

## 2011-2012 United States Supreme Court Update

The Supreme Court had more than its share of surprising opinions and unexpected rulings this year. During the term the justices ruled for criminal defendants in some of most important cases on crime and punishment. While that alone is a rarity for a court that routinely leans to the right, it should be a sign to law enforcement as to the future rulings of the USSC. Below the Daigle Law Group, LLC has provided a summary of the court rulings which directly impact law enforcement operations.

### **Bobby v. Dixon,**

2011 U.S. LEXIS 7926, November 7, 2011

Dixon was convicted of the murder of Chris Hammer in the Ohio state court and sentenced to death. In reaching the conviction, the Ohio Supreme Court ruled that Dixon's confession to the murder of Hammer was admissible. The Sixth Circuit Court of Appeals disagreed and held that Dixon's confession was inadmissible because it was obtained in violation of Dixon's Fifth Amendment rights. The United States Supreme Court reversed the Sixth Circuit, agreeing with the Ohio Supreme Court that Dixon's confession was admissible.

This case involves three relevant encounters with the police. On November 4, Dixon was voluntarily at the police station on an unrelated matter when an officer questioned him about the victim's disappearance. Prior to questioning Dixon, the officer gave Dixon *Miranda* warnings, even though Dixon was not in custody. Dixon declined to answer any questions without a lawyer present and left the station.

On November 9, the police arrested Dixon for forging the victim's name on a check. The police suspected that Dixon was involved in the victim's disappearance with a co-defendant. The officers questioned Dixon regarding the victim's disappearance, but intentionally did not provide him with *Miranda* warnings for fear that he would again refuse to speak with them. During the interrogation, Dixon admitted to forging the victim's name on a check, but claimed he had no knowledge regarding the victim's disappearance. While urging Dixon to tell them the truth, the officers falsely claiming that the co-defendant was also being interviewed, and that he was giving them useful information. The officers indicated to Dixon that in order to get a "deal," he would have to provide the information before his co-defendant. Dixon still refused to cooperate with the officers and was transported from the police station to the jail.

That same afternoon, the co-defendant led police to the victim's body and claimed that Dixon told him where it was buried. Approximately four hours later, officers brought Dixon back to the police station. Before the officers began their questioning of Dixon, he told them that he heard that they had found the victim's body, claimed that he had talked to his attorney, and stated that he wanted to tell them what happened. An officer read Dixon his *Miranda* rights and obtained a signed waiver of those rights he waived his rights. Dixon then

confessed to murdering the victim but tried to pin most of the blame on the co-defendant. At trial, the Ohio trial court excluded both Dixon's confession to the forgery charge and his confession to the victim's murder later that same day.

The Sixth Circuit held that the officers could not speak to Dixon on November 9 because on November 4 he had refused to speak to them without his lawyer. The Supreme Court, however, disagreed and held that Dixon was not in custody during his chance encounter with the police on November 4 and that a person cannot validly invoke his *Miranda* rights in anticipation of a future custodial interrogation.

Next, the Supreme Court held that the Sixth Circuit improperly ruled that the officers violated Dixon's *Fifth Amendment* rights by urging him to "cut a deal" before his co-defendant did so. The Court stated that it is not unconstitutional for police to urge one suspect to confess before another suspect has the opportunity to do so.

Finally, the court held that the Sixth Circuit improperly ruled that Dixon's confession was a result of a deliberate "question-first, warn-later strategy." When employing this strategy, an officer intentionally fails to *Mirandize* a suspect in the hope that the suspect confesses. Once the officer obtains the confession, he then *Mirandizes* the suspect, hoping that the suspect waives the *Miranda* rights, and then urges the suspect to repeat the earlier unwarned confession.

The Supreme Court found that even though the police intentionally failed to *Mirandize* Dixon when they first interrogated him on November 9, the "question-first, warn-later strategy" was not applicable because there was no earlier confession to repeat. During that interrogation, Dixon claimed that he had no knowledge of the victim's disappearance. Furthermore, Dixon was *Mirandized* prior to his statement confessing to the victim's murder, which contradicted his prior unwarned statement. In addition, there was no evidence that the police used Dixon's admission to forgery to induce him to waive his right to silence later. The Court reasoned that following Dixon's unwarned forgery confession, four hours passed, during which time he was transported to and from jail, claimed to have spoken with his attorney, and had learned that the police had located the victim's body and were questioning the co-defendant. Given the significant break in time and the dramatic change in circumstances, there was no nexus between Dixon's unwarned admission to forgery and his later, warned confession to murder.

**Smith v. Cain,**

2012 U.S. LEXIS 576, January 10, 2012

Smith was convicted of five counts of first degree murder, for killing five people during an armed robbery, based on the testimony of a single eyewitness, Larry Boatner. At trial, Boatner identified Smith as the first gunman through the door and testified that he had been "face to face with Smith during the initial moments of the robbery." During postconviction relief proceedings, Smith obtained police files containing statements by Boatner that contradicted his trial testimony. Smith claimed that the prosecution's failure to disclose those statements, prior to trial, violated *Brady v. Maryland*.

Under *Brady*, the state violates a defendant's right to due process if it withholds evidence that is favorable to the defense and material to the defendant's guilt or punishment. *Brady* provides that evidence is

“material” if there is “a reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different.” The state conceded that Boatner’s statements in the police files were favorable to Smith, but argued that they were not material to a determination of his guilt.

The Supreme Court disagreed and reasoned that Boatner’s testimony was the only evidence linking Smith to the crime, and his undisclosed statements directly contradicted his trial testimony. While Boatner told the jury that he had “no doubt” that Smith was the gunman and he stood “face-to-face” with on the night of the crime, the officer’s notes indicated that the only description Boater could provide was that they were black males. The notes further provide that Boatner said that he “could not identify anyone because he could not see faces” and “would not know them if he saw them.” The Court concluded that Boatner’s undisclosed statements were both favorable to the defense and material to the verdict and they were sufficient to undermine the confidence in Smith’s conviction.

***Perry v. New Hampshire,***

2012 U.S. LEXIS 579, January 11, 2012

Around 3 a.m., police officers responded to an apartment complex to investigate the report of an African-American man breaking into cars. When the first officer arrived, she heard what sounded like a “metal bat” hitting the ground. She then saw Perry standing between two cars. When he walked toward the officer, she noted that he was holding two car stereo amplifiers in his hands and a metal bat lay on the ground behind him. The officer left Perry standing in the parking lot with another officer who had arrived on scene and proceeded into the apartment building to interview the witness who had reported the break-ins. The officer asked the witness to describe the person she had seen breaking into the victim’s car. The witness pointed to her kitchen window and told the officer that the man she saw breaking into the car was the same African-American man that was standing next to the other officer in the parking lot. Perry was arrested and charged with the break-ins.

At trial, Perry moved to suppress the witness’ identification of him as the perpetrator, while he was standing next to the police officer in the parking lot, on the grounds that it amounted to an unduly suggestive one-person show-up. Perry claimed that this procedure all but guaranteed that the witness would identify him as the person she had seen committing the break-ins. The trial court disagreed. The witness’ identification testimony was allowed and the jury convicted Perry. The New Hampshire Supreme Court affirmed the decision.

To determine whether due process prohibits the introduction of an out-of-court identification at trial, courts utilize a two-step inquiry. First, a trial court must decide whether police used an unnecessarily suggestive identification procedure. If the trial court finds that they did, the court must next determine whether the improper identification procedure “so tainted” the resulting identification as to render it unreliable and therefore inadmissible at trial.

The United States Supreme Court held that the *Due Process Clause* does not require a trial judge to conduct a preliminary assessment of the reliability of eyewitness identification, made under suggestive circumstances, when those circumstances were not arranged by the police.

The *Due Process Clause* provides a check on the reliability of an identification only after the defendant establishes improper police conduct. The Court reasoned that first, the police in this case did not arrange the suggestive circumstances surrounding the witness' identification. Second, even if the defendant could have established that the police used an identification procedure that was both suggestive and unnecessary, the identification would not have automatically been excluded. Instead, the trial court would have determined, after considering the totality of the circumstances, whether there was a substantial likelihood of misidentification because of the unnecessarily suggestive identification procedure. Since Perry did not establish police misconduct, the trial court never had to determine this issue.

In this case, the police were not involved in, nor arranged the identification procedure which led to Perry's arrest and subsequent conviction. Therefore, the Court found that the *Due Process Clause* was not implicated. The Court reasoned that when there is no improper police conduct involved in the identification procedure, it suffices to test reliability of such identifications through the right to counsel and the right to vigorous cross-examination, as well as jury instructions and the requirement to prove guilt beyond a reasonable doubt.

**Ryburn v. Huff,**

2012 U.S. LEXIS 910, January 23, 2012

Four officers went to the Huffs' residence to investigate a claim that their son, Vincent Huff, had allegedly written a letter in which he threatened to "shoot-up" his school. Two officers went up to the front door and two officers remained on the sidewalk. After knocking on the front door and receiving no answer, one of the officers called the house phone number but no one picked up. An officer then called Mrs. Huff on her cell phone and asked her where she was. She responded that she was inside the house but quickly hung up the phone. A few minutes later, she and Vincent stepped out onto the front steps. The officer asked Mrs. Huff if they could talk inside, but she refused. When the officer asked Mrs. Huff if there were any guns in the house, she immediately turned around and ran into the house. Based on Mrs. Huff's behavior, the two officers entered the house behind her. The two officers on the sidewalk also entered the house, having assumed that Mrs. Huff had given the other two officers permission to enter. Once inside the home, Mr. Huff challenged the officers' authority to be there. The officers remained in the living room for approximately five to ten minutes, while they spoke with Mr. Huff and Vincent. The officers did not conduct a search of any Huff family member or the residence and left after they were satisfied that the claim against Vincent was false.

The Huffs brought a § 1983 action against the officers, alleging that the officers violated their Fourth Amendment rights by entering their home without a warrant. The District Court ruled in favor of the officers and held that the officers were entitled to qualified immunity because Mrs. Huff's odd behavior and the information officers obtained through their investigation could have led a reasonable officer to believe "that

there could be weapons inside the house, and that family members or the officers themselves were in danger.” The Ninth Circuit, however, reversed the District Court ruling a determined that the officers were not entitled to qualified immunity.

The United States Supreme Court stated that officers may enter a residence without a warrant when they have “an objectively reasonable basis for believing that an occupant is imminently threatened with serious injury.” The Court explained that “[t]he need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency.”

The United States Supreme Court held that, based on the facts found by the District Court, the officers could have reasonably believed they were justified in making a warrantless entry into the house because there was an objectively reasonable basis for fearing that violence was imminent and there was an imminent threat to the safety of themselves or others. The Court focused on Mrs. Huff’s behavior, especially after she ran into the house without answering the question of whether there were any guns inside, and found that it provided officers with reasonable belief that there could be weapons inside, and that family members or the officers themselves were in danger.

**U.S. v. Jones,**

2012 U.S. LEXIS 1063, January 23, 2012

The police installed a Global-Positioning-System (GPS) tracking device on a vehicle registered to Jones’s wife, without a valid warrant, and tracked its movements twenty-four hours a day for a period of four weeks. At trial, Jones moved to suppress evidence obtained through the GPS device on the basis that it violated his Fourth Amendment rights against unreasonable search and seizures.

The Fourth Amendment provides in relevant part that “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.” The United States Supreme Court found that “[i]t is beyond dispute that a vehicle is an “effect” as that term is used in the Amendment.

The Supreme Court held that the government’s installation of a GPS device on a target’s vehicle, in this case the vehicle registered to Jones’s wife, and its use of that device to monitor the vehicle’s movements, constituted a “search.” The court found that the government physically occupied private property for the purpose of obtaining information when it installed the GPS device on the vehicle, and that such a physical intrusion would have been considered a “search” under the *Fourth Amendment*.

The government argued that even if the attachment and use of the GPS device was a search, it was reasonable, and therefore lawful, under the *Fourth Amendment* because “the officers had reasonable suspicion and indeed probable cause” to believe that Jones was involved in a drug trafficking conspiracy. The court declined to decide this issue, however, because the government did not raise it on appeal and as a result, the court of appeals did not have the opportunity to address it.

**Howes v. Fields,**

2012 U.S. LEXIS 1077, February 21, 2012

While serving a jail sentence, a corrections officer escorted Fields to a conference room where two police officers questioned him about criminal activity that he had allegedly engaged in before his incarceration. Prior to the interview, the officers did not give Field his *Miranda* warnings or advise him that he did not have to speak with the officers. Field, however, was not restrained during the interview and the officers told him that he was free to leave and return to his cell whenever he wanted. During the interview, Fields was again told that he was free to return to his cell whenever he wanted. Officers questioned Fields for five to seven hours and Fields eventually confessed to the crime.

At trial, Field moved to suppress the confession on the basis that he was subjected to a custodial interrogation without a *Miranda* warning. The trial court denied Field's motion and he was subsequently convicted. The Sixth Circuit Court of Appeals reversed the trial court decision and held that any time an inmate is taken from the general prison population and questioned about a crime that occurred outside the prison, he is always in-custody for *Miranda* purposes.

The Supreme Court disagreed. The court held that serving a term of imprisonment, by itself, is not enough to constitute *Miranda* custody. When a prisoner is questioned, the determination of *Miranda* custody should focus on all of the circumstances surrounding the interrogation, to include the language that is used in summoning the prisoner to the interview and the manner in which the interrogation is conducted.

In this case, the court held that Fields was not in-custody for *Miranda* purposes. Although the interview lasted between five and seven hours and continued well past the time Fields went to bed, the officers told Fields several times that he could leave and go back to his cell whenever he wanted. Additionally, the interview was conducted in a comfortable conference room, the officers did not physically restrain or threaten Fields, and they offered him food and water. The Supreme Court found that all of these facts taken together are consistent with an interrogation environment in which a reasonable person would have felt free to terminate the interview and leave.

**Messerschmidt v. Millender,**

2012 U.S. LEXIS 1687, February 22, 2012

Jerry Ray Bowen attacked his girlfriend, Shelly Kelly, while she was moving out of her apartment and tried to throw her over a second-story landing. As Kelly escaped and fled to her vehicle, Bowen pointed a sawed-off shotgun at her and threatened to kill her if she tried to leave. Kelly nonetheless sped away as Bowen fired five shots at the car, blowing out one of its tires. Kelly reported the incident to police and described the attack in detail, mentioning that Bowen had previously attacked her, that he had ties to a gang, and that he might be staying at the home of his former foster mother, Augusta Millender. Following this conversation, the officer conducted a detailed investigation, during which he confirmed Bowen's connection to the Millenders' home, verified his membership in two gangs, and learned that Bowen had been arrested and convicted for numerous



violent and firearm-related offenses. Based on this investigation, the officer drafted an application for a warrant authorizing a search of the Millenders' home for all firearms and ammunition, as well as evidence indicating gang membership. The officer submitted the application to a magistrate, who is the warrant. A search of the Millender home uncovered only the Millender's shotgun, a letter addressed to Bowen, and a box of .45-caliber ammunition.

The Millenders filed a § 1983 action alleging that the officers conducted an unreasonable search and seizure in violation of their Fourth Amendment rights. The District Court granted summary judgment in favor of the Millenders, holding that the firearm and gang-material portions of the search warrant were overbroad and denied the officers qualified immunity from damages. The Ninth Circuit affirmed the denial of qualified immunity. The Ninth Circuit Court found that while the officers had probable cause to search for a sawed-off shotgun, they did not have probable cause to search for the broad class of firearms, ammunition, and gang related material that was listed in the warrant. As a result, the court held that the warrant was so invalid on its face that no officer could have reasonably relied on it.

The Supreme Court reversed the Ninth Circuit, holding that the officers were entitled to qualified immunity. The Court reasoned that Bowen's possession of one illegal gun, his gang membership, and willingness to use the gun to kill someone, it was reasonable for the officers to conclude that Bowen owned other guns. The Court further found that an officer could reasonably believe that seizure of firearms was necessary to prevent further assaults on Bowen's girlfriend. Under California law, the officers are permitted to seize items, such as firearms, that Bowen could potentially use to harm another person. The officers included reference to this statute in their search warrant application.

The Court also held that it was permissible for the officers to search for gang-related materials. A reasonable officer could view Bowen's attack on his girlfriend as motivated by a concern that she might disclose his gang activities to the police and not solely as a domestic dispute. As a result, it would be reasonable for an officer to believe that evidence of Bowen's gang affiliation would be helpful in prosecuting him for the attack on his girlfriend.

Additionally, the officers sought and obtained approval of the warrant application from a superior officer and a deputy district attorney before submitting it to a neutral magistrate, who issued the warrant. The Court found that this provides a further indication that the officers could reasonably have believed that the scope of the warrant was supported by probable cause.

**Rehberg v. Paulk,**

2012 U.S. LEXIS 2711, April 2, 2012

Paulk, the chief investigator for the district attorney's office, was the sole "complaining witness" at three different grand jury proceedings that resulted in three separate indictments being returned against Rehberg. After all of the indictments were ultimately dismissed, Rehberg brought suit under 42 U.S.C. § 1983 claiming that Paulk conspired to present and presented false testimony to the grand jury. The Eleventh Circuit Court of

Appeals dismissed Rehberg's suit, holding that Paulk had absolute immunity from a § 1983 claim, based on his grand jury testimony. The Supreme Court affirmed the decision.

The Supreme Court explained that a trial witness has absolute immunity with respect to *any* claim based on the witness' testimony. Without absolute immunity for witnesses, the Court concluded, the truth-seeking process at trial would be impaired. Witnesses "might be reluctant to come forward to testify," and even if a witness took the stand, the witness "might be inclined to shade his testimony in favor of the potential plaintiff" for "fear of subsequent liability."

The Court held that the factors that justify absolute immunity for trial witnesses apply with equal force to witnesses in a grand jury proceeding. The Court further held that there is no reason to distinguish law enforcement witnesses and lay witnesses when applying the principles of absolute immunity for testimony at trial and grand jury proceedings reasoning that a law enforcement officer who takes the stand performs the same functions as any other witness.

**Florence v. Board of Chosen Freeholders of the County of Burlington,**  
2012 U.S. LEXIS 2712, April 2, 2012

Florence and his wife were stopped in their automobile by a State Trooper. A computer check revealed an outstanding warrant for failure to pay a fine. The Trooper arrested Florence and transported him to the Country Detention Center. After being briefly incarcerated in two different jails, the charges against him were ultimately dismissed after it was revealed that the fine had been paid. Jail procedures mandate that every arrestee shower with a delousing agent and that officers check arrestees for scars, marks, gang tattoos, and contraband as they disrobe. Florence claims that he was also instructed to open his mouth, lift his tongue, hold out his arms, turn around, and lift his genitals. Florence contends that this process was repeated at the two facilities in which he was held. This policy applied regardless of the circumstances of the arrest, the suspected offense, or the detainee's behavior, demeanor, or criminal history.

Florence filed suit under 42 U.S.C. §1983 claiming that individuals arrested for minor offenses could not be required to remove their clothing and expose the most private areas of their bodies to close visual inspection as a routine part of the jail intake process. Florence argued that jail officials could conduct this kind of search only if they had reason to suspect a particular inmate of concealing a weapon, drugs or other contraband.

The court stated that Correctional facilities have a legitimate interest and responsibility to ensure that jails are not made less secure by reason of what new detainees may carry in on their bodies. "Facility personnel, other inmates, and the new detainee himself or herself may be in danger if these threats are introduced into the jail population." The Court has also recognized that deterring the possession of contraband depends in part on the ability to conduct searches without predictable exceptions. The Court noted that Florence was not physically touched during either search at the two separate facilities. The Supreme Court held that the search procedures at the two jails struck a reasonable balance between inmate privacy and the needs of the institutions to maintain a safe and secure environment.