

Supreme Court Preview: 2015 Term

Author : Jeff Welty

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It's the first Monday in October, which means it's the first day of the Supreme Court's 2015 Term. Read on to learn about the criminal law cases that the Court will consider.

The list so far. SCOTUSblog's list of cases that the Court will hear this Term, together with a statement of the issue in each case, is [here](#). The Court is likely to accept more cases for this Term in the coming months, so this will end up being a partial list. However, depending on how one counts habeas cases and prison rights cases, there are already ten or so criminal law cases on the docket.

Capital cases up early. Several capital cases will be argued early in the Term. They're discussed in detail in [this](#) SCOTUSblog post, but I'll call out two specifically. First, in two days, the Court will hear the companion cases of *Kansas v. Gleason* and *Kansas v. Carr*. The main issue is whether jurors in a capital case must be instructed explicitly that mitigating circumstances need not be proved beyond a reasonable doubt. It's an interesting case but perhaps of little direct impact in North Carolina, where N.C.P.I. – Crim. 150.10 already informs jurors that the standard of proof for mitigating circumstances is a preponderance of the evidence. Second, in November, the Court will hear *Foster v. Chatman*, a *Batson* case from Georgia involving evidence of possible racial bias by the prosecutor discovered years after trial in response to a public records request.

Miller retroactivity to be determined. As Jessie noted [here](#), *Montgomery v. Louisiana* will be argued on October 13. The 69-year-old petitioner was convicted of murdering a deputy sheriff in 1963, when the petitioner was 17. He received a mandatory sentence of life without parole. Mandatory LWOP sentences for juveniles are no longer permitted under *Miller v. Alabama*, 567 U.S. ___ (2012), but lower courts have split about whether *Miller* applies retroactively. (North Carolina's appellate courts haven't addressed the issue yet though a significant number of inmates will be affected by the answer.) There's a jurisdictional issue in *Montgomery* that could be a problem, but the case looks primed to address the retroactivity question.

Fourth Amendment conundrum. The Term's top Fourth Amendment case, at least so far, is *Utah v. Strieff*. No argument date has yet been set, but the issue presented is “[w]hether evidence seized incident to a lawful arrest on an outstanding warrant should be suppressed because the warrant was discovered during an investigatory stop later found to be unlawful.” In a nutshell, an officer stopped Strieff based on the officer's hunch that Strieff was involved in drug activity. During the stop, the officer ran a warrant check, found an outstanding warrant, and arrested Strieff. He then searched Strieff and found methamphetamine. The parties dispute whether the drugs should be suppressed as the fruit of the illegal stop, or whether the discovery of the warrant was an intervening event that attenuated the taint of the stop. The issue appears to have divided the lower courts, with Utah's brief usefully breaking them into camps. Neither of the parties' briefs cite a North Carolina precedent and one doesn't leap right to my mind, but maybe one is out there. If so, it will of course be trumped by the outcome of *Strieff*.

As usual, we'll keep you up to date on the Court's doings, so check back as the Term progresses.