

Major Criminal Procedure and Criminal Law Cases: October Terms 2018 and 2019

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I. Criminal cases – October Term 2018

A. Fourth Amendment

Mitchell v. Wisconsin, 139 S.Ct. 2525 (2019). There are almost always exigent circumstances that justify the police taking blood from an unconscious motorist without a warrant.

B. Double jeopardy

Gamble v. United States, 139 S.Ct. 1960 (2019). The “separate sovereigns” exception to the double jeopardy clause is reaffirmed.

C. Eighth Amendment

Dunn v. Ray, 139 S.Ct. 661 (2019) (mem.) Overturning stay of execution issued by the Eleventh Circuit because of denial of clergy to a Muslim inmate at his execution.

Murphy v. Collier, 139 S.Ct. 1475 (2019) (mem.) Staying execution of Buddhist inmate who was not allowed clergy at the time of his execution.

Madison v. Alabama, 139 S.Ct. 718 (2019). The Eighth Amendment may permit executing a prisoner even if he cannot remember committing his crime, but it may prohibit executing a prisoner who suffers from dementia or another disorder rather than psychotic delusions.

Bucklew v. Precythe, 139 S.Ct. 1112 (2019). *Baze v. Rees* and *Glossip v. Gross* govern all Eighth Amendment challenges alleging that a method of execution inflicts unconstitutionally cruel pain; Russell Bucklew’s as-applied challenge to Missouri’s single-drug execution protocol -- that it would cause him severe pain because of his particular medical condition -- fails to satisfy the *Baze-Glossip* test.

D. Due process

Flowers v. Mississippi, 139 S.Ct. 2228 (2019). *Batson v. Kentucky* was violated when the same prosecutor struck 41 of 42 African-American jurors over six trials involving the same defendant.

United States v. Davis, 139 S.Ct. 2319 (2019). Title 18 U. S. C. §924(c)(3)(B), which provides enhanced penalties for using a firearm during a “crime of violence,” is unconstitutionally vague.

E. Sixth Amendment

United States v. Haymond, 139 S.Ct. 2369 (2019). The U.S. Court of Appeals for the 10th Circuit was correct in holding “unconstitutional and unenforceable” the portions of 18 U.S.C. § 3583(k) that required the district court to revoke the respondent’s 10-year term of supervised release, and to impose five years of reimprisonment, following its finding by a preponderance of the evidence that the respondent violated the conditions of his release by knowingly possessing child pornography.

Garza v. Idaho, 139 S.Ct. 738 (2019). The presumption of prejudice for Sixth Amendment purposes recognized in *Roe v. Flores-Ortega* applies regardless of whether a defendant has signed an appeal waiver.

II. Criminal cases – October Term 2019

Kahler v. Kansas, 410 P.3d 105 (Kansas 2018).

Whether the Eighth and 14th Amendments permit a state to abolish the insanity defense.

Ramos v. Louisiana, 31 So.3d 44 (La. Ct. App. 2018).

Whether the 14th Amendment fully incorporates the Sixth Amendment guarantee of a unanimous verdict.

Kansas v. Glover, 422 P.3d 64 (Kansas 2018).

Whether, for purposes of an investigative stop under the Fourth Amendment, it is reasonable for an officer to suspect that the registered owner of a vehicle is the one driving the vehicle absent any information to the contrary.