

SUPREME COURT REVIEW AND PREVIEW
David A. Moran, Wayne State University Law School

I. Search and Seizure

A. Seizures—Reasonableness

Scott v. Harris, 127 S.Ct. 1769 (2007)

The police may reasonably seize a fleeing motorist by bumping him off the road where the motorist's driving imperils the lives of innocent civilians.

Los Angeles County v. Rettele, 127 S.Ct. 1989 (2007)

Police executing a search warrant in a home acted reasonably in ordering an unclothed couple out of their bed and in refusing to let them cover themselves for several minutes even though they did not resemble the suspects for whom the police were searching.

B. Arrests—Lawfulness

Virginia v. Moore (to be argued January 14, 2008)

Does a custodial arrest for a state offense violate the Fourth Amendment when state law does not permit an officer to perform a custodial arrest for that offense?

C. Traffic Stops

Brendlin v. California, 127 S.Ct. 2400 (2007)

A passenger in a vehicle stopped by the police is "seized" within the meaning of the Fourth Amendment and therefore has standing to challenge the validity of the stop.

II. Confessions and the Vienna Convention

Medellin v. Texas (argued October 10, 2007)

Is a holding of the International Court of Justice that particular foreign nationals are entitled to have their convictions and sentences reviewed because of violations of the Vienna Convention binding on state courts?

III. Miscellaneous Trial Issues

A. Conduct of Trial

***Carey v. Musladin*, 127 S.Ct. 649 (2006)**

Supreme Court precedent does not clearly establish that right to fair trial is denied when spectators are permitted to wear buttons depicting image of victim.

B. Sufficiency of the Charging Instrument

***United States v. Resendiz-Ponce*, 127 S.Ct. 782 (2007)**

An indictment is not fatally defective for failure to set forth overt act amounting to substantial step in attempted crime.

C. Jury Selection

***Snyder v. Louisiana* (argued December 4, 2007)**

What evidence constitutes sufficient proof that a prosecutor used peremptory challenges for discriminatory reasons, what standard of review should an appellate court apply to such *Batson* claims on direct review, and are *Batson* claims waived by failure to object to particular strikes even if that failure to object constitutes ineffective assistance of counsel?

D. Ineffective Assistance of Counsel

***Arave v. Hoffman* (to be argued February 2008)**

Is it ineffective assistance for counsel to advise defendant to reject plea offer based on inaccurate prediction of law and, if so, what remedy, if any, is a defendant who has been convicted after a fair trial entitled to receive because of ineffective assistance during plea negotiations?

IV. Sentencing—*Blakely* and *Booker*

***Cunningham v. California*, 127 S.Ct. 856 (2007)**

California's scheme of presumptive sentences and judicial departures violates *Blakely*.

***Rita v. United States*, 127 S.Ct. 2746 (2007)**

An appellate court may apply a presumption of reasonableness to a sentence within the federal sentencing guidelines.

***Kimbrough v. United States*, (argued October 2, 2007)**

In fashioning reasonable sentence, may judge take into account guidelines' disparate treatment of crack and powder cocaine?

***Gall v. United States* (argued October 2, 2007)**

Must district judge set forth extraordinary circumstances to justify imposing sentence below sentencing guidelines range?

V. Post-Conviction Relief

A. Statute of Limitations

***Lawrence v. Florida*, 127 S.Ct. 1079 (2007)**

Pendency of certiorari petition in U.S. Supreme Court following denial of state post-conviction relief did not toll one-year habeas corpus clock.

B. Standard of Review—Harmless Error Analysis

***Fry v. Pliler*, 127 S.Ct. 2321 (2007)**

Deferential standard of *Brecht v. Abrahamson*, 507 U.S. 619 (1993), applies on habeas corpus review as to harmlessness of constitutional error even if state court failed to apply "harmless beyond reasonable doubt standard on direct review of error.

C. Retroactivity

***Whorton v. Bockting*, 127 S.Ct. 1173 (2007)**

Crawford v. Washington cannot be applied retroactively on federal habeas corpus to convictions that became final before *Crawford* was decided

***Danforth v. Minnesota* (argued October 31, 2007)**

May *Crawford v. Washington* be applied retroactively on state collateral review despite *Whorton v. Bockting*?

D. Appellate Procedure

***Bowles v. Russell*, 127 S.Ct. 2360 (2007)**

Failure to file appeal within time prescribed deprived appellate court of jurisdiction to hear appeal even though district judge's error resulted in late filing.