

CRIMINAL CASES DECIDED BY THE SUPREME COURT FOR THE 2016 TERM

Bosse v. Oklahoma, No. 15-9173. The Supreme Court decided this case without oral argument and found that the Oklahoma Court of Criminal Appeals erred in concluding that it was not bound by the Supreme Court's holding in *Booth v. Maryland* that the Eighth Amendment prohibits a capital sentencing jury from considering testimony by a victim's family members about the crime, the defendant, and the appropriate sentence.

CRIMINAL ISSUES PENDING BEFORE THE SUPREME COURT FOR THE 2016 TERM

Salman v. United States, No. 15-628. Whether the personal benefit to the insider that is necessary to establish insider trading under *Dirks v. SEC* requires proof of "an exchange that is objective, consequential, and represents at least a potential gain of a pecuniary or similarly valuable nature," as the Second Circuit held in *United States v. Newman*, or whether it is enough that the insider and the tippee shared a close family relationship, as the Ninth Circuit held in this case.

Pena-Rodriguez v. Colorado, No. 15-606. Whether a no-impeachment rule constitutionally may bar evidence of racial bias offered to prove a violation of the Sixth Amendment right to an impartial jury.

Shaw v. United States, No. 15-5991. Whether, in the bank-fraud statute, 18 U.S.C. § 1344, subsection (1)'s "scheme to defraud a financial institution" requires proof of a specific intent not only to deceive, but also to cheat, a bank, as nine circuits have held, and as petitioner argued here.

Moore v. Texas, No. 15-797. (1) Whether it violates the Eighth Amendment and this Court's decisions in *Hall v. Florida* and *Atkins v. Virginia* to prohibit the use of current medical standards on intellectual disability, and require the use of outdated medical standards, in determining whether an individual may be executed.

Buck v. Stephens, No. 15-8049. Whether the Fifth Circuit imposed an improper and unduly burdensome certificate of appealability (COA) standard that

contravenes this Court's precedent and deepens two circuit splits when it denied petitioner a COA on his motion to reopen the judgment and obtain merits review of his claim that his trial counsel was constitutionally ineffective for knowingly presenting an expert who testified that petitioner was more likely to be dangerous in the future because he is Black, where future dangerousness was both a prerequisite for a death sentence and the central issue at sentencing.

***Bravo-Fernandez v. United States*, No. 15-537.** (1) Whether, under *Ashe v. Swenson* and *Yeager v. United States*, a vacated, unconstitutional conviction can cancel out the preclusive effect of an acquittal under the collateral estoppel prong of the Double Jeopardy Clause; and (2) whether, under *Evans v. Michigan*, the Double Jeopardy Clause permits a district court to retract its "judgment of acquittal" entered on remand as an interpretation of the Court of Appeals' mandate.

***Beckles v. United States*, No. 15-8544.** (1) Whether *Johnson v. United States* applies retroactively to collateral cases challenging federal sentences enhanced under the residual clause in United States Sentencing Guidelines § 4B1.2(a)(2) (defining "crime of violence"); (2) whether *Johnson's* constitutional holding applies to the residual clause in § 4B1.2(a)(2), thereby rendering challenges to sentences enhanced under it cognizable on collateral review; and (3) whether mere possession of a sawed-off shotgun, an offense listed as a "crime of violence" only in commentary to § 4B1.2, remains a "crime of violence" after *Johnson*.

***Manuel v. City of Joliet*, No. 14-9496.** Whether an individual's Fourth Amendment right to be free from unreasonable seizure continues beyond legal process so as to allow a malicious prosecution claim based upon the Fourth Amendment.

***Manrique v. United States*, No. 15-7250.** Whether a notice of appeal from a sentencing judgment deferring restitution is effective to challenge the validity of a later-issued restitution award.

***Nelson v. Colorado*, No. 15-1256.** Whether Colorado's requirement that defendants must prove their innocence by clear and convincing evidence to get

their money back, after reversal of conviction of a crime entailing various monetary penalties, is consistent with Due Process?

***Lynch v. Dimaya*, No. 15-1498.** Whether 18 U.S.C. § 16(b), as incorporated into the Immigration and Nationality Act's provisions governing an alien's removal from the United States, is unconstitutionally vague?