

## ***State v. Hernandez***

**Full Citation:** State v. Hernandez, 417 P.3d 207 (Ariz. 2018).

**Date Filed:** May 18, 2018

**Opinion's Author:** Justice Lopez

**Joined By:** Chief Justice Bales, Vice Chief Justice Pelander, Justices Brutinel, Timmer, Bolick and Gould (Justice Bolick concurred).

*Practitioners: For quick reference, please see the "Issue" and "Holding" sections.*

**Facts:** On September 11, 2014, two county sheriff's deputies were on patrol in Willcox. They started to follow a vehicle after seeing it turn at several intersections apparently in an effort to elude the officers. While following the vehicle, the officers ran a license plate check and saw that the vehicle's insurance had been cancelled the previous month. The officers then turned on their emergency lights to initiate a traffic stop for the insurance cancellation. The vehicle they were pursuing then drove onto the road shoulder, over a curb, and onto a private driveway. The officers, led by the vehicle, drove the length of the driveway and into the backyard of a residence. One officer stated that they followed the vehicle up the driveway "because that's where the vehicle took us when we attempted to stop it."<sup>1</sup>

The driver of the vehicle, Anthony Lito Hernandez, stopped the vehicle and got out. The approaching officer smelled marijuana and ordered Hernandez to put his hands behind his back. The officer found cash and an empty plastic baggie during a pat-down search. Upon inspection, "the officers found a burned marijuana cigarette, a metal spoon with char marks on the bottom and a 'burnt substance in it,' and a clear plastic baggie containing suspected methamphetamine."<sup>2</sup> Hernandez told the officers that he did not know who owned the property, but it was later determined that his girlfriend occupied the home.

**Procedural History:** The case is currently before the Arizona Supreme Court. Hernandez was charged with possession of marijuana, possession of drug paraphernalia, and transporting methamphetamine for sale. Hernandez moved to suppress the evidence seized from him and his vehicle during the stop, but a trial court denied his motion and a jury later found him guilty of each of those offenses. The court of appeals affirmed the trial court's denial of the motion to suppress, stating that an officer in pursuit of a person under investigation cannot be stopped by that person's entering private property.<sup>3</sup> In the dissenting opinion, the officers were found to have encroached on "constitutionally protected curtilage" which was per se unreasonable based on the State's failure to show exigent circumstances.<sup>4</sup>

The Arizona Supreme Court granted review.

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<sup>1</sup> State v. Hernandez, 417 P.3d 207, 209 (Ariz. 2018).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* (citing State v. Hernandez, 399 P.3d 115, 123 (Ariz. Ct. App. 2017)).

<sup>4</sup> *Id.* (citing *Hernandez*, 399 P.3d at 128).

**Issue:** Generally, under the Fourth Amendment, officers need a warrant when on private property. Were the defendant's Fourth Amendment rights violated when pursuing officers followed the defendant onto a private driveway and searched him and his car without a warrant?

**Holding:** No. Defendant's rights were not violated when law enforcement officers followed his vehicle onto a private road when the traffic stop began on a public road.

**Disposition:** The Arizona Supreme Court affirmed the trial court's denial of the motion to suppress, affirmed Hernandez's convictions and resulting sentences, and vacated the opinion of the court of appeals.

**Rule:** When a driver being pursued by police officers initiating a traffic stop leads the officers onto a private driveway, the driver impliedly gives consent to the officers entering the property and no warrant is needed under the Fourth Amendment protections.

**Reasoning:**

- **Fourth Amendment.** The court relied on the "reasonableness" standard exception to officers needing a warrant before entering a protected area.<sup>5</sup> The court specifically analyzed the exceptions of consent to an officer's entry and exigent circumstances that would justify the intrusion.<sup>6</sup> Fourth Amendment protections apply to areas where an individual has a reasonable expectation of privacy.<sup>7</sup> The court determined that Hernandez had a reasonable expectation of privacy because the driveway was behind the home and was partially obscured from the public view.<sup>8</sup> The court found that although Hernandez had a reasonable expectation of privacy in the driveway, the officers did not impermissibly invade because he had impliedly consented to the officers' presence when he led the officers down the driveway while they were attempting to complete a traffic stop.<sup>9</sup> Once officers initiate a traffic stop, the driver only has two lawful choices: pull over on public property or pull over on private property. Accordingly, if a driver pulls over onto private property during a traffic stop, the officers can assume consent to the officers' entry onto the private property.<sup>10</sup> Because Hernandez does not have any legal right to avoid the traffic stop, he impliedly gave consent to enter the private property when he led the pursuing officers onto his girlfriend's driveway.<sup>11</sup> Officers may generally navigate onto private property to the same extent that private citizens

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<sup>5</sup> *Id.* (citing *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006)).

<sup>6</sup> *Id.* (citing *Payton v. New York*, 455 U.S. 573, 583 (1980)).

<sup>7</sup> *Id.* at 210 (citing *Katz v. United States*, 389 U.S. 347, 360 (1967)).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 211.

<sup>10</sup> *Id.* (citing *State v. Tucker*, 574 P.2d 1295, 1298 (1978)).

<sup>11</sup> *Id.* (citing *State v. Castaneda*, 724 P.2d 1, 8 (1986)).

do.<sup>12</sup> Hernandez effectively invited the officers onto the private driveway when he led them there as the officers initiated the traffic stop.<sup>13</sup>

- **Arizona Constitution.** The court is not persuaded that the scope of the Arizona Constitution exceeds the Fourth Amendment protections.<sup>14</sup> The court held that the defendant's rights were not violated under the Arizona Constitution.<sup>15</sup>

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<sup>12</sup> *Id.* (comparing Florida v. Jardines, 569 U.S. 1, 8 (2013)).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 212.

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