

The Supreme Court - May 14, 2018

The Supreme Court of the United States issued five decisions today:

Murphy v. National Collegiate Athletic Assn., No. 16-476: In the 1990s, Congress enacted the Professional and Amateur Sports Protection Act ("PASPA"), 28 U.S.C. §3701 et seq., which prohibited states from sponsoring, operating, advertising, promoting, licensing, or authorizing sports betting. See §3702(1). It included a "grandfather" provision for Nevada and other states that already allowed sports gambling, and gave New Jersey the option of legalizing sports gambling in Atlantic City within one year of the law's effective date. New Jersey did not exercise its option at the time, but in 2012 passed a law authorizing sports gambling. The NCAA and others sought to enjoin the law under PASPA, and prevailed before the District Court and Third Circuit over New Jersey's arguments PASPA violated the "anticommandeering" principle. Today, the Court reversed, holding that PASPA's prohibition of state authorization or licensing of sports gambling violates the anticommandeering rule, and that none of the other provisions of PASPA are severable from the provision directly at issue in these cases.

The Court's decision is available [here](#).

Dahda v. United States, No. 17-43: By federal law, judges may issue wiretap orders, but the same statute also requires suppression of any evidence if, *inter alia*, the wiretap order was "insufficient on its face." See 18 U.S.C. §2518(10)(A)(ii). Here, a judge in the District of Kansas issued a number of wiretap orders that met all statutory requirements, but included a sentence providing that if the telephones at issue were transported outside the territorial jurisdiction of the District of Kansas, interception could still occur. Most of the wiretaps did not run afoul of the territorial jurisdictional limit, but one did because the Government listening post and mobile phone were both outside the state. The Dahdas were indicted, and tried to suppress all wiretap evidence, arguing the orders were insufficient on their face because it extended beyond the proper territorial jurisdiction. The Government agreed not to introduce any evidence arising from the one

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wiretap outside the District of Kansas' jurisdiction, and the District Court denied the motion to suppress. The Tenth Circuit affirmed. The Court today affirmed, holding that an order is "insufficient on its face" only insofar as it is "deficient" or "lacking in what is necessary or requisite," and that here, the sentence extending the reach beyond the territorial jurisdiction of the court did not render the order "insufficient on its face," but was surplus.

The Court's decision is available [here](#).

McCoy v. Louisiana, No. 16-8255: Petitioner Robert Leroy McCoy was charged with three counts of first-degree murder in Louisiana State Court, and faced the death penalty. While McCoy maintained his innocence, his attorney determined the evidence was overwhelming and that unless McCoy conceded guilt, it would be impossible for him to avoid a death sentence. The attorney thus conceded guilt at trial over McCoy's objection, but the jury still returned three death verdicts. McCoy's motion for a new trial with new counsel was denied, and the Louisiana Supreme Court affirmed that defense counsel has the authority to concede guilt in these circumstances. Today, the Court reversed, holding that the Sixth Amendment demands that in capital cases, it is the defendant's prerogative, not counsel's, to decide whether the objective is to admit guilt in the hope of gaining mercy at sentencing, or to maintain innocence.

The Court's decision is available [here](#).

Byrd v. United States, No. 16-1371: Petitioner Terrence Byrd was pulled over by Pennsylvania State Troopers. When during the stop, the troopers learned the car was rented and Byrd was not listed on the rental agreement as an authorized driver, troopers proceeded to search the car without Byrd's consent. The troopers discovered heroin and body armor in the trunk, and Byrd was federally prosecuted. The District Court denied Byrd's motion to suppress, and the Third Circuit affirmed. The Court today vacated and remanded, holding that as a general rule, someone in otherwise lawful possession and control of a rental car has a reasonable expectation of privacy in it even if the rental agreement does not list him or her as an authorized driver, and remanded for a determination as to whether Byrd had no greater expectation of privacy than a car thief, or if probable cause otherwise justified the search.

The Court's decision is available [here](#).

United States v. Sanchez-Gomez, No. 17-312: Respondents are four criminal defendants who, over their objections, were bound in full restraints by the Marshals Service during their pretrial hearings. The District Court denied their constitutional challenges, and while on appeal to the Ninth Circuit, the issue of mootness arose because three of the defendants pleaded guilty, and the charges against the other were dismissed under a deferred-prosecution agreement. The Ninth Circuit found the claims were not moot, analogizing to mootness principles in the class action context, and on the merits found that the restraint policy was unconstitutional. Today the Court vacated, holding that the case should be dismissed as moot because class action precedent did not apply, and the argument that this is capable of repetition, yet evading review was

inapplicable when respondents simply anticipate violating lawful criminal statutes.

The Court's decision is available [here](#).

Today, the Supreme Court granted certiorari in two cases:

BNSF Railway Co. v. Loos, No. 17-1042: Whether a railroad's payment to an employee for time lost from work is subject to employment taxes under the Railroad Retirement Tax Act.

Air and Liquid Systems v. Devries, No. 17-1104: Can products-liability defendants be held liable under maritime law for injuries caused by products they did not make, sell, or distribute?