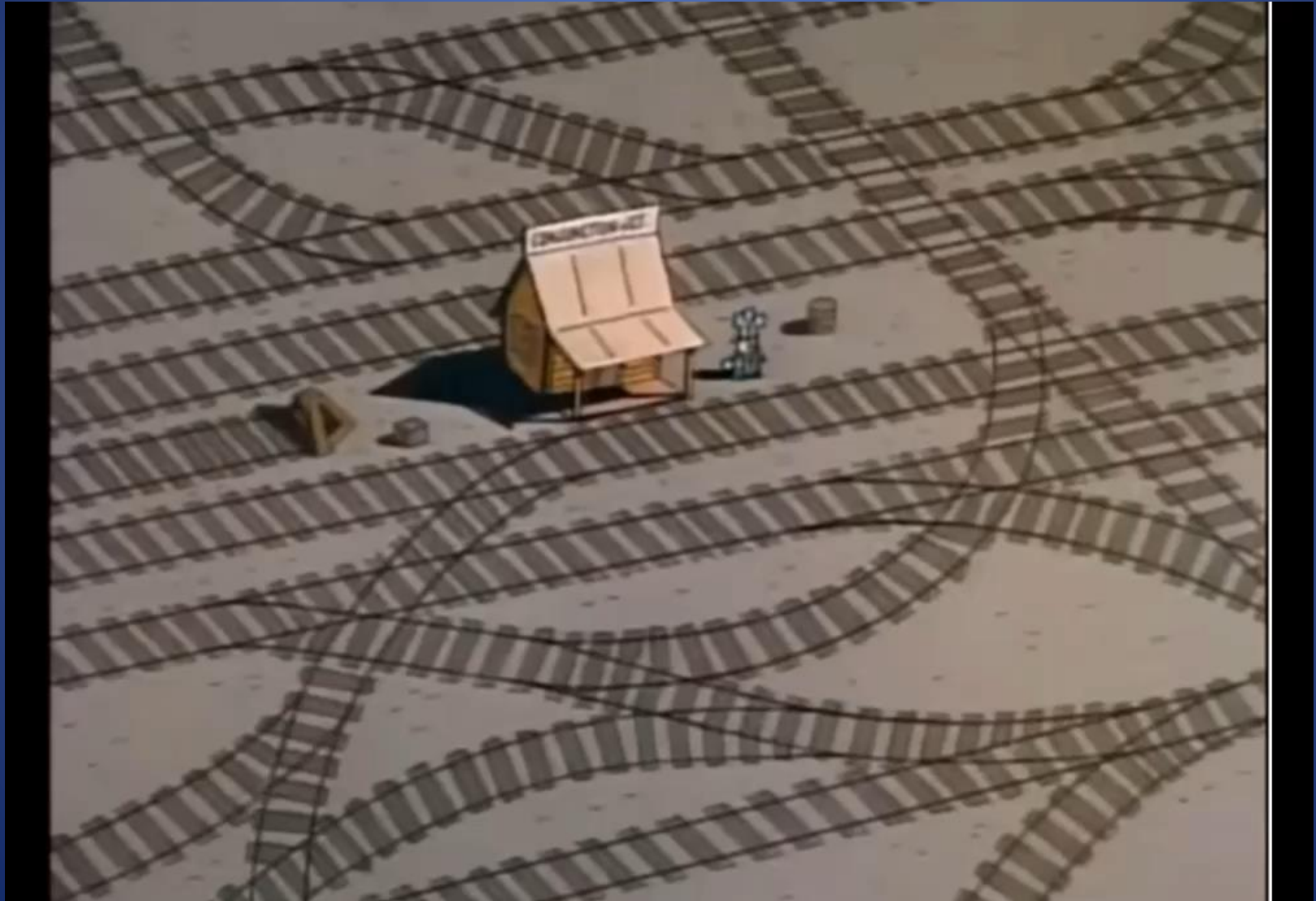


Overview

- 2023 Term
- 10 Cases
 - 4 Statutory
 - 4 Con. Law
 - 2 Rules



Conjunction Junction



Pulsifer (6-3 Loss) (Kagan)

- 3553(f): Eligible for safety valve “if the court finds at sentencing . . . (1) that the D does not have—
 - (A) more than 4 criminal history points. . . ;
 - (B) a prior 3-point offense . . . ; and
 - (C) a prior 2-point violent offense. . . .
- QP: Is D ineligible for safety valve if he has any of the (A), (B), or (C); or ineligible only if he has all of them?
- Holding: context, surplusage, common sense show this a checklist; having (A), (B), or (C) makes D ineligible for SV.
- Gorsuch: majority rewrites text to help the government; could have just used “or”, and what about lenity?

A Great Fraud on the Public



Rahimi (OA Nov. 7)

- 922(g)(8): illegal to possess firearm if subject to domestic violence restraining order.
- QP: is (g)(8) facially unconstitut. under 2A/Bruen.
- Big question: does 2A apply to “dangerous” people?
- How do courts conduct Bruen historical analysis?
- Implications for 2A challenges to other 922 provision

Living in the Past



Brown/Jackson (OA Nov. 27)

- ACCA “serious drug offense” requires categorical match between state elements and the federal CSA schedules.
- QP: Which temporal version of the federal CSA schedules?
- Three options:
 - 1) those in effect at time of prior state drug offense (SG/CA11)
 - OR
 - 2) those in effect at time of federal firearm offense (Jackson)
 - 3) those in effect at time of federal sentencing (Brown)

Shot Marvin in the Face



Repugnant



McElrath (9-0 Win) (KBJ)

- Murder case: jury finds D guilty (but mentally ill) of felony murder, but not guilty by reason of insanity of malice murder.
- Ga. Supreme Ct. vacates the entire verdict as “repugnant” and allows a retrial on both counts, including the acquitted count.
- QP: Does Double Jeopardy bar re-trial for the acquitted count?
- Holding: Of course. It’s an “acquittal,” even though inconsistent (or “repugnant” under GA law) with verdict on other counts. Cannot look behind verdict to speculate about reasons for inconsistency.
- Alito: we don’t decide whether it’s an “acquittal” where trial judge rejects inconsistent verdict and tells jury to keep deliberating.

Expert



Smith v. AZ (OA Jan. 10)

- Crime lab analyst tests substances and determines they are drugs. However, analyst leaves employment before trial. At trial, the state calls another analyst at the same lab. He did not do any of the testing, but relied on the other analyst's notes/reports to form his own expert opinion.
- QP: Does expert testimony violate the Confrontation Clause where it is based on a non-testifying analyst's findings?
- Petitioner: testifying expert here impermissibly served as a conduit for the testimonial statements of non-testifying technician; and those statements were offered for truth b/c they were the basis of the expert's opinion.
- SG: Testimony here went too far, but many cases will be fine; otherwise, state would have to call all of the people involved in the testing process.
- State: Expert came to his own independent opinion and was subject to cross; in any event, the underlying notes/report weren't testimonial.

Rules made to be broken



McIntosh (9-0 Loss) (Sotomayor)

- Fed. R. Crim. P. 32.2: “Unless doing so is impractical, the court must enter the preliminary order sufficiently in advance of sentencing to allow the parties to suggest revisions or modifications before the order becomes final”
- Preliminary forfeiture order came 2.5 years after sentencing.
- QP: Is Rule 32.2 essentially optional?
- Petitioner: it’s a claim processing rule that Defendants can enforce.
- Government: it’s a time-related directive for courts that is effectively unenforceable and subject to harmless error on appeal.
- Holding: It’s a time-related directive designed to spur court action. So failure to comply does not bar court from ordering forfeiture.

Entrusted with Valuable Cargo



Diaz (OA Mar. 19)

- Federal Rule of Evidence 704(b): “In a criminal case, an expert witness must not state an opinion about whether the defendant did or did not have a mental state or condition that constitutes an element of the crime charged or of a defense. Those matters are for the trier of fact alone.”
- Meth found in car door panels at border; at trial, DHS expert testified that, in “most circumstances,” drivers carrying large quantities across border “know” because the cartels don’t entrust drugs to unknowing couriers.
- QP: Does this sort of expert testimony violate Rule 704(b)?
- Petitioner: Rule prohibits all class-wide expert testimony about mens rea if the class covers D, even if testimony is probabilistic rather than absolute.
- Government: Rule permits expert testimony about drug trafficking practices as long as it does not opine on a specific defendant’s mens rea, even if testimony allows the jury to make inferences about his mens rea.

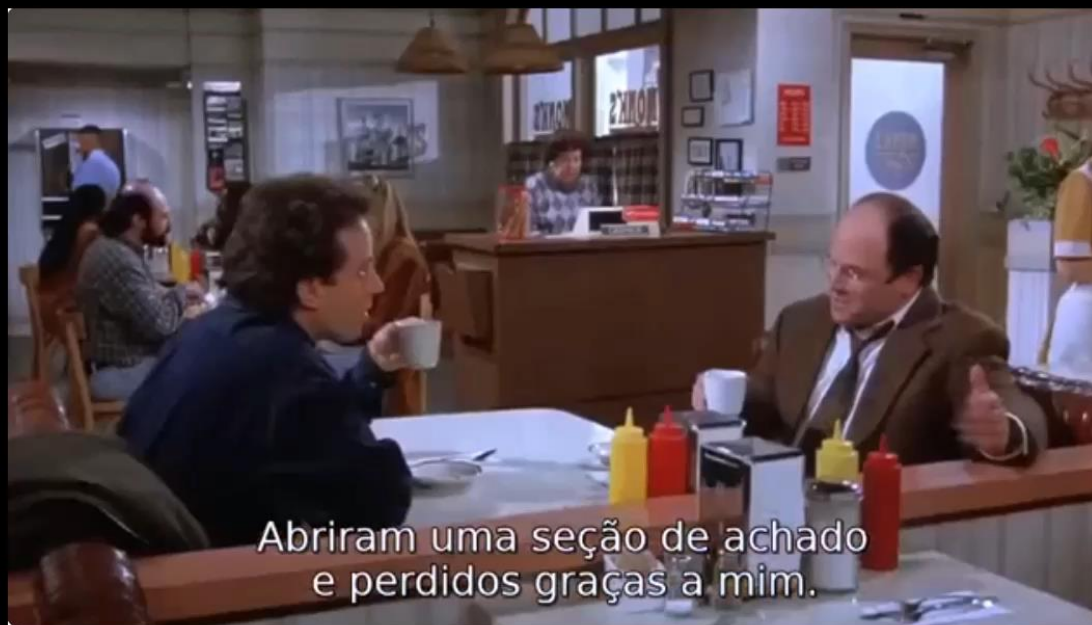
Separate incidents



Erlinger (OA Mar. 27)

- ACCA: 15-year mandatory minimum where felon-in-possession D has three prior convictions committed on “different occasions.”
- Wooden: multi-factor test for determining different occasions: time, place, character, relationship, intervening events, etc...
- QP: Is the different-occasion issue an element that must be charged and found by a jury beyond reasonable doubt?
- Petitioner/SG: Almendarez-Torres exception is limited to the fact of prior conviction, and the Wooden factors go beyond that fact.
- Amicus: Almendarez-Torres exception covers all recidivism facts.

Credit for Tipping



Snyder (OA Apr. 15)

- Indiana mayor rigged bids for garbage truck contracts. Beneficiaries of the contract later gave the mayor \$13K after the fact.
- Convicted under 18 U.S.C. 666(a)(1)(B), which makes it a crime for state/local officials to “corruptly” accept payment “intending to be influenced or rewarded” for doing government business.
- QP: Does 666(a)(1)(B) cover gratuities?
- Petitioner: statute is limited to up-front quid pro quo bribery; otherwise, it would cover token thank-you gifts for public service.
- Government: “rewarded” plainly covers after-the-fact gratuities; need to incentivize officials to serve the public, not themselves.

Jan. 6 Peaceful Protest



Fischer (OA Apr. 16)

- 300+ Jan. 6 defendants have been charged with 1512(c)(2).
- 18 U.S.C. 1512(c): Whoever corruptly: (1) alters/destroys documents for use in an official proceeding; or (2) “otherwise” obstructs/impedes any official proceeding....
- QP: Is 1512(c)(2) limited to acts that impair the integrity or availability of evidence?
- Petitioner: Yes, (c)(2) must be read together with—and so is limited by—(c)(1) to focus on the destruction of evidence.
- Government: No, (c)(2) is a catchall provision covering all forms of corruptly obstructing an official proceeding.

Fin

That's all Folks!



kalilak