



**December 2012**

## **AG Encourages Collaboration on School Safety Measures**

Ohio Attorney General Mike DeWine encourages local teams of law enforcement and educators to attend a new school safety course that will be offered around the state beginning in January and to collaborate on required school safety plans.

"Nothing is more important than keeping our children safe, and we must do everything in our power to ensure their safety while at school," Attorney General DeWine said. "In light of the horrible tragedies in Chardon and in Connecticut, the Attorney General's Office has taken a leadership role in promoting school safety and working with our partners across state government to help educators be prepared for all types of school emergencies."

The Ohio Peace Officer Training Academy (OPOTA) will offer the new course, Active Shooter Training for Educators, across Ohio in 2013. It is being made available free of charge in partnership with the Ohio Department of Education (ODE), and local teams of law enforcement, teachers, and administrators are encouraged to attend together.

The first offerings are set for Jan. 17 at Educational Service Center of Central Ohio, 2080 Citygate Drive, Columbus. Two, four-hour sessions are planned, one beginning at 8 a.m. and a second at 1 p.m.

OPOTA and ODE will host additional sessions across the state throughout the year. They will be listed at [www.OhioAttorneyGeneral.gov/OPOTA](http://www.OhioAttorneyGeneral.gov/OPOTA) as information becomes available, and law enforcement can register through OPOTA. Registration also is possible through the ODE website at <http://www.ode.state.oh.us/>. Click on the SAFE sign-in tab, set up an account, and register via the STARS professional development link.

The course covers the Five Phases of the Active School Shooters, as developed by noted law enforcement trainer Dan Marcou. It provides insight into shooters' thinking and potential characteristics, offers guidance on responding to an active shooting, and covers compliance with FERPA and HIPPA laws.

OPOTA also offers Profile of an Active Shooter and First Officer Response to an Active Threat, which are specifically for law enforcement. Dates and registration information for those courses appear at [www.OhioAttorneyGeneral.gov/OPOTA](http://www.OhioAttorneyGeneral.gov/OPOTA).

"We traditionally think of first responders as law enforcement, police, and fire departments. When there is a school emergency, teachers and educators really are the first responders to our

children," Attorney General DeWine said. "We need to adopt a holistic approach to make sure educators are prepared for any type of emergency or threat."

Earlier this year, Attorney General DeWine formed the Attorney General's School Safety Task Force, made up of educators, school associations, local law enforcement, and other first responders. The Attorney General plans to expand the group in partnership with ODE, the Ohio School Boards Association, the Buckeye Association of School Administrators, and the Ohio Association of School Business Officials following conversations in the aftermath of the recent Connecticut school shooting.

The Attorney General released a copy of the guidelines the task force created to help Ohio schools comply with a state requirement to submit building plans and a school safety plan to his office. The guidelines can serve as a template for schools to create or update their plans. A copy of the guidelines can be found [here](#) and at [www.OHLEG.org](http://www.OHLEG.org).

Ohio Revised Code Section 3313.536 requires the board of education of each city, exempted village, and local school district and the governing authority of each chartered nonpublic school to file a comprehensive school safety plan and floor plan for each school building under the board's or governing authority's control. This information, once filed with the Ohio Attorney General's Office, is available to law enforcement through the Ohio Law Enforcement Gateway.

The Attorney General's Office also took these steps in recent months to enhance school safety:

- Bureau of Criminal Investigation agents and local law enforcement from Chardon offered training at the 2012 Law Enforcement Conference.
- OPOTA has offered free Profile of an Active Shooter and Single Officer Response to Active Shooter trainings to law enforcement, with additional offerings scheduled for 2013.
- OPOTA has offered mobile simulators to bring training on shooting scenarios to local law enforcement agencies.
- In July, the Attorney General and the Department of Education co-sponsored the School Safety Summit, attended by more than 200 educators.

## Trending in the Courts

The U.S. Supreme Court is considering two cases of interest to the criminal justice community this term. Decisions are expected by mid-2013.

### ***Maryland v. King***

In this case, the court will answer the question of whether the Fourth Amendment permits warrantless collection and analysis of DNA from a felony arrestee, solely for use in investigating other offenses, without individualized suspicion.

In 2009, Alonzo Jay King Jr. was arrested for assault. Police collected his DNA and placed it in the statewide database. While he was awaiting trial on the assault, King's DNA profile generated a match to a DNA sample collected from a 2003 unsolved rape. The match gave police probable

cause to indict King for rape, and he was convicted and sentenced to life in prison on the rape charge, and King challenged the collection of his DNA while he was an arrestee.

Maryland extended its DNA sampling law in 2008 to require sampling of those arrested and not yet convicted. Maryland's highest court reversed King's conviction, holding that collecting a DNA sample from an arrestee was unconstitutional as applied to King. However, the federal government and 24 of the 50 states, including Ohio, have similar DNA sampling laws.

The Supreme Court released an order allowing police to continue collecting DNA samples from arrestees while it considers the issue, which has pitted law enforcement interests against privacy concerns.

### ***Bailey v. United States***

More than 30 years ago, in *Michigan v. Summers*, the U.S. Supreme Court held that when police officers execute a search warrant at a home, they may detain a resident until the search is completed. The question before the Supreme Court now is whether peace officers may detain an individual while executing a search warrant when the individual left the vicinity of his home before the warrant was executed.

In 2005, officers had a no-knock search warrant for Chunon Bailey's apartment. While conducting surveillance before executing the warrant, the officers saw Bailey come out of the apartment, get into a car, and drive away. They decided not to detain him on the scene, fearing they might alert someone in the apartment to their presence and jeopardize potential evidence inside. About a mile down the road, the officers stopped Bailey's car, ordered him to get out, and frisked him. They didn't find any weapons, but they seized Bailey's keys from his pants pocket and questioned him. Officers told him that he was being detained incident to the execution of the search warrant and drove him back to the apartment. They arrested Bailey after finding guns and drugs in the apartment.

The Second Circuit Court held that, under *Michigan v. Summers*, the officers could detain Bailey incident to executing the search warrant even though he was detained away from his home because he was in close proximity and the detention occurred as soon as practicable. The lower court noted that the officers' decision to wait until Bailey had driven out of view of the home before detaining him was reasonable given their concern for officer safety and the potential of alerting other possible occupants of the home.

### ***State v. Platt* — Twelfth District Court of Appeals (Brown, Butler, Clermont, Clinton, Fayette, Madison, Preble, and Warren counties), Nov. 13, 2012**

**Question:** Does a peace officer violate a suspect's Fifth Amendment right if the officer does not inform the suspect that anything he says will be used *against him* in a court of law?

**Quick Answer:** No, as long as the suspect is told the substance of his constitutional rights, there is no need to issue a *Miranda* warning verbatim.

**Facts:** When defendant Phillip Platt was arrested, the interrogating detective advised him of his *Miranda* rights, but he failed to explicitly tell him that any statement he made could be used “against him.” The interrogation was videotaped, and as the detective advised Platt of his *Miranda* rights, the detective can be heard saying, “This is the *Miranda* card and this says that I warn you I am a police officer. You have the right to remain silent and anything you say can and will be used in a court of law.” Platt filed a motion to suppress statements he made based on a *Miranda* violation.

**Why this case is important:** The court held that the detective’s *Miranda* warning was constitutionally sufficient. There is no rigid rule that requires the content of the *Miranda* warnings given be the precise language contained in the *Miranda* opinion. Here, Platt was informed of the substance of his rights, that any statement he made could be used in a court of law. Platt could have readily inferred that any statement given to the investigators could be used against him.

**Keep in mind:** It is important that officers give the substance of all the *Miranda* rights, but failing to use certain “magic words” don’t give defendants a “Get Out of Jail Free Card.”

Visit the [Twelfth District Court of Appeals](#) website to read the entire opinion.

## ***State v. Miller* — Second District Court of Appeals (Champaign, Clark, Darke, Greene, Miami, and Montgomery counties), Nov. 9, 2012**

**Question:** If peace officers attempt a “knock-and-talk” but the occupant immediately slams the door and refuses to talk, do the officers have any authority to issue commands to the occupant?

**Quick Answer:** No. Without a search warrant, the officers have no authority to command the occupants to open the door or to open it themselves.

**Facts:** Police officers received multiple complaints of drug activity occurring at a house. The complaints alleged that numerous cars were seen stopping at the house for a short period of time and that an individual frequently left the house on a bicycle and returned a short time later. Four or five officers decided to conduct a knock-and-talk at the house. When they knocked on the door, one of the occupants opened the door. After the officers identified themselves, the occupant closed the front door and locked it. The officers continued knocking and announcing their presence for another 30 to 45 seconds when another occupant, Antonio Miller, partially opened the door. The lead officer looked inside the home and saw a digital scale and two plastic baggies containing marijuana on the coffee table. The officer entered the house and seized the marijuana and scale. Miller filed a motion to suppress based on the seizure and warrantless entry.

**Why this case is important:** This court found that when the first occupant decided to shut the door on police and then lock it, he unequivocally communicated to the officers that he didn't want to speak with them or answer any of their questions. Police officers are permitted to engage in consensual encounters with suspects, such as the knock-and-talk, without violating the Fourth Amendment. Here, the occupant was under no obligation to speak with or allow the officers to enter the home, and therefore was entitled to close the door and lock it. But knock-and-talks become coercive if an officer asserts his authority, refuses to leave, or otherwise makes the people inside feel they cannot refuse to open the door. Here, when the officers continued knocking and then entered the home after Miller re-opened the door, the knock-and-talk stopped being a consensual encounter. The officers had no constitutional authority to command the occupants to speak to them or allow them inside the home without a warrant.

**Keep in mind:** When you knock on a door without a search warrant, you have no more rights to enter or speak to the occupants than a private citizen might have. You have essentially the same legal authority as a door-to-door vacuum cleaner salesman. And if an occupant slams the door in your face, you are pretty much out of luck.

Of course, you might make one last attempt by saying something like, "Hey, we'd just like to talk to you." That could be seen as still merely seeking a consensual discussion. But in this case, four or five officers in tactical police gear stood around the front door as one officer continued to knock and say "Police" for up to 45 seconds. If you have more questions about when a knock-and-talk crosses the line from consensual to coercive, consult your legal counsel.

Visit the [Second District Court of Appeals](#) website to read the entire opinion.

## ***State v. Powell* — Second District Court of Appeals (Champaign, Clark, Darke, Greene, Miami, and Montgomery counties), Nov. 2, 2012**

**Question:** Is a suspect's consent to search freely and voluntarily given when law enforcement doesn't read a consent to search form verbatim?

**Quick Answer:** Yes, as long as the form is explained to the suspect, and it's signed freely, the consent is freely and voluntarily given.

**Facts:** At about 5:15 a.m., a detective went to defendant Christopher Powell's residence to investigate a recent tip regarding marijuana thought to be on the premises. The detective was accompanied by four or five other detectives and deputies; one of the deputies was in uniform, while the other officers were in plain clothes. The officers drove a total of four vehicles, including two cruisers, to Powell's home. They knocked on Powell's door, and he answered after several minutes. Powell had been sleeping, but he let the officers inside his home after the detective explained that he had received a complaint about marijuana being grown and preserved on the property. The detective told Powell that the tip concerned an unattached garage on the property and that the officers needed to take a look. But he also told Powell that, depending on what was discovered in the garage, the rest of the residence may need to be checked. The detective then

explained a consent to search form. Powell signed the consent form, the detective signed it, and another officer signed it as a witness.

The officers searched the garage, finding old marijuana shake leaves. The detective then told Powell that they needed to check the back of Powell's property to make sure everything was OK. The detective shone a flashlight inside a back window of the home and saw marijuana plants hanging upside down to dry. The detective told Powell that they had to go inside and collect the marijuana, and Powell said that he understood. Powell was charged with various drug crimes, and he filed a motion to suppress the fruits of the warrantless search.

**Why this case is important:** The court found that the consent to search form was explained to Powell before he signed it and before any search began, even though Powell alleged that he never read the form before signing it. Plus, there was no evidence that the deputies displayed any weapons or engaged in any conduct toward Powell that overcame his will. Powell's consent was not coerced based solely on the time of day, the fact that he had been asleep, his lack of experience with law enforcement officers, or the number of officers present.

**Keep in mind:** Consent to search must be freely and voluntarily given, and your best line of defense is the consent to search form. You should make it a practice to get the suspect to sign the form before the search if possible. That way, any other conduct that a court might construe as coercive may be offset by the consent form, as in this case.

Visit the [Second District Court of Appeals](#) website to read the entire opinion.

## ***State v. Roberson* — Second District Court of Appeals (Champaign, Clark, Darke, Greene, Miami, and Montgomery counties), Nov. 2, 2012**

**Question:** When multiple peace officers have secured the premises, may they search a suspect's luggage for a firearm without a warrant?

**Quick Answer:** No, the allegation that there is a firearm on the premises does not create exigent circumstances if the scene is secured. A warrant is needed to search.

**Facts:** Officers were dispatched for a domestic violence call. The victim told officers that the suspect, Cordero Roberson, had threatened her with a gun, and that Cordero was taking a shower. The victim explained that the gun was either with Roberson in the bathroom or in one of Roberson's two bags in the living room. The officers entered and announced their presence. They heard loud music coming from the bathroom and the sound of the shower running. The officers quickly secured the home while Roberson remained in the bathroom. While one officer watched the bathroom door with his gun drawn, another officer searched Roberson's suitcase and found a Colt .380 semiautomatic firearm. Roberson moved to suppress the gun based on the warrantless search.

**Why this case is important:** This court found that no exigent circumstances existed to justify the warrantless search of Roberson’s suitcase. The exigent or emergency circumstances exception justifies a warrantless entry in a variety of situations, including:

- When entry into a building is necessary to protect or preserve life
- To prevent physical harm to persons or property
- To prevent the concealment or destruction of evidence
- When someone inside poses a danger to an officer’s safety

Here, there was no ongoing emergency at the time of the search, as the officers had their guns drawn, the home had been secured, and the victim was safely outside. Plus, searching the suitcase would not have increased officer safety because, had the gun not been there, its whereabouts were still unknown. Once the officers secured the home, they should have called for a search warrant while continuing to secure the premises and restrict Roberson’s access to the home.

**Keep in mind:** Officer safety should always be your top priority. And here, the officers did what would come naturally to anyone: They had a tip about the location of the firearm and they attempted to secure it. But once you have the scene under control, you’ve got to start thinking about your Fourth Amendment training before taking any further action. Since the premises were secure, there was no “potential emergency” that justified a general search.

Visit the [Second District Court of Appeals](#) website to read the entire opinion.

## ***State v. Garcia* — Eighth District Court of Appeals (Cuyahoga County), Nov. 1, 2012**

**Question:** When a peace officer in his patrol car tells a citizen to stop and talk to him, is this a consensual encounter?

**Quick Answer:** No, it’s an investigatory stop for which an officer needs reasonable suspicion.

**Facts:** Around midnight, suspect San Pedro Garcia was on a bicycle talking to a friend, who was in a car stopped in the middle of the street. Police officers saw the two men, turned their patrol car around, and approached them. Garcia began to ride away from his friend’s car as he saw police approach. One officer ordered Garcia to stop and asked him what was going on. As they were talking, Garcia kept reaching for the waistband of his pants. The officer exited the car and told Garcia he was going to pat him down for weapons. As the officer conducted the pat-down, he asked Garcia if he had any weapons. Garcia admitted he had a gun. The officer found a loaded handgun with an extra magazine concealed in Garcia’s waistband. Garcia was charged with carrying a concealed weapon, and he filed a motion to suppress the gun based on a warrantless search.

**Why this case is important:** The court found that the police-citizen interaction was not a consensual encounter. A consensual encounter occurs when the police approach a person, engage in conversation, and the person remains free to walk away or not answer. Here, there



was no consent because the circumstances conveyed a “show of authority” that restricted the suspect’s movement: Two officers in a marked police car turned around and ordered Garcia to stop. Instead, it was an investigatory stop that wasn’t justified because the officers were relying on mere hunches of drug activity and couldn’t point to specific, articulable facts (such as furtive movements, criminal activity, or flight from police) that would warrant the pat-down. All the police knew was that Garcia was riding a bike and talking to his friend in a stopped car on the street.

**Keep in mind:** When out on your beat, you may intend to have a consensual encounter with a citizen, but remember these examples that may cause your consensual encounter to become a seizure: (1) the presence of several officers, (2) the display of a weapon by an officer, (3) physically touching the person, and (4) the use of language or tone of voice that indicates that the citizen is compelled to obey. And when you are making an investigatory stop, you *must* be able to point to specific, articulable facts of why you are making the stop; you can’t base it on hunches or “gut feelings.”

Visit the [Eighth District Court of Appeals](#) website to read the entire opinion.

## ***Campbell v. City of Springboro* — Sixth Circuit Court of Appeals (Michigan, Kentucky, Ohio, Tennessee), Nov. 29, 2012**

**Question:** Can a canine officer’s handler be civilly liable when the canine bites a suspect in the line of duty?

**Quick Answer:** Maybe. It may depend on whether the dog’s state certification remains current and whether the dog goes through periodic maintenance training.

**Facts:** Two plaintiffs sued an Ohio police officer, police chief, and their municipality, alleging that the peace officer used excessive force by allowing his canine officer, Spike, to bite them. They also alleged that the police chief failed to supervise the department’s canine unit and failed to permit routine maintenance training for the canine officers.

In each case, Spike bit the plaintiffs without receiving his handler’s command to do so. In the first case, plaintiff Samuel Campbell was found lying on the ground in the back yard of a home when Spike bit him. The police were at the home because they received a noise complaint, and Campbell alleged that Spike’s handler made eye contact with him before Spike bit him. In the second case, police were called to a home to investigate underage drinking and arrested plaintiff Chelsie Gemperline. After being cuffed and placed in the police cruiser, Gemperline managed to wriggle one hand out of the cuffs, crawl out the cruiser window, and run into a neighbor’s backyard. Officers began looking for Gemperline with Spike. Spike found her in a child’s playhouse and bit her. Spike’s handler had to remove the dog from Gemperline’s leg.

**Why this case is important:** Based on the facts and circumstances of the plaintiffs’ cases, the Sixth Circuit denied the police officer’s motion for summary judgment, holding that the plaintiffs presented plausible claims for excessive use of force. In both cases, the plaintiffs were not armed or involved in violent, serious crime. Also, when found, neither plaintiff tried to resist



arrest or flee the scene. Nor did Spike's handling officer ever give any warnings to the plaintiffs before Spike bit them.

The court also denied the police chief's motion because the plaintiffs showed evidence that the chief never approved Spike's handling officer to get maintenance training for Spike even though it was necessary to maintain the dog's obedience. Also, the chief continued to allow Spike to be in the field with his handling officer even though his Ohio canine peace officer certification had lapsed.

**Keep in mind:** This case shows how crucial it is to have your canine units not only keep the dogs' certifications current, but also stay up-to-date on their maintenance training. You can't predict with 100 percent certainty what your canine officer will do, but maintenance training is essential to help ensure the dog's obedience. Here, the fact that Spike's certification had lapsed and that he failed to receive any maintenance training in the months before biting the plaintiffs may be evidence that would open up a dog's handler and possibly others to civil liability.

Visit the [Sixth Circuit Court of Appeals](#) website to read the entire opinion.

## ***United States v. Oehne* — Second Circuit Court of Appeals (Connecticut, New York, Vermont), Oct. 25, 2012**

**Question:** If a suspect informs peace officers that he has a lawyer for a separate, unrelated charge, must officers abandon all questioning?

**Quick Answer:** No, because a suspect's request for counsel must be unambiguous.

**Facts:** FBI agents suspected that defendant William Oehne had sexually abused a minor when he lived in Connecticut. The officers learned that Oehne was living in Virginia, where he had a pending criminal case for sexual abuse of another minor girl. The agents went to Oehne's house, placed him in handcuffs, and seated him in a police car while other officers secured the house until a search warrant could be obtained. While waiting in the car, Oehne began to talk about the minor victim's mother, so an FBI agent began to read him a *Miranda* form. As she read the first line of the form, Oehne explained that he had a lawyer. The agent asked Oehne if the lawyer was for his pending case in Virginia, and Oehne said, "Yes." The agent finished reading him the form, but he never signed it because he was handcuffed. Oehne eventually waived his *Miranda* rights and made several incriminating statements.

**Why this case is important:** The court held that Oehne never invoked his right to an attorney, so there was no *Miranda* violation. For a defendant to invoke his right to counsel, he must do so through a clear, unambiguous affirmative action or statement. When Oehne told the officers he had a lawyer, he was referring to an attorney representing him in a separate pending charge in Virginia. Oehne never requested a lawyer for the interrogation of the Connecticut crime; he merely told the officers that a lawyer represented him in an unrelated matter. And this mention didn't constitute an unequivocal request for counsel.

**Keep in mind:** If an accused makes a statement concerning the right to counsel that is ambiguous or equivocal or makes no statement, the police are not required to end the interrogation.

Visit the [Second Circuit Court of Appeals](#) website to read the entire opinion.

## ***United States v. Smith* — Seventh Circuit Court of Appeals (Illinois, Indiana, Wisconsin), Oct. 4, 2012**

**Question:** Does a peace officer exceed the scope of a *Terry* investigatory stop if he approaches a suspect with a gun drawn and proceeds to handcuff the suspect?

**Quick Answer:** No, but the officer's actions must be reasonable under the circumstances.

**Facts:** Defendants Corley Smith and Kim Evans robbed a bank and fled in a green Cadillac. FBI agents already had been tipped off by an informant about the defendants, so they were driving around the area looking for a green Cadillac. The agents later saw the Cadillac pull into a parking spot on the street. Approaching with a gun drawn, one agent detained Smith when he got out of the Cadillac. Meanwhile, Evans drove off at a high speed, and other agents followed in close pursuit. The agent detaining Smith placed him in handcuffs for 10 minutes until another agent arrived with security camera photos of the robbers. Smith's clothing matched that of one of the robbers pictured, so the agent arrested him. The agent then searched Smith and recovered a pair of black gloves and a Velcro face mask. Smith moved to suppress the evidence, claiming that the agent essentially placed him under arrest when he drew his weapon and cuffed him.

**Why this case is important:** The court held that Smith's initial encounter with the agent was a valid *Terry* stop, requiring only reasonable suspicion. Officers conducting a *Terry* stop may approach with guns drawn and handcuff a suspect, without automatically transforming the stop into an arrest, when it is warranted by the circumstances. Here, it was reasonable for the agents to approach the Cadillac with guns drawn because they had information that a green Cadillac was the get-away vehicle in a recent robbery in which a gun was used. For the same reason, it was reasonable for the agent to handcuff Smith: he was alone with Smith on the street while the other agents chased Evans, so he handcuffed Smith for officer safety.

**Keep in mind:** An investigative detention becomes an unlawful arrest when there is no longer a reasonable basis to keep a suspect in handcuffs. Officers should release a suspect from handcuffs if, after a reasonable time, they lack probable cause required for a valid arrest or if they determine that the suspect is not a safety risk. A court will look at the circumstances of each case to see if the situation warranted heightened police intrusion. Increased intrusion, such as use of handcuffs or firearms, may not be seen as necessary if the police outnumber the defendants, the stop is executed on an open highway during the day, police have no tips or observations that the suspects were armed or violent, or the defendants pulled their car to a stop and stepped out in full compliance with police orders.

Visit the [Seventh Circuit Court of Appeals](#) website to read the entire opinion.