

RECENT THIRD CIRCUIT AND SUPREME COURT CASES

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SUPREME COURT

I. Speedy Trial and Sentencing

Betterman v. Montana, No. 14-1457, 2016 U.S. LEXIS 3349 (U.S. May 19, 2016).

The Sixth Amendment's Speedy Trial guarantee, which serves to protect a criminal defendant's presumption of innocence, does not apply once the defendant has been found guilty at trial or has pleaded guilty to criminal charges.

NOTE: This opinion leaves open the possibility that a defendant who suffers inordinate delay before sentencing may have a Due Process claim under the Fifth and Fourteenth Amendments. Relevant considerations for such a claim may include the length of and reasons for the delay, the defendant's diligence in requesting an expeditious sentencing, and prejudice.

The majority also reserved ruling on whether the Speedy Trial Clause applies to bifurcated proceedings in which, at the sentencing stage facts that could increase the prescribed sentencing range are determined, as well as the question of whether the Sixth Amendment's Speedy Trial right reattaches upon renewed prosecution following a defendant's successful appeal, when he again enjoys the presumption of innocence.

II. Arson as an Aggravated Felony for Immigration Purposes

Luna Torres v. Lynch, No. 14-1096, 2016 U.S. LEXIS 3351 (U.S. May 19, 2016).

The federal arson statute's federal jurisdictional hook based on a connection to interstate commerce is not included in the "match of elements" required for a state arson conviction to qualify as a crime of violence under the aggravated felony immigration statute, 8 U.S.C. § 1101(a)(43).

NOTE: This case provides helpful language in two areas. First, the Court expressly approved the Ninth Circuit opinion that California arson is NOT a crime of violence because its breadth includes the destruction of one's own property. This should also apply to federal arson, which can be committed by destroying one's own property. The Court also opined that "crime of violence" "would not pick up" demanding ransom for kidnapping, most child pornography offenses, and firearms possession offenses.

Second, the Court summarized its case law interpreting statutes to require a *mens rea* even when the statutory language does not include such an element, but contrasts it with case law reversing that presumption regarding jurisdictional elements.

III. *Batson* Claims / Purposeful Discrimination in Jury Strikes

Foster v. Chatman, No. 14-8349, 2016 U.S. LEXIS 3486 (U.S. May 23, 2016).

- (1) The Court had jurisdiction to review a prisoner's claim that the Georgia Supreme Court improperly denied him a certificate of probable cause to appeal his *habeas* case, as the state habeas court's application of *res judicata* to the prisoner's *Batson* claim was not independent of the merits of his federal constitutional challenge.
- (2) The Court reversed the Georgia state court and found under the third step of the equal protection analysis required by *Batson v. Kentucky*, 476 U.S. 79 (1986), that the State's strikes of two (of four) black prospective jurors in his capital murder trial were motivated in substantial part by discriminatory intent. The State's proffered reasons for the strikes applied as well to otherwise-similar nonblack venire panelists who were allowed to serve, and other evidence of discriminatory intent included the State's shifting explanations, misrepresentations of the record, and a persistent focus on race in documents located in the prosecution's file, which Foster obtained through Georgia's Open Records Act.

THIRD CIRCUIT

I. Second Amendment / Possession of Machine Guns

United States v. One Palmetto State Armory PA-15 Machinegun Receiver/Frame, No. 15-2859, 2016 U.S. App. LEXIS 9050 (3d Cir. May 18, 2016).

This case holds: (1) the Second Amendment does not protect the possession of machine guns, and therefore 18 U.S.C. § 922(o) is not unconstitutional; and (2) a trust is not exempt from § 922(o) because it is not an entity distinct from its trustees, and therefore cannot own property and take legal action on its own behalf. To allow a trustee who is otherwise prohibited from possessing a machine gun to do so as a trustee would provide prohibited persons with an end run around criminal liability by simply placing the machine gun in "trust."

II. Due Process / Judicial Vindictiveness at Sentencing

United States v. Nerius, No. 15-3688, 2016 U.S. App. LEXIS (3d Cir. May 25, 2016).

The presumption of judicial vindictiveness did not apply where Nerius was sentenced to 37 months at the bottom of the career offender guideline range, and after his case was remanded for sentencing without the career offender guideline, he received 36 months, which was the top of the new range. The fact that the district court went from the bottom of a higher guideline range to the top of a new guideline range was irrelevant to the Due Process vindictiveness analysis required by *North Carolina v. Pearce*, 395 U.S. 711 (1969); what matters is whether the sentence on remand was higher. Since Nerius offered no argument of "actual vindictiveness" on the part of the district court, the sentence was affirmed as compliant with Due Process demands.