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A 5-4 Ruling, One of Three, Limits Silence's Protection

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WASHINGTON — The Supreme Court issued three 5-to-4 decisions on Monday. One limited a criminal suspect's right to remain silent before being taken into custody. Another granted additional discretion to judges in sentencing. The third allowed a lawsuit against trial lawyers who had solicited clients using information from motor vehicle departments to move forward. The justices also agreed to hear a case on fair-housing laws.

RIGHT TO REMAIN SILENT The court ruled that a suspect's failure to answer a police officer's questions before an arrest may be used against the suspect at trial.

The Supreme Court has long said the Fifth Amendment's protection against self-incrimination applies after arrest and at trial. But it had never decided, in the words of a [1980 decision](#), "whether or under what circumstances pre-arrest silence" in the face of questioning by law enforcement personnel is entitled to protection.

The case decided Monday, [Salinas v. Texas](#), No. 12-246, arose from the 1992 murder of two brothers, Juan and Hector Garza, in Houston. Among the evidence the police found were discarded shotgun shells.

The police questioned Genovevo Salinas, who was said to have attended a party at the Garzas' apartment. Mr. Salinas answered questions for almost an hour but would not say if a shotgun the police had taken from his home would match the recovered shells.

At trial, a prosecutor commented on Mr. Salinas's silence about the shells. "An innocent person," the prosecutor told the jury, "is going to say: 'What are you talking about? I didn't do that. I wasn't there.' He didn't respond that way. He didn't say, 'No, it's not going to match up.' "

Mr. Salinas was convicted and sentenced to 20 years in prison.

The justices in the majority on Monday offered differing rationales for sustaining the conviction. Justice Samuel A. Alito Jr., joined by Chief Justice John G. Roberts Jr. and Justice Anthony M. Kennedy, said Mr. Salinas had to expressly invoke his right to remain silent to benefit from it.

Justice Clarence Thomas, joined by Justice Antonin Scalia, wrote that "Salinas's claim would fail even if he had invoked the privilege."

Justice Stephen G. Breyer, joined by Justices Ruth Bader Ginsburg, Sonia Sotomayor and Elena Kagan, said allowing “a prosecutor to comment on a defendant’s constitutionally protected silence would put that defendant in an impossible predicament.” Mr. Salinas’s choice, Justice Breyer wrote, was “between incrimination through speech and incrimination through silence.”

SENTENCING The court overruled a 2002 decision that had required judges to impose mandatory minimum sentences even if they were not supported by jury findings. Justice Thomas, joined by the court’s four liberal members, said the case could not be reconciled with a line of precedent since 2000 that gave juries a larger role in sentencing proceedings.

Justice Breyer was in the majority in the 2002 ruling, [Harris v. United States](#), but since then has expressed ambivalence about his vote. In his [2002 concurrence](#), he wrote that the logic of the seminal 2000 decision, [Apprendi v. New Jersey](#), required the opposite result. But, he added, “I cannot yet accept its rule.” On Monday, he came to accept it.

The case concerned Allen R. Alleyne, who was convicted of robbery and a gun charge. The jury failed to find that Mr. Alleyne had brandished a gun, a determination that would have required a seven-year mandatory sentence. But the judge did find that it was more likely than not that Mr. Alleyne had brandished a weapon, raised the sentencing floor to seven years from five and sentenced the defendant to the longer term.

The five opinions in the decision, [Alleyne v. United States](#), No. 11-9335, were partly about the jury’s role in sentencing, with Justice Thomas writing that there should be no difference between facts supporting an increase in the maximum sentence and facts supporting the increase in a minimum sentence. Both required jury findings, he said.

The justices also argued about respect for precedent, which Justice Thomas said was “at its nadir in cases concerning procedural rules that implicate fundamental constitutional protections.”

In dissent, Justice Alito wrote that “the court’s decision creates a precedent about precedent that may have greater precedential effect than the dubious decisions on which it relies.”

PRIVACY The court ruled that trial lawyers in South Carolina ran afoul of part of the federal Driver’s Privacy Protection Act by using information obtained from the state motor vehicles department to solicit clients for a lawsuit about overcharges from car dealerships.

The part of the federal law that permitted the lawyers to use driver information “in connection with” or “in anticipation of litigation” did not apply to solicitations, Justice Kennedy wrote for the majority. He was joined by Chief Justice Roberts and Justices Thomas, Breyer and Alito.

In dissent, Justice Ginsburg said the law, properly interpreted, allowed information to be used in “a concrete civil action between identified parties that is ongoing or impending.”

She added that the decision, in [Maracich v. Spears](#), No. 12-25, “exposes lawyers whose conduct meets state ethical requirements to huge civil liability and potential criminal liability.”

FAIR HOUSING The court agreed to decide whether suits under the Fair Housing Act require proof that the challenged practice was motivated by an intent to discriminate. The appeals court in the case, *Mount Holly v. Mount Holly Gardens Citizens in Action*, No. 11-1507, ruled that proof of disparate impact without evidence of an intent to discriminate was enough to allow the suit to proceed.