

547 U.S. 398, 164 L.Ed.2d 650

BRIGHAM CITY, UTAH, Petitioner,

v.

Charles W. STUART et al.

No. 05–502.

Argued April 24, 2006.

Decided May 22, 2006.

Background: Defendants charged in state court with contributing to the delinquency of a minor, disorderly conduct, and intoxication, filed a motion to suppress. The First District Court, Brigham City Department, Clint S. Judkins, J., granted the motion. City appealed. The Utah Court of Appeals, 57 P.3d 1111, affirmed. City again appealed. The Utah Supreme Court, 122 P.3d 506, affirmed.

Holdings: On grant of certiorari, the United States Supreme Court, Chief Justice Roberts held that:

- (1) regardless of their subjective motives, police officers were justified in entering a home without a warrant under exigent circumstances exception to warrant requirement; abrogating *United States v. Cervantes*, 219 F.3d 882, *People v. Mitchell*, 39 N.Y.2d 173, 383 N.Y.S.2d 246, 347 N.E.2d 607, *State v. Mountford*, 171 Vt. 487, 492, 769 A.2d 639, and
- (2) manner of entry into home was reasonable.

Reversed and remanded.

Justice Stevens filed concurring opinion.

1. Searches and Seizures ⇔25.1

Searches and seizures inside a home without a warrant are presumptively unreasonable for Fourth Amendment purposes. U.S.C.A. Const.Amend. 4.

2. Searches and Seizures ⇔23, 24

Because the ultimate touchstone of the Fourth Amendment is reasonableness,

the search warrant requirement is subject to certain exceptions. U.S.C.A. Const. Amend. 4.

3. Searches and Seizures ⇔42.1

Warrants are generally required to search a person's home or his person unless the exigencies of the situation make the needs of law enforcement so compelling that a warrantless search is objectively reasonable under the Fourth Amendment. U.S.C.A. Const.Amend. 4.

4. Searches and Seizures ⇔42.1

One exigency obviating the requirement of a search warrant is the need to assist persons who are seriously injured or threatened with such injury. U.S.C.A. Const.Amend. 4.

5. Searches and Seizures ⇔42.1

Law enforcement officers may enter a home without a warrant to render emergency assistance to an injured occupant or to protect an occupant from imminent injury, without violating the Fourth Amendment. U.S.C.A. Const.Amend. 4.

6. Searches and Seizures ⇔42.1

Regardless of their subjective motives, police officers were justified in entering a home without a warrant, under exigent circumstances exception to warrant requirement, as they had an objectively reasonable basis for believing that an occupant was seriously injured or imminently threatened with injury; officers responded to complaints about loud party at the home at three o'clock in the morning, they heard fighting and yelling from within the home as they approached, and from the backyard of the home through windows, they observed a juvenile being held back by several adults, and the juvenile struck one of the adults, sending the adult to the sink spitting blood; abrogating *United States v. Cervantes*, 219 F.3d 882, *People v. Mitchell*, 39 N.Y.2d 173, 383 N.Y.S.2d 246, 347

N.E.2d 607, *State v. Mountford*, 171 Vt. 487, 492, 769 A.2d 639. U.S.C.A. Const. Amend. 4.

7. Searches and Seizures ⇌23

An action is “reasonable” under the Fourth Amendment, regardless of the individual police officer’s state of mind, as long as the circumstances, viewed objectively, justify the action. U.S.C.A. Const. Amend. 4.

See publication Words and Phrases for other judicial constructions and definitions.

8. Searches and Seizures ⇌23, 36.1

A law enforcement officer’s subjective motivation for conducting a search is irrelevant in the Fourth Amendment context. U.S.C.A. Const. Amend. 4.

9. Searches and Seizures ⇌54

Police officers’ manner of warrantless entry into home was “reasonable,” for Fourth Amendment purposes, where after observing ongoing physical altercation between occupants from outside, one officer opened the screen door of the home and yelled “police,” and when nobody responded, officers stepped inside and again announced their presence. U.S.C.A. Const. Amend. 4.

1398 *Syllabus* *

Responding to a 3 a.m. call about a loud party, police arrived at the house in question, heard shouting inside, proceeded down the driveway, and saw two juveniles drinking beer in the backyard. Entering the yard, they saw through a screen door and windows an altercation in the kitchen between four adults and a juvenile, who punched one of the adults, causing him to spit blood in a sink. An officer opened the screen door and announced the officers’

presence. Unnoticed amid the tumult, the officer entered the kitchen and again cried out, whereupon the altercation gradually subsided. The officers arrested respondents and charged them with contributing to the delinquency of a minor and related offenses. The trial court granted their motion to suppress all evidence obtained after the officers entered the home on the ground that the warrantless entry violated the Fourth Amendment, and the Utah Court of Appeals affirmed. Affirming, the State Supreme Court held that the injury caused by the juvenile’s punch was insufficient to trigger the “emergency aid doctrine” because it did not give rise to an objectively reasonable belief that an unconscious, semiconscious, or missing person feared injured or dead was in the home. Furthermore, the court suggested the doctrine was inapplicable because the officers had not sought to assist the injured adult but had acted exclusively in a law enforcement capacity. The court also held that the entry did not fall within the exigent circumstances exception to the warrant requirement.

Held: 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.

Because the Fourth Amendment’s ultimate touchstone is “reasonableness,” the warrant requirement is subject to certain exceptions. For example, one exigency obviating the requirement is the need to render emergency assistance to occupants of private property who are seriously injured or threatened with such injury. *Mincey v. Arizona*, 437 U.S. 385, 392, 98 S.Ct. 2408, 57 L.Ed.2d 290. This Court

* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of

the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 50 L.Ed. 499.

has repeatedly rejected respondents' contention that, in assessing the reasonableness of an entry, consideration should be given to the subjective motivations of individual officers. Because the officers' subjective motivation is irrelevant, *Bond v. United States*, 529 U.S. 334, 338, n. 2, 120 S.Ct. 1462, 146 L.Ed.2d 365, it does not matter here whether they entered the kitchen to arrest respondents and gather evidence or to §39 assist the injured and prevent further violence. *Indianapolis v. Edmond*, 531 U.S. 32, 46, 121 S.Ct. 447, 148 L.Ed.2d 333, and *Florida v. Wells*, 495 U.S. 1, 4, 110 S.Ct. 1632, 109 L.Ed.2d 1, distinguished. Relying on this Court's holding in *Welsh v. Wisconsin*, 466 U.S. 740, 753, 104 S.Ct. 2091, 80 L.Ed.2d 732, 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," respondents further contend that their conduct was not serious enough to justify the officers' intrusion into the home. This contention is misplaced. In *Welsh*, the "only potential emergency" confronting the officers was the need to preserve evidence of the suspect's blood-alcohol level, an exigency the Court held insufficient under the circumstances to justify a warrantless entry into the suspect's home. *Ibid.* Here, the officers were confronted with *ongoing* violence occurring *within* the home, a situation *Welsh* did not address.

The officers' entry here was plainly reasonable under the circumstances. Given the tumult at the house when they arrived, it was obvious that knocking on the front door would have been futile. Moreover, in light of the fracas 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 was just beginning. Nothing in the Fourth Amendment required them to wait until another blow

rendered someone unconscious, semiconscious, or worse before entering. The manner of their entry was also reasonable, since nobody heard the first announcement of their presence, 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 and, under the circumstances, there was no violation of the Fourth Amendment's knock-and-announce rule. Furthermore, once the announcement was made, the officers were free to enter; it would serve no purpose to make them stand dumbly at the door awaiting a response while those within brawled on, oblivious to their presence. Pp. 1947–1949.

2005 UT 13, 122 P.3d 506, reversed and remanded.

ROBERTS, C. J., delivered the opinion for a unanimous Court. STEVENS, J., filed a concurring opinion, *post*, p. 1949.

Paul J. McNulty, for the United States as amicus curiae, by special leave of the Court, supporting the petitioner.

Mark L. Shurtleff, Utah Attorney General, Kirk M. Torgensen, Chief Deputy Attorney General, J. Frederic Voros, Jr., Chief, Criminal Appeals, Jeffrey S. Gray, Counsel of Record, Assistant Attorney General, Utah Attorney General's Office, Salt Lake City, UT, Counsel for Petitioner.

Michael P. Studebaker, Counsel of Record, Law Office of Michael Studebaker, LLC, Ogden, UT, Counsel for Respondents.

For U.S. Supreme Court briefs, see:

2006 WL 422138 (Pet.Brief)

2006 WL 794710 (Resp.Brief)
2006 WL 1002047 (Reply.Brief)

Chief Justice ROBERTS delivered the opinion of the Court.

1⁴⁰⁰In this case we consider whether 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. We conclude that they may.

I

This case arises out of a melee that occurred in a Brigham City, Utah, home in the early morning hours of July 23, 2000. At about 3 a.m., four police officers responded to a call regarding⁴⁰¹ a loud party at a residence. Upon arriving at the house, they heard shouting from inside, and proceeded down the driveway to investigate. There, they observed two juveniles drinking beer in the backyard. They entered the backyard, and saw—through a screen door and windows—an altercation taking place in the kitchen of the home. According to the testimony of one of the officers, four adults were attempting, with some difficulty, to restrain a juvenile. The juvenile eventually “broke free, swung a fist and struck one of the adults in the face.” 2005 UT 13, ¶ 2, 122 P.3d 506, 508. The officer testified that he observed the victim of the blow spitting blood into a nearby sink. App. 40. The other adults continued to try to restrain the juvenile, pressing him up against a refrigerator with such force that the refrigerator began moving across the floor. At this point, an officer opened the screen door and announced the officers’ presence. Amid the tumult, nobody noticed. The officer entered the kitchen and again cried out, and as the occupants slowly became aware that the police were on the scene, the altercation ceased.

The officers subsequently arrested respondents and charged them with contributing to the delinquency of a minor, disorderly conduct, and intoxication. In the trial court, respondents filed a motion to suppress all evidence obtained after the officers entered the home, arguing that the warrantless entry violated the Fourth Amendment. The court granted the motion, and the Utah Court of Appeals affirmed.

Before the Supreme Court of Utah, Brigham City argued that although the officers lacked a warrant, their entry was nevertheless reasonable on either of two grounds. The court rejected both contentions and, over two dissenters, affirmed. First, the court held that the injury caused by the juvenile’s punch was insufficient to trigger the so-called “emergency aid doctrine” because it did not give rise to an “objectively reasonable belief that an unconscious, semi-conscious,⁴⁰² or missing person feared injured or dead [was] in the home.” 122 P.3d, at 513 (internal quotation marks omitted). Furthermore, the court suggested that the doctrine was inapplicable because the officers had not sought to assist the injured adult, but instead had acted “exclusively in their law enforcement capacity.” *Ibid.*

The court also held that the entry did not fall within the exigent circumstances exception to the warrant requirement. This exception applies, the court explained, where police have probable cause and where “a reasonable person [would] believe that the entry was necessary to prevent physical harm to the officers or other persons.” *Id.*, at 514 (internal quotation marks omitted). Under this standard, the court stated, the potential harm need not be as serious as that required to invoke the emergency aid exception. Although it found the case “a close and difficult call,” the court nevertheless concluded that the

officers' entry was not justified by exigent circumstances. *Id.*, at 515.

We granted certiorari, 546 U.S. 1085, 126 S.Ct. 979, 163 L.Ed.2d 722 (2006), in light of differences among state courts and the Courts of Appeals concerning the appropriate Fourth Amendment standard governing warrantless entry by law enforcement in an emergency situation. Compare *In re Sealed Case 96-3167*, 153 F.3d 759, 766 (C.A.D.C.1998) (“[T]he standard for exigent circumstances is an objective one”), and *People v. Hebert*, 46 P.3d 473, 480 (Colo.2002) (en banc) (considering the circumstances as they “would have been objectively examined by a prudent and trained police officer”), with *United States v. Cervantes*, 219 F.3d 882, 890 (C.A.9 2000) (“[U]nder the emergency doctrine, [a] search must not be primarily motivated by intent to arrest and seize evidence”) (quoting *People v. Mitchell*, 39 N.Y.2d 173, 177, 383 N.Y.S.2d 246, 347 N.E.2d 607, 609 (1976)), and *State v. Mountford*, 171 Vt. 487, 492, 769 A.2d 639, 645 (2000) (*Mitchell* test “requir[es] courts to find that the primary subjective motivation behind such searches was to provide emergency aid”).

¶₄₀₃II

[1-3] It is a “‘basic principle of Fourth Amendment law that searches and seizures inside a home without a warrant are presumptively unreasonable.’” *Groh v. Ramirez*, 540 U.S. 551, 559, 124 S.Ct. 1284, 157 L.Ed.2d 1068 (2004) (quoting *Payton v. New York*, 445 U.S. 573, 586, 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980); some internal quotation marks omitted). Nevertheless, because the ultimate touchstone of the Fourth Amendment is “reasonableness,” the warrant requirement is subject to certain exceptions. *Flippo v. West Virginia*, 528 U.S. 11, 13, 120 S.Ct. 7, 145 L.Ed.2d 16 (1999) (*per curiam*); *Katz v. United*

States, 389 U.S. 347, 357, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967). We have held, for example, that law enforcement officers may make a warrantless entry onto private property to fight a fire and investigate its cause, *Michigan v. Tyler*, 436 U.S. 499, 509, 98 S.Ct. 1942, 56 L.Ed.2d 486 (1978), to prevent the imminent destruction of evidence, *Ker v. California*, 374 U.S. 23, 40, 83 S.Ct. 1623, 10 L.Ed.2d 726 (1963) (plurality opinion), or to engage in “‘hot pursuit’” of a fleeing suspect, *United States v. Santana*, 427 U.S. 38, 42, 43, 96 S.Ct. 2406, 49 L.Ed.2d 300 (1976). “[W]arrants are generally required to search a person’s home or his person unless ‘the exigencies of the situation’ make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment.” *Mincey v. Arizona*, 437 U.S. 385, 393-394, 98 S.Ct. 2408, 57 L.Ed.2d 290 (1978).

[4,5] One exigency obviating the requirement of a warrant is the need to assist persons who are seriously injured or threatened with such injury. “The need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency.” *Id.*, at 392, 98 S.Ct. 2408 (quoting *Wayne v. United States*, 318 F.2d 205, 212 (C.A.D.C.1963) (Burger, J.)); see also *Tyler*, *supra*, at 509, 98 S.Ct. 1942. Accordingly, law enforcement officers may enter a home without a warrant to render emergency assistance to an injured occupant or to protect an occupant from imminent injury. *Mincey*, *supra*, at 392, 98 S.Ct. 2408; see also *Georgia v. Randolph*, *ante*, at 118, 126 S.Ct. 1515, 1525, 164 L.Ed.2d 208 (“[I]t would be silly to suggest that the police would commit a tort by entering . . . to determine ¶₄₀₄ whether violence (or threat of violence) has just occurred or is about to (or soon will occur”).

[6] Respondents do not take issue with these principles, but instead advance two reasons why the officers' entry here was unreasonable. First, they argue that the officers were more interested in making arrests than quelling violence. They urge us to consider, in assessing the reasonableness of the entry, whether the officers were "indeed motivated primarily by a desire to save lives and property." Brief for Respondents 3; see also Brief for National Association of Criminal Defense Lawyers as *Amicus Curiae* 6 (entry to render emergency assistance justifies a search "only when the searching officer is acting outside his traditional law-enforcement capacity"). The Utah Supreme Court also considered the officers' subjective motivations relevant. See 122 P.3d, at 513 (search under the "emergency aid doctrine" may not be "primarily motivated by intent to arrest and seize evidence" (internal quotation marks omitted)).

[7, 8] Our cases have repeatedly rejected this approach. 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." *Scott v. United States*, 436 U.S. 128, 138, 98 S.Ct. 1717, 56 L.Ed.2d 168 (1978) (emphasis added). The officer's subjective motivation is irrelevant. See *Bond v. United States*, 529 U.S. 334, 338, n. 2, 120 S.Ct. 1462, 146 L.Ed.2d 365 (2000) ("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"); *Whren v. United States*, 517 U.S. 806, 813, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996) ("[W]e have been unwilling to entertain Fourth Amendment challenges based on the actual motivations of individual offi-

cers"); *Graham v. Connor*, 490 U.S. 386, 397, 109 S.Ct. 1865, 104 L.Ed.2d 443 (1989) ("[O]ur prior cases make clear" that "the subjective motivations of the individual officers . . . ha[ve] no bearing on whether a particular seizure is 'unreasonable' under the Fourth Amendment").⁴⁰⁵ It therefore does not matter here—even if their subjective motives could be so neatly unraveled—whether the officers entered the kitchen to arrest respondents and gather evidence against them or to assist the injured and prevent further violence.

As respondents note, we have held in the context of programmatic searches conducted without individualized suspicion—such as checkpoints to combat drunk driving or drug trafficking—that "an inquiry into *programmatic* purpose" is sometimes appropriate. *Indianapolis v. Edmond*, 531 U.S. 32, 46, 121 S.Ct. 447, 148 L.Ed.2d 333 (2000) (emphasis added); see also *Florida v. Wells*, 495 U.S. 1, 4, 110 S.Ct. 1632, 109 L.Ed.2d 1 (1990) (an inventory search must be regulated by "standardized criteria" or "established routine" so as not to "be a ruse for a general rummaging in order to discover incriminating evidence"). But this inquiry is directed at ensuring that the purpose behind the *program* is not "ultimately indistinguishable from the general interest in crime control." *Edmond*, 531 U.S., at 44, 121 S.Ct. 447. It has nothing to do with discerning what is in the mind of the individual officer conducting the search. *Id.*, at 48, 121 S.Ct. 447.

Respondents further contend that their conduct was not serious enough to justify the officers' intrusion into the home. They rely on *Welsh v. Wisconsin*, 466 U.S. 740, 753, 104 S.Ct. 2091, 80 L.Ed.2d 732 (1984), in which we held 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.” This contention, too, is misplaced. *Welsh* involved a warrantless entry by officers to arrest a suspect for driving while intoxicated. There, the “only potential emergency” confronting the officers was the need to preserve evidence (*i.e.*, the suspect’s blood-alcohol level)—an exigency that we held insufficient under the circumstances to justify entry into the suspect’s home. *Ibid.* Here, the officers were confronted with *ongoing* violence occurring *within* the home. *Welsh* did not address such a situation.

⁴⁰⁶ We think the officers’ entry here was plainly reasonable under the circumstances. The officers were responding, at 3 o’clock in the morning, to complaints about a loud party. As they approached the house, they could hear from within “an altercation occurring, some kind of a fight.” App. 29. “It was loud and it was tumultuous.” *Id.*, at 33. The officers heard “thumping and crashing” and people yelling “stop, stop” and “get off me.” *Id.*, at 28, 29. As the trial court found, “it was obvious that . . . knocking on the front door” would have been futile. *Id.*, at 92. The noise seemed to be coming from the back of the house; after looking in the front window and seeing nothing, the officers proceeded around back to investigate further. They found two juveniles drinking beer in the backyard. From there, they could see that a fracas was taking place inside the kitchen. A juvenile, fists clenched, was being held back by several adults. As the officers watch, he breaks free and strikes one of the adults in the face, sending the adult to the sink spitting blood.

In these circumstances, the officers had an objectively reasonable basis for believing both that the injured adult might need help and that the violence in the kitchen was just beginning. Nothing in the Fourth Amendment required them to wait

until another blow rendered someone “unconscious” or “semi-conscious” or worse before entering. The role of a peace officer includes preventing violence and restoring order, not simply rendering first aid to casualties; an officer is not like a boxing (or hockey) referee, poised to stop a bout only if it becomes too one-sided.

[9] The manner of the officers’ entry was also reasonable. After witnessing the punch, one of the officers opened the screen door and “yelled in police.” *Id.*, at 40. When nobody heard him, he stepped into the kitchen and announced himself again. Only then did the tumult subside. The officer’s announcement of his presence was at least equivalent to a knock on the screen door. Indeed, it was probably the ⁴⁰⁷only option that had even a chance of rising above the din. Under these circumstances, there was no violation of the Fourth Amendment’s knock-and-announce rule. Furthermore, once the announcement was made, the officers were free to enter; it would serve no purpose to require them to stand dumbly at the door awaiting a response while those within brawled on, oblivious to their presence.

Accordingly, we reverse the judgment of the Supreme Court of Utah, and remand the case for further proceedings not inconsistent with this opinion.

It is so ordered.

Justice STEVENS, concurring.

This is an odd flyspeck of a case. The charges that have been pending against respondents for the past six years are minor offenses—intoxication, contributing to the delinquency of a minor, and disorderly conduct—two of which could have been proved by evidence that was gathered by the responding officers before they entered the home. The maximum punishment for these crimes ranges be-

tween 90 days and 6 months in jail. And the Court's unanimous opinion restating well-settled rules of federal law is so clearly persuasive that it is hard to imagine the outcome was ever in doubt.

Under these circumstances, the only difficult question is which of the following is the most peculiar: (1) that the Utah trial judge, the intermediate state appellate court, and the Utah Supreme Court all found a Fourth Amendment violation on these facts; (2) that the prosecution chose to pursue this matter all the way to the United States Supreme Court; or (3) that this Court voted to grant the petition for a writ of certiorari.

A possible explanation for the first is that the suppression ruling was correct as a matter of Utah law, and neither trial counsel nor the trial judge bothered to identify the Utah Constitution as an independent basis for the decision because ¹⁴⁰⁸they did not expect the prosecution to appeal.* The most plausible explanation for the latter two decisions is that they were made so police officers in Utah may enter a home without a warrant when they see ongoing violence—we are, of course, reversing the Utah Supreme Court's conclusion to the contrary. But that purpose, laudable though it may be, cannot be achieved in this case. Our holding today addresses only the limitations placed by the Federal Constitution on the search at issue; we have no authority to decide whether the police in this case violated the Utah Constitution.

The Utah Supreme Court, however, has made clear that the Utah Constitution provides greater protection to the privacy of the home than does the Fourth Amendment. See *State v. DeBooy*, 2000 UT 32, ¶ 12, 996 P.2d 546, 549. And it complained in this case of respondents' failure to raise

or adequately brief a state constitutional challenge, thus preventing the state courts from deciding the case on anything other than Fourth Amendment grounds. See 2005 UT 13, ¶ 12, 122 P.3d 506, 510. “[S]urpris[ed]” by “[t]he reluctance of litigants to take up and develop a state constitutional analysis,” *ibid.*, the court expressly invited future litigants to bring challenges under the Utah Constitution to enable it to fulfill its “responsibility as guardians of the individual liberty of our citizens” and “undertak[e] a principled exploration of the interplay between federal and state protections of individual rights,” *id.*, 122 P.3d at 511. The fact that this admonishment and request came from the Utah Supreme Court in this very case not only demonstrates that the prosecution selected the wrong case for establishing the rule it wants, but also indicates that the Utah Supreme Court would probably adopt the same rule as a matter of state constitutional law that we reject today under the Federal Constitution.

¹⁴⁰⁹Whether or not that forecast is accurate, I can see no reason for this Court to cause the Utah courts to redecide the question as a matter of state law. Federal interests are not offended when a single State elects to provide greater protection for its citizens than the Federal Constitution requires. Indeed, I continue to believe “that a policy of judicial restraint—one that allows other decisional bodies to have the last word in legal interpretation until it is truly necessary for this Court to intervene—enables this Court to make its most effective contribution to our federal system of government.” *Michigan v. Long*, 463 U.S. 1032, 1067, 103 S.Ct. 3469, 77 L.Ed.2d 1201 (1983) (STEVENS, J., dissenting). Thus, while I join the Court's

* Indeed, it was the prosecution that prepared the trial court's order granting respondents'

motion to suppress. See 2002 UT App. 317, ¶ 4, 57 P.3d 1111, 1112.

opinion, I remain persuaded that my vote to deny the State's petition for certiorari was correct.



547 U.S. 410, 164 L.Ed.2d 689

Gil GARCETTI et al., Petitioners,

v.

Richard CEBALLOS.

No. 04-473.

Argued March 21, 2006.

Decided May 30, 2006.

Background: Deputy district attorney filed § 1983 complaint against county and supervisors at district attorneys' office, alleging that he was subject to adverse employment actions in retaliation for engaging in protected speech, that is, for writing a disposition memorandum in which he recommended dismissal of a case on the basis of purported governmental misconduct. The United States District Court for the Central District of California, A. Howard Matz, J., granted defendants' motion for summary judgment, and district attorney appealed. The Court of Appeals for the Ninth Circuit, Reinhardt, Circuit Judge, 361 F.3d 1168, reversed and remanded. Certiorari was granted.

Holdings: The United States Supreme Court, Justice Kennedy, held that:

- (1) when public employees make statements pursuant to their official duties, they are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline, and
- (2) here, district attorney did not speak as a citizen when he wrote his memo and,

thus, his speech was not protected by the First Amendment.

Reversed and remanded.

Justice Stevens filed a dissenting opinion.

Justice Souter filed a dissenting opinion in which Justices Stevens and Ginsburg joined.

Justice Breyer filed a dissenting opinion.

1. Constitutional Law ⇌1937

A state cannot condition public employment on a basis that infringes the employee's constitutionally protected interest in freedom of expression. U.S.C.A. Const.Amend. 1.

2. Constitutional Law ⇌1929

Public employees do not surrender all their First Amendment rights by reason of their employment; rather, the First Amendment protects a public employee's right, in certain circumstances, to speak as a citizen addressing matters of public concern. U.S.C.A. Const.Amend. 1.

3. Constitutional Law ⇌1929, 1931

Pursuant to *Pickering* and its progeny, two inquiries guide interpretation of the constitutional protections accorded to public employee speech: the first requires determining whether the employee spoke as a citizen on a matter of public concern; if not, the employee has no First Amendment cause of action based on the government employer's reaction to the speech, but if the answer is yes, the possibility of a First Amendment claim arises, and the question then becomes whether the government employer had an adequate justification for treating the employee differently from any other member of the general public. U.S.C.A. Const.Amend. 1.

4. Constitutional Law ⇌1925

Government entity has broader discretion to restrict speech when it acts in