



# Ohio Attorney General's Law Enforcement Bulletin



**August 2012**

## **Victim interviews: An essential tool in sexual assault investigations**

With more than 130 Ohio colleges and universities starting classes this fall, campus peace officers and local law enforcement agencies unfortunately will be responding to one of the most prevalent and underreported campus area crimes: sexual assault. In such cases, a well-conducted victim interview is officers' best investigative tool.

Sexual assault is any sexual act that is (1) inflicted on someone who is unable to consent or (2) unwanted but compelled on someone by force, manipulation, threats, or intimidation. Most assaults involve a victim and perpetrator who know one another. These non-stranger sexual assaults make reporting the crime even more difficult for the victim, so it's vital for law enforcement to conduct effective interviews.

In the initial interview, peace officers can learn details of the assault that will assist in evidence collection, crime scene locations, and establishing the elements of the crime. A successful interview begins with building trust and creating rapport with the victim. This includes making sure the victim feels safe and comfortable; thus, a police interrogation room shouldn't be used for interviews.

Also, it's important to decide who will be present during the interview. A victim always should be asked if they want a victim advocate present. Although the victim also may request that a family member or friend attend, this is not recommended because it may make the victim reluctant to disclose important details of her ordeal. Try to limit the number of people in the room and set ground rules so the victim knows everyone's role. For instance, decide on one person to lead the interview and have only that person ask questions.

Keep a friendly, approachable tone and demeanor. Greet the victim by introducing yourself and acknowledging that you are sorry to be meeting under these circumstances. Showing empathy will encourage the victim to be forthcoming. Do not let any bias about the individual — such as alcohol use, credibility, or risky behavior — interfere with your investigation.

Explain that your purpose is to collect information so you can find out exactly what happened. The victim may be hesitant to open up to you, fearing that you doubt or blame her. Allowing her to talk about her emotions and reassuring that her feelings are normal can help put her at ease.

Next, have the victim begin telling you what happened. Let her explain in her own words and at her own pace. Don't interrupt with questions. Rather, allow her to give a narrative of what

she is able to remember. At most, reserve your questions to open-ended prompts, such as, “And then what happened?” or “Tell me more about that.” When she begins describing the sexual acts committed, listen to the words she uses and follow her lead. For example, don’t use medical terminology if she is using slang language. If you don’t understand a term she uses or it could have several meanings, ask her to clarify.

Once the victim finishes, ask any follow-up questions you may have. Have her clarify any points that are unclear, making sure to ask open-ended questions that do not prompt only “yes” or “no.” You don’t want to influence the victim’s recollection of events.

From both the narrative and follow-up questions, try to get as much information as possible, including a description of the suspect, the victim’s relationship with the suspect before the assault (if any), the suspect’s behavior and mode of operation before, during, and after the assault, the specific sexual acts committed; and whether force or threat of force was used.

To conclude the interview, describe the next steps in the investigation process. Address any safety concerns the victim may have about her attacker, especially if she knows him.

When the interview is over, write your report as soon as you’re able. It should reflect the victim’s account as accurately as possible, including the language she used to describe what happened. Write the report in first person, and be as objective as possible. *Never* include personal opinions in your reports.

Officers can receive more extensive training in victim interviewing, and in sexual assault investigations generally, through the Ohio Peace Officer Training Academy. OPOTA offers a three-day course on how to conduct these investigations, including victim and witness interviews, evidence collection, and suspect interviews.

A victim interview is just the first step to investigating a sexual assault crime, but its success is crucial for law enforcement to help keep sexual assault perpetrators from becoming repeat offenders.

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For more information on sexual assault investigation courses, visit [www.OhioAttorneyGeneral.gov/OPOTA](http://www.OhioAttorneyGeneral.gov/OPOTA) or e-mail [askOPOTA@OhioAttorneyGeneral.gov](mailto:askOPOTA@OhioAttorneyGeneral.gov).

## **OPOTA courses help law enforcement satisfy mandatory human trafficking training requirements**

Ohio's new human trafficking law requires peace officers to receive basic and advanced training in handling human trafficking violations.

To help law enforcement agencies satisfy the requirement, the Attorney General's Ohio Peace Officer Training Academy offers courses that assist officers in identifying the crime, recognizing and protecting the rights of victims, and collaborating with non-governmental and social service organizations to help victims.

Two options — classroom-based training and online courses — are available, and both approaches satisfy the law's mandate.

Scheduled classroom-based training dates and locations are:

- Sept. 6, Course 02-187-12-03, London OPOTA campus
- Sept. 17, Course 02-187-12-05, Columbus Police Academy
- Sept. 20, Course 02-187-12-06, Cincinnati Police Academy
- Sept. 24, Course 02-187-12-07, Owens Community College, Perrysburg
- Sept. 28, Course 52-187-12-01, Richfield OPOTA campus
- Dec. 6, Course 02-187-12-04, London OPOTA campus

Law enforcement also may take advantage of online courses available through eOPOTA, accessible through the Ohio Law Enforcement Gateway. Awareness of Human Trafficking and Responding to Human Trafficking may be taken at officers' convenience. A third eOPOTA course highlighting aspects of the new law is in development. Successful completion of all three online courses will fulfill the mandated training requirement.

For more information on these courses, visit [www.OhioAttorneyGeneral.gov/OPOTA](http://www.OhioAttorneyGeneral.gov/OPOTA) or [www.OHLEG.org/eOPOTA](http://www.OHLEG.org/eOPOTA), or send an e-mail to [askOPOTA@OhioAttorneyGeneral.gov](mailto:askOPOTA@OhioAttorneyGeneral.gov).

## ***U.S. v. Skinner* – Sixth Circuit Court of Appeals (Michigan, Kentucky, Ohio, Tennessee), Aug. 14, 2012**

**Question:** Can a peace officer obtain a suspect's cell phone GPS "pings" without a warrant and use that information to execute a warrantless search?

**Quick answer:** Yes. Under the Fourth Amendment, a suspect has no reasonable expectation of privacy in his cell phone's real-time tracking capabilities.

**Facts:** DEA agents learned from an informant that members of a suspected drug trafficking ring in Tennessee had purchased pay-as-you-go cell phones to communicate with one another. The agents first obtained court orders allowing them to intercept the wireless communications from the phones. And based on information from those calls, the agents obtained another court order authorizing the cell service providers to release the subscribers' data, cell site information, and GPS real-time "ping" locations. From the ping locations, the agents learned that defendant Melvin Skinner was part of the trafficking scheme and was traveling on a public road near Abilene, Texas. Shortly thereafter, agents located Skinner at a rest stop in Texas. They walked a drug dog around the motor home Skinner was driving, and the dog alerted to the presence of drugs. The agents then searched inside the vehicle and found more than 1,100 pounds of marijuana. Skinner was charged with federal drug crimes and moved to suppress the drugs based on the agents' warrantless GPS real-time tracking of his cell phone.

**Why this case is important:** The Sixth Circuit found that the agents did not violate the Fourth Amendment because Skinner did not have a reasonable expectation of privacy in the data given off by his cell phone. The court relied on the Supreme Court's decision in *U.S. v. Knotts*, holding that obtaining ping notifications from Skinner's cell phone basically amounted to the DEA visually surveilling Skinner's vehicle on public streets and highways. Skinner had no reasonable expectation of privacy in the pings from his pay-as-you-go cell phone, not because he used the phone for criminal activity, but because the phone's technological capabilities would allow anyone, including law enforcement, to track the position of Skinner's phone. There is no inherent constitutional difference between trailing a suspect and tracking him via technology.

The court also distinguished this case from the Supreme Court's recent decision *U.S. v. Jones* (see March 2012 Law Enforcement Bulletin). Because law enforcement never physically came into contact with the cell phone, no physical trespass occurred by obtaining the phone's GPS real-time tracking signals.

**Keep in mind:** Suspects have no reasonable expectation of privacy related to technology that can be used to enhance the human senses, so you don't need a warrant to obtain any information that you could collect with your naked eyes, ears, etc. Because cell phone pings allow you to find a suspect's location without ever physically trespassing on the suspect's phone, there is no Fourth Amendment search violation in collecting that information. However, some cell phone service providers may require a search warrant before turning over that information, so check with the provider. At a minimum, it is good practice to get a court order before obtaining any real-time ping tracking, such as the officers did in this case.

Click [here](#) to read the entire opinion.

### ***U.S. v. Rashawn Gill* – Sixth Circuit Court of Appeals (Michigan, Kentucky, Ohio Tennessee), July 17, 2012**

**Question:** Can a peace officer arrest a suspect if the officer establishes probable cause based solely on information from a confidential informant (CI)?

**Quick answer:** Yes, as long as the CI's information is corroborated, the officer may arrest the suspect without personally witnessing any crime.

**Facts:** Police set up a controlled buy through a CI in order to make an arrest. The CI called his drug dealer, defendant Rashawn Gill, while officers listened to the CI's end of the conversation. The CI told police that Gill would sell him five ounces of cocaine at a house on Vine Street and that Gill would be driving a green Acura. The officers saw Gill arrive at the meeting location in the green Acura and join a group of people in front of the house. Suspecting the buy was going down, the officers approached and identified themselves. Gill fled down the block, but officers caught up with him and directed him to get on the ground. The officers found a small amount of marijuana in Gill's waistband, and they recovered a gun that Gill had hidden on a nearby porch. Gill was arrested, and officers later found five ounces of cocaine in the green Acura.

**Why this case is important:** The court found that police had probable cause to arrest Gill even though they did not directly observe the transaction. The officers corroborated key elements of the CI's tip: the color and make of the car Gill would be driving and the location of the arranged drug sale. The law doesn't require that an illegal act be completed for sufficient probable cause to develop. The law only requires the existence of facts that could lead a reasonable person to believe an illegal act has occurred or is about to occur.

**Keep in mind:** When you receive a tip from a CI, you might be able to use that tip not just to conduct a warrantless search, but also to make an arrest. However, you must corroborate the key information from the tip. And corroboration is even more important when the CI's credibility is unknown to law enforcement.

Click [here](#) to read the entire opinion.

### ***U.S. v. Archibald, et. al.* – Sixth Circuit Court of Appeals (Michigan, Kentucky, Ohio, Tennessee), July 11, 2012**

**Questions:** (1) Does probable cause to search an apartment go stale when a peace officer waits to get a warrant a few days after the officer has a confidential informant (CI) buy drugs? (2) Is a search warrant invalid if it's not executed until several days after a magistrate issues it?

**Quick answers:** (1) No, not if the facts and circumstances of the case show that, when the warrant is issued, there is still a fair probability that drugs and other incriminating evidence

are located at the place to be searched. (2) Yes, so long as the reason for the delay is reasonable and no circumstances have changed between the time the warrant was issued and its later execution.

**Facts:** Police officers used a CI to purchase crack cocaine from defendant Robert Archibald while they surveilled Archibald's apartment. Three days later, one of the officers received a search warrant for the apartment, but officers did not execute it until five days later. Archibald and others were in the apartment when officers arrived. They discovered crack cocaine on one person and a large amount of cash on Archibald. Police also found a loaded pistol and a large piece of crack cocaine in the kitchen. A canine search of Archibald's car revealed \$12,000 in cash. Archibald moved to have all the evidence suppressed, arguing that any probable cause for the warrant had gone stale and that the officers invalidly executed the warrant by waiting five days.

**Why this case is important:** The Sixth Circuit first held that probable cause for the warrant had not gone stale even though police waited three days after the controlled buy before getting a warrant. The CI's initial buy established probable cause for the warrant, and when looking at the totality of the circumstances, waiting three days before getting a search warrant did not make the probable cause become stale. Courts will consider several factors in determining "staleness," including (1) the character of the crime; (2) the criminal; (3) the thing to be seized; and (4) the place to be searched. Here, police were searching for evidence of drug crimes, so it is reasonable to believe that drugs, related paraphernalia, or money would still be located in an alleged drug house three days after the CI's controlled buy.

Second, the court found that the officers' five-day delay in executing the search warrant was reasonable. Even if officers delay in executing a search warrant, as long as the execution falls within the time frame allowed by law and no circumstances have changed, probable cause will still exist. Here, Tennessee's criminal procedure rules allowed for police to execute a warrant within five days of its issuance. Plus, the warrant was issued before Memorial Day weekend, when many officers had scheduling conflicts.

**Keep in mind:** When you've established probable cause to get a search warrant, it's always best practice to submit your warrant affidavit as soon as possible. However, if there is a delay, a court still may find probable cause depending on the crime and what you're trying to obtain. In the case of drug trafficking and economic crimes, for instance, probable cause would continue to exist for days after you've first established it.

Further, in Ohio (Criminal R ule 41), a search warrant generally must be executed within 72 hours of being issued. So, when obtaining and executing search warrants, any passage of time beyond 72 hours must be reasonable. And reasonableness, of course, depends on the facts and circumstances of each case. To avoid this problem, include in your warrant affidavit any known reason why you would need more time to execute the warrant.

Click [here](#) to read the entire opinion.

**U.S. v. Robbins — Eighth Circuit Court of Appeals (Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, South Dakota), June 29, 2012**

**Question:** If an officer enters the fenced-in, intimate area of a home to perform a public safety check and instead uncovers drug activity, will the drug evidence be suppressed?

**Quick answer:** No, as long as the intrusion onto the property is limited, is done for a legitimate purpose, and isn't done with the intent of uncovering criminal activity.

**Facts:** A police dispatcher received a 911 hang-up call. Dispatch requested that officers in the area conduct a safety check at the address. Two officers tried to locate the address associated with the telephone number, but they had difficulty locating the home. They finally found a house near the address they were given. It was 10 p.m., and because there were so many lights on in the house, the officers believed someone was home. They walked up through a large, open wooden gate that led to a breezeway connecting the garage to the living quarters of the home. The officers walked up to the front porch of the house and knocked on the front door. No one answered, so they walked around the perimeter of the house to see if anyone was home. The officers eventually made their way back to the front door to knock again. At that point, they smelled an odor of marijuana coming through the crack of the door. A drug detection dog was called to the scene, and it alerted to the presence of drugs in the home. The officers then obtained a search warrant and discovered a large marijuana grow operation inside the house. Defendant Terry Robbins owned the home and was charged with federal drug crimes.

**Why this case is important:** “Curtilage” is legalese for the intimate area of a property that generally is off limits for police. So, while you can stand on a sidewalk and peer into a person's house without a warrant, you cannot sneak up under the eaves and press your nose to the glass. However, when a legitimate law enforcement purpose exists, a warrantless entry onto the curtilage of a home is reasonable as long as the intrusion is limited. Here, police acted with a legitimate purpose because they were performing a safety check from a 911 hang-up that they thought came from Robbins' home. The officers approached the house using the normal access route that any visitor would use, and police entry through an unlocked gate for a “knock and talk” is a reasonable, limited intrusion.

Plus, when officers are conducting legitimate law enforcement business and develop a reasonable belief that someone is present in a home, they are allowed to proceed to another entrance if knocking at the front door was unsuccessful. Here, the officers walked around the home's perimeter only because so many lights were on inside, making the officers think they might be able to locate another entrance or find an occupant.

**Keep in mind:** If you have a legitimate law enforcement purpose, you may make a minimal, limited intrusion onto a home's curtilage. A minimal intrusion includes knocking on the front door or looking in the windows. You also may conduct a quick search of the home's perimeter, including the front yard, back yard, front porch, and driveway. But because

curtilage gets Fourth Amendment protections, you'll need a warrant if you want to enter for the purposes of a search against the home's owner.

Click [here](#) to read the entire opinion.

## ***U.S. v. Whitley* – Tenth Circuit Court of Appeals (Colorado, Kansas, New Mexico, Oklahoma, Utah, Wyoming), June 1, 2012**

**Question:** Can a peace officer stop a vehicle when there has been no traffic violation and the officer is relying solely on another peace officer's finding of suspicion?

**Quick answer:** Yes, under the collective knowledge doctrine, an officer can stop a vehicle so long as another officer requesting the stop has at least reasonable suspicion that the suspect is involved in criminal activity.

**Facts:** A federal agent received a tip from a citizen informant that defendant John Whitley had a firearm and ammunition in his employer's company vehicle. The agent conducted a records check and discovered that Whitley had a previous felony conviction. A few days later, the agent received a second tip from the same citizen informant that Whitley had loaded a dead antelope into his truck on the first day of hunting season. Based on this information, the agent believed that Whitley was a felon in possession of a firearm. The agent called the county sheriff's office and requested that Whitley be stopped and checked for weapons. Shortly after, a sheriff's sergeant spotted Whitley's truck with the antelope in the back. The sergeant pulled Whitley over and noticed two rifles in plain view along the center console of the truck. The sergeant contacted the federal agent, who showed up a short time later and recovered more firearms and ammunition when searching Whitley's truck. Whitley was charged with being a felon in possession of a firearm. He filed a motion to suppress the weapons, claiming there was neither probable cause nor reasonable suspicion to stop his vehicle.

**Why this case is important:** The Tenth Circuit found that the sergeant's stop of Whitley was constitutional. To conduct a lawful investigatory stop of a vehicle, a peace officer only needs reasonable suspicion that criminal activity is afoot, regardless of whether the stop involves a traffic violation. Here, the federal agent received two tips that Whitley had a firearm in his possession and learned that Whitley had a felony conviction. These facts were enough to establish reasonable suspicion to at least stop Whitley's vehicle. And the sheriff's sergeant was justified in stopping Whitley under the collective knowledge doctrine. This means that an officer who makes an investigatory stop doesn't need to have reasonable suspicion that criminal activity is afoot. Instead, the knowledge of one officer with reasonable suspicion (or probable cause) can be conveyed to another. Here, the federal agent had developed reasonable suspicion that Whitley had a gun, so he could relay this knowledge to another officer and request a traffic stop without that officer personally having any suspicion.

**Keep in mind:** The collective knowledge doctrine is an important tool for law enforcement to remember for investigations. In *U.S. v. Hensley*, the U.S. Supreme Court recognized the collective knowledge doctrine, and there are two different types to remember: vertical and

horizontal. Vertical collective knowledge involves an officer with probable cause or reasonable suspicion instructing another officer to act, even without communicating all the information necessary to justify the action. Horizontal collective knowledge occurs when a number of individual officers have “pieces of the probable cause or reasonable suspicion puzzle,” but no single officer has enough information to satisfy the suspicion’s standard. These doctrines may be especially helpful during investigations that require lengthy surveillance or coverage of a large geographical area.

Click [here](#) to read the entire opinion.

***State v. Butler, State v. Pickens* – Fifth District Court of Appeals (Ashland, Coshocton, Delaware, Fairfield, Guernsey, Holmes, Knox, Licking, Morgan, Morrow, Muskingum, Perry, Richland, Stark, and Tuscarawas counties)**

**Question:** Can a peace officer stop a vehicle based on a police dispatch that is later shown to be a mistake-of-fact in identity?

**Quick answer:** Yes, because information received from a police broadcast is an official communication that’s considered trustworthy.

**Facts:** Police officers were conducting a robbery investigation of Steven Simpkins by following Simpkins’ car and surveilling his girlfriend’s house. One afternoon while searching for Simpkins, a detective saw a black male come out of a house wearing a black cap, white shirt, and black pants. The detective photographed the man, and another detective identified him as Simpkins. The first detective watched the man eventually get into a Chevy Malibu with another person. Simpkins’ girlfriend was known to drive a Malibu. The detective briefly lost sight of the car but quickly recovered and followed the vehicle to what the detective believed was Simpkins’ girlfriend’s home. He never actually saw the occupants of the Malibu enter the home, but chose to surveil the home and wait for Simpkins to leave. He later saw a black Hyundai drive up to the house. A black male walked out of the house, wearing a black cap, white shirt, and black pants, and he got into the passenger seat of the Hyundai. So the detective radioed to other officers that Simpkins was in a black Hyundai, in the front passenger seat, and that he had a warrant for his arrest for robbery. The detective asked that the sheriff’s department make the traffic stop to avoid exposing his surveillance vehicle.

A sheriff’s sergeant received the dispatch call and stopped the Hyundai. The sergeant removed the front passenger from the car, believing it was Simpkins. The sergeant noticed the suspect reaching into his waistband, so he pinned him against the police cruiser. The sergeant recovered a 9-mm handgun from the man’s waistband and also found marijuana, cocaine, and crack-cocaine. The sergeant told the suspect he was under arrest for robbery, but it was later discovered that the suspect was not Simpkins, but defendant Marcus Pickens. Another passenger in the vehicle was co-defendant Tywhon Butler, whom the sergeant also charged with being a felon in possession of a firearm. Both men moved to suppress the evidence, arguing that law enforcement had no basis to stop the vehicle.

**Why this case is important:** The court found that even though the first police detective made a mistake-of-fact in identity, the facts and circumstances show that his misidentification was reasonable and is supported by competent, credible evidence in the record: The detective was at a far distance while conducting surveillance, and when pictures taken of Pickens were compared to photos of Simpkins, the two men looked similar. Also, the responding sergeant was reasonable in relying on the police dispatched misidentification. The radio dispatch provided the sergeant with reasonable suspicion to stop the vehicle because, even though it gave incorrect information, police dispatches are an official communication and generally are considered trustworthy.

**Keep in mind:** You need only reasonable, articulable suspicion of criminal activity to stop a vehicle, and you can rely on a police dispatch to get reasonable suspicion, regardless whether the dispatch provides information that you later learn is a mistake-of-fact. So any evidence of criminality found during your stop will not be suppressed as long as the mistake-of-fact is reasonable.

Click [here](#) to read the entire *Butler* opinion.

Click [here](#) to read the entire *Pickens* opinion.

## **State v. Sweeney – Eighth District Court of Appeals (Cuyahoga County), July 12, 2012**

**Question:** Once the premises are secure, can a peace officer further detain an individual because he is a patron at a bar known for gun violence and drug activity?

**Quick answer:** No, not without any particularized suspicion that the individual was engaged in criminal activity.

**Facts:** Police officers executed a temporary restraining order on a bar that had more than 30 civil violations and four felony arrests in the past year. That evening, there were about 50 to 75 bar patrons when police arrived. The officers decided to detain everyone for officer safety and because of the bar's past violent history. To secure the scene, officers patted down all patrons for weapons. Finding nothing, they asked patrons for their IDs, detaining them further to check for outstanding warrants. Defendant Seymour Sweeney, a bar patron, had an outstanding warrant for failing to appear in court for driving under suspension. As a result, police arrested him. Officers again patted down Sweeney before placing him in a police cruiser. The second pat-down revealed crack cocaine in his pocket. Sweeney moved to suppress the drugs because police lacked any suspicion for detaining him to check on outstanding warrants.

**Why this case is important:** The court found no constitutional violation for initially detaining and patting down Sweeney because he was at a bar known for violent crime. However, once the officers didn't find any weapons, the bar was secured, and they verified that Sweeney was of legal drinking age, Sweeney should have been released because police had no reasonable, *individualized* suspicion that he was involved in any criminal activity. The fact that the bar was known for drug and gun crime and that Sweeney seemed "fidgety" are not

enough to justify further detaining him to check for outstanding warrants. Therefore, the officers' continued detention and second pat-down of Sweeney was unconstitutional.

**Keep in mind:** Being in an establishment known for drug and gun crimes is not a crime, and it doesn't provide you with reasonable suspicion to do anything other than what is necessary for officer safety. The U.S. Supreme Court decided a similar case in *Ybarra v. Illinois*, where it held that an individual's proximity to other people or places suspected of crime doesn't give law enforcement probable cause to search that individual. So, to secure a scene, you may detain individuals as long as necessary for safety, which includes a pat-down for weapons. But once you've secured the area, unless you have a particularized suspicion that an individual is involved in criminal activity, you violate the Constitution by detaining him any longer.

Click [here](#) to read the entire opinion.

### **State v. Quinn – Twelfth District Court of Appeals (Brown, Butler, Clermont, Clinton, Fayette, Madison, Preble, and Warren counties), July 9, 2012**

**Questions:** (1) Does a peace officer need to get a warrant to search a suspect's garbage left in an alley for collection? (2) Can an officer establish probable cause for a warrant from complaints about drug activity and the contents found during a trash-pull? (3) Is a "search all persons on the premises" clause in a warrant invalid?

**Quick answers:** (1) No, garbage that is voluntarily left in a public area for collection is not protected under U.S. or Ohio search and seizure laws. (2) Yes, probable cause could be based independently on the contents found during a trash-pull, but it could not be based solely on uncorroborated complaints about drug activity. (3) It depends. If there is probable cause to support a search of every person on the premises, then the clause isn't invalid.

**Facts:** Police officers received complaints that a neighbor was allowing others to store large amounts of drugs in his home. From these complaints, officers conducted a trash-pull, where they inspected three garbage bags that had been placed in an alley by someone in the house. Inside the bags, officers found loose marijuana, torn baggies, marijuana cigarettes, saran-wrapped packages with cocaine and crack cocaine residue on them, and several documents that were addressed to the homeowner. Based on the complaints and the trash-pull evidence, police obtained a search warrant for the home. They executed the warrant at night, and during that time, defendant Chauncy Quinn walked up to the house to go inside. When he saw police, he turned and ran. An officer caught him in the front yard of the home and searched him, finding a key to the house as well as marijuana and crack cocaine. Quinn moved to suppress all the evidence based on an unconstitutional search warrant that lacked probable cause.

**Why this case is important:** The court first found that the warrantless trash-pull was constitutional. In Ohio, there is no protected privacy interest in garbage that is placed outside for collection because a person is knowingly exposing the garbage to the public. Once placed outside to be collected, garbage is accessible for anyone to examine, including

law enforcement's opportunity to search for evidence of criminal activity. Second, the court found that the complaints of drug activity were not, on their own, sufficient to establish probable cause, as there was no way to know if the complaints were credible. However, the officers' trash-pull independently provided them with probable cause for a warrant because the officers found drugs and mail linking the homeowner to the residence.

Finally, the court explained that a warrant's "search all persons on the premises" clause isn't invalid if, based on the facts and circumstances, probable cause exists to believe that evidence found in the home also would be found on persons in and around the home. Here, Quinn was about to enter the house when he saw police and ran. He was found with a key to the home's front door, too, showing he had open access to the residence. Plus, police were executing the search warrant at night for evidence of drugs and drug transactions, which typically involves multiple individuals who often are armed and dangerous. From these facts and circumstances, the court found that searching Quinn was justified under the "all persons" clause of the warrant.

**Keep in mind:** Garbage placed outside for collection is accessible to animals, children, scavengers, snoops, and other members of the public. In Ohio, you can collect it and search through it without a warrant. And the evidence you find from the trash-pull alone could give you probable cause to get a warrant for searching the home. But the U.S. Supreme Court makes a key distinction in *California v. Greenwood* that you can't collect a suspect's garbage *until they've set it out for collection*. This means, for example, that any trash sitting in the curtilage of a person's home that's not yet taken to the curb for collection cannot be searched without a warrant. This distinction is important depending on the jurisdiction where you work (urban vs. rural). Setting garbage outside a person's home (in an alley, for instance) may be considered "ready for collection" in a city, but the same may not be true in a rural setting, where garbage placed just outside the home is still considered within the home's curtilage.

Further, depending on the facts of your case, you may be able to include a "search all persons on the premises" clause in the warrant, particularly if you are dealing with a potential drug house.

Click [here](#) to read the entire opinion.