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Identity Theft Victims Turn to Law Enforcement, New Program

Identity theft is difficult to prevent. It's often not until money is stolen that a victim — let alone law enforcement — knows his identity was taken. But there are ways Ohio peace officers can help ID theft victims, including knowing the services available to assist them. One valuable resource is the Ohio Attorney General's Office, which provides a program specifically tailored to reduce the impact of ID theft.

In 2012, the Ohio Attorney General's Consumer Protection Section launched a new Identity Theft Unit to help victims address the effects of identity theft, such as fixing credit report errors or clearing up fraudulent accounts. More than 300 individuals already have sought help through the new program.

In general, identity theft occurs when someone's personal information is fraudulently used. For example, an imposter may use a victim's personal information to obtain credit, take out a loan, open a utility account, receive medical treatment, or otherwise pretend to be the victim.

The Identity Theft Unit offers two programs:

Traditional Assistance

- A consumer advocate will work with credit agencies, creditors, collectors, or other organizations on the victim's behalf to rectify the effects of identity theft.
- Individuals must have filed a police report to participate in this program.
- This option is ideal for those who are not comfortable trying to correct the effects of identity theft on their own.

Self-Help Assistance

- Victims receive a step-by-step guide to rectify the effects of identity theft themselves.
- The guide includes necessary contact information and form letters to dispute information on credit reports, dispute charges, or take other action.
- This option is ideal for those who prefer to work at their own pace and contact credit reporting agencies and creditors themselves.
- A police report is not required for this program but may be helpful for the victim.

Law enforcement agencies should recognize that filing a police report is an important step for most victims of identity theft. Individuals will need a copy of the police report to take advantage of certain rights they have as identity theft victims, and organizations may require a copy of the report in order to assist.

The new Identity Theft Unit helps individuals correct a variety of problems, regardless of how the problem began. In a recent case, the Identity Theft Unit helped an Ohio man who was pulled over for a minor traffic violation by a Grove City police officer. The officer informed him that multiple out-of-state warrants containing his Social Security number may have been filed in his name. The man took the officer's advice and contacted the Ohio Attorney General's Identity Theft Unit.

Following a lead, the Identity Theft Unit contacted Colorado authorities, who confirmed the Ohio man did not have existing warrants there but said there were open warrants in Michigan. Michigan State Police verified the warrants, found they were the result of a clerical error, and quickly remedied the mistake.

Although the identity mix-up was the result of an error, not theft, the Identity Theft Unit was able to expeditiously rectify the situation at the state and federal levels.

Law enforcement agencies should be aware that the new Identity Theft Unit is part of the Attorney General's Consumer Protection Section, not the Crime Victim Services Section, and has replaced the PASSPORT Program, which is no longer in operation. Additionally, the PASSPORT Program phone number no longer leads to the Attorney General's Office, and law enforcement agencies should not direct victims to that number.

Consumers and law enforcement can receive information about the new Identity Theft Unit by contacting the Ohio Attorney General's Office at 800-282-0515 or visiting www.OhioAttorneyGeneral.gov/IdentityTheft.

Florida v. Harris, U.S. Supreme Court, Feb. 19, 2013

Question: Does a law enforcement drug dog's field performance record determine whether the dog's alert provides probable cause to search a vehicle?

Quick Answer: Not really. Probable cause to search is based on the "totality of the circumstances."

Facts: A K-9 unit officer on patrol stopped a vehicle for having an expired license plate. When the officer approached, driver Clayton Harris was visibly nervous: He was breathing rapidly, fidgety, and shaking. The officer noticed an open beer can inside the truck, which prompted him to ask Harris for consent to search the truck. Harris refused, so the officer walked his dog, Aldo, around the vehicle. Aldo alerted at the driver's side door handle. The officer then searched the truck, finding 200 loose pseudoephedrine pills, 8,000 matches, a bottle of hydrochloric acid, and other products that could be used for making methamphetamine. Aldo wasn't trained to alert for these materials, only narcotics. Harris was arrested for possession of pseudoephedrine for use in manufacturing methamphetamine. He posted bail for this arrest and was stopped by the same officer on another date, this time for a broken tail light. The officer's dog walked around Harris' truck and again alerted to the driver's side door handle. This time, the officer found nothing upon searching the vehicle. Harris later moved to suppress the evidence discovered during the officer's first search based on a lack of probable cause.

At the suppression hearing, the officer testified to the different trainings he and Aldo had attended, how Aldo had previously received a certification in detecting specific narcotics, how the two took refresher courses together, and how they practiced weekly on Aldo's detection skills. But the officer admitted that Aldo's certification had expired a year earlier, and Aldo gave two false positives for detecting narcotics in Harris' vehicle.

Why this case is important: The Supreme Court held that, when looking at the totality of the circumstances of the dog's training and experience, the drug dog's alert was enough to find probable cause to search Harris' vehicle. Determining probable cause isn't based on a rigid set of rules, so there is no specific "laundry list" that law enforcement must satisfy before a drug dog's alert will provide probable cause to search. In this case, the officer didn't keep a record of his dog's field performance accuracy, but that's not a requirement to satisfy the probable cause standard. The standard is about probabilities in specific factual circumstances. Here, even though the dog gave two false positive alerts to narcotics and there was no record of the dog's field performance, the dog and officer had been through extensive trainings. Also, the dog performed "satisfactorily" during his weekly tests with the officer. This was enough to establish probable cause in this case because Harris didn't challenge the dog's training, only his performance during both traffic stops.

Keep in mind: If you don't keep a log of your drug detection dog's field performance, it won't affect your ability to obtain probable cause from the dog's sniffs. No one specific type of evidence is considered "the gold standard" of proving your dog's reliability.

However, because courts consider the totality of the circumstances, you'll need to be able to point to other factors that make your dog reliable: training, certifications, and continuous practice.

Visit the [U.S. Supreme Court's website](#) to view the entire opinion.

***Bailey v. U.S.*, U.S. Supreme Court, Feb. 19, 2013**

Question: May peace officers detain a person while executing a search warrant at the person's home when that person has left the premises?

Quick Answer: Yes, but only if the person is a recent occupant and is within the immediate vicinity of the premises being searched.

Facts: Police obtained a search warrant to look for weapons in an apartment because a confidential informant told officers he saw a hand gun in the apartment during a recent drug buy. Two officers surveilling the area watched as two men left the apartment, both matching the CI's description of the suspect selling drugs. The officers watched the men get into a car and drive away from the apartment complex. The officers then radioed the search warrant team to begin their search.

During that time, the surveilling officers followed the suspects' car for almost a mile before making a traffic stop. The officers ordered the men out of the car and conducted a pat-down for weapons. When asked where they had been driving from, one of the suspects, Chunon Bailey, explained that he lived in the nearby apartment complex even though the address on his driver's license was a different location. Bailey's car passenger confirmed that Bailey lived in the apartment. But when police told Bailey that they were executing a search warrant at the apartment, he changed his story. At that point, he claimed he was only staying at the apartment but didn't live there and so nothing in the apartment belonged to him. Then different officers showed up and drove Bailey back to the apartment. A gun and drugs were found inside, and police discovered a key to the apartment during Bailey's search incident to arrest. Bailey was arrested for three federal offenses, and he moved to suppress the evidence and any statements he made based on an unreasonable seizure.

Why this case is important: The Supreme Court determined that Bailey's detention violated the Fourth Amendment. In *Michigan v. Summers*, the court held that law enforcement may detain occupants of a residence without a warrant or any level of suspicion if the detention is based on

officer safety, aiding the completion of the search, and preventing flight if incriminating evidence is found. All of these justifications must be satisfied before a warrantless detention will be lawful. And when detaining a recent occupant of a residence, the occupant must have been within “the immediate vicinity of the premises to be searched” for the warrantless detention to be lawful. Here, police waited until Bailey was almost a mile down the road before they stopped him, which is clearly not within the immediate vicinity of Bailey’s apartment. Therefore, police couldn’t justify detaining Bailey based on *Summers*.

And the court refused to extend *Summers* because a remote detention is more intrusive than an on-scene one, appearing to both the recent occupant and spectators as a full-fledged arrest.

Keep in mind: To detain a recent occupant during a search of his home, the biggest consideration is distance. How far away is the occupant from his home? To permit a warrantless detention, the court has instructed that an occupant must be within the “immediate vicinity” of the residence that’s being searched. We aren’t given a definition of “immediate vicinity,” but factors that will help you judge any close calls are: the lawful limits of the premises (the property boundaries); if the occupant is within the line of sight of the premises; and the ease of re-entry from the occupant’s location.

However, don’t forget about *Terry*. The recent occupant of the premises also may be your suspect, so you may be able to justify your detention if you’ve got reasonable suspicion.

Visit the [U.S. Supreme Court’s website](#) to view the entire opinion.

***U.S. v. Shaw*, U.S. Sixth Circuit Court of Appeals, Feb. 21, 2013**

Question: May law enforcement officers make potentially false statements in an attempt to serve an arrest warrant inside a home?

Quick Answer: No.

Facts: Two police officers attempted to locate an address to serve an arrest warrant for a Phyllis Brown. When they got near the address, they couldn’t find the specific house number, 3171, but found two different homes on opposite sides of the street that had a 3170 address. One of the homes was occupied and the other wasn’t, so the officers approached the occupied home. The officers knocked on the front door, and a woman answered but immediately slammed the door shut when she saw police. The officers repeatedly knocked and demanded that someone answer the door. Seven or eight minutes later, the same woman again answered the door. The officers explained that they had a warrant “for this house,” so the woman let them inside. None of the five occupants in the home looked at the warrant, but one asked, “What address are you looking for?” The officers misled the occupants, saying they were looking for house number 3170. The occupants then misled officers, saying they were at 3171. The officers performed a protective sweep of the home. They didn’t find Phyllis Brown, but they did find a significant amount of cocaine. The officers arrested the home’s resident, Steven Shaw, on several federal drug charges. The home’s actual address was 3170, so Shaw filed a motion to suppress the evidence based on Fourth Amendment violations.

Why this case is important: Because the officers didn’t take reasonable steps to ensure they were at the correct address, their gamble violated Shaw’s constitutional rights. As part of law enforcement investigation tactics, officers are permitted to lie, but the court has drawn a hard line about (1) lying about having an arrest warrant for a home, and (2) using that lie to gain entry into the

home. In this case, the officers made a false claim of legal authority, and neither case law nor law enforcement policy permits such a practice. The officers weren't at fault for approaching the occupied home, but they could have asked for the home's address at the outset verified which sides of the street had odd- and even-numbered homes. They also could have located the correct address on the Internet, but instead chose to lie to the home's occupants about having an arrest warrant "for this address."

No exigent circumstances existed to justify the officers' lies to gain entry. When the woman slammed the door in the officers' faces, the officers never reported that they heard frantic movement or yelling inside the home, which would possibly suggest destruction of evidence. And the same woman answered the door minutes later, suggesting that she wasn't Phyllis Brown and trying to avoid arrest.

Keep in mind: You can't lie to gain entry into someone's home when you aren't sure you have a legal right to be there. When serving an arrest warrant, take the necessary steps to ensure you are in the right location and you know who you are looking for.

Visit the [U.S. Sixth Circuit's website](#) to view the entire opinion.

***U.S. v. Young*, U.S. Sixth Circuit Court of Appeals, Dec. 20, 2012**

Questions: (1) Does a person's presence in a high-crime area, along with other general factors, provide reasonable suspicion to conduct a *Terry* stop? (2) Does a peace officer exceed the scope of the *Terry* stop when the officer runs a warrant check that's unrelated to the suspected crime?

Quick Answers: (1) No, an articulable fact specific to that person is also needed to conduct the stop. (2) No, warrant checks are a routine part of law enforcement practice.

Facts: During an early morning patrol, two police officers noticed a passenger reclined in a car that was parked in a city parking lot near a local restaurant. The city had a trespassing ordinance that made it a crime for a person to remain on city property without doing business at any nearby establishments. The officers knew this parking lot had been the scene of recent gun violence. They also knew that people carrying guns usually loitered in that parking lot because the local restaurant often patted down its patrons for weapons. After watching the car for 90 seconds, the officers pulled in behind it, and as they approached the vehicle, a third officer joined them. All three officers looked inside the car with flashlights, and one officer knocked on the passenger's window.

The passenger, Michael Young, rolled down the window after 15 seconds, and the officer asked for Young's identification. Another officer took Young's ID to check for outstanding warrants. During that time, Young explained that he fell asleep while the car's driver checked if they could eat inside the restaurant. The officers then noticed the friend approaching the car, so they asked that he go back inside the restaurant. They told Young to "sit tight" while they explained that he was trespassing on city property. While listening, Young continued to make furtive movements toward his left pants pocket. The police officer speaking with Young noticed these furtive movements and asked Young if he had any weapons or drugs on him. He then had Young step out of the car. Young told the officers that he had a gun in his pocket, so one of the officers retrieved the weapon and placed Young in handcuffs. The third officer returned and reported that Young had an outstanding warrant. He was arrested for being a felon in possession of a firearm. He moved to suppress the evidence, arguing that there was no reasonable basis for the initial seizure and that checking Young for warrants unrelated to the trespass crime exceeded the scope of the Fourth Amendment seizure.

Why this case is important: The court held that the officers had a reasonable basis for seizing Young. Young's seizure occurred when the officers parked behind the car and began looking inside with flashlights. The officers' actions were reasonable based on the totality of the circumstances: Young was in a high-crime area; officers knew that people with guns typically waited in the parking lot because the restaurant did routine pat-downs; Young had his seat reclined; and Young was loitering, possibly trespassing, by remaining in the car for at least 90 seconds without any movement. Being in a high-crime area and knowing that gun-toting patrons remain outside the local restaurant are not enough to justify a warrantless seizure under *Terry v. Ohio* because those facts aren't specific to Young. Such generalized facts shouldn't be given too much weight when determining reasonable suspicion because they lead to racial, ethnic, and socioeconomic profiling. But when combined with the fact that Young was loitering in the car for more than 90 seconds, the officers had reasonable suspicion to believe he may have been committing a trespass.

The court also found that the police warrant check didn't unreasonably exceed the scope of the seizure. Requesting a suspect's ID for a warrants check is part of law enforcement's routine with many *Terry* stops, and the checks do not need to be for warrants specific to the suspected crime. Plus, Young's explanation of why he was waiting in the car, along with his furtive movements toward his pants pocket, were enough for police to detain Young further under reasonable suspicion for other criminal activity. And the entire stop lasted only four minutes, which is a reasonable amount of time for officers to obtain or dispel any suspicion of a crime.

Keep in mind: If you plan to conduct a *Terry* stop of a person, you'll need suspicion that's specific to the person you are stopping. Factors such as a high-crime area or known criminal practices are too general on their own.

Once you have reasonable suspicion to make a stop, you can request the person's ID to check for outstanding warrants, no matter what possible crime you are investigating. Running a warrants check is a basic police practice and doesn't exceed the scope of a stop, no matter what the initial reason for the stop. But, as already mentioned, you must have articulable facts *specific to the person you are stopping* in order to justify the stop and, of course, the warrants check.

Visit the [U.S. Sixth Circuit's website](#) to view the entire opinion.

State v. Lam, Second District Court of Appeals (Champaign, Clark, Darke, Greene, Miami, and Montgomery counties), Feb. 15, 2013

Question: Can a peace officer make a warrantless entry into a home during pursuit of a fleeing suspect?

Quick Answer: Yes, for any crime, as long as the pursuit begins in a public place.

Facts: While on patrol, two police officers spotted a gold Oldsmobile Intrigue they believed was involved in a police car chase the week before. The officers were familiar with the car's driver, Jeffrey Lam, because he and his brother Tim had a history with the local police department. They thought Jeffrey may again give chase, so they followed him until he parked his car at his home and turned off the engine. The officers then turned on their emergency lights, at which point Jeffrey got out of the car and began to flee the scene. The officers chased Jeffrey on foot through the neighborhood and saw him make his way back inside his home. The officers also saw Jeffrey's brother Tim on the front porch. Tim retreated inside the home and shut the door. The officers tried to kick in the door. They

then ordered the occupants to open it, but neither effort succeeded. The officers went back to their patrol car for a battering ram and forced entry. In the meantime, backup had arrived.

Once inside the home, officers heard a toilet flushing and movement on the second floor. The officers began performing a protective sweep and found Tim Lam and another person upstairs. During the sweep, various drugs were seen in plain view. Tim Lam was arrested on drug charges, and during a search incident to arrest, officers found more drugs on Tim Lam's person. He moved to suppress the evidence based on the warrantless entry into the home.

Why this case is important: Although hesitant to do so, the court held that the officers' entry into the home didn't violate the Fourth Amendment, under the exigent circumstances exception. It's a hard and fast rule that law enforcement must obtain a warrant before entering and searching a home, but a common exception to this rule is exigent circumstances. Peace officers often respond to the exigencies of a person needing immediate aid or of the destruction of evidence, but hot pursuit is another exigency that would justify warrantless entry into a home. A suspect may not avoid an otherwise lawful arrest by fleeing from a public place to a private one despite the Fourth Amendment's protections of a home. And the Ohio Supreme Court has determined that any person in Ohio who flees from arrest may be immediately pursued inside a home without a warrant, no matter the crime that was committed.

Also, once inside the home, the officers were justified in performing a protective sweep because they heard movement upstairs. During that sweep, they saw drugs in plain view, so these were fair game to collect as evidence.

Keep in mind: If you have a suspect fleeing from arrest, even on a non-jailable offense such as a minor misdemeanor, Fourth Amendment case law permits you to pursue that person from a public place to a private one, including inside a home. However, the pursuit into the home must be immediate and continuous; you can't stop pursuit and wait for backup to arrive before entering the home. Also, because some courts apply this exception with extreme hesitation for misdemeanor offenses, it is advisable to use this exception in extremely limited circumstances. If you can secure the home and go obtain a warrant without any real concern for safety or destruction of evidence, that is best practice.

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

State v. Dean, Fifth District Court of Appeals, Feb. 1, 2013

Question: May a peace officer make a traffic stop for a vehicle that is traveling at a slow speed?

Quick Answer: No, not unless the vehicle is impeding the flow of traffic or posing a danger on the road.

Facts: About 1 a.m., a police officer noticed a car driving at least 15 mph slower than the posted speed limits. The officer followed the car for a mile and noted that it traveled at a consistently slow speed, signaled to make a turn hundreds of yards ahead of the actual turn, and turned very slowly. The officer stopped the vehicle for slow speed and, from his interactions with the driver, Alan Dean, the officer determined that Dean was operating his vehicle under the influence of alcohol. Dean later moved to suppress based on a lack of reasonable suspicion to make the traffic stop.

Why this case is important: The court held that slow speed, on its own, isn't reasonable suspicion to justify making a traffic stop. It's also not a traffic violation under the Ohio Revised Code's Sec. 4511.22(A) unless the speed is so unreasonably slow that it impedes or blocks traffic or creates a safety risk on the road. However, each case depends on the totality of the circumstances. Here, traveling at 15 mph below the speed limit wasn't impeding traffic, so the officer had no legal justification to make the traffic stop.

Keep in mind: Although very slow driving may seem suspicious, especially in the early morning hours, you'll need more evidence that criminal activity or a traffic violation is afoot before you can legally pull someone over. In this case, the officer based the traffic stop on only a hunch of wrongdoing, which violates the Fourth Amendment.

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

State v. Smith, Seventh District Court of Appeals (Belmont, Carroll, Columbiana, Harrison, Jefferson, Mahoning, Monroe, and Noble counties), Feb. 1, 2013

Question: Does a peace officer's mistakenly incorrect statement of law invalidate a confession?

Quick Answer: Yes, when the incorrect statement is repeated numerous times and coercive in nature.

Facts: A woman made a report at the police station that her physician, Larry Smith, had sexual contact with her against her will. Two detectives visited Smith's office to talk about the accusation, and Smith agreed to speak with the detectives later at the police station. Once Smith arrived, the detectives took him into an 11 x 17 booking room to question him. They told him he wasn't under arrest and he could leave at any time. He wasn't offered a seat during the questioning. The detectives repeatedly asked Smith if he had sexual contact with the woman, and Smith denied doing so. One of the detectives then told Smith, "You are allowed to have sexual relationships with your clients. Is it unethical? Yes. Is it illegal? No, it's not illegal." The same detective also explained that "there's an Ohio Revised Code [and] with all the Ohio laws[,] it is not illegal as a physician to have sex with your client." The detective assured Smith, "I know the law, obviously . . . and I'm telling you it is not illegal . . . to have sex with your patients." However, under Ohio law, a physician commits sexual battery by having sexual relations with a patient.

After 47 minutes of questioning, and the detective's seven assurances that Smith wasn't committing a crime by having sexual relations with his patients, Smith admitted that he had consensual sexual contact with the patient. Smith later was charged with rape and sexual battery. Smith moved to suppress his statements to police based on an involuntary confession.

Why this case is important: The court held that, based on the detective's repeated false statements of law, Smith's confession was involuntary. A suspect's confession is not voluntarily made if it's obtained by threats or violence, by any direct or implied promises, or by exerting improper influence over the suspect. Here, the detectives told Smith repeatedly that having sexual relations with his patients *wasn't a crime*, which is an incorrect statement of law—it's sexual battery. The repetition of this false statement, for 47 minutes, eventually influenced Smith to admit to having sexual contact with the victim: "OK, do you want me to say it's consensual? OK, it's consensual." This repeated incorrect statement of law coerced Smith to confess involuntarily, and

this type of coercion was similar to an implied promise that an admission to having sexual relations wasn't going to cause Smith any legal problems.

Keep in mind: False statements of the law, regardless whether you know they are false, aren't acceptable police tactics when you make those statements repeatedly to encourage a confession. Just because no obvious signs of coercion are used, such as threats or raised voices, doesn't mean that your statements can't be construed as coercive, especially when they appear as an implied promise that a confession won't render any legal consequences.

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