

## 2014 United States Supreme Court Cases

Court adjourned at the end of July and its time to learn what they left us to work with! The United States Supreme Court term ended and they delivered opinions on recent case law that impacts the way officers should conduct themselves in the field. The following are four cases decided in the last term for law enforcement legal updated training.

### **Prado Navarette v. California, 572 U.S. \_\_\_\_ (2014)**

In *Prado Navarette v. California*, the United States Supreme Court held that an anonymous 911 call (alleging specific reckless driving behavior), which resulted in the caller's car being run off the road, gave officers reasonable suspicion of drunk driving. This, then, justified the traffic stop of that vehicle, and the arrest of the occupants for transporting marijuana.

#### *Factual Background*

On August 23, 2008, a dispatcher relayed a 911 call received from a motorist claiming that a vehicle had run her off the road. The 911 caller indicated that a Silver Ford 150 pickup, bearing license plate number 8D94925 had run her off the road at Highway 1, marker 88, and was last seen five minutes prior to the call. A responding officer pulled the vehicle over near mile marker 69; a second officer arrived at the scene. The two officers smelled marijuana when they approached the truck. Upon searching the truck bed the officers discovered 30 pounds of marijuana. The officers arrested the driver and passenger of the vehicle, Lorenzo Prado Navarette and José Prado Navarette ("Petitioners").

The Petitioners moved to suppress the evidence located in the truck bed, claiming that the traffic stop violated the Fourth Amendment because the officers lacked reasonable suspicion of criminal activity. The Superior Court denied the motion to suppress and the Petitioners pled guilty to transporting marijuana. The California Appellate Court affirmed the lower court decision, concluding that the tip received from the 911 caller was reliable and the officers did have a reasonable suspicion to conduct the traffic stop. The California Supreme Court denied review. The United States Supreme Court granted certiorari and affirmed the decision of the lower courts.

#### *Supreme Court Analysis*

The Supreme Court first noted that the Fourth Amendment permits a brief investigative stop when an officer has a "particularized and objective basis from suspecting the particular person stopped of criminal activity."<sup>1</sup> The reasonable suspicion necessary to justify such a stop "is dependent upon both the content of the information possessed by police and its degree of reliability."<sup>2</sup>

The Supreme Court stated that these same principles apply to any investigative stop that is based on an anonymous tip. The Court noted that while an anonymous tip, by itself, is seldom sufficient to "demonstrate



the informant's basis of knowledge or veracity," under appropriate circumstances an anonymous tip can demonstrate "sufficient indicia of reliability to provide reasonable suspicion to make [an] investigatory stop."

#### Reliability of the Anonymous 911 Call:

The Court found that even assuming that the 911 call was anonymous, the call was sufficiently reliable and, therefore, the officers were justified in relying on the information received that the truck had in fact dangerously run the caller's car off the road.

The Supreme Court reasoned that by indicating that she had been run off the road, and providing the description of the vehicle, license plate number, and location of the incident, the caller necessarily claimed eyewitness knowledge of the alleged dangerous driving. The driver's claim that the driver of the truck ran her off the road implied first-hand knowledge that the other vehicle was driving in a dangerous manner.

The Court also pointed out that the timeline from the receipt of the 911 call to the officer locating the truck was further evidence that the 911 caller was telling the truth. The truck was located roughly 19 highway miles away from the reported location of the incident and approximately 18 minutes after the 911 call was received, which suggests that the caller reported the incident soon after she was run off the road, indicating that it was a "contemporaneous report." Reports of this nature have long been treated as especially reliable. Statements that are related to a "startling event," like getting run off the road, made while the declarant was "under the stress of the excitement that it caused" are generally seen as trustworthy. Finally, the Court noted that while 911 calls are not *per se* reliable, the advanced technology allowing for the identification of callers would make it less likely that a false tipster would utilize the system.

#### Reasonable Suspicion to Perform Traffic Stop:

The Court found that the traffic stop was proper as an objectively reasonable police officer could conclude that the reckless driving reported in the 911 call amounted to reasonable suspicion of drunk driving. The court reasoned that it could "appropriately recognize that certain driving behaviors as sound indicia of drunk driving." While not every traffic infraction implies intoxication, a reliable tip alleging reckless and dangerous driving behavior would justify a traffic stop based on suspicion of drunk driving.

In the present case, the Court noted that the 911 caller alleged specific reckless and dangerous driving that resulted in her car being run off the road, which the court found to bear too great a resemblance to drunk driving to be dismissed as an isolated example of reckless driving. The Court concluded that based on the foregoing, it could not say that the officer acted unreasonable in stopping a driver whose alleged conduct was a significant indicator of drunk driving. The Court stated that while the driver's behavior could be related to distracted driving or other reason, it has "consistently recognized that reasonable suspicion 'need not rule out the possibility of innocent conduct.'"

The Court held that under the totality of the circumstances there was indication of reliability in the present case "to provide an officer with reasonable suspicion that the driver of the reported vehicle had run another



vehicle off the road.” That made it reasonable under the circumstances for the officer to execute the traffic stop. Therefore, the Supreme Court affirmed the lower courts holding.

### **Fernandez v. California, 571 U.S. \_\_\_\_ (2014)**

The *Fernandez* case clarified the Supreme Court’s prior holding in *Georgia v. Randolph*, holding that when multiple individuals reside at a premises, if a physically present individual objects to a warrantless search of the residence, the police may not search the residence even if another occupant consents to the search.

#### ***Factual Background***

Walter Fernandez committed a violent robbery and fled from the scene. A man on the street told the officers that Fernandez was in an apartment building. The officers then observed another man run through the alley and into the apartment building. After a minute or two, the officers heard fighting coming from within the building and knocked on the door from which the screaming and fighting was heard. Roxanne Rojas answered the door and had an apparent fresh injury to her face. When asked if there was anyone else in the apartment Rojas told the officers that only her 4-year-old son was present. The officers asked Rojas to step outside the apartment so they could conduct a protective sweep. At that point, Fernandez appeared at the door and told the officers that they could not come in to the apartment. The officers suspected that Fernandez had assaulted Rojas, removed him from the apartment, placed him under arrest, and took him to the station for booking.

The officers returned to the apartment approximately one hour later and informed Rojas that Fernandez had been arrested. After a request from the officer, Rojas gave them both oral and written consent to search the apartment. The search revealed items connecting Fernandez to the robbery, as well as weapons and ammunition.

Fernandez’s motion to suppress the evidence found at the residence was denied and he was convicted of charges, including robbery and infliction of corporal injury. The Appellate Court affirmed the trial court’s decision finding that an occupant may give consent to search a shared residence and since Fernandez was not present at the time that Rojas consented, the trial court’s decision regarding the motion to suppress evidence was proper.

#### ***Supreme Court Analysis***

While officers are generally required to obtain a warrant before searching a home, one exception to the warrant requirement is when the owner or occupant of the home gives consent. An issue may arise, however, as to when a one resident of a jointly occupied premises can give consent to a search. In *Georgia v. Randolph*,<sup>3</sup> the Supreme Court found that a physically present inhabitant of a home may refuse consent to search the premises, regardless of the consent of a fellow occupant. The controlling factor under these circumstances is that the objecting occupant must be present.



Fernandez argued that it did not matter that he was absent at the time Rojas gave her consent to search the apartment since he was only absent because the officers had removed him from the premises. Fernandez further argued that his objection to the search, which was given while he was in the doorway of the premises prior to his arrest, should remain in effect until he “no longer wished to keep the police out of his home.”

The Court reiterated that the *Randolph* decision unequivocally requires that the individual who refuses consent to search a premises must be physically present to make such an objection. Since Fernandez had been placed under arrest for assault and removed from the premises, and was not present when Rojas’ gave her consent to search the house, her consent in his absence was sufficient. The Court held that “an occupant who is absent due to a lawful detention or arrest stands in the same shoes as an occupant who is absent for any other reason.”

Furthermore, the Court found that Fernandez’s argument that his objection to the search was still in effect would create the necessity for an unreasonable interpretation as to a continuing objection. In other words, it would require that the scope and duration of an objection to a search be defined, creating a burdensome and unreasonable process.

The Court’s decision in *Fernandez* reiterates its holding that the party must be physically present to voice an objection to a search of the premises. A review of this present case, however, indicates that a problem may arise if the only reason police officers remove a subject from the premises is to stop that individual from voicing an objection. The Court, however, refuses to analyze the motive of a police officer for removing the party, but rather whether the actions taken were objectively reasonable. In other words, if the police officer has a lawful purpose for removing the individual from the premises, his underlying motive for doing so will not come into play.

In summary, when a residence is occupied by multiple individuals, one occupant may give consent to the police to search. If an occupant, who is present at the time, objects to a search, officers may not search the premises, even if another occupant gives consent. Following the holding of this case, even if an occupant initially objects to a search, if that occupant is lawfully detained or arrested, another occupant can later give consent to the search in the same manner as if the initially objecting occupant had not been present. The only caveat to this holding is that if the purpose of removing an occupant from the premises is not lawful, but rather to stop the party from objecting to the search, then the consent to search may not be reasonable.

#### **Plumhoff v. Richard, 572 U.S. \_\_\_\_ (2014)**

In *Plumhoff v. Rickard*, the United States Supreme Court held that officers’ use of deadly force to terminate a dangerous car chase did not violate the Fourth Amendment. The Court also held, in the alternative, that the officers were entitled to qualified immunity because they did not violate any clearly established law.

#### ***Factual Background***



On July 18, 2004, a Lieutenant pulled over a vehicle driven by Donald Rickard for a traffic violation. When the Lt. approached the vehicle, he asked Rickard whether he had been drinking, to which Rickard responded he had not. Rickard failed to produce a driver's license upon request and was acting in a nervous manner. Based on these observations, the Lt. ordered Rickard to step out of the car, but Rickard sped away.

The Lt. pursued Rickard's vehicle and was joined by five additional cruisers from the Department. The officers attempted to stop Rickard on the highway with the use of a "rolling roadblock," but the attempt was not successful. During the pursuit, the vehicles were swerving in and out of traffic at high speeds, at times reaching over 100 miles per hour, and passed more than two dozen other vehicles.

When Rickard exited the highway, he made a sharp right turn, causing contact between his vehicle and a vehicle driven by Officer Evans. As a result of the contact between the two vehicles, Rickard's vehicle spun out into a parking lot and collided with another cruiser, driven by Officer Plumhoff. Plumhoff and Evans exited their cruisers and approached Rickard's vehicle. Evans pounded on the passenger-side window. At this point, Rickard's vehicle collided with another cruiser. Rickard's tires were spinning and his vehicle was rocking back and forth, indicating he still had his foot on the accelerator even though Rickard's bumper was flush against a police cruiser. At this point, Plumhoff fired three shots into Rickard's vehicle. Rickard then put his vehicle in reverse and, in a 180 degree arc, maneuvered onto another street. This action forced an officer to step to the right to avoid being hit. As Rickard's vehicle was fleeing down the street two other officers fired an additional twelve shots at the vehicle. There were fifteen total shots fired at Rickard's vehicle during the incident. Rickard then lost control of his vehicle and it crashed. As a result of the combined injuries from gunshot wounds and the crash, both Rickard and his passenger died.

Rickard's daughter filed a §1983 action alleging that the officers used excessive force in violation of the Fourth and Fourteenth Amendments. The officers moved for summary judgment based on the theory of qualified immunity. The District Court denied the officers' motion, holding that the officers' actions violated Rickard's Fourth Amendment rights and were contrary to clearly established law. The officers appealed to the Sixth Circuit Court, which eventually affirmed the order of the District Court denying the officers' motion for summary judgment.

### ***Supreme Court Analysis***

On Appeal, the officers contended that they did not violate Rickard's Fourth Amendment rights and that, in any event, their conduct did not violate clearly established right at the relevant time. The Supreme Court stated that it must first decide whether the officers' actions violated Rickard's Fourth Amendment rights, before deciding whether there existed a clearly established right at the relevant time.

The issue of whether officers used excessive force is governed by the Fourth Amendment "reasonableness" standard. When determining whether the actions were "objectively reasonable", courts must analyze the "totality of the circumstances." The question of whether an action is "objectively reasonable" is analyzed from the perspective "of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight."

The Court first addressed respondent's contention that the use of deadly force to terminate the chase of Rickard's vehicle was in violation of his Fourth Amendment rights. In the Court's prior decision in *Scott v. Harris*,<sup>4</sup> it held that 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 Court found that in the present case, Rickard's "outrageously reckless" driving posed a "grave risk to public safety" (driving in excess of 100 miles per hour and passing more than two dozen vehicles). The Court further observed that while it was true that Rickard's vehicle temporarily came to a near standstill when it spun out in the parking lot, the chase did not end there. Even though Rickard's vehicle was flush with another vehicle, he was still pushing down on the accelerator, causing his wheels to spin and vehicle to rock, and was eventually able to put his vehicle in reverse in an attempt to escape. These actions disproved respondent's claim that the chase had already ended when the officers started shooting. The Court stated, "[u]nder the circumstances at the moment when the shots were fired, all that a reasonable police officer could have concluded was that Rickard was intent on resuming his flight and that, if he was allowed to do so, he would once again pose a deadly threat for others on the road." The Court found it noteworthy that even after the shots were fired, Rickard still managed to drive away, despite the officers attempts to block his path. Accordingly, the Court found that the officers acted reasonably in using deadly force to end the pursuit.

The Court also rejected that argument that even if the use of deadly force was permissible, the officers acted unreasonable in firing fifteen shots at Rickard's vehicle. The Court found that if the officers were justified in firing at Rickard to "end a severe threat to public safety, the officers need not stop shooting until the threat has ended." The Court pointed out that during the 10-second span in which the shots were fired Rickard continued in his attempts to flee. The Court noted that even after the fifteen shots had been fired, Rickard was able to drive away and continue driving until he crashed.

The Court did point out, however, that it would be a "different case if the [officers] had initiated a second round of shots after an initial round had clearly incapacitated Rickard and had ended any threat of continued flight, or if Rickard had clearly given himself up."

The Court held that the while the officers' conduct did not violate Rickard's Fourth Amendment rights, even if it had, the officers would still be entitled to qualified immunity. "An official sued under §1983 is entitled to qualified immunity unless it is shown that the official violated a statutory or constitutional right that was clearly established at the time of the alleged conduct." The Court found that at the time of the incident, there was no clearly established law that it was unconstitutional to shoot a fleeing driver to protect those whom his flight might endanger.

In summary, the Court held that "the Fourth Amendment did not prohibit [the officers] from using the deadly force that they employed to terminate the dangerous car chase that Rickland precipitated." The Court further held that, in the alternative, the officers were entitled to qualified immunity because they violated no clearly established law.

## **Riley v. California/United States v. Wurie, 573 U.S. \_\_\_\_ (2014)**

The Supreme Court consolidated two cases, *Riley v. California*<sup>5</sup> and *United States v. Wurie*<sup>6</sup> as they raised a common question: “whether the police may, without a warrant, search digital information on a cell phone seized from an individual who has been arrested.”

### ***Factual Background***

*Riley:* A police officer stopped David Riley for driving with expired vehicle registration tags, and discovered that Riley’s license had been suspended. The officer impounded Riley’s car and during an inventory search two handguns were found under the car’s hood. Riley was arrested for possession of concealed and loaded firearms. While conducting a search of Riley incident to the arrest, the officer found items associated with the “Bloods” street gang and seized a cell phone located in Riley’s pant pocket. A search of the cell phone revealed that some words were preceded by the letters “CK,” which he believed to stand for “Crip Killers”, a slang term for members of the Bloods gang. An additional search of the cell phone revealed further evidence of gang activity, including photographs of Riley standing in front of a vehicle suspected to have been involved in a shooting a few weeks prior.

Riley was charged in connection with the earlier shooting. The State alleged that Riley committed these crimes to benefit his gang, which is considered an aggravating factor and carries an enhanced sentence. At trial, Riley filed a motion to suppress the evidence obtained from the search of his cell phone on the basis that it violated his Fourth Amendment rights against unreasonable search and seizures because the police conducted a warrantless search that was not otherwise justified by exigent circumstances. The trial court rejected this argument and Riley was convicted. The California Court of Appeals affirmed. The U.S. Supreme Court granted certiorari.

*Wurie:* Police officers arrested Brima Wurie for making an apparent drug sale from his vehicle while under surveillance. At the police station, officers seized two cell phones from Wurie’s person. Five or ten minutes after Wurie arrived at the police station, officers noted that the phone was repeatedly receiving calls from a number identified on the screen as “my house.” Officers then opened the phone and saw that the wallpaper picture was a woman holding a baby. Officers pressed one button on the phone to access the call log to determine the actual number associated with “my house.” The number was traced to an apartment building utilizing an online phone directory. When officers arrived at the apartment building, they noted Wurie’s name on a mailbox and observed through a window the woman shown in the cell phone’s wallpaper. Officers secured the apartment while they obtained a search warrant. Upon execution of the warrant officers located drugs, firearms, ammunition, and cash.

Wurie was charged with various drug charges and being a felon in possession of a firearm and ammunition. Wurie moved to suppress the evidence obtained from the apartment, claiming that it was the fruit of an unconstitutional search of his cell phone. The district court denied Wurie’s motion to suppress and he was convicted. The First Circuit Court of Appeals reversed the denial of the motion to suppress and vacated the conviction. The U.S. Supreme Court granted certiorari.

### ***Supreme Court Analysis***

The Court stated that the “ultimate touchstone of the Fourth Amendment is ‘reasonableness’ . . . and reasonableness generally requires the obtaining of a judicial warrant.” In the absence of a search warrant, a search is reasonable only if it falls within a specific exception to the warrant requirement. The Court noted that in the present two cases, the issue is the reasonableness of a warrantless search of the cell phones incident to a lawful arrest. The Court stated that “it has been well accepted that such a search constitutes an exception to the warrant requirement.” The debate over these searches, however, focuses on the extent to which officers may search property found on or near the arrestee.



The Supreme Court discussed three related precedents that set forth the rules governing search of this nature: (1) *Chimel v. California*<sup>7</sup> (officers may search the person arrested to remove any weapons that may endanger the safety of officers or to effect an escape and may search for and seize any evidence on the arrestee's person to prevent its concealment or destruction. Areas within a subject's immediate control may be searched, meaning the area from within which the subject might gain possession of a weapon or destructible evidence); (2) *United States v. Robinson*<sup>8</sup> (a "custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment; that intrusion being lawful, a search incident to the arrest requires no additional justification"); and (3) *Arizona v. Gant*<sup>9</sup> (officers are authorized to search a vehicle "on when the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search").

The Court discussed that while harm to officers and destruction of evidence were present in all custodial arrests, these risks are not necessarily present when the search is of digital data. Since cell phones contain a vast amount of personal data, a search of information on a cell phone bears little resemblance to the type of brief physical search considered in *Robinson* (search of a crushed cigarette package found on the subject's person). The Supreme Court held that "officers must generally secure a warrant before conducting such a search."

In reaching its conclusion, the court noted that: (1) digital data stored on a cell phone cannot be used as a weapon against officers and cannot be used to assist in an escape and (2) the concern for destruction of evidence is limited since once officers have a cell phone in custody, there is no longer any risk that an arrestee will delete or destroy incriminating evidence from the phone.

The Court stated that "it is no exaggeration to say that many of the more than 90% of American adults who own a cell phone keep in their person a digital record of nearly every aspect of their lives – from the mundane to the intimate. . . . Allowing the police to scrutinize such records on a routine basis is quite different from allowing them to search a personal item or two in the occasional case."

The Court stressed, however, that it's holding does not render information on cell phones immune from searches; "**it is instead that a warrant is generally required before such a search, even when a cell phone is seized incident to arrest.**" The United States Supreme Court concluded its holding by stating: "Our answer to the question of what police must do before searching a cell phone seized incident to an arrest is accordingly simple – get a warrant."

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<sup>1</sup> *United States v. Cortez*, 449 U.S. 411, 417-418 (1981)

<sup>2</sup> *Cortez*, 449 U.S. at 417)

<sup>3</sup> 547 U.S. 103 (2006)

<sup>4</sup> 550 U.S. 372 (2007)

<sup>5</sup> 2013 WL 4752428 (Feb. 8, 2013)

<sup>6</sup> 728 F.3d 1 (May 17, 2013)

<sup>7</sup> 395 U.S. 752 (1969)

<sup>8</sup> 414 U.S. 218 (1973) (patdown search of Robinson revealed a crushed cigarette package in his coat pocket. Upon opening the package, police discovered 14 capsules of heroin)

<sup>9</sup> 556 U.S. 332 (2009)