

**OFFICE OF THE FEDERAL PUBLIC DEFENDER  
EASTERN DISTRICT OF NORTH CAROLINA  
U.S. SUPREME COURT CRIMINAL LAW UPDATE**

**Criminal Cases Decided Between January 1 and April 24, 2009,  
and Granted Review for the October 2009-10 Term**

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TABLE OF CONTENTS

I.	INTRODUCTION. ....	1
II.	SPECIFIC OFFENSES. ....	1
III.	FOURTH AMENDMENT / SUPPRESSION. ....	2
IV.	FIFTH AND SIXTH AMENDMENTS; CONFESSIONS. ....	3
V.	TRIAL. ....	4
VI.	SENTENCING. ....	4

## I. INTRODUCTION

This outline summarizes United States Supreme Court decisions published between January 1 and April 24, 2009, and those cases pending review. For up-to-date summaries of all decided cases and cases pending review, see the *United States Supreme Court Review-Preview-Overview*, updated weekly by Paul M. Rashkind, Chief of the Appellate Division, Office of the Federal Public Defender, S.D. Fla., and available at <http://www.rashkind.com>, or the U.S. Supreme Court Blog at <http://ussc.blogspot.com/>. Please direct any email questions about this outline or the websites listed above to [Jay Todd@fd.org](mailto:Jay_Todd@fd.org).

## II. SPECIFIC OFFENSES

### A. Decided Cases

***United States v. Hayes***, 129 S.Ct. 1079 (Feb. 24, 2009). Firearm Possession after Misdemeanor Domestic Violence Conviction, 18 U.S.C. § 929(g)(9).

Facts: Fourth Circuit overturned Hayes' conviction for possession of a firearm by a person with a misdemeanor domestic violence conviction, on grounds that North Carolina's assault on a female crime did not have as an element a domestic relationship with the victim.

Issue: Whether a § 922(g)(9) predicate conviction must have as an element a domestic relationship between defendant and victim.

Held: No. Section 922(g)(9) only requires proof beyond a reasonable doubt of a domestic relationship between defendant and victim, but does not require the predicate conviction to include this relationship as an element.

***Chambers v. United States***, 129 S.Ct. 687 (Jan. 13, 2009). Escape from Custody, 18 U.S.C. § 751, and Armed Career Criminal Act ("ACCA"), 18 U.S.C. § 924(e).

Facts: Seventh Circuit reversed Armed Career Criminal Enhancement where statute of predicate state escape conviction proscribe both actual escapes and failures to report or return to custody, relying on recent Supreme Court decision in *Begay v. United States*, — U.S. —, 128 S.Ct. 1581 (2008), which held ACCA's "violent felony" definition required predicate conviction to involve "purposeful, violent, and aggressive" conduct and present serious risk of physical injury to another.

Issue: Whether an "escape" conviction categorically meets ACCA's "violent felony" definition, where statute of conviction proscribes both active escapes and failures to report/return to custody.

Held: No. Affirming the Seventh Circuit and relying on *Begay*, the Supreme Court held that a failure to report to custody does not present serious risk of physical injury to another nor necessarily involve purposeful, violent and aggressive conduct, as § 924(e) requires.

#### B. Cases Granted Review

***Flores-Figueroa v. United States***, 129 S.Ct. 457 (cert. granted October 20, 2008); decision below at 274 Fed. App'x. 501 (8th Cir. 2008). 18 U.S.C. § 1028A, Aggravated Identity Theft.

Issue: Whether Aggravated Identity Theft, 18 U.S.C. § 1028A, requires proof defendant knew identity he/she used belonged to an actual person.

***Johnson v. United States***, 129 S.Ct. 1315 (cert. granted Feb. 23, 2009); decision below at 528 F.3d 1318 (11th Cir. 2008). 18 U.S.C. § 924(e), Armed Career Criminal Act.

Issues: 1) Whether a simple battery conviction involving merely *de minimis* physical contact categorically meets ACCA's "violent felony" definition.

2) Whether state's highest court holding predicate state conviction does not have as an element the use or threatened use of physical force against another is binding on federal court applying ACCA.

### III. FOURTH AMENDMENT

#### A. Decided Cases

***Arizona v. Johnson***, 129 S.Ct. 781 (Jan. 26, 2009). Search of Vehicle's Occupants after Traffic Stop.

Issue: Whether an officer, after stopping a vehicle for a minor traffic violation, may conduct a pat-down search of a vehicle's occupant, where the officer reasonably suspects occupant is armed and presently dangerous but has no reasonable basis to believe occupant is committing or has committed a crime.

Held: Yes. Pending inquiry into a traffic violation following a lawful traffic stop, an officer may frisk the vehicle's occupants for weapons, so long as officer has reasonable basis to believe occupant is armed and presently dangerous.

*Arizona v. Gant*, 556 U.S.— , 2009 WL 1045962 (Apr. 21, 2009). Vehicle Search Incident to Arrest.

Issue: Whether the Fourth Amendment precludes a warrantless vehicle search if the officers have arrested and secured the arrestee and the recent occupants of the vehicle.

Held: Yes. To conduct a warrantless vehicle search incident to arrest, the Fourth Amendment requires officers to demonstrate a threat to their safety or a need to preserve evidence related to the offense of arrest. Here, where the officers arrested Gant for driving with a suspended license and had secured him and the other occupants in a patrol car, the subsequent vehicle search was unreasonable because Gant had no access to any weapon in the vehicle, and the officers did not have a reasonable basis to believe a vehicle search would yield evidence of driving with a suspended license.

#### IV. FIFTH AND SIXTH AMENDMENTS; CONFESSIONS

##### A. Decided Cases

*Corley v. United States*, 556 U.S. — , 2009 WL 901513 (Apr. 6, 2009). Suppression Due to Presentment Delay.

Facts: Third Circuit upheld admission of statements secured between federal arrest and initial appearance, which occurred nearly 30 hours after arrest, on grounds that admissions were voluntarily given. Third Circuit reasoned that 18 U.S.C. § 3501 permitted admission of confessions secured before presentment so long as confessions were voluntary and any presentment delay is found reasonable.

Issue: Whether 18 U.S.C. § 3501 discarded the rule in *McNabb v. United States*, 318 U.S. 332 (1943), and *Mallory v. United States*, 354 U.S. 449 (1957), which barred even voluntary confessions secured during an unreasonable presentment delay?

Held: No. Section 3501, read together with Fed. R. Crim. P. 5(a), does not discard the *McNabb/Mallory* rule requiring suppression of voluntary confessions secured due to an unreasonable or unnecessary presentment delay. Section 3501 merely limited *McNabb/Mallory* rule by permitting admission of voluntary confessions secured within 6 hours of arrest.

## B. Cases Granted Review

***Kansas v. Ventris***, 129 S.Ct. 29 (cert. granted Oct. 1, 2008); decision below at 176 P.3d 920 (Kan. 2008). Confessions; Right to Counsel.

Issue: Whether voluntary statement obtained in the absence of a knowing and intelligent waiver or right to counsel is admissible for impeachment purposes.

***Melendez-Diaz v. Massachusetts***, 128 S.Ct. 1647 (cert. granted Mar. 17, 2008); decision below at 870 N.E.2d 676 (Mass. 2007). Lab Reports and *Crawford*.

Issue: Whether drug lab report is “testimonial,” subject to *Crawford*’s application of the Sixth Amendment’s Confrontation Clause.

***Padilla v. Kentucky***, 129 S.Ct. 1317 (cert. granted Feb. 23, 2009); decision below at 253 S.W.3d 482 (Ky. 2008).

Issue: Whether failure to correctly inform client of guilty plea’s immigration consequences constitutes ineffective assistance of counsel.

## V. TRIAL

### A. Cases Granted Review

***Yeager v. United States***, 129 S.Ct. 593 (cert. granted Nov. 14, 2008); decision below at 521 F.3d 367 (5th Cir. 2008). Double Jeopardy and Collateral Estoppel.

Issue: Whether collateral estoppel bars retrial on hung counts, where jury acquittal on other counts was based on determination of common elements (with hung counts).

## VI. SENTENCING

### A. Decided Cases

***Spears v. United States***, 129 S.Ct. 840 (Jan. 21, 2009); ***Nelson v. United States***, 129 S.Ct. 890 (Jan. 26, 2009). *Booker* and Advisory Guidelines.

Held: Both *Spears* and *Nelson* reaffirm import of *Booker*’s holding by emphasizing sentencing court may vary below advisory guideline range based solely upon a policy disagreement with Guidelines, and may not treat advisory guideline range as presumptively reasonable.

***Oregon v. Ice***, 129 S.Ct. 711 (Jan. 14, 2009). *Apprendi's* Impact on Consecutive Sentencing.

Facts: Applying *Apprendi* and *Blakely*, Oregon Supreme Court reversed imposition of consecutive sentences which was based on judicial findings that convictions were separate incidents, created risks of danger to victims and demonstrated recidivism by defendant.

Issue: Whether the Sixth Amendment, as applied by *Apprendi* and progeny, preclude judicial fact-finding of predicate facts necessary to impose consecutive rather than concurrent sentences.

Held: No. “Twin considerations – historical practice and respect for state sovereignty – counsel against extending *Apprendi's* rule to imposition of sentences for discrete crimes.”