

Department of
CRIMINAL JUSTICE TRAINING

KENTUCKY JUSTICE AND PUBLIC SAFETY CABINET

2006-07



Leadership is a behavior, not a position

U.S. SUPREME COURT
CASE LAW
SUMMARIES



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Commissioner



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CRIMINAL JUSTICE TRAINING

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The Leadership Institute Branch of the Department of Criminal Justice Training offers a Web-based service to address questions concerning legal issues in law enforcement. Questions can now be sent via e-mail to the Legal Training Section at

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In addition, the Department of Criminal Justice Training has a new service on its web site to assist agencies that have questions concerning various legal matters. Questions concerning changes in statutes, current case laws, and general legal issues concerning law enforcement agencies and/or their officers can now be addressed to docjt.legal@ky.gov. The Legal Training Section staff will monitor this site, and questions received will be forwarded to a staff attorney for reply. Questions concerning the Kentucky Law Enforcement Council policies and those concerning KLEFPF will be forwarded to the DOCJT General Counsel for consideration. It is the goal that questions received be answered within two to three business days (Monday-Friday). Please include in the query your name, agency, and a day phone number or email address in case the assigned attorney needs clarification on the issues to be addressed.

2006-07 Term

U.S. Supreme Court

Carey v. Musladin
127 S.Ct. 649 (2006)

FACTS: During Musladin's trial for murder, several members of the victim's family "sat in the front row of the spectator's gallery." During parts of the trial, the family members "wore buttons with a photo of Struder [the victim] on them." Musladin's counsel asked the court to have them remove the buttons, but the trial court refused, stating that it found "no possible prejudice to the defendant" in allowing the buttons to be worn.

Eventually, Musladin was convicted of murder. (He had admitted to killing Struder, but claimed self-defense.) He appealed his conviction through the state court system, arguing that "the buttons deprived him of his Fourteenth Amendment and Sixth Amendment rights." The state courts agreed with the trial court, finding no prejudice to Musladin in allowing the family members to show "normal grief" for their loved one. Musladin then filed for a writ of habeas corpus in the federal courts arguing that the buttons were prejudicial and denied him the opportunity for a fair trial. The U.S. District Court refused Musladin's petition for habeas corpus, and to review the case, but did permit Musladin to appeal the issue to the Ninth Circuit Court of Appeals.

The Ninth Circuit reversed the lower court's rulings, finding that the "test for inherent prejudice" used by the trial court was not in accord with clearly established federal law on the issue.

The U.S. Supreme Court granted certiorari.

ISSUE: Is there clearly established federal law providing guidance to a court in deciding whether to regulate non-disruptive courtroom behavior by spectators?

HOLDING: No

DISCUSSION: The Court discussed several cases that "addressed the effect of courtroom practices on defendants' fair-trial rights." In Estelle v. Williams, the Court held that it was improper to force a defendant to stand trial in "identifiable prison clothes."¹ In Holbrook v. Flynn, the Court found that having "four uniformed state troopers" sit directly behind the defendant "was not so inherently prejudicial that it denied the defendant a fair trial."²

¹ 425 U.S. 501 (1976)

² 475 U.S. 560 (1986)

The Court noted, however, that prior cases had “dealt with government-sponsored practices,” not the conduct of private actors. And, it noted “although the Court [had] articulated the test for inherent prejudice that applies to state conduct, ... [it had] never applied that test to spectators’ conduct.”

The Court concluded that since the U.S. Supreme Court had issued no rulings on the propriety of using that state test for private conduct, and because the U.S. Circuit Courts of Appeal had “diverged widely in their treatment of defendants’ spectator-conduct claims,” the Court concluded that there was, in fact, no clearly established federal law on the issue. As such, it could not say that the California state courts “unreasonably applied” federal law, since no previous decision “required that the California Court of Appeals to apply the test of Williams and Flynn to the spectators’ conduct here.” As such, the U.S. Supreme Court held that the “state court’s decision was not contrary to or an unreasonable application of clearly established federal law” and vacated the Ninth Circuit’s decision.

Full Text:

<http://www.supremecourtus.gov/opinions/06pdf/05-785.pdf>

NOTE: There appears to be no relevant Kentucky or Sixth Circuit Court of Appeals decisions on this type of issue to provide guidance to Kentucky courts, should a similar situation arise in Kentucky. This case is summarized because deputy sheriffs will be called upon by the court to assist in enforcing the court’s decision in such matters.

Wallace v. Kato

127 S.Ct. 1091 (2007)

FACTS: As a result of a murder committed in Chicago in 1994, Wallace, age 15, was arrested. He was interrogated at length, and eventually confessed to the murder. He then, apparently, waived his Miranda rights and signed a statement to that effect.

Before the trial, Wallace’s counsel attempted to have the statement suppressed, unsuccessfully. He was convicted of murder. On appeal, however, the Illinois courts reversed the conviction, finding that he had been arrested without probable cause. The case was remanded for further proceedings, and eventually, the case against Wallace was dismissed.

Just less than a year after the case was formally dismissed, on April 2, 2003, Wallace filed an action for false arrest under 42 U.S.C. §1983. The defendant officers sought to have the case dismissed, arguing that the statute of limitations had run on such an action. The U.S. District Court agreed, and dismissed the case against the officers. The Seventh Circuit Court of Appeals affirmed that decision, holding that Wallace’s “cause of action accrued at the time of his arrest, and not when his conviction was later set aside.”

Wallace appealed, and the U.S. Supreme Court granted certiorari.

ISSUE: Does the statute of limitations on a false arrest claim, filed under 42 U.S.C. §1983, begin to run when the detention (arrest) actually occurs?

HOLDING: Yes

DISCUSSION: The Court began its discussion by noting that although the cause of action in the case is federal, that the statute of limitation in a §1983 case is that which is set by the state in which the incident occurs – it is the statute of limitation set for personal-injury tort actions. In Illinois, that would be two years.³ Under the principles of Heck v. Humphrey⁴ and Carey v. Piphus,⁵ the case accrues “when the plaintiff has a ‘complete and present cause of action.’” Certainly, Wallace could have filed suit immediately upon his arrest.

However, the Court noted, false imprisonment/arrest cases are the subject of “distinctive treatment” by the common law. In such cases, the courts have held that “[l]imitations begin to run against an action for false imprisonment when the alleged false imprisonment ends.”

Wallace argued that the appropriate statute of limitations began to run when he was actually released from custody. He further argued that under Heck v. Humphrey, “his suit could not accrue until the State dropped its charges against him.” “In Heck, a state prisoner filed suit under §1983 raising claims which, if true, would have established the invalidity of his outstanding conviction.” In effect, Heck “delays what would otherwise be the accrual date of a tort action until the setting aside of an extant conviction which success in that tort action would impugn.” The Court noted that what Wallace was seeking was “the adoption of a principle that goes well beyond Heck: that an action which would impugn an anticipated future conviction cannot be brought until the conviction occurs and is set aside.” That rule, the Court found, would be impractical. The court noted that if a plaintiff files a “false arrest claim before he has been convicted,” that the trial court will simply “stay the civil action until the criminal case or the likelihood of a criminal case is ended.” If the plaintiff escapes conviction, or if the conviction is set aside, the lawsuit will continue, otherwise, Heck would require dismissal of the lawsuit.

The Court, however, noted that §1983 cases have a complication that it must address. Many such cases “accrue before the setting aside of – indeed, even before the existence of – the related criminal conviction.” In the case at bar, for example, Wallace’s conviction would have served to toll (or stop) the running of the statute of limitations, and that toll would have only been lifted when that conviction was set aside. In that instance, his filing would have been timely.

The Court concluded that “the statute of limitations upon a §1983 claim seeking damages for a false arrest in violation of the Fourth Amendment, where the arrest is followed by criminal proceedings, begins to run at the time the claimant becomes detained pursuant to legal process.” In Wallace’s case, that time had run prior to the filing of the lawsuit, and thus, was “out of time.” The Seventh Circuit’s decision was affirmed.

Full Text:

<http://www.supremecourtus.gov/opinions/06pdf/05-1240.pdf>

Whorton v. Bockting
127 S.Ct. 1173 (2007)

FACTS: In the underlying criminal case, Bockting was convicted of multiple counts of sexual assault of his six-year-old stepdaughter. During that trial, it was determined that the child was “too distressed to be

³ In Kentucky, it is one year.

⁴ 512 U.S. 477 (1994)

⁵ 435 U.S. 247 (1978)

sworn in" and under Nevada state evidence law, the Court permitted the investigating detective to testify as to what the child had related about the assaults. (Her mother was also permitted to testify about the child's statements.)

Bocking appealed his conviction through the state courts, which handed down its final decision, affirming his convictions, in 1993. The Court based its decision on Ohio v. Roberts, "which was then the governing precedent of" the Ninth Circuit.⁶

Bocking then pursued appeals through the federal courts, and the U.S. District Court affirmed his conviction. He then appealed to the Ninth Circuit Court of Appeals. While that appeal was pending, the U.S. Supreme Court issued Crawford v. Washington, in which it stated that the "interpretation of the Confrontation Clause set out in Roberts was unsound in several respects."⁷

Bocking then argued that "if the rule in Crawford had been applied to his case, [the child's] out-of-court statements could not have been admitted into evidence and the jury would not have convicted him." The Ninth Circuit agreed and reversed the U.S. District Court, "holding that Crawford applies retroactively to cases on collateral review," that "Crawford announced a new rule of criminal procedure" and that the rule was a "watershed rule that rework[ed] our understanding of bedrock criminal procedure."

The Nevada Department of Corrections, which is a party to the case (rather than the prosecuting entity) because Bocking's case was brought under the writ of habeas corpus against the party holding the defendant prisoner, appealed to the U.S. Supreme Court, which granted certiorari.

ISSUE: May an appeal be based upon Crawford v. Washington during the collateral appeal of the criminal case?

HOLDING: No

DISCUSSION: The Court noted that the Ninth Circuit's decision, that Crawford is to be applied "retroactive to cases on collateral review" is in conflict with "every other Court of Appeals and State Supreme Court that [had] addressed [the] issue."

The Court stated that there is a difference between a case that is considered to state an "old rule" and one that creates a new rule. Under Teague, a case that reinforces that an existing (or old) rule is to be applied on both direct and collateral review.⁸ (A direct review, for example, would be within the same court system, such as through the Kentucky courts, and which deals with the primary issue in the case. A collateral review would be an appeal of a state case through the federal system – as this case was – on an issue that isn't primary to the substantive, factual case.) However, a "new rule is generally applicable only to cases that are still on direct review."⁹ Further, the Court stated that "[a] new rule applies retroactively in a collateral proceeding only if (1) the rule is substantive or (2) the rule is a 'watershed rul[e] of criminal procedure' implicating the fundamental fairness and accuracy of the criminal proceeding."

⁶ 448 U.S. 56 (1980)

⁷ 541 U.S. 36 (2004)

⁸ Teague v. Lane, 489 U.S. 288 (1989)

⁹ Griffith v. Kentucky, 479 U.S. 314 (1987)

Bockting's conviction "became final on direct appeal well before Crawford was decided." As such, the Court only had to decide "whether Crawford applied an old rule or announced a new one." The Crawford decision was not "'dictated' by prior precedent" but was in fact, "flatly inconsistent with the prior governing precedent" – the Roberts case. The Court found that a "reasonable jurist" ... "could have reached the conclusion that the Roberts rule was the rule that governed the admission of hearsay statements made by an unavailable declarant." As such, the Court held that Crawford created a new rule.

Since it was a new rule, the Court moved to the second prong of the case, whether the Crawford case was so fundamental that it could be considered a "watershed" case. The Court noted that "in the years since Teague" - the case that created the criteria for such cases – the Court had "rejected every claim that a new rule satisfied the requirements for watershed status." Such a case would have to meet two requirements: it "must be necessary to prevent an 'impermissibly large risk' of an inaccurate conviction" and it must "alter [the Court's] understanding of the bedrock procedural elements essential to the fairness of a proceeding."

Applying these criteria to Crawford, the Court agreed that the substance of the decision did not alleviate an "impermissibly large risk of an inaccurate conviction." It found that the "Crawford rule is much more limited in scope, and the relationship of that rule to the accuracy of the factfinding process is far less direct and profound." The Crawford Court had reached its decision as a way to "improve the accuracy of fact finding in criminal trials" but there has been simply no proof whether Crawford "on the whole, decreased or increased the number of unreliable out-of-court statements that may be admitted in criminal trials." It did not find that Crawford effected a change of sufficient magnitude so as to make it retroactive.

This case did not meet the second criteria either, as it did not meet the "primacy" and "centrality" of the rule under Gideon v. Wainwright.¹⁰ The Supreme Court reversed the Ninth Circuit's decision, overturned Bockting's conviction and held that Crawford may not be raised in a case on collateral review.

Full Text:

<http://www.supremecourtus.gov/opinions/06pdf/05-595.pdf>

Scott v. Harris

127 S.Ct. 1769 (2007)

FACTS: In late March, 2001, a deputy sheriff in Coweta County, Georgia, "clocked [Harris's] vehicle traveling at 73 miles per hour on a road with a 55-mile-per-hour speed limit." The deputy activated his emergency equipment and tried to pull the vehicle over, but instead, it "sped away, initiating a chase down what is in most portions was a two-lane road, at speeds exceeding 85 miles per hour." Deputy Scott and others joined in the chase. At one point, the responding officers tried to box in the Harris vehicle, and Harris "evaded the trap by making a sharp turn, colliding with Scott's police car" and he escaped.

Scott then took over as the lead vehicle¹¹ and six minutes, and ten miles, into the chase, Scott made an "attempt to terminate the episode by employing a "Precision Intervention Technique ('PIT') maneuver, which cause[d] the fleeing vehicle to spin to a stop." Scott was instructed by his supervisor to "[g]o ahead and take him out." Scott then "applied his push bumper to the rear of [Harris's] vehicle" and Harris "lost

¹⁰ 332 U.S. 375 (1963)

¹¹ From the video, it appears that the officers already anticipated they would need to make contact with the vehicle to stop it, since Scott stated that he should take the lead as his vehicle was already damaged from the earlier collision.

control of [the] vehicle, which left the roadway, ran down an embankment, overturned, and crashed.” Harris became a quadriplegic as a result of the wreck.

Harris filed suit under 42 U.S.C. §1983, arguing that his injuries were as a result of an excessive use of force by Deputy Scott. Scott filed for summary judgment, but the U.S. District Court in the Northern District of Georgia denied the motion, finding that there were “material issues of fact” which prevented the Court’s grant of the motion. The Eleventh Circuit Court of Appeals affirmed that decision, finding that Scott’s action could constitute “deadly force” and that a reasonable jury might find that his use of force was not appropriate.

Scott requested, and was granted, certiorari from the U.S. Supreme Court.

ISSUE: Is a law enforcement officer’s conduct “objectively reasonable’ under the Fourth Amendment when the officer makes a split-second decision to terminate a high-speed pursuit by bumping the fleeing suspect’s vehicle with his push bumper, because the suspect had demonstrated that he would continue to drive in a reckless and dangerous manner that put the lives of innocent persons at serious risk of death?

HOLDING: Yes

DISCUSSION: In Saucier v. Katz, the Court noted that the “threshold question” for an analysis of qualified immunity is “[t]aken in the light most favorable to the party asserting the injury, do the facts alleged show the officer’s conduct violated a constitutional right?”¹² Only if the Court finds such a violation will the Court take the next step to determine if “the right was clearly established” at the time, and “in light of the specific context of the case.”

The Court noted that Harris’s “version of events (unsurprisingly) differs substantially from Scott’s version.” Usually, that requires the Court to accept the plaintiff’s version in all matters in dispute. “There is, however, an added wrinkle in this case: existence in the record of a videotape capturing the events in question.” As Harris did not argue that the “videotape was doctored or altered in any way,” the Court accepted the tape as valid. The Court noted that the “videotape quite clearly contradicts the version of the story told by [Harris] and adopted by the Court of Appeals.”

As an example, Harris asserted that “during the chase, ‘there was little, if any, actual threat to pedestrians or other motorists, as the roads were mostly empty and [Harris] remained in control of his vehicle.” The Court stated that “[i]ndeed, reading the lower court’s opinion, one gets the impression that [Harris], rather than fleeing from police, was attempting to pass his driving test.”

The Court noted, however, that “[t]he videotape tells quite a different story.” The Court continued, stating:

There we see [Harris’s] vehicle racing down narrow, two-lane roads in the dead of night at speeds that are shockingly fast. We see it swerve around more than a dozen other cars traveling in both directions to their respective shoulders to avoid being hit. We see it run multiple red lights and travel for considerable periods of time in the occasional center left-turn-only lane, chased by numerous police cars forced to engage in the same hazardous

¹² 533 U.S. 194 (2001)

maneuvers just to keep up. Far from being the cautious and controlled driver the lower court depicts, what we see on the video more closely resembles a Hollywood-style car chase of the most frightening sort, placing police officers and innocent bystanders alike at great risk of serious injury.

The Court stated that Harris's "version of events is so utterly discredited by the record that no reasonable jury could have believed him" and that the "Court of Appeals should not have relied on such visible fiction; it should have viewed the facts in the light depicted by the videotape."

The Court found it "quite clear that Deputy Scott did not violate the Fourth Amendment." Deputy Scott admitted that his decision to terminate the pursuit by ramming Harris's car was a seizure. As such, the only question for the Court was whether that decision, and the action, was "objectively reasonable" under the circumstances.

The Court rejected Harris's argument that the actions must be considered deadly force, thus requiring the application of Tennessee v. Garner.¹³ The Court stated that "Garner did not establish a magical on/off switch that triggers rigid preconditions whenever an officer's actions constitute "deadly force." The appropriate factors from Garner "have scant applicability to this case, which has vastly different facts." In particular, the "threat posed by the flight on foot of an unarmed suspect [is not] even remotely comparable to the extreme danger to human life posed by [Harris] in this case." In the end, the Court stated, "all that matters is whether Scott's actions were reasonable."

Scott defend[ed] his actions by "pointing to the paramount governmental interest in ensuring public safety, and [Harris] nowhere suggests this was not the purpose motivating Scott's behavior." To decide upon reasonableness, the Court "must consider the risk of bodily harm that Scott's actions posed to [Harris] in light of the threat to the public that Scott was trying to eliminate." The Court found it "clear from the videotape that [Harris] posed an actual and imminent threat to the lives of any pedestrians who might have been present, to other civilian motorists, and to the officers involved in the chase." The Court found it "equally clear that Scott's actions posed a high likelihood of serious physical injury or death to [Harris] – though not the near *certainty* of death posed by" a shooting such as occurred in Garner. It was Harris, "after all, who intentionally placed himself and the public in danger by unlawfully engaging in the reckless, high-speed flight that ultimately produced the choice between two evils that Scott confronted." The Court continued:

Multiple police cars, with blue lights flashing and sirens blaring, had been chasing [Harris] for nearly 10 miles, but he ignored their warning to stop. By contrast, those who might have been harmed had Scott not taken the action he did were entirely innocent. We have little difficulty in concluding it was reasonable for Scott to take the action that he did."

But wait, says [Harris]: Couldn't the innocent public equally have been protected, and the tragic accident entirely avoided, if the police had simply ceased their pursuit? We think the police need not have taken that chance and hoped for the best. Whereas Scott's action-ramming [Harris] off the road – was *certain* to eliminate the risk that [Harris] posed to the public, ceasing pursuit was not. First of all, there would have been no way to convey convincingly to [Harris] that the chase was off, and that he was free to go. Had [Harris]

¹³ 471 U.S. 1 (1985)

looked in his rear-view mirror and seen the police cars deactivate their flashing lights and turn around, he would have had no idea whether they were truly letting him get away, or simply devising a new strategy for capture. Perhaps the police knew a shortcut he didn't know, and would reappear down the road to intercept him; or perhaps they were setting up a roadblock in his path. Given such uncertainty, [Harris] might have been just as likely to respond by continuing to drive recklessly as by slowing down and wiping his brow.

The Court was "loath to lay down a rule requiring the police to allow fleeing suspects to get away whenever they drive *so recklessly* that they put other people's lives in danger." Further:

It is obvious the perverse incentives such a rule would create: Every fleeing motorist would know that escape is within his grasp, if only he accelerates to 90 miles per hour, crosses the double-yellow line a few times, and runs a few red lights. The Constitution assuredly does not impose this invitation to impunity-earned-by-recklessness. Instead, we lay down a more sensible rule: A police officer's attempt to terminate a dangerous high-speed car chase that threatens the lives of innocent bystanders does not violate the Fourth Amendment, even when it places the fleeing motorist at risk of serious injury or death.

The U.S. Supreme Court found that Deputy Scott was entitled to summary judgment and the decision of the U.S. Court of Appeals, Eleventh Circuit was reversed.

Full text:

<http://www.supremecourtus.gov/opinions/06pdf/05-1631.pdf>

Video (in Real Player):

http://www.supremecourtus.gov/opinions/video/scott_v_harris.rmvb

Note: This case clearly addresses the value of an audiovisual recording during a chase or other law enforcement encounter, particularly when, as in this situation, the officers involved conducted themselves in a calm and professional manner.

Los Angeles (CA) County v. Rettele
127 S.Ct. 1989 (2007)

FACTS: "From September to December, 2001, Los Angeles County Sheriff's Department Deputy Dennis Waters investigated a fraud and identity theft crime ring." He had four suspects, all African American, and one who had a handgun registered in his name.

On Dec. 11, Deputy Waters got search warrants for two houses where he believed the suspects might be found. The warrant authorized searching the homes and three of the suspects for "documents and computer files." Deputy Waters had used several sources, including Department of Motor Vehicle files, mailing address listings, an outstanding warrant for one of the suspects and an Internet telephone directory to place the suspects as living at Rettele's home.

However, what the deputy "did not know was that one of the houses (the first to be searched) had been sold in September to Max Rettele." Rettele shared the house with his girlfriend, Sadler, and her 17-year old son, Chase Hall. All three of these individuals were Caucasian.

On December 19, the deputies involved in the search were briefed by Watters about the three suspects and about the weapon. Because they had not gotten permission for a nighttime search (a requirement under state law), the warrant could not be executed under after 7 a.m. At about 7:15 a.m. the deputies knocked on the door and Chase Hall answered. "The deputies entered the house after ordering Hall to lie face down on the ground." Their entry woke Rettele and Sadler. The deputies entered their bedroom and ordered them to get out of bed, but both protested that "they were not wearing clothes." Rettele attempted, but was not permitted to, put on sweatpants, and Sadler was likewise not permitted to "cover herself with a sheet." They were held at gunpoint, although at some point "Rettele was permitted to retrieve a robe for Sadler" and he was allowed to dress. Within a few minutes, they were permitted to sit on the couch in the living room.

After a few more minutes, the "deputies realized they had made a mistake," apologized, "thanked them for not becoming upset," and left. They found the three suspects at the other house and arrested all three.

Rettele, Sadler and Hall (through Sadler) filed suit under 42 U.S.C. §1983 against Los Angeles County, the Sheriff's Office, Deputy Watters and others, alleging that their Fourth Amendment rights were violated by the deputies "obtaining a warrant in [a] reckless fashion and conducting an unreasonable search and detention."

The U.S. District Court found that the "warrant was obtained by proper procedures and the search was reasonable" and in the alternative, that the rights allegedly violated were not clearly established and that, as a result, the deputies were entitled to qualified immunity." Upon further appeal, Rettele did not challenge that the warrant itself was valid, but "did argue that the deputies had conducted the search in an unreasonable manner." The Ninth Circuit reversed the lower court's opinion, holding that facts of the case indicated an unreasonable search, and that the deputies "should have known the search and detention were unlawful."

The County (and the individual defendants) appealed, and the U.S. Supreme Court accepted certiorari.

ISSUE: Does the discovery that occupants of a home subject to a search warrant are of a different race than those of the suspects require that the law enforcement officer immediately stop the search and not take action to temporarily secure those occupants?

HOLDING: No

DISCUSSION: The Court first addressed the Ninth Circuit's assertion that "[b]ecause [Rettele and the others] were of a different race than the suspects the deputies were seeking" that the deputies should have immediately recognized that they were not the suspects and that they "did not pose a threat to the deputies' safety." The Court found that to be an "unsound proposition" as the deputies would have "had no way of knowing whether the African-American suspects were elsewhere in the house."

The Court looked to Michigan v. Summers¹⁴ and agreed that it was reasonable to secure occupants during the execution of a search warrant. The Court found that "[u]nreasonable actions include the use of

¹⁴ 452 U.S. 692 (1981)

excessive force or restraints that cause unnecessary pain or are imposed for a prolonged and unnecessary period of time.”¹⁵

The Court found that the “orders by the police to the occupants, in the context of this lawful search, were permissible, and perhaps necessary, to protect the safety of the deputies.” In addition, the Court noted that the “Constitution does not require an officer to ignore the possibility that an armed suspect may sleep with a weapon within reach.” In this case, the “deputies needed a moment to secure the room and ensure that other persons were not close by or did not present a danger.” They were not “required to turn their backs to allow Rettele and Sadler to retrieve clothing or to cover themselves with sheets.”

The Court did not give the deputies freedom to force the two “to remain motionless and standing for any longer than necessary.” However, in this case, the “deputies left the home less than 15 minutes after arriving.” There was no assertion “that the deputies prevented Sadler and Rettele from dressing longer than necessary to protect their safety.” In fact, Sadler agreed that “once the police were satisfied that no immediate threat was presented,” the couple were encouraged to get dressed.

The Court concluded that the “Fourth Amendment allows warrants to issue on probable cause, a standard well short of absolute certainty.” Further, it noted:

Valid warrants will issue to search the innocent, and people like Rettele and Sadler unfortunately bear the cost. Officers executing search warrants on occasion enter a house when residents are engaged in private activity: and the resulting frustration, embarrassment, and humiliation may be real, as was true here. When officers execute a valid warrant and act in a reasonable manner to protect themselves from harm, however, the Fourth Amendment is not violated.

The decision of the Ninth Circuit was reversed, and the case remanded for further proceedings consistent with this opinion.

FULL TEXT:

<http://www.supremecourtus.gov/opinions/06pdf/06-605.pdf>

Brendlin v. California

127 S.Ct. 2400 (2007)

FACTS: On Nov. 27, 2001, Deputy Sheriff Brokenbrough, along with her partner, made a stop of a vehicle displaying a temporary tag. The tag indicated that it was valid through November, but the deputies “decided to pull the Buick over to verify that the permit matched the vehicle, even though, as Brokenbrough admitted later, there was nothing unusual about the permit or the way it was affixed.” Brokenbrough asked the driver, Simeroth, for her license. One of the deputies recognized the passenger, Bruce Brendlin, as “one of the Brendlin brothers” and asked the passenger to identify himself, as Brokenbrough knew that one of the two brothers had “dropped out of parole supervision.”

Upon obtaining the passenger’s identification, the deputy returned to the cruiser and verified that there was an outstanding warrant for that individual. While they were waiting for back-up, the deputy “saw Brendlin

¹⁵ Graham v. Connor, 490 U.S. 386 (1989); Muehler v. Mena, 544 U.S. 93 (2005)

briefly open and then close the passenger door of the Buick.” Once the deputies were able to remove Brendlin from the car and place him under arrest, they searched his person and found an “orange syringe cap.” Simeroth was patted down and the deputies found “syringes and a plastic bag of a green leafy substance.” She was also arrested. A search of the vehicle revealed “tubing, a scale, and other things used to produce methamphetamine.”

Brendlin was charged with possession and manufacture of methamphetamine, because of the items found in the car, and he moved for suppression of that evidence. Brendlin argued that “the officers lacked probable cause or reasonable suspicion to make the traffic stop.” He did not argue that his rights were violated by the stop, but “claimed only that the traffic stop was an unlawful seizure of his person.” The California “trial court denied the suppression motion after finding that the stop was lawful and Brendlin was not seized until Brokenbrough ordered him out of the car and formally arrested him.” Brendlin took a conditional guilty plea, and appealed.

The state appellate court reversed the trial court, finding that the traffic stop was, in fact, unlawful. The prosecution conceded that the “police officers lacked reasonable suspicion to justify the traffic stop because” the display of the temporary permit was legal. The California Supreme Court, however, reversed, finding that the legality of the original stop was immaterial, and that “a passenger is not seized as a constitutional matter absent additional circumstances that would indicate to a reasonable person that he [the passenger, specifically] was the subject of the officer’s investigation or show of authority.”

Brendlin requested certiorari, and the U.S. Supreme Court accepted the case.

ISSUE: Is a passenger in a vehicle subject to a traffic stop “detained” for purposes of the Fourth Amendment?

HOLDING: Yes

DISCUSSION: The Court began its unanimous decision by stated that a “person is seized by the police and thus entitled to challenge the government’s action under the Fourth Amendment when the officer, ‘ by means of physical force or show of authority,’ terminates or restrains his freedom of movement.”¹⁶ A seizure may be made by a simple “show of authority” without physical force, but there is “no seizure without ... [an] actual submission.”

The Court noted that it had previously created a “test for telling when a seizure occurs in response to authority, and when it does not.” In U.S. v. Mendenhall, the Court ruled that “a seizure occurs if ‘in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave.’”¹⁷

The Court noted that the “law is settled that in Fourth Amendment terms a traffic stop entails a seizure of the driver ‘even though the purposes of the stop is limited and the resulting detention quite brief.’”¹⁸ Further, the Court stated that while it had not yet “squarely answered the question whether a passenger is

¹⁶ Florida v. Bostick, 501 U.S. 429 (1991); Brower v. County of Inyo, 489 U.S. 593 (1989)

¹⁷ 446 U.S. 544 (1980)

¹⁸ Delaware v. Prouse, 440 U.S. 648 (1979). Whren v. U.S. , 517 U.S.806 (1996)

also seized," it had stated, "in dicta that during a traffic stop an officer seizes everyone in the vehicle, not just the driver."

To resolve the question in this case, the Court asked "whether a reasonable person in Brendlin's position when the car stopped would have believed himself free to 'terminate the encounter' between the police and himself." The Court continued, stating that it thought "that in these circumstances any reasonable passenger would have understood the police officers to be exercising control to the point that no one in the car was free to depart without police permission." Further:

A traffic stop necessarily curtails the travel a passenger has chosen just as much as it halts the driver, diverting both from the stream of traffic to the side of the road, and the police activity that normally amounts to intrusion on 'privacy and personal security' does not normally (and did not here) distinguish between passenger and driver."¹⁹ An officer who orders one particular car to pull over acts with an implicit claim of right based on fault of some sort, and a sensible person would not expect a police officer to allow people to come and go freely from the physical focal point of an investigation into faulty behavior or wrongdoing. If the likely wrongdoing is not the driving, the passenger will reasonably feel subject to suspicion owing to close association; but even when the wrongdoing is only bad driving, the passenger will expect to be subject to some scrutiny, and his attempt to leave the scene would be so obviously likely to prompt an objection from the officer that no passenger would feel free to leave in the first place.

The Court also agreed that it is "reasonable for passengers to expect that a police officer at the scene of a crime, arrest, or investigation will not let people move around in ways that could jeopardize his safety."²⁰ The Court agreed that the "risk of harm to both the police and the occupants is minimized if the officers routinely exercise unquestioned command of the situation."

Finally, the Court noted that its decision "comports with the views of all nine Federal Courts of Appeals, and nearly every state court, to have ruled on the question" - leading to a "prevailing judicial view that a passenger may bring a Fourth Amendment challenge to the legality of a traffic stop."

The Court disagreed with the premises of the California Supreme Court. Using the objective test described in Mendenhall "of what a reasonable passenger would understand," the Court noted that "[t]o the extent that there is anything ambiguous in the show of force was it fairly seen as directed only at the driver or at the car and its occupants, the test resolves the ambiguity, and here it leads to the intuitive conclusion that all the occupants were subject to like control by the successful display of authority." The Court also found that "what may amount to submission depends on what a person was doing before the show of authority: a fleeing man is not seized until he is physically overpowered, but one sitting in a chair may submit to authority by not getting up to run away." In other words, "Brendlin had no effective way to signal submission while the car was still moving on the roadway, but once it came to a stop he could, and apparently did, submit by staying inside."

¹⁹ U.S. v. Martinez-Fuerte, 428 U.S. 543 (1976).

²⁰ Maryland v. Wilson, 519 U.S. 408 (1997); Pennsylvania v. Mims, 434 U.S. 106 (1977); Michigan v. Summers, 452 U.S. 692 (1981)

The Court concluded its opinion by noting that holding otherwise would lead to the situation where “[h]olding that the passenger in a private car is not (without more) seized in a traffic stop would invite police officers to stop cars with passengers regardless of probable cause or reasonable suspicion of anything illegal.” Further:

The fact that evidence uncovered as a result of an arbitrary traffic stop would still be admissible against any passengers would be a powerful incentive to run the kind of ‘roving patrols’ that would still violate the driver’s Fourth Amendment right.

The Court concluded that “Brendlin was seized from the moment Simeroth’s car came to a halt on the side of the road, and it was error to deny his suppression motion on the ground that seizure occurred only at the formal arrest.” The Court vacated the decision of the California Supreme Court and remanded the case back to California for further proceedings consistent with the opinion.

FULL TEXT:

<http://www.supremecourtus.gov/opinions/06pdf/06-8120.pdf>