



# Ohio Attorney General's Law Enforcement Bulletin



**August 2013**

## **Sessions Focus on Unsolved Homicide Investigations**

The Attorney General's Office will offer a pair of free two-day symposiums this fall on unsolved homicide investigations.

Offered as part of the office's Ohio Unsolved Homicide Initiative and led by the Bureau of Criminal Investigation (BCI), the Unsolved Homicide Investigative Strategies and Resources sessions are Sept. 25–26 in Richfield and Nov. 12–13 in Bowling Green. Earlier sessions were held in Cincinnati and Athens.

The symposiums are for detectives and supervisors conducting unsolved homicide investigations. The first day's material covers methodology, case studies, impact on victims' families, and legal and laboratory resources. The second day's program includes case presentation and review, giving agencies a chance to present their unsolved homicide cases to a review panel for discussion and recommendations. The panel includes local law enforcement; BCI Crime Scene, Special Investigations, and Cyber Crimes agents; BCI laboratory personnel; and a representative of the Attorney General's Special Prosecutions Section.

Here are details of the upcoming symposiums, which run from 8 a.m. to 5 p.m. each day:

- The Sept. 25–26 sessions are at the Richfield Campus of the Ohio Peace Officer Training Academy, 4055 Highlander Parkway, Richfield. To sign up, visit [www.OhioAttorneyGeneral.gov/OPOTACourses](http://www.OhioAttorneyGeneral.gov/OPOTACourses) and select OPOTA Course 53-706-13-01.
- The Nov. 12–13 sessions are at Bowling Green State University Bowen-Thompson Student Union, Room 201/Sky Bank Room, off Thurstin Street, Bowling Green. Use the link above and sign up for OPOTA Course 53-706-13-02.

Agencies wishing to be considered for a case presentation should contact Jennifer Dillion at [Jennifer.Dillion@OhioAttorneyGeneral.gov](mailto:Jennifer.Dillion@OhioAttorneyGeneral.gov). Each case presentation and review lasts an hour to an hour and a half, and agencies must have a detailed PowerPoint presentation outlining the particulars of their case, including evidence overview and suspect development.

"The responses have been extremely positive," said Roger Davis, a BCI special agent who has been involved in Ohio's initiative from the start. "There are ideas and investigative strategies exchanged that officers can take back and use in their cases."

BCI offers many services valuable in unsolved homicide cases, and local agencies can take advantage of as many or as few as make sense for their investigations.

“At a minimum, we recommend a case review,” said Suver, a special agent supervisor who coordinates the AG’s Ohio Unsolved Homicides Initiative. That process reveals what other steps might be in order, such as digitization of the case file for preservation, evidence review, electronic media analysis, interviews and interrogations, blood spatter interpretations, exhumations, or other options.

In one case, BCI’s involvement led to more than 30 sets of fingerprints that could be entered into AFIS or used for comparison. Initially, the agency had only seven sets of prints from evidence in the case.

The simplest step local agencies can take in unsolved homicide cases — and one with a huge potential payoff — is to submit their cases for inclusion in the Attorney General’s unsolved homicide database. Located at [www.OhioAttorneyGeneral.gov/OhioUnsolvedHomicides](http://www.OhioAttorneyGeneral.gov/OhioUnsolvedHomicides), the database has grown dramatically in recent months.

It contained just 166 cases last fall, when Attorney General Mike DeWine announced a plan to focus more attention on unsolved homicides, compared to more than 1,800 in mid-August. Yet, the FBI estimates Ohio has more than 5,000 unsolved homicide cases.

“We truly want all of those cases on the website,” Suver said. “The more cases, the more traffic we’ll get from people who might have valuable information.” Ninety-one tips and 187 inquiries have resulted since the site was developed three years ago.

**To submit cases:** Law enforcement can call 855-BCI-OHIO (224-6446) or email [OhioUnsolvedHomicides@OhioAttorneyGeneral.gov](mailto:OhioUnsolvedHomicides@OhioAttorneyGeneral.gov) for information on submitting cases for the site. BCI can help input large volumes.

### **BCI’s Project LINK can help resolve missing persons, unidentified remains cases**

Like unsolved homicides, missing persons cases can keep family members in agony for years. Through Project LINK, more Ohio families are finding closure.

Project LINK compares the DNA of unidentified human remains and samples from relatives of long-term missing individuals. The comparison sometimes leads to DNA results that allow law enforcement and coroners to identify remains and solve missing persons cases.

In a case resolved in March, the remains of an Ohio woman missing since 1988 were identified. Earlier this year, Michigan authorities submitted DNA from an unidentified remains case to the national CODIS database, and it hit to DNA from the woman’s relatives that BCI had entered in 2001. BCI documented six hits last year and four so far this year through Project LINK, a program it started in 1999.

**For information:** Find out more about using Project LINK from BCI’s Criminal Intelligence Unit at 855-BCI-OHIO (224-6446) or [Intel@OhioAttorneyGeneral.gov](mailto:Intel@OhioAttorneyGeneral.gov).

## **Interrogations: *State of Ohio v. Tullis***

**Question:** Do you have to give *Miranda* warnings to suspects who voluntarily come to the police station for an interview, but who are not in custody?

**Quick Answer:** No, *Miranda* is only required for custodial interrogation.

**[State of Ohio v. Tullis](#), Second Appellate District, Greene County, July 12, 2013**

**Facts:** Police asked Damerick Tullis to come to the station to discuss a voyeurism case. He met two detectives there, and they took him to an interview room. Detectives Daniel Foreman and Ryan Whittaker told Tullis he was not under arrest and could leave at any time. Although the room's door locked automatically, it was left open during the interview, except for once being briefly closed because of noise in the hallway. The detectives questioned Tullis about an incidents of voyeurism and reports of him peering into neighbors' windows. Tullis confessed to the incident and later confessed to additional incidents of voyeurism, burglary, kidnapping, and rape. The interview lasted two hours and, when it was complete, he left. Tullis was indicted a few months later.

The court determined *Miranda* warnings were not necessary because Tullis was not in custody during the interview. He was told he could leave at any time, was not handcuffed, was allowed to keep his cell phone, was able to take breaks, did not ask to leave, and did not ask for an attorney. Also, the door to the room was open for most of the interview. The court stated that under these circumstances, a reasonable person would believe he was free to leave.

**Importance:** It is a good practice to make clear to an individual in a voluntary interview that they are not in custody, just as the detectives did in this case. Of course, if there's any doubt about whether the interview is going to be custodial, you should err on the side of caution and Mirandize the suspect. You work hard to get a confession, so do everything possible to make sure it sticks.

**Keep in Mind:** A videotape of the interrogation was the key to winning this case. Consider videotaping your interviews, and make sure the picture and sound are of good quality.

**Other Cases to Consider**

- **Can I get a time out? Re-Mirandizing after a break:** You are interrogating a suspect and need a break. Do you have to re-Mirandize the suspect when you start the interrogation again? It depends. Consider the length of the interupation and the circumstances for the break. For example, the Third District recently said detectives did not have to re-Mirandize the suspect when the detective decided to take a break and the suspect asked to continue the interrogation. Additionally, the suspect had not left the police station, and the police believed the second interrogation was a continuation of the first. If you are ever in doubt, take 30 seconds and re-Mirandize the suspect. (**[State v. Branch](#), Third Appellate District, Allen County, July 22, 2013**)
- **Lying to get a confession? Not a good idea:** You think you have the perpetrator of a crime, but he doesn't want to play ball and denies every allegation you throw at him. Can you entice a confession based on false promises that the suspect will receive leniency in his sentence for his confession? The detective in *State of Ohio v. Rybarczyk* was found to be out of line in telling Jason Rybarczyk he could get probation for rape and that he was trying to throw Rybarczyk a "lifeline" by saving him from jail. This promise was found to have coerced the suspect's confession, making the confession involuntary and prompting the court to suppress it. Remember, it is fine to remind a suspect of the benefits of confession and the possibility of a shorter sentence — as long as it is true. The problem in this case was the detective promised probation when probation is not an option in a rape case. (**[State of Ohio v. Rybarczyk](#), Sixth Appellate District, Wood County, July 5, 2013**)

- **Where's my mommy? Mirandizing a juvenile suspect:** As you know, a juvenile suspect is entitled to have a parent and attorney present at arraignment, trial, or sentencing, which are stages of the proceedings. However, did you know this rule does not apply to Mirandizing a juvenile suspect? In *In re T.J.*, the court said *Miranda* warnings are not part of the proceedings covered by Ohio Revised Code Section 2151.352, as those proceedings only begin after a complaint has been filed or the juvenile suspect makes an appearance in court. ([In re T.J.](#), Sixth Appellate District, Lucas County, July 12, 2013)

## **Search and Seizure (Vehicles): *State of Ohio v. White***

**Question:** Can you continue to detain an individual after a routine traffic stop if you have a hunch the person has engaged in illegal activity?

**Quick Answer:** Depends. You may detain an individual after a routine traffic stop only if you have a reasonable, articulable suspicion that criminal activity is occurring. If you detain someone longer than necessary, it may not matter whether he gave consent to a search.

### **[State of Ohio v. White](#), Second Appellate District, Montgomery County, July 12, 2013**

**Facts:** An officer observed Megan White parked in a rear parking lot away from all other vehicles and buildings. As the officer drove up, White was hunched over the center console. She sat up, made eye contact with him, exited the vehicle, and walked into the woods. The officer parked his vehicle and watched White exit the woods and return to her vehicle. White drove away. The officer noticed she had a broken taillight and called for backup. During a routine stop, the two officers walked to White's vehicle, gave her a verbal warning for the taillight, and told her she was free to leave. The officer immediately asked if he could ask White a question. She agreed. He recounted what he had seen in the parking lot and asked if she had anything illegal in the car. She said no. Then he asked for permission to conduct a search, but he did not inform White she could say no. White agreed and got out of the vehicle. The officer checked the center console and found sandy brown chunks, which he suspected to be heroin, and a marijuana pipe.

The court determined the officers did not have reasonable suspicion that White was engaged in criminal activity sufficient to detain and search her vehicle after the traffic stop. Although White gave consent, the court found the circumstances surrounding the prolonged stop made her consent involuntary.

**Importance:** What is a hunch or a gut reaction? You get them all the time. It is important to distinguish between a "hunch" and "reasonable suspicion" as that distinction makes the difference between winning and losing a case. When you stop someone, it is your job to detain him or her only as long as necessary to complete the stop. Merely having a hunch that something else may be going on is not good enough to continue the detention. In this case, the officer told the suspect she was free to go, but then immediately detained her longer by seeking her consent to stay, questioning her about criminal activity, and asking to search her car.

**Keep in Mind:** A hunch is not a reasonable, articulable suspicion. For example, if you just think, "That dude has drugs on him," but you can't explain why, you're playing a hunch. On the other hand, if you can say, "It was late at night, in a high drug-crime area, and the suspect walked away furtively (lawyers love words like "furtive") when he saw me, in a manner that, in my experience, is consistent

with drug dealers,” you are articulating specific grounds for reasonable suspicion. Do not manufacture ways to search if you cannot articulate the criminal activity occurring at that very moment. If you can, make sure your paperwork reflects the reasonable suspicion fully, and make sure the prosecutor asks you about it during testimony.

### **Other Cases to Consider**

- **Hey! You can't search my purse:** Make sure that the next time you search a passenger, it is related to the reason the driver was pulled over and arrested. The Second District determined that when the driver was arrested on an outstanding warrant, there were no reasonable grounds to search the passenger's purse without her consent because the deputy had no reason to believe she had contraband. ([State of Ohio v. Caulfield](#), **Second Appellate District, Montgomery County, July 12, 2013**)
- **Oops. I left my weed in my car. The automobile exception:** When you see a car parked on a public street and notice marijuana in plain view, you are able to apprehend the suspect, get his keys, and conduct a search of the car without a warrant. This is because you have probable cause to believe there is contraband in the vehicle and the vehicle is readily movable, so you do not need a warrant under the automobile exception. Once inside, you can perform a full search of the vehicle, looking in all the places where contraband can be hidden. If you find something else, such as a gun in plain view under the passenger's seat, that can be seized as well. Guess those suspects in *Bazrawi* should have taken their marijuana with them. ([State of Ohio v. Bazrawi](#), **Tenth Appellate District, Franklin County, July 11, 2013**)

## **Search and Seizure (Electronic Search): *State of Ohio v. Lemasters***

**Question:** Can you obtain Internet files from a third-party provider with an investigative subpoena even though the Electronic Communications Privacy Act (ECPA) requires a court order or warrant?

**Quick Answer:** Yes, but only if the suspect is not entitled to a reasonable expectation of privacy based on his conduct. Otherwise, a warrant or court order is required.

[State of Ohio v. Lemasters](#), **Twelfth Appellate District, Madison County, July 8, 2013**

**Facts:** As part of an Internet Crimes Against Children Task Force, Detective Marcus Penwell investigated social networking sites where adults solicit children for sexual activity and monitored file-sharing programs for the distribution of child pornography files. Using “Shareaze,” a file-sharing program, the detective was able to access and download child pornography from a computer with an IP address belonging to a Time Warner Cable customer. Penwell obtained an investigative subpoena, contacted Time Warner, and it determined that Donald Lemasters was the IP user. The Madison County Sheriff's Office became involved and executed a search warrant on Lemasters' home, seizing more than 170,000 images of child pornography from his computer and DVDs made from downloaded material. Lemaster argued that the investigative subpoena sent to Time Warner was improper and in violation of the ECPA. The court determined the investigative subpoena was proper because the ECPA did not apply.

**Importance:** The ECPA requires that law enforcement obtain a court order or a warrant to obtain electronic records from the third-party provider. However, when a suspect subscribes to an Internet

service and openly shares files with third parties through file-sharing programs, he is not entitled to a reasonable expectation of privacy. As a result, the ECPA does not apply and an investigative subpoena is proper. The key is whether the suspect, through his conduct, has a reasonable expectation of privacy.

**Keep in Mind:** If Lemasters had not used file sharing or posted on public websites, Detective Penwell would have been required to obtain a court order or warrant pursuant to the ECPA.

## **Search and Seizure (People/Property): *State of Ohio v. Mechling***

**Question:** When eavesdropping on a suspect, do you have reasonable suspicion to conduct a search when you hear him deny having contraband?

**Quick Answer:** Probably not.

### ***State of Ohio v. Mechling*, Fifth Appellate District, Ashland, July 29, 2013**

**Facts:** An officer was called to respond to a complaint of loud music at the home of Christopher Mechling. He determined the music was coming from a detached garage at the rear of the property and walked through the side yard around the residence. Before walking around the corner, the officer overheard a woman telling Mechling to get the “fat joint” out of his pocket so they could “smoke it.” Mechling responded that he did not have a joint. The woman said she had seen it and told him to take out the joint. At this point, the officer walked around the corner and stated, “Yeah, why don’t you get it out.” He then asked Mechling what was in his pocket and Mechling responded, “Nothing.” The officer asked Mechling to show him what was in his pockets. Mechling then pulled his pockets halfway out and marijuana was visible in his hand. He also had rolling papers. Mechling was charged with possession of marijuana and drug paraphernalia. The defense argued the officer conducted an improper search. The court agreed and suppressed the drug evidence.

**Importance:** You know the Constitution prohibits warrantless searches and seizures. When an officer shows authority and commands a person to adhere to an order to stop, that constitutes a seizure under *Terry*. In this case, the officer did not have reasonable suspicion to conduct a warrantless search. Although he had a hunch, based on the comments of the woman that Mechling had contraband, he also was faced with the statements of Mechling denying having the joint to the woman and later to the him.

Nothing prevents an officer in these circumstances from initiating a consensual encounter. That is, an officer is always free to approach someone and merely talk to them. However, once you start telling people to turn their pockets out, have you crossed into a stop.

**Keep in Mind:** You might think that the officer in this case had reasonable suspicion because he knew someone else saw the joint. But take a step back from the situation and view it the way the court did. Reasonable suspicion is based on all the circumstances, not just the one that favors the stop. Here, although the officer testified that a woman claimed to have seen the joint, the suspect denied having one. The officer hadn’t even seen the two speaking, but he immediately confronted the suspect and quickly ordered him to turn out his pockets.

If Mechling had admitted to either the woman or the officer that he had the joint, or if the officer had talked to the suspect and observed a nervous demeanor, this case might have been different.

## Other Cases to Consider

- **My neighbor is making a bomb in his garage. Community caretaking/emergency aid exception:** When you are investigating a complaint that a suspect is making bombs in his garage, see gunpowder on the table and floor, and observe the suspect moving around tables mixing substances in bowls, follow your agency protocol to remove the suspect and the materials, but remember, you can enter without a warrant. When you have probable cause to believe the suspect is making illegal explosive devices, an emergency exists and justifies entry without a warrant. This is under the community caretaking/ emergency aid exception to the warrant requirement. ([State of Ohio v. Griffin](#), Second Appellate District, Montgomery County, July 12, 2013)
- **Marijuana here, there, and everywhere. Evidence to support an affidavit for the warrant:** You drive up to a house and see marijuana growing in the back yard and smell its odor. On a protective search inside the home, you find two bags of marijuana. What is the basis for your affidavit to obtain the search warrant? If you answered the marijuana in the back yard, you are correct. The police in *State of Ohio v. Patton* did it right by not including the observations from the protective sweep as a basis for their search warrant. This was for the best because the protective sweep was found to be improper. However, because the police explained other evidence not found in the protective search, they were able to obtain a valid search warrant and seize the bags of marijuana from inside the home. The key to this case is the fact the police had an independent basis for executing the search warrant — the marijuana from outside the home. ([State of Ohio v. Patton](#), First Appellate District, Hamilton County, July 19, 2013)

## Proper Protocol: *State of Ohio v. Schneller*

**Question:** Can you patrol in an unmarked police vehicle to enforce traffic laws?

**Quick Answer:** No.

[State of Ohio v. Schneller](#), Fifth District, Stark County, July 8, 2013

**Facts:** A captain parked in the grass about five to ten feet off the side of the road. The engine was running, but the headlights were out. The car was all black and only indicated the word “POLICE” in silver letters on the front quarter panel of the cruiser, 3 inches in height and stretching 30 inches across the bottom of the panel. The captain stopped Andrew Schneller for OVI and driving on the wrong side of the road. Schneller described the car as “black-out,” and police inventory described the car as “unmarked.” The vehicle had no other police logos and had civilian license plates. The court determined the officer violated ORC 4549.13 and found his testimony incompetent.

**Importance:** ORC 4549.13 requires officers on duty for the main purpose of enforcing misdemeanor motor vehicle or traffic laws to be in a vehicle that is marked in a distinctive manner or color and equipped with at least one flashing, oscillating, or rotating colored light mounted on top of the vehicle. If the car is not marked, the officer is unable to testify against the defendant at trial, and if they do, the testimony is automatically deemed inadmissible.

**Keep in Mind:** You know your car has to be marked to catch traffic violators when your assigned duty is to enforce traffic laws. But what happens if you are in an unmarked car on another assignment and witness a traffic violation? The outcome in that case may be different because your main purpose for patrolling is not to enforce traffic laws.

### **Other Cases to Consider**

- **What is he trying to say? Writing clear affidavits:** You are not trying to win a literary prize for your affidavit, but remember, it is important to be clear and concise. In *State of Ohio v. Fetter* case, the offender complained about inaccurate information supplied by officers on the affidavit for the BAC test because the date of manufacture was after the date of the calibration test. The court determined that the officer interpreted the language “within one year of its manufacture, to-wit” to refer to a date one year after the manufacture date, not the actual date of manufacture. Luckily, and even though the affidavit wording was awkward, the check test forms attached to the affidavit showed the correct date. (**[State of Ohio v. Fetter, Fifth Appellate District, Licking County, July 29, 2013](#)**)
- **“Bum Rushing” does not lead to provoked flight:** Sometimes you use strategic tactics to contain a large mass of people or deal with a persistent issue. Did you know that if you create a situation where a reasonable person would fear danger and flee to seek shelter or evade the danger, you may not be able to perform a *Terry* stop? When the police in *United States v. Jeter* conducted a “bum rush” on a large group of individuals loitering in a nearly abandoned shopping center, the court determined the strategic maneuver was not designed to provoke flight, but instead to contain them. In fact, it contained everyone except Dominic Jeter, who decided to run. Using strategic tactics makes for effective policing, but make sure you use tactics that will not interfere with how and why you can perform searches or seizures of individuals. (**[United States of America v. Jeter, Sixth Circuit, Northern District of Ohio, Toledo, July 10, 2013](#)**)