



## High court begins term with case on police actions

BY MARK SHERMAN

October 6, 2014

People can't plead ignorance of the law to excuse a violation. The first case of the new Supreme Court term Monday tests whether there's a double standard when it comes to the police.

A case from North Carolina turns on whether an officer's mistaken belief about a state law still can justify a traffic stop that led to the discovery of cocaine.

The justices are beginning their fifth year together, and Chief Justice John Roberts is at the start of his 10th year at the head of the high court.

Their term could be one for the ages if they decide, as seems likely, to take on the issue of same-sex marriage and settle once and for all whether gay and lesbian couples have a constitutional right to marry.

But before they get there, the court has an array of cases involving:

—Religious, employment and housing discrimination;

—The drawing of political districts in Alabama and Arizona;

—A dispute between Congress and the president over passports that is heavy with Middle East politics;

—The use of a law to prevent document shredding against a fisherman accused of throwing undersized red grouper overboard, and

—The prosecution of a self-styled rapper whose Facebook postings threatened his estranged wife, an FBI agent and area schools.

Monday's argument on the police action involves an appeal by Nicholas Heien, whose Ford Escort was pulled over when an officer saw that the right rear brake light wasn't working, although the left one was. The officer found cocaine during an ensuing search, and Heien was later convicted of drug trafficking.

Typically, evidence found in a car that has been pulled over for a valid reason can be used against a defendant. But North Carolina's quirky traffic laws mandate that only one brake light on a car be functioning.

The case tests whether the officer's mistaken understanding of the law makes the traffic stop unreasonable and the search a violation of Heien's constitutional rights. A divided state Supreme Court said the mistake was reasonable enough to justify the routine traffic stop.

The next day, the justices will take up the case of Arkansas prison inmate Gregory Holt, who says his Muslim beliefs require him to grow a half-inch beard. Arkansas prison officials permit no beards, with the exception of inmates with certain skin conditions, who can have beards a quarter-inch long.

Prison officials say their rule is a matter of security because beards can be used to hide prohibited items, and 18 states are backing the state's argument. But groups across the political spectrum and the Obama administration say Holt has a right to grow a beard under a federal law aimed at protecting prisoners' religious rights. More than 40 states already allow beards, with little evidence that inmates have tried to hide prohibited items in them.

Last term, the court bitterly divided over the religious rights of family-owned corporations that objected to paying for women's contraceptives under President Barack Obama's health care law. The Gregory Holt case appears likely to unite the court, said University of Notre Dame law professor Richard Garnett. "I think there's every reason to expect agreement among the justices that Arkansas hasn't even come close to satisfying the burden," Garnett said.

The court's calendar this fall also includes a foray into the online world. Anthony Elonis of Bethlehem, Pennsylvania, is challenging his conviction for using Facebook to post threats of violence. The issue in Elonis' case is whether he had to intend to make the threats. The government argues that the proper measure is whether a reasonable person would feel threatened.

Elonis said his online postings should be considered speech that is protected by the First Amendment, and that he used the forum to vent his frustration over a series of events that included the loss of his job and the breakup of his marriage.

"When you look at this guy's entire Facebook feed, he literally thinks he's the next Eminem," said Hashim Mooppan, a lawyer with the Jones Day law firm in Washington and a former law clerk to Justice Antonin Scalia, in a reference to the rap artist.

Beyond individual cases on the court's docket, court observers across the political spectrum are using the milestone 10th year to offer assessments of Roberts and the court he leads.

The court's record on gay rights is comparable to its embrace of civil rights for African-Americans in the 1950s and 1960s under Chief Justice Earl Warren, said University of Chicago law professor David Strauss. "The court will go down in history as one that was on the frontiers

of establishing rights for gays and lesbians," Strauss said, even though the chief justice has mainly been in dissent.

But the Roberts court also has rolled back campaign finance limits, upheld abortion restrictions and been generally skeptical of the consideration of race in public life, in decisions driven by a conservative five-justice majority.

To liberals, Roberts has ignored his promise during Senate confirmation hearings to be modest, "instead using the power of court to move dramatically to the right," Brianne Gorod of the liberal Constitutional Accountability Center.

Some conservatives meanwhile are dismayed by what they see as Roberts' unwillingness to take big steps on key issues, and they have yet to forgive his vote to uphold Obama's health care law in 2012. Roger Pilon, a vice president of the libertarian Cato Institute, wrote in Cato's Supreme Court review that "missed opportunities can become lost opportunities."

With the court closely divided on key issues, a change on the bench can mean the difference between victory and defeat. That was indeed the case with the replacement of Justice Sandra Day O'Connor with Justice Samuel Alito, affecting outcomes in cases on abortion, race and campaign finance.