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De-escalation techniques can be effective with special needs populations

Peace officers are trained to maintain safety when responding to dispatch calls, which sometimes requires more authority and control when a suspect ignores the officers' verbal commands. However, the typical command and control techniques aren't the best response with certain subjects. For example, using a more commanding presence with a special needs person in crisis actually may escalate an already-tense situation.

A person with special needs is considered to have diminished capacity, which means his ability to think clearly or behave in a socially acceptable, law-abiding manner can be affected by a brain condition. Mental illnesses, such as schizophrenia and bipolar disorder, are the most common types of special needs.

Special needs persons are more likely to come in contact with law enforcement when they are faced with a crisis, such as an emotionally stressful event, a traumatic change in their life, or a serious interruption in their mental balance. The crisis affects their perception, decision-making, and problem-solving abilities, and they may not have effective coping skills to deal with the crisis. This is the point at which peace officers often get involved.

If an officer believes he is dealing with a special needs person in crisis, he must take that person's diminished capacity into account. The officer should try nontraditional techniques to achieve a safe, successful outcome. For instance, when an officer's safety is not in jeopardy, it may be more effective to approach the person with a "de-escalation" mindset and a less physical, less authoritative method to resolve the problem.

One effective method is the EAR Model, which stands for engage, assess, and resolve. First, you should calmly engage the special needs person to make a connection; the first 10 seconds of this interaction are crucial. Ask the person his name and tell him your name. Ask the person open-ended questions, such as "What's going on?" or "What can I help you with?" You should tell him what you are observing through "you" statements, and you can personalize the conversation and take a non-blaming tone with "I" statements.

During this initial contact, it's important to show empathy and make the person feel heard. You also need to be patient, because he may not be able to quickly process the situation and therefore delay in responding to your questions. Avoid criticizing, arguing, commanding, or giving ultimatums, and instead try to model calm behavior and tone of voice.

Next, gather as much information as possible about the person. Remove distractions from the scene, such as onlookers or people negatively trying to influence the person. Also, remember that the individual may be overwhelmed not just by what's happening around him, but also by thoughts, sensations, or beliefs he may be experiencing.

Ask the person whether he has a medical condition, is receiving medical treatment, or is taking medication. If he will not speak to you, try to talk with his friends or family members. Reinforce that you are there to assist the person and, again, be patient while waiting for a response.

Once you've assessed the person, start thinking about how to resolve the problem. Things to consider: Has the person committed a crime? Does he need to be taken to a hospital? Are health care personnel needed at the scene? Does your department have policies for dealing with special populations?

When you have decided your course of action, be sure to announce your intentions to the person. Let him know what you plan to do, and be patient and repetitive in your explanation. You should give only short, simple instructions, and wait until he understands each instruction before giving him another.

The EAR Model is just one de-escalation technique that law enforcement can use with the special needs population. Officers can learn more about this model and others through an Ohio Peace Officer Training Academy course titled Interacting with the Special Needs Population.

Above all, remember that when dealing with such individuals, law enforcement's ultimate goal is to cut through fear and confusion and achieve voluntary compliance. Using a de-escalation technique will go a long way toward helping officers realize a safe and peaceful result.

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Important Resources:

- Ronald Davitt, OPOTA law enforcement training officer, can answer questions on training for interacting with special needs populations. E-mail him at Ronald.Davitt@OhioAttorneyGeneral.gov.
- For information on OPOTA courses covering special needs populations, visit www.OhioAttorneyGeneral.gov/OPOTA or www.OHLEG.org/eOPOTA or e-mail askOPOTA@OhioAttorneyGeneral.gov.

eOPOTA course covers use of new OH-1 Crash Report

The Ohio Peace Officer Training Academy (OPOTA) has released OH-1 Crash Report Update on its eOPOTA online training program under an agreement with and support from the Ohio Department of Public Safety.

This interactive course trains officers to use the revised OH-1 Crash Report. All Ohio law enforcement agencies must begin using the new report by January 2013, but many departments already have introduced it.

The eOPOTA course explains why the OH-1 Crash Report has been updated and what has changed. It also instructs officers on what information to gather and how to capture the maximum amount of data possible under the new format. The course reviews the common errors made in crash reports, as well, and how the new OH-1 Update makes collecting information easier.

The Department of Public Safety's Traffic Crash Report Manual also has been updated and will aid law enforcement officers in filling out the new crash reports.

For more information, contact OPOTA at AskOPOTA@OhioAttorneyGeneral.gov.

***United States v. Williams*—Second Circuit Court of Appeals (Connecticut, New York, Vermont), May 17, 2012**

Question: Does a peace officer violate the Fifth Amendment when he briefly questions a suspect on the scene and later gives *Miranda* warnings before questioning at the officer's station?

Quick answer: It depends on the totality of the evidence surrounding the questioning.

Facts: Police had been tracking a gun trafficking scheme from Birmingham, Ala., to New York City for a year and a half by relying on information from a confidential informant. Defendant Robert Williams and two other men had recently arrived in New York from Alabama to sell guns, and the informant tipped off police that Williams was at an apartment with two other men, and they had at least 10 guns in their possession. Officers had the informant purchase a weapon from the men, and then they quickly obtained and executed a search warrant for the apartment that same evening. Police expected to find three gun traffickers and at least 10 guns, but they found only four guns and two gun traffickers, including Williams.

After securing the suspects in handcuffs, one officer asked Williams who the guns belonged to and the location of the other firearms and third gun trafficker. Williams admitted that the guns were his, but he didn't respond to the other questions. The officer then began helping a woman in the apartment who needed medical attention. Two hours later at the police station, the officers gave Williams a *Miranda* warning. He waived his rights and gave a detailed confession during questioning. Williams later moved to suppress his confession as a two-step interrogation that violated his Fifth Amendment right against self-incrimination.

Why this case is important: The court found that Williams' statements should not be suppressed because the police officers did not engage in a deliberate two-step interrogation. Under *Missouri v. Seibert*, the U.S. Supreme Court condemned law enforcement's use of a two-step interrogation in which officers would purposely refrain from giving suspects their *Miranda* warnings to first try to get a confession. Once the confession was obtained, the officers would then give *Miranda* warnings and ask the suspect questions about his pre-*Miranda* confession. Whether a two-step interrogation has occurred depends on the totality of the evidence surrounding the questioning.

Here, there was no evidence that the police officers' questions about the ownership of the guns or location of the missing guns or third gun trafficker was deliberately done to produce a confession-first, warn-later situation prohibited in *Seibert*. Public safety considerations accounted for the officers' limited questioning at the apartment because they believed they'd find more guns and one more trafficker. Plus, there was no continuity from the questioning at the apartment to the questioning at the police station. In fact, the officer who quickly questioned Williams about the guns just as quickly turned his attention toward a woman who needed medical assistance. Therefore, the officers committed no Fifth Amendment violation because there was no deliberate two-step interrogation.

Keep in mind: If you decide to question a suspect while executing a search warrant, focus your questions on public safety concerns to help secure the scene, and make sure not to get too specific in your questioning before you've given the suspect his *Miranda* warnings. Otherwise, a court might suppress all of the suspect's incriminating statements.

Click [here](#) to read the entire opinion.

***United States v. Laudermilt* — Fourth Circuit Court of Appeals (Maryland, North Carolina, South Carolina, Virginia, West Virginia), May 3, 2012**

Question: Is a peace officer justified in conducting a warrantless protective sweep of a home after arresting a suspect inside the home?

Quick answer: Yes, if the officer reasonably believes another individual is inside the home and poses a danger to those on the scene.

Facts: Sheriff's deputies drove to defendant Jordan Laudermilt's home after his girlfriend called 911 to report domestic violence. The 911 calls reported that there were two additional people and a gun inside the home. When deputies arrived, they saw Laudermilt walk onto the front porch and heard him threaten to kill his girlfriend and her family with a gun. The deputies waited until Laudermilt walked out onto the front porch again and took him into custody. Then they conducted a protective sweep of the residence. Laudermilt told deputies that his 14-year-old autistic brother was in the house. A deputy found the brother in an upstairs bedroom, "shaking" and "freaking out." The deputy took the brother into the kitchen of the home, and a sergeant asked the brother if he knew where the gun was. The brother pointed to a rifle hanging on a gun rack, in plain view. Meanwhile, the other deputies finished the protective sweep, which took five minutes. Laudermilt moved to suppress the gun recovered during the sweep.

Why this case is important: The court found that the deputies' protective sweep was constitutionally justified. Typically, peace officers violate the Fourth Amendment when they enter and search a home without a warrant. However, the U.S. Supreme Court has recognized an exception to this rule in *Maryland v. Buie*, a "protective sweep" that allows officers to make a cursory search of a home for individuals who might pose a danger to those on the scene. A *Buie* sweep is an extension of a *Terry* frisk for the home, so officers must have at least reasonable suspicion that a dangerous individual remains in the home. And the officers can look only in places where a person may be found.

Here, the deputies were justified in performing a sweep because (1) they were responding to a volatile situation involving a firearm and a domestic dispute; (2) the firearm was unaccounted for; and (3) they believed at least one other person was in the home. Even though Laudermilt told the deputies that his brother was the only other person left inside the home, officers are not bound by what the suspect tells them. Based on the 911 calls, there was some confusion about how many people were in the house, and the location of the firearm was unknown. For those reasons, the deputies were justified in conducting the sweep.

Keep in mind: When you make an arrest inside a home, you are entitled to perform a "protective sweep" of the home if you have specific, articulable facts that there may be a dangerous individual somewhere inside. But remember, a protective sweep is a limited search — it only entitles you to search those spaces where a person may be found. For instance, checking drawers and small containers is out of the question. Plus, the sweep should last no longer than it takes to dispel the reasonable suspicion of danger and/or make the arrest and leave the home.

Click [here](#) to read the entire opinion.

***United States v. Collins* — Sixth Circuit Court of Appeals (Michigan, Kentucky, Ohio, Tennessee), June 12, 2012**

Question: Does a peace officer's factually accurate statement to a suspect violate the Fifth Amendment as an un-Mirandized interrogation if the suspect responds with an incriminating statement?

Quick answer: No.

Facts: Early one morning, an officer on patrol observed a car traveling 55 mph in a 45-mph zone. The officer stopped the vehicle for speeding, and during the stop, four other police cruisers arrived on the scene. A different officer witnessed defendant Michael Collins, a passenger in the speeding car, reach down toward the car's floorboard, as if he was trying to retrieve or hide something. The car's driver gave officers permission to search the vehicle. They found a loaded .22-caliber handgun under the front passenger seat, where Collins had reached earlier. When officers first asked who owned the gun, neither Collins nor the driver admitted to ownership. One of the officers told the men that, because neither of them would claim the gun, the officer would have to charge them both with possession. At that point, Collins told the officer, "I will take the charge" and admitted to owning the gun. He later signed a *Miranda* waiver and written statement, confessing to ownership of the weapon. He later moved to suppress his statements, alleging a *Miranda* violation.

Why this case is important: The court found that Collins' statement to police was voluntary and was not made in response to an interrogation. An interrogation involves not just express police questioning, but also any words or actions on the part of the officers (other than those normally related to arrest and custody) that they should know are reasonably likely to elicit an incriminating response from the suspect. In Collins' case, the officer's statement about charging both Collins and the driver was not a threat to coerce a confession, but a factually accurate statement that explained what the officer had to do because no one claimed the gun. Such statements cannot reasonably be expected to prompt an incriminating statement, so no police interrogation occurred before Collins admitted to owning the gun.

Keep in mind: If a traffic stop turns into a criminal investigation, you do not have to Mirandize the suspect until you place him in custody and begin questioning him about the new crime. Therefore, you can explain what's happening to the suspect without needing to give the suspect his *Miranda* warnings. During that time, if the suspect makes any unsolicited statements to implicate himself, those statements are fair game to be used against him later in court.

Click [here](#) to read the entire opinion.

***United States v. Jackson* — Sixth Circuit Court of Appeals (Michigan, Kentucky, Ohio, and Tennessee), June 19, 2012**

Question: Is a peace officer's inventory search illegal if the officer follows his department's inventory policy?

Quick answer: No, as long as the policy is well-established and authorizes a search of all interior areas of the vehicle before ordering a tow.

Facts: While on patrol, a police officer passed a vehicle thought to be involved in a recent nightclub shooting. The officer continued to watch the SUV after it passed, noticing it made a quick left turn into a driveway without using a signal. The officer turned around, activated his lights, and stopped behind the SUV to approach the driver, defendant Rudolph Jackson. When the officer approached, he saw that both Jackson and the car's passenger were holding open beer bottles. Jackson also said he didn't have a valid driver's license. At that point, the officer realized that Jackson's SUV was not the vehicle from the nightclub shooting, but he arrested Jackson anyway for the open container violation.

The officer conducted a background check on Jackson and his passenger, which revealed that both had suspended licenses and that Jackson had an outstanding arrest warrant. The officer called to have the car towed because it was illegally parked and because neither Jackson nor his passenger could drive it to another location because of their suspended licenses and alcohol consumption. Before the tow, the officer performed an inventory search of the SUV. He found a six-pack of beer with two opened bottles. Also, on the floor of the driver's seat, where it looked like the carpet had been torn, the officer found a concealed .380 Cobra handgun. Jackson was arrested for being a felon in possession of a firearm. He moved to suppress the handgun on Fourth Amendment grounds, including the officer's inventory search.

Why this case is important: The court held that the officer's search of Jackson's SUV didn't violate the Fourth Amendment. An inventory search may not be conducted for purposes of investigation, and it must follow the officer's established inventory search policy. Here, the officer was following his department's established procedure, under which an officer has discretion as to whether to tow the vehicle. The policy also stated that, if the officer chooses to have the car towed, the officer should then take inventory of both the exterior and interior of the car beforehand, even taking inventory of the contents from any unlocked compartments or containers.

While it is true that a department's established inventory policy doesn't give officers complete freedom to intrude into every space of the vehicle, including ripping up the interior carpet, in this case, the officer simply checked under the already worn and torn carpeting.

Keep in mind: If your department has an established inventory policy, follow it. In most cases, this will prevent any evidence you find from being suppressed. But remember, you can't substitute an inventory search for an investigative search. Therefore, searching underneath the carpet or ripping apart a vehicle's interior most likely will not be permitted under your department's policy. The intrusion in each case must be limited in scope to the places in a car where you could reasonably conclude that personal property might be found.

Click [here](#) to read the entire opinion.

***United States v. Stubblefield, et al.* — Sixth Circuit Court of Appeals (Michigan, Kentucky, Ohio, Tennessee), June 19, 2012**

Question: (1) Does a peace officer's use of a drug-detection dog prolong the time necessary to complete a traffic stop? (2) Can a dog's reliability be established so that his positive alert is sufficient probable cause to search? (3) Does a drug-detection dog's alert allow a peace officer to search

anywhere in the vehicle? (4) May a peace officer arrest a suspect based on what's discovered during the search, even if the evidence has no relation to the drug-detection dog's alert?

Quick answer: (1) No, in most cases, but it also depends on the facts and circumstances of the traffic stop. (2) Yes, an officer's testimony as to a dog's training and certification may establish the reliability of the dog. (3) Yes, under current federal law, a drug-detection dog's alert provides probable cause to search every part of the vehicle and all containers within it. (4) Yes, if the officer has knowledge and reasonably trustworthy information to believe that the suspect has committed a crime.

Facts: A local police officer pulled over a rental car for speeding, and a state trooper arrived to assist with the traffic stop. The trooper explained the speeding ticket to defendants Cedrick Stubblefield, Latorey Earvin, and Brandon Spigner while the police officer walked his drug-detection dog around the car. The dog alerted to the presence of drugs, so both law enforcement officers began to search the car and containers inside that were capable of hiding drugs. From the search, the officers discovered a very heavy sealed and addressed envelope. They opened the envelope to look for drugs, but the officers instead found multiple fake drivers' licenses, several false checks made out to names on the fake licenses, and maps to different stores in the Columbus and Dayton areas. From this discovery, the officers arrested all three defendants and towed the car. A further search of the car revealed more fake licenses, maps to specific stores, and lists of names with Social Security numbers. The defendants moved to suppress the evidence from the search based on Fourth Amendment violations.

Why this case is important: The court first held that using a drug-detection dog did not prolong the time necessary to complete the traffic stop. Walking a drug dog around a car during a traffic stop isn't outside the scope of the stop. Also, less than five minutes passed between the police officer's request for identification from the defendants and the trooper's issuing of the speeding ticket. In fact, the trooper finished explaining the ticket while the police officer simultaneously walked the dog around the car.

The court next found that a drug-detection dog's reliability may be based on the handler's testimony alone. The dog's handler testified to the dog's training, certifications, and accuracy, which helped establish the dog's reliability. The fact that no drugs were found in this case is not the important question to answer in determining a dog's reliability. Instead, the question is whether the dog is likely enough to be right so that a positive alert is enough to establish probable cause. Here, because of the dog's reliability, the positive alert gave the officers probable cause to perform a warrantless search of the car and any containers in it capable of hiding drugs. The officers' belief that drugs could be hidden in the envelope was reasonable, too, because, based on the officers' training and experience, they knew that certain types of drugs could be packaged in an envelope.

Finally, the court found that the officers were justified in arresting the defendants because, when looking at the facts and circumstances, an objectively reasonable police officer would believe that the defendants had committed or were committing a crime. The officers found fake drivers' licenses, bank checks, maps, and cash inside the envelope, so it was reasonable to believe that the defendants were using these fake IDs and cashing the checks at the various mapped out stores in the Columbus and Dayton areas.

Keep in mind: (1) You don't need to have any suspicion to conduct a dog sniff of a vehicle, and a sniff isn't outside the scope of a traffic stop. However, the sniff can't prolong the time necessary to complete the traffic stop. (2) You will have to establish that a dog is trained and reliable in order for the alert to establish probable cause. This will include introducing certifications, training records, and the handler's testimony about the dog's reliability. (3) Under current federal law, when a trained and reliable drug dog alerts to the presence of drugs, you can search every part of the vehicle and any containers inside that you reasonably believe could hold drugs. However, this issue is currently in front of the U.S. Supreme Court, so the law could change (see April's Bulletin, "Trending in the Courts"). (4) You need to have more than a mere suspicion before arresting a suspect for committing a crime, but you don't have to show guilt beyond a reasonable doubt that the crime was committed, just probable cause.

Click [here](#) to read the entire opinion.

***State v. Byrd*— Second District Court of Appeals (Champaign, Clark, Darke, Greene, Miami, and Montgomery counties), June 15, 2012**

Question: Is an officer's pat-down constitutional when a suspected gang member is stopped in a high crime area and admits to having marijuana in his pants pocket?

Quick answer: No, not without any particularized suspicion that the suspect is armed or presents a danger to officers.

Facts: Officers were patrolling a neighborhood known for drug trafficking and gang activity when they observed defendant Rodney Byrd committing a jaywalking violation. Based on previous interactions in the neighborhood and information from the law enforcement database, officers learned that Byrd was an alleged member of a violent gang, that he allegedly had run a "dope house" in the past, and that others reported him as being armed and selling drugs.

The officers stopped Byrd by grabbing his shirt, and one officer asked Byrd if he had any weapons. Byrd said no. The officer then asked, "Do you have anything I need to know about?" Byrd told the officer that he had a bag of marijuana in his right jeans pocket. The officer reached into Byrd's pocket to retrieve the marijuana and, when doing so, he felt two items that he described as "small rocks or pebbles." He admitted that he did not immediately know what the items were. Then the officer pulled up Byrd's pants and conducted a pat-down of Byrd's clothing. The officer again felt the small pebbles, and at that point, he believed they were either crack cocaine or heroin. The officer reached back into Byrd's pants and pulled out the pebbles, which were crack cocaine. Byrd was charged with possession.

Why this case is important: The court found that the officers' pat-down was unconstitutional under the Fourth Amendment. A peace officer may briefly stop and detain a suspect if the officer has a reasonable, articulable suspicion that criminal activity has occurred or is about to occur. But a pat-down doesn't go hand-in-hand with the stop. An officer has to have a reasonable belief that the suspect may be armed and dangerous before a pat-down can occur, and the pat-down is to check only for concealed weapons.

Here, Byrd, an alleged gang member, told officers he had marijuana in his pants, so the officers were allowed to go into Byrd's pocket to seize it. However, they had no additional reasonable suspicion to believe that Byrd was armed, so they had no justification to perform a pat-down. Being in a high-crime area and being an alleged gang member aren't enough for the particularized suspicion needed to justify a pat-down for weapons. Also, even though the officer who retrieved the marijuana noticed that Byrd had some "pebbles" in his pocket, he later admitted that he didn't believe they were weapons and didn't immediately know what the pebbles were. This, too, gave the officers no justification for retrieving the crack cocaine during the unlawful pat-down.

Keep in mind: You can't pat down a suspect if you have no reasonable, particularized suspicion that the suspect is armed. Being in a high-crime area, being involved in a gang, and possessing drugs doesn't give you that particularized suspicion, either, if the suspect hasn't given any indication that he might be armed and dangerous.

Click [here](#) to read the entire opinion.

***State v. Miklas* — Seventh District Court of Appeals (Belmont, Carroll, Columbiana, Harrison, Jefferson, Mahoning, Monroe, and Noble counties), June 6, 2012**

Question: Is a suspect's confession involuntary when a peace officer questioning the suspect asks if he'd like to write an apology letter to the victim?

Quick answer: It depends on the totality of the circumstances.

Facts: Defendant Robert Miklas was suspected of raping his minor stepdaughter. Miklas agreed to meet law enforcement officers to take a polygraph about inappropriate sexual touching of the girl. An agent read Miklas his *Miranda* rights, and Miklas signed a written waiver. Then the agent began a pre-polygraph interview with Miklas. The agent asked Miklas about the sexual touching, and Miklas admitted that he had touched his stepdaughter's genitals. Based on that statement, the agent asked Miklas if he wanted to write "a letter of apology" to his stepdaughter. Miklas replied yes. After Miklas wrote the letter, the agent asked him to clarify a few ambiguous statements in the letter, such as, "I'm sorry for what I did to you." Miklas also wrote that he was sorry for touching his stepdaughter, so the agent asked him to clarify that statement as well. When Miklas clarified that he had digitally penetrated his stepdaughter, the agent ended the interview. Because of Miklas' statements, the agent did not conduct a polygraph test.

Miklas later was charged with rape, and he filed a motion to suppress his confession because he argued that the agent's request for a "letter of apology" constituted coercive police tactics used to obtain an involuntary confession.

Why this case is important: The court found that Miklas' confession was voluntary. An involuntary statement involves a defendant's will being overcome by coercive police conduct. Requesting "letters of apology" is questionable, but a court still will consider the totality of the circumstances to decide if the confession was voluntary. This includes the age, mentality, and prior criminal experience of the suspect; the length, intensity, and frequency of the interrogation; the existence of physical deprivation or mistreatment; and the existence of threat or inducement.

Here, although the agent admitted that the purpose of the “Voluntary Letter of Apology” form was to obtain a confession, Miklas’ will was never overcome during the interview. At the time, Miklas was a 40-year-old high school graduate with some college education; there were no allegations of physical deprivation or mistreatment by law enforcement; there was no evidence that the interview was too lengthy; Miklas voluntarily drove himself to the police station for the interview; Miklas admitted that he knew he was not under arrest and probably could have called to cancel the interview; the agent advised Miklas of his *Miranda* rights and told him that he could leave at any time; and Miklas signed the waiver form before the interview began. For these reasons, the court held that Miklas’ confession was voluntarily given through the letter of apology.

Keep in mind: A court will consider the totality of the circumstances before deciding if a confession is voluntary. However, using a “Voluntary Letter of Apology” has been found as a form of inducement by law enforcement. Therefore, consider what type of suspect you are dealing with before using that form. For example, if you have a suspect who may have a low-level education and who’s never had previous experience with law enforcement, using the “apology” form may be coercive, and any confession that comes from the letter probably would be suppressed. To be sure, consult with your department’s legal counsel.

Click [here](#) to read the entire opinion.

***State v. Robinson* — Ninth District Court of Appeals (Lorain, Medina, Summit, and Wayne counties), June 4, 2012**

Question: Does a peace officer violate the Fourth Amendment by searching inside a suspect’s pocket or socks without a warrant?

Quick answer: Yes, but only if there are no warrant exceptions that will justify the warrantless search.

Facts: A police officer saw a truck with out-of-state license plates parked at an apartment complex in an area known for drug trafficking. The officer entered the truck’s plates into the law enforcement database and learned that the truck belonged to defendant Maurice Robinson, who had a prior drug conviction. The officer watched Robinson leave the apartment complex and drive away in his truck, and the officer followed. He witnessed Robinson commit two traffic violations, so he stopped Robinson’s vehicle and then called for the K9 unit to come to the scene for a drug sniff while he wrote Robinson a traffic ticket.

The K9 officer arrived, which caused Robinson to become agitated and argumentative. When the dog alerted to the driver’s side door, the officer asked Robinson to get out of the car. He handcuffed Robinson for safety purposes. The officer then asked if he could pat down Robinson’s clothing, and Robinson consented. The officer patted down his outer clothing and discovered a large wad of money in his pocket. The officer began to retrieve the money, but Robinson reminded the officer that he only consented to a “*Terry* pat-down,” not a search.

Shortly after the officer found the wad of money, the K9 officer discovered loose marijuana on the floor of Robinson's car. Upon learning this information, the first officer went into Robinson's pocket and took out the money he felt from the pat-down. He requested that Robinson sit on the bumper of the cruiser and remove his shoes, and Robinson complied. He had two bags of cocaine in his sock, so the officer placed Robinson under arrest for drug possession. Robinson moved to suppress the evidence from both his pants and his socks as an unconstitutional search.

Why this case is important: The court held that the search of Robinson's person violated the Fourth Amendment. The officers conducted a warrantless search, and they had no justification from any warrant exceptions. First, the drug-detection dog's positive alert didn't give the officers probable cause to search Robinson, only his vehicle, under the automobile exception. Once a trained drug dog alerts to drugs in a lawfully detained vehicle, an officer has probable cause to search *only the vehicle* for contraband. However, searching inside an individual's pockets or shoes is not permissible as part of the search. Second, the officers couldn't justify the search as a *Terry* frisk. An officer is allowed to conduct a limited pat-down of an individual's outer clothing for weapons during an investigatory stop if the officer has reasonable suspicion that the suspect may be armed and dangerous. Here, because there was no indication that the officers believed either the wad of money or the bulge in Robinson's socks was a weapon, or that the criminality of the items were immediately apparent, they couldn't justify their warrantless search under *Terry*.

Third, the officers couldn't justify searching Robinson's clothing under the search incident to arrest warrant exception. The officers couldn't arrest Robinson for the small amount of loose marijuana found in the car because it is considered a minor misdemeanor in Ohio, and peace officers aren't permitted to arrest someone for a minor misdemeanor (unless there is a statutory exception). Finally, Robinson didn't consent to the search of his pockets or his socks. Consent to search is voluntarily given when a reasonable person would believe he had the freedom to refuse an order given by an officer. Here, Robinson limited his consent to a "*Terry* pat-down" only, and he removed his shoes only because he acquiesced to the officer's claim of authority, not because he consented.

Keep in mind: For a warrantless search to be constitutional (and the evidence to be admitted in court), you have to have a valid warrant exception to justify the search. So remember the warrant exceptions and what is required for each of them to be valid. For example, with the automobile exception, should you find probable cause, you can search only the vehicle, *not* the driver or passengers of the vehicle.

Click [here](#) to read the entire opinion.

***State v. Broughton* — Tenth District Court of Appeals (Franklin County), June 7, 2012**

Question: May a peace officer perform a protective sweep in the passenger compartment of a suspect's car when the suspect is removed from the car for a non-arresting offense?

Quick answer: Yes, if the officer has reasonable suspicion that the suspect is dangerous and would gain immediate control of a weapon upon returning to the vehicle.

Facts: While responding to a dispatch call, police officers watched defendant Derek Broughton fail to stop at a red light before turning right at an intersection. Then as Broughton turned the corner, he

nearly collided with another vehicle. The officers activated the cruiser's lights and siren and began following Broughton. He drove several blocks before pulling over onto a side street. As Broughton slowed to a stop, one of the officers observed him lean all the way over to the passenger side of the car. The officer thought that, based on her experience, Broughton's movement suggested that he was reaching for something, hiding something, or putting something away, such as a weapon or drugs.

Once Broughton stopped his car, the officer looked inside with her flashlight and saw no evidence of a weapon or drugs. The other officer ordered Broughton out of the car and conducted a brief pat-down for weapons; none were found. Broughton seemed overly nervous during the interaction. He also didn't have a license on him, so one officer placed him in the back of the police cruiser while she tried to figure out his identity. In the meantime, the other officer performed a "protective sweep" of Broughton's car and found a loaded .22 caliber handgun wrapped in a bandanna inside the glove compartment. He was charged with carrying a concealed weapon and improper handling of a firearm. He moved to suppress the evidence based on the warrantless search of his car.

Why this case is important: In a "close call," the court held that the search of the passenger compartment of Broughton's car was constitutional. Performing a warrantless protective sweep of a vehicle is permissible if the sweep is limited to areas where a weapon may be placed or hidden. To conduct a sweep, an officer must have a reasonable belief, based on specific and articulable facts, that the suspect is dangerous and may gain immediate control of weapons. In reviewing the totality of the circumstances, courts generally consider factors such as the time of day, the experience of the officers involved, and suspicious activities by the defendant, both before and during the stop, including furtive gestures.

Here, the officers were justified in performing the sweep because Broughton didn't immediately pull over his car; he didn't immediately comply with the officers' demands to turn off his engine; he seemed overly nervous for the traffic stop; and one officer saw him make a furtive movement over to the passenger side of the car. For these reasons, the officers had at least reasonable suspicion to conduct a pat-down for weapons. Plus, because there was no reason to further detain or arrest Broughton, the fact that he would have been able to access any weapon when he returned to his car allowed the officers to extend the *Terry* pat-down to the inside of Broughton's vehicle.

Keep in mind: You can extend a *Terry* pat-down to a suspect's vehicle, but only if you have reasonable suspicion that the suspect is dangerous and may have access to a weapon. And you can't do a "protective sweep" of the car if you've arrested the suspect because then he wouldn't have immediate access to a weapon, which is the basis for allowing a *Terry* frisk of a car. Note: You also might not be able to justify a search of the car under the search incident to arrest warrant exception if the suspect is secured in your custody and no longer within immediate control of the inside of his vehicle, under the U.S. Supreme Court's *Arizona v. Gant* case.

Click [here](#) to read the entire opinion.

***City of Wickliffe v. Petway*— Eleventh District Court of Appeals (Ashtabula, Geauga, Lake, Portage, and Trumbull counties), June 4, 2012**

Question: If a peace officer witnesses a vehicle weaving slightly within its own lane of traffic, does this observation provide probable cause or reasonable suspicion for a traffic stop?

Quick answer: No, more evidence of either a traffic violation or erratic driving is needed to justify a stop.

Facts: A police officer stopped defendant Derrick Petway's van after observing the van twice veer left onto the lane's marked line within a 15-second period. The officer eventually arrested Petway for OVI and other misdemeanor crimes, but Petway moved to suppress the evidence of OVI based on an unconstitutional stop.

Why this case is important: The court found that the officer lacked probable cause to stop the van because the officer's cruiser camera didn't show that Petway committed a marked lane violation. The video showed only the van's left tires briefly driving on the line dividing the lanes, but the van's tires never passed into the neighboring lane. There was no reasonable suspicion for the stop, either, because Petway's weaving was not substantial and couldn't reasonably be characterized as jerky, unsafe, or erratic.

Keep in mind: To make a constitutional traffic stop, you must have probable cause that a traffic offense has occurred or some indication of erratic driving to warrant an investigative stop based on reasonable suspicion. If there is only modest or minimal weaving in one's lane alone, that is not enough to allow you to stop the vehicle.

Click [here](#) to read the entire opinion.