

Court of Criminal Appeals
June 11, 2014

Matthews v. State

No. PD-1341-13

Case Summary written by Tarryn Johnson, Online Edition Editor.

COCHRAN, J., delivered the opinion of the Court in which KELLER, P.J., and MEYERS, PRICE, WOMACK, JOHNSON, HERVEY and ALCALA, JJ., joined. KEASLER, J., concurred.

An “anonymous” 911 call sent Officer Zimpelman and his partner, Officer Smith, to investigate what the caller said was someone selling crack cocaine out of their car. The caller described the person as a black male named Neil Matthews, who was wearing a white muscle shirt and dark pants, and selling “crack” out of a white van parked in front of a food store in Fort Worth. The location was a high-crime area, known for drug and weapons arrests.

The officers arrived at the scene, approached the vehicle they believed the caller had described, and made contact with the driver, Matthews, who was wearing clothes matching the caller’s description. Officer Zimpelman asked Matthews to keep his hands within view, but according to the officer, Matthews ignored the request. After a second request to keep his hands within the officers’ view went unheeded, and because it was a dark night in a high-crime area, officers asked Matthews to step outside of his car. Officer Smith escorted Matthews to the back of the vehicle and frisked him; nothing was found. Upon request, Matthews identified himself, and officers noticed his name was similar to the tipster’s information once again. When officers asked for permission to search the vehicle, Matthews declined because the car was not his. Officers explained that he was in control of the vehicle, so therefore he had authority to consent to the search, but Matthews did not consent. Officer Zimpelman requested a K-9 unit to come to the scene to conduct an open-air sniff and Matthews became visibly nervous. As officers escorted Matthews to the patrol car to wait for the K-9, Matthews ran off; officers chased Matthews for a short distance before handcuffing him. A woman later came to the scene and identified herself as the anonymous caller. The K-9 sniff alerted to the presence of contraband, and when police searched the vehicle they found marijuana and crack cocaine.

Matthews was charged with possession of cocaine with intent to distribute. In a pretrial motion, he contested the legality of the warrantless search conducted by police officers and challenged the reasonableness of his detention by police. After hearing evidence on the motion, the trial judge denied the motion to suppress, reasoning that Matthews did not have standing to challenge the search. The judge also found the appellant’s detention reasonable. At trial, Matthews was convicted and sentenced to twenty-two years in prison. Matthews appealed his conviction on the grounds of unreasonable detention and an unlawful search, but the appeals court agreed with the trial judge and affirmed.

Issues: (1) Whether appellant’s initial and continued detention was supported by reasonable suspicion.

(2) Whether a person who legitimately borrows a vehicle has standing to challenge its search.

First, the Court examined Matthews’ detention from the very beginning and held that although an anonymous tip alone is “seldom sufficient to establish reasonable suspicion,” the totality of the circumstances surrounding appellant’s detention was reasonable. Officers indeed received an anonymous tip, but in addition to the tip officers

were able to corroborate the anonymous caller's description with facts they independently observed, not to mention that the area had a reputation for being a high-crime area known for drug and weapon offenses, and Matthews took off running after officers requested a K-9 unit. Matthews argued that the constitutional line was crossed when officers continued to detain him after the frisk, which yielded no weapons or contraband. The Court disagreed, reasoning that the fifteen to twenty minute wait for the K-9 unit was not unreasonable because the frisk did not dispel officers' suspicions that Matthews was selling "crack" from his vehicle.

Second, the Court addressed Matthews' argument that the court of appeals erred when it held that he lacked standing to challenge the search of the borrowed vehicle. Generally, a person driving a borrowed car has a subjective and reasonable expectation of privacy in that vehicle. The Court, however, relied on fundamental property concepts and concluded that a borrower who abandons the property no longer has an expectation of privacy in it. When Matthews decided to run from police, he effectively abandoned—not simply discarded—the borrowed vehicle; thus, his voluntary and intentional departure from the scene rendered the vehicle abandoned and Matthews relinquished any expectation of privacy he had in the car. Therefore, Matthews lacked standing to contest the search of the vehicle.

In sum, the Court agreed with both the trial and appeals courts that the initial investigation and continued detention was supported by reasonable suspicion. The Court also agreed with both the trial and appellate courts that Matthews lacked standing to challenge the search of the van, but for slightly different reasons than the lower courts. Accordingly, Matthews' conviction and judgments were affirmed.

Garza v. State

No. PD-1596-12

Case Summary written by Tarryn Johnson, Online Edition Editor.

KEASLER, J., delivered the opinion of the Court, in which MEYERS, PRICE, WOMACK, and HERVEY, JJ., join. PRICE, J., filed a concurring opinion, in which WOMACK, J., joined. COCHRAN, J., filed a concurring opinion, in which ALCALA, J., joined. ALCALA, J., filed a concurring opinion, in which JOHNSON and COCHRAN, JJ., joined. KELLER, P.J., filed a dissenting opinion.

This case is brought on appeal by a juvenile who was sentenced to life in prison without the possibility of parole. Appellant claims that his sentence for stabbing and killing a man while attempting to steal a car violates the Eighth Amendment prohibition against cruel and unusual punishment, and bases his argument on the United States Supreme Court's decision in *Miller v. Alabama*. In *Miller*, the United States Supreme Court held that a mandatory imposition of a life sentence without the possibility of parole—for a juvenile—is unconstitutional. The court of appeals affirmed the trial court's sentence without addressing the merits of Garza's claim because it found that the issue had not been preserved for review below.

Although the general preservation requirement applies to most claims, the rule is not absolute. The Court of Criminal Appeals separates the rights of a defendant into three categories: (1) absolute rights which cannot be forfeited by inaction alone; (2) rights that are not forfeitable, but are waivable, if waiver is done plainly, freely, affirmatively, and intelligently; and (3) rights that are forfeitable by inaction. The court of appeals relied on

this Court's previous cases in holding that Eighth Amendment issues are forfeited if not raised in the trial court; however, this Court recently decided *Ex parte Maxwell*, which held that the Supreme Court's ruling in *Miller* was a substantive right and therefore applied retroactively. Therefore, the Court is presented with the issue of whether "substantive status-based or individualized-sentencing claims under the Eighth Amendment and embraced by *Miller* are forfeited by inaction."

Issue: Was Garza's *Miller* claim forfeited on appeal because it was not raised as an objection at trial?

No; in light of the Court of Criminal Appeals' recent decision in *Maxwell* and its express and implied holdings, Garza's claim was not forfeited by inaction. "Failing to consider *Maxwell's* effect on the instant case denies *Maxwell* the force of precedent deserving of an opinion that received the support from a majority of the Court. Until such time as the United States Supreme Court calls this Court's characterization of the *Miller* rule into doubt, we are bound by *Maxwell*]"

The Court makes it a point to note that neither *Maxwell* nor this case discerns exactly which category of rights a *Miller* claim falls into. The two possible categories are the "absolute rights" or "waiver-only" rights. The Court declined to address this residual issue and reserved decision on the matter for a case that properly presents the issue.

Judge Price, concurring

Judge Price writes separately to add further explanation of why the implied holding in *Maxwell* is correctly applied here in Garza's case. Primarily, Judge Price reasons that "[b]ecause we granted habeas corpus relief in *Maxwell*, despite the lack of a trial objection, it must be presumed that we necessarily held, however implicitly, that a violation of the Eighth Amendment as recognized in *Miller* was not subject to procedural default by inaction" Furthermore, the rule announced in *Miller* places the exact type of limitation on state power that usually triggers the "absolute rights" classification where the right is immune from procedural default. To that extent, Judge Price agrees with the Court that this sort of issue is correctly placed in one of the non-forfeiture categories of a defendant's rights.

Judge Cochran, concurring

Judge Cochran adds his perspective to the Court's decision by noting that, in her opinion, the result reached today is neither "novel [nor] untoward." Judge Cochran reasons that "the failure to object on Eighth Amendment grounds at trial forfeits review of the claim on appeal. But that forfeiture rule does not apply when the Supreme Court has just announced a new Eighth Amendment categorical right." Judge Cochran compares the present case to those cases that have prohibited the execution of the intellectually disabled, or even those cases that have prohibited the execution of juveniles, and reaches the conclusion that these Eighth Amendment categorical rights are not subject to forfeiture and the "absolute rights" of category one apply retroactively despite typical rules of procedural default.

Judge Alcala, concurring

Judge Alcala concurs only in the Court's judgment and writes separately because she believes that the Court's analysis is unnecessary for resolving this appeal. Also, Judge Alcala disagrees with the Court's suggestion that preservation-of-error requirements are identical to those required for obtaining habeas corpus relief. The analysis Judge Alcala introduces is based upon the procedural review the Court should take because Garza's case is a direct appeal. "Because the present case is on direct appeal, this Court must apply the constitutional ruling in *Miller* to this case." In her view, the ruling in *Miller* removes procedural principles such as waiver and procedural default completely from the table. Plainly, a defendant cannot default on or waive certain protections that were never available to begin with. "I would hold that, because the constitutional rule at issue had not been established at the time of appellant's trial, his counsel's failure to object did not forfeit his complaint on that basis [. . .] because this case is on direct appeal, appellant is entitled to the benefit of the new rule of constitutional law.

Presiding Judge Keller, dissenting

Dissenting from the Court's opinion, Keller notes that the record fails to establish that Garza was in fact a juvenile at the time the crime was committed and that she disagrees that a rule of law can be established by the Court impliedly by failing to address an issue in a prior case. Judge Keller would dismiss appellant's petition as improvidently granted for failure to prove Garza's juvenile status.