

Supreme Court, U.S.
Printed by

No. _____ 06-1701-01-2006

OFFICE OF THE CLERK

In The
Supreme Court of the United States

—◆—
ANDREW LOCKHART,

Petitioner,

v.

NEDRA CHANDLER,

Respondent.

—◆—
**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Seventh Circuit**

—◆—
PETITION FOR A WRIT OF CERTIORARI
—◆—

MICHAEL M. CONWAY
Counsel of Record
MICHAEL S. SHAPIRO
JAMES F. CIRINCIONE
FOLEY & LARDNER LLP
321 North Clark Street
Chicago, Illinois 60610
(312) 832-4500

*Counsel for Petitioner
Andrew Lockhart*

170

QUESTION PRESENTED

Whether Congress, by enacting the Antiterrorism and Effective Death Penalty Assistance Act, stripped the federal courts of their authority, when determining whether a petitioner is entitled to a writ of habeas corpus pursuant to 28 U.S.C. § 2254, to consider decisions of the federal courts of appeals and state supreme courts that had applied clearly established precedent of this Court.

Supreme Court U.S.
FILED

06-171 JUL 31 2006

No. OFFICE OF THE CLERK

In the
Supreme Court of the United States

DAWN ROSS KATZ,
Petitioner,

v.

WILLIAM THOMAS GREGORY,
Respondent.

**On Petition for a Writ of Certiorari to the United
States Court of Appeals for the Sixth Circuit**

PETITION FOR WRIT OF CERTIORARI

ROGER G. WRIGHT
JUSTICE & PUBLIC SAFETY
CABINET
OFFICE OF LEGAL SERVICES
919 VERSAILLES ROAD
FRANKFORT, KY 40601
(502) 695-6345

THOMAS SELF
Counsel of Record
JUSTICE & PUBLIC SAFETY
CABINET
OFFICE OF LEGAL SERVICES
125 HOLMES ST., 2ND FLOOR
FRANKFORT, KY 40601
(502) 564-8234

Counsel for Petitioner

171

Questions Presented

1. Whether forensic analysts employed by a state law enforcement agency crime laboratory possess absolute witness immunity in federal civil rights actions for their pretrial activities, to include examining evidence, preparation of lab notes and lab reports, forming subjective expert opinions based on their evaluation of evidence, and discussions of their evaluations and opinions with prosecuting authorities. If such immunity does not generally exist, then the more narrow issue present is whether a state crime lab employee, who engages in the pretrial activities discussed above, after probable cause for the arrest of a suspect has been established and criminal proceedings have commenced, would possess absolute witness immunity.

2. Whether the United States Court of Appeals for the Sixth Circuit erred as a matter of law in denying Petitioner qualified immunity on Respondent's federal civil rights claims premised upon the allegation that Petitioner wrongfully withheld exculpatory evidence.

Supreme Court, U.S.
FILED

06-172 JUL 31 2006

~~NO~~ OFFICE OF THE CLERK

In the
SUPREME COURT OF THE UNITED STATES

RONALD J. SOMMERS, TRUSTEE,
Petitioner,

v.

WELLS FARGO BANK OF TEXAS, N.A.,
Respondent.

On Petition For A Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

STACY OBENHAUS
(Counsel of Record)
JAMES P. REID
DAVID ELDER
LISA HONEY
GARDERE WYNNE SEWELL LLP
3000 Thanksgiving Tower
1601 Elm Street
Dallas, Texas 75201-4761
(214) 999-3000
Counsel for Petitioner

172

QUESTIONS PRESENTED

- I. **If a bankruptcy court modifies the automatic stay in effect under 11 U.S.C. § 362 and allows a creditor to pursue state law claims against a third party, are bankruptcy law remedies affecting that third party barred?**

- II. **If a bankruptcy trustee agrees not to oppose a creditor's request to modify the automatic stay and pursue state law claims against a third party, is the bankruptcy trustee estopped from asserting bankruptcy law remedies against that third party?**

Supreme Court, U.S.
FILED

No. 06- 06-173 AUG 1 - 2006

IN THE OFFICE OF THE CLERK
Supreme Court of the United States

SAN CARLOS APACHE TRIBE,

Petitioner,

v.

STATE OF ARIZONA; GILA RIVER INDIAN COMMUNITY; ASARCO LLC;
PHELPS DODGE INCORPORATED; SAN CARLOS IRRIGATION AND DRAINAGE
DISTRICT; CITY OF SAFFORD; GILA VALLEY IRRIGATION DISTRICT;
FRANKLIN IRRIGATION DISTRICT; SALT RIVER PROJECT; CITY OF
GOODYEAR; BHP COPPER INCORPORATED, AND
UNITED STATES OF AMERICA,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
ARIZONA SUPREME COURT

PETITION FOR A WRIT OF CERTIORARI

JOE P. SPARKS

Counsel of Record

SUSAN B. MONTGOMERY

ROBYN L. INTERPRETER

SPARKS, TEHAN & RYLEY, P.C.

7503 First Street

Scottsdale, AZ 85251

(480) 949-1339

Attorneys for Petitioner

202477



COUNSEL PRESS

(800) 274-3321 • (800) 359-6859

173

i

QUESTIONS PRESENTED

- ISSUE 1:** Where the United States as trustee for the San Carlos Apache Tribe, and the Apache Tribe on its own behalf, were required by this Court to adjudicate all the Tribe's federal reserved, aboriginal and other water rights in Arizona's general stream adjudication under the McCarran Amendment, 43 U.S.C. § 666, and where opposing claimants in the general stream adjudication raised the affirmative defense of *res judicata* in motions for summary judgment arguing that a previous federal consent decree on the Gila River precluded the United States and the Tribe from adjudicating water rights to the Gila River mainstream for the Apache Reservation, did the Arizona Supreme Court err where it assumed the existence of privity and affirmed the trial court's decision on *res judicata*, concluding as a "matter of federal law" that comity compelled the Apache Tribe to present its defenses to *res judicata* in the federal district court which entered the prior consent decree?
- ISSUE 2:** Does it violate the Due Process and Equal Protection Clauses of the Fifth and Fourteenth Amendments to the U.S. Constitution to apply the **affirmative defense** of *res judicata* to preclude the United States as trustee for a federally recognized Indian Tribe, and the Tribe on its own behalf, from adjudicating certain federal reserved, aboriginal and other water rights in a state general stream adjudication conducted under the McCarran Amendment, without allowing the Indian Tribe to present its **defenses** to *res judicata* in the state forum in which it was raised?

Supreme Court of the United States
2006

No. 06-174 AUG 1 - 2006

OFFICE OF THE CLERK
In The
Supreme Court of the United States

KENNETH MARK BROWN,
Petitioner,

v.

NATHANIEL QUARTERMAN, DIRECTOR,
TEXAS DEPARTMENT OF CRIMINAL JUSTICE
CORRECTIONAL INSTITUTIONS DIVISION,
Respondent.

**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Fifth Circuit**

PETITION FOR A WRIT OF CERTIORARI

RANDOLPH L. SCHAFFER, JR.
Counsel of Record
1301 McKinney, Suite 3100
Houston, Texas 77010
(713) 951-9555

*Counsel for Petitioner
Kenneth Mark Brown*

174

QUESTION PRESENTED

Did the Fifth Circuit err in denying a certificate of appealability where the state trial court initially excluded petitioner's oral statement on the basis that it was obtained in violation of *Miranda v. Arizona*; the state court of appeals upheld the admission of the statement on the basis that it was *res gestae* of the arrest; and the lower federal courts, instead of deciding whether the state court decision was contrary to *Miranda*, denied relief on the basis that the statement was admissible pursuant to the public safety exception to *Miranda* even though petitioner was arrested at a residence instead of in a public place?

Supreme Court U.S.
FILED

06-175 AUG 3 - 2006

OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

In Re MARIA GONZALEZ, individually and as mother and legal
guardian of her daughters TARA GONZALEZ (age 14) and
NICOLE GONZALEZ (age 8),

Petitioner.

ON PETITION FOR WRIT OF MANDAMUS TO THE UNITED STATES
COURT OF APPEALS FOR THE SECOND CIRCUIT

**PETITION FOR WRIT OF MANDAMUS TO THE
UNITED STATES COURT OF APPEALS SECOND CIRCUIT,
AND HON. JOHN M. WALKER, JR., CHIEF JUDGE,
AND HON. JOHN O. NEWMAN, AND
HON. SONIA SOTOMAYOR, CIRCUIT JUDGES**

GABRIEL NORTH SEYMOUR
200 Route 126
Falls Village, Connecticut 06031
(860) 824-1412

WHITNEY NORTH SEYMOUR, JR.
Counsel of Record
425 Lexington Avenue, Room 1721
New York, New York 10017
(212) 455-7640

Attorneys for Petitioner

175

Questions Presented for Review

1. Is the FCC required by Federal law to prepare an Environmental Impact Statement prior to any nationwide licensing of a whole new spectrum of ultra-high radio frequencies for Advanced Wireless Services? (42 U.S.C. § 4331 *et seq.*)

2. Does FCC's release of untested and potentially harmful AWS radio frequencies for unauthorized invasion into private homes without NEPA compliance violate the Third, Fourth and Fifth Amendments?

3. Has the FCC's intransigent refusal to prepare a timely EIS closed off all other opportunities to obtain adequate relief in any other form or court, except by writ of mandamus?

4. Will the issuance of a writ of mandamus to the Second Circuit Court of Appeals aid the appellate jurisdiction of the Circuit and Supreme Courts to review the FCC's final RF Safety regulations for AWS frequencies?

5. Do exceptional circumstances exist to warrant the exercise of the Supreme Court's discretionary powers?

Supreme Court U.S.

06-1760008-2006

No. 06-OFFICE OF THE CLERK

IN THE
Supreme Court of the United States

CNH AMERICA LLC,

Petitioner,

v.

GLADYS YOLTON, WILBUR MONTGOMERY, ELSIE TEAS,
ROBERT BETKER, EDWARD MAYNARD, GARY HALSTED, AND
EL PASO TENNESSEE PIPELINE COMPANY,

Respondents.

On Petition For Writ Of Certiorari
To The United States Court of Appeals for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

ROBERTO MIOTTO
MICHAEL P. GOING
ALLAN R. CRIDER
CNH AMERICA LLC
100 S. Saunders Rd.
Lake Forest, IL 60045
(847) 955-3900

NORMAN C. ANKERS
HONIGMAN MILLER
SCHWARTZ & COHN LLP
2290 First National Bldg.
660 Woodward Ave.
Detroit, MI 48226
(313) 465-7000

BOBBY R. BURCHFIELD
Counsel of Record
JASON A. LEVINE
DOUGLAS G. EDELSCHICK
JOSHUA D. ROGACZEWSKI
ERIK C. BAPTIST
MCDERMOTT WILL &
EMERY LLP
600 13th Street, N.W.
Washington, DC 20005
(202) 756-8000

Counsel for Petitioner

AUGUST 3, 2006

176

(i)

QUESTIONS PRESENTED

1. Does federal labor law permit the judicial inference, set forth in *International Union, UAW v. Yard-Man, Inc.*, 716 F.2d 1476 (6th Cir. 1983), *cert. denied*, 465 U.S. 1007 (1984), but rejected by eight other Circuits, that a retiree's health care benefits are "vested," and thus must be fully funded without change by the employer for the rest of the retiree's life, merely because the collective bargaining agreement providing the benefits does not expressly limit their duration?

2. Does federal labor law permit a judicial determination that a successor company is the "alter ego" of its predecessor in a labor dispute, even though the transaction that created the successor explicitly allocated all pertinent liabilities to the predecessor's solvent parent, and in the absence of proof that the transaction creating the successor was fraudulent or undertaken to evade the predecessor's federal labor law obligations?

Supreme Court, U.S.
FILED

06 - 177 JUN 10 2006

No. _____ OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

Isidoro Rodriguez, Esq.,
Petitioner,

v.

Danilo Davis Pereira,
Respondent.

On Petition For Writ of Certiorari
United States Court of Appeals for the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

Isidoro Rodriguez, Esq.
Counsel for Petitioner

THE LAW OFFICES OF ISIDORO RODRIGUEZ
7924 Payton Forest Trail
Annandale, Virginia 22003-1560
Telephone: 571.423.5066
E-Mail: isidoror@EarthLink.net

177

QUESTIONS PRESENTED FOR REVIEW

On October 15, 2002, Isidoro Rodriguez, Esq.'s ("Rodriguez"), filed this amended action against his former client, his former agent Respondent Danilo Devis Pereira ("Devis"), and other various defendants. Rodriguez seeks to enforce his statutory property rights in his Virginia Attorney's Lien, VA Code §54.1-3932, for \$4.6 million, and interest and penalty; as well as to protect said property rights, business and profession from a business conspiracy, VA Code §§ 18.2-499 and 500. Pursuant to Virginia Long-Arm Statute VA Code § 8.01-328.A(1) and (4), jurisdiction as to Devis is based on his conducting business and tortious acts from 1987 to the present, in aid of the alleged business conspiracy. Devis were noticed and served in the Republic of Colombia under the Inter-American Convention on Letters of Rogatory. Devis "fell into default." Although the Fairfax County Circuit Court had entered against Devis a Default Judgment in a parallel action, Devis had entered Virginia recently in January 2004, to assist his co-defendant in filing a fraudulent Virginia State Bar Complaint against Rodriguez, and Devis had failed to file any response, the District Court denied a motion for default judgment and jury trial on damages, and dismissed the complaint without prejudice.

- I. WHETHER JUDGE LEE ERRED IN NOT COMPLYING WITH 28 U.S.C. § 2072, § 1738, INTER-AMERICAN CONVENTION ON LETTERS OF ROGATORY, AND VA CODE § 8.01-428?
- II. WHETHER JUDGE LEE ERRED BY DISMISSING THE MOTION FOR DEFAULT WITHOUT REQUIRING DEVIS TO PRESENT EVIDENCE TO SUPPORT VOIDING HIS "FALLING INTO DEFAULT UNDER THE INTER-AMERICAN CONVENTION ON LET-

177
127

TERS OF ROGATORY AND VA CODE § 8.01-428(A)(II)?

- III. WHETHER JUDGE LEE ERRED BY NOT FOLLOWING VIRGINIA LAW ON PROVIDING THE DEMANDED JURY TRIAL ON AS TO THE BUSINESS CONSPIRACY?
- IV. WHETHER BASED ON ITS CURRENT POLICY AGAINST *PRO HOC VICE* PRACTICE, JUDGE LEE AND THE FOURTH CIRCUIT HAVE DEPRIVED RODRIGUEZ OF HIS SUBSTANTIVE STATUTORY PROPERTY RIGHTS IN HIS VIRGINIA ATTORNEY'S LIEN, WITHOUT DUE PROCESS AND EQUAL PROTECTION UNDER THE LAWS?
- V. WHETHER JUDGE LEE AND THE FOURTH CIRCUIT HAVE VIOLATED THEIR DUTY UNDER 18 U.S.C. §§ 4 AND 1001?
- VI. WHETHER JUDGE LEE AND THE FOURTH CIRCUIT HAVE VIOLATED THEIR DUTY UNDER 28 U.S.C. §§ 455?

TAI

QUESTIONS PRESEN

TABLE OF CONTENT

TABLE OF CITED AU

CITATIONS TO UNP

STATEMENT OF JUI

STATEMENT REQUI

U.S. AND VIRGINI

VIRGINIA STATUTC

STATEMENT OF TH

REASONS FOR GRA

CONCLUSION

Appendix

Supreme Court, U.S.
FILED

06-178 AUG 2 - 2006

No. OFFICE OF THE CLERK

In the
Supreme Court of the United States

RAYMOND POLANCO,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

PETITION FOR WRIT OF CERTIORARI

HERALD PRICE FAHRINGER *
ERICA T. DUBNO
FAHRINGER & DUBNO
780 Third Avenue, 32nd Floor
New York, New York 10017
(212) 319-5351

Counsel for Petitioner

* Counsel of Record

178

QUESTIONS PRESENTED

Whether a federal criminal defendant, who asserts a claim of ineffective assistance of counsel in a habeas corpus proceeding, is denied due process and the right of confrontation where his petition is dismissed without the hearing required by 28 U.S.C. § 2255, based solely upon his trial lawyer's affidavit that disputed his own ineffectiveness.

Where a criminal defendant has a constitutional right to testify on his own behalf, can his lawyer's refusal to let him invoke that right ever be considered a "tactical" decision in order to defeat his Sixth Amendment claim that he was denied the effective assistance of counsel?

Supreme Court U.S.

06-179-000-2006

No. 06- OFFICE OF THE CLERK

IN THE
Supreme Court of the United States

CHARLES R. RIEGEL and DONNA S. RIEGEL,
Petitioners,

v.

MEDTRONIC, INC.,
Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Second Circuit

PETITION FOR A WRIT OF CERTIORARI

WAYNE P. SMITH
157 Barrett Street
Schenectady, NY 12305
(518) 393-1371

ALLISON M. ZIEVE
Counsel of Record
BRIAN WOLFMAN
PUBLIC CITIZEN
LITIGATION GROUP
1600 20th Street, NW
Washington, DC 20009
(202) 588-1000

Counsel for Petitioners
Charles Riegel and Donna Riegel

August 2006

179

QUESTION PRESENTED

Whether the express preemption provision of the Medical Device Amendments to the Food, Drug, and Cosmetic Act, 21 U.S.C. § 360k(a), preempts state-law claims seeking damages for injuries caused by medical devices that received premarket approval from the Food and Drug Administration.