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## **Criminal Procedure: Confessions, Searches, and Seizures**

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# CRIMINAL PROCEDURE: CONFESSIONS, SEARCHES, AND SEIZURES

*Michael E. Keasler\**

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**A** review of Texas and Supreme Court cases over the last year reveals few remarkable departures from established jurisprudence related to confessions, searches, and seizures.

## I. CONFESSIONS

### A. VOLUNTARINESS

The issue of voluntariness in relation to confessions has a long history in our jurisprudence. More than a century ago, the Supreme Court of the United States ruled that in order to be admissible, a confession “must be free and voluntary: that is, must not be extracted by any sort of threats or violence, nor obtained by any direct or implied promises, however slight,

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\* Judge, Texas Court of Criminal Appeals. I would like to thank Claire G. Hargrove, my former briefing attorney, for her research assistance on the original draft of this Article. I would also like to thank Stacey M. Goldstein, my research attorney, and David C. Cardona, a Juris Doctor candidate at St. Mary’s School of Law, who served as my intern during the summer of 2006, for providing additional research and editing assistance on the final version of this Article.

nor by the exertion of any improper influence.”<sup>1</sup> Admission of an involuntary statement is a deprivation of due process, even if there is ample evidence admitted properly to support the conviction.<sup>2</sup> Therefore, the determination of voluntariness is a threshold requirement that must be proven before a confession is admitted into evidence.<sup>3</sup> Through the decades, courts have repeatedly refined and defined what constitutes a “voluntary” confession as well as who gets to make that determination. Before the Supreme Court ruling in *Jackson v. Denno*,<sup>4</sup> Texas courts followed the New York rule, leaving the voluntariness determination solely to the jury.<sup>5</sup> In *Jackson*, the Court ruled that a defendant has a constitutional right to object to a confession’s admissibility and have a fair hearing on the voluntariness issue.<sup>6</sup> At this hearing, commonly referred to as a *Jackson v. Denno* hearing, a judge determines voluntariness before the question is presented to the jury.<sup>7</sup> The Texas Court of Criminal Appeals first applied the *Jackson* standard in *Lopez v. State*, stating “Only those confessions which the trial judge actually and independently determines from all of the evidence to be voluntary shall be admitted as evidence before the jury.”<sup>8</sup>

Under both federal and state law, a confession’s truth or falsity has no bearing on whether it is voluntary.<sup>9</sup> The methods that law enforcement use to obtain a confession dictate whether a statement offends the Constitution.<sup>10</sup> The test for determining whether an officially sanctioned promise makes a statement involuntary is whether the promise is likely to make a defendant speak untruthfully.<sup>11</sup> Under Texas law, a promise renders a confession invalid if it is: (1) positive, (2) sanctioned or made by someone in authority, and (3) sufficiently influential in nature to make a defendant speak falsely.<sup>12</sup> By contrast, federal courts consider “what effect the totality of the circumstances had upon the [defendant’s] will.”<sup>13</sup>

The timing of a defendant’s claim, depending on whether it is made during pretrial, trial, or post-conviction, determines which party bears the burden of proof on the voluntariness issue. When a defendant raises a pretrial challenge to voluntariness, the state has the burden to prove voluntariness by a preponderance of the evidence.<sup>14</sup> During trial, however,

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1. *Bram v. United States*, 168 U.S. 532, 542-43 (1897).

2. *Malinski v. New York*, 324 U.S. 401, 404 (1945).

3. *United States v. Martin*, 431 F.3d 846, 849 (5th Cir. 2005) (quoting *Brown v. Illinois*, 422 U.S. 590 (1975)).

4. 378 U.S. 368, 376-77 (1964).

5. *Vasquez v. State*, 179 S.W.3d 646, 661 (Tex. App.—Austin 2005, pet. granted).

6. *Jackson*, 378 U.S. at 376-77.

7. *Id.*

8. 384 S.W.2d 345, 348 (Tex. Crim. App. 1964).

9. *Martinez v. Dretke*, No. 4:04-CV-0825-A, 2005 U.S. Dist. LEXIS 4767, at \*10 (N.D. Tex. Mar. 25, 2005).

10. *Kearney v. State*, 181 S.W.3d 438, 444 (Tex. App.—Waco 2005, pet. ref’d).

11. *Martinez*, 2005 U.S. Dist. LEXIS 4767, at \*10.

12. *Bible v. State*, 162 S.W.3d 234, 244 (Tex. Crim. App. 2005).

13. *Martinez*, 2005 U.S. Dist. LEXIS 4767, at \*11.

14. *Whitmire v. State*, 183 S.W.3d 522, 527 (Tex. App.—Houston [14th Dist.] 2006, no pet.).

a criminal defendant claiming involuntariness must show that the government used coercive conduct and that the defendant made the confession as a result of that coercion.<sup>15</sup> Finally, in a federal habeas action, the petitioner must prove that the confession was not voluntary.<sup>16</sup>

Courts have long acknowledged that interrogation plays a legitimate role in a criminal investigation.<sup>17</sup> Defendants commonly claim that they were subjected to police coercion during custodial interrogation. But even where an interrogation is lengthy and sustained, courts will consider the totality of the circumstances to determine voluntariness.<sup>18</sup> In *Vasquez v. State*, the trial court found that the defendant's confession, although obtained after a lengthy interrogation, was voluntary.<sup>19</sup> On appeal, the Austin Court of Appeals upheld the trial court's ruling.<sup>20</sup> In doing so, the court of appeals noted that although trained homicide detectives bent on eliciting a confession subjected the defendant to an intense and lengthy interrogation, Vasquez was told repeatedly that he could leave and the door was left open.<sup>21</sup> Similarly, in *Scott v. State*, the defendant was subjected to over twenty hours of intense questioning, but the questioning took place over a five-day period, the defendant was never handcuffed or frisked, and he was given ample unsupervised breaks, food, and water.<sup>22</sup> Further pressure had been applied when the police falsely advised the defendant that other suspects had identified him as being involved.<sup>23</sup> Texas courts have ruled that police misrepresentations that they have evidence linking the suspect to a crime are not unlikely to render a confession involuntary.<sup>24</sup>

## B. CUSTODIAL INTERROGATION

When the government subjects a suspect to custodial interrogation, *Miranda* warnings must be given. The warnings are meant to counter custodial interrogation's inherently coercive nature.<sup>25</sup> For the State to use statements obtained during custodial interrogation, it must prove that the government administered proper warnings.<sup>26</sup> In federal court, "there is no talismanic incantation of phrases required to satisfy the strictures of *Miranda*."<sup>27</sup> Texas, however, has codified the required warnings under

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15. *McWilliams v. Dretke*, No. 7:02-CV-094-R, 2005 U.S. Dist. LEXIS 510, at \*21 (N.D. Tex. Jan. 13, 2005).

16. *Jenkins v. Dretke*, No. 3:03-CV-0933-G, 2005 U.S. Dist. LEXIS 7013, at \*15 (N.D. Tex. Apr. 20, 2005).

17. *Vasquez*, 179 S.W.3d at 657 n.7.

18. *Scott v. State*, 165 S.W.3d 27, 36 (Tex. App.—Austin 2005, pet. ref'd).

19. *Vasquez*, 179 S.W.3d at 656-57.

20. *Id.*

21. *Id.*

22. *Scott*, 165 S.W.3d at 42.

23. *Id.* at 43.

24. *Id.*

25. *United States v. Cardenas*, 410 F.3d 287, 292 (5th Cir. 2005).

26. *Id.*

27. *Id.*

Texas Code of Criminal Procedure Article 38.22.<sup>28</sup> In Texas, written statements must include a signed waiver of *Miranda* rights, and oral statements must be electronically recorded and show that the suspect was orally advised of his or her *Miranda* rights before questioning.<sup>29</sup>

Confessions made during custodial interrogation are still admissible if a voluntary waiver of *Miranda* rights is obtained. So in cases involving a confession obtained during custodial interrogation, courts change their focus from determining whether the statement was given voluntarily to whether the defendant voluntarily waived his *Miranda* rights.<sup>30</sup> When determining whether a *Miranda* waiver is valid, a court will first consider whether the waiver was a "free and deliberate choice" or made under force or coercion.<sup>31</sup> Also, courts will determine whether the waiver was made with full knowledge of the rights being waived and the possible consequences of waiver.<sup>32</sup>

Only confessions elicited by police through interrogation are subject to *Miranda* privilege; any free and voluntary statement made without coercion is admissible.<sup>33</sup> Police questioning before taking a suspect into custody is not subject to *Miranda*.<sup>34</sup> Texas courts consider four factors when determining "whether a person is in custody: (1) probable cause to arrest, (2) subjective intent of the police, (3) focus of the investigation, and (4) subjective belief of the defendant."<sup>35</sup> Texas courts have identified four situations that may constitute custody:

- (1) when the suspect is physically deprived of his freedom of action in any significant way;
- (2) when a law enforcement officer tells the suspect he cannot leave;
- (3) when law enforcement officials create a situation that would lead a reasonable person to believe that his freedom of movement has been significantly restricted; and
- (4) when there is probable cause to arrest and law enforcement officers do not tell the suspect he is free to leave.<sup>36</sup>

Finally, mere questioning by police does not necessarily constitute interrogation.<sup>37</sup> Instead, interrogation is questioning that is likely to elicit a suspect's incriminating response.<sup>38</sup>

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28. TEX. CRIM. PROC. CODE ANN. § 38.22 (Vernon 2005).

29. *Id.*

30. *Cardenas*, 410 F.3d at 292.

31. *Id.* at 293.

32. *Id.* at 292-93.

33. *Gant v. State*, 153 S.W.3d 294, 300 (Tex. App.—Beaumont 2005, pet. ref'd), cert. denied, 126 S. Ct. 1574 (2006).

34. *Martinez v. State*, 171 S.W.3d 422, 429 (Tex. App.—Houston [14th Dist.] 2005, no pet.).

35. *Yarborough v. State*, 178 S.W.3d 895, 910 (Tex. App.—Texarkana 2005, pet. ref'd).

36. *Martinez*, 171 S.W.3d at 429.

37. *United States v. Fannin*, No. 4:03-CR-0119-A, 2005 U.S. Dist. LEXIS 11090, at \*8 (N.D. Tex. June 7, 2005).

38. *Id.*

## C. STATUTORY REQUIREMENTS

For a confession obtained during custodial interrogation to be introduced into evidence against the speaker, Article 38.22 states that the warnings must be given before the statement is made.<sup>39</sup> A written statement must include a copy of the warnings, and the suspect must sign and acknowledge them.<sup>40</sup> Texas also allows admission of an oral statement; however:

No oral . . . statement of an accused made as a result of custodial interrogation shall be admissible against the accused in a criminal proceeding unless:

- (1) an electronic recording . . . is made of the statement;
- (2) prior to the statement but during the recording the accused is given the warning in Subsection (a) of Section 2 above and the accused knowingly, intelligently, and voluntarily waives any rights set out in the warning;
- (3) the recording device was capable of making an accurate recording, the operator was competent, and the recording is accurate and has not been altered;
- (4) all voices on the recording are identified; and
- (5) not later than the 20th day before the date of the proceeding, the attorney representing the defendant is provided with a true, complete, and accurate copy of all recordings of the defendant made under this article.<sup>41</sup>

Although *Miranda* warnings are normally required for admission of a confession obtained during a custodial interrogation, Texas rules provide an exception.<sup>42</sup> Under Texas law, a confession is admissible, even without *Miranda* warnings, if it contains information leading to independent verification of the crime, such as the location of stolen property.<sup>43</sup> It should be noted, however, that as a Supreme Court case, *Miranda* constitutes binding precedent on Texas courts.

In *Yarborough v. State*, the defendant objected to admission of the victim's videotaped statement because the recording contained no warnings.<sup>44</sup> The Texarkana Court of Appeals ruled that the statement was not a product of custodial interrogation, and therefore, Article 38.22 warnings were not required.<sup>45</sup>

Other exceptions to Article 38.22 include (1) the accused's statement in open court, during a grand jury hearing, or at an examining trial; (2) an otherwise voluntary statement, and any statement, whether the result of custodial interrogation or not, that bears on the credibility of the accused

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39. TEX. CRIM. PROC. CODE ANN. art. 38.22, § 2(a) (Vernon 2001).

40. *Id.* §§ 1-2(a).

41. *Yarborough*, 178 S.W.3d at 900 (citing TEX. CRIM. PROC. CODE ANN. art. 38.22, § 3(a)).

42. TEX. CRIM. PROC. CODE ANN. art. 38.22, § 3(c).

43. *Id.*

44. *Yarborough*, 178 S.W.3d at 900.

45. *Id.* at 905.

as a witness.<sup>46</sup> Texas courts will also admit a statement that does not meet Article 38.22 restrictions if federal law-enforcement officers took the statement, or if it was taken in another state and was obtained in compliance with state laws.<sup>47</sup>

#### D. JUVENILES

The admission of statements made by juvenile suspects has special requirements that are set forth in the Texas Family Code.<sup>48</sup> Juveniles must receive the same warnings as adult suspects, but a magistrate must give the warnings outside police or prosecutor presence.<sup>49</sup> The magistrate must be satisfied that the child understands the warnings and is making the statement voluntarily.<sup>50</sup> Family Code section 52.02(b) requires the government to promptly notify the parent or guardian that the minor has been taken into custody and the reason for the detention.<sup>51</sup> In *Pham v. State*, the First District Court of Appeals reversed the defendant's conviction, holding that the defendant's statement was inadmissible because the State violated section 52.02(b).<sup>52</sup> However, the Texas Court of Criminal Appeals returned the case to the First District Court of Appeals for reconsideration in light of its decision in *Gonzales v. State*.<sup>53</sup> In *Gonzales*, the court held that there must be a causal link between the Family Code violation and the statement.<sup>54</sup> The court also held that the moving party has the burden of proving this causal link.<sup>55</sup> If the defendant provides evidence of a causal link, the State has two options: It can present evidence that there is no link, and therefore, the statement is admissible; or it may make an "attenuation-of-taint" argument.<sup>56</sup> The attenuation argument is evaluated under a four-step analysis in which the State can argue that "although the defendant has demonstrated evidence of a causal connection, the taint of the violation was so far removed from the obtaining of the evidence that the causal chain the defendant demonstrated is in fact broken."<sup>57</sup>

#### E. VIENNA CONVENTION

The Vienna Convention on Consular Relations regulates the establish-

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46. TEX. CRIM. PROC. CODE ANN. art. 38.22, § 5.

47. *Id.* § 38.22-8.

48. TEX. FAM. CODE ANN. § 51.095 (Vernon 2002 & Supp. 2005).

49. *Id.*

50. *Id.*

51. *Id.* § 52.02(b)

52. *Pham v. State*, 175 S.W.3d 767 (Tex. Crim. App. 2005).

53. *Id.* at 769-70 (citing *Gonzales v. State*, 67 S.W.3d 910, 913 n.8 (Tex. Crim. App. 2005)).

54. *Gonzales*, 67 S.W.3d at 913.

55. *Pham*, 175 S.W.3d at 771.

56. *Id.* at 773.

57. *Id.*

ment of consular relations and the exercise of consular functions.<sup>58</sup> Currently, 170 countries are members to the Convention, including the United States, which became bound by the Convention in 1969.<sup>59</sup> Article 36 to the Convention “ensure[s] that no signatory nation denies consular access and assistance to another country’s citizens traveling or residing in a foreign country.”<sup>60</sup> When a foreign national is arrested, placed in custody or imprisoned while awaiting trial, or detained in any other manner, Article 36(1)(b) to the Convention requires competent authorities to inform the foreign national of his or her right to contact the consular post for the foreign national’s home country without delay.<sup>61</sup> Additionally, when a foreign national requests that his or her consular post receive notification of his or her arrest, placement in custody, imprisonment, or detention, Article 36(1)(b) states that authorities shall provide such notice without delay.<sup>62</sup>

Since the late 1990’s, Texas courts have been presented with claims to suppress statements made to law enforcement officials based on violations of Article 36 to the Vienna Convention.<sup>63</sup> When addressing these claims, Texas courts have confronted the threshold issue of standing, specifically, whether Article 36 to the Vienna Convention confers privately enforceable rights. While the United States Court of Appeals for the Fifth Circuit has concluded that Article 36 does not grant foreign nationals privately enforceable rights,<sup>64</sup> Texas state courts have declined to decide the issue.<sup>65</sup> In *Rocha v. State*, the appellant argued that the trial court erred in failing to suppress his oral statements to police under Texas’s statutory exclusionary rule, Article 38.23 of the Texas Code of Criminal Procedure, because law enforcement officers did not advise him of his right to contact the Mexican consulate under Article 36(1)(b) of the Vienna Convention.<sup>66</sup> Without addressing whether the appellant had standing under the Convention,<sup>67</sup> the Texas Court of Criminal Appeals held that Article 38.23 of the Texas Code of Criminal Procedure does not provide a vehicle to remedy violations of Article 36 because “treaties do not constitute ‘laws’ for Article 38.23 purposes.”<sup>68</sup> Noting that its holding

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58. VIENNA CONVENTION ON CONSULAR RELATIONS, April 24, 1963, 21 U.S.T. 77, 596 U.N.T.S. 261 (ratified by the United States on Nov. 24, 1969) [hereinafter VIENNA CONVENTION].

59. *Sanchez-Llamas v. Oregon*, 126 S. Ct. 2669, 2674-75 (2006).

60. *Sorto v. State*, 173 S.W.3d 469 (Tex. Crim. App. 2005).

61. VIENNA CONVENTION, *supra* note 58, at art. 36(1)(b).

62. *Id.*

63. *See, e.g., Maldonado v. State*, 998 S.W.2d 239, 246 (Tex. Crim. App. 1999); *Ibarra v. State*, 11 S.W.3d 189, 197 (Tex. Crim. App. 1999); *Rocha v. State*, 16 S.W.3d 1, 13 (Tex. Crim. App. 2000); *Sorto*, 173 S.W.3d at 477; *Cardona v. State*, 973 S.W.2d 412, 417-18 (Tex. App.—Austin 1998, no pet.); *Sifuentes v. State*, 29 S.W.3d 238, 242 (Tex. App.—Amarillo 2000, pet. ref’d); *Perez v. State*, 25 S.W.3d 278, 279-80 (Tex. App.—San Antonio 2000, no pet.); *Sierra v. State*, 157 S.W.3d 52, 59-60 (Tex. App.—Fort Worth 2004, pet. granted).

64. *United States v. Jimenez-Nava*, 243 F.3d 192, 198 (5th Cir. 2001).

65. *Rocha*, 16 S.W.3d at 18; *Sorto*, 173 S.W.3d at 481.

66. *Rocha*, 16 S.W.3d at 13.

67. *Id.* at 18.

68. *Id.* at 19.



was limited to the applicability of Article 38.23, the court stated that its determination “does not preclude the application of a federal exclusionary rule.”<sup>69</sup> Accordingly, the court acknowledged that “[i]f the United States Supreme Court decides that all jurisdictions in the United States must enforce Vienna Convention violations through an exclusionary rule, then this Court would be bound, under the supremacy clause, to give effect to that holding.”<sup>70</sup>

Last term, in *Sanchez-Llamas v. Oregon*, the Supreme Court considered whether suppression of evidence is a proper remedy for a violation of Article 36 to the Vienna Convention.<sup>71</sup> Assuming, but without deciding that the Vienna Convention grants individuals enforceable rights,<sup>72</sup> the Court opined: “neither the Vienna Convention itself nor our precedents applying the exclusionary rule support suppression of [the petitioner’s] statements to police.”<sup>73</sup> In reaching this conclusion, the Court noted that its application of the exclusionary rule has been confined to cases where the Fourth or Fifth Amendment was violated and to “statutory violations that implicated important Fourth and Fifth Amendment interests.”<sup>74</sup> The Court concluded that its reasons for requiring “suppression for Fourth and Fifth Amendment violations are entirely absent from the consular notification context” and stated that:

The failure to inform a defendant of his Article 36 rights is unlikely, with any frequency, to produce unreliable confessions. And unlike the search-and-seizure context—where the need to obtain valuable evidence may tempt authorities to transgress Fourth Amendment limitations—police win little, if any, practical advantage from violating Article 36. Suppression would be a vastly disproportionate remedy for an Article 36 violation.<sup>75</sup>

## II. SEARCH AND SEIZURE

### A. IN GENERAL

Texas courts are not bound by Supreme Court jurisprudence “as long as the United States Constitution is not offended.”<sup>76</sup> However, in search and seizure cases, Texas courts generally do follow Supreme Court precedent.<sup>77</sup> The standard analysis is based on the Fourth Amendment, rather than Article I, section 9 of the Texas Constitution.<sup>78</sup> Texas appellate courts give almost total deference to the trial court’s ruling on: (1) ques-

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69. *Id.*

70. *Id.*

71. 126 S. Ct. at 2682.

72. *Id.* at 2677.

73. *Id.* at 2682.

74. *Id.* at 2680-82.

75. *Id.* at 2681.

76. *Dew v. State*, No. 11-04-00093-CR, 2005 Tex. App. LEXIS 6304, at \*3-4 (Tex. App.—Eastland Aug. 11, 2005, no pet.).

77. *Id.*

78. *State v. Ballman*, 157 S.W.3d 65, 68 (Tex. App.—Fort Worth 2005, pet. ref’d).

tions of historical fact and (2) application of law-to-fact questions that turn on an evaluation of credibility and demeanor.<sup>79</sup> But mixed rulings of law and fact may be subject to de novo review in which credibility and demeanor are not at issue.<sup>80</sup>

Not every search or seizure is subject to the Fourth Amendment. To trigger Fourth Amendment protections, there must be a legitimate expectation of privacy.<sup>81</sup> The Supreme Court has held that there is no expectation of privacy in smells; police are free to use drug-sniffing canines to detect the odor of drugs on individuals or property as long as the suspect is not improperly detained while the canine is working.<sup>82</sup> In *Illinois v. Caballes*, while one officer was writing a speeding ticket, another walked a drug-sniffing dog around the suspect's vehicle, which alerted the police of the presence of drugs in the trunk.<sup>83</sup> The entire incident lasted no more than ten minutes.<sup>84</sup> There was no additional delay to the suspect past the time required to write the speeding ticket.<sup>85</sup> The Supreme Court ruled, as they have in the past, that using a well-trained drug-sniffing dog while a suspect is reasonably detained on other grounds does not implicate privacy interests.<sup>86</sup> Noting that the Fourth Amendment protects only "legitimate" privacy interests, the Court concluded that there is no legitimate interest in contraband.<sup>87</sup>

Additionally, the Supreme Court recently considered the privacy interests of inmates released on parole. In *Samson v. California*, the Court held "that the Fourth Amendment does not prohibit a police officer from conducting a suspicionless search of a parolee."<sup>88</sup> Weighing the degree of intrusion on a parolee's privacy against the promotion of legitimate governmental interests,<sup>89</sup> the Court determined that a parolee does not "have an expectation of privacy that society would recognize as legitimate"<sup>90</sup> and that the government has a substantial interest in supervising parolees to reduce recidivism and promote reintegration into society.<sup>91</sup>

It is also well established that in order to show an expectation of privacy, one must show dominion or control over the place being searched. Guests merely visiting a residence and passengers in vehicles do not have standing to protest an invalid search because they have no expectation of

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79. *Montanez v. State*, No. PD-894-04, 2006 Tex. Crim. App. LEXIS 830, at \*13-14 (Tex. Crim. App. Apr. 26, 2006) (citing *Guzman v. State*, 955 S.W.2d 85, 89 (Tex. Crim. App. 1997)).

80. *State v. Mechler*, 153 S.W.3d 435, 439 (Tex. Crim. App. 2005).

81. *Illinois v. Caballes*, 543 U.S. 405, 410 (2005).

82. *Id.*

83. *Id.* at 406.

84. *Id.*

85. *Id.*

86. *Id.* at 409-10.

87. *Id.* at 409.

88. *Samson v. California*, 126 S. Ct. 2193, 2202 (2006).

89. *Id.* at 2197.

90. *Id.* at 2199.

91. *Id.* at 2200.

privacy in those locations.<sup>92</sup> A family member's consent to search, even if that person resides in the household, can be invalid if the area searched is under the sole dominion of a non-consenting party.<sup>93</sup> Consent to search is an exception to the Fourth Amendment warrant requirements.<sup>94</sup> But for consent to be valid, the person consenting must have common authority over the area to be searched.<sup>95</sup> The police can reasonably rely on the apparent authority of the party giving consent; however, that reliance must be in good faith and reasonable.<sup>96</sup> In *Malone v. State*, the Sixth Court of Appeals ruled that the suspect's brother, even though he was a household resident, did not have the authority to consent to a search of the suspect's private bedroom.<sup>97</sup> Because the authority was ambiguous, the officer's reliance was unreasonable and the evidence found in the room was suppressed.<sup>98</sup>

Further, although a party with common authority over a residence may validly consent to a search of the residence, the consent exception will not apply when a physically present co-occupant expressly refuses to permit a warrantless search.<sup>99</sup> In *Georgia v. Randolph*, a police officer responded to a domestic disturbance call at a married couple's home.<sup>100</sup> The wife informed the officer of her husband's illegal drug use and stated "that there were 'items of drug-evidence' in the house."<sup>101</sup> When the officer requested the wife's permission to search the house, she consented.<sup>102</sup> However, the husband, who was present during the conversation, "unequivocally" objected to the officer's request.<sup>103</sup> The Supreme Court held that "a physically present occupant's stated refusal to permit entry prevails, rendering the warrantless search unreasonable and invalid as to him."<sup>104</sup>

The Fourth Amendment protects citizens against unreasonable intrusion by the government.<sup>105</sup> Therefore, private individuals who conduct searches but are not agents of or sanctioned by the government are not subject to the Fourth Amendment.<sup>106</sup> The Fort Worth Court of Appeals ruled that a search by motel employees who discovered drugs in a suspect's room and called the police was not subject to Fourth Amendment

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92. *United States v. Hall*, No. 3-05-CR-087-R, 2005 U.S. Dist. LEXIS 19986, at \*16-17 (N.D. Tex. Sept. 14, 2005).

93. *Malone v. State*, 163 S.W.3d 785, 799 (Tex. App.—Texarkana 2005, pet. ref'd).

94. *Cisneros v. State*, 165 S.W.3d 853, 856 (Tex. App.—Texarkana 2005, no pet.).

95. *Malone*, 163 S.W.3d at 796.

96. *Id.* at 797.

97. *Id.* at 799.

98. *Id.*

99. *Georgia v. Randolph*, 126 S. Ct. 1515, 1526 (2006).

100. *Id.* at 1519.

101. *Id.*

102. *Id.*

103. *Id.*

104. *Id.*

105. *United States v. Fang*, No. EP-04-CR-2753-PRM, 2005 U.S. Dist. LEXIS 11612, at \*9 (W.D. Tex. May 20, 2005).

106. *Kane v. State*, 173 S.W.3d 589, 592 (Tex. App.—Fort Worth 2005, no pet.).

protection.<sup>107</sup> Texas courts have also held that when a private shipper inspects a package to determine that it does not contain contraband, Fourth Amendment rights are not implicated.<sup>108</sup> In *Arnold v. State*, a Federal Express employee reported the smell of marijuana on an envelope.<sup>109</sup> Acting in accordance with company policy, the employee opened the envelope and found it contained heroin.<sup>110</sup> The heroin was ruled admissible.<sup>111</sup>

## B. ARREST, STOP, OR INQUIRY WITHOUT WARRANT

The Texas Court of Criminal Appeals has recognized that the following three categories of interactions between police officers and citizens trigger different levels of constitutional protection:

- (1) Encounters, which require no articulable justification,
- (2) investigative detentions, which require reasonable suspicion, and
- (3) arrests, which require probable cause.<sup>112</sup>

“Police officers do not violate the Fourth Amendment by approaching an individual on the street or in another public place and questioning him.”<sup>113</sup>

### 1. Encounters

“Unlike an investigative detention or an arrest, an encounter is a consensual interaction, which the citizen is free to terminate at any time.”<sup>114</sup> “Therefore, an encounter is not considered a ‘seizure’ for Fourth Amendment purposes and does not warrant constitutional analysis.”<sup>115</sup> Even without reasonable suspicion, a trained canine sniffing the outside of a vehicle during a routine, valid traffic stop does not constitute a search under the Fourth Amendment.<sup>116</sup> The El Paso Court of Appeals, in *Delgadillo v. State*, stated that “the police may engage in encounters with the public without such interactions being characterized as detentions.”<sup>117</sup> In that case, a canine-unit officer was patrolling a parking lot near the border when the dog alerted on a van, indicating that drugs were present.<sup>118</sup> The officer approached the vehicle and asked for permission to search the vehicle, advising the occupants that the dog had indicated the presence of drugs.<sup>119</sup> Only after the drug’s discovery were the van’s occupants placed

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107. *Id.*

108. *Arnold v. State*, 172 S.W.3d 326, 329 (Tex. App.—Amarillo 2005, pet. ref’d).

109. *Id.* at 328.

110. *Id.*

111. *Id.* at 329.

112. *State v. Bryant*, 161 S.W.3d 758, 761 (Tex. App.—Fort Worth 2005, no pet. h.).

113. *Delgadillo v. State*, No. 08-03-00507-CR, 2005 Tex. App. LEXIS 5901, at \*6 (Tex. App.—El Paso July 28, 2005, no pet.).

114. *Bryant*, 161 S.W.3d at 761.

115. *Id.*

116. *Haas v. State*, 172 S.W.3d 42, 51 (Tex. App.—Waco 2005, pet. ref’d).

117. *Delgadillo*, 2005 Tex. App. LEXIS 5901, at \*8.

118. *Id.* at \*1-2.

119. *Id.*

under arrest.<sup>120</sup> The court ruled that the encounter between the officer and the suspects did not constitute a detention requiring reasonable suspicion until they were told to exit the vehicle, which occurred only after the dog alerted.<sup>121</sup>

In *State v. Bryant*, the Texas Court of Criminal Appeals found that the trial court erred in granting appellee's motion to suppress.<sup>122</sup> An officer observed a vehicle traveling very slowly on the highway; it exited, entered a parking lot, and stopped between two buildings.<sup>123</sup> The officer approached the vehicle and knocked on the window.<sup>124</sup> When the driver opened the door, the officer smelled alcohol.<sup>125</sup> The trial court suppressed the evidence leading to the arrest, stating that the officer was required to have reasonable suspicion before approaching appellee in his parked car.<sup>126</sup> The Court of Criminal Appeals held that the officer was not required to have reasonable suspicion to approach and knock on the suspect's window.<sup>127</sup> The encounter escalated into a detention requiring reasonable suspicion only after the suspect opened the car door.<sup>128</sup>

## 2. *Investigative Detentions (Terry Stops)*

The next step above encounter on the constitutional scale is investigative detention. In order for an investigative detention to be valid, an officer must be able to articulate reasonable suspicion that criminal activity may be afoot.<sup>129</sup> Application of the reasonable suspicion standard requires taking into account factors such as the officer's experience, the location, and the time of the stop.<sup>130</sup> Under *Terry*, "a temporary investigative detention—a Fourth Amendment seizure—is reasonable, and therefore constitutional, if: (1) the officer's action was justified at the detention's inception; and (2) the detention was reasonably related in scope to the circumstances that justified the interference in the first place."<sup>131</sup> Under the first requirement, there must be articulable facts and rational inferences to justify the officer's actions.<sup>132</sup> A detention that is reasonable at its inception can violate the Fourth Amendment if it becomes excessive in intensity and scope.<sup>133</sup> Thus, under *Terry's* second requirement, an investigative detention must be temporary and not last

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120. *Id.*

121. *Id.* at \*8.

122. *Bryant*, 161 S.W.3d at 762.

123. *Id.* at 760.

124. *Id.*

125. *Id.*

126. *Id.*

127. *Id.* at 762.

128. *Id.*

129. *United States v. Cleveland*, No. SA-05-CR-193-XR, 2005 U.S. Dist. LEXIS 22582, at \*7-8 (W.D. Tex. Oct. 4, 2005).

130. *Id.* at \*7.

131. *Haas*, 172 S.W.3d at 50.

132. *Id.* at 51.

133. *Id.*

longer than necessary to fulfill the stop's purpose.<sup>134</sup> "Once the reason for the stop has been satisfied, the stop may not be used as a 'fishing expedition for other unrelated criminal activity.'" <sup>135</sup>

The officer is not required to personally witness activity. Reasonable suspicion to support a *Terry* stop may be based on information provided by eyewitness.<sup>136</sup> The Texas Court of Criminal Appeals has accepted citizen-informant reliability, which is generally shown to be reliable by the very circumstances under which citizens report incriminating information.<sup>137</sup> The veracity and reliability of citizen-informants, as well as the basis for their knowledge, are all relevant factors in determining the report's value.<sup>138</sup> In reviewing an officer's decision to detain, trial courts should look not only to the information's content, but also to its quality.<sup>139</sup> In *United States v. Cleveland*, fast-food restaurant employees pointed out the suspect to the officer and told him the threats that the suspect made to "come and shoot the place up."<sup>140</sup> "Corroboration by the law enforcement officer of any information related by the informant may increase the reliability of the information."<sup>141</sup> In *Brother v. State*, the Court of Criminal Appeals ruled that information relayed by an eyewitness through a series of anonymous 911 calls was sufficient, when considered as a whole, to justify the officer's stop of the suspect.<sup>142</sup> In *Gansky v. State*, the Second Court of Appeals found that even anonymous tips were sufficient to justify a *Terry* stop.<sup>143</sup>

The facts that constitute reasonable suspicion may vary by location. Searches at or in the immediate vicinity of the border are not subject to normal search requirements.<sup>144</sup> But as the distance from the border increases, normal Fourth Amendment protections are applied.<sup>145</sup> For example, in determining whether border agents had reasonable suspicion to stop a car to search for illegal aliens, the courts may consider:

1. the proximity of the area to the border;
2. the known characteristics of the area;
3. the usual traffic patterns on that road;
4. the agent's previous experience in detecting illegal activity;
5. information about recent illegal trafficking in aliens in the area;
6. particular aspects or characteristics of the vehicle;

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134. *Id.*

135. *Id.* (quoting *Davis v. State*, 947 S.W.2d 240, 243 (Tex. Crim. App. 1997)).

136. *Gonzales v. City of Corpus Christi*, No. C-05-280, 2006 U.S. Dist. LEXIS 5269 (S.D. Tex. Jan. 25, 2006).

137. *Gansky v. State*, 180 S.W.3d 240, 245 (Tex. App.—Fort Worth 2005, pet. ref'd).

138. *Id.* at 245 (citing *Pipkin v. State*, 114 S.W.3d 649, 654 (Tex. App.—Fort Worth 2003, no pet.)).

139. *Id.*

140. *Cleveland*, 2005 U.S. Dist. LEXIS 22582, at \*2.

141. *Gansky*, 180 S.W.3d at 245 (quoting *Pipkin*, 114 S.W.3d at 654).

142. *Brother v. State*, 166 S.W.3d 255 (Tex. Crim. App. 2005).

143. *Gansky*, 180 S.W.3d at 240.

144. *United States v. Odutayo*, 406 F.3d 386, 390-91 (5th Cir. 2005).

145. *United States v. Vazquez-Jose*, No. 2:05-CR-0061, 2005 U.S. Dist. LEXIS 24437, at \*5 (N.D. Tex. Oct. 20, 2005).

7. behavior of the driver; and

8. the number, appearance, and behavior of the passengers.<sup>146</sup>

Although racial profiling is not allowed, courts have held that race can be used as a relevant fact in determining if a *Terry* stop was justified.<sup>147</sup> "The Constitution, however, does not guarantee that an innocent person will never be questioned or stopped by the police."<sup>148</sup> It simply requires "that the investigatory stop not be unreasonable under the Fourth Amendment."<sup>149</sup>

### 3. *Warrantless Searches and Arrests*

The home is considered an inviolable space, central to the family. Protecting the home is a cornerstone upon which American society is built. Therefore, the Fourth Amendment requires that the government obtain a valid search warrant before entering a citizen's home.<sup>150</sup> Warrantless searches are per se unconstitutional except in a few well-delineated instances.<sup>151</sup> Exceptions to the warrant requirement include, among others, routine border searches, exigent circumstances, the auto exception, searches incident to arrest, items in plain view, frisks, and protective sweeps of property to ensure the officer's safety.<sup>152</sup> This year, Texas and federal courts handling Texas cases have ruled in warrantless search cases involving the following issues:

- Exigent Circumstances<sup>153</sup>
- The Auto Exception<sup>154</sup>
- Consent<sup>155</sup>
- Protective Sweeps<sup>156</sup>
- The Plain-View Doctrine<sup>157</sup>
- Curtilage<sup>158</sup>

While the Fourth Amendment represents an important safeguard from unnecessary intrusion into the lives and homes of American citizens, exceptions to the general rule are necessary for the administration of justice and the safety of police officers and the general public. Exigent circumstances involve situations that demand unusual or immediate action.<sup>159</sup> Such situations cannot wait for the usual warrant process. In order to enter a private residence without a warrant, a police officer must have

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146. *Id.*

147. *Id.* at \*20.

148. *Id.* at \*21.

149. *Id.*

150. U.S. CONST. amend. IV.

151. *United States v. Fang*, No. EP-04-CR-2753-PRM, 2005 U.S. Dist. LEXIS 11612, at \*10 (W.D. Tex. May 20, 2005).

152. BLACK'S LAW DICTIONARY 260 (8th ed. 2004).

153. *Randolph v. State*, 152 S.W.3d 764, 770 (Tex. App.—Dallas 2004, no pet.).

154. *Id.*

155. *Id.* at 771.

156. *Id.*

157. *Id.*

158. *Id.*

159. *Id.* at 767-68.

probable cause to arrest, and there must be exigent circumstances that make procuring a warrant impracticable.<sup>160</sup> Situations in which courts have found that exigent circumstances exist include:

- (1) a risk of danger to the police or *the victim*;
- (2) an increased likelihood of apprehending a suspect;
- (3) possible destruction of evidence or contraband;
- (4) hot or continuous pursuit; and
- (5) rendering aid or assistance to persons who the officer reasonably believes are in need of assistance.<sup>161</sup>

The seriousness of the offense is also considered when determining whether it is permissible to enter a constitutionally protected area without a warrant.<sup>162</sup> Entry is only allowed in situations in which a jailable offense is involved.<sup>163</sup> In *Randolph v. State*, police were notified of a 911 call with no one on the line.<sup>164</sup> Police responded to the address and talked to the complainant, who was seven-and-a-half months pregnant.<sup>165</sup> She told the police that she hid the car keys from her intoxicated husband who then physically assaulted her and left the house.<sup>166</sup> While the police officer was still outside, he saw a car pull into the home's garage.<sup>167</sup> The police officer, fearing further assault, entered the garage and escorted the suspect outside to administer sobriety tests.<sup>168</sup> The Dallas Court of Appeals found that because the offense involved was of a jailable nature and there were sufficient exigent circumstances, the officer was justified in entering the garage to arrest the suspect.<sup>169</sup>

The auto exception to the warrant requirement is often litigated. The automobile exception allows a warrantless search of an automobile if there is probable cause to believe that the vehicle contains evidence of a crime.<sup>170</sup> Both the United States and Texas Constitutions authorize a warrantless search of a vehicle if there is probable cause because a vehicle is not a stationary object and can be moved out of the jurisdiction before a warrant can be obtained.<sup>171</sup> It is not necessary that the vehicle be on a public street for the auto exception to apply.<sup>172</sup> Any vehicle that is found in a stationary position, is not being used as a residence, and can be driven on the highway is subject to the auto exception.<sup>173</sup> For instance, the Fourteenth District Court of Appeals ruled during this Survey

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160. *Id.*

161. *Id.*

162. *Id.*

163. *Id.*

164. *Id.*

165. *Id.*

166. *Id.*

167. *Id.*

168. *Id.*

169. *Id.* at 773.

170. *Liffick v. State*, 167 S.W.3d 518, 520 (Tex. App.—Houston [14th Dist.] 2005, no pet.).

171. *Id.* at 521.

172. *Id.*

173. *Id.*



period that a vehicle parked in a business's private parking lot was subject to the automobile exception.<sup>174</sup> Because vehicles are mobile, the warrant requirement is suspended.<sup>175</sup> However, police are still required to have probable cause to believe that the vehicle contains evidence of a crime.<sup>176</sup> During this Survey period, the Austin Court of Appeals reversed a conviction for possession of methamphetamine, ruling that the police had no probable cause to believe that the vehicle in which the drugs were found contained evidence of a crime.<sup>177</sup>

Consent to search is a well-established exception to the constitutional requirement that there be probable cause and a warrant.<sup>178</sup> However, both the Fourth and Fourteenth Amendments require that consent not be obtained by covert force or implied threat—either explicit or implicit.<sup>179</sup> In deciding whether consent was given voluntarily or whether the defendant's will was overborne, a court must consider the totality of the circumstances.<sup>180</sup> Under the United States Constitution, the State is required to prove by a preponderance of the evidence that there was voluntary consent to search.<sup>181</sup> However, the Texas Constitution requires the State to prove voluntary consent by clear and convincing evidence.<sup>182</sup> In *Cisneros v. State*, the police officer stopped the defendant for speeding.<sup>183</sup> The defendant refused permission to search the vehicle.<sup>184</sup> After the officer advised the defendant that he did not need her permission to search the vehicle, the defendant said to go ahead and search.<sup>185</sup> The trial court denied the defendant's motion to suppress the evidence found in the search.<sup>186</sup> On appeal, the State argued that there was valid consent.<sup>187</sup> The Texarkana Court of Appeals, however, found that, based on the exchange between the officer and the defendant, it was clear that she gave consent only because the officer misrepresented the law.<sup>188</sup> The court concluded that the search could not be justified on the defendant's consent because her consent was coerced.<sup>189</sup>

Protective sweeps and the plain-view doctrine are often litigated together. "The Fourth Amendment permits a properly limited protective sweep in conjunction with an in-home arrest when the searching officer

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174. *Id.*

175. *Wiede v. State*, 163 S.W.3d 239, 243 (Tex. App.—Austin 2005, pet. granted).

176. *Id.*

177. *Id.* at 246.

178. *Cisneros v. State*, 165 S.W.3d 853, 856 (Tex. App.—Texarkana 2005, no pet.).

179. *Id.*

180. *Montanez v. State*, No. PD-894-04, 2006 Tex. Crim. App. LEXIS, at \*11 (Tex. Crim. App. Apr. 26, 2006) (citing *Carmouche v. State*, 10 S.W.3d 323, 331 (Tex. Crim. App. 2000)).

181. *Id.*

182. *Cisneros*, 165 S.W.3d at 857.

183. *Id.* at 855.

184. *Id.*

185. *Id.*

186. *Id.*

187. *Id.* at 855-56.

188. *Id.* at 858.

189. *Id.*

possesses a reasonable belief based on specific and articulable facts, that the area to be swept harbors an individual posing a danger to those on the arrest scene.”<sup>190</sup> Seizure of incriminating evidence seen in plain sight during a protective sweep is permissible under the plain-view doctrine.<sup>191</sup> During the Survey period, the Amarillo Court of Appeals ruled that weapons seized by law enforcement officers during a protective sweep of a known white supremacist’s home conducted at the time of his arrest were admissible against him.<sup>192</sup>

The plain-view doctrine is also often argued in conjunction with police intrusion into the curtilage of a home. Curtilage encompasses the area around the residence that is still intimately associated with daily life in the home.<sup>193</sup> One has an expectation of privacy in one’s own home that extends to the area around the home, subject to certain restrictions.<sup>194</sup> Unless warning signs are posted or barriers put into place, a police officer, like any member of the public, is allowed to approach and knock on the door of a residence.<sup>195</sup> Anything in plain view during this entry is not subject to Fourth Amendment protection.<sup>196</sup> In fact, the Houston Court of Appeals held that an officer who stood on his tiptoes and shined a light through a high window did not violate the Fourth Amendment.<sup>197</sup>

### C. ARREST OR SEARCH WITH WARRANTS

“[A] warrant [is] facially valid under the Fourth Amendment [when it is] based upon probable cause and supported by a sworn affidavit describing the place and things to be seized.”<sup>198</sup>

#### 1. Affidavits

The affidavit supporting an arrest warrant is called a complaint. Texas Code of Criminal Procedure Article 15.05 requires that a complaint in support of an arrest warrant:

1. . . . [S]tate the name of the accused, if known, and if not known, must give some reasonably definite description of him[;]
2. . . . [S]how that the accused has committed some offense against the laws of the State, either directly or that the affiant has good reason to believe, and does believe, that the accused has committed such offense[;]
3. . . . [S]tate the time and place of the commission of the offense, as definitely as can be done by the affiant[;] and

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190. *United States v. Waldrop*, 404 F.3d 365, 368-69 (5th Cir. 2005) (quoting *Maryland v. Buie*, 494 U.S. 325, 337 (1990)).

191. *Id.* at 369.

192. *Id.*

193. *Washington v. State*, 152 S.W.3d 209, 214 n.5 (Tex. App.—Amarillo 2005, no pet.).

194. *Id.*

195. *Duhig v. State*, 171 S.W.3d 631, 635 (Tex. App.—Houston [14th Dist.] 2005, pet. ref’d).

196. *Id.* at 636.

197. *Id.* at 636-37.

198. *Bryant v. Orndorff*, No. 5:04-CV-215-C, 2005 U.S. Dist. LEXIS 11094, at \*13 (N.D. Tex. Jan. 21, 2005) (citing *Groh v. Ramirez*, 540 U.S. 551 (2004)).

4. . . . [B]e signed by the affiant by writing his name or affirming his mark.<sup>199</sup>

In order to be valid, an arrest warrant "must be accompanied by an affidavit with enough factual information to support probable cause, and reflect the approval of a detached and neutral magistrate."<sup>200</sup> There is sufficient probable cause to support a search warrant if reasonable inferences drawn from the facts within the four corners of the affidavit justify the magistrate's finding that the object of the search is probably on the premises at the time of issuance.<sup>201</sup>

Evidence seized under a search warrant later found to be invalid is not subject to the exclusionary rule if the police officer acted in good faith.<sup>202</sup> In *United States v. Dodd*, the United States District Court for the Western District of Texas found the affidavit deficient, but upheld the search because the officer's belief that the affidavit was sufficient was not unreasonable, and the magistrate made a neutral determination of probable cause.<sup>203</sup> If good faith is not found, the State still has an opportunity to prove that the search falls within one of the exceptions to the warrant requirement.<sup>204</sup>

When executing a search warrant at a residence, law enforcement officials are required to knock and announce their presence and purpose before making a forced entry.<sup>205</sup> Under the Fourth Amendment, "the reasonableness of a search of a dwelling may depend in part on whether law enforcement officers announced their presence and authority prior to entering."<sup>206</sup> In certain circumstances, law enforcement officials do not need to follow the knock and announce requirement. For instance, a magistrate may issue a "no-knock" warrant if an affiant demonstrates "reasonable grounds to expect futility or to suspect that one or another such exigency already exists or will arise instantly upon knocking."<sup>207</sup> Also "the obligation gives way when officials have a reasonable suspicion that knocking and announcing their presence, under the particular circumstances, would be dangerous or futile, or . . . would inhibit the effective investigation of the crime by, for example, allowing the destruction of evidence."<sup>208</sup> When officials enter a residence without first knocking and announcing their presence, courts will examine the "facts and circumstances" surrounding the entry to determine whether it was lawful.<sup>209</sup>

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199. TEX. CRIM. PROC. CODE ANN. art. 15.05 (Vernon 2005).

200. *Weems v. State*, 167 S.W.3d 350, 358 (Tex. App.—Houston [14th Dist.] 2005, pet. ref'd).

201. *Davis v. State*, 165 S.W.3d 393, 398 (Tex. App.—Fort Worth 2005, pet. granted).

202. *United States v. Gibbs*, 421 F.3d 352, 357 (5th Cir. 2005).

203. *United States v. Dodd*, 349 F. Supp. 2d 1039, 1047-52 (W.D. Tex. 2005).

204. *Matthews v. State*, 165 S.W.3d 104, 115 (Tex. App.—Fort Worth 2005, no pet.).

205. *Flores v. State*, 177 S.W.3d 8, 14 (Tex. App.—Houston [1st Dist.] 2005, pet. ref'd), cert. denied, 126 S. Ct. 2298 (2006) (citing *Wilson v. Arkansas*, 514 U.S. 927, 934 (1995)).

206. *Wilson*, 514 U.S. at 931.

207. *Id.*

208. *United States v. Banks*, 540 U.S. 31, 36 (2003) (citing *Richards v. Wisconsin*, 520 U.S. 385, 394 (1997)).

209. *Richards*, 520 U.S. at 394.

Further, even when officials knock and announce their presence before making a forced entry, courts often consider whether, under the “totality of the circumstances,” officials waited a reasonable amount of time before entering.<sup>210</sup> When officials violate the knock and announce rule, the federal exclusionary rules do not apply.<sup>211</sup> According to the Supreme Court in *Hudson v. Michigan*, “the social costs of applying the exclusionary rule to knock-and-announce violations are considerable; the incentive to such violations is minimal to begin with, and the extant deterrence against them are substantial—incomparably greater than the factor deterring warrantless entries when *Mapp* was decided.”<sup>212</sup>

## 2. Scope

The Fourth Amendment requires that a search warrant state with particularity the area to be searched.<sup>213</sup> A search made under the authority of a valid search warrant may include the entire area covered by the warrant’s description.<sup>214</sup> “However, when a search exceeds the scope of the warrant, evidence obtained must be excluded.”<sup>215</sup> Courts examining warrants to determine the scope of the area to be searched follow a common-sense approach rather than a technical one.<sup>216</sup> For instance, the Austin Court of Appeals found that although a detached garage was not specifically listed as a place to be searched, the warrant did specify outbuildings and curtilage. The court found that a garage is generally within the curtilage of a residence.<sup>217</sup>

## III. CONCLUSION

Over the past year, Texas courts and the United States Supreme Court have affirmed well-established precedents in the areas of confessions, searches, and seizures. However, recent decisions by these courts present new and important interpretations of the law in these areas.

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210. *United States v. Bruno*, 398 F. Supp. 2d 827, 831 (S.D. Tex. 2005) (citing *Banks*, 540 U.S. at 41).

211. *Hudson v. Michigan*, 126 S. Ct. 2159, 2168 (2006).

212. *Id.*

213. U.S. CONST. amend. IV; *Affatato v. State*, 169 S.W.3d 313, 316 (Tex. App.—Austin 2005, no pet.).

214. *Affatato*, 169 S.W.3d at 316.

215. *Id.*

216. *Id.*

217. *Id.*

