Camreta v. Greene: Constitutional Limits on Child Abuse Investigations

Sara Kearsley
OCAP Fellow

Nobody can deny that protecting children from abuse and neglect is “one of society’s most important roles.”\(^1\) Additionally, there is no doubt that the numbers of children facing abuse and neglect are upsetting. A recent report on child abuse indicates that between 750,000 and 900,000 children are victims of some form of abuse or neglect every year.\(^2\) However studies also indicate that the instances of “substantiated” child abuse are at rates lower than they have been in nineteen years.\(^3\) The rate of sexual abuse in children under age 18 has gone down 61%; the rate of physical abuse on children has decreased 55%.\(^4\)

The government interest in protecting children through investigation of child abuse hinges on the great numbers of abused and neglected children in this country. Beside the moral responsibility to protect children, there are great social costs to child abuse: “child abuse victims are more likely to develop addictions to drugs and alcohol, commit violent crimes as adults, suffer psychological disorders, experience teen pregnancy, and to abuse their own children.”\(^5\) Unfortunately child or sexual abuse investigations may also harm children and undermine the integrity and trust in a family, particularly when allegations are unfounded. The “interest of parents in the care, custody, and control of their children is perhaps the oldest of the fundamental liberty interests recognized by this Court.”\(^6\)

*Camreta v. Greene* involves the investigation of alleged sex abuse of a 9-year old child, S.G., by her father.\(^7\) After S.G.’s father was released on bail after being charged with sex abuse of a neighbor child, the police contacted the Department of Human Services (DHS) to report its concerns about the father’s contact with his two young daughters. The police called DHS eight days after the father was arrested. Three days after the report, DHS caseworker Camreta and a sheriff’s deputy, Alford, went to S.G.’s school to interview her. Neither a warrant nor parental consent was sought before questioning S.G. Camreta and Alford took S.G. into a conference room at the school and asked her questions for one to two hours.

In the petitioner’s brief, the interview is described as following “best practices,” established after experience and research in investigating child abuse and working with child victims who are also in most cases the only witnesses to the crime. The respondents, however, describe the interview as an

---

1 Brief for Petitioner Bob Camreta (Camreta Brief) at 25.
5 Camreta Brief at 25.
7 Brief for Respondents (Greene Brief) at 2.
interrogation in which S.G. finally gave Camreta the answers he wanted just so that she could leave, an experience so upsetting that S.G. was physically ill.

S.G.’s father was charged with sex abuse of his two daughters, and the girls were removed from the family home and placed in shelter care. They were both evaluated and interviewed by professionals at the KIDS Center, a medical center specializing in child sex abuse. The KIDS Center was unable to determine whether there had been sexual abuse. In all subsequent interviews of S.G., she denied any sexual abuse by her father. The charges against S.G.’s father regarding the sex abuse of S.G. were dropped, and the children were returned home, approximately three weeks after they had been removed.

S.G.’s mother sued Camreta and Alford under 42 USC 1983, claiming, *inter alia*, that S.G.’s Fourth Amendment rights were violated by the seizure at her school. (The petitioners stipulated that S.G. was “seized,” but at least Justice Sotomayor questioned that conclusion.) The district court held that the seizure was constitutional, and even if it were not, Camreta and Alford were entitled to qualified immunity. The Ninth Circuit likewise held that Camreta and Alford were entitled to qualified immunity. However, the court also held that “applying the traditional Fourth Amendment requirements, the decision to seize and interrogate S.G. in the absence of a warrant, a court order, exigent circumstances, or parental consent was unconstitutional.”

On Tuesday, March 1, the Supreme Court heard oral arguments in this case. There were two issues before the Court. First, since the petitioner “won” the §1983 case below because the Ninth Circuit ruled that they have qualified immunity, there is a question as to whether the Supreme Court may even review the Ninth Circuit’s ruling that the seizure was unconstitutional. The second issue is what standard under the Fourth Amendment is necessary to justify interviewing a child without parental consent when state officials are investigating child abuse.

I. Whether the Ninth Circuit’s rule that the seizure was unconstitutional is reviewable.

The Ninth Circuit ruled that the petitioners had qualified immunity, and therefore that S.G. had no right to recover money damages in the §1983 suit. However, the court also said that the seizure of S.G. was unconstitutional. Many of the questions from the Supreme Court at oral arguments focused on the issue of whether the constitutionality of the seizure is reviewable.

Petitioners argue that because the Ninth Circuit ruled on the constitutionality of S.G.’s seizure to “clarify the law” in order to avoid repeated claims of qualified immunity, the rule is binding on the State of Oregon and all other jurisdictions within the Ninth Circuit. If the rule is not reviewable in this case, the State has the choice to either comply with the unfavorable rule or defy it and risk new lawsuits. Given the government’s stated strong interest in protecting children by investigating child abuse, neither of these options is desirable.

The respondent states that the Ninth Circuit’s decision is not reviewable because (1) the Ninth Circuit ruled in favor of the petitioners, (2) the ruling about the constitutionality of the seizure was not part of the court’s judgment, (3) there is no “case or controversy” because S.G. abandoned her Fourth

---

8 *Greene v. Camreta (I)*, 2006 WL 758547 at *3-4.
9 *Greene v. Camreta (II)*, 588 F.3d 1011, 1033 (9th Cir. 2009).
10 *Greene II*, 588 F.3d at 1030.
Amendment claim in deciding not to petition for certiorari from the judgment against her, and (4) petitioners lack standing because they have no personal stake in the claim. Similarly, the State of Oregon and Deschutes County may have a stake in the court’s decision, but they are not parties to the suit and therefore have no standing. Additional uncertainty also derives from the fact that, while S.G. and her mother have abandoned the §1983 claim against Camreta and Alford, there is still a case pending against Deschutes County, which may or may not be affected by the Supreme Court decision.

II. **How Fourth Amendment search and seizure law applies to the investigation of child abuse, particularly interviewing possible witnesses/victims.**

The Fourth Amendment states that, “The rights of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause…” The reasonableness requirement is met in balancing the state’s interests against the individual’s interests. This balancing determines what level of justification is required and whether the situation requires a warrant or is an exception to the warrant requirement. For example, in *Terry v. Ohio,* the Supreme Court balanced the state’s interests in preventing crime against an individual’s interests in bodily freedom and ruled that reasonable suspicion is sufficient to justify a brief detention for questioning. Similarly, circumstances sometimes allow for seizures to occur without requiring a warrant.

Here, the State asserts first that interviews of possible child victims of abuse should be evaluated based upon reasonableness, “not determined by rigid adherence to the warrant requirement.” Given the widespread “epidemic” of child abuse, the government interests in completing investigations promptly are strong, and, the petitioners argue, the privacy interests of children in school are reduced. Alternatives to interviewing children at school without parental permission, such as speaking to the children with the parent (and possible abuser) present may cause more harm to children in abusive homes or may be impractical. The balance between strong government interests and reduced privacy expectations, bolstered by a lack of alternatives, leads the petitioners to conclude that interviews such as the one that S.G. experienced are reasonable.

Respondents disagree with the petitioners’ general “reasonableness” standard and argue that the Court “should decline to provide lesser constitutional protection to S.G., who was suspected of no wrong-doing, than to the individuals seized in those cases, who were.” Respondents also refer to the government’s interest in not disrupting families and causing “irreparable” harm to the child when allegations are unfounded. (In S.G.’s case, she felt responsible for tearing apart her family when her father was arrested and the children removed from the home, even though the charges against her father were dropped.) The importance of a “neutral and detached magistrate” is one rationale for the warrant requirement cited by respondents. Given the emotional response that individuals have to child abuse,

---

12 Greene Brief at 58.
this rationale is even stronger in child abuse investigations. Respondents argue that none of the warrant exceptions are available here. Below are some of the cases and Fourth Amendment doctrines discussed in the briefs:


The Court in Lidster examined vehicle stops as part of a systematic program to locate witnesses to a hit-and-run accident that had occurred nearby several days earlier. Since the law enforcement officers were not trying to determine if the cars’ occupants had committed a crime, but rather were seeking witnesses to a crime, there was no individualized suspicion justifying the stops. The Court held that no warrant was required. The Fourth Amendment required balancing the government’s interests served by the seizure, the individuals’ liberty interests and the degree to which the seizure interfered. The Court concluded that the vehicle stop was reasonable at its inception and in its scope.

Relying on Lidster, petitioners argued that the Court should recognize that children who are victims of child or sexual abuse are often also the only witnesses to the abuse. The government interest in protecting these children by discovering the abuse and acting to prevent further abuse outweighs the child’s privacy interests. Therefore the warrantless seizure of S.G. was reasonable.


In T.L.O., a student was sent to the vice principal at her school for violating the school’s no smoking rule. The vice principal opened the student’s purse and found cigarettes and cigarette rolling papers. Because he associated the papers with marijuana, he searched further and found a small amount of marijuana, as well as evidence that the student was dealing marijuana. The student moved to suppress the evidence. The Supreme Court found that the search was valid, even though it was based only on reasonable suspicion. In so deciding, the Court balanced the need for discipline and order in the school with the legitimate privacy expectations of school children. The Court also considered the fact that obtaining a warrant would interfere with the school’s ability to discipline quickly and informally.

T.L.O.’s holding strengthens the petitioners’ argument above in that it recognizes the uniqueness of the school setting. Students have a “lesser expectation of privacy” than the general population.13 They are under the supervision and control of school officials, who are “responsible for maintaining discipline, health, and safety.”14 The petitioners argue that the expectation of privacy that S.G. had at school weighs less against the strong government interests. However, students do still maintain some liberty interests; as respondents point out, students are not in prison. T.L.O. is further distinguished from cases of child abuse investigations in that the search in T.L.O. was done by a school official in response to violation of a school rule. In S.G.’s case, no school officials were in the room during the interview, nor was it in any way related to maintaining discipline or safety in the school.

3. “Special needs” doctrine:

---

The “special needs” doctrine provides that warrantless searches and seizures may be allowable in cases where the purpose for the search or seizure is not related to law enforcement. The doctrine allows for different levels of justification for the search or seizure, again based upon a reasonableness balancing test. For example, health and safety inspections are allowed without obtaining warrants based on probable cause; and random drug testing of student athletes are allowed without suspicion.  

Both because of the school setting of S.G.’s interview and because the primary purpose of the interview was not for law enforcement, but for child protection, petitioners argue that the special needs doctrine applies. Petitioners maintain that because S.G. was potentially a victim/witness, there was no chance of self-incrimination. Therefore any “entanglement with law enforcement” is irrelevant.

Respondents emphasize that the sheriff’s presence throughout the interview implicates law enforcement so that the special needs doctrine does not apply. In addition, the fact that S.G.’s responses in the interview led to the arrest of her father on charges of sexual abuse suggests that there was a strong law enforcement purpose to the interview.

4. Exigent circumstances:
This doctrine allows for warrantless searches and seizures when there is an emergency situation, one that does not allow time for seeking a warrant. While there may certainly be child abuse cases that are exigent, respondents here emphasized that the father’s arrest for sex abuse occurred eight days before the police notified DHS, and then DHS waited three more days before interviewing S.G. Therefore, the argue, there was no emergency and plenty of time in which to obtain a warrant.

5. Parental consent:
An individual may at any time consent to a seizure, and a parent may consent for his or her child to be questioned by a caseworker and/or law enforcement officer. The applicability of parental consent to child abuse investigations is, again, sharply disputed. Petitioners argue that parents who are abusing their children will not consent to have those children speak with officials about that abuse. An additional concern is that children will be pressured to lie to protect the parent, or face even greater abuse, if the parent knows that the child told a caseworker or law enforcement about abuse. Respondents, however, cite studies showing that 90% of parents who are asked will give consent for caseworkers to speak with their children.

15Vernonia, 515 U.S. 646.