

**SUPREME COURT OF THE UNITED STATES
2018-2019 TERM**

The full text of all opinions may be found at www.supremecourt.gov.

City of Escondido (CA) v. Emmons, 3

Gamble v. U.S., 10

McDonough v. Smith, 11

Mitchell v. Wisconsin, 14

Mount Lemmon Fire District v. Guido, 1

Nieves v. Bartlett, 7

Rehaif v. U.S., 13

Stokeling v. U.S., 5

Timbs v. Indiana, 6

U.S. v. Stitt/ U.S. v. Sims, 2

EMPLOYMENT

Mount Lemmon Fire District v. Guido, --- U.S. --- (2018)

Decided November 6, 2018

FACTS: When the Mount Lemmon Fire District (Arizona) found itself in a budget crisis, it laid off two of its oldest firefighters, Guido and Rankin. They sued the fire district, which is a political subdivision of the state under Arizona law, under the Age Discrimination in Employment Act of 1967 (ADEA), 29 U.S.C. §621. The fire district argued that it was too small under federal law to qualify as an employer as it did not have twenty employees.

The issue centered on the following definition:

“The term ‘employer’ means a person engaged in an industry affecting commerce who has twenty or more employees The term also means (1) any agent of such a person, and (2) a State or political subdivision of a State”¹

The Ninth Circuit ruled that the definition indicated that a State, or a political subdivision of a State, did not require the numerosity limitation to be met for the ADEA to apply. The Fire District requested certiorari and the U.S. Supreme Court granted review.

ISSUE: Does the ADEA apply to government entities with fewer than 20 employees?

HOLDING: Yes

DISCUSSION: The Court reviewed the evolution of the law, which in 1974 was amended to “reach state and local employers.” The Court agreed that the phrase, “also means,” should be read to indicate that the two parts of the definition should be read independently. The Court

¹ 29 U.S.C. §630(b)

agreed that in the same amendment, the Fair Labor Standards Act (FLSA) was amended to “reach all government employers regardless of their size.” The Court looked to the dozens of other instances in which the phrase is used in federal law and noted it “typically carr[ies] an additive meaning.”

The Court discounted the concern that applying the ADEA to “small public entities risks curtailment of vital public services.” The Court noted that in the years since many states have enacted similar laws on age discrimination, no “untoward service shrinkages have been documented.”

The Court affirmed the decision of the Ninth Circuit Court of Appeals.

NOTE: Although this case involved a fire district, the same interpretation can be placed on small city governments in Kentucky as well, some of which may have fewer than 20 employees total.

ACCA

U.S. v. Stitt/ U.S. v. Sims, --- U.S. --- (2018)

Decided December 10, 2018

FACTS: In two separate cases, Stitt and Sims were each convicted of unlawful possession of a firearm (18 U.S.C. 922(g)(1)). Because each had prior state burglary convictions, they both were also potentially subject to enhanced sentencing under the Armed Career Criminal Act (ACCA), 18 U.S.C. 924(e)(1). The ACCA “requires an enhanced sentence for offenders who have at least three previous convictions for certain ‘violent’ or drug-related felonies.” The federal statute provides some description of the state laws that might qualify for the provisions of the ACCA and include, among other crimes, burglary.

Stitt was convicted for aggravated burglary under Tennessee law, which included a burglary of a structure “designed or adapted for the overnight accommodation of persons,” Sims was convicted under Arkansas law for the burglary of a “residential occupiable structure.” For both, the federal District Courts agreed that their crimes fell within the scope of burglary for purposes of the ACCA, and imposed the enhanced sentences. In both, however, their respective federal Circuit Courts of Appeal disagreed, vacated their sentences and remanded the cases for resentencing.

The Government, in both, requested certiorari for reconsideration of those decisions, and the U.S. Supreme Court granted review.

ISSUE: Is burglary a violent crime under the Armed Career Criminal Act?

HOLDING: Yes (most of the time).

DISCUSSION: The Court began by noting that the “word ‘burglary,’ like the word ‘crime’ itself, is ambiguous.” The Court determined that the ACCA requires a trial court to “evaluate a state conviction ‘in terms of how the law defines the offense and not in terms of how an individual offender might have committed it on a particular occasion.’”² The Court noted that in Taylor v. U.S., it had concluded that Congress intended a “uniform definition of burglary” to be used in ACCA cases.³ That would include the “classic” common law definition – breaking and entering into a dwelling at night – but that had been extended over time by most states to include other types of structures as well. The Court agreed, however, that it appeared to limit the scope to “serious” burglaries, those that might lead to a “serious risk of physical harm.” In Taylor, the Court had defined the elements for a generic burglary as “an unlawful or unprivileged entry into, or remaining in, a building or other structure, with intend to commit a crime.”

The Court agreed that the state law in Tennessee and Arkansas fell within that generic definition. By the time the ACCA was passed, in the mid-1980s, most state burglary laws included vehicles used for lodging, such as a recreational vehicle, so the inclusion of such did not remove convictions under those laws from consideration under the ACCA. Further, burglary is an “inherently dangerous crime” that “creates the possibility of a violent confrontation between the offender and an occupant, caretaker, or some other person who comes to investigate.”

With respect to vehicles used as mobile lodgings, the Court noted that the same risk is present, if not even greater given the smaller size of such lodgings, because both occupants and burglars would find it difficult to escape to avoid confrontation. The Court also found no need to consider the part-time aspects of the use of a recreational vehicle, as it is “no less a burglary” in such circumstances. The Court also discounted the argument that the Tennessee law included atypical structures and vehicles, such as those being used for housing that are not typical RVs, as not an issue it needed to consider for the purposes of deciding the case.

The Court reversed the decision of the Sixth Circuit (for Stitt) and vacated and remanded the decision of the Eighth Circuit (for Sims.)

NOTE: *This case may affect individuals convicted under Kentucky’s burglary statutes (KRS Chapter 511).*

42 U.S.C. §1983 - FORCE

City of Escondido (CA) v. Emmons, --- U.S. --- (2019)

Decided January 7, 2019

FACTS: In April 2013, Escondido Police received a 911 call from Maggie Emmons, concerning domestic violence. Officer Houchin responded and the domestic call escalated, resulting in the arrest of Maggie’s husband, for injuries he inflicted on Maggie. He was soon

² Begay v. U.S., 553 U.S. 137 (2008).

³ Taylor v. U.S., 495 U.S. 575 (1990).

released. On May 27, police received another 911 call, this time conveyed by Douglas' mother – Douglas being a roommate of the Emmons. She had received a call from her daughter, screaming for help, and the daughter appeared to be fighting with Maggie Emmons. Officer Houchin again responded, along with Officer Craig. Dispatch told the officers there might be two children in the apartment and that call-backs to the apartment were going unanswered.

Officers knocked but got no answer. They were able to speak to Maggie Emmons through an open window and they tried to get her to open the door for a welfare check. A man inside told Emmons to “back away from the window,” but officers could not identify him. Additional officers arrived as backup. A man emerged and tried to brush past Officer Craig, leaving the apartment. Officer Craig told him to leave the door open, but he did not, shutting it behind him. Officer Craig seized the man, took him to the ground and handcuffed him. The body worn camera did not indicate the man to be in any discomfort as a result. The man was brought to his feet and arrested for a misdemeanor offense. The man turned out to be Marty Emmons, Maggie's father. He ultimately sued Officer Craig and Sgt. Toth under 42 U.S.C. §1983, claiming excessive force. The District Court upheld the arrest and the force used to effect it, finding the officers had probable cause, and further that the “video shows that the officers acted professionally and respectfully” in their interaction with Emmons. The Ninth Circuit reversed that decision and remanded the matter to trial.

The officers requested certiorari and the U.S. Supreme Court granted review.

ISSUE: Is an officer immune from suit if it is even debatable whether the force used was excessive under clearly established law?

HOLDING: Yes.

DISCUSSION:

The Court first reversed the decision concerning Sgt. Toth, which the U.S. Supreme Court found puzzling as only Officer Craig was involved in the use of force claim.

With respect to Officer Craig, the Court noted:

As we have explained many times: “Qualified immunity attaches when an official's conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.”⁴

Under existing precedent, and particularly with respect to excessive force cases, the court continued:

⁴ *Kisela v. Hughes*, 584 U. S. ___, ___ (2018) (per curiam) (slip op.), see *District of Columbia v. Wesby*, 583 U. S. ___, ___–___ (2018); *White v. Pauly*, 580 U. S. ___, ___–___ (2017) (per curiam); *Mullenix v. Luna*, 577 U. S. ___, ___–___ (2015) (per curiam).

Specificity is especially important in the Fourth Amendment context, where the Court has recognized that it is sometimes difficult for an officer to determine how the relevant legal doctrine, here excessive force, will apply to the factual situation the officer confronts. Use of excessive force is an area of the law in which the result depends very much on the facts of each case, and thus police officers are entitled to qualified immunity unless existing precedent squarely governs the specific facts at issue. . . . “[I]t does not suffice for a court simply to state that an officer may not use unreasonable and excessive force, deny qualified immunity, and then remit the case for a trial on the question of reasonableness. An officer cannot be said to have violated a clearly established right unless the right’s contours were sufficiently definite that any reasonable official in the defendant’s shoes would have understood that he was violating it.”⁵

With Emmons’ arrest, the Court agreed that the Ninth Circuit “should have asked whether clearly established law prohibited the officers from stopping and taking down a man in these circumstances.” The Court found the Ninth’s Circuit evaluation to be “far too general” in applying a force case that involved passive resistance to the situation, and the Ninth Circuit “made no effort to explain how that case law prohibited Officer Craig’s actions in this case.”

The Court agreed that the proper analysis was “whether clearly established law barred Officer Craig from stopping and taking down Marty Emmons in this manner as Emmons exited the apartment.” The Court vacated the decision with respect to Sgt. Toth, and remanded the case back to the Ninth Circuit to analyze the case against Officer Emmons using the correct process.

ACCA

Stokeling v. U.S., --- U.S. --- (2019) Decided January 15, 2019

FACTS: On July 27, 2015, two men burglarized a Miami Beach restaurant. Stokeling was an employee and quickly became a suspect. After a background check, he was found to have already been convicted of three felonies, including a robbery. He was armed when arrested.

Stokeling pled guilty to being a felon in possession, and was also sentenced under the Armed Career Criminal Act (ACCA), 18 U.S.C. §922(g)(1). The ACCA applies when an individual has three prior convictions for a violent felony. At issue was his prior conviction for robbery, which he argued was not a “predicate offense” for the ACCA. The District Court denied the enhancement, but the Eleventh Circuit reversed that decision, ruling that the ACCA applied.

Stokeling petitioned for certiorari, and the U.S. Supreme Court granted review.

ISSUE: Is a robbery under the common law elements a predicate offense for the ACCA?

⁵ Id., at ___ (slip op., at 5) (quotation altered).

HOLDING: Yes.

DISCUSSION: For a determination under the ACCA, the court must find that the underlying offense has, as an element, some degree of necessary violence. Stokeling argued that under robbery, Florida requires a use of force, defined in that state as including “resistance of the victim that is overcome by the physical force of the offender.” The District Court had looked at the actual facts of the underlying robbery and found that his specific actions in that case did not justify the enhancement.

The Court noted that the Florida statute “mirrored the elements of the common-law crime of robbery, which has long required force of violence.” Those two terms, in fact, are often used interchangeably. The law made no distinction between “gradations” of violence, and the overcoming of even slight resistance is enough to constitute violence for a robbery offense. When it enacted the ACCA, Congress defined robbery as having an element of force or violence, which clearly indicated a desire to legislate against a background of the common law. When the ACCA was amended in 1986, the enumerated crimes, including robbery, were eliminated, but instead an “element clause” was substituted, and that was defined as any crime that included the “use, attempted use, or threatened use of physical force.” Clearly, the Court agreed, Congress intended that force retain the same definition as it had under the common law. Most states require a degree of force to overcome resistance in even the lowest degree of robbery, but that is more than mere touching. It is on the nature of a “physical contest” between victim and criminal, but need not result in physical pain or injury, just be capable of causing it.

The Court held that any crime that includes an element of physical force – force that is “capable of causing physical pain or injury” is sufficient to serve as a predicate offense under the ACCA. As such, the Florida crime of robbery does so. The Eleventh Circuit’s decision was affirmed.

NOTE: Under this decision, a conviction under either degree of Robbery under KRS Chapter 515 may serve as a predicate offense for the ACCA.

ASSET FORFEITURE

Timbs v. Indiana, --- U.S. --- (2019)
Decided February 20, 2019

FACTS: Timbs pleaded guilty in an Indiana state court to dealing in a controlled substance (heroin) and conspiracy to commit theft. At the time he was arrested, the police also seized a Land Rover SUV, valued at \$42,000, that he purchased with money he received as a result of his father’s death. Indiana sought forfeiture of the SUV under civil law, claiming the vehicle had been used to transport the heroin. The trial court agreed that the vehicle had been used to transport heroin, but denied forfeiture because state law limited the fine for such an offense to \$10,000. The trial court found forfeiture unconstitutional under the Eighth Amendment’s Excessive Fines Clause as grossly disproportionate to the severity of his actual crime. However, the Indiana Supreme Court disagreed, finding that clause applies only to federal actions.

Timbs requested certiorari and the U.S. Supreme Court granted review.

ISSUE: Is the Eighth Amendment’s Excessive Fines Clause applicable to the states under the Fourteenth Amendment’s Due Process Clause?

HOLDING: Yes

DISCUSSION: The Court noted that initially, the Bill of Rights applied only to the Federal Government. However, over time, as cases came before the Court, it accepted (with only one exception) the specific protections in each of the Bill of Rights to the States under the Fourteenth Amendment (the Due Process Clause). Each of the fifty states have, in their respective constitutions, a provision prohibiting the imposition of excessive fines. An excessive fine violates the “penal goals of retribution and deterrence.”

The Supreme Court disagreed with Indiana’s argument that the Excessive Fines Clause does not apply in “civil *in rem* forfeitures.”

The Court vacated the forfeiture of the vehicle and remanded the case.

42 U.S.C. §1983 - ARREST

Nieves v. Bartlett, --- U.S. --- (2019)

Decided May 28, 2019

FACTS: This matter arose from an Alaska event called the Arctic Man – an “extreme ski event” in the mountains near Paxson, Alaska. The event drew large crowds and includes “high levels of alcohol use.” Troopers Nieves and Weight (Alaska State Police) were sent to the parking lot to investigate complaints of underage drinking.

During the investigation, Trooper Nieves tapped on Bartlett’s shoulder and asked him if “they could talk.” Bartlett refused to do so and asked if he was free to go, and the trooper allowed him to walk away. A little later, about 1:30 a.m., Bartlett saw a minor he’d accompanied to the party talking to Trooper Weight. He approached the pair and told the trooper that he didn’t “have the authority to talk to him without a parent or guardian present.” (It was suggested that he spoke loudly due to the music playing.) The trooper said “No” and pushed Bartlett, who later claimed his hands came up in reaction to the shove. Trooper Nieves grabbed Bartlett’s arm and ordered him to back up, while Trooper Weight grabbed the other, and they tried to force Bartlett to the ground. Bartlett “hesitated,” as he later said he did not want to aggravate an existing back injury. They threatened him with a Taser and he then voluntarily went prone to the ground and put his hands behind his back.

Bartlett was placed into a cruiser and told he was under arrest for “harassing” the trooper. They loosened his cuffs when he complained. At some point, Bartlett claimed Trooper Nieves stated

that “bet you wish you would have talked to me now,” a statement that would prove critical in later proceedings. He was charged with disorderly conduct and “resisting or interfering with arrest.” The troopers drafted a report, which Bartlett later claimed was “fabricated in that it contain[ed] many false statements.” Ultimately, the state dismissed the charges against Bartlett.

Bartlett filed suit under 42 U.S.C. §1983, claiming that he should be “free from unlawful assault by a police officer, to be free from a malicious criminal prosecution, to not be falsely incarcerated, unreasonable search and seizure, freedom of speech, equal protection of the law and his right to due process.” In particular, he noted that he did not attempt to head-butt the troopers, as the report indicated, nor did he throw punches. He also claimed he did not yell back into his RV, which was nearby, that the occupants did not have to talk to the troopers. Several videos were submitted, from different angles, and some were subject to more than one interpretation. (In fact, a news crew was with Trooper Nieves.) The troopers claim they were entitled to qualified immunity in the arrest.

The District Court reviewed the various allegations. With respect to the false arrest claim, the Court agreed that “it is well established that an arrest without probable cause violates the Fourth Amendment.” Further, it noted the “the ultimate touchstone ... is ‘reasonableness.’” “To be reasonable is not to be perfect, and so the Fourth Amendment allows for some mistakes on the part of government officials, giving them ‘fair leeway for enforcing the law in the community’s protection.’” If “it was reasonable for an officer to suspect that the defendant’s conduct was illegal,” then “there was no violation of the Fourth Amendment.” The standard is objective, and so “[w]e do not examine the subjective understanding of the particular officer involved.” Even if it was arguable, and reasonable officers might disagree on the legality of an arrest, they might still be entitled to qualified immunity. Bartlett was told that he was being arrested for harassment – which under Alaska law was when “with intent to harass or annoy another person, that person ... insults, taunts, or challenges another person in a manner likely to provoke an immediate violent response.” Looking at the undisputed facts, the Court agreed that his conduct spurred the “violent response,” even if that was not his intent, given his loud voice and hand movements. The District Court agreed that the troopers had probable cause for the arrest.

With respect to his malicious prosecution claims, the District Court found no indication that they had exercised any influence over the prosecuting attorney that would have swayed his decision, and in fact, helped him locate video of the event that was not in the possession of the ASP.

With respect to Bartlett’s excessive force claim, the Court looked to Graham v. Connor and its “objective reasonableness” standard.⁶ It noted that “not every push or shove, even if it may later seem unnecessary in the peace of a judge’s chambers, violates the Fourth Amendment.” The troopers noted that no case law suggested that their actions were inappropriate or excessive, and that they did, in fact, a “controlled takedown.” Looking at the Graham factors, the Court noted that in hindsight, his offense was minor, but that the circumstances did suggest a possible threat to the troopers and the public. Trooper Weight’s shove, which did not even knock Bartlett

⁶ Graham v. Connor, 490 U.S. 386 (1989).

down, served only to put distance between them. When he complained about the handcuffs, they were immediately loosened and he suffered no injury as a result. The Court agreed that the troopers were entitled to qualified immunity on the claim.

With respect to the First Amendment, the District Court noted “criticism of the police is not a crime, and even obscene gestures and words directed towards police officers, without more, will not support probable cause to arrest.” The Court agreed, however, that there had not yet been a case recognizing a “First Amendment right to be free from a retaliatory arrest that is supported by probable cause.” Bartlett believe his arrest was “motivated purely by a desire to retaliate against a verbal challenge to an officer’s authority.” The Court agreed, however, that since the troopers had adequately shown that they had probable cause to support the arrest, he could not maintain a First Amendment claim.

Finally, the District Court agreed that there was no evidence that the media footage was improperly withheld or that it was ever even in the possession of the prosecutor or the police. It agreed that without individual claims, there could be no conspiracy claim, either. The District Court ruled in favor of the troopers.

Bartlett then appealed to the Ninth Circuit Court of Appeals. It affirmed the decision on the issue of the false arrest and force claims, as well as the malicious prosecution claim. The Court, however, reversed the trial court’s decision on the retaliatory arrest claim, noting in it had held, in the past, that a “plaintiff can prevail on a retaliatory arrest claim even if the officers had probable cause to arrest,’ despite the decision in Reichle v. Howards.⁷ The Court agreed that the threat of an arrest would “chill a person of ordinary firmness from future First Amendment activity.”

The Troopers requested certiorari on the retaliatory arrest claim, and the U.S. Supreme Court granted review.

ISSUE: Does probable cause defeat a First Amendment retaliatory-arrest claim under 42 U.S.C. §1983?

HOLDING: Yes, in most instances.

DISCUSSION: The Court noted that the issue it was “asked to resolve” is “whether probable cause to make an arrest defeats a claim that the arrest was in retaliation for speech protected by the First Amendment.” Although the issue had been brought in twice in recent court terms, it had been left essentially unanswered. The Court found the facts of this matter, however, appropriate to directly address the issue.

The Court agreed that “[A]s a general matter the First Amendment prohibits government officials from subjecting an individual to retaliatory actions” when they are “engaging in protected

⁷ 566 U.S. 658 (2012); See also Hartman v. Moore, 547 U.S. 250 (2006).

speech.”⁸ If the official does something based on a retaliatory motive, and there is insufficient grounds to have provoked the consequences (such as an arrest) absent that motive, the injured party may seek relief.⁹ To prevail, the plaintiff must be able to show a “causal connection’ between the government defendant’s ‘retaliatory animus’ and the plaintiff’s ‘subsequent injury.’” The motive and the injury must be linked together, and that “but-for” the motive, the action would not have occurred.

Often, the court agreed, the connection was straightforward and obvious. In Hartman, however, the Court required plaintiffs to further and “prove as a threshold matter that the decision to press charges was objectively unreasonable because it was not supported by probable cause.” The officers in the instant case “argue that the same no-probable-cause requirement should apply to First Amendment retaliatory arrest claims.” The Court agreed that such claims often “give rise to complex causal inquiries.” But, in short, the Court agreed that the “plaintiff pressing a retaliatory arrest claim must plead and prove the absence of probable cause for the arrest.”

Further, the Court agreed, it had “almost uniformly rejected invitation to probe subjective intent” – preferring to depend instead on the “application of objective standards of conduct, rather than standards that depend upon the subjective state of mind of the officer.”¹⁰ The Court noted that although, as a rule, “probable cause should generally defeat a retaliatory arrest claim, a narrow qualification is warranted for circumstances where officers have probable cause to make arrests, but typically exercise their discretion not to do so.” It emphasized that when 1983 was first adopted, officers in most of the country were much more limited in their ability to make warrantless arrests for misdemeanors. That has changed, however, and such arrests are now permitted “in a much wider range of situations.” It left intact the possible argument that a plaintiff could raise, that the subject “was arrested when otherwise similarly situated individuals not engaged in the same sort of protected speech had not been.”

However, in Bartlett’s situation, the Court agreed that despite the statement made by Nieves, that Trooper Weight, who made the arrest, had no knowledge of the prior interaction. The Court agreed that the troopers had probable cause for the arrest and that his “retaliatory arrest claim fail[ed] as a matter of law.”

The Court reversed the decision of the Ninth Circuit Court of Appeals and the case was remanded.

DUAL SOVEREIGNTY

Gamble v. U.S., --- U.S. --- 2019
Decided June 17, 2019

⁸ Hartman, *supra*.

⁹ Crawford-El v. Britton, 523 U.S. 574 (1998); Mt. Healthy City Bd. Of Ed. v. Doyle, 429 U.S. 274 (1977).

¹⁰ Supra.

FACTS: In 2015, Gamble, a convicted felon, was arrested in Alabama with a handgun. He pled guilty under state law for possession of the firearm, and was then indicted under federal law for possession of the same gun. He moved to dismiss, arguing that the federal indictment was the “same offence” under the Fifth Amendment as the one at issue in the state conviction. However, the Court had long held that such situations were not, in fact the same offense, under Double Jeopardy, if prosecuted by “different sovereigns.” He then entered a conditional guilty plea.

Gamble appealed to the Eleventh Circuit, and his conviction was affirmed. He petitioned the U.S. Supreme Court for review, and it granted certiorari.

ISSUE: May an individual be prosecuted for the same essential offense under both state and federal law?

HOLDING: Yes.

DISCUSSION: The Court reviewed the history of the Fifth Amendment and the Double Jeopardy clause, in particular, at length. The Court held that eliminating the “dual sovereignty rule” would not reduce the reach of the federal government in criminal law, and would have little effect on state law prosecutions.

The Court upheld the prosecution under both Alabama state law and federal law, and upheld Gamble’s conviction.

42 U.S.C. §1983 – MALICIOUS PROSECUTION

McDonough v. Smith, --- U.S. --- (2019)

Decided June 20, 2019

FACTS: McDonough was a commissioner in the Rensselaer County, New York, board of elections. Smith was appointed as a special district attorney to prosecute possibly forged absentee ballots. Allegedly, Smith scapegoated McDonough (in which there was a personal vendetta) and fabricated evidence, and leaked to the press that McDonough was the primary target. McDonough refused to confess and “Smith allegedly fabricated evidence in order to inculcate him.” Smith was accused of falsifying affidavits, coaching witnesses to lie and orchestrating “a suspect DNA analysis to link McDonough to relevant ballot envelopes.”

Using this evidence in part, Smith obtained an indictment of McDonough. He was arrested, arraigned and released with restrictions. At trial a year later, the trial ended in a mistrial. Ultimately, during a second trial in 2012, in which fabricated testimony was used, McDonough was acquitted. Just under three years later, in 2015, McDonough sued Smith and others under 42 U.S.C. §1983 for fabrication evidence and malicious prosecution. The District Court dismissed the latter under immunity and dismissed the former as untimely.

McDonough appealed to the U.S. Court of Appeals for the Second Circuit, which affirmed, agreeing with disposition of the malicious prosecution claim. It also explored when the limitations period for the evidence claim accrued and concluded that it started when McDonough was arrested, as that was the point at which he knew the evidence was false and being used against him, and he suffered some loss of liberty (the restrictions of his release). As such, the case was brought untimely, as the matter had a three year statute of limitations in New York. (Such claims follow the statute of limitations for personal injury in the state in which it occurred.) McDonough requested review, and the U.S. Supreme Court granted certiorari.

ISSUE: When does the statute of limitations for a malicious prosecution claim under 42 U.S.C. §1983 accrue?

HOLDING: At the favorable termination of the defendant’s underlying criminal case.

DISCUSSION: The Court held that the statute of limitations for such a claim did not begin until the criminal proceedings terminated in the subject’s favor. When the claim accrues and is a matter for federal law to decide, it begins only when the plaintiff has a “complete and present cause of action.” In such cases, it was first necessary to identify “the specific constitutional right’ alleged to have been infringed.”¹¹ The Second Circuit treated the claim as falling under the Due Process Clause, and the Court found that to be sound, as it normally decided such accrual questions by looking to analogous claims.

Looking to Heck v. Humphrey, the Court agreed that malicious prosecution is the most analogous common-law tort, and that required a showing that a “defendant instigated a criminal proceeding with improper purposes and without probable cause.”¹² In such a claim, he could not bring up the case until the favorable termination of his prosecution, which was designed to avoid conflicting and parallel civil and criminal prosecutions.

The Court held “[o]nly once the criminal proceeding has ended in the defendant’s favor, or a resulting conviction has been invalidated within the meaning of Heck, will the statute of limitations begin to run.”

The Court noted that it would “impose a ticking limitations clock” which would force defendants to take action quickly after they become aware of the fabrication, which would create “practical problems” where criminal proceedings might extend into years. Such defendants might have to choose between letting the case expire or filing a lawsuit against the very person prosecuting them, and the latter would cause defense strategy issues as well. The Court agreed that McDonough “had a complete and present cause of action for the loss of his liberty only once the criminal proceedings against him terminated in his favor.”

¹¹ Manuel v. Joliet, 580 U.S. – (2017).

¹² 512 U.S. 477 (1994).

The Court concluded that the statute of limitations began at McDonough's acquittal. As such, his lawsuit was brought in a timely manner. The Court reversed the decision of the Second Circuit and remanded the case for further proceeding consistent with the decision.

FEDERAL LAW – FIREARMS

Rehaif v. U.S., --- U.S. --- (2019)

Decided June 21, 2019

FACTS: Rehaif entered the U.S. on a student visa. When he received failing grades, he was told he needed to transfer to another university or leave the country. He did neither. Sometime after that, he visited a range and fired two weapons. Learning of this, he was prosecuted for possessing the firearms illegally (as a "alien unlawfully in the" U.S.). At trial, the judge instructed the jury that Rehaif did not need to have been proven to have known he was in the U.S. unlawfully.

Rehaif was convicted and appealed, arguing that the jury should not have received that instruction. The Eleventh Circuit Court of Appeals affirmed the decision, finding that a defendant need not to have been shown to have known his status, and that a similar lack of a requirement would be found in the "felon-in-possession" statutes.

Rehaif requested review and the U.S. Supreme Court granted certiorari.

ISSUE: Must a subject know that it is illegal for them to possess a firearm as a criminal alien and that they are, in fact, a criminal alien?

HOLDING: Yes.

DISCUSSION: The Court noted that in looking at the intent of Congress in this statute, it had long held that "Congress intends to require a defendant to possess a culpable mental state regarding "each of the statutory elements that criminalize otherwise innocent conduct." In other words, there is a presumption of scienter – knowledge – inherent in each.

In this case, Rehaif's status was what made his actions criminal. The Court did not believe that Congress would have expected all possible defendants to understand their own status, and normally presumed that "Congress did not intend to impose criminal liability on persons who, due to lack of knowledge, did not have a wrongful mental state." Further, the maxim of "ignorance of the law is no excuse" did not apply when the defendant "has a mistaken impression concerning the legal effect of some collateral matter and that mistake results in his misunderstanding the full significance of his conduct" – which negated the mental state required.

The Court concluded that to prosecute Rehaif, the Government "must prove both that the defendant knew he possessed a firearm and that he knew he belonged to the relevant category

of persons barred from possessing a firearm. The Court reversed Rehaif's conviction and remanded the case.

DUI

Mitchell v. Wisconsin, --- U.S. --- (2019) **Decided June 27, 2019**

FACTS: Officer Jaeger (Sheboygan, Wisconsin, PD) was dispatched to a call of a possibly impaired subject. The officer located Mitchell, who was apparently extremely intoxicated. Mitchell's instability made a field sobriety test "hopeless, if not dangerous," so the officer gave Mitchell a PBT instead. It registered 0.24%. He was arrested and taken to the police station. On the way, his condition deteriorated and upon arrival, Officer Jaeger drove Mitchell to the hospital instead. Jaeger read Mitchell the standard warning, and Mitchell was unresponsive. The blood draw, taken while he was unconscious, taken some 90 minutes after his arrest, was 0.222%.

Mitchell was charged and moved to suppress the results, as it was taken without a warrant and under Wisconsin's implied-consent statute. Under that law, the blood test was considered consensual, "curing any Fourth Amendment problem." The Wisconsin Supreme Court affirmed Mitchell's convictions.

Mitchell requested review from the U.S. Supreme Court, which granted certiorari.

ISSUE: Does a statute authorizing a blood draw from an unconscious motorist provides an exception to the Fourth Amendment warrant requirement?

HOLDING: No, but it can be justified under another principle.

DISCUSSION: The Supreme Court noted that its prior decisions on the topic have been based on "the precedent regarding the specific constitutional claims in each case, while keeping in mind the wider regulatory scheme developed over the years to combat drunk driving. The scheme is centered on legally specified BAC limits for drivers – limits enforced by the BAC tests promoted by implied-consent laws." Over the years, the Court had ruled on a number of DUI-related decisions, and for the most part, the court has approved of the methods in use.

In some cases, drivers had raised challenged under the Fourth Amendment, as such BAC tests are searches. By default, a search requires a warrant, but "there are well-defined exceptions to the rule." In the most recently decided case, Birchfield v. North Dakota, the Court had concluded that a DUI arrest may justify a warrantless breath test, but not a blood tests, "since breath tests are less intrusive, just as informant, and (in the case of conscious suspects) readily available."¹³ BAC tests had also been address as being taken under "exigent circumstances" in Missouri v.

¹³ 579 U. S. ____ (2016).

McNeely.¹⁴ In the much older case of Schmerber v. California, the Court had agreed that while the “fleeting qualify” of BAC evidence is not alone enough for a warrantless search, that it could justify excusing the need for a warrant because it was done in the context of a wreck, whether the officers were attending to “other pressing duties.”¹⁵

In this fact pattern, the Court noted:

Like Schmerber, this case sits much higher than McNeely on the exigency spectrum. McNeely was about the minimum degree of urgency common to all drunk-driving cases. In Schmerber, a car accident heightened that urgency. And here Mitchell’s medical condition did just the same.

The Court emphasized that “Mitchell’s stupor and eventual unconsciousness also deprived officials of a reasonable opportunity to administer a breath test.” Although a PBT was obtained at the scene, the officer had no chance to use an “evidence-grade” instrument.

The Court continued:

The importance of the needs served by BAC testing is hard to overstate. The bottom line is that BAC tests are needed for enforcing laws that save lives. The specifics, in short, are these: Highway safety is critical; it is served by laws that criminalize driving with a certain BAC level: and enforcing these legal BAC limits requires efficient testing to obtain BAC evidence, which naturally dissipates. So BAC tests are crucial links in a chain on which vital interests hang. And when a breath test is unavailable to advance those aims, a blood test becomes essential.

The Court reiterated, strongly, that highway safety is a legally “compelling interest,” and had, in two much earlier cases called “the effects of irresponsible driving ... ‘slaughter’ comparable to the ravages of war.”¹⁶

It agreed that established BAC limits helped to eliminate that tragedy. Such tough measures had corresponded with a “dramatic drop in highway deaths and injuries.” To enforce the law requires an accurate and reliable testing process that is effected promptly on the subject. Evidence, in such cases, it agreed “is literally disappearing by the minute.”

The Court noted that drivers who are so impaired as to pass out are an even greater risk and “it would be perverse if the more wanton behavior were rewarded – if the more harrowing threat were harder to punish.” And in such drivers, unconsciousness is, in itself, a medical emergency requiring a trip to the hospital where of course, blood would be drawn and where the treatment would delay testing and might even distort the results of later testing.

¹⁴ 569 U.S. 141 (2013).

¹⁵ 384 U. S. 757 (1966).

¹⁶ Breithaupt v. Abram, 352 U. S. 432 (1957); Perez v. Campbell, 402 U. S. 637 (1971).

Further:

Indeed, in many unconscious-driver cases, the exigency will be more acute, as elaborated in the briefing and argument in this case. A driver so drunk as to lose consciousness is quite likely to crash, especially if he passes out before managing to park. And then the accident might give officers a slew of urgent tasks beyond that of securing (and working around) medical care for the suspect. Police may have to ensure that others who are injured receive prompt medical attention; they may have to provide first aid themselves until medical personnel arrive at the scene. In some cases, they may have to deal with fatalities. They may have to preserve evidence at the scene and block or redirect traffic to prevent further accidents. These pressing matters, too, would require responsible officers to put off applying for a warrant, and that would only exacerbate the delay—and imprecision—of any subsequent BAC test.

In sum, all these rival priorities would put officers, who must often engage in a form of triage, to a dilemma. It would force them to choose between prioritizing a warrant application, to the detriment of critical health and safety needs, and delaying the warrant application, and thus the BAC test, to the detriment of its evidentiary value and all the compelling interests served by BAC limits. This is just the kind of scenario for which the exigency rule was born—just the kind of grim dilemma it lives to dissolve.

The Court looked at Mitchell’s argument, that in modern times, warrants are easier, because of technology, to obtain, but noted that they still take time. And “In the emergency scenarios created by unconscious drivers, forcing police to put off other tasks for even a relatively short period of time may have terrible collateral costs. That is just what it means for these situations to be emergencies.”

Although the Court vacated the Wisconsin Supreme Court’s decision, the Court noted that was done because Mitchell did not “have a chance to attempt to make” the argument that “his blood would not have been drawn if police had not been seeking BAC information, and that police could not have reasonably judged that a warrant application would interfere with other pressing needs or duties.” The Court concluded that “[w]hen police have probable cause to believe a person has committed a drunk-driving offense and the driver’s unconsciousness or stupor requires him to be taken to the hospital or similar facility before police have a reasonable opportunity to administer a standard evidentiary breath test, they may almost always order a warrantless blood test to measure the driver’s BAC without offending the Fourth Amendment. We do not rule out the possibility that in an unusual case a defendant would be able to show that his blood would not have been drawn if police had not been seeking BAC information, and that police could not have reasonably judged that a warrant application would interfere with other pressing needs or duties.” However, clearly, the Court intimated that such cases would like be few and far between, and that in most cases, a driver’s unconscious or stupor state constituted sufficient exigent circumstances to justify a warrantless blood draw.

NOTE: *In essence, although the Court effectively negated Wisconsin's statutory implied-consent doctrine, similar to Kentucky's KRS 189A.103, it upheld the principle of allowing a warrantless blood draw in cases where the subject is physically unable to give consent. Instead of basing such a test on the statute, however, it must be based on a more general "exigency" justification.*