



# Ohio Attorney General's Law Enforcement Bulletin



**October 2015**

## **State v. Cash 2015 Ohio 3792**

Question: Can a police officer approach and request identification from someone who appears to be loitering in an RTA hub for several hours?

Quick Answer: Yes, officers can engage in conversations with citizens as long as the person knows he or she is free to walk away and police have not conveyed a message that compliance is required.

Facts: Officers on foot patrol were contacted by the RTA security director because she had observed Cash loitering in the RTA hub. The RTA has strict rules prohibiting citizens who are not waiting for buses from loitering in the hub. Given that Cash had been in the hub for several hours, it was apparent he was violating RTA rules. Based on their observation of Cash, they could not recall if he was previously banned from RTA property. Two officers approached Cash and requested his identification. Upon complying, the officers were able to verify he was previously barred indefinitely from the RTA hub. Cash was arrested for trespassing and a subsequent search revealed he was unlawfully in possession of oxycodone and methadone. At a suppression hearing, Cash argued the officers lacked reasonable suspicion to stop him. The court found the officers' interaction was a consensual encounter and did not rise to the level of a *Terry* stop. The court pointed out that, absent coercion, a request for identification during a consensual encounter does not otherwise convert the exchange into a *Terry* stop requiring reasonable suspicion.

Keep in Mind: It is generally permissible to request identification from citizens without running afoul of the Fourth Amendment provided that officers do not employ a level of coercion in their request.

## **State v. Williams 2015 Ohio 3968**

Question: Can a suspect give a knowing, intelligent and voluntary waiver of his Miranda rights, despite being on medication for bipolar disorder and depression?

Quick Answer: Yes. Courts will consider the totality of the circumstances including the age, mentality and prior criminal experience of the accused; the length, intensity and frequency of the interrogation; the existence of physical deprivation or mistreatment; and the existence of threat or inducement.

Facts: Williams was incarcerated on an unrelated crime when investigators received a DNA match on an unsolved rape from 1998. An investigator interviewed Williams at the corrections facility for about 25 minutes after obtaining a written and verbal waiver of his Miranda rights. Although Williams explained that he was receiving medication for his bipolar disorder and depression, he voluntarily spoke to the investigator and appropriately answered questions when asked. The officers did not deny Williams food, drink, or the opportunity to use the restroom during his brief questioning. Williams himself terminated the interview. Williams argued that because he was heavily medicated for his mental conditions, he could not have properly waived his right to remain silent under Miranda. The court reasoned that Williams was 38 years old, very familiar with the criminal justice system, managing mental illness, and the interview was a brief, onetime event. Therefore based on the totality of the circumstances, the waiver was made knowingly, intelligently, and voluntarily.

Keep in Mind: The mere fact that a suspect is receiving medication or suffering from mental illness does not preclude officers from being able to secure a valid Miranda waiver when being mindful of the factors outlined above.

## **State v. Ambrosini 2015 Ohio 4150**

Question: Can officers make a warrantless entry into a home based on an observation of marijuana and marijuana paraphernalia viewed from outside the residence?

Quick Answer: No. Although exigent circumstances allow officers to make a warrantless entry into a home, observations of minor offenses made from outside the home do not give rise to an exigency.

Facts: Officers responded to a complaint of loud music and alleged drug use. Upon arriving, officers followed the smell of burning marijuana and loud music to Ambrosini's apartment. While standing in a common area, one officer was able to detect the smell of marijuana coming from a small opening in the apartment's sliding door. He also observed a glass pipe and what appeared to be marijuana on a kitchen table. Based on these observations, officers entered the apartment, seized the items, and cited Ambrosini for marijuana possession and possession of marijuana paraphernalia – each a minor misdemeanor. As a general rule, warrantless plain view seizures are permissible if: 1) the officer did not violate the Fourth Amendment in arriving at the place from which he viewed the object; 2) the officer has a lawful right of access to the object; and 3) the incriminating character of the object is immediately apparent. In this case, although officers were lawfully present in the common area outside the apartment, Ambrosini had an expectation of privacy *inside* the apartment. The United States Supreme Court has determined that exigent circumstances premised upon the imminent destruction of evidence of a minor offense is insufficient to overcome the presumption of unreasonableness that attaches to a warrantless entry. Therefore, the entry in to Ambrosini's apartment was invalid.

Keep in Mind: While concern for destruction of evidence may give rise to a warrantless entry, officers should be mindful that courts have limited the application of this rule when considering minor offenses such as those related to marijuana.