TCCDLA Caselaw Update June 2018

United States Supreme Court

McCoy v. Louisiana, **No. 16–8255**

This case was mentioned in February. The Court has now issued its decision. The Court held that counsel may not admit the client's guilt over the client's objection. Doing so is structural error and does not require a harm analysis. I can't say I'm terribly surprised at this decision. On the other hand, it may not be what actually happened in the case.

The dissent paints a very different picture. This is the introductory paragraph of the dissenting opinion:

> The Constitution gives us the authority to decide real cases and controversies; we do not have the right to simplify or otherwise change the facts of a case in order to make our work easier or to achieve a desired result. But that is exactly what the Court does in this case. The Court overturns petitioner's convictions for three counts of first-degree murder by attributing to his trial attorney, Larry English, something that English never did. The Court holds that English violated petitioner's constitutional rights by "admit[ting] h[is] client's guilt of a charged crime over the client's intransigent objection." But English did not admit that petitioner was guilty of first-degree murder. Instead, faced with overwhelming evidence that petitioner shot and killed the three victims, English admitted that petitioner committed one element of that offense, i.e., that he killed the victims. But English strenuously argued that petitioner was not guilty of first-degree murder because he lacked the intent (the mens rea) required for the offense. So the Court's newly discovered fundamental right simply does not apply to the real facts of this case.

The dissent pointed out numerous issues with the majority's holding. For example, counsel only admitted one element of the offense; not McCoy's guilt of the offense. The majority opinion could be read as sanctioning's trial counsel's not challenging an element of the offense but disapproving admitting that element, which raises a real question of whether trial counsel can concede an element of an offense. McCoy's preferred trial strategy—advancing a conspiracy theory—would have been disastrous "and would have severely damaged English's credibility in the eyes of the jury, thus undermining his ability to argue effectively against the imposition of a death sentence at the penalty phase of the trial." The Court reached and effectively overruled a state law question: that counsel's pursuing McCoy's strategy would have been a breach of state ethics rules. Finally, this question was not considered below.

Comment: In my opinion, this case will either fade into oblivion as a poor decision reached mostly because this was a death penalty case or it will spawn much habeas litigation over the scope of the trial lawyer's authority to make strategic decisions.

Collins v. Virginia, **No. 16–1027**

Collins was suspected of being in possession of a stolen motorcycle that he committed a traffic violation on and later fled police on. On Collins' Facebook page, there were photos of Collins at a house with a motorcycle matching the one he'd been seen on. An officer located the residence and saw what he believed was a motorcycle under a tarp positioned similarly to the Facebook pictures. The officer crossed the curtilage, looked under a tarp, and found the motorcycle. The Virginia court of appeals affirmed finding probable cause and exigent circumstances. The Virginia Supreme Court affirmed based on the automobile exception.

The Supreme Court rejected this notion. Relying on *Florida v. Jardines*, 569 U. S. 1, 6 (2013), the Court held that crossing the curtilage to investigate was a search: "When a law enforcement officer physically intrudes on the curtilage to gather evidence, a search within the meaning of the Fourth Amendment has occurred. Such conduct thus is presumptively unreasonable absent a warrant." The Court rejected the application of the automobile exception because that exception extends no further than the automobile: "The reason is that the scope of the automobile exception extends no further than the automobile itself." Slip Op. at 7 (*Pennsylvania v. Labron*, 518 U. S. 938, 940 (1996) (per curiam); *Wyoming v. Houghton*, 526 U. S. 295, 300 (1999)).

Byrd v. United States, **No. 16–1371**

Byrd was arresting driver a load of heroin in a rental car rented by his girlfriend. Byrd was stopped by law enforcement, and the load of heroin discovered. The simple holding here is that you don't have to be listed on the rental agreement to have a privacy interest in a rental car. Byrd's girlfriend rented the car for Byrd to use to haul a load of heroin. She rented it and gave it to

him. Thus, he had a legitimate right to be operating the vehicle even though he wasn't an authorized driver under the rental agreement. The Court also rejected the government's assertions that this violation of the rental agreement vitiated his expectation of privacy.

This doesn't end the case for Byrd though. The record is unclear about the basis for the search, and the case is being remanded. The officers clearly believed they could search because Byrd wasn't on the rental agreement but repeatedly asked for consent anyway. Byrd repeatedly refused consent but had committed a traffic violation, admitted to having a blunt in the car, had an out-of-state warrant for his arrest (that that state didn't want him arrested on as they wouldn't extradite), and tried to flee the scene on foot when told he was going to be detained. The case is also being remanded for consideration of the government's argument that renting a car for a criminal purpose vitiates any expectation of privacy.

Comment: If the government is correct that renting a car for a criminal purposes vitiates any expectation of privacy, wouldn't then your using your own car for a criminal purpose vitiate your expectation of privacy?

Pro tip: Don't tell the officer about the blunt you have in the glovebox.

Lagos v. United States, **No. 16–1519**

The Mandatory Victims Restitution Act of 1996 requires defendants convicted of a listed range of offenses to "reimburse the victim for lost income and necessary child care, transportation, and other expenses in- curred during participation in the investigation or prosecution of the offense or attendance at proceedings related to the offense." This language does not require the defendant to reimburse the victim for the costs of its investigation of the offense as it refers to the government's investigation of the offense and not the defendant's own investigation.

Hughes v. United States, **No. 17–155**

The question here is whether a defendant who was sentenced under an 11(c)(1)(C) plea agreement can later be re-sentenced under a retroactively applicable change to the sentencing guidelines pursuant to 18 U.S.C. § 3582(c). The answer is yes if the sentencing guidelines affected the court's decision to approve the 11(c)(1)(C) plea agreement.

An 11(c)(1)(C) plea agreement is an agreement to a specific sentence. It must be approved by the court. If it is not approved, the defendant may withdraw his plea. It's a marked departure from the usual federal court practice of pleading to an offense or offenses and then being sentenced based on the advisory sentencing guidelines range and the other 18 U.S.C. § 3553(a) factors subject to the full range of punishment. Several circuit courts of appeals had held that a defendant sentenced under an 11(c)(1)(C) plea agreement could not benefit from a subsequent retroactive revision to the sentencing guidelines. Now, a defendant sentenced under an 11(c)(1)(C) agreement is eligible for consideration for re-sentencing under a retroactive change to the sentencing guidelines provided that acceptance of the original 11(c)(1)(C) agreement was "based on" the defendant's Guidelines range—i.e. "so long as that range was part of the framework the district court relied on in imposing the sentence or accepting the agreement."

Note: this only addresses eligibility for consideration. Whether the defendant should be re-sentenced is still a question left to the district court's discretion.

Koons v. United States, **No. 17–5716**

This is the companion case to *Hughes*. In short, where the defendant's sentence was *not* based on the sentencing guidelines, the defendant cannot take advantage of a subsequent retroactive change to the sentencing guidelines and seek re-sentencing under sec. 3582(c). Here, the defendants were charged with a 10–life drug conspiracy. Their sentencing guidelines ranges were below the 10-year mandatory minimum, so that—120 months—became their sentencing guidelines range under sec. 5G1.1(a). Because each defendant had provided substantial assistance to the government, the district court was able to and did sentence each defendant to less than the mandatory minimum. These defendants were not eligible for re-sentencing under sec. 3582(c) because their original sentences were not based on the sentencing guidelines calculation.

Note: For those of you going to Rusty Duncan, I strongly recommend Gerry Goldstein's Fourth Amendment presentation Saturday morning. He knows Fourth Amendment law better than anyone and is incredibly engaging and entertaining.