Department of Homeland Security
Federal Law Enforcement Training Center
Legal Division

June 2007

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.

This edition of *The Informer* may be cited as "6 INFORMER 07".
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- **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**
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- **FISA – An Overview for Officers and Agents**

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UNITED STATES SUPREME COURT
CASE SUMMARIES

Los Angeles County v. Rettele, 127 S. Ct. 1989, May 21, 2007

Officers who are searching a house where they believe a suspect might be armed possess authority to secure the premises before deciding whether to continue with the search. It is reasonable for officers to take action to secure the premises and to ensure their own safety and the efficiency of the search. The risk of harm to both the police and the occupants is minimized if the officers routinely exercise unquestioned command of the situation.

Unknown to the officers, the suspects had moved from and sold the house three months earlier. The occupants were completely innocent of wrongdoing. Clearly, the officers made an error in the case. However, "[t]he Fourth Amendment allows warrants to issue on probable cause, a standard well short of absolute certainty." Under such standards, mistakes are inevitable. This does not mean that all mistakes are unreasonable. When officers execute a valid warrant and act in a reasonable manner to protect themselves from harm, the Fourth Amendment is not violated.

Click **HERE** for the Court's opinion.

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Brendlin v. California, 127 S. Ct. 2400, June 18, 2007

When police stop a vehicle, the driver and passengers are effectively seized, giving the passenger a right to challenge the legality of the stop and the admissibility of evidence discovered as "fruit of the poisonous tree." No passenger in such a situation would feel free to leave, even after the vehicle came to a full stop. For safety reasons alone, officers would be unlikely to allow the passenger just to walk away even if the offense was a mere traffic violation.

Click **HERE** for the Court's opinion.

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CIRCUIT COURTS OF APPEALS
CASE SUMMARIES

1st CIRCUIT

U.S. v. Bravo, 2007 U.S. App. LEXIS 12925, May 29, 2007

The Maritime Drug Law Enforcement Act (MDLEA) allows the United States to enforce drug laws outside of the United States, and more specifically, exercise jurisdiction over stateless vessels. A "vessel without nationality" includes a vessel aboard which the master or person in charge makes a claim of registry and the claimed nation of registry does not affirmatively and unequivocally assert that the vessel is of its nationality.

The Fourth Amendment prohibits "unreasonable searches and seizures" whether or not the evidence is sought to be used in a criminal trial. A violation of the Amendment is "fully accomplished" at the time of an unreasonable government intrusion. For purposes of this case, therefore, if there was a violation of the Fourth Amendment, it occurred solely in international waters, where the search and seizure took place. However, the Fourth Amendment does not apply to activities of the United States against aliens in international waters.

Click **HERE** for the court's opinion.

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6th CIRCUIT

U.S. v. Campbell, 2007 U.S. App. LEXIS 12097, May 24, 2007

The Supreme Court has noted that "interrogation relating to one's identity or a request for identification by the police does not, by itself, constitute a Fourth Amendment seizure." Regarding the statement, "I would *like* to see your ID," the use of the word "like," as opposed to "need" or "want," suggests that a reasonable person would feel free to decline this request and leave the scene. Moreover, this court has previously held that the use of less permissive language by police officers than the phrase "I'd like to see some ID" does not constitute a seizure. A person walking down the street is not detained when an officer driving in a marked police car yells, "Hey, buddy, come here." Such a statement is a request rather than an order.

Click **HERE** for the court's opinion.

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Van Hook v. Anderson, 2007 U.S. App. LEXIS 12098, May 24, 2007

When, following the arrest of a suspect, the police advise him of his *Miranda* rights and the suspect asks for a lawyer, all questioning must then stop (a) until a lawyer has been provided, or (b) unless the suspect "himself" initiates a discussion. Police are permitted to approach the suspect and inquire whether he now wants to talk when a third party tells police that the suspect is now willing to speak with them. Police are not precluded from acting on that information because it was not communicated to them directly by the suspect.

The 8th, 9th, and 11th Circuits agree, as does the Georgia Supreme Court (cites omitted)**.**

Click **HERE** for the court's opinion.

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7th CIRCUIT

U.S. v. Strong, 485 F.3d 985, May 14, 2007

When a defendant has been charged with felon in possession of a firearm, evidence of contemporaneous uncharged drug trafficking is admissible under the "inextricably intertwined" doctrine. Such evidence tends to prove "knowing possession" of the firearm. Drug trafficking supplies a motive for having a gun because weapons are tools of the trade of drug dealers.

Click **HERE** for the court's opinion.

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9th CIRCUIT

U.S. v. Orman, 2007 U.S. App. LEXIS 11966, May 22, 2007

A brief investigatory detention, a *Terry* stop, while constituting a seizure, is not a violation of the Fourth Amendment provided that the police officer has reasonable suspicion that criminal activity may be afoot. In the course of a lawful investigatory stop, a police officer also may lawfully pat down the detained individual for weapons, a *Terry* frisk, provided that the officer has reasonable suspicion that the person may be armed and presently dangerous. However, a *Terry* frisk is not confined to just those situations in which a *Terry* stop has occurred. A *Terry* stop and a *Terry* frisk are two independent actions, each requiring separate justifications. *Terry* frisks are authorized in consensual encounters so long as there is reasonable suspicion that the person is armed and presently dangerous.

Click **HERE** for the court's opinion.

U.S. v. Lopez, 484 F.3d 1186, May 07, 2007

A driver who transports a group of illegal aliens from a drop-off point in the United States to another destination in this country commits only the offense of transporting aliens "within" the United States but is not guilty of aiding and abetting the crime of "bringing" the aliens "to" the United States.

Although all of the elements of the "bringing to" offense are satisfied once the aliens cross the border, the crime does not terminate until the initial transporter who brings the aliens to the United States ceases to transport them and drops off the aliens on the U.S. side of the border. One who transports undocumented aliens only within the United States and only after the initial transporter had dropped the aliens off inside the country is not guilty of aiding and abetting the initial transportation.

Click **HERE** for the court's opinion.

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11th CIRCUIT

U.S. v. Presley, 2007 U.S. App. LEXIS 12531, May 31, 2007

The elements of a "necessity" defense to felon in possession of a firearm include "that the defendant had no reasonable legal alternative to violating the law."

Click **HERE** for the court's opinion.

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U.S. v. Ward, 2007 U.S. App. LEXIS 11416, May 16, 2007

A defendant may be convicted of mail fraud without personally committing each and every element of mail fraud, so long as the defendant knowingly and willfully joined the criminal scheme, and a co-schemer used the mails for the purpose of executing the scheme.

It is not necessary that a defendant actually do any of the mailing so long as there is sufficient evidence to tie him to the fraudulent scheme which involves the use of the mails.

Click **HERE** for the court's opinion.