Oklahoma State Bureau of Investigation

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Highlights

## UNITED STATES SUPREME COURT

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## Search Reasonable Despite Suspects' Move

*LA County v. Rettelle, 2007 U.S. LEXIS 5900, Decided May 21, 2007*

From September to December 2001, Los Angeles County Sheriff's Department Deputy Dennis Watters investigated a fraud and identity-theft crime ring. There were four suspects of the investigation, and one of the suspects had registered a 9-millimeter Glock handgun. The four suspects were known to be African-Americans.

On December 11, Watters obtained a search warrant for two houses in Lancaster, California, where he believed he could find the suspects. The warrant authorized him to search the homes and three of the suspects for documents and computer files.

In support of the search warrant, an affidavit cited various sources showing the suspects resided at the homes to be searched. The sources included Department of Motor Vehicles reports, mailing address listings, an outstanding warrant, and an Internet telephone directory.

What Watters did not know was that one of the houses (the first to be searched) had been sold in September to a Max Rettele. He had purchased the home and moved into it three months earlier with his girlfriend and her 17-year-old son. All three are Caucasians.

On the morning of December 19, Watters briefed six other deputies in preparation for the search of the houses. Watters informed them they would be searching for three African-American suspects, one of whom owned a registered handgun. The possibility a suspect would be armed caused the deputies concern for their own safety. Around 7:15 a.m., Watters and six other deputies knocked on the door and announced their presence. The 17-year-old answered the door. The deputies entered the house after ordering him to lie face down on the ground.

The deputies' announcement awoke the two adult residents. The deputies entered their bedroom with guns drawn and ordered them to get out of their bed and to show their hands. They protested that they were not wearing clothes. One stood up and attempted to put on a pair of sweatpants, but deputies told him not to move. The female resident also stood up and attempted, without success, to cover herself with a sheet. Both were held at gunpoint for one to two minutes before they were allowed to cover themselves. They both left the bedroom within three to four minutes to sit on the couch in the living room.

By that time, the deputies realized they had made a mistake. They apologized and left within five minutes. They proceeded to the other house that the warrant authorized them to search, where they found three of their suspects. Those suspects were arrested and later convicted.

The residents of the first home that was searched filed a § 1983 suit and alleged that their Fourth Amendment rights were violated when the deputies obtained a warrant in “reckless fashion” and conducted an unreasonable search and detention.

The District Court held that the warrant was obtained by proper procedures, and the search was reasonable. However, the Ninth Circuit Court of Appeals reversed and held that a reasonable jury could conclude that the search and detention were “unnecessarily painful, degrading, or prolonged,” and involved an “undue invasion of privacy.”

On further appeal, the United States Supreme Court held that the Court of Appeals erred when it found that the deputies acted improperly by ordering the Caucasian, unclothed residents from their bed at gunpoint, though their valid warrant described African American suspects. The Supreme Court explained that the Fourth Amendment allows warrants to be issued upon a showing of probable cause, which is a standard well short of absolute certainty. The Court reasoned that valid warrants could be issued which would eventually affect the innocent, and the residents in this case unfortunately suffered the penalty. When the deputies ordered respon

dents from their bed, they had no way of knowing whether the African-American suspects were elsewhere in the house. The presence of some Caucasians in the residence did not eliminate the possibility that the suspects lived there as well. The Court held that the deputies, who were searching a house where they believed a suspect might be armed, possessed authority to secure the premises before deciding whether to continue with the search.

The Court further found that officers executing search warrants sometimes make mistakes. They could enter a house when innocent residents were engaged in private activity; and the resulting frustration, embarrassment, and humiliation could be real.

In the case before the Court, 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. The deputies needed a moment to secure the room and ensure that other persons were not close by or did not present a danger. Deputies were not required to turn their backs to allow the residents to retrieve clothing or to cover themselves with the sheets. Rather, the Court stated, "the risk of harm to both the police and the occupants is minimized if the officers routinely exercise unquestioned command of the situation."

However, the Court recognized that the deputies were not free to force the occupants to remain motionless and standing for any longer than necessary. Courts have recognized in the past that "special circumstances, or possibly a prolonged detention" might render a search unreasonable. However, there was no accusation that the detention here was prolonged. The deputies left the home less than 15 minutes after arriving.

Considering the totality of the circumstances before them, the Court held that the deputies did not violate anyone's constitutional rights. When officers execute a valid warrant and act in a reasonable manner to protect themselves from harm, the Fourth Amendment is not violated. Therefore, the Ninth Circuit's decision was reversed.

## Officer Not Liable for Defendant's Injuries

*Scott v. Harris, 2007 U.S. LEXIS 4748, Decided April 30, 2007*

Deputy Timothy Scott terminated a high-speed pursuit of suspect Harris's car by applying his push bumper to the rear of the vehicle, causing it to leave the road and crash. As a result of the wreck, Respondent Harris was rendered a quadriplegic. He filed suit under 42 U.S.C. § 1983 alleging that Deputy Scott used excessive force resulting in an unreasonable seizure under the Fourth Amendment.

The District Court denied Deputy Scott's summary judgment motion, which was based on qualified immunity. The Eleventh Circuit Court of Appeals affirmed on appeal, concluding that: 1) Scott's actions could constitute "deadly force" under Tennessee v. Garner, 471 U.S. 1, 105 S. Ct. 1694; 2) the use of such force in this context would violate respondent's constitutional right to be free from excessive force during a seizure; and 3) a reasonable jury could agree with the first two conclusions.

The United States Supreme Court reversed on appeal and held that: 1) the car chase that Harris initiated posed a substantial and immediate risk of serious physical injury to others; 2) Deputy Scott's attempt to terminate the chase by forcing respondent off the road was reasonable; and 3) Deputy Scott is entitled to summary judgment.

In deciding its ruling, the Court considered the following issues:

(a) Qualified immunity requires resolution of a "threshold question: Taken in the light most favorable to the party asserting the injury, do the facts alleged show the officer's conduct violated a constitutional right?"

(b) The record in this case included a videotape which captured the events in question and completely contradicted Harris's version of events. As a result, the Court found that no reasonable jury could believe Harris, and no court should adopt such a contradictory version of facts for purposes of ruling on a summary judgment motion.

(c) Viewing the facts in the light depicted by the videotape, the Court stated that it was clear that Deputy Scott did not violate the Fourth Amendment. The Court further reasoned that Tennesse v. Garner did not establish a "magical on/off switch" that triggers rigid preconditions whenever an officer's actions constitute "deadly force." The Court there simply applied the Fourth Amendment's "reasonableness" test to the use of a particular type of force in a particular situation. In other words, what matters is whether the officer's actions were reasonable.

(d) In determining a seizure's reasonableness, the Court balances the intrusion on the individual's Fourth Amendment interests against the importance of the governmental interests. In weighing the high likelihood of serious injury or death to Harris that Deputy Scott's actions posed versus the actual and imminent threat that Harris posed to the lives of others, the Court took into account the number of lives at risk and the relative culpability of the parties involved. Harris intentionally placed himself and the public in danger by unlawfully engaging in reckless, high-speed flight. However, those who might have been harmed, had Deputy Scott not forced Harris off the road, were entirely innocent.

As a result, the Court concluded that it was reasonable for Deputy Scott to take the action that he did. The Court rejected Harris's argument that safety could have been assured if the police had simply stopped their pursuit. The Court ruled 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.

**NOTICE**

The Legal Eagle is a news publication for law enforcement officers and is not designed to give legal advice. You should always contact your police legal advisor, municipal attorney, or district attorney concerning legal matters.

# Defendant Entitled to Have Mitigating Evidence Considered by Jury

*Scott v. Harris, 2007 U.S. LEXIS 4748, Decided April 30, 2007*

Petitioner Abdul-Kabir (fka Cole) was convicted of capital murder. At sentencing, the trial judge asked the jury to answer two special issues, (affirmative answers to the questions would require the judge to impose a death sentence): 1) whether Cole's conduct was committed deliberately and with the reasonable expectation it would result in his victim's death; and 2) whether it was probable he would commit future violent acts.

Cole's mitigating evidence included family members' testimony describing his unhappy childhood as well as expert testimony which, to some extent, contradicted the State's claim that he was dangerous. The defense experts primarily sought to reduce the defendant's moral culpability by explaining that his violent propensities were attributable to neurological damage and childhood neglect.

However, the prosecutor discouraged jurors from taking these latter considerations into account, advising them instead to answer the special issues based only on the facts and to disregard any other views as to what might constitute an appropriate punishment for this particular defendant. The trial judge refused to give Cole's requested jury instructions, which would have authorized a negative answer to either of the special issues on the basis of any mitigating evidence. After their deliberations, the jury answered both issues in the affirmative. As a result, Cole was sentenced to death.

The Texas Court of Criminal Appeals affirmed on direct appeal, and Cole eventually filed a federal habeas petition, asserting that his Constitutional rights had been adversely affected. Cole argued that because the sentencing jury was unable to consider and give effect to his mitigating evidence, the Constitution had been violated.

Specifically, Cole argued that, upon affirmative answers to both questions, the death sentence was imposed as mandatory. Furthermore, Cole asserted that limiting jury findings to only two issues unconstitutionally barred the jury from properly considering his mitigating evidence of a disturbed childhood and neurological damage.

The U.S. Supreme Court held that federal habeas corpus relief was warranted since there was a reasonable likelihood that the state trial court's instructions prevented jurors from giving meaningful consideration to constitutionally relevant mitigating evidence. Notwithstanding the severity of the defendant's crime or his potential to commit similar offenses in the future, the jury was entitled to give meaningful consideration and effect to all mitigating evidence that could provide a basis for refusing to impose the death penalty based on moral culpability.

As a result of their findings, the judgment affirming the denial of habeas corpus relief was reversed, and the case was remanded for further proceedings.