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SUPREME COURT UPDATE

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Ryburn v. Hugg, U.S. Supreme Court 11-208 (Decided 1/23/2012)

Burbank police officers Darin Ryburn and Edmundo Zepeda responded to a call from a high school in their jurisdiction. When the officers arrived at the school, they were informed that a student, Vincent Huff, was rumored to have made written threats to "shoot up" the school. Interviewing the principal and two of Vincent's classmates, the officers learned that he had been absent from school for two days and was frequently subjected to bullying. One of Vincent's classmates advised the officers that he believed that Vincent was capable of carrying out the alleged threat. The officers had received training in school violence and were aware that absences from school along with a history of being subjected to bullying were common characteristics among perpetrators of school shootings.

The officers decided to continue the investigation by interviewing Vincent. When officers arrived at Vincent's house, no one answered the door or otherwise responded to the officer's knocks and announcements as police officers. When the officers called the home telephone, they could hear the phone ringing in the house, but no one answered. The officers next tried calling the cell phone of Vincent's mother. When Mrs. Huff answered the phone, the police officer identified himself and asked her location. Mrs. Huff advised the officer that she and Vincent Huff were inside the house. The officer advised Mrs. Huff that he and other officers were outside and requested to speak with her, but she hung up the phone.

One or two minutes later, Mrs. Huff and Vincent walked out of the house and stood on the front steps. The officers advised them that they were there to discuss the threats. Vincent, seemingly aware of the threats, stated, "I can't believe you're here for that." Mrs. Huff refused an officer's request to continue the discussion inside the house. One of the officers involved, Sergeant Ryburn, worked with the juvenile bureau and found this "extremely unusual." Sergeant Ryburn then asked Mrs. Huff if there were any guns in the house. Mrs. Huff responded by "immediately turn[ing] around and r[unning] into the house." Sergeant Ryburn was "scared because [he] didn't know what was in that house" and had "seen too many officers killed," and entered the house behind her. Vincent Huff entered the house behind Sergeant Ryburn and Officer Zepeda entered after Vincent because he was concerned about officer safety and did not want Sergeant Ryburn to enter the house alone.

Upon entering the house, the officers remained in the living room with Mrs. Huff and Vincent. Eventually, Vincent's father entered the room and challenged the officers' authority to be there. The officers remained inside the house for a total of five to ten minutes. During that time, they did not conduct any search of any of the Huffs or their property. The officers ultimately concluded that the rumor about Vincent was false, and reported that conclusion to the school.

The Huffs brought suit against the officers alleging that the officers violated their Fourth Amendment rights by entering their home without a warrant. The District Court entered judgment in favor of the officers. The District Court heard conflicting testimony regarding Mrs. Huff's response to Sergeant Ryburn's question about guns by finding that Mrs. Huff "immediately turned around and ran into the house." The trial court concluded that the officers were entitled to qualified immunity be-

cause Mrs. Huff's odd behavior, combined with the information the officers gathered at the school, could have led reasonable officers to believe "that there could be weapons inside the house, and that family members or the officers themselves were in danger."

The Ninth Circuit overturned that ruling on appeal. In doing so, the appellate court acknowledged that police officers may enter a home without a warrant if they reasonably believe that immediate entry is necessary to protect themselves or others from serious harm, even if the officers lack probable cause to believe that a crime has been or is about to be committed. The majority of the appeals court, however, determined that in this case, any belief that the officers or other family members were in serious, imminent harm would have been objectively unreasonable given that she merely asserted her right to end her conversation with the officers and returned to her home.

The officers appealed to the U.S. Supreme Court, which over-ruled the appellate court and upheld the original trial court decision. In doing so, the Supreme Court noted that the appellate court determination that the officers acted unreasonably rested on an account of the facts that differed markedly from the district court's findings. Though the trial court had specifically found that Mrs. Huff "immediately turned around and ran into the house", the appellate court characterized her conduct as merely asserting her right to end the conversation and returned to her home after telling the officers that she would go get her husband. The Supreme Court held that the appellate court did not have the authority to substitute its own finding of facts and was required to make its decision based upon the facts as determined at the trial level.

The Supreme Court also stated that the appellate court took the view that conduct cannot be regarded as a matter of concern so long as it is lawful. This view was explicitly rejected. The U.S. Supreme Court stated, "It should go without saying, however, that there are many circumstances in which lawful conduct may portend imminent violence." It went on to state that, "...it is a matter of common sense that a combination of events each of which is mundane when viewed in isolation may paint an alarming picture."

The Supreme Court reviewed prior cases involving the "officer safety" exception to the Fourth Amendment. In doing so, it reaffirmed its prior decisions that reasonableness "must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight" and that "the calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments in circumstances that are tense, uncertain, and rapidly evolving." In ruling in favor of the officers, the Supreme Court held that judged from the perspective of a reasonable officer forced to make a split-second decision, Mrs. Huff turning and running into the house after refusing to answer a question about guns, the officers' belief that entry was necessary to avoid injury to themselves or others was completely reasonable.

Florence v. Board of Chosen Freeholders of County of Burlington, U.S. Supreme Court, No. 10-945 (Decided 4/2/2012)

Florence was arrested during a traffic stop by a New Jersey state trooper who checked a statewide computer database and found a bench warrant for his arrest for failure to appear at a hearing to enforce a fine. He was detained in two separate jails, but was released once it was determined that the fine had been paid.

At both jails, he was required to completely disrobe and be checked for scars, marks, gang tattoos, wounds, and contraband. He also was required to shower at both locations. Florence further claimed that he was required to open his mouth, lift his tongue, lift his genitals and cough while squatting in the check for contrabands. The evidence reflected that every detainee at these jails were subjected to such a search, including complete disrobement and examination, regardless of the seriousness of the offense for which the detainee was being held.

Florence filed an action in Federal Court against the government entities that ran the jails alleging Fourth and Fourteenth Amendment violations. He argued that persons arrested for minor offenses cannot be subjected to invasive searches unless the officials have a reasonable suspicion that the detainee is concealing weapons, drugs, or other contraband. The trial court granted him summary judgment. In doing so, it ruled that "strip-searching" non-indictable offenders without reasonable suspicion violated the Fourth Amendment prohibition against unreasonable searches and seizures as a matter of law. The Third Circuit Court of Appeals reversed that decision and held that such searches did not violate the Fourth or Fourteenth Amendment as a matter of law.

The U.S. Supreme Court ruled with the Third Circuit appellate decision. In doing so, the Supreme Court concluded that the search procedures in place struck a reasonable balance between inmate privacy and the needs of the institution. It held that the Fourth and Fourteenth Amendment do not require adoption of a framework and rules that Florence and the trial court proposed.

The Supreme Court recognized that correctional officials have a significant interest in conducting a thorough search as a standard part of the intake process because the admission of new inmates creates risks for staff, the existing detainee population, and the detainee himself. Such officials must screen for contagious infections, and for wounds and injuries requiring immediate medical attention, and that doing so is exceedingly difficult without detainees removing their clothes for a visual inspection. It also pointed out that such a visual, unclothed inspection was an appropriate tool to screen for signs of gang affiliation as part of the intake process and to detect drugs, weapons, drugs, alcohol, and other prohibited contraband the detainee may possess. The Supreme Court

held that the seriousness of the offense for which the detainee is presently being held is a poor predictor of who has contraband, and that exempting people arrested for minor offenses from a standard search protocol could put them at greater risk and result in more contraband being brought into a detention facility. The court held that prior cases regarding the matter established that correctional officials must be permitted to devise reasonable search policies to detect and deter the possession of contraband in their facilities, and that "in the absence of substantial evidence in the record to indicate that the officials have exaggerated their response to the considerations, the court should ordinarily defer to their expert judgment in such matters.

Perry v. New Hampshire, U. S. Supreme Court, No. 10-8974 (Decided January 11, 2012)

The Nashua New Hampshire Police Department received a call reporting that an African-American male was trying to break into cars parked in the lot of the caller's apartment building. When an officer responding to the call asked the eyewitness to describe the man, she pointed through her kitchen window and said the man she saw breaking into the car was standing in the parking lot, next to a police officer. Barion Perry was arrested following this identification.

Before trial, Perry moved to suppress the eyewitness's identification on the grounds that admitting it at trial violated due process. The trial court denied his motion. It held that a two-step inquiry was necessary to determine whether due process prohibits the introduction of an out-of-court identification at trial. The trial court must first decide whether the police used an unnecessarily suggestive identification procedure. If they did, the court must next consider whether that procedure so tainted the resulting identification that it rendered it unreliable and therefore inadmissible. The trial court held that Perry's challenge failed at step one because the identification procedure was not an unnecessarily suggestive procedure employed by the police. Perry was convicted by a jury and appealed to the New Hampshire Supreme Court.

On appeal, Perry argued that any suggestive circumstances at all (whether employed by the police or not) were sufficient to require a judge's evaluation of the reliability of an eyewitness identification before allowing it to be presented to the jury. The New Hampshire Supreme Court rejected that argument and affirmed the conviction.

The U.S. Supreme Court likewise affirmed the conviction. It held that the Due Process Clause of the U.S. Constitution does not require a preliminary judicial inquiry into the reliability of an eyewitness identification when the identification was not procured under any unnecessarily suggestive circumstances arranged by law enforcement. In doing so, the Supreme Court referred to prior decisions involving police-arranged identification procedures. It noted that a key premise in all those decisions was that the primary aim of excluding identification evidence obtained under unnecessarily suggestive circumstances was to deter law enforcement use of improper procedures in the first place. That deterrence rationale was not present in cases, like Perry's, where there is no improper police conduct. Though Perry maintained that eyewitness identifications were uniquely unreliable, the court held that the fallibility of eyewitness evidence did not, without the taint of improper state conduct, warrant a due process rule requiring a trial court to first screen the evidence for reliability before allowing the jury to assess its credibility. The Court's unwillingness to adopt such a rule rested on its recognition that the jury, not the judge, traditionally determines the reliability of evidence. It also noted that there are other safeguards built into the adversary system that caution juries against placing undue weight on such eyewitness identifications. Those protections include the Sixth Amendment right to counsel and to confront the eye-witness, and eye-witness specific instructions regarding the reliability of such evidence. It held that the due process check for reliability before presentation to the jury comes into play only after the defendant establishes improper police conduct. Without such a showing, the defendant was free to attack the credibility and reliability of the evidence before the jury, but could not bar its admissibility and presentation before the jury.

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UNITED STATES V. JONES, U.S. SUPREME COURT, NO. 10-1259 (DECIDED JANUARY 23, 2012)

The Government originally obtained a search warrant permitting it to install a Global-Positioning-System (GPS) tracking device on a vehicle registered to Jones' wife. The agency serving the warrant, however, failed to attach it within the statutorily allowed period of time or within the proper jurisdiction, making the attachment of the GPS device one accomplished without a warrant. The Government then tracked the vehicle's movements for 28 days. It later indicted Jones on drug trafficking conspiracy charges with several others. The trial court suppressed the GPS data obtained while the vehicle was parked at Jones' residence, but held the remaining data admissible because Jones had no reasonable expectation of privacy when the vehicle was on public streets. Jones was convicted, but the D.C. Circuit Court reversed that ruling and concluded that admission of the evidence obtained by the warrantless use of the GPS device violated Jones' Fourth Amendment rights. The United States appealed to the U.S. Supreme Court.

The United States Supreme Court held that the attachment of the GPS device to the vehicle and its use of that device to monitor the vehicle's movements, was a search under the Fourth Amendment. The Court analyzed the historical interpretation of the Fourth Amendment and noted that it protects the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." The Court noted that it's Fourth Amendment analysis had historically been tied to common-law trespass. Later cases, most notably, *Katz v. U.S.,* 389 U.S. 374, focused on protection of a person's "reasonable expectation of privacy". The Supreme Court held that the conduct of the state constituted a warrantless search under the older common-law trespassory test. It held that the Court did not need to address the Government's argument that Jones had no "reasonable expectation of privacy" because his Fourth Amendment rights did not rise or fall with the *Katz* formulation/decision, but rather the Fourth Amendment analysis in place at the time the Amendment was adopted. It held that *Katz* did not overturn the understanding that the Fourth Amendment continues to maintain a particular concern for government trespass upon the particular areas in mentions in its text. The *Katz* reasonable expectation of privacy test had been added to, but had not substituted for, the common-law trespassory test.

Since this decision, law enforcement agencies would be well advised to get a warrant prior to attaching any tracking devices to any effects without the owner's consent. There is still one issue, however, left undecided by the Supreme Court which may change this. At the Supreme Court level, the Government attempted to argue in the alternative that even if the attachment and use of the device was a search, it was reasonable and therefore lawful under the Fourth Amendment because "officers had reasonable suspicion, and indeed probable cause, to believe that [Jones] was a leader in a large-scale cocaine distribution conspiracy." The Supreme Court declined to consider the alternative argument because it was not raised in the lower courts. It is possible that the Courts may determine that such attachment of GPS devices while the vehicle is on a public road may be *per se* reasonable as a matter of law. Until they do, however, a warrant should be obtained before attaching such devices without the owner's knowledge and consent.

Howes, Warden v. Fields, U.S. Supreme Court, No. 10-680 (Decided February 21, 2012)

Fields, a Michigan state prisoner, was taken from his cell to a conference room. In that conference room he was questions by two sheriff's deputies about criminal activity in which he had allegedly been involved before coming to prison. He was never given *Miranda* warnings or advised that he did not have to speak with the deputies. He was questioned for between five and seven hours. He was told more than once that he was free to leave and go back to his cell. He remained free of restraints during the questioning. The conference room door was sometimes open and sometimes shut. Fields never asked to return back to his cell. After Fields confessed, he had to wait an additional 20 minutes for an escort and returned to his cell much later than when he generally slept for the night.

The trial court denied Fields' motion to suppress his confessions under *Miranda.* He was convicted. The Michigan Court of Appeals upheld that conviction, but the United States District Court for the Eastern District of Michigan granted Field relief on a habeas corpus application in federal court. The Sixth Circuit Appeals Court upheld that ruling. In doing so, it held that the interview was a custodial interrogation with the meaning of *Miranda*. It stated a rule that isolation from the general prison population, combined with questioning about conduct occurring outside the prison, makes any such interrogation custodial *per se.* The state appealed to the U.S. Supreme Court.

The U.S. Supreme Court held that it's prior decisions did not establish such a categorical rule, and that it had repeatedly declined to adopt such a bright line rule. The Supreme Court held that the initial step in determining whether a person is in *Miranda* custody is to ascertain, given "all the circumstances surrounding the interrogation," how a suspect would have gauged his freedom of movement. It pointed out that not all restraints on freedom of movement amount to *Miranda* custody. It pointed out that at least three strong grounds supported not having a *per se* rule such as that established by the Sixth Circuit: 1) questioning a person who is already in prison does not generally involve the shock that very often accompanies an arrest, 2) the prisoner is unlikely to be lured into speaking by a longing for a prompt release, and 3) the prisoner knows that his questioners probably lack authority to affect the duration of his present sentence. The Supreme Court held that service of a prison term, without more, is not enough to alone constitute *Miranda* custody.

Having held that when a prisoner is questioned, the determination of *Miranda* custody must focus on all the features of the interrogation, the Court then looked at the particular circumstances in Fields' case. In doing so, it pointed out that from the onset of the interrogation and throughout the same, he was advised that he was free to leave and return to his cell whenever he wanted. Furthermore, he was not physically restrained or threatened and was interviewed in a well-lit, average-sized conference room where the door was sometimes left open. He was also offered food and water during the interrogation. The Supreme Court held that these facts were consistent with an environment in which a reasonable person would have felt free to terminate the interview and leave, subject to the ordinary restraints of life behind bars. Consequently, the Supreme Court over-ruled the habeas relief granted by the federal courts and reinstated the state court conviction.