U.S. SUPREME COURT

2009 Term – Case Update

International Association of Chiefs of Police
Legal Officers' Section

Presented by Karen J. Kruger
Funk & Bolton, P.A.
Baltimore, Maryland

FUNK & BOLTON
ATTORNEYS AT LAW

Michigan v. Fisher, 130 S. Ct. 546 (Dec. 2, 2009)

- Search and seizure inside a home without a warrant is "presumptively unreasonable."

- However, in this case, the Court upheld a warrantless entry into a private residence under the "emergency aid exception" based on the specific facts.

Holding

- “Exigencies of a situation [may] make the needs of law enforcement so compelling that the warrantless search is objectively reasonable.”
- One such circumstance is to assist injured persons or protect occupants from immediate threat of harm.

Standard

- Police officers “do not need ironclad proof of ‘a likely serious, life-threatening’ injury to invoke the emergency aid exception.”
- Do need an objectively reasonable basis believing that a person in the house is in need of immediate aid.

City of Ontario v. Quon, 130 S. Ct. 2619 (June 17, 2010)

- Supreme Court held that a police department's review of text messages sent and received on an officer's department-owned-and-issued alphanumeric pager did not violate the Fourth Amendment's prohibition against unlawful search and seizure.
- Search was reasonable for audit purposes.

Holding

- “Government searches to retrieve work-related materials or to investigate violations of workplace rules-related searches of the sort that are regarded as reasonable and normal in the private-employer context do not violate the Fourth Amendment.”
- Employee’s reasonable expectation of privacy based on objective, not subjective criteria.

Florida v. Powell, 130 S. Ct. 1195 (Feb. 23, 2010)

- "You have the right to talk to a lawyer before answering any of our questions" and "[y]ou have the right to use any of these rights at any time you want during this interview."
- Powell confessed to owning a handgun; he was convicted of possession of a firearm by a convicted felon.

Holding

- *Miranda* warnings must reasonably convey to the suspect what his rights are – no prescribed form.
- The Court likes the standard FBI language.

Maryland v. Shatzer, 130 S. Ct. 1213 (Feb. 24, 2010)

- When a suspect asserts his *Miranda* right to counsel during custodial interrogation, police questioning must stop until counsel is obtained.
- Here, Supreme Court ruled that this protection, established in *Edwards v. Arizona*, ceases after the suspect has been released from custody for a minimum of 14-days. At this point, the police are no longer constrained by *Edwards* and they may approach the suspect anew for purposes of interrogation.

Incarcerated Suspects

- The Court also held that, in a case in which the interrogated suspect is incarcerated on unrelated charges, his return to the general prison population after invoking his right to counsel qualifies as a break in his *Miranda/Edwards* custody.

Wilkins v. Gaddy, 130 S. Ct. 1175 (Feb. 24, 2010)

- Excessive force claims are based on nature of force used, not necessarily degree of injury.
- Evidence of excessive injury is not an essential element of use of force claim.
- Force resulting in *de minimus* injury may not prevail but dismissal of claim not appropriate until after examination of use of force.

Berghuis v. Thompkins, 130 S. Ct. 2250 (June 1, 2010)

- Does prolonged silence during a post-*Miranda* interview constitute the invocation of the 5th amendment right to silence?
- Suspect was mostly silent during 3 hour interrogation, but answered "yes" when police asked if he "prayed to God to forgive him for the shooting."
- Moved to suppress statement at trial.

Holding

- Suspect must unambiguously assert 5th amendment right to remain silent to be effective; mere silence, even protracted, is not sufficient to invoke the protection.
- This brings right to silence in line with the 6th amendment right to counsel, which the court previously has held must be clearly and affirmatively invoked.

Implications

- The court also reiterated that a *Miranda* waiver may be implied by the suspect's words and actions.
- Here, the suspect offered some limited verbal responses, such as "yeah," or "no," or "I don't know," and never said that he wished to remain silent or did not want to talk to the police.
- Police do not have to guess whether or not suspect is asserting rights.

Cases to Watch

2010 Term

Cases Recently Argued

- *Michigan v. Bryant* – Confrontation clause challenge to admission of incriminating out of court statements made by gunshot victim who later died. (Argued: 10/5)
- *NASA v. Nelson*: Claim that pre-employment background check questions violated constitutional right to privacy. (Argued: 10/5)

Cases Recently Argued

- *Los Angeles Co. v. Humphries* – Burden of proving that a constitutional *Monell* violation actually resulted from public entity's policy, custom or practice. (Argued: 10/5)
- *Connick v. Thompson* – Whether failure of D.A.'s office to train about *Brady* obligations shows "deliberate indifference" where only 1 case was affected. (Argued: 10/6)

Cases in Which Argument is Not Yet Scheduled

- *Kentucky v. King* – Is warrantless entry impermissible when police "created" the exigent circumstances?
- *Bullcoming v. New Mexico* – Confrontation clause challenge to admission of testimony of crime lab supervisor about test that he did not conduct.