




# Ohio Attorney General's Law Enforcement Bulletin



January 2016

## State v. Polk, 2016 Ohio 28

Question: When a school security guard discovers an abandoned backpack, and does a preliminary search to determine the owner, may the security guard conduct a more thorough search given that the owner was a rumored gang member?

Quick Answer: No. Rumors do not rise to reasonable suspicion, and mere affiliation with a criminal group does not constitute a crime or justification for a search, even in a school.

Facts: In an effort to identify the owner of a book bag left on a school bus, a school security guard opened the bag and quickly determined it belonged to Polk. After learning Polk was the owner, the guard took the bag to the principal's office and emptied its contents, "just to be precautionary," as he recalled rumors that Polk was in a gang. Several bullets were found, the principal was notified and the police were called. The security guard, principal, and police officer met with Polk in a classroom where the bag he was carrying was searched and a pistol was recovered. The court suppressed the bullets and pistol finding that while the first cursory search to determine ownership was valid, subsequent searching of the bag was not. The court noted that while students enjoy a lesser expectation of privacy than would a person *outside* of school, they "do not shed their constitutional rights ... at the schoolhouse gate." The legal standard in student searches is one of reasonableness. In determining the reasonableness of a student search, one must consider: 1) whether the search was justified at its inception (i.e., whether the search is likely to turn up evidence of rules/law being violated); and 2) was it reasonably related to the scope of the immediate circumstances (i.e., reasonably related to the search objectives). In this case, the court held that the need to determine ownership and confirm no hazard was present were satisfied after the initial search and "the justification for an intrusion ... expires when it is fulfilled, making further unjustified searches unlawful."

Keep in Mind: Public school employees are state actors for purposes of the Fourth Amendment when they discover evidence and deliver it to police or prosecutors so that their students may be prosecuted. Consequently, it was irrelevant that the original "finder" was a school security guard and not a police officer.

## State v. Knoefel, 2015 Ohio 5207

Question: Are recorded telephone conversations between a suspect and a cooperating witness, made in violation of a California statute, admissible in an Ohio criminal prosecution?

Quick Answer: Yes. California code is irrelevant in this situation.

Facts: Officers were investigating Knoefel for his involvement in his wife's recent murder. The murder was committed by Zurich (Knoefel's foster daughter and mistress). Suspecting Knoefel's participation in plotting the murder, officers arranged to record phone conversations between Knoefel and a family friend who agreed to be a cooperating witness despite having moved to California. While the phone conversations did not result in an outright confession, Knoefel made statements favorable to the prosecution's case against him. Knoefel challenged the use of these statements in his trial, claiming that since the cooperating witness was in California at the time of the calls, the recordings violated California's Eavesdropping Statute. The court explained that California law was not relevant in this matter. Knoefel was a resident of Ohio and the crimes he was facing occurred in Ohio. Further, there was no warrant requirement for the recordings between a consenting police informant and a non-consenting defendant. In the absence of some deterrent effect, the alleged violation of California law in the context of an Ohio criminal prosecution is insufficient to invoke the application of the exclusionary rule.

Keep in Mind: Ohio's statute prohibiting the interception of communications (R.C. 2933.52(B)(3)), states that it **does not apply** to "a law enforcement officer who intercepts a wire, oral, or electronic communication, if the officer is a party to the communication or if one of the parties to the communication has given prior consent to the interception by the officer."

## State v. Barry, 2015 Ohio 5449

Question: Is a person guilty of tampering with evidence when they hide unmistakable evidence, in the absence of a crime that would otherwise be reported?

Quick Answer: No. Ohio law does not impute constructive knowledge of an impending investigation based solely on the commission of an offense since the charge of tampering with evidence requires the offender to *have knowledge* of an investigation/proceeding relating to their crimes.

Facts: Barry and three friends met up in Middletown, Ohio, where Barry was given a condom filled with heroin. Barry concealed it in her body with the promise she would be paid in drugs for helping transport the heroin to Huntington, W. Va. Barry was stopped by a trooper for several traffic violations as they drove through Scioto County. The trooper questioned Barry about possessing drugs and, ultimately, Barry admitted to having the drug-filled condom concealed inside her. Amongst other drug-related offenses, Barry was charged with tampering with evidence. The trial and appellate courts upheld her conviction for tampering. The Ohio Supreme Court, however, overturned Barry's tampering conviction holding that the state had not met its burden of showing that Barry knew that an official proceeding or investigation was ongoing or likely to be instituted. In other words, there was no evidence that at the time she concealed the heroin in her body in Middletown she knew or could have known that a state trooper would stop her car in Scioto County and begin an investigation of her for drug trafficking and drug possession.

Keep in Mind: In Ohio, merely establishing that the crime committed is an unmistakable crime is insufficient to prove that the accused knew at the time the evidence was altered, destroyed, concealed, or removed, that an official proceeding or investigation into that crime was ongoing or likely to be instituted.

### **State v. Cole, 2015 Ohio 5295**

Question: Is consent to search a hotel room, obtained during a traffic stop but executed 50 minutes later, still valid?

Quick Answer: Yes.

Facts: Officers were conducting surveillance at a hotel in a high drug area. They observed a car with darkly tinted windows drive around suspiciously and park in a neighboring lot. A man exited the car, removed a backpack from the trunk, walked across the parking lot and entered a hotel room rented to Cole. Shortly thereafter, Cole and the man left the hotel room carrying black trash bags and entered another hotel room. They eventually left the hotel in the car with dark-tinted windows. Surveilling officers requested a traffic stop be conducted for a window tint violation. The officer smelled burnt marijuana coming from the rolled down window and requested a canine. The canine unit arrived four to five minutes later and the dog alerted on the car but only minor bits of marijuana shake were found inside. The surveillance officers joined the traffic stop and asked Cole if she had any “smuggling types of items,” etc., in her hotel room and whether she would consent to a search of the room. She agreed and officers returned to the hotel with Cole. Upon arrival, Cole admitted there was a gun in the room. Officers recovered the gun, cocaine, and a scale in her room.

Cole argued that the traffic stop was unlawfully extended to question her about the events observed at the hotel and possible contraband inside. Therefore, she argued, any consent obtained during this extension poisoned the subsequent seizure of the gun. The court disagreed, finding that Cole’s consent originally given during the traffic stop was executed within a reasonable time (45 or 50 minutes) of the traffic stop. Further, the court noted that she was no longer detained pursuant to the traffic stop, she was not under arrest, or handcuffed and she willingly returned to the hotel with officers to search. Therefore, the consent remained valid.