



November 2012

Knowing How to Investigate Common Scams May Reveal Actual Crimes

With the holidays approaching, 'tis the season for shopping, celebrating, and . . . scamming? Unfortunately, some consumers will fall victim to scammers at this time of year. However, some scams are actually thefts, so it's important for law enforcement to investigate them as potential crimes.

Scams involve deception or the abuse of a position of trust, and they become criminal when the scammer actually has the intent to deceive consumers and never make good on his promises. Common scams that officers should recognize are home improvement fraud, phone scams targeting older residents, credit repair scams, Craigslist or eBay scams, and prize or sweepstakes fraud. These scams may involve the underlying crimes of forgery, telecommunications fraud, identity fraud, and passing bad checks.

The Attorney General's Economic Crimes Division, formed a year ago within the Consumer Protection Section, can help local authorities identify, investigate, and prosecute consumer fraud of a criminal nature. Led by a former prosecutor, the division includes four attorneys and three investigators.

In addition, the Ohio Attorney General's Peace Officer Training Academy (OPOTA) can assist officers with a course specifically tailored to investigating scams as crimes.

First, you must look at the evidence you have from the victim. For example, in a gift card scam, officers would have the victim's statement; purchase receipts; bank statements; and, if the victim purchased the gift cards online, any electronic information such as the website address, the seller contact information, and possibly an IP address.

Second, try to figure out what additional evidence you would need for a case. Talk to your prosecutor about what is needed for an indictment and conviction. If you are investigating a phone scam aimed at taking advantage of the elderly, for instance, a great place to start is locating any documentation that could identify the suspect.

With economic crimes, identifying a suspect is always difficult because he may have many aliases. A victim's phone records may lead you to a suspect. Also, contact the money transfer service to try to get a name or ID of a suspect or at least the cash pick-up location.

As with other crimes, subpoenas and search warrants are useful during evidence collection. Suspect target interviews also can provide valuable evidence. When preparing for such an interview, know the ins and outs of the alleged scam. That way, you can make a suspect commit to a particular story. You can confront the suspect with what knowledge you have about the scam and possibly catch him in a lie. Be patient and relentless with what you know to be true, as the scammer probably will continue to lie about his crimes. Be sure to record the conversation to document the meeting.

When gathering evidence, look for consistency in the scam's pattern. For example, ask about the amount of money taken, whether the victims were told to write checks to a variety of people, and what the suspect's excuses were for not providing the product or service even though money had been collected. This evidence will establish a pattern that there was never an intent to follow through with the promises made.

In using all of these investigation tools, the main question you must answer is, "Where did the money go?" Following the money will reveal the theft, and, most times, the actual thief.

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To request the Attorney General's assistance in an economic crimes investigation, visit the Ohio Law Enforcement Gateway (OHLEG) at www.OHLEG.org and click on "Economic Crimes—Assistance to Law Enforcement" in the left-hand column. Fill out the brief form and a staff member will respond. Or send an e-mail to EconomicCrimes@OhioAttorneyGeneral.gov.

For more information about OPOTA's Economic Crimes Investigations course and other courses, visit www.OhioAttorneyGeneral.gov/OPOTA or www.OHLEG.org or e-mail askOPOTA@OhioAttorneyGeneral.gov.

***Hensley v. Gassman* — Sixth Circuit Court of Appeals (Kentucky, Michigan, Ohio, Tennessee), Sept. 11, 2012**

Question: Can officers' participation in the repossession of a car lead to a Fourth Amendment violation?

Quick Answer: Yes, if there is no apparent legal basis for a repossession, officers violate the Fourth Amendment by taking an active role in a private repossession.

Facts: Ronald Gassman went to Sheila Hensley's house to repossess a vehicle. At Gassman's request, two police officers were dispatched to provide a police presence during the repossession. Gassman told the officers that he had a private repossession order and showed them a file, but the officers did not read any of the documents in it. Officers knew Gassman did not have a court ordering requiring repossession. While Gassman tried to tow the vehicle, Hensley got into the vehicle, started it, and locked the doors. The officers told Gassman to pull the vehicle out of the driveway, and after he did, an officer broke one of the windows, opened the door, and pulled Hensley out. Gassman towed the vehicle, which was returned to Hensley the next day after it was discovered that her payments were current.

Why this case is important: The court held that the seizure of Hensley's vehicle was unreasonable. The officers knew that the repossession was a private civil matter, and they lacked any evidence that supported Gassman's claim that he was authorized to repossess the vehicle.

Keep in mind: If your department allows officers to be present to keep the peace at repossession, you should remember that your job is to keep the peace; it is not to act as enforcers for the person repossessing the vehicle. If you're seen as "picking sides" in a purely civil dispute, you could be subjecting yourself and your department to liability. Although this case turns on Michigan repossession laws, the basic principle is applicable to many civil disputes: absent a court order demanding a certain outcome, an officer fulfilling a peacekeeping role should not pick sides.

In this case, once the officer ordered the vehicle out into the street, broke into it, and forcibly extracted Hensley, he was essentially no longer performing a peacekeeping function. Instead, he was using police authority to assist in the repossession.

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

***U.S. v. Navedo* — Third Circuit Court of Appeals (Delaware, New Jersey, Pennsylvania), Sept. 12, 2012**

Question: Do officers have reasonable suspicion to stop and question a suspect if they observe him looking at a gun followed by the suspect's flight away from the officers, and does that justify the officers' warrantless entry into his apartment, where the firearms were seized?

Quick Answer: No, without some other indicia of wrongdoing, mere unprovoked flight from the approaching officers does not support probable cause to arrest.

Facts: While performing surveillance in an unrelated case, two police officers saw a man approach Alexander Navedo on the porch of his apartment building. The man pulled what appeared to be a gun out of his book bag and showed it to Navedo. Navedo never touched the gun, and the officers did not see him do anything illegal. The officers got out of their car, identified themselves, and approached the men on the porch. Both men ran. One officer caught the man with the gun. Another officer chased Navedo into the building and up to his apartment. The officer tackled Navedo in the doorway and both men landed inside his apartment. The officer arrested Navedo and then saw several firearms and ammunition in the apartment. Navedo was convicted of illegally possessing the firearms that were seized from his apartment.

Why this case is important: The court here found that a suspect's mere flight from the police upon noticing them did not constitute reasonable suspicion to detain. Navedo's actions (in this case, merely being in a conversation with someone who had a gun) were not illegal. Navedo was not a suspect in some other criminal investigation. He was not in a high crime area or doing anything that suggested he was committing a crime. Under these circumstances, there was no reason for the officers to believe that he was committing a criminal offense, and therefore no reason to detain him, much less place him under arrest.

Keep in mind: When someone runs, it's your instinct to give chase. That's because it's a reasonable hunch that a person who runs is guilty of something. But the courts don't always view it that way. Merely running away from the police is not a crime, nor is it necessarily evidence of criminal activity. In this case, the officers were not responding to a high-risk situation, and so they could have taken the time to allow the situation to develop further to try to establish reasonable suspicion on Navedo.

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

***United States v. Snard* — Third Circuit Court of Appeals (Delaware, New Jersey, Pennsylvania), Sept. 21, 2012**

Question: Was a search under box springs and a mattress permissible under the protective sweep doctrine?

Quick Answer: Yes, a protective sweep can extend to looking under a mattress because it is a common hiding place.

Facts: Police received a tip that a wanted man who went by the names "Timothy Snard" and "Victor Brewington" could be found at a nearby hotel. The informant disclosed Snard's date of birth and said he had a gun and drugs. The police discovered an outstanding warrant and physical description for Victor Brewington, aka Timothy Snard, whose birthday matched the date provided by the informant. Police officers responded and identified themselves as police. Snard asked the police for whom they were looking, and the police responded "Timothy Snard." After a moment, Snard opened the door and identified himself as "Victor Brennington." Because Snard's appearance was consistent with the database's description, the police placed Snard under arrest. The officers then began a protective sweep of the hotel room. They patted the bed and checked the bathroom and closet. One officer lifted the mattress and box springs to see if anyone was under the bed. As the mattress was raised, a firearm, crack cocaine, and a bag of marijuana fell to the floor.

Why this case is important: When Snard opened his door for the police, they immediately placed him under arrest. He then chose to walk back into the hotel room to dress. The officers followed him inside and did a protective sweep of the premises to ensure officer safety. They looked in closets and other spaces immediately adjoining the place of arrest that an assailant could hide in; it was not a full search of the premises and extended only to a cursory inspection of those spaces where a person could hide.

Keep in mind: Officers' beliefs and actions are evaluated using an objective reasonableness test. Although, in hindsight, it appears unlikely that someone was under the bed because of the type of platform frame, the officers' belief that someone could have been under the bed was objectively reasonable. Police must act quickly and decisively to minimize the risk of ambush.

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

***United States v. Griffin* — Eleventh Circuit Court of Appeals (Alabama, Florida, Georgia), Oct. 2, 2012**

Question: Does a valid stop and frisk become unreasonable under the Fourth Amendment when an officer asks some brief questions that are unrelated to the reason for the stop and the purpose of the frisk?

Quick Answer: No, as long as the unrelated questions are brief and do not prolong the stop.

Facts: A peace officer responded to a 911 call from a store in Jacksonville, Fla. The officer was familiar with the area and knew that there had been drug activity and several burglaries nearby. The store's security guard told the officer that a man attempted to steal some clothing. The guard pointed out and identified a male walking quickly away from the store. As the officer approached the suspect, the man repeatedly looked over his shoulder and continued to walk away briskly. The officer asked the man, Kareen Griffin to stop, but he disobeyed the command and continued walking away. Finally, the officer approached Griffin and informed him that he was investigating a theft. Griffin said he did not steal anything. The officer frisked Griffin to ensure safety. During the frisk, the officer felt what he "believed to be" C-cell batteries in Griffin's pocket. The officer asked, "Hey, what's in your pocket? Why do you have batteries?" Griffin responded that the items were shotgun shells, not batteries.

Why this case is important: The court found that brief questioning unrelated to the stop is not unreasonable; therefore, questioning was not a search. First, the initial stop of Griffin was permissible because the officer reasonably suspected him of stealing based on the security guard's identification and Griffin's evasive and noncompliant behavior. Second, the frisk was permissible because the officer made the stop alone at night in a high crime area. In addition, Griffin acted evasively and refused to obey commands to stop. Finally, the questions about items felt during the frisk, while not related to the reason for the stop, did not prolong the stop. Because the officer had not yet completed his investigation into the alleged attempted theft, and because he acted diligently, his brief questions did not transform the stop into a prolonged seizure.

Keep in mind: The simple act of police questioning does not constitute a seizure. Police can stop and briefly detain a person for investigative purposes if the officer has a reasonable suspicion supported by articulable facts that criminal activity "may be afoot," even if the officer lacks probable cause. Once an officer has stopped an individual, he may conduct a pat-down or frisk for weapons if he reasonably believes that his safety, or the safety of others, is threatened. Officers may ask unrelated questions as long as the stop is not unreasonably prolonged.

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

***State v. Wade* — Ninth District Court of Appeals (Lorain, Medina, Summit, Wayne), Sept. 19, 2012**

Question: If no occupant of a car has access to the vehicle, are officers still able to rely on concerns relating to safety and destruction of evidence to conduct a limited search?

Quick Answer: If the occupants will be allowed to return to the vehicle, a limited search is a reasonable protective measure because the occupants could regain immediate control of a weapon once back in the car.

Facts: An SUV was stopped for failing to display a front license plate. During the traffic stop, officers noticed Ryan Wade sitting in the back seat of the SUV making unusual movements. Officers asked him to step out of the vehicle. While Wade stood outside the vehicle, he was fidgety, nervous, and didn't immediately comply with officer instruction. One officer patted Wade down for weapons while another officer searched the area where Wade had been a passenger. Officers found a gun where Wade had been sitting. Wade was placed under arrest, and the driver was permitted to return to the SUV based on a valid license.

Why this case is important: A warrantless search should be no more intrusive than necessary. In this case, the limited search of the passenger area was necessary because of the officers' fear that the suspect was dangerous and might gain control of a weapon. But the officer's belief must be reasonable and based on specific and articulable facts as well as rational inferences from those facts. Under these circumstances, when a passenger made movements consistent with concealing a weapon, exhibited excessive nervousness, and hesitated to comply with police requests, it was reasonable for officers to conduct a protective search for officer safety. A protective search was reasonable as a preventive measure when the occupants were temporarily removed from the vehicle and would ultimately be permitted to return.

Keep in mind: In order to determine if a protective search is reasonable, courts will look to see if the surrounding facts justify a reasonably cautious officer's belief that the search was necessary to maintain officer safety. A limited search of the area underneath Wade's seat was a reasonable protective measure because Wade would have been permitted to return to the SUV at the conclusion of the traffic stop and could have regained immediate control of a weapon.

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

***State v. Wilcox* — Fifth District Court of Appeals (Ashland, Coshocton, Delaware, Fairfield, Guernsey, Holmes, Knox, Licking, Morgan, Morrow, Muskingum, Perry, Richland, Stark, Tuscarawas), Sept. 25, 2012**

Question: Does an illegal seizure take place if peace officers instruct a suspect to put her purse on the hood of the vehicle, and does an illegal search take place when they look inside it after a K-9 unit alerts to it?

Quick Answer: No, instructing a suspect to put a purse on the hood of a car is not a search. And when an officer is reasonably diligent in conducting a stop, an alert by a K-9 is not unconstitutional.

Facts: Melody Wilcox was stopped for a headlight violation in a neighborhood known for criminal activity. Immediately upon initiating the traffic stop, the officer called for the K-9 unit. Wilcox pulled over into a parking lot after driving for another half block. She then jumped out of the vehicle, and the officer asked her to stay with her vehicle and place her purse on the hood of the car. The officer asked Wilcox for her driver's license, registration, and proof of insurance, and

she could not produce one of those items. Once the officer determined Wilcox had a valid driver's license and no outstanding warrants, he began to issue a citation for the headlight violation. At this time, the K-9 unit arrived. The officer was still writing the citation when the K-9 unit alerted to drugs.

Why this case is important: When it comes to K-9s, officers frequently run into trouble when they unnecessarily detain a citizen in order to wait for the K-9 to arrive. If you don't have reasonable suspicion of drug activity, you cannot extend a stop to wait for a K-9. Here, because the officer immediately requested the K-9, the unit arrived *during the normal course of the stop*. A traffic stop is not unconstitutionally prolonged when background checks are diligently undertaken and not completed by the time a drug dog alerts on the vehicle. As long as the stop was not delayed for the sole purpose of allowing the dog to conduct its search, there is no constitutional violation. The court here found that the K-9 alert, coupled with Wilcox's actions and location, gave rise to a reasonable suspicion that she was involved in criminal activity and probable cause to search her purse.

Keep in mind: You can request a K-9 even if you don't have any articulable facts of drug activity (such as the odor of marijuana or observation of drug paraphernalia,), but you cannot delay the stop any longer than reasonably necessary to write a ticket for the underlying offense. You should diligently take the same steps you would for any similar offender. If you finish your duties before a K-9 arrives, you should let the offender leave.

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

***State v. Whitten* — Second District Court of Appeals (Champaign, Clark, Darke, Greene, Miami, Montgomery), Sept. 28, 2012**

Question: May an officer remove a package from a suspect's clothing based on an assumption that it contains contraband?

Quick Answer: Yes, if it appears to be a weapon or if the suspect admits that it is contraband.

Facts: Police received numerous complaints about drug sales in the same area where other officers made drug arrests. While patrolling in that area, officers observed a car turn without signaling. Before conducting a traffic stop, officers ran the license plate and discovered that the owner previously was arrested for cocaine possession. During the traffic stop, officers noticed that the passenger, Jerry Whitten, was leaning over and making unnatural movements. A peace officer opened the passenger's side door and observed an open 40-ounce can of beer. The officer asked Whitten to step out of the vehicle, and he conducted a pat-down. Officers asked Whitten if he had any weapons on him, and he lied. (Officers saw the outline of a knife in his pocket.) During the pat-down, the officer felt a hard cigarette pack. The officer asked Whitten if he had any drugs on him, and Whitten responded that he did have crack cocaine on his person. Officers then removed the hard cigarette pack from Whitten's pants and discovered crack cocaine.

Why this case is important: Generally an officer cannot remove a package from a suspect's clothing based on an assumption that it contains contraband. However, here, Whitten admitted

to possessing crack cocaine, and this admission gave the officer probable cause to conduct a search incident to arrest, including a search of the cigarette pack.

Keep in mind: If Whitten had not admitted that he had drugs on his person — and if the officer had not developed any articulable reasonable suspicion that the cigarette pack contained drugs — the officer would not have been justified in removing the pack. Whitten’s lie regarding the knife in his pocket gave the officer reasonable, articulable suspicion to conduct a pat-down for additional weapons. Whitten’s admission that he possessed crack cocaine gave the officer probable cause to arrest him for drug possession, to seize the cigarette package, and to look inside.

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

***State v. Luong* — Twelfth District Court of Appeals (Brown, Butler, Clermont, Clinton, Fayette, Madison, Preble), Oct. 1, 2012**

Question: Did firefighters and peace officers have an objective, reasonable belief that an immediate entry into the residence was necessary in order to protect any persons or property or to prevent the destruction of evidence inside?

Quick Answer: Yes, if exigent circumstances exist, such as a need to protect life and property and to prevent the imminent destruction of evidence, peace officers may enter a suspect’s residence without a search warrant.

Facts: Phuc Ky Luong’s neighbors reported that an “unknown” odor was coming from Luong’s house, and that they had seen individuals enter the house but not leave. Firefighters and peace officers arrived at the house and noticed the unfamiliar odor. Firefighters walked to the rear of the house, where they noticed a warm, moist air flow coming from a basement window. They attempted to obtain gas readings through the basement window by pushing on the window just enough to allow them to insert a multi-gas meter. When the firefighters pushed on the window they glanced into the basement and saw an individual and tables filled with green, leafy plants. At that time, a peace officer decided that warrantless entry of the residence was justified based on possible health hazard created from the existence of chemicals as well as the possible destruction of evidence that could occur in the 30 minutes it would take to obtain a search warrant. Upon entering the residence, officers made a protective sweep to determine if anyone was inside. The officers then permitted firefighters to inspect the house for safety concerns. Once the fire department determined that no imminent danger existed, the police waited outside the residence for a search warrant to arrive.

Why this case is important: Warrantless searches are allowed when the circumstances make it reasonable. In this case, the decision of the firefighters and police to make a warrantless entry and/or search was justified by exigent circumstances, including the need to protect life and property at Luong’s residence and to prevent the imminent destruction of evidence. The intrusion was minimal and limited to the exigent circumstances. The officers here were very restrained. As soon as they that there was no exigency, they waited outside the residence for a search warrant to arrive rather than conduct a general search.

Keep in mind: There were two exceptions to the search warrant rule in this case. First, the officers intruded into the house by opening the rear window. Normally, this would have been unconstitutional, but here it was justified because of a possible health hazard that might have required emergency assistance. Second, upon seeing obvious contraband, the officer entered into the house to ensure that the evidence was not likely to be destroyed. This was a legitimate concern because the neighbors had reported people entering the house, but no one leaving, and so the officers reasonably believed suspects could be in the house and able to destroy the evidence. At that point, the officers also were able to complete their emergency assistance goal by allowing the firefighters to take a gas reading. Once these two tasks were complete, the officers withdrew and sought a warrant to fully search the premises.

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

***State v. Rogers* — Second District Court of Appeals (Champaign, Clark, Darke, Greene, Miami, Montgomery), Oct. 12, 2012**

Question: Did officers illegally expand the scope and duration of an original traffic stop when they asked a suspect to talk with them without first advising him that he could refuse.

Quick Answer: Yes, once the reason for the traffic stop ended, officers detained the suspect illegally, thereby tainting his ability to consent.

Facts: Peace officers received an e-mail tip concerning possible drug activity at James Rogers' residence. Officers learned that Rogers had prior convictions for drug possession and trafficking. While officers were unsuccessfully attempting a knock and talk at Rogers' home, they saw a car with dark tinted windows approach. Officers stopped the vehicle, and Rogers exited from the passenger side. The officers ordered Rogers back into the car. After finding that there were no outstanding warrants or license violations for either occupant, the officers issued a verbal warning for the window tint and told the driver she was free to leave. But the officers then asked Rogers if he would step out of the vehicle and speak with them. He did, and the officers explained why they were there and asked Rogers for permission to search his apartment. Rogers agreed and signed a consent form. The officers seized two weapons from Rogers' home and arrested him.

Why this case is important: This case shows how complex search-and-seizure law can be. Here, although the officers explained why they wanted to talk to Rogers and had him sign a consent form before they searched his house, the court found that the detention was unconstitutional from the moment they asked Rogers to exit the car. Because Rogers was unlawfully detained, his consent to search was not voluntary, and therefore the entire case was thrown out.

Under the Fourth Amendment, this result is wrong. Under Ohio law, once a traffic stop is concluded, it is unlawful to detain a person further to ask to search a vehicle unless there is specific evidence of other wrongdoing.

Here, the court concluded that the officers did not have a reasonable basis to continue to detain Rogers, and therefore it was incumbent upon the officer to ensure that Rogers knew he was free

to leave and did not have to answer any questions. The court did not believe that happened here, and therefore suppressed the evidence.

Keep in mind: It isn't clear from this opinion why the court didn't consider the original e-mail tip to be a reasonable basis to detain Rogers (the tip came from an employee of the Dayton Metropolitan Housing Authority, and mentioned possible drug activity at Rogers' DMHA residence). However, once the detention becomes unlawful, it is the state's burden to prove that any subsequent consent is voluntarily given. The easiest way to do this is either to give a *Miranda* warning or to simply tell the suspect that he doesn't have to answer any questions and is free to walk away if he wants to.

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