

10-704 MESSERSCHMIDT V. MILLENDER

DECISION BELOW: 620 F.3d 1016

LOWER COURT CASE NUMBER: 07-55518

QUESTION PRESENTED:

This Court has held that police officers who procure and execute warrants later determined invalid are entitled to qualified immunity, and evidence obtained should not be suppressed, so long as the warrant is not "so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable." *United States v. Leon*, 468 U.S. 897, 920, 923 (1984); *Malley v. Briggs*, 475 U.S. 335,341,344-45 (1986).

The Questions Presented are:

1. Under these standards, are officers entitled to qualified immunity where they obtained a facially valid warrant to search for firearms, firearm-related materials, and gang-related items in the residence of a gang member and felon who had threatened to kill his girlfriend and fired a sawed-off shotgun at her, and a district attorney approved the application, no factually on-point case law prohibited the search, and the alleged overbreadth in the warrant did not ex-pand the scope of the search?

2. Should the *Malley/Leon* standards be reconsidered or clarified in light of lower courts' inability to apply them in accordance with their purpose of deterring police misconduct, resulting in imposition of liability on officers for good faith conduct and improper exclusion of evidence in criminal cases?

CERT. GRANTED 6/27/2011