




Ohio Attorney General's Law Enforcement Bulletin



June 2015

Search and Seizure (Open Carry): *Northrup v. City of Toledo Police Department*

Question: If someone is openly carrying a firearm, can an officer conduct a Terry stop and frisk and disarm the person?

Quick Answer: No, open carry is legal in Ohio and simply carrying a weapon openly is not sufficient reasonable suspicion to justify a Terry stop and frisk.

City of Toledo Police Department, 6th Circuit Court of Appeals, Northern District of Ohio (May 13, 2015)

Facts: An officer was advised by dispatch that a man was walking his dog while openly carrying a gun on his hip. The officer responded to the call and saw the subject, Shawn Northrup, and his wife walking their dog down the street. The officer approached Northrup and disarmed him. He demanded his driver's license and concealed carry permit. Northrup gave the officer his license but told the officer to look up his concealed carry permit himself. The officer then threatened to charge Northrup with inducing panic, put Northrup in handcuffs, and placed him in his squad car. He eventually released Northrup with a citation for "failure to disclose personal information." The charge was later dropped by police. Northrup sued the officer and the Toledo Police Department for violating his Fourth Amendment rights.

Importance: Clearly established law prevents officers from stopping and frisking individuals unless they have "reasonable suspicion" that the individual committed, or is about to commit, a crime. While Northrup was clearly "armed," he was legally armed and there is no evidence that he was armed and dangerous. Because Northrup's Fourth Amendment right to be free from unreasonable searches and seizures was violated, the Court allowed Northrup's lawsuit to proceed.

Keep in Mind: Officers can always approach someone who is openly carrying and ask them questions when it is a consensual encounter. What an officer cannot do under the Fourth Amendment is require them to answer. Failure to disclose is not a proper charge because a citizen who is openly carrying a gun, and otherwise not committing a crime, is under no obligation to produce identification. Inducing panic doesn't fit because it requires the commission of an "offense," and carrying a handgun in the open is not an offense.

Search and Seizure (Terry Stop and Frisk): *State v. Holder III*

Question: Can an officer automatically conduct a pat-down before placing a subject in his patrol car?

Quick Answer: No. Without anything else to justify a pat-down, the automatic search of an individual solely because he is being placed in the cruiser violates the Fourth Amendment.

***State v. Holder*, 8th Appellate District, Cuyahoga County (May 14, 2015).**

Facts: While on patrol, an officer observed a vehicle traveling at an excessive speed. The driver was ultimately arrested when he failed the field sobriety test. The defendant, James Holder, was a passenger in the vehicle. Holder was allowed to call his girlfriend and have her pick him up. The officer told Holder he was going to have him sit in the back of his patrol car while officers inventoried the contents of the impounded vehicle. He never told Holder that he was free to leave, and another officer on scene was still attempting to verify his identity. The officer then conducted a pat-down search of Holder and found a revolver in his pocket. The officer testified that he always conducts a pat-down search before he puts someone in his patrol car. The officer also testified that prior to the pat-down he had no indication that Holder posed a danger. There were no furtive movements, signs of nervousness, or any other indication that he possessed a firearm. He also testified that Holder was at all times cooperative, consented to the pat-down search, and that Holder was free to leave prior to the pat-down.

Importance: It violates the Fourth Amendment to conduct a pat-down search solely because you are putting someone in the back of your car. The court found that the pat-down search was not consensual because Holder was not given a choice about whether he could sit in the back of the patrol car, and the officer never said Holder was free to leave. The search was not justified under *Terry* because there was no reasonable suspicion of criminal activity or that the individual was armed and dangerous.

Keep in Mind: A search conducted for officer safety before placing someone in a patrol car can be justified when someone is legally detained and there is a possibility of ambush, or when there is a dangerous condition that requires the placement of the individual in the police car. However, you cannot automatically pat-down everyone you place in the back of your cruiser. Under these circumstances, if you don't tell the subject he is free to leave, the court will likely find the encounter to be non-consensual.

Search and Seizure (Warrantless Home Entry, Noise Complaint, Exigency): *State of Ohio v. Gorden*

Question: Can an officer prevent someone from closing their door by placing their foot in the doorway without an exception to the warrant requirement?

Quick Answer: No. Unless there are exigent circumstances, the threshold of a home may not be crossed without a warrant.

***State of Ohio v. Gorden*, 9th Appellate District, Summit County, June 3, 2015.**

Facts: Police officers responded to a complaint of loud music coming from a second-floor apartment. Officers could hear the music when they exited the cruiser. The officers knocked on the door, and James Gorden answered. He was informed of the complaint and told the officers he would turn it down. The officers waited three minutes, but the noise continued. They knocked on the door again, and when Gorden

answered they told him he was going to be cited for violating the city's noise ordinance and requested his identification. At all times Gorden was inside his home. Instead of complying, Gorden said he would turn the music down and attempted to close the door. The officer put his foot in the doorway and demanded his identification again. There was a struggle at the door, and Gorden was eventually arrested. He was charged with having weapons under disability, resisting arrest, disorderly conduct, and obstructing official business. The trial court granted Gorden's motion to suppress the evidence. The appellate court agreed that any evidence against Gorden obtained after the officer placed his foot in the doorway should be suppressed.

Importance: Once the threshold of a doorway is crossed, even by a foot preventing the door from being shut, the Fourth Amendment is implicated. Hot pursuit did not apply in this case because the arrest was not attempted in a public place and there was no exigency that justified entry into the home. Since there wasn't exigency or consent to justify entering the home, the officers would have to get a warrant.

Keep in Mind: Exigent circumstances will justify a warrantless entry when there is an emergency situation that requires imminent aid to someone in the home, destruction of evidence, or hot pursuit. In determining whether an exigency exists, courts will look at the gravity of the underlying offense and are less likely to find an exigent circumstances exception when it is minor.