

CRIMINAL CASES
SUPREME COURT OF THE UNITED STATES
2016 – 2017 TERM

TABLE OF CONTENTS

2016 cases decided after last year’s Annual Meeting

**Birchfield v. North Dakota, together with
Bernard v. Minnesota, and Beylund v. Levi,**
136 S. Ct. 2160, 195 L. Ed. 2d 560 (2016)1.

Utah v. Strieff, 136 S. Ct. 2056, 195 L. Ed. 2d 400 (2016)3.

2016-2017 term

Peña-Rodriguez v. Colorado, 137 S. Ct. 855, 197 L. Ed. 2d 107 (2017)6.

CRIMINAL CASE SUMMARIES
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2016 Cases decided after last year's Annual Meeting

CRIMINAL LAW – SEARCH & SEIZURE – BLOOD ALCOHOL TESTING

***Birchfield v. North Dakota, together with
Bernard v. Minnesota, and Beylund v. Levi*, 136 S. Ct. 2160, 195 L. Ed. 2d 560 (2016)**

These three consolidated cases address the question whether the Fourth Amendment warrant clause requires police to obtain a warrant in order to perform a blood test on a motorist suspected of operating under the influence:

In *Birchfield* police informed the motorist that pursuant to North Dakota's implied consent law his failure to consent to having his blood drawn would result in a charge of misdemeanor violation of the refusal statute. He refused and entered a conditional guilty plea; North Dakota procedure allowed him to preserve his Fourth Amendment claim for appeal. The North Dakota Supreme Court rejected his claim and affirmed the conviction.

Bernard involved similar facts except that the Minnesota statute criminalized refusal to take a breath test. Bernard refused and was charged. The trial court dismissed the charges, concluding that compelling a breath test violated the Fourth Amendment. The Minnesota intermediate appellate court and Supreme Court disagreed and reinstated the charges.

Beylund, like *Birchfield*, arose under the North Dakota blood-test-refusal statute. Beylund was arrested and transported to a hospital, where police cautioned him that refusal to submit to a blood test would result in criminal charges. He consented and the test showed blood

alcohol over three times the legal limit. He argued, unsuccessfully, that his consent had been unlawfully coerced. Beylund was not, however, prosecuted under the criminal statute; he received administrative sanctions including two year loss of license. His appeals within the state courts were unsuccessful.

HELD (per Alito, J, joined by Roberts, C.J., and Kennedy, Breyer and Kagan, JJ. Separate opinions by Thomas, J, and Sotomayor, J., joined by Ginsburg, J.):

The Fourth Amendment permits warrantless *breath* tests incident to arrests for drunk driving. Such tests are not intrusive and fall within the scope of the “search-incident-to-arrest” doctrine. The act of breathing into a machine is far less intrusive than drawing blood or even retrieval of DNA samples, both of which involve seizure of biological samples.

Blood tests, on the other hand are significantly intrusive and allow the government to obtain physical evidence from which the government could conceivably derive far more information than just blood alcohol content. Imposing *criminal* consequences for refusal to submit to a blood draw violates the Fourth Amendment’s warrant requirement. (Note: the opinion suggests that the “exigent circumstances doctrine” might, in some cases, excuse failure to obtain a warrant).

The Court accordingly disposed of the three defendants as follows:

Birchfield’s conviction could not stand, because his blood was drawn without consent and without a warrant. Bernard, who refused a breath test, could be prosecuted because such tests are permissible searches incident to a drunk driving arrest. Because Beylund submitted to a blood test after consent obtained under the threat of criminal prosecution, the Court remanded the case for a determination whether his consent was a fruit of the threat or was otherwise voluntary.

Utah v. Strieff, 136 S.Ct. 2056, 195 L.Ed.2d 560 (2016)

The Supreme Court granted certiorari in this case to resolve the issue of how the attenuation doctrine applies when an unconstitutional detention leads to the discovery of a valid arrest warrant, and in the process of a search incident to the arrest, evidence is discovered which leads to new criminal charges.

The underlying facts began with the surveillance of a Salt Lake City residence following an anonymous tip about drug activity in the home. The detective observed a number of people making brief visits to the home and became suspicious that drug dealing might be taking place there. He observed Strieff leaving the home and detained him in a nearby parking lot. The detective asked Strieff what he was doing on the property, and asked him for identification. When police dispatch ran Strieff's identification, the dispatcher advised the officer holding Strieff that he had an outstanding arrest warrant for a traffic violation. The officer arrested Strieff, searched him, and found methamphetamine and drug paraphernalia on his person. The State charged Strieff with unlawful possession of the methamphetamine and the drug paraphernalia. Strieff moved to suppress the evidence on the ground that it was inadmissible because it was derived from an unlawful investigatory stop. The State admitted that the officer who detained Strieff lacked reasonable suspicion but argued that the evidence was admissible because the existence of a valid arrest warrant attenuated the connection between the unlawful stop and the discovery of contraband. The trial Court denied the motion to suppress, and the Utah Supreme Court reversed.

The United States Supreme Court reviewed its precedents relating to Fourth Amendment protections which exclude evidence obtained either as a direct result of an illegal search or seizure or evidence which derives from an illegal search or seizure, i.e. "fruit of the poisonous

tree.” The Court reviewed exceptions to the so-called “exclusionary rule” and considered the applicability of the “attenuation doctrine,” which allows admission of evidence when the unconstitutional action of the police has been interrupted by an intervening event. The question posed by the Court was whether the discovery of a valid arrest warrant, which led to a search incident to the arrest, was a “sufficient intervening event to break the causal chain” between the unlawful stop and the discovery of contraband on Strieff. The Court first examined the “temporal proximity” between the unconstitutional stop and the discovery of contraband and determined that the closeness in time between the two events weighed in favor of suppressing the evidence. Next the Court examined the intervening event, i.e. the officer’s discovery of a valid arrest warrant that predated the officer’s surveillance and was unrelated to his investigation. The Court concluded that the discovery of a pre-existing, unrelated warrant which led to a valid arrest and a reasonable, constitutional search of Strieff’s person weighed heavily in favor of admissibility. Finally, the Court examined the “purpose and flagrancy” of the officer’s misconduct. The Court concluded that the officer had made good-faith mistakes leading to an insufficient basis for detaining Strieff. Instead of detaining Strieff, the officer could have simply approached him to ask him about the residence the officer was surveilling. The Court concluded that the officer’s errors did not amount to a purposeful or flagrant violation of Strieff’s Fourth Amendment rights. Rather, they were isolated negligent acts that arose in connection with a bona fide investigation. Consequently, the Court determined that the outstanding, valid arrest warrant broke the causal chain between the illegal stop and the discovery of contraband. The evidence was accordingly admissible. The Court reversed the judgment of the Utah Supreme Court.

This was a 5-3 decision, with Justices Sotomayor, Ginsburg, and Kagan dissenting.
Justice Thomas authored the Court's majority opinion.

2016-2017 Term

Peña-Rodriguez v. Colorado, 137 S. Ct. 855, 197 L. Ed. 2d 107 (2017)

A Colorado jury convicted petitioner Peña–Rodriguez of harassment and unlawful sexual contact. Following the discharge of the jury, two jurors told defense counsel that, during deliberations, Juror H.C. had expressed anti-Hispanic bias toward petitioner and petitioner’s alibi witness. Counsel, with the trial court’s supervision, obtained affidavits from the two jurors describing a number of biased statements by H.C. The court acknowledged H.C.’s apparent bias but denied petitioner’s motion for a new trial on the ground that [Colorado Rule of Evidence 606\(b\)](#) generally prohibits a juror from testifying as to statements made during deliberations in a proceeding inquiring into the validity of the verdict. The Colorado Supreme Court also affirmed.

In an opinion written by Justice Kennedy and joined by Justices Ginsburg, Breyer, Sotomayor, and Kagan, the Supreme Court reversed. It held that, when a juror makes a clear statement indicating that he or she relied on racial stereotypes or animus to convict a criminal defendant, the Sixth Amendment requires that the no-impeachment rule give way in order to permit the trial court to consider the evidence of the juror’s statement and any resulting denial of the jury trial guarantee.

In reaching this decision, the Court recognized that the general rule against impeachment evidence serves important purposes, including promoting full and vigorous discussion by jurors and providing considerable assurance that after being discharged they will not be summoned to recount their deliberations or otherwise harassed. The rule gives stability and finality to verdicts. However, the Fourteenth Amendment’s Equal Protection Clause imposes a countervailing principle by prohibiting racial discrimination in the jury system. This case lies at the intersection of the Court’s decisions endorsing the no-impeachment rule and those seeking to eliminate racial

bias in the jury system. Unlike other forms of juror misconduct and bias, the Court held, racial bias implicates unique historical, constitutional, and institutional concerns and, if left unaddressed, would risk systemic injury to the administration of justice. In balancing these considerations, the Court concluded that a constitutional rule that racial bias in the justice system must be addressed—including, in some instances, after a verdict has been entered—is necessary to prevent a systemic loss of confidence in jury verdicts, a confidence that is a central premise of the Sixth Amendment trial right.

Before the no-impeachment bar can be set aside to allow further judicial inquiry, the Court ruled, there must be a threshold showing that one or more jurors made statements exhibiting overt racial bias that cast serious doubt on the fairness and impartiality of the jury's deliberations and resulting verdict. To qualify, the statement must tend to show that racial animus was a significant motivating factor in the juror's vote to convict. Whether the threshold showing has been satisfied is committed to the substantial discretion of the trial court in light of all the circumstances, including the content and timing of the alleged statements and the reliability of the proffered evidence.

Justice Alito wrote a dissenting opinion joined by Chief Justice Roberts and Justice Thomas.