

THE FEDERAL LAW ENFORCEMENT - INFORMER -

MONTHLY LEGAL RESOURCE AND COMMENTARY FOR FEDERAL LAW
ENFORCEMENT OFFICERS AND AGENTS

Welcome to this installment of *The Federal Law Enforcement Informer (The Informer)*. The Legal Division of the Federal Law Enforcement Training Center is dedicated to providing federal law enforcement officers with quality, useful and timely Supreme Court and Circuit Court reviews, interesting developments in the law, and legal articles written to clarify or highlight various issues. The views expressed in these articles are the opinions of the author and do not necessarily reflect the views of the Federal Law Enforcement Training Center. *The Informer* is researched and written by members of the Legal Division. All comments, suggestions, or questions regarding *The Informer* can be directed to the Editor at (912) 267-2179 or FLETC-LegalTrainingDivision@dhs.gov. You can join *The Informer* Mailing List, have *The Informer* delivered directly to you via e-mail, and view copies of the current and past editions and articles in *The Quarterly Review* and *The Informer* by visiting the Legal Division web page at: <http://www.fletc.gov/legal>.

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4th Amendment Roadmap

Hot Issues

4th AMENDMENT ROADMAP

A step by step guide to searches

Posted Now

- Introduction to 4th Amendment Searches
- Who is a Government Agent?
- Reasonable Expectation of Privacy 1 and 2
- Probable Cause 1 and 2
- What is a Search Warrant?
- Search Warrant Service 1 and 2
- Terry Stop and Frisk
- Protective Sweeps
- Search Incident to Arrest
- Consent
- Mobile Conveyances
- Exigent Circumstances
- Plain View
- Exclusionary Rule 1 and 2
- Inspections
- Inventories

HOT ISSUES

Supreme Court cases and emergent issues

Posted Now

- Consent Searches – *GA v. Randolph*
- Anticipatory Warrants – *US v. Grubbs*
- GPS Tracking
- Covert Entry Search Warrants
- Use of Force – *Scott v. Harris*
- Passengers and Traffic Stops – *Brendlin v. California*
- FISA Parts 1 and 2 – An Overview for Officers and Agents
- Use of Force Continuum
- Interviewing Government Employees

SELF INCRIMINATION ROADMAP

A step by step guide to Lawful Interviews

- *Miranda* and the 5th Amendment
- *Miranda* Waivers and Invocations
- 6th Amendment Right to Counsel
- Comparing the 5th and 6th Amendment Rights to Counsel

Just Added

- Interviewing Government Employees

MILITARY INTERROGATIONS

The 5th Amendment, *Miranda*, and Article 31

- Article 31(b), UCMJ
- Military Interrogations – The Fifth Amendment and *Miranda*

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CASE SUMMARIES

SUPREME COURT

U.S. v. Ressaam, 128 S. Ct. 1858, May 19, 2008

Proof that there were explosives in defendant's car at the time he lied on a customs form (18 U.S.C. § 1001) while attempting to enter the United States is sufficient to convict for "carrying" explosives "during" the commission of a felony in violation of 18 U.S.C. § 844 (h)(4). The government does not have to prove that the explosives were carried "in relation to" the underlying felony. The government only has to prove that the explosives were carried while the felony was being committed.

Click [HERE](#) for the court's opinion.

* * * *

U.S. v. Rodriquez, 128 S. Ct. 1783, May 19, 2008

The Armed Career Criminal Act, 18 U.S.C. 924(e), provides for an enhanced sentence for felons convicted of possession of a firearm, if the defendant has three prior convictions for, *inter alia*, a state-law controlled substance offense "for which a maximum term of imprisonment of ten years or more is prescribed by law." A state drug-trafficking offense, for which state law authorized a ten-year sentence *because the defendant was a recidivist*, qualifies as a predicate offense under the Act, mandating the minimum 15 year sentence.

Click [HERE](#) for the court's opinion.

CIRCUIT COURTS OF APPEALS

5th CIRCUIT

U.S. v. Fambro, 2008 U.S. App. LEXIS 9582, May 02, 2008

A person is in constructive possession of contraband if he knowingly has ownership, dominion, or control over the contraband itself or over the premises in which the contraband is located. Constructive possession need not be exclusive. It may be joint with others, and it may be proven with circumstantial evidence. When there is joint occupancy, control or dominion over the place in which contraband is found is not by itself sufficient to establish constructive possession. Constructive possession in such cases exists only when there is some evidence supporting at least a plausible inference that the defendant had knowledge of and access to the contraband.

Click [HERE](#) for the court's opinion.

6th CIRCUIT

U.S. v. Blair, 2008 U.S. App. LEXIS 9506, May 02, 2008

An officer must have probable cause to make a stop for a civil traffic infraction, and reasonable suspicion of an ongoing crime to make a stop for a criminal violation.

Presence in a high-crime area at 10:30 p.m. does not by itself justify a *Terry* stop. That a given locale is well known for criminal activity will not by itself justify a *Terry* stop, although it may be taken into account with other factors. A late hour can contribute to reasonable suspicion; however, 10:30 p.m. is not late enough to arouse suspicion of criminal activity.

Click [HERE](#) for the court's opinion.

8th CIRCUIT

U.S. v. Peralez, 2008 U.S. App. LEXIS 10358, May 14, 2008

The Fourth Amendment is violated when the extent and duration of the trooper's focus on non-routine questions prolongs a traffic stop beyond the time reasonably required to complete its purpose. However, suppression of evidence is the appropriate remedy only if the constitutional violation was "at least a but-for cause of obtaining the evidence."

Because the drug dog was available at the outset of the stop, and because at the outset of the stop the trooper indicated to both the driver and passenger that he intended to run the dog around the exterior of the van, regardless of the responses to the trooper's expanded inquiries, the dog sniff was not "the consequence of a constitutional violation." The positive indication during the dog sniff provided probable cause to search the van, resulting in the discovery of the evidence.

Click [HERE](#) for the court's opinion.

9th CIRCUIT

Torres v. City of Madera, 2008 U.S. App. LEXIS 9648, May 05, 2008

Five factors are relevant in determining whether an officer's mistake in using the Glock rather than the Taser was objectively unreasonable: (1) the nature of the training the officer had received to prevent incidents like this from happening; (2) whether the officer acted in accordance with that training; (3) whether following that training would have alerted the officer that he was holding a handgun; (4) whether the defendant's conduct heightened the officer's sense of danger; and (5) whether the defendant's conduct caused the officer to act with undue haste and inconsistently with that training.

This determination of reasonableness must allow for the fact that police officers are often forced to make split second judgments.

Click [HERE](#) for the court's opinion.

10th CIRCUIT

U.S. v. Reeves, 524 F.3d 1161, May 07, 2008

Opening the door was not voluntary when, between 2:30 and 3:00 in the morning, three officers pounded on the door and window continuously for at least twenty minutes while yelling and loudly identifying themselves as police officers. A reasonable person faced with those circumstances would not feel free to ignore the officers' implicit command to open the door.

If an individual's decision to open the door to his home to the police is not made voluntarily, the individual is seized inside his home. Absent a warrant or exigent circumstance, the seizure violates the Fourth Amendment, and evidence seized inside is inadmissible as fruit of the poisonous tree.

The 6th, 7th, and 8th circuits agree (cites omitted).

Click [HERE](#) for the court's opinion.

11th CIRCUIT

U.S. v. Harris, 2008 U.S. App. LEXIS 9814, May 08, 2008

Passengers in a taxicab can have a reasonable expectation of privacy in the passenger compartment. The cab driver has the authority to consent to a search of the passenger compartment.

(Editor's Note: The Court did not define the "passenger compartment" in which the taxicab passenger could have a reasonable expectation of privacy. The Court suggests in dicta based on the Supreme Court's decision in *Georgia v. Randolph* that a refusal by the passenger who is present would prevail over consent by the driver.)

Click [HERE](#) for the court's opinion.

Gandara v. Bennett, 2008 U.S. App. LEXIS 11088, May 22, 2008

Looking at this issue for the first time, the court decides:

Article 36 of the Vienna Convention on Consular Relations provides that a foreigner who has been arrested and detained in this country must be advised of his rights regarding notification of representatives of his home country. Failure to comply with this international treaty cannot form the basis of a civil suit under 42 U.S.C. § 1983.

Click [HERE](#) for the court's opinion.

The 9th Circuit agrees. *Cornejo v. County of San Diego*, 504 F.3d 853 (2007)
(Click [10 Informer 07](#)).

The 7th Circuit disagrees. *Jogi v. Voges*, 480 F.3d 822 (2007). (Click [HERE](#)).
