

# **RECENT FEDERAL CASES OF INTEREST TO CITIES**

**RANDY MONTGOMERY**

**D. Randall Montgomery &  
Associates P.L.L.C.**

*Rmontgomery@drmlawyers.com*

*South Padre Island*

*June 12 , 2009*

## **Court Analysis Exam**

**You only need 4 correct to pass**

- 1) How long did the Hundred Years' War last?**
- 2) Which country makes Panama hats?**
- 3) From which animal do we get cat gut?**
- 4) In which month do Russians celebrate the October Revolution?**
- 5) What is a camel's hair brush made of?**

## More questions...

- 6) The Canary Islands in the Pacific are named after what animal?
- 7) What was King George VI's first name?
- 8) What color is a purple finch?
- 9) Where are Chinese gooseberries from?
- 10) What is the color of the black box in a commercial airplane?

## ANSWERS TO THE QUIZ

- 1) How long did the Hundred Years War last? 116 years
- 2) Which country makes Panama hats? Ecuador
- 3) From which animal do we get cat gut? Sheep and Horses
- 4) In which month do Russians celebrate the October Revolution? November
- 5) What is a camel's hair brush made of? Squirrel fur

## Answers.....

- 6) The Canary Islands in the Pacific are named after what animal? Dogs
- 7) What was King George VI's first name? Albert
- 8) What color is a purple finch ? Crimson
- 9) Where are Chinese gooseberries from? New Zealand
- 10) What is the color of the black box in a commercial airplane? Orange (of course)

### *Pleasant Grove City, Utah v. Summum, 129 S.Ct. 1125 (2009)*

- First Amendment case
- Monument in City park
- Free speech Clause not applicable
- Government speech
- Not all groups get to place monuments

***United States v. Williams,*  
128 S.Ct. 1830 (2008)**

- First Amendment
- Federal child pornography statute
- Statute will be facially invalid if it prohibits a substantial amount of protected speech

***James v. Collin County,* 535  
F.3d 365 (5th Cir. 2008)**

- Foreman in Collin County public works department
- Ran for County commissioner 2x during employment
- Terminated and brought action under §1983 and 1988
- First amendment retaliation discharge claim

***Van de Kamp v. Goldstein,*  
129 S.Ct. 855 (2009)**

- Jailhouse confession
- § 1983 Due Process action against chief prosecutor for alleged failure to trial
- Absolute prosecutorial immunity
- Extended up the chain

***Linquist v. City of Pasadena,*  
525 F.3d 383 (5th Cir. 2008)**

- Applied for used car dealership license
- Denied license but others were granted
- Equal protection claim and due process claim
- Plaintiff carries heavy burden on equal protection claim
- Dismissed due process claim

***Crawford v. Metropolitan Government of Nashville*, 129 S.Ct. 846 (2009)**

- Crawford participated in internal affairs investigation
- Was fired subsequently
- Claimed retaliatory discharged under Title VII
- Title VII protects whether speak out on own or when prompted by employers investigation

***Meacham v. Knolls Atomic Power Laboratory*, 128 S.Ct. 2395 (2008)**

- Layoffs due to budget cuts
- 30 out of 31 laid off
- Disparate impact claim under ADEA
- Exception "reasonable factors other than age"

***Gomez-Perez v. Potter,***  
**128 S.Ct. 1931 (2008)**

- Postal worker claimed retaliation after filing ADEA claim
- Focus on “discrimination based on age”
- And whether includes retaliation for filing age discrimination complaint
- Court compared to Title IX

***Taylor v. United Parcel Serv., Inc.,***  
**554 F.3d 510 (5th Cir. 2008)**

- Taylor brought various claims for discrimination
- Part of previous class action in 1994
- Issue regarding whether the statute of limitations was tolled

***Stover v. Hattiesburg Pub. School Dist.*, 549 F.3d 985 (5th Cir. 2008)**

- Race discrimination claims under Title VII, gender, retaliation and constructive discharge
- Found for the District on all counts
- Issue regarding award of attorneys fees and costs

***Abner v. Kan. City S. Ry. Co.*, 541 F.3d 372 (5th Cir. 2008)**

- Plaintiff employees won on hostile work environment claims and awarded damages, attorneys fees and costs
- Defendant argued against award as to attorney fees from first trial (mistrial)
- “prevailing party” or not?
- Court has discretion to adjust award



***Aryain v. Wal-Mart Stores Texas  
L.P.*, 534 F.3d 473 (5th Cir. 2008)**

- Title VII action involving sexual harassment, constructive discharge and retaliation
- Inappropriate comments over 4 months
- Transferred out of department
- Analysis of constructive discharge

***EEOC v. Argo Distribution, LLC*, 555 F.3d 462 (5th Cir. 2009)**

- ADA claim
- Unable to sweat
- Question of reasonable accommodation
- Factors to consider in mitigating situation
- Not disabled under ADA definition

***Pinkerton v. Spellings*, 529  
F.3d 513 (5th Cir. 2008)**

- Disabled individual
- Removed for unacceptable behavior
- Filed EEOC complaint
- Must show disability was a "motivating factor" not the "sole cause"

***Nelson v. University of Texas at  
Dallas*, 535 F.3d 318 (5th Cir. 2008)**

- Employee of UTD
- Went on FMLA leave and terminated while on leave for absenteeism
- UTD claimed immunity under 11<sup>th</sup> Amendment and official immunity
- Request for reinstatement falls under exception

***Elsensohn v. St. Tammany Parish Sheriff's Office*, 530 F.3d 368 (5th Cir. 2008)**

- FMLA claim by Sheriff's deputy
- Wife was former employee in department
- Must establish prima facie case
- Court did not find protection for relatives and friends under FMLA

***CBOCS v. Humphries*, 128 S.Ct. 1951 (2008)**

- Cracker Barrel assistant manager
- Sued for racial bias
- Question before the Court was whether or not Section 1981 encompassed retaliation claims

***Fitzgerald v. Barnstable School Committee, 129 S.Ct. 788 (2009)***

- Child bullied on bus and at school
- Title IX and § 1983 claims
- School investigated various claims
- Sets out elements of Title IX claim
- Court held IX claim for Equal Protection does not preclude use of §1983

***Herring v. U.S., 129 S.Ct. 695 (2009)***

- Arrested on warrant issued in adjacent county
- Arrested and found gun and drugs
- Warrant had been recalled months before and not taken out of system
- Exclusionary rule did not apply
- 4<sup>th</sup> Amendment violation but upheld

***Rothgery v. Gillespie County,*  
128 S.Ct. 2578 (2008)**

- 6<sup>th</sup> Amendment right to counsel
- Requests for counsel were not granted
- Brought §1983 claim
- Court rejected County's arguments regarding delay in appointing counsel
- Narrow decision
- Court did not address what constitutes a reasonable time for the appointment

***Mapes v. Bishop,* 541 F.3d  
582 (5th Cir. 2008)**

- Filed complaint exactly one year after his criminal prosecution terminated in his favor
- Statute of limitations on a § 1983 claim for false arrest in violation of the Fourth Amendment, where the arrest is followed by criminal proceedings, begins to run at the time the claimant becomes detained pursuant to legal process.
- Remanded to determine date

***McIntosh v. Partridge*, 540  
F.3d 315 (5th Cir. 2008)**

- Dentist
- USERRA- navy reserve
- Professional incompetence
- Due process and equal protection claims

***Southwestern Bell Telephone, LP v.  
City of Houston*, 529 F.3d 257 (5th  
Cir. 2008)**

- Federal Telecommunications Act
- Seeking to cover costs of relocation
- Interpretation of language in statute
- No private right enforceable under 1983

***Whitt v. Stephens County,*  
529 F.3d 278 (5th Cir. 2008)**

- Jail suicide – or was it?
- 42 USC 1983
- John Doe defendants
- Strange facts

***United States v. Cano, 519*  
F.3d 512 (5th Cir. 2008)**

- Traffic stop and arrested
- Consented initially to search
- Motion to suppress evidence
- Pro se representation denied
- Error to deny motion without hearing

***Waltman v. Payne*, 535  
F.3d 342 (5th Cir. 2008)**

- Hunting lease with look alike marijuana
- Cut down 500 plants and destroyed them
- 14<sup>th</sup> Amendment and due process claims
- Open fields doctrine and open view

***Sossamon v. The Lone Star State of Texas*, 560 F.3d 316 (5th Cir. 2009)**

- Inmate denied access to chapel while on cell restriction
- RLUIPA claim
- Security and safety issues
- Strict scrutiny analysis
- Substantial burden vs governmental interest (less restrictive)



***Mayfield v. Texas Dept. Criminal Justice*, 529 F.3d 599 (5th Cir. 2008)**

- Northern European folk religion
- No group worship meetings without volunteer
- 1983 action alleging violation of RLUIPA
- Requires a higher burden "substantial burden on the religious exercise"

***Arizona v. Johnson*, 129 S.Ct. 781 (2009)**

- Stopped a car with insurance suspended
- Ordered passenger out and found gun
- Search can not unduly prolong stop
- Court enlarged the "stop and frisk" authority to control scene

## ***Arizona v. Gant, 129 S.Ct.*** **--- (2009)**

- Warrant for driving with a suspended license
- Gant was handcuffed in the back of a patrol car, an officer searched the passenger compartment of Gant's car and found cocaine and a gun.
- Police may conduct a warrantless vehicle search incident to an arrest only if the arrestee is within reaching distance of the vehicle, or if the officers have reasonable belief that "evidence of the offense of arrest might be found in the vehicle."

## ***United States v. Zavala, 541*** **F.3d 562 (5th Cir. 2008)**

- Cell phone not included in consensual search
- Warrantless search
- Cell phone search not under "incident to arrest" theory
- Detention exceeded *Terry* detention

***Hinojosa v. Butler*, 547  
F.3d 285 (5th Cir. 2008)**

- Excessive force and deliberate indifference claim
- Traffic stop
- Defendant officer asserted his Fifth Amendment privilege against self-incrimination
- Whether to allow the jury to draw an adverse inference when a party in a civil case asserts the Fifth Amendment privilege

***Hagan v. Echostar Satellite, LLC*,  
529 F.3d 617 (5th Cir. 2008)**

- FLSA
- Whether behavior met filing requirements under FLSA
- Did not participate in protected activity under FLSA

***Wright v. Harris County*, 536  
F.3d 436 (5th Cir. 2008)**

- 1983 action
- Died after left custody
- Batson challenge
- Judge changed mind
- Error was waived

***District of Columbia v. Heller*,  
128 S.Ct. 2783 (2008)**

- DC police officer applied to register a hand gun
- 2<sup>nd</sup> Amendment case
- Total ban of handguns in the home violates the 2<sup>nd</sup> Amendment

***Fahim v. Marriott Hotel Services, Inc.*, 551 F.3d 344 (5th Cir. 2008)**

- Title II of the Civil Rights Act
- Damages not available under Title II
- No direct evidence of discrimination in public accommodations under Title II
- District Court then denied motion to amend for relief under § 1981, for which damages are available.

***Blanton v. Quarterman*, 543 F.3d 230 (5th Cir. 2008)**

- Attorney failed to raise a *Batson* challenge when the prosecutor requested a jury shuffle
- 3 African-American venire members were seated in the first twenty positions. After the shuffle, the first African-American venire member was seated in the 64th position
- Prosecutor responded with a race-neutral explanation
- Blanton's counsel then lodged a second *Batson* challenge regarding the shuffle
- At the time of trial, neither Texas nor federal law recognized any relationship between a jury shuffle and a *Batson* challenge.

***Haynes v. Quarterman*, 561  
F.3d 535 (5th Cir. 2009)**

- Convicted of capital murder of a peace officer and sentenced to death
- Jury selection process, two judges took turns presiding over the matter
- Prosecutor justified his peremptory challenge solely on his impression of the potential juror's demeanor
- Fifth Circuit concluded that it could not apply deference to the state court because the state court engaged in purely appellate fact-finding.

***Oliver v. Quarterman*, 541  
F.3d 329 (5th Cir. 2008)**

- Received the death penalty at his trial
- Argued that the jury was improperly exposed to external influences during its deliberations in violation of his Sixth and Eighth Amendment rights.
- Consulted the Bible while deliberating
- Jury's consultation of the Bible passage in question amounted to an external influence
- Still denied habeas corpus

***Virginia v. Moore*, 128  
S.Ct. 1598 (2008)**

- Stopped vehicle driven by Moore
- State law – summons only but was arrested
- Found drugs
- No violation of 4<sup>th</sup> Amendment when arrest made with probable cause

***Powell v. Quarterman*, 536  
F.3d 3265 (5th Cir. 2008)**

- Convicted of murder of police officer
- 5<sup>th</sup> and 14<sup>th</sup> Amendment
- ER doctor examined 12 hours after arrest without a Miranda warning
- Doctor not acting as agent for state

***US v. Casper, 536 F.3d  
409 (5th Cir. 2008)***

- Two warrantless searches
- Traffic stop and search
- Phone tip and search
- Informant's tip can provide reasonable suspicion if the government can establish the reliability and the credibility of the informant.
- Officers had reasonable suspicion to justify an investigative stop

***Rivera v. Illinois, 129  
S.Ct. 1446 (2009)***

- Convicted on two counts of first degree murder and sentenced to 85 years in prison
- Whether error in dismissing a defendant's pre-trial motion to dismiss a juror requires automatic reversal of conviction because it denies the defendant's right to an impartial jury guaranteed by the Sixth Amendment
- No constitutional right to preemptory challenges
- States are free to decide as a matter of law whether the mistaken denial of a preemptory challenge is reversible error



***United States v. Campbell,*  
544 F.3d 577 (5th Cir. 2008)**

- Court first became aware that one juror had a language issue through the jury's questions to the judge during deliberation
- Juror could not effectively communicate with other jurors
- Rule 23 allows for mistrial where the parties have not lost much by throwing out the first case
- Not double jeopardy

***Kansas v. Venstris,* 129  
U.S. --- (2009)**

- Admitted to an informant planted in his cell prior to trial that he had committed the crimes for which he was charged
- *Massiah* exclusionary rule merely as a remedy for a constitutional violation that had already taken place;
- Exclusion should not extend to use for impeachment purposes

## ***Pearson v. Callahan*, 129 S.Ct. 808 (2009)**

- Callahan convicted of unlawful possession and distribution of methamphetamine
- Supreme Court rejected its own rigid, two-step qualified immunity analysis set forth in *Saucier v. Katz*, which required that federal courts first determine if a constitutional violation occurred and then decide whether the right infringed was "clearly established."
- This opinion gives federal courts back the discretion to decide which question they would answer first.
- Court emphasized that it was not telling lower courts to always address the "clearly established" prong of the qualified immunity defense first; rather, this opinion clarifies that the lower courts "should have the discretion to decide whether that procedure [*Saucier*] is worthwhile in particular cases."

## ***Ramirez v. Knoulton*, 542 F.3d 124 (5th Cir. 2008)**

- Officer of Kerrville Police Department was involved in the shooting of Ramirez during an arrest
- Knoulton shot Ramirez after the officers saw a handgun
- Ramirez brought excessive force claim
- Given the totality of the circumstances, Knoulton had probable cause to believe that Ramirez posed a threat of serious harm
- Fifth Circuit refused to second guess the officer's conduct