



Fall 9-1-2002

United States v. Bass 122 S. Ct. 2389 (2002)

Follow this and additional works at: <https://scholarlycommons.law.wlu.edu/wlucdj>



Part of the [Criminal Procedure Commons](#), and the [Law Enforcement and Corrections Commons](#)

Recommended Citation

United States v. Bass 122 S. Ct. 2389 (2002), 15 Cap. DEF J. 161 (2002).

Available at: <https://scholarlycommons.law.wlu.edu/wlucdj/vol15/iss1/12>

This Casenote, U.S. Supreme Ct. is brought to you for free and open access by the Law School Journals at Washington and Lee University School of Law Scholarly Commons. It has been accepted for inclusion in Capital Defense Journal by an authorized editor of Washington and Lee University School of Law Scholarly Commons. For more information, please contact christensena@wlu.edu.

United States v. Bass

122 S. Ct. 2389 (2002)

I. Facts

A federal grand jury in the Eastern District of Michigan returned a second superseding indictment charging John Bass (“Bass”) with the “intentional fire-arm killings of two individuals.”¹ After the United States filed a notice of intent to seek the death penalty, Bass moved to dismiss it. In the alternative, he moved for discovery of information regarding the Government’s capital charging practice on the ground that the Government sought the death penalty against him because he is black.² The district court granted Bass’s motion for discovery. The United States refused to comply with the discovery order and the district court dismissed the death penalty notice.³ The United States Court of Appeals for the Sixth Circuit, in a divided panel, affirmed the discovery order.⁴ The United States Supreme Court granted certiorari.⁵

II. Holding

The United States Supreme Court reversed the decision of the Sixth Circuit. The Court held that the Sixth Circuit’s decision was contrary to *United States v Armstrong*.⁶

III. Analysis / Application in Virginia

The United States Supreme Court applied the analysis of *Armstrong*, a non-capital case, to *Bass*.⁷ In order for a capital defendant to obtain discovery on a claim of selective prosecution, he must meet the requirements of *Armstrong*.⁸ *Armstrong* requires a defendant seeking discovery on a claim of selective prosecution to put forth evidence of both discriminatory effect and discriminatory

1. United States v. Bass, 122 S. Ct. 2389, 2389 (2002).

2. *Id.*

3. *Id.*

4. See generally United States v. Bass, 266 F.3d 532 (6th Cir. 2001).

5. *Bass*, 122 S. Ct. at 2389.

6. *Id.*; see United States v. Armstrong, 517 U.S. 456, 465 (1996) (holding that a defendant must show evidence of discriminatory effect and discriminatory intent in order to be granted discovery on a claim of selective prosecution).

7. *Bass*, 122 S. Ct. at 2389. See generally *Armstrong*, 517 U.S. at 456.

8. See *Bass*, 122 S. Ct. at 2389.

intent.⁹ In order to show discriminatory effect, the defendant must show that “similarly situated individuals of a different race were not prosecuted.”¹⁰

The Supreme Court found that the Sixth Circuit affirmed Bass’s discovery order based upon nationwide statistics showing that blacks are charged with death-eligible offenses more often than whites and that whites receive plea bargains more often than blacks.¹¹ These statistics were based on overall charges, rather than on charges brought against defendants who were similarly situated to Bass.¹² The Court succinctly dismissed as irrelevant the statistical evidence regarding plea bargains because Bass declined a plea bargain that was offered to him.¹³ The Court then stated that Bass had failed to show that he was treated differently from others who were similarly situated.¹⁴ The Court found that pursuant to *Armstrong*, Bass had not shown a discriminatory effect, and thus was not entitled to discovery of the Government’s capital charging practices.¹⁵ In light of *Bass*, a capital defendant must meet the high hurdle of *Armstrong* in order to obtain discovery on a selective prosecution theory.¹⁶

Kristen F. Grunewald

9. *Armstrong*, 517 U.S. at 465.

10. *Bass*, 122 S. Ct. at 2389 (quoting *Armstrong*, 517 U.S. at 465); see also *United States v. Olvis*, 97 F.3d 739 (4th Cir. 1996).

11. *Bass*, 122 S. Ct. 2389.

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.* See generally *Armstrong*, 517 U.S. at 456.

CASE NOTES:

**United States Court of Appeals
for the Fourth Circuit**
