



Ohio Attorney General's Law Enforcement Bulletin



July 2013

Conference focuses on officer safety, wellness

Putting others first is a reality of police work. Yet research and real life clearly show that the stress of the job can take a toll on those who do it, prompting a decision to focus the Ohio Attorney General's 2013 Law Enforcement Conference on officer safety and wellness.

Several workshops and presentations will center on the conference theme of *Protecting Ohio's Finest*. The conference — now in its 20th year — will take place Oct. 29–30 at the Hyatt Regency Columbus. Registration will be available soon at www.OhioAttorneyGeneral.gov/LEConference.

This year's speakers:

- Robert Paudert retired in 2011 as chief of the West Memphis, Ark., Police Department after his son, Sgt. Brandon Paudert of the same department, was killed in the line of duty by sovereign citizens. Robert Paudert worked in law enforcement for 45 years before joining the U.S. Department of Justice, Bureau of Justice Assistance. He speaks to law enforcement nationwide about the dangers posed by the sovereign citizen movement.
- Donna Schulz's husband, FBI Special Agent Bruce Schulz, took his own life in 1995. A 33-year law enforcement veteran, she retired in 2012 as the law enforcement coordination manager with the U.S. Attorney's Office, Middle District of Florida. She is involved with In Harm's Way, a training program aimed at preventing suicide among law enforcement officers.
- Dr. Stephen Douglas is a psychologist and law enforcement consultant who has been a favorite among past conference attendees. He serves as a psychological and organizational development consultant to the Columbus Division of Police and maintains a private psychology practice.

Among the conference's 30 educational workshops are Single Officer Response to Active Threat; Critical Incident Stress Management Awareness; Investigation, Capture, and Prosecution of the Craigslist Killer; and Sex and Texts: Lessons Learned from Steubenville. Several workshops will offer continuing legal education credit.

The \$75 registration fee covers breakfast and lunch both days, including the Distinguished Law Enforcement Awards Luncheon on Oct. 30.

For more information: E-mail LEC@OhioAttorneyGeneral.gov or contact Kelly Shore at **740-845-2684**.

CAC Symposium among conference highlights

The second annual Crimes Against Children Symposium will be held Tuesday, Oct. 29, during the Ohio Attorney General's Law Enforcement Conference. The invitation-only event will provide attendees the opportunity to exchange ideas and information with investigators and prosecutors working on child exploitation cases around Ohio and to hear from Dr. Peter Collins, an Ontario Provincial Police forensic psychiatrist who has worked with agencies worldwide. To inquire about a symposium invitation, e-mail Nicole.Dehner@OhioAttorneyGeneral.gov.

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You now can tailor the topics and timing of email communications from the Ohio Attorney General's Office. In addition to receiving the Law Enforcement Bulletin, Criminal Justice Update, and OPOTA Mobile Academy newsletters, you can learn about new OPOTA courses as they're posted and get updates on missing persons, unsolved homicides, and other topics. To choose your preferred topics and timeframe — when available, daily, or weekly — visit www.OhioAttorneyGeneral.gov/EmailUpdates.

State v. Steele, Ohio Supreme Court, June 18, 2013

Question: Can an officer be criminally prosecuted for abduction when he detains a person he does not suspect of criminal wrongdoing?

Quick answer: Yes, absolutely.

Facts: While investigating a series of robberies, the officer in this case received a tip that a vehicle owned by Alicia Maxton had been driving around the neighborhood suspiciously. The next day, the officer went to the school that Maxton's children attended and arrested R.M., one of Maxton's children. R.M. did not fit the description of the robbers, but was aggressively interrogated by the officer. The officer threatened to arrest R.M.'s mother and siblings if he didn't confess. Not surprisingly, R.M. eventually confessed, and the officer charged R.M., *even though he didn't think R.M. was guilty of anything.*

While R.M. was being detained, the officer convinced Maxton to come to his apartment to discuss the case. He suggested that he could help R.M. out if Maxton had sex with him. She ultimately consented in order to help her son.

The evidence eventually established that the officer never believed R.M. was a genuine suspect. Instead, the officer had a self-professed practice of "bullshitting," or arresting people without probable cause in the hope that a promising lead would come up. Another word for this practice: "illegal."

Nine days after R.M. was locked up on charges that the officer already acknowledged were false, the prosecutor found out that R.M. was still being detained. The prosecutor immediately dismissed the charges and had R.M. released. The officer ultimately was charged with multiple criminal counts, including witness intimidation and abduction.

Why this case is important: This case sounds like something out of a bad movie script: The dirty cop rounds up some innocent kid and tosses him in the slammer to see if anything shakes loose, and while he's in there he coerces the kid's mother into sex. But while these are extreme facts, they underscore the greatest source of tension between law enforcement and public: the extraordinary power officers can have over the lives of average citizens. The people place an incredible amount of trust in you, which is why abuse of police power draws so much scrutiny.

Of course, all officers eventually are faced with close cases on probable cause and must ask themselves, "Do I have enough to arrest?" Sometimes these decisions are made after careful deliberation and examining mountains of facts. Other times they are split-second decisions made on the side of a road. The court recognized this problem and said, "Police officers performing their valuable and often dangerous duties cannot be made to fear criminal charges any time an arrest or detention is made with what turns out to be less than probable cause." Thus, the court narrowed its decision specifically to instances in which "*a reasonable officer would know that there was no probable cause supporting the detention, no matter how brief.*"

Keep in mind: Don't ever do any of this.

Visit the [Ohio Supreme Court website](#) to view the entire opinion.

State v. George, Fourth District Court of Appeals (Adams, Athens, Gallia, Highland, Hocking, Jackson, Lawrence, Meigs, Pickaway, Pike, Ross, Scioto, Vinton, and Washington counties), June 14, 2013

State v. Atkins, Fifth District Court of Appeals (Ashland, Coshocton, Delaware, Fairfield, Guernsey, Holmes, Knox, Licking, Morgan, Morrow, Muskingum, Perry, Richland, Stark, and Tuscarawas counties), June 7, 2013

State v. Hahn, Fifth District Court of Appeals, June 3, 2013

Question: When can you rely on a tip to make a stop?

Quick answer: These three cases highlight the most basic issues that come up in a tip-based stop: identifying whether the suspect is an "identified citizen informant" or a "known" or "anonymous" informant.

Facts

State v. George: Police received a call from Mitchell Gardner that a blue Ford Focus was following and threatening the car his fiancée was driving. Gardner gave police a description of the vehicle and its occupants and was told by dispatch to stop and talk to officers, which he did. Meanwhile, Officer

Matthew Howell identified a vehicle that matched the description and followed it to a nearby parking lot. While other officers spoke to the informant, Howell questioned the driver of the suspect vehicle.

State v. Atkins: Dispatch received a cell phone call regarding a vehicle that appeared to be operating erratically. Trooper Daniel Moran Jr. caught up with the vehicle, driven by Holly Atkins, and the caller (who had kept up with Atkins' car) confirmed the trooper had the right car. The trooper later spoke with the driver and passenger from the informant car.

State v. Hahn: An officer was dispatched to a residential area after an unknown person claimed there were noises that sounded like car doors being opened. While investigating, the officer noticed a vehicle driving away at a high rate of speed. (He later said he did not do a visual estimation of speed, nor was speed the reason for the stop).

Why these cases are important: There are three types of informants: identified citizens, known, and anonymous. "Known informants" are probably the easiest to identify because they are criminal contacts an officer relies on for tips. The difference between identified citizens and anonymous informants can be much blurrier, especially in today's world of cell phones and caller ID. But it can be an extremely important distinction.

When an identified citizen informant gives a tip, the courts generally consider that good enough to meet the reasonable suspicion standard necessary to make a stop. On the other hand, if the informant is anonymous, the police must independently corroborate the tip or personally observe evidence sufficient for reasonable suspicion.

For example, it does not appear, in any of these cases, that the arresting officer *knew the name of the informants* before making a stop. And so in each case, the defendant argued that the informant was anonymous.

In *George*, the court found that the caller was an identified civilian informant because he stopped to talk to other officers while Officer Howell was stopping the suspect. Similarly, in *Atkins*, the informant followed the suspect vehicle until Trooper Moran caught up with it and confirmed the identity of the vehicle while the trooper was there. In both cases, the courts found there was enough information to consider the informants to be identified civilian informants and, therefore, there was no need for independent corroboration.

By contrast, in *Hahn*, the officer did not have information on the caller's identity nor was there any reason for the officer to believe he would be able to identify the caller. *When an informant is not identifiable (and therefore, not subject to being charged with providing false information), the informant is anonymous.* When you have an anonymous informant, you *must* get independent corroboration of criminal activity before you can stop a suspect.

Keep in mind: When it comes to tips, it definitely pays to have a good working relationship with your dispatchers. If you can determine that an informant is an "identified citizen," you can make a stop based solely on their statements. And sometimes the question of whether they are identified is based on fluid facts that you'll get from dispatch. If you both know what signs to look for, you can decide whether to make a stop immediately or whether you need to treat the informant as anonymous. In the latter case, you're going to need independent reasonable suspicion.

Visit the [Ohio Fourth District Court of Appeals website](#) (*George*) and the Ohio Fifth District Court of Appeals ([Atkins](#) and [Hahn](#)) website to view the entire opinions.

State v. Jennings, Tenth District Court of Appeals (Franklin County), June 27, 2013

Question: Can an officer generate reasonable suspicion to stop based on many factors that, standing alone, would not create reasonable suspicion?

Quick Answer: Yes, that's why it's called "totality" of all the circumstances; you have to look at every permissible factor.

Facts: Columbus Police Officer Ryan Steele was patrolling an area known for narcotic and gang activity. He pulled into an apartment complex about 1 a.m. and noticed a vehicle with its hood up. Rommel Jennings, who was standing near the vehicle, saw Steele, looked panicked, and immediately started walking nervously toward the vehicle. The officer testified that he saw Jennings make a "pitching" or "tossing" motion toward the hood of the car.

Steele got out of his cruiser and started talking to Jennings. He then asked Jennings to step away from the vehicle and sit on the sidewalk because he didn't know what Jennings had put in the engine bay. Jennings tried to shut the hood, but Steele stopped it. Jennings attempted to close the hood a second time, and Steele let it shut. Having succeeded in closing the hood, Jennings sat on the sidewalk. Officer Steele opened the hood and found a bag of crack cocaine and a crack pipe.

Why this case is important: Although this case stands for a simple proposition that everyone learns in peace officer basic training — that the "totality of the circumstances" means *all* the permissible circumstances — this is still a good read concerning the nitty-gritty legal details of your profession. This case deals with a split decision. The trial court judge said the officer didn't have reasonable suspicion. On appeal, two of the appellate judges voted that the officer did, while one voted that he didn't.

The court spent five paragraphs (10 through 14), a full two pages of the opinion, analyzing exactly *when* Jennings had been "seized." Most people might assume Jennings had been seized when the officer asked him to step away from the car and sit on the sidewalk. But the court noted that, even if that request was seen as an order, a person isn't "seized" if they do not submit to a show of authority. Because Jennings ignored the request and instead attempted to close the hood, he wasn't yet seized for constitutional purposes. Similarly, although the officer exercised a show of authority by stopping Jennings from closing the hood the first time, Jennings tried and succeeded in closing it the second time. Thus, it wasn't until Jennings succeeded in closing the hood *and then* submitted to the officer's authority by sitting on the sidewalk that he had been "seized." The court then went into a three-page analysis about what constitutes reasonable suspicion and concluded that Officer Steele had sufficient grounds to make the investigatory stop.

The dissenting judge disagreed, noting, "Police officers make mistakes and sometimes testify in a way to justify what they have done earlier." Instead, the dissenting judge would have voted to uphold the trial judge's determination that Officer Steel was not credible and there were no reasonable grounds to justify even a minor intrusion to Jennings' freedom.

Keep in mind: The law is finicky. In this case, the court spent five pages identifying the precise moment that Jennings was seized and discussing whether there was reasonable suspicion for the stop. To put that in perspective: That's a 2,000-word discussion on a series of decisions that Officer Steele had to make over the course of a few minutes while talking to a possibly armed suspect. And even then, one judge dissented.

Face it, there's very little room for error when you're dealing with a bunch of lawyers. That's why you have to develop an almost reflexive, instinctual feel for reasonable suspicion and probable cause. You can't read a 2,000-word legal analysis every time you make a stop, so your gut reaction has to be as good as an appellate judge's considered deliberation.

Visit the [Ohio Tenth District Court of Appeals website](#) to view the entire opinion.

Ashland v. McClain, Fifth District Court of Appeals (Ashland, Coshocton, Delaware, Fairfield, Guernsey, Holmes, Knox, Licking, Morgan, Morrow, Muskingum, Perry, Richland, Stark, and Tuscarawas counties), June 26, 2013

Question: Can you pat down and search someone you place in your cruiser for the sole purpose of convenience?

Quick answer: No.

Facts: Ashland Police Department responded to a call from Penny Brown, who indicated that her boyfriend, Everette McClain, was trying to get into her apartment. The officer defused the situation, and McClain left the area. About an hour later, Brown called back to say that McClain was trying to kick in one of her windows. When the officer returned, he found McClain walking away from Brown's apartment. The officer wanted to talk to both Brown and McClain, so he put McClain in his police cruiser. Prior to doing so, he patted McClain down and removed two packs of cigarettes from McClain because he didn't want McClain smoking in his cruiser.

Upon further investigation, the officer decided to arrest McClain for disorderly conduct. On the way to the jail, the officer looked in the cigarette packs and found marijuana.

Why this case is important: When you are putting someone in a cruiser for your convenience, you are not automatically entitled to pat them down. In this case, the officer testified that he was placing McClain in his cruiser so that he would be able to talk to both Brown and McClain, and the officer provided no reason to believe the McClain was armed. So, the officer's search was improper.

Further, the officer seized two packs of cigarettes. But there was no evidence that the packs contained weapons or contraband. Instead, the officer seized the property because he didn't want McClain to smoke in his cruiser. But that is not a valid reason to seize property.

Ultimately, because the officer arrested McClain for persistent disorderly conduct *before* he looked inside the packages, the court held that the evidence was admissible under the "inevitable discovery doctrine," which is the legal equivalent of a "no harm, no foul" rule.

Keep in mind: This case highlights the risk you take that evidence will be suppressed anytime you deviate from the strict legal requirements. It's not clear from the opinion why the state couldn't have argued that the officer had a legitimate safety concern considering he was responding to a forcible-entry call, but that issue wasn't reached. If you are putting someone in your cruiser *solely* for your convenience, there is no legitimate safety concern that justifies a pat-down.

Visit the [Ohio Fifth District Court of Appeals website](#) to view the entire opinion.

State v. Bolds, Fifth District Court of Appeals (Ashland, Coshocton, Delaware, Fairfield, Guernsey, Holmes, Knox, Licking, Morgan, Morrow, Muskingum, Perry, Richland, Stark, and Tuscarawas counties), May 24, 2013

Question: When a plastic bag of drugs falls out during a pat-down, is it admissible?

Quick answer: Yes.

Facts: Canton Police Officer Richard Hart responded to a report of a person brandishing a firearm. When Hart arrived, he saw Orion Bolds — who matched the description of the suspect — walking around the area with his hands in his pants. Hart handcuffed Bolds and started a pat-down. Because Bolds' baggy pants were hanging off him, the officer pulled them up to effectively pat down Bold's upper legs and groin. When he did so, a bag of cocaine fell out.

Why this case is important: Officer Hart was not searching Bolds for drugs. He was making sure Bolds wasn't armed, and in doing so he readjusted Bolds' clothes *to the degree that is necessary* to conduct the pat-down. Bolds was suspected of brandishing a firearm, and when the officer saw him, he had his hands in his pants. The officer reasonably concluded that a weapon might be in Bolds' pants, so the officer pulled up Bolds' pants to ensure he could pat down the area effectively. In doing so, the officer dislodged the cocaine.

Keep in mind: Proving that sometimes fashion trends and crime don't mix, Bolds' baggy pants led to the discovery of a bag of cocaine.

Visit the [Ohio Fifth District Court of Appeals](#) website to view the entire opinion.

State v. Howard, Second District Court of Appeals, June 7, 2013

Question: Can officers search a car inside a detached garage if their search warrant allows them to search the "surrounding curtilage" of a house?

Quick answer: Yes.

Facts: Officers from the Greene County Agencies for Combined Enforcement Task Force got a warrant to search the house of Christopher Howard's mother based on suspected drug activity. The warrant mentioned a detached garage and the surrounding curtilage. When the officers executed the warrant, they discovered a quarter kilo of cocaine in the trunk of a Chrysler Sebring parked in the garage. Howards moved to suppress the cocaine evidence on the grounds that the warrant did not authorize the search of the garage or the Sebring.

Why this case is important: "Curtilage" is an obscure term that no one but lawyers and cops uses anymore, and this case is a good reminder that "curtilage" covers any outbuildings (including garages, sheds, and barns) connected with and in close vicinity of the residence to be searched. In other words, even if the detached garaged hadn't been specifically mentioned in the warrant, it would have been covered as part of the curtilage of the residence. "Curtilage" also includes any vehicles parked in the immediate proximity of the house, and so the Sebring also was covered.

Keep in mind: While outbuildings and vehicles are part of the curtilage of the house, they also have to be close and related to the property searched. So, for example, a barn on the back 40 may not be “in surrounding curtilage” of a farmhouse a quarter mile away. Similarly, when two houses share a driveway, it would be improper to search a car that you know belongs to a neighbor or that you cannot otherwise connect to the residence on your search warrant.

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