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NOTICE

The Legal Eagle is a news publication for law enforcement officers and is not designed to give legal advice. You should always contact your police legal advisor, municipal attorney, or district attorney concerning legal matters.

UNITED STATES SUPREME COURT

Highlights

Collective Knowledge	
Doctrine Upheld.....	3
Supreme Court	
Summary.....	4-5

Second Amendment Rights Defined

D.C. v. Heller, 2008 US LEXIS 5268, Decided June 26, 2008

Heller was a special police officer for the District of Columbia and authorized to carry a handgun while on duty. Heller applied for a registration certificate for a handgun that he wished to keep at home, but the District of Columbia refused.

After his request was denied, he sued the District of Columbia on Second Amendment grounds and asked the Court to prevent the city from enforcing: 1) the ban on the registration of handguns; 2) the licensing requirement insofar as it prohibits the carrying of a firearm in the home without a license; and 3) the trigger-lock requirement inso-

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far as it prohibits the use of “functional firearms within the home.”

District of Columbia law provided the following: 1) handgun possession was banned by making it a crime to carry an unregistered firearm and prohibiting the registration of handguns; 2) no person could carry an unlicensed handgun, but authorized the police chief to issue 1-year licenses; and 3) required residents to keep lawfully owned firearms unloaded and disassembled or bound by a trigger lock or similar device.

In examining Heller’s request, the Supreme Court

first found that the Second Amendment to the United State Constitution protects an individual right to possess a firearm unconnected with service in a militia, and gives individuals

the right to use that arm for traditionally lawful purposes, such as self-defense within the home. In other words, the Court acknowledged an individual’s right to keep and bear arms.

The Court reasoned that their interpretation is confirmed by similar arms-bearing rights present in state constitutions that preceded and immediately followed the Second Amendment. Furthermore, interpretation of the Second Amendment by scholars, courts, and legislators from immediately after its ratification, through the late 19th century, also supports the Court’s decision.

However, the Court reasoned that, like most rights, the Second Amendment right is not limited. The Court found that it is not a right to keep and carry “any weapon whatsoever

in any manner whatsoever and for whatever purpose” For example, concealed weapons prohibitions have been previously upheld both under the Second Amendment and similar state provisions.

The Court further clarified that their opinion should not be interpreted as casting doubt on long-standing prohibitions on the possession of firearms by felons and the mentally ill, laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.

In examining the handgun ban and the trigger-lock requirement (as applied to self-defense), the Court held that these limitations violated the Second Amendment. The Court ruled that the District’s total ban on handgun possession in the home amounted to a prohibition on an entire class of “arms” that Americans overwhelmingly choose for the lawful purpose of self-defense.

In a review of all of the previous standards of scrutiny the Court has applied to enumerated constitutional rights, the Court ruled that this prohibition — affecting “the place where the importance of the lawful defense of self, family, and property is most acute” — failed to meet constitutional requirements and must be repealed.

Similarly, the Court further found that

the requirement that any lawful firearm in the home be disassembled or bound by a trigger lock made it impossible for citizens to use arms for the core



lawful purpose of self-defense and is therefore unconstitutional.

Because the Plaintiff agreed at oral argument that the D. C. licensing law would be constitutionally permissible if it was not enforced "arbitrarily and capriciously", the Court assumed that a license would satisfy his request for relief and therefore, it did not address the licensing requirement.

In conclusion, the Court held that, unless the Plaintiff was disqualified from exercising his Second Amendment rights, the District must permit him to register his handgun and must issue him a license to carry it in the home.

Tenth Circuit Court of Appeals

Collective Knowledge Doctrine Upheld

*U.S. v. Chavez, 2008 U.S. App. LEXIS 16558,
Decided July 29, 2008*

After an intensive drug investigation by federal agents, the DEA requested a patrolman's assistance with the traffic stop of Defendant Chavez. Prior to the traffic stop, a DEA task force had investigated and conducted surveillance of Servando Moreno, the passenger in Mr. Chavez's pickup truck at the time of the stop. The DEA had also, through a confidential source, arranged to purchase 1 kilo of cocaine from Mr. Moreno on the day of the traffic stop. Based on its investigation, the



DEA directed the patrolman to stop and search Mr. Chavez's vehicle.

During a search of the Defendant's pickup truck, a New Mexico State Police patrolman discovered approximately 1 kilogram of cocaine in a bucket covered with nails. Mr. Chavez eventually entered a conditional guilty plea to one count of conspiracy to commit possession with intent to distribute more than 500 grams of cocaine, and one count of possession with intent to distribute more than 500 grams of cocaine. He conditioned his plea on the right to appeal the district court's decision not to suppress the narcotics evidence as fruits of an illegal stop and search.

On appeal, Chavez argued that the patrolman lacked probable cause because he was not privy to the details of the DEA investigation. Therefore, the central question presented before the Court was whether the patrolman's stop and search of Chavez's vehicle was justified under the "collective knowledge" doctrine.

Under the collective knowledge doctrine, absent any traffic violation, a police officer may rely on the instructions of another law enforcement agency or officer to initiate a traffic stop, and then conduct a search pursuant to the automobile exception. Horizontal collective knowledge exists when individual law enforcement officers have pieces of probable cause knowledge, but no single officer possesses information sufficient for probable cause. The Court found that, under these circumstances, the officers can communicate the information they possess individually and,

thereby, pool their collective knowledge to meet the probable cause threshold.

Examining this particular issue for the first time, the Court decided that vertical collective knowledge allows a police officer, when stopping and searching a car, to rely on the instructions of another law enforcement officer or agency, with knowledge of the probable cause facts, even if that officer himself is not privy to all the facts.

The appellate court found that the stop and search of defendant's vehicle was justified under the collective knowledge doctrine because, at the time of the traffic stop, the facts and circumstances within the DEA task force's knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that Chavez was committing an offense. Because the task force officer and the DEA task force collectively had probable cause to search the truck, so too did the patrolman.



Supreme Court Summary

The summer months proved to be busy ones for the United States Supreme Court. In addition to the landmark decision regarding the Second Amendment discussed in this edition of the Legal Eagle, the Court also decided numerous other important issues. The following is a brief summary of some of the Court's rulings impacting the criminal court system.

Giles v. California, Docket Number 07-6053, Decided June 25, 2008

Dwayne Giles was tried for the murder of his ex-girlfriend. Giles alleged that he shot the woman in self-defense. In order to combat his self-defense claim, prosecutors introduced evidence of a conversation that the victim had with investigators approximately one month before her death. In that interview, the victim told police that Giles had assaulted her and threatened to kill her with a knife.



On appeal, Giles argued that the use of the victim's statement during the trial violated his Sixth Amendment right to confront witnesses against him. The California Supreme Court held that Giles had given up his right to confront the victim because his criminal act was the cause of her absence.

Under previous court decisions, defendants have been subject to the rule of "forfeiture by wrongdoing." That rule provides that those whose own wrongful actions have prevented a witness from testifying are said to "forfeit" their confrontation rights so that hearsay testimony from the absent witness is admissible.

However in 2004, the Supreme Court decided that out-of-court testimony from unavailable witnesses was inadmissible at trial unless the previous testimony was subject to cross-examination by the defendant.

Because the State had not shown that Giles had killed the victim to ensure that she

would be unavailable to testify against him, the Court ruled that his rights may have been violated. Justice Scalia, in the majority opinion, wrote that the lower state courts were now free to investigate Giles's intent in killing the victim. If their inquiry uncovers proof of an "abusive relationship" that ended in murder, the Court held that the evidence "might support" a finding that the crime resulted from an intent "to isolate the victim and to stop her" from reporting the abuse. If that is case, then the defendant's rights would not have necessarily been violated.

Kennedy v. Louisiana, Docket Number 07-343, Decided June 25, 2008

The defendant was found guilty of raping his eight-year-old stepdaughter and was sentenced to death as provided for under Louisiana law. The defendant appealed his death sentence by arguing that it violated the Constitution's Eighth Amendment ban on cruel and unusual punishment.

In its ruling, the Court closely examined its prior ruling in Coker v. Georgia. In that case, the Court found that, despite the seriousness of the crime of rape, it did not involve the taking of a human life, and therefore did not justify the death penalty. However, because the Coker decision only dealt with the rape of adult women, the state of Louisiana argued that it didn't explicitly preclude states from enacting the death penalty for child rapists.

In a 5-4 decision, the Supreme Court held that a death sentence for a defendant who rapes a child, but does not kill the victim, and who did not intend to assist another in killing the child, did in fact violate the Eighth Amendment's prohibition on cruel and unusual punishment. In handing down its decision, the majority stated that, "difficulties in administering the penalty to ensure its arbitrary and capricious application require adherence to a rule reserving its use, at this stage of evolving standards and in cases of crimes against indi-

viduals, for crimes that take the life of the victim."

As a result of the Court's decision, five other states' laws will be affected - Montana, Georgia, Oklahoma, South Carolina and Texas.

Rothgery v. Gillespie County, Docket Number 07-440, Decided June 23, 2008

The defendant was arrested for carrying a firearm after conviction of a felony and taken before a judge for processing, without a prosecutor being present. He asked to receive counsel, but was told that would take several days. When he learned that waiting for an attorney would extend his jail stay, he waived his right to counsel for that hearing. The court found probable cause that he had committed the crime and ordered him held until he posted bond or the charges were concluded.

After he posted bond and was released, he continued to ask, in writing, about the appointment of counsel, but none was assigned to him. After several months had passed, and he was indicted by a grand jury, an attorney was finally assigned to his case. The lawyer presented evidence that the defendant was not guilty of the charged offense because he had never been previously convicted of a felony. As a result, the defendant's charges were dropped.

The defendant sued the county and alleged that his Sixth Amendment rights had been violated by the county's failure to appoint him an attorney. The Fifth Circuit Court of Appeals ruled that the first court hearing did not involve a prosecutor, and therefore, the Sixth Amendment right to counsel did not apply.

Once heard by the Supreme Court, the Court held that "a criminal defendant's initial appearance before a judicial officer, where he learns the charge against him and his liberty is subject to restriction, marks the start of adversary judicial proceedings that trigger attachment of the Sixth Amendment right to counsel."