

POLICE OFFICERS RECEIVE FAVORABLE RULINGS FROM OUR NATION'S HIGH COURT

Prepared By

**Ms. Lynnette Ballato Dinkler
Subashi / Wildermuth / Dinkler**

In the 2008 term, the United States Supreme Court agreed to hear four cases involving police officers and the Fourth Amendment. So far, three of the cases have been decided. Two of them are unanimous opinions – something that rarely occurs. **All of them have been decided in favor of law enforcement.** This is excellent news for those who selflessly serve and protect.

Herring v. United States was the first decision to be published. This is the only decision where all nine justices did not agree.

The facts at issue in *Herring* are common to police officers across Ohio. *Herring* entered the police department one day to get his truck out of impound. A police officer at the station saw *Herring*, knew him because he was a “regular,” and had his name run to see if any outstanding warrants existed for *Herring*. Sure enough, one did.

Herring was then placed under arrest for the active warrant issued by a neighboring jurisdiction. What’s the catch? The neighboring jurisdiction should have recalled the warrant a few months earlier but did not.

Herring was searched incident to arrest. And, as one could expect, he possessed methamphetamine in his pocket and illegally possessed a gun under his truck seat. Criminal charges were filed against him as a result of this evidence being discovered. *Herring* argued he should go free because but for the stale warrant, he would have never been caught with the drugs and gun – a brazen argument to make when he voluntarily walked into the police department with the drugs in his pocket!

In analyzing whether the Fourth Amendment should allow admission of the drugs and gun into evidence at *Herring*’s criminal trial, the Court made two points. First, the Court said that negligent police mistakes do not justify criminals going free. Secondly, the Court said that only systematic error or reckless disregard of constitutional requirements

will lead to suppression of evidence in criminal matters.

This opinion is in harmony with the Court’s opinions on affording law enforcement with a “good faith exception” and the protections of qualified immunity from civil rights suits when suspects are mistakenly arrested for stale or recalled warrants. So long as police officers believe, in good faith, that the warrant is active and should be executed, the officer and city employing the officer will remain entitled to immunity from civil rights suits. It is always important for the city and department to follow its own policy and procedure on keeping the warrant database updated to keep people from being unnecessarily being arrested on stale or recalled warrants.

Next, the Supreme Court decided ***Pearson v. Callahan***. This case involved a police drug bust for methamphetamine. An informant contacted a Utah drug task force to purchase methamphetamine. The informant entered *Pearson*’s home, made the deal, and sent a pre-arranged signal to awaiting officers, who then entered and arrested *Pearson*. A state appellate court that held the search of *Pearson*’s house violated the Fourth Amendment overturned *Pearson*’s criminal conviction. *Pearson* then brought a civil rights suit against the police.

The United States Supreme Court, in accepting this case for briefing and argument, asked both sides to address whether its recent decision of ***Saucier v. Katz*** should be overturned. *Saucier* tells us that courts deciding claims of qualified immunity from civil rights suits must first decide if a constitutional right exists, and if yes, then second decide if that right was clearly established such that a reasonable officer (or other public employee) would know of such right.

The *Saucier* test was highly criticized by federal courts across the country. It created outcomes where the public servant would win a civil rights case on summary judgment because up to that time, the alleged right was not clearly established, but “lose” the case by creating new “clearly established law” that would impose liability for future conduct found to be in violation of the newly created right. No appeal right for the “victorious defendant” exists to challenge whether such a newly created right exists.

Pearson corrects this problem. The Supreme Court modified its *Saucier* decision to give federal courts freedom to decide whether the asserted constitutional right is clearly established first. If it is

not clearly established, the court is under no obligation to address whether such a right even exists.

In *Pearson*, the Supreme Court granted the officers qualified immunity from suit because the right at issue was not clearly established. The Court declined to comment on whether it believed the search method at issue, the “consent once removed doctrine,” was constitutional. The Sixth Circuit, which controls Ohio, does not follow the consent once removed doctrine.

The Supreme Court then again delivered a unanimous opinion in *Arizona v. Johnson*. This case is truly important to police officers because it allows police officers to use their training, experience, and instincts to protect them while they serve to protect the communities they serve day in and day out.

A car, in a known drug and gang area, was stopped for a minor traffic violation. The officer removed the passenger from the car and engaged him in conversation because she knew he was wearing gang colors, and appeared to her to be dangerous. The officer was, indeed, correct.

Even though the officer did not have reasonable grounds to believe the passenger was then committing, or had committed, a criminal offense, she patted him down and found a gun and marijuana. The Supreme Court deemed the pat down constitutional under the Fourth Amendment because the officer had an articulable basis that the passenger might be armed and dangerous.

This case is a good reminder to police officers that it is always a good idea to take proper time in completing reports. Officers should always put enough detail in the report so that years later the officer will know exactly what he or she observed and, why he or she believed the suspect to be dangerous. Also, this case is a good reminder to supervisors who are charged with reviewing reports that, when necessary, sending a report back to the officer and demanding further detail never hurts. It will go a long way in helping to prosecute the criminal charge and, in the instances when the officer and city are sued for a civil rights violation, it will help to defend against a claim for monetary damages as well.

The case that remains undecided is *Arizona v. Gant*. That case addresses the issue of a warrantless car search incident to arrest where the car’s recent occupants were secured at the time of the search. The decision, when issued, is expected to consider issues related to the need to preserve evidence that may be located in the car and whether a threat to police safety still exists under such circumstances.

