the particular violation – new suppression hearing for Waller

- "A new trial need be held only if a new, public suppression hearing results in the suppression of material evidence not suppressed at the first trial, or in some other material change in the positions of the parties." *Waller*, 467 U.S. at 50.

Due Process violations

Improper jury instructions/burden of proof allocation implicates due process...

- According to *Sullivan v. Louisiana*, 508 U.S. 275, 280, 113 S. Ct. 2078, 2082 (1993), the giving of a constitutionally deficient reasonable-doubt instruction is among those constitutional errors that require reversal of a conviction, rather than those that are amenable to harmless-error analysis.

- "Appellant asserts the trial court failed to properly instruct the jury regarding the reasonable doubt standard. We agree and, consistent with *Sullivan*, review for structural error."
  State v. Ireland, 10th Dist. No. 15AP-1134, 2017-Ohio-263, ¶ 24 (Ct. App.)

Defendant has a due process right to be present during sentencing...

- "Because Williams was not present when the trial court effectively modified his sentence, the sentence was imposed in violation of Williams's due process right to be present at sentencing embodied in Crim.R. 43(A)."
  State v. Williams, 2016-Ohio-5827, ¶ 83, 71 N.E.3d 592, 609 (Ct. App.)

Recent opinions out of the Supreme Court of the United States

Double Jeopardy - *Bravo-Fernandez v. United States*

- Where the jury returns irreconcilably inconsistent verdicts of conviction and acquittal, and the convictions are later vacated for legal error unrelated to the inconsistency, the Double Jeopardy Clause does not preclude a retrial.

- No inconsistency with the issue preclusion doctrine because it is unknowable which of the inconsistent verdicts — the acquittal[s] or the conviction[s] — the jury really meant.

- But a court's evaluation of the evidence as insufficient to convict is equivalent to an acquittal and therefore bars a second prosecution for the same offense.
  Bravo-Fernandez v. United States, 137 S. Ct. 352, 364 (2016)

606(B)- *Pena-Rodriguez v. Colorado*, 137 S. Ct. 855 (2017)

- where a juror makes a clear statement that indicates he relied on racial stereotypes or animus to convict a criminal defendant, the Sixth Amendment requires that the no-impeachment rule give way in order to permit the trial court to consider the evidence of the juror's statement and any resulting denial of the jury trial guarantee.

- For the inquiry to proceed, there must be a showing that one or more jurors made statements exhibiting overt racial bias that cast serious doubt on the fairness and impartiality of the jury's deliberations and resulting verdict. To qualify, the statement must tend to show that racial animus was a significant motivating factor in the juror's vote to convict. Whether that threshold showing has been satisfied is a matter committed to the substantial discretion of the trial court in light of all the circumstances, including the content and timing of the alleged statements and the reliability of the proffered evidence.

- While the trial court concluded that Colorado's Rule 606(b) did not permit it even to consider the resulting affidavits, the Court's holding today removes that bar. When jurors disclose an instance of racial bias as serious as the one involved in this case, the law must not wholly disregard its occurrence.

Judicial Bias - *Williams v. Pennsylvania*, 136 S. Ct. 1899 (2016); *Rippo v. Baker*, 137 S. Ct. 905 (2017)

Williams v. Pennsylvania, 136 S. Ct. 1899, 1905 (2016)

- "The Court asks not whether a judge harbors an actual, subjective bias, but instead whether, as an objective matter, the average judge in his position is 'likely' to be neutral, or whether there is an unconstitutional potential for bias."
- an unconstitutional potential for bias exists when the same person serves as both accuser and adjudicator in a case.

Rippo v. Baker, 137 S. Ct. 905, 907 (2017)

- At the time of Rippo's trial, Rippo's judge was the target of federal bribery probe, and the Clark County District Attorney's Office—which was prosecuting Rippo—was playing a role in that investigation. SCOTUS determined NOT OK

  "Under our precedents, the Due Process Clause may sometimes demand recusal even when a judge has no actual bias. Recusal is required when, objectively speaking, the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable."

Opinions to look for out of the Supreme Court of the United States

Weaver v. Massachusetts, Case No. 16-240, argued 4/19/17

- The court closed the courtroom during voir dire, trial counsel failed to object
- If a defendant's lawyer fails to raise a structural error, what needs proven for prejudice? When there is a "structural" error in a criminal trial, prejudice is presumed. But when a defendant alleges that his lawyer was constitutionally ineffective, he must prove prejudice before his conviction will be reversed.
- According to SCOTUSblog's analysis of the argument, the justices "seemed divided and genuinely undecided."

McWilliams v. Dunn, Case No. 16-5294, argued 4/24/17

- Whether, when Supreme Court held in *Ake v. Oklahoma* that an indigent defendant is entitled to meaningful expert assistance for the "evaluation, preparation, and presentation of the defense," it clearly established that the expert should be independent of the prosecution.
- Cert off a federal habeas case, so bar is higher, but still looks promising
- SCOTUSblog counted 5 likely votes for defense

Turner v. U.S., *Overton v. U.S.*, Case Nos. 15-1503 and 15-1504, argued 3/29/17

- *Brady* issue raised by 7 co-defendants with varying questions presented
- Cert granted, questions presented changed by SCOTUS to a simple one – whether the men's convictions must be set aside.
- Very fact-intensive
- SCOTUSblog took the fact that the Court changed the question presented as a sign that the Court would likely rule in favor of the defendant, though hard to read