SUPREME COURT UPDATE

2012-2013 Term

IMPORTANT STUFF

- Any Case mentioned can be downloaded free in its entirety at:
  - www.supremecourt.gov
  - Look for Opinions

Statistical Review

Source: SCOTUSBLOG STAT PACK 6/27/13

- Stable court (no one arrived; no one left)
- 73 Cases with signed opinions
  - 49 cases decided by vote of 9-0
  - 23 cases decided by vote of 5-4
- 6 Summary reversals (without signed opinions)
- 72% of decisions reversed or vacated the lower court
- 9th Circuit – had 18% of cases before the Court, 86% of which were reversed

The REALLY hot cases

- *Shelby County v. Holder* – striking down §4(b) of the Voting Rights Act
- *U.S. v. Windsor* – striking down §3 of DOMA
- *Association for Molecular Pathology v. Myriad Genetics* – ability to patent an isolated gene sequence
- *Grutter v. Bollinger* – affirmative action in university admissions

WE ARE NOT DISCUSSING ANY OF THESE

INSTEAD…

- FOURTH AMENDMENT
  - Including some K-9 cases
- FIFTH AMENDMENT
- SIXTH AMENDMENT
- EMPLOYMENT LAW
- AND A FEW OTHERS…

FOURTH AMENDMENT

- *Florida v. Jardines*   3/26/2013
- *Florida v. Harris* 2/19/2013
- *Bailey v. U.S.* 2/19/2013
- *Missouri v. McNeely* 4/17/2013
- *Maryland v. King*   6/3/2013

K-9 – Florida v. Jardines

The Miami-Dade Police Department received an unverified tip that marijuana was being grown in Jardines' home. A month later, a surveillance team went to the home. After a fifteen minute surveillance that revealed no activity of any kind at the home, two police detectives (one a canine-handler accompanied by his canine) went up the driveway and along a path to the front porch. Upon nearing the porch, the canine began reacting to a scent, eventually sitting directly in front of the front door, indicating that was the point of the strongest odor detected. The detectives then left the area. One of the detectives used the dog's alert to file for a search warrant. Service of the warrant revealed marijuana plants.

Was the officers' behavior a search under the 4th Amendment?

Yes. According to the Supreme Court officers have the same right as others to approach the front porch of a person's home for the purpose of engaging them in conversation. However, that right does not extend to bringing in a trained police canine to search for incriminating evidence. This is consistent with the Kyllo (2001) thermal imaging case.

As it did last year in the *Jones* case (the case that made it clear that a warrant is necessary prior to placing a GPS device on a car), the Supreme Court again relied on a “property rights” test to determine that a search had occurred. The Court stressed that:

> *When the Government obtains information by physically intruding on persons, houses, papers, or effects, a search within the original meaning of the Fourth Amendment has undoubtedly occurred.*

To find a visitor knocking on the door is routine (even if sometimes unwelcome); to spot that same visitor exploring the front path with a metal detector, or marching his bloodhound into the garden before saying hello and asking permission, would inspire most of us to – well, call the police.

K-9 FLORIDA v. HARRIS

A vehicle driven by Harris was lawfully stopped on two different occasions by the same canine officer. During the first stop the canine alerted. When the officer searched the vehicle, nothing the dog was trained to alert on was present. The officer did discover several items used to make methamphetamine and Harris was charged with possessing pseudoephedrine for use in manufacturing meth. During the second stop of Harris, the dog again alerted to the presence of drugs but during this search nothing of interest was discovered.

At trial on the possession case and again on appeal following his conviction, Harris asked the trial court to suppress the evidence arguing that the canine was unreliable, based primarily on the dog's performance during these two stops.

When the case reached the Florida Supreme Court, Court held that in order to admit a canine alert, prosecutors would have to present a checklist of evidence, specifically including "comprehensive documentation of the dog's prior 'hits' and 'misses' in the field."

The United States Supreme Court reversed.

The Court repeated its long-standing test for the determination of probable cause – **"totality of the circumstances"** – and stated that records of a dog's performance in controlled training is a better indicator of reliability. Evidence of a dog's satisfactory performance in a certification or training program can be sufficient to establish the reliability of the dog's alert.

At the same time, the Court also held a defendant must have a chance to challenge the dog's reliability by challenging the records and cross-examination of the handler. This may require maintaining records.

BAILEY v. U.S.

Detectives watching a basement apartment prior to the service of a search warrant saw two men leave the apartment, get in a car and leave the area. Detectives followed the car for five minutes, stopping the vehicle a mile from the apartment. The occupants, Bailey and Middleton, were frisked. Detectives found keys on Bailey, who admitted to living in the apartment. At trial, the fact that Bailey's key fit the lock at the apartment and his initial admission to living there were both admitted as evidence that he was the possessor of the contraband found at the apartment.

On appeal, Bailey argued the detention was not allowed incident to the service of a search warrant, as it was too far from the premises being searched.

Holding – the rule allowing the detention of occupants while a warrant is being executed is ***limited to those persons in the immediate vicinity of the premises to be searched, and listed the following factors to consider***:

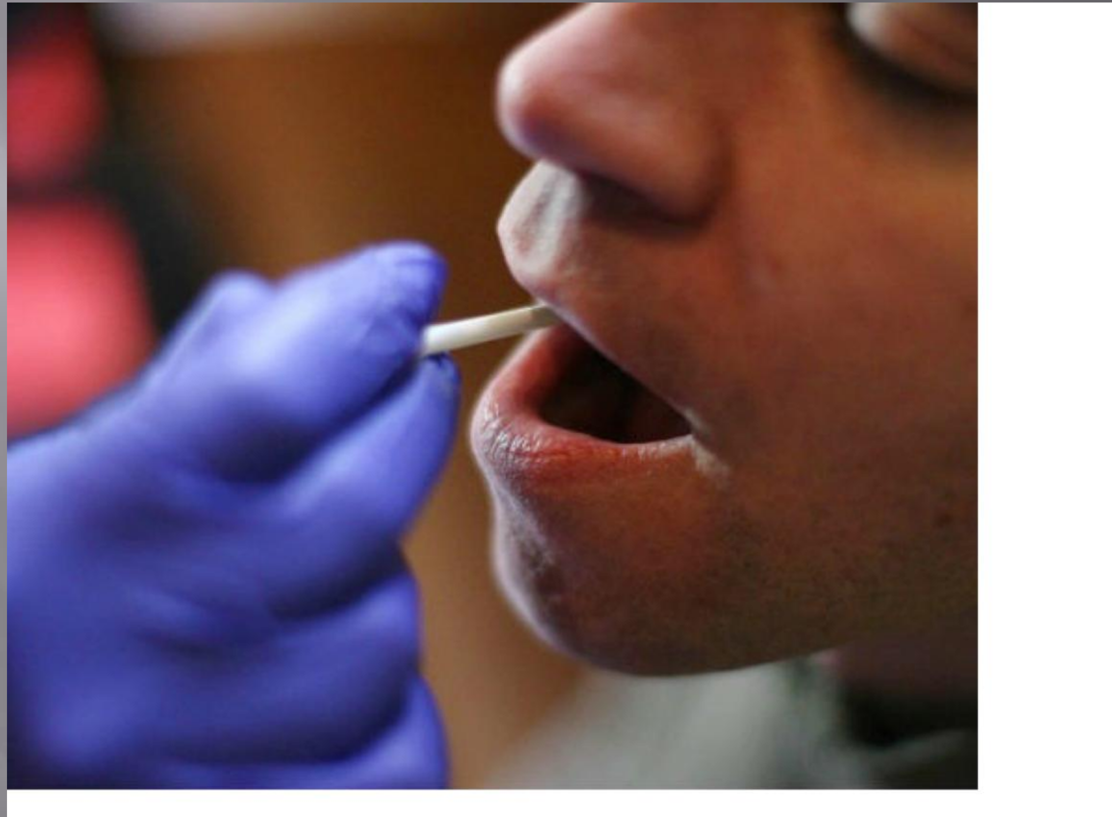
- Proximity to the boundary of the property,
- whether the occupant was within line of sight of his dwelling,
- the ease of re-entry from the occupant's location,
- other relevant factors.

MISSOURI v. McNEELY

McNeeley was stopped by an officer for speeding and repeatedly crossing the centerline. He displayed signs and symptoms of intoxication and performed poorly on field sobriety tests. He then declined the officer's request to use a breath-testing device. The officer transported McNeeley to the local hospital, read him implied consent, and asked if he would consent to a blood draw. He again refused. At that time the officer directed a hospital lab technician to take a blood sample. No warrant was ever requested.

Fourth Amendment violation?

Yes. Compliance with the Fourth Amendment requires either a warrant, exigent circumstances or consent. The Court held that there was neither a warrant nor consent and further found that the fact that alcohol dissipates over time in a person's blood does not in itself establish exigent circumstances.



MARYLAND v. KING

Mr. King was charged with first and second-degree assault. Pursuant to Maryland's DNA Collection Act, a DNA sample was taken at the time of his arrest. The sample was submitted to the Combined DNA Index System (CODIS) for a comparison to other unknown samples on file.

The sample was matched to an unsolved rape case, for which King was subsequently prosecuted. After conviction, King appealed, arguing the statute that required the DNA sample authorized an unlawful seizure and therefore violated the Fourth Amendment.

- The U.S. Supreme Court upheld the Maryland statutory requirement regarding the collection of DNA, describing it as a "reasonable search that can be considered part of a routine booking procedure," just like fingerprinting and photographing.
- Please note that the Maryland statute has built-in safeguards that may or may not be an essential part of the Court's decision. Careful comparison of your state statute to the one involved in this case should be made prior to relying on the case as complete protection for your state law.

FIFTH AMENDMENT

- SALINAS V. TEXAS 6/17/2013
  - Consensual, non-custodial, non-Miranda interview at Police Station in a murder case
  - Suspect answered questions until a key question was asked
  - He responded with silence
  - After key question, he again answered other questions
  - After interview, he was arrested for traffic warrants
  - Released shortly thereafter

Salinas

- After his release, a witness came forward and Salinas was arrested & convicted
- His silence to the incriminating question was used in the prosecution's case-in-chief
- Salinas claimed violation of his 5th Amendment right against self-incrimination
- SCt ruled must invoke privilege at time unless it meets exceptions of testifying at trial or coercive government conduct.
- The exceptions were not present here.

SIXTH AMENDMENT

- ***Alleyne v. U.S*** **6/17/13**
- ***U.S. v. KEBODEAUX*** **6/24/13**

Alleyne v. U.S

Reconciling

floors (minimum sentences)

and

ceilings (maximum sentences)?

SENTENCING DETERMINATIONS

Apprendi v. New Jersey (SCOTUS 2000):

- Defendant has the right under the 6th Amendment to a **jury** finding- using the beyond a reasonable doubt standard - of all facts that could enhance a statutory **maximum** sentence.

Harris v. U. S. (SCOTUS 2002):

- Defendant does not have the right to a jury finding on facts that trigger mandatory **minimums – judges** may determine those facts using a preponderance of the evidence standard.

UNTIL NOW.
IN *ALLEYNE*, THE COURT:

- Reverses the *Harris* decision
- Holds that the 6th amendment requires a **jury** to find beyond a reasonable doubt all facts that fix the penalty range of a crime, whether underlying the mandatory minimum or the statutory maximum.

U.S. v. KEBODEAUX

The two questions in Kevodeaux were:

- Whether the Necessary and Proper Clause granted Congress the authority to enact the Sex Offender Registration and Notification Act (SORNA)
- Whether it could be applied to Kevodeaux, whose sentence was completed before the Act's enactment.

Answers:

- Yes, SORNA is a proper exercise of the Necessary and Proper Clause and
- Yes, primarily because the offender in this case was already subject to another federal statute that mandated registration, his remaining subject to this statute was permitted.

EMPLOYMENT LAW
Vance v. Ball State U. 6/24/2013

- Who is a supervisor in workplace?
- Why is it important?

Vance

- Two standards under Title VII regarding workplace harassment
  - Negligence standard applied to coworker on coworker harassment
  - Strict Liability standard applies to supervisor on coworker harassment
- Supervisor standard applies when the worker has authority to take a tangible employment action against another worker

Vance

- Tangible Employment Action
  - Hire
  - Fire
  - Suspend
  - Power to promote/demote
  - Reassign with significantly different job duties
  - Decision causing a significant change in benefits

- NOT ANY "SUPERVISOR" AS TERM COMMONLY UNDERSTOOD

Other Cases of Interest

- *Millbrook v. U.S. 3/27/2013*– The Federal Tort Claims Act allows tort claims against federal law enforcement officers "while acting within the scope of their employment." It is NOT limited to injuries committed by law enforcement officers when they are "executing a search, seizing evidence or making arrests for violations of federal law."

- This determination should result in more tort cases against federal law enforcement officials to proceed, in those Circuits where the narrower definition had previously applied.

McQuiggin v. Perkins *5/28/2013*

- A procedural case that for the truly innocent, there is good and bad news

- The good news: Actual innocence remains a path to circumvent the AEDPA statute of limitations and other procedural habeas obstacles. However, the Court holds, an unjustifiable delay by the habeas petitioner may bear on the strength of his showing of actual innocence.

- The bad news: The Court upheld the concept but made it clear that it agreed with the District Court's conclusion that Mr. Perkins had not made a showing of actual innocence sufficient to get past the limitations bar.

Preview of coming attractions

Fernandez v. California

- Whether, under Georgia v. Randolph, a defendant must be personally present and objecting when police officers ask a co-tenant for consent to conduct a warrantless search or whether a defendant's previously stated objection, while physically present, to a warrantless search is a continuing assertion of Fourth Amendment rights which cannot be overridden by a co-tenant.

McCullen v. Coakley

- (1) Whether the First Circuit erred in upholding Massachusetts's selective exclusion law – which makes it a crime for speakers other than clinic "employees or agents . . . acting within the scope of their employment" to "enter or remain on a public way or sidewalk" within thirty-five feet of an entrance, exit, or driveway of "a reproductive health care facility" – under the First and Fourteenth Amendments, on its face and as applied to petitioners; (2) whether, if *Hill v. Colorado* permits enforcement of this law, *Hill* should be limited or overruled.

Navarette v. California

- Does the Fourth Amendment require an officer who receives an anonymous tip regarding a drunken or reckless driver to corroborate dangerous driving before stopping the vehicle?

REMEMBER
Keep Smiling to show you still enjoy the job

Questions??

PRESENTED BY:

Chief David J. Spotts, Esq.
Mechanicsburg Police Department
36 West Allen St.
Mechanicsburg, PA 17055
Phone: (717) 691-3300
dspotts@mechanicsburgpolice.org

Preparation assistance by:
Bev. Ginn
Edwards & Ginn, P.C.
520.444.4469
bevginn@gmail.com