RECENT FEDERAL CASES OF INTEREST TO CITIES

RANDY MONTGOMERY
D. Randall Montgomery & Associates P.L.L.C.
Rmontgomery@drmlawyers.com

TEXAS CITY ATTORNEYS ASSOCIATION
FORT WORTH, TEXAS
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Morgan v. Quarterman, 570 F.3d 663 (5th Cir. 2009)

- *Habeas corpus* action
- Claims 1st and 14th Amendment violations
- Wrote note in response to Motion to Dismiss
- Disciplinary action not a violation

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

Lee v. Kansas City Southern Railway Co., 574 F.3d 253 (5th Cir. 2009)

- EEOC, FMLA and Title VII (racial discrimination)
- Former engineer terminated
- Court remanded Title VII after analysis of persons similarly situated to Plaintiff
- "acceptable comparator"

Gross v. FBL Financial Services, Inc., 557 U. S. 2343 (2009)

- ADEA
- "Motivating factor" not the standard
- Must show "but for" the Plaintiff's age the employer would not have taken the adverse employment action
- Mixed motive burden shifting not allowed
- BOP stays with Plaintiff

Ricci v. DeStefano, 557 U.S. 2658 (2009)

- Title VII
- Invalidation of management promotion
- 118 candidates
- Engaged in "express race based decision making"
- Good faith not an excuse
- Cannot change process in middle

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

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. Chevron Phillips, 570 F.3d 606 (5th Cir. 2009)

- EEOC
- Reasonable accommodation requirement
- Chronic Fatigue Syndrome 13 year before
- Medical Questionnaire

Frame v. City of Arlington, 575 F.3d 432 (5th Cir. 2009)

- City of Arlington
- ADA requirements
- Statute of limitations issue
- Discovery rule does not apply
- Begins to run upon the completion of a noncompliant construction or alteration
- Not on injury

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

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

Collier v. Montgomery, 569 F.3d 214 (5th Cir. 2009)

- Routine traffic stop
- 4th, 5th and 8th amendment claims
- Tried to grab pen
- Resisting arrest
- Video was used at trial
- Qualified immunity for officers

Pasco v. Knoblauch, 566 F.3d 572 (5th Cir. 2009)

- 1983 claim
- High speed chase
- Qualified immunity issues
- 4th amendment balancing test
- importance of the governmental interest to justify intrusion

Goodman v. Harris County, 571 F.3d 388 (5th Cir. 2009)

- 1983 action
- Shooting
- Nero the dog was being drowned
- Evaluated conduct of officer and found unreasonable force was used- not qualified immunity

Safford Unified School District v. Redding, 557 U.S. 2633 (2009)

- 8th grader searched by school officials
- 4th Amendment right to be free from unreasonable search and seizure
- Search must be "reasonably related to the objectives of the search and not excessively intrusive in light of age and sex of the student and nature of the infraction"
- Did not find school official liability this time

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
- 4th Amendment violation but upheld

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

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

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

Davis v. Tarrant County, 565 F.3d 214 (5th Cir. 2009)

- Judicial immunity case
- What type of function is it?
- If judicial act then judicial immunity

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 4th Amendment when arrest made with probable cause

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

- Convicted of murder of police officer
- 5th and 14th 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. Ventris, 129 U.S. 1841 (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