An Overview of the Supreme Court's Search and Seizure Decisions from the October 2005 Term

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Summary

The Fourth Amendment to the United States Constitution provides that "[t]he right of the people to be secure in their person, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." The Supreme Court has interpreted this language as imposing a presumptive warrant requirement on all searches and seizures predicated on governmental authority.

However, the Court has carved out exceptions to the warrant requirement when obtaining such would be impractical or unnecessary. In crafting these exceptions, the Court has analyzed the "reasonableness" of the circumstances that gave rise to the warrantless search. During the October 2005 term, the Court addressed the "reasonableness" of such warrantless searches based on third-party consent, exigent circumstances, and parolee status. In *Georgia v. Randolph* (126 S.Ct. 1515 [2006]), the Court held that the warrantless search of a defendant's residence based on his wife's consent to the police was unreasonable and invalid as to the defendant, who was physically present and expressly refused to consent. The Court clarified the appropriate Fourth Amendment standard governing warrantless entry by law enforcement in an emergency situation in *Brigham City Utah v. Stuart* (126 S.Ct. 1943 [2006]), holding that the police officers may enter a home without a warrant when there exists an objectively reasonable basis for believing that an occupant is seriously injured or imminently threatened with such injury. Also, in *Samson v. California* (126 S.Ct. 2193 [2006]), the Court ruled that the a parolee's reduced expectation of privacy fails to outweigh the State's interests in protecting the community.

In addition, the Court resolved two fundamental issues concerning the lawfulness of searches pursuant to anticipatory search warrants. In *United States v. Grubbs* (126 S.Ct. 1494 [2006]), the Court found that such warrants do not categorically violate the Fourth Amendment. Also, the Court held that an anticipatory search warrant authorizing the search of the defendant's residence on the occurrence of a condition precedent stated in an affidavit but not in the warrant itself was proper and supported by probable cause. This report summarizes the Court's decisions addressing these issues and will not be updated.

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The Fourth Amendment to the U.S. Constitution governs all searches and seizures conducted by government agents.[1] The Amendment contains two separate clauses: a prohibition against unreasonable searches and seizures, and a requirement that probable cause support each warrant issued. The issue of "reasonableness" is generally determined by a balancing test that weighs the degree to which the search intrudes on an individual's legitimate expectation of privacy and the degree to which it is needed for the promotion of legitimate governmental interests, such as crime prevention. In *United States v. Katz*,[2] the U.S. Supreme Court adopted a two-part test to determine whether a person's expectation of privacy is legitimate. First, the court will determine whether the individual has an actual subjective expectation of privacy.[3] Second, society must be prepared to recognize that expectation as objectively reasonable.[4] The Court has found warrantless searches to be "reasonable" under some circumstances, including those in which consent was given[5] and in which exigent circumstances existed.[6] During the October 2005 term, the Court addressed some of the lingering questions regarding the "reasonableness" of warrantless searches. In *Georgia v. Randolph*,[7] the Court held that the warrantless search of a defendant's residence based on his wife's consent to the police was unreasonable and invalid as to the defendant, who was physically present and expressly refused to consent. In *Brigham City Utah v. Stuart*,[8] the Court clarified the appropriate Fourth Amendment standard governing warrantless entry by law enforcement in an emergency situation by holding that police officers may enter a home without a warrant when they have an objectively reasonable basis for believing that an occupant is seriously injured or imminently threatened with such an injury. In *Samson v. California*,[9] the Court found that a parolee has a reduced expectation of privacy, which fails to outweigh the State's interests in protecting the community. Finally, in *United States v. Grubbs*,[10] the Court addressed the issue of anticipatory search warrants when it found that an anticipatory search warrant authorizing the search of the defendant's residence on

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[1] The Fourth Amendment states:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The Fourth Amendment is applicable to state officials through the Due Process Clause of the Fourteenth Amendment. See Wolf v. Colo., 338 U.S. 25, 27-28 (1949), *overruled on other grounds* by Mapp v. Ohio, 367 U.S. 643 (1961).

[2] 389 U.S. 347, 361 (1967).

[3] *Id. See also, Rawlings v. Kentucky*, 448 U.S.98, 105-06 (1980)(finding there was no subjective expectation of privacy in another's purse despite ownership of drugs in the purse because the suspect had only known the purse's owner a few days, did not previously seek access to the purse, and did not take precautions to maintain privacy expectation in the purse).

[4] 389 U.S. at 361. *See also, Hudson v. Palmer*, 468 U.S. 517, 526 (1984)(finding no objective expectation of privacy for inmates in their prison cells).

[5] *See United States v. Matlock*, 415 U.S. 164, 177 (1974)(finding voluntary consent to search given by co-occupant of bedroom sufficient to admit evidence seized without a warrant); *see also Frazier v. Cupp*, 394 U.S. 731, 740 (1969)(finding voluntary consent to search given by joint owner of duffel bag sufficient to admit evidence seized from bag).

[6] *See Warden v. Hayden*, 387 U.S. 294, 298-99 (1957)(finding exigent circumstance justified warrantless search of a house to search for armed robbery suspect and weapons because a delay would endanger the lives of officers and citizens).

[7] 126 S.Ct. 1515 (2006).

[8] 126 S.Ct. 1943 (2006).

[9] 126 S.Ct. 2193 (2006).

[10] 126 S.Ct. 1494 (2006).

the basis of an affidavit stating that the warrant would be executed upon delivery of a videotape containing child pornography was supported by probable cause.

Consent Searches

In *Katz v. United States*,[11] the Supreme Court stated that warrantless searches "are per se unreasonable under the Fourth Amendment subject only to a few specifically established and well-delineated exceptions."[12] One of these exceptions occurs when police obtain voluntary consent of an occupant who shares, or is reasonably believed to share, authority over an area. Generally, anyone who has a reasonable expectation of privacy in the place being searched can consent to a warrantless search, and any person with common authority over, or other sufficient relationship to, the place or effects being searched can give valid consent.[13] The Court has concluded that an individual "assumes a risk" when he or she shares authority over an area.[14] In both *United States v. Matlock*[15] and *Illinois v. Rodriguez*,[16] the Court ruled that consent by co-occupants eliminated subsequent Fourth Amendment objections to the admission of seized evidence by an occupant who was not immediately present and therefore did not object at the time to the search. In assessing the "reasonableness" of such searches, the Court looked to the widely shared social expectations, which are generally influenced by property law. However, in *Georgia v. Randolph*,[17] the Supreme Court found such a search unreasonable as it applies to a physically present occupant who expressly objects to the search.

After a domestic dispute, the wife complained to the police that her husband took their son away. When police arrived at the house, she told them that her husband was a cocaine user and there was drug evidence in the home. One officer asked the defendant for permission to search the house, which the defendant expressly refused. That officer then went to the wife for consent to search, which she readily gave. The wife led the officer to an upstairs bedroom, where the officer noticed a drinking straw with a powdery residue, which ultimately proved to be cocaine. The police took the straw to the police station, along with the couple. After getting a search warrant, the police returned to the house and seized further evidence of drug use, which was used to indict the defendant for possession of cocaine.

The defendant moved to suppress the evidence as the product of a warrantless search of his house, unauthorized by his wife's consent over his expressed refusal. The trial court denied the motion, ruling that his wife had common authority to consent to the search as established in *Matlock*. The Georgia appellate court reversed,[18] and the Georgia Supreme Court affirmed, finding that the consent was invalid because, at the time of the warrantless search the defendant

[11] 389 U.S. 347 (1967).

[12] *Id.* at 357.

[13] See *U.S. v. Matlock*, 415 U.S. 164, 169-171 (1974)(establishing that "the voluntary consent of any joint occupant of a residence to search the premises jointly occupied is valid against the co-occupant, permitting evidence discovered in the search to be used against him at a criminal trial."); *see also Illinois v. Rodriguez*, 497 U.S. 177, 186 (1970).

[14] *Id.*

[15] 415 U.S. 164-169-171.

[16] 497 U.S. 177, 186.

[17] 126 S. Ct. 1515 (2006).

[18] 264 Ga. App. 396, 590 S.E.2d 834 (2003).

was physically present and had clearly refused to consent to the search.[19] The U.S. Supreme Court decided to take the case to resolve a split of authority on whether one occupant may give law enforcement effective consent to search shared premises, as against a co-tenant who is present, but refuses to permit the search.

In its 5-3 decision, written by Justice Souter, the Court held that the warrantless search of a defendant's residence based on his wife's consent to the police was unreasonable as to a physically present defendant who expressly refused to consent. The Court built on its previous decision in *Minnesota v. Olson*,[20] wherein it found that overnight houseguests have a legitimate expectation of privacy in their temporary quarters. The Court concluded that if, as was found in *Olson*, the "customary expectation of courtesy or deference is a foundation of Fourth Amendment rights of a houseguest," it should follow that a co-inhabitant should have even a stronger claim.[21] The Court found that there is no societal or common understanding that one co-tenant generally has a right or authority to prevail over the express wishes of another.

In reaching its decision, the Court noted that there were alternatives available to bring the criminal activity to light. For example, the co-tenant could bring evidence to the police on her own initiative. Or, exigent circumstances could justify immediate action on the police's part, if the objecting tenant cannot be incapacitated from destroying easily disposable evidence during the time required to get a warrant.

The majority distinguished *Randolph* from *Matlock/Rodriguez* based on the fact that in *Randolph* the defendant expressly denied consent to search, whereas in *Matlock/Rodriguez* the defendants were silent. The Court stated: "In sum, there is no common understanding that one co-tenant generally has a right or authority to prevail over the express wishes of another, whether the issue is the color of the curtains or invitations to outsiders."[22] The Court acknowledged that the line drawn between *Matlock* and *Illinois v. Rodriguez*, where the defendants in both cases were nearby but simply not asked for their permission, and *Randolph* was a fine one. Nevertheless, the Court refused to require police who have obtained consent from one resident to take "affirmative steps" to find out whether another resident objects. Instead, the Court adopted a simpler rule that "a physically present inhabitant's express refusal of consent to a police search is dispositive as to him, regardless of the consent of a fellow occupant."[23]

In a dissenting opinion, Chief Justice Roberts, joined by Justice Scalia, criticized the Court's reliance on its understanding of social expectations and argued that a straightforward application of *Matlock's* "assumption-of-the-risk" principle should allow police to rely on one resident's consent over another resident's objection. The dissenters argued that the majority ruling "provides protection on a random and happenstance basis," which may protect the occupant at the door, but not one "napping or watching television in the next room."[24]

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[19] 278 Ga 614, 604 S.E.3d 835 (2004).

[20] 495 U.S. 91,99 (1990)(holding that overnight houseguests have a legitimate expectation of privacy in their temporary quarters because "it is unlikely that the host will admit someone who wants to see or meet with the guest over the objection of the guest").

[21] 126 S.Ct. at 1522.

[22] *Id.* at 1523.

[23] *Id.* at 1528.

[24] *Id.* at 1531.

Exigent Circumstances

It is a general rule that searches and seizures inside a home without a warrant are presumptively unreasonable for Fourth Amendment purposes. However, this search warrant requirement is subject to certain exceptions, such as in cases where the exigencies of the situation make the needs of the law enforcement so compelling that a warrantless search is objectively reasonable under the Fourth Amendment. The Supreme Court addressed such a circumstance in *Brigham City v. Stuart*[25] where, in reversing the Utah Supreme Court's decision, the Court held that police may enter a home without a warrant when they have an objectively reasonable basis for believing that an occupant is seriously injured or imminently threatened with such injury.[26]

This case arose when police officers responded to a call regarding a loud party at a residence. Upon arriving on the scene, the officers observed two juveniles drinking beer in the backyard.[27] They entered the backyard, looked into the window and saw an altercation taking place in the kitchen. The officers testified that they saw four adults attempting to restrain a juvenile, and that the juvenile struck one of the adults, who was then spitting blood. The officers announced their presence and the altercation ceased. The officers subsequently arrested each of the adults for contributing to the delinquency of a minor, disorderly conduct, and intoxication. The adults argued that the warrantless entry violated the Fourth Amendment, and the Utah courts agreed.[28]

Writing for a unanimous Court, Chief Justice Roberts noted that one exigency obviating the warrant requirement is the need to assist individuals who are seriously injured or threatened with such injury.[29] The petitioners did not take issue with this principle, but instead advanced two reasons why the officers' entry was unreasonable. First, they argued that the officers were more interested in making arrests than quelling violence. The Court noted that the officers' subjective motivation was irrelevant.[30] Relying on the Court's previous ruling in *Welsh v. Wisconsin*,[31] the petitioners further contended that their conduct was not serious enough to justify the warrantless intrusion. Distinguishing the facts in *Welsh*, the Court responded that the officers were confronted by ongoing violence occurring within the home, as opposed to a mere potential emergency, such as the need to preserve evidence.

The Court concluded that the officers' entry to the home was reasonable under the totality of the circumstances.[32] Given the tumult at the house upon their arrival, it was obvious that a knock on

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[25] 122 P.3d 506 (Utah 2005).

[26] 126 S.Ct. 1943 (2006).

[27] *Id.* at 1946.

[28] The lower court held that the injury caused by the juvenile's punch was insufficient to trigger the "exigent circumstances" doctrine because it did not give rise to an "objectively reasonable belief that an unconscious, semi-conscious, or missing person feared injured or dead [was] in the home." 122 P.3d at 513.

[29] 126 S. Ct. at 1947.

[30] *Id.* at 1948 (stating that "an action is 'reasonable' under the Fourth Amendment regardless of the individual officer's state of mind, 'as long as the circumstances, viewed objectively, justify [the] action"). *See Bond v. United States*, 529 U.S. 334, 338, n.2 (stating that "the parties properly agree that the subjective intent of the law enforcement officer is irrelevant in determining whether that officer's actions violate the Fourth Amendment...; the issue is not his state of mind, but the objective effect of his actions").

[31] 466 U.S. 740, 753 (1984)(holding that "an important factor to be considered when determining whether any exigency exists is the gravity of the underlying offense for which the arrest is being made").

[32] 126 S. Ct. at 1949.

the front door would have been futile. Moreover, in light of the chaos they observed in the kitchen, the officers had an objectively reasonable basis for believing both that the injured adult might need help and that the violence could escalate. The Court concluded that "nothing in the Fourth Amendment required the officers to wait until the altercation escalated to the point that another blow rendered someone unconscious, semiconscious, or worse before entering."[33] The Court also found that the officers' manner of entry was also reasonable. Since the first announcement of their presence went unheard and it was only after the announcing officer stepped into the kitchen and announced himself again that the tumult subsided, that announcement was at least equivalent to a knock on the screen door.[34] Furthermore, the Court concluded that once the announcement was made, the officers were free to enter. The Court noted that it would serve no purpose to make the officers stand dumbly at the door awaiting a response while those within fought on, oblivious to the officers' presence.

Parolee Status

The question of whether a search is "reasonable" under the Fourth Amendment is generally determined by a balancing test that weighs the degree to which the search intrudes on an individual's privacy against the degree to which it is needed for the promotion of legitimate governmental interests. In *United States v. Knights*,[35] the Court upheld a warrantless search of a probationer based on reasonable suspicion and his probationary status. In doing so, the Court noted that probationers have a diminished expectation of privacy, given that probation is on the continuum of punishments ranging from solitary prison confinement to community service.[36] Utilizing a balancing test, the Court found that probation searches were necessary to promote legitimate governmental interests of integrating probationers back into the community, combating recidivism, and protecting potential victims, thus outweighing the privacy interests of the probationer. However, the Court's decision in *Knights* did not address the reasonableness of a search solely predicated on the probation condition regardless of reasonable suspicion.[37]

In *Samson v. California*,[38] the defendant was stopped by a police officer while walking down the street. The officer conducted a search solely on the basis of his status as a parolee, which the officer knew.[39] The search subsequently uncovered a bag of methamphetamines, and the defendant was charged with possession. At trial, the defendant moved to suppress the evidence, arguing that the search violated the Fourth Amendment. The motion was denied. The California Court of Appeals affirmed, finding that suspicionless searches of parolees are permitted under California law and "reasonable" within the meaning of the Fourth Amendment.[40]

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[33] *Id.* at 1949.

[34] In addition, the Court found that there was no violation of the "knock-and-announce" rule.

[35] 534 U.S. 112 (2005).

[36] *Id* at 118-19.

[37] *Id.* at 120, n.6 (stating that "we do not decide whether the probation condition so diminished, or completely eliminated, Knights' reasonable expectation of privacy ... that a search by a law enforcement officer without any individual suspicion would have satisfied the reasonableness requirement of the Fourth Amendment").

[38] 126 S.Ct. 2193.

[39] California law provides that every prisoner eligible for release on state parole "shall agree in writing to be subject to search or seizure by a parole officer or other peace officer at any time of the day or night, with or without a search warrant and with or without cause." Cal. Penal Code Ann. § 3067(a).

[40] 2004 WL 2307111 (Ct.App.Cal., 1st App. Dist., Oct. 14, 2004) No. A102394.

In a 6-3 decision, written by Justice Thomas, the Court in examining the totality of the circumstances found that the parolee did not have an expectation of privacy "that society would recognize as legitimate"[41] because on the continuum of punishments, parole is closer to prison that probation. The Court noted that a parolee remains in the legal custody of the Department of Corrections through the remainder of his parole term. Moreover, the parolee signed an order submitting to the condition. Further, the Court found that the State's interest in reducing recidivism is substantial and warrants privacy intrusions not otherwise tolerated.[42] The Court noted that requiring individualized suspicion would undermine the State's ability to effectively supervise parolees.[43]

Justice Stevens, joined by Justices Souter and Breyer, dissented, arguing that the Fourth Amendment provides at least some protection to parolees and, therefore, suspicionless searches by police with no special relationship to the parolee cannot be considered "reasonable."[44] The dissenters argued that this is the first time the Court has ever found a search reasonable in the absence of either individualized suspicion or "special needs."[45] Further, the dissenters contended that the majority's near-equating of parolees to prisoners was unsupported by precedent. In addition, the dissenters felt that a "special needs" search by parole officers, who have a close relationship to a parolee, might be acceptable, but a blanket authorization allowing a parolee to be searched by any police officer is not.[46] Moreover, the dissenters were concerned that there are no procedural protections in California law to ensure that such searches were performed evenhandedly.[47]

Anticipatory Warrants

Probable cause is required to justify certain governmental intrusions upon interests protected by the Fourth Amendment.[48] Generally, probable cause is defined as "a fair probability that contraband or evidence of a crime will be found in a particular place."[49] To satisfy the warrant requirement, an impartial judicial officer must assess whether the police have probable cause to make an arrest, to conduct a search, or to seize evidence, instrumentalities, fruits of a crime, or contraband.[50] Generally, the magistrate must consider the facts and circumstances presented in the

[41] 126 S.Ct. at 2199.

[42] Id. at 2200-01.

[43] *Id.* at 2200.

[44] *Id.* at 2202.

[45] In limited situations, the Supreme Court has held that the government's "special needs" may permit it to dispense with the warrant and probable cause requirements for certain searches. Searches of individuals subject to government control or supervision have been upheld as special needs searches. In *Griffin v. Wisconsin*, 483 U.S. 868, 872-73 (1987), the Court upheld a warrantless search of a probationer's home conducted pursuant to state regulation. The Court found the warrantless search appropriate because probations have a diminished privacy interest due to the ongoing supervisory relationship between the State and the individual that is outweighed by the State's interest in adequate supervision.

[46] *Id.*

[47] *Id.* at 2204.

[48] See *Ornelas v. U.S.*, 517 U.S. 690, 695 (1996).

[49] See *Illinois v. Gates*, 462 U.S. 213, 28 (1983).

[50] See *Warden v. Hayden*, 387 U.S. 294, 301-02 (1967).

warrant application, including the supporting affidavit,[51] in a practical, common-sense manner, and make an independent assessment regarding probable cause.[52]

Moreover, the Fourth Amendment requires that a warrant describe with "particularity ... the place to be searched and the persons or things to be seized."[53] This limitation safeguards the individual's privacy interest against "the wide-ranging exploratory searches the Framers [of the Constitution] intended to prohibit."[54] In *United States v. Grubbs*, the Court found that an anticipatory warrant[55] satisfied the Fourth Amendment's probable cause requirement so long as there is a fair probability that the condition precedent to execution will occur and that, once it has, evidence of a crime will be found. In addition, the Court held that the particularity requirement in the Fourth Amendment does not require that the warrant itself state the condition precedent.

The defendant purchased a videotape containing child pornography from a website operated by U.S. postal inspectors. The inspectors arranged a controlled delivery of the tape and obtained a search warrant for the defendant's home to be executed once the tape was "physically taken into the residence." The warrant itself did not contain the "triggering condition," though it was stated in an unincorporated affidavit. After the package was delivered, the inspectors executed the warrant and seized the evidence. Although they provided the defendant with a copy of the warrant, the inspectors did not give him a copy of the supporting affidavit. The U.S. Court of Appeals for the Ninth Circuit held that the fruits of the search had to be suppressed, concluding that the warrant was invalid because it failed to state the triggering condition.[56]

In an 8-0 decision, written by Justice Scalia, the Court held that the warrant was supported by probable clause and met the Fourth Amendment's requirement of particularity. Before addressing the merits of the appellate court's holding, the Court declared that anticipatory search warrants are constitutional. The Court reasoned that there is no difference between anticipatory warrants and ordinary warrants, as both require a magistrate to determine that it is now probable that contraband, evidence of a crime, or a fugitive will be on the described premises when the warrant is executed. When the anticipatory warrant places a condition (other than the mere passage of time) on its execution, the first of these determinations goes not merely to what will be found if the condition is met, but also to the likelihood that the condition will be met, and thus a proper object of seizure will be on the premises described. The Court reasoned that the occurrence of the triggering condition—successful delivery of the videotape—would plainly establish probable cause for the search. Moreover, the affidavit established probable cause to believe the triggering condition would be satisfied.

The Court also found that the warrant at issue did not violate the Fourth Amendment's particularity requirement because the Fourth Amendment requires that the warrant particularly

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[51] A sworn affidavit, usually completed by an investigating police officer, must establish grounds for issuance of a search or arrest warrant. See Fed. R. Crim P. 41(d).

[52] See *Aguilar v. Texas*, 378 U.S. 108, 109, 111-13 (1964)(finding that the magistrate could not make an independent assessment of probable cause when officers stated only that they "received reliable information from a credible person and do believe" narcotics are stored in the defendant's home), overruled on other grounds by *Illinois v. Gates*, 462 U.S. 213 (1983).

[53] U.S. Const. Amend. IV.

[54] *Maryland v. Garrison*, 480 U.S. 79, 84 (1987).

[55] Anticipatory warrants are issued in advance of the "triggering condition."

[56] 377 F.3d 1072, 1077-78 amended, 389 F.3d 130-6 (C.A. 9 2004)(holding that "the particularity requirement of the Fourth Amendment applies with full force to the conditions precedent to an anticipatory search warrant").

describe only two things: the place to be searched and the persons or things to be seized. As such, the Court concluded that Fourth Amendment does not require that the triggering condition for an anticipatory warrant be set forth in the warrant itself.

Justice Souter, joined by Justices Stevens and Ginsburg, wrote a concurring opinion to qualify some points specifically to caution that omitting the triggering condition off the face of an anticipatory warrant could lead to "several untoward consequences with constitutional significance." For example, an officer who is unfamiliar with the warrant might unwittingly execute it before the triggering condition has occurred, which could result in spoiling the fruits of the search. Moreover, Justice Souter left open the possibility for reconsideration of this issue should the Court decide that the target of a warrant has a right to inspect it prior to its execution.

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