



# Training Key® #675

## Supreme Court Update: 2012

The following U.S. Supreme Court rulings have a bearing on how law enforcement officers conduct enforcement operations. Their implications for individual police agency and police officer operations should be taken into consideration.

### **Incarceration and Custody for *Miranda*** ***Howes v. Fields*, 132 S. Ct. 1181 (2012)**

It has long been established in law that when a suspect is questioned in a custodial setting, questioning must first be preceded by giving the suspect the *Miranda* warnings. However, what constitutes a custodial setting has been the subject of much debate over the years.<sup>1</sup>

The 2012 case of *Howes v. Fields*<sup>2</sup> occasioned another examination by the U.S. Supreme Court of the concept of custody, particularly in the context of an existing incarceration. In *Fields*, sheriff's deputies came to a Michigan jail to question Fields about an unrelated offense involving Fields' allegedly having sex with a young boy, the incident having occurred prior to Fields' current incarceration. Fields was taken to a conference room in the jail where the deputies questioned him for between five and seven hours. At the beginning of the interview, Fields was told that he was free to leave, and later he was again told that he could leave whenever he wanted to. However, Fields was not given the *Miranda* warnings by the deputies, nor was he ever advised that he did not have to talk to the deputies. Fields was not handcuffed or otherwise restrained during the session, and the door to the conference room was sometimes open during the questioning. Fields eventually confessed to engaging in sexual acts with the young boy.

Fields was charged with sexual criminal conduct and convicted. On appeal, he contended that his statements should have been suppressed because he was subjected to a custodial interrogation without any *Mi-*

*randu* warnings. The Sixth Circuit Court of Appeals, relying on the case of *Mathis v. United States*,<sup>3</sup> agreed, holding that the interview in the conference room was a "custodial interrogation" within the meaning of *Miranda*.<sup>4</sup>

The U.S. Supreme Court granted certiorari, and held that Fields was not in custody within the meaning of *Miranda* at the time of this incident. In reaching this conclusion, the Court reasoned as follows:

1. In determining whether a person is in "custody" for purposes of *Miranda*, the initial step is to ascertain whether, in light of the objective circumstances of the interrogation, a reasonable person would have felt that he or she was not at liberty to terminate the interrogation and leave.<sup>5</sup>
2. In making this determination, the courts must examine all of the circumstances surrounding the interrogation. These circumstances include
  - The location of the questioning.
  - The duration of the questioning.
  - The statements made during the interview.
  - The presence or absence of physical restraints during the questioning.
  - The release of the interviewee at the end of the questioning.<sup>6</sup>
3. It must also be determined whether the environment in which the questioning occurred presents the same inherently coercive pressures as the type of "station house questioning" at issue in *Miranda*.

*Determining whether an individual's freedom of movement was curtailed, however,*

*is simply the first step in the analysis, not the last. Not all restraints on freedom of movement amount to custody for purposes of Miranda. We have ... asked the additional question whether the [environment in which the questioning occurs] presents the same inherently coercive pressures as the type of station house questioning at issue in Miranda.*<sup>7</sup>

To illustrate this point, the Court cited the instances of a traffic stop or a *Terry* stop,<sup>8</sup> which the Court observed both curtail “freedom of action” but do not constitute custody for purposes of the *Miranda* warnings “because such detention does not sufficiently impair [the detained person’s] free exercise of his privilege against self-incrimination to require that he be warned of his constitutional rights.”<sup>9</sup>

4. Service of a term of imprisonment, without more, is not enough to constitute *Miranda* custody. The Court gave three reasons for this conclusion:
  - First, questioning a person who is already serving a prison term does not generally involve the shock that very often accompanies arrest.
  - Second, a prisoner, unlike a person who has not been sentenced to a term of incarceration, is unlikely to be lured into speaking by a longing for prompt release.
  - Third, a prisoner, unlike a person who has not been convicted and sentenced, knows that the law enforcement officers who question him probably lack the authority to affect the duration of his sentence.
5. When a prisoner is questioned, the determination of custody should focus on all of the features of the interrogation. These features include
  - The language that is used in summoning the prisoner to the interview; and
  - The manner in which the interrogation is conducted.
6. If an inmate is treated in a manner that renders him “in custody,” the *Miranda* warnings must be given.

*An inmate who is removed from the general prison population for questioning and is thereafter . . . subjected to treatment in connection with the interrogation that renders him “in custody” for practical purposes ... will be entitled to the full panoply of protections prescribed by Miranda.*<sup>10</sup>

7. In *Howes v. Fields*, the defendant was not in custody for purposes of *Miranda*. The Court reasoned that this was because
  - The defendant was told at the outset of the interrogation, and reminded again later, that he could leave and go back to his cell whenever he wanted to.

- The defendant was not physically restrained or threatened and was interviewed in a well-lit, average-sized conference room, where he was “not uncomfortable.”
- He was offered food and water, and the door to the conference room was sometimes left open.

According to the Court, all of these objective facts are consistent with an environment in which a reasonable person would have felt free to terminate the interview and leave.<sup>11</sup> Therefore, the Court held that the defendant in this case did not have to be advised of his *Miranda* rights prior to the questioning.

### **Qualified Immunity in a Civil Suit Related to an Overbroad Search Warrant**

#### ***Messerschmidt v. Millender*, 132 S. Ct. 1235 (2012)**

The doctrine of qualified immunity protects law enforcement officers and other government officials from liability for civil damages as long as their conduct does not violate “clearly established statutory or constitutional rights of which a reasonable person would have known.”<sup>12</sup>

The issue of qualified immunity for officers being sued civilly arose in the 2012 case of *Messerschmidt v. Millender*,<sup>13</sup> a lawsuit filed against Detective Messerschmidt of the Los Angeles County Sheriff’s office and other officers. The facts of the case, as reported by the Court, were as follows:

A woman named Kelly decided to break off her romantic relationship with Jerry Ray Bowen and move out of her apartment, to which Bowen had a key. As she was moving out, Bowen appeared. Bowen shouted “I told you never to call the cops on me bitch!” and physically assaulted Kelly. Bowen then discharged a shotgun several times at her departing vehicle. Kelly reported the incident to police and mentioned that Bowen was an active member of a local street gang. Detective Messerschmidt was assigned to investigate the incident. When he met with Kelly to obtain details of the assault and information about Bowen, Kelly informed the detective that she thought Bowen was staying at his foster mother’s home on 120th Street. Kelly also informed Messerschmidt of Bowen’s previous assaults on her and of his gang ties.

Messerschmidt then conducted a background check on Bowen, and this confirmed Bowen’s connection to the 120th Street address. He also confirmed that Bowen was an “active” member of one gang and a “secondary” member of another. Messerschmidt also learned that Bowen had been arrested and convicted for numerous violent and firearm-related offenses.

Indeed, at the time of the investigation, Bowen’s “rapsheet” spanned over 17 printed pages, and indicated that he had been arrested at least 31 times. Nine of these arrests were for firearms offenses and six

were for violent crimes, including three arrests for assault with a deadly weapon (firearm).<sup>14</sup>

*Detective Messerschmidt prepared two warrants, one to authorize Bowen's arrest and one to authorize the search of 2234 East 120th Street. An attachment to the search warrant described the property that would be the object of the search as:*

*"All handguns, rifles, or shotguns of any caliber, or any firearms capable of firing ammunition, or firearms or devices modified or designed to allow it [sic] to fire ammunition. All caliber [sic] of ammunition, miscellaneous gun parts, gun cleaning kits, holsters which could hold or have held any caliber handgun being sought. Any receipts or paperwork, showing the purchase, ownership, or possession of the handguns being sought. Any firearm for which there is no proof of ownership. Any firearm capable of firing or chambered to fire any caliber ammunition. ... Articles of evidence showing street gang membership or affiliation with any Street Gang to include but not limited to any reference to "Mona Park Crips," including writings or graffiti depicting gang membership, activity or identity. Articles of personal property tending to establish the identity of person [sic] in control of the premise or premises. Any photographs or photograph albums depicting persons, vehicles, weapons or locations, which may appear relevant to gang membership, or which may depict the item being sought and or believed to be evidence in the case being investigated on this warrant, or which may depict evidence of criminal activity. Additionally to include any gang indicia that would establish the persons being sought in this warrant, affiliation or membership with the "Mona Park Crips" street gang."<sup>15</sup>*

Two affidavits accompanied Messerschmidt's warrant applications. The first affidavit described Messerschmidt's extensive law enforcement experience. The second affidavit, which was expressly incorporated into the search warrant, explained in detail why Messerschmidt believed there was sufficient probable cause to support the warrant. The affidavit requested that the search warrant be endorsed for night service. Messerschmidt submitted the warrants to his supervisors for review. A deputy district attorney also reviewed the warrants. Finally, Messerschmidt submitted the warrants to a magistrate. The magistrate approved the warrants and authorized night service.

The search warrant was served two days later by a team of officers that included Messerschmidt, Lawrence, and others. Augusta Millender and her daughter and grandson were present in the residence at that time, but Bowen was not found there. The

search resulted in the seizure of Augusta Millender's shotgun, a California Social Services letter addressed to Bowen, and a box of .45-caliber ammunition. Bowen was located and arrested two weeks later.

The Millenders filed suit in federal district court against the County of Los Angeles, the sheriff's department, the sheriff, and a number of individual officers, including Messerschmidt and Lawrence. The complaint alleged that the search warrant was invalid under the Fourth Amendment and sought damages from Messerschmidt and Lawrence, among others.

The district court concluded that the warrant's authorization to search for firearms was unconstitutionally overbroad because the crime specified was a physical assault with a very specific weapon, a black sawed-off shotgun with a pistol grip, which the court felt negated any need to "search for all firearms." The district court also found the warrant overbroad with respect to the search for gang-related materials, because there "was no evidence that the crime at issue was gang-related." As a result, the district court granted summary judgment to the Millenders on their constitutional challenges to the firearm and gang material aspects of the search warrant. The district court also rejected the officers' claim that they were entitled to qualified immunity from damages. The Ninth Circuit affirmed the district court's denial of qualified immunity. The U.S. Supreme Court granted certiorari.

The Court reversed, holding that the officers were entitled to qualified immunity. In the majority opinion, Chief Justice Roberts said that:

1. Qualified immunity "protects 'all but the plainly incompetent or those who knowingly violate the law.'"<sup>16</sup>
2. Whether an official protected by qualified immunity may be held personally liable for an allegedly unlawful official action generally turns on the objective legal reasonableness of the action, assessed in light of the legal rules that were clearly established at the time it was taken.<sup>17</sup>
3. The fact that a neutral magistrate has issued a warrant authorizing the allegedly unconstitutional search or seizure does not end the inquiry into objective reasonableness. Even when a neutral magistrate has issued a warrant, suit against law enforcement officers may nevertheless be allowed when it is obvious that no reasonably competent officer would have concluded that a warrant should be issued. The "shield of immunity" otherwise conferred by the warrant will be lost, for example, where the warrant was "based on an affidavit so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable."<sup>18</sup>
4. In this case, the officers' judgment that the scope of the warrant was supported by probable cause was not "plainly incompetent," and the officers are therefore entitled to qualified immunity, because of the following:
  - Given Bowen's possession of one illegal gun, his gang membership, his willingness

to use the gun to kill someone, and his concern about the police, a reasonable officer could conclude that there would be additional illegal guns among others that Bowen owned.

- A reasonable officer could conclude that Bowen would make another attempt on Kelly's life and that he possessed other firearms "with the intent to use them" to that end.
- Prior cases have held that the Fourth Amendment allows a search for evidence when there is "probable cause ... to believe that the evidence sought will aid in a particular apprehension or conviction."<sup>19</sup>
- It would therefore not have been unreasonable, based on the facts set out in the affidavit, for an officer to believe that evidence regarding Bowen's gang affiliation would prove helpful in prosecuting him for the attack on Kelly.
- In addition, a reasonable officer could believe that evidence demonstrating Bowen's membership in a gang might prove helpful in impeaching Bowen or rebutting various defenses he could raise at trial. For example, evidence that Bowen had ties to a gang that uses guns such as the one he used to assault Kelly would certainly be relevant to establish that he had familiarity with or access to this type of weapon.
- Moreover, a reasonable officer could conclude that gang paraphernalia found at the Millenders' residence would aid in the prosecution of Bowen by, for example, demonstrating Bowen's connection to other evidence found there.
- The fact that the officers sought and obtained approval of the warrant application from a superior and a deputy district attorney before submitting it to the magistrate provides further support for the conclusion that an officer could reasonably have believed that the scope of the warrant was supported by probable cause.
- The officers thus took every step that could reasonably be expected of them. In light of the foregoing, it cannot be said that "no officer of reasonable competence would have requested the warrant." Indeed, a contrary conclusion would mean not only that Messerschmidt and Lawrence were "plainly incompetent," but that their supervisor, the deputy district attorney, and the magistrate were as well.

The Supreme Court concluded the opinion by saying:

*The question in this case is not whether the magistrate erred in believing there was sufficient probable cause to support the scope*

*of the warrant he issued. It is instead whether the magistrate so obviously erred that any reasonable officer would have recognized the error. The occasions on which this standard will be met may be rare, but so too are the circumstances in which it will be appropriate to impose personal liability on a lay officer in the face of judicial approval of his actions. Even if the warrant in this case were invalid, it was not so obviously lacking in probable cause that the officers can be considered "plainly incompetent" for concluding otherwise. The judgment of the Court of Appeals denying the officers qualified immunity must therefore be reversed.<sup>20</sup>*

### **GPS Devices and Searches**

#### ***United States v. Jones, 132 S. Ct. 945 (2012)***

The use of a vehicle tracking device of any type raises legal issues, in particular the relationship of such devices to the requirements of the Fourth Amendment. Due to the sophistication of the global positioning system (GPS) devices now being employed by law enforcement and the amount and detail of the information that the GPS trackers provide, the legal battle over the Fourth Amendment's applicability to the use of these instruments has intensified greatly, generating many motions to suppress evidence and other legal challenges to the devices and the information they produce.

Recognizing the disparity of lower court decisions on this point, in 2012 the U.S. Supreme Court examined the issue in the case of *United States v. Jones*.<sup>21</sup> Jones was the owner and operator of a nightclub in the District of Columbia. He came under suspicion of trafficking in narcotics and was made the target of an investigation by a joint FBI and Metropolitan Police Department task force. The investigating officers employed various investigative techniques, including visual surveillance of the nightclub, installation of a camera focused on the front door of the club, and a pen register and wiretap covering Jones's cellular phone. Based in part on information gathered from these sources, the government applied to the United States District Court for the District of Columbia for a warrant authorizing the use of an electronic tracking device on the Jeep Grand Cherokee registered to Jones's wife. A warrant was issued, authorizing installation of the device *in the District of Columbia within 10 days*.

On the 11th day, and not in the District of Columbia but in Maryland, agents installed a GPS tracking device on the undercarriage of the vehicle while it was parked in a public parking lot. For the next 28 days, the government used the device to track the vehicle's movements. During this time they once had to replace the device's battery while the vehicle was parked in a different public lot in Maryland. By means of signals from multiple satellites, the device established the ve-

hicle's location within 50 to 100 feet, and communicated that location by cellular phone to a government computer. It relayed more than 2,000 pages of data over the 4-week period.

The government ultimately obtained a multiple-count indictment charging Jones and several alleged co-conspirators with conspiracy to distribute and possess with intent to distribute 5 kilograms or more of cocaine and 50 grams or more of cocaine base, in violation of 21 U. S. C. §§841 and 846. Before trial, Jones filed a motion to suppress the evidence obtained through the use of the GPS device. The district court granted the motion in part, suppressing only the portion of the data obtained while the vehicle was parked in the garage adjoining Jones's residence.

Jones was convicted. However, the United States Court of Appeals for the District of Columbia Circuit reversed the conviction because of admission of the evidence obtained by warrantless use of the GPS device, which, it said, violated the Fourth Amendment.<sup>22</sup>

The U.S. Supreme Court upheld the reversal of the conviction. The majority opinion, written by Justice Scalia, reasoned as follows:

1. The government's installation of a GPS device on the vehicle and its use of that device to monitor the vehicle's movements constituted a search.
2. The Fourth Amendment provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated."<sup>23</sup> It is beyond dispute that a vehicle is an effect as that term is used in the Amendment.
3. In this case, the government physically occupied private property for the purpose of obtaining information, which constituted a trespass.
4. Therefore, such a physical intrusion was a search within the meaning of the Fourth Amendment.<sup>24</sup>

The Justices of the U.S. Supreme Court agreed unanimously with Justice Scalia's conclusion that the placing of the GPS device was a search. However, other Justices filed opinions concurring in the result but basing their conclusions upon legal principles other than trespass, including, for example, the "expectation of privacy" rationale used by the U.S. Supreme Court in previous well-known search and seizure cases such as *Katz v. United States*.<sup>25</sup>

Note: Although a warrant was obtained in this case, the device was, as reported in the opinion, placed on the vehicle after the time specified in the warrant and outside the geographical limits stated therein.<sup>26</sup>

## Acknowledgment

This *Training Key*® was prepared by Charles E. Friend, an attorney at law, former law enforcement officer, and law professor. Mr. Friend has taught legal and law enforcement courses at several colleges and universities, and has served as an instructor in evidence and other legal subjects at his regional criminal justice training academy. He is the author of several books including "Police Rights: Civil Remedies for Law Enforcement Officers" and of several periodical articles on legal and law enforcement subjects. He has written numerous papers for the IACP, including *Training Keys*®, newsletters, and other materials, and has lectured for both the IACP and the National Sheriffs Association. He served on President Reagan's Law Enforcement Task Force, and has since worked with various groups to assist law enforcement officers and agencies in the performance of their duties.

## Endnotes

<sup>1</sup> See, e.g., *Berkemer*, 468 U.S. 420, 437 (1984) (*Terry* stop was not custodial for purposes of *Miranda*); *Shatzer*, 130 S. Ct. 1213 (2010) (continuation of pre-existing incarceration did not preclude a finding that there had been a "break in custody" between two interrogations).

<sup>2</sup> *Howes v. Fields*, 132 S. Ct. 1181 (2012).

<sup>3</sup> *Mathis v. United States*, 391 U.S. 1 (1968).

<sup>4</sup> *Fields v. Howes*, 617 F.3d 813 (2010).

<sup>5</sup> *Id.*, citing *Stansbury*, 511 U.S. 318 (1994) (*per curiam*).

<sup>6</sup> *Fields*, 617 F.3d 813 (2010), citing *Stansbury*, 511 U.S. 318 (1994) (*per curiam*), *Shatzer*, 130 S. Ct. 1213 (2010), *New York v. Quarles*, 467 U.S. 649 (1984), *Berkemer*, 468 U.S. 420 (1984), and *California v. Beheler*, 463 U.S. 1121 (1983) (*per curiam*).

<sup>7</sup> *Fields*, 617 F.3d 813 (2010), citing *Shatzer*, 130 S. Ct. 1213 (2010).

<sup>8</sup> See *Terry v. Ohio*, 392 U.S. 1 (1968).

<sup>9</sup> *Fields*, 617 F.3d 813 (2010), citing *Miranda*, 384 U.S. 436 (1966), and *Terry*, 392 U.S. 1 (1968).

<sup>10</sup> *Fields*, 617 F.3d 813 (2010), citing *Berkemer*, 468 U.S. 420 (1984) (quotation marks omitted).

<sup>11</sup> *Fields*, 617 F.3d 813 (2010), citing *Yarborough v. Alvarado*, 541 U.S. 652, 665 (2004).

<sup>12</sup> See, e.g., *Pearson v. Callahan*, 555 U.S. 223, 231 (2009); *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).

<sup>13</sup> *Messerschmidt v. Millender*, 132 S. Ct. 1235 (2012).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*, quoting *Ashcroft v. al-Kidd*, 563 U.S. \_\_\_\_, \_\_\_\_, (2011) (slip op., at 12) and *Malley v. Briggs*, 475 U.S. 335, 341 (1986).

<sup>17</sup> *Messerschmidt*, 132 S. Ct. 1235 (2012), quoting *Anderson v. Creighton*, 483 U.S. 635, 639 (1987) (citation omitted).

<sup>18</sup> *United States v. Leon*, 468 U.S. 897, 923, 104 S. Ct. 3405 (1984).

<sup>19</sup> *Warden, Md. Penitentiary v. Hayden*, 387 U.S. 294, 307 (1967).

<sup>20</sup> *Messerschmidt*, 132 S. Ct. 1235 (2012), opinion of Roberts, C.J.

<sup>21</sup> *United States v. Jones*, 132 S. Ct. 945 (2012).

<sup>22</sup> The Court of Appeals decision was styled *United States v. Maynard*, 615 F.3d 544 (2010).

<sup>23</sup> U.S. Const. amend. IV.

<sup>24</sup> In support of this conclusion, the Court cited the English case of *Entick v. Carrington*, 95 Eng. Rep. 807 (C. P. 1765), which the Court considered to be "the true and ultimate expression of constitutional law" with regard to search and seizure. "[O]ur law holds the property of every man so sacred, that no man can set his foot upon his neighbour's close without his leave; if he does he is a trespasser, though he does no damage at all; if he will tread upon his neighbour's ground, he must justify it by law." *Id.*, 95 Eng. Rep. 807, 817 (C. P. 1765).

<sup>25</sup> *Katz v. United States*, 389 U.S. 347 (1967).

<sup>26</sup> "The warrant authorized installation in the District of Columbia and within 10 days, but agents installed the device on the 11th day and in Maryland." *Jones*, 132 S. Ct. 945 (2012), opinion of Justice Scalia.

## questions

The following questions are based on material in this *Training Key*®. Select the one best answer for each question.

1. When determining whether a person is “in custody” for purposes of *Miranda*, which of the following should be considered?

(a) *Whether a reasonable person would have felt that he or she is at liberty to terminate the interrogation and leave.*

(b) *Whether the environment in which the questioning occurs presents the same inherently coercive pressures as the type of “station house questioning” at issue in *Miranda*.*

(c) *In the case of a prisoner, the features of the interrogation, including the language that is used to summon the prisoner to the interview and the manner in which the interrogation is conducted.*

(d) *All of the above.*

2. Whether an official protected by qualified immunity may be held personally liable for an allegedly unlawful official action generally turns on the objective reasonableness of the action, assessed in light of the legal rules that were clearly established at the time it was taken.

(a) *True*

(b) *False*

3. Which of the following is false regarding GPS devices.

(a) *They are the source of numerous legal battles regarding the Fourth Amendment’s applicability to their use.*

(b) *Warrantless use of GPS devices is a violation of the Fourth Amendment.*

(c) *The placement of a GPS device on a vehicle and the subsequent monitoring of the vehicle’s movements is considered a search.*

(d) *A vehicle is not considered an effect as that term is used in the Fourth Amendment.*

## answers

1. (d) All of the above.

2. (a) True.

3. (d) It is beyond dispute that a vehicle is an effect as defined in the Fourth Amendment and is therefore protected against unreasonable search and seizures.

