




Ohio Attorney General's Law Enforcement Bulletin



August 2016

State v. Thip, 2016 Ohio 4970

Question: Does an officer who pats down a known gang member prior to issuing a citation on the scene of a chaotic call run afoul of the Fourth Amendment?

Quick Answer: No. Under the totality of the circumstances, and the officer's knowledge of the defendant and his gang affiliation, he was justified in patting down the suspect for weapons.

Facts: Columbus Police Officer Leppla responded to a disturbance around 11:30 p.m. in a high-crime area. Officer Leppla testified he had responded to this area for calls ranging from neighborhood disputes to shootings. Upon arriving in the area he observed Thip outside urinating. Officer Leppla stopped Thip and immediately recognized him by name and knew he was a member of the "Tiny Rascal gang." He escorted Thip to his cruiser, patted him down for weapons, and found a firearm in his waistband. Thip filed a motion to suppress the pat down. During the hearing, Officer Leppla testified to his knowledge and dealings with the Tiny Rascal gang. This included calls about shootings and other incidents involving weapons. The trial court denied the motion to suppress and Thip appealed. On appeal, the court noted the totality of the circumstances. The nature of the call, his knowledge of Thip and his gang affiliation as well as the gang's involvement in firearms-related incidents supported Officer Leppla's belief that Thip may have been armed and dangerous.

Keep in Mind: In order to pat down for weapons someone who is not under arrest, the officer must have consent **or** a reasonable belief the suspect is armed and dangerous.

State v. Carver, 2016 Ohio 4926

Question: Can an officer extend a traffic stop without reasonable suspicion in order to seek consent to search a vehicle?

Quick Answer: No, in order to extend a traffic stop beyond the time necessary to take enforcement action an officer must have reasonable, articulable suspicion of criminal activity.

Facts: A trooper stopped a vehicle for traveling 7 mph over the speed limit. After stopping the vehicle, he observed three occupants. The trooper indicated the three individuals seemed unusually nervous and didn't make eye contact with him. He did not detect an odor of alcohol or marijuana and did not observe

any contraband in the vehicle. He asked for and ran all of their identifications, finding no outstanding issues. He did note the driver, Carver, had two prior drug offenses on his record. Approximately 30 minutes after the stop, the trooper asked Carver to exit the vehicle and told him he was giving him a warning. Instead of issuing the warning at that point, the trooper continued the questioning of Carver and then sought and received consent to search. The search revealed two hypodermic needles, a small amount of hashish, and another hypodermic needle and spoon with heroin residue inside Carver's sock. Carver filed a motion to suppress; the motion was denied by the trial court. On appeal, the appellate court overruled the trial court and suppressed the consent and subsequent search. The appeals court noted that at the conclusion of checking identifications, aside from nervousness and Carver's prior drug offenses, there was no justification in the continuation of the detention. The court advised that the continued detention negated the consent to search later obtained by the trooper.

Keep in Mind: Officers may only extend the duration of a traffic stop beyond the time it takes to take enforcement action when there is reasonable, articulable suspicion to believe the occupants are engaged in criminal activity, or the person consents to the continued detention after it is apparent they are otherwise free to leave.

State v. Clelland, 2016 Ohio 4827

Question: Does an officer's subjective intent in questioning someone turn a consensual encounter into an investigative detention?

Quick Answer: No, the test for determining whether an encounter is consensual is objective, **not** subjective.

Facts: Officer Smith drove by Clelland and observed him sitting on a guardrail near a school in the hot sun. Approximately 45 minutes later he observed Clelland in the same spot. He pulled up near him and started a conversation while still seated in his cruiser. When he asked his name, Clelland misspelled it. Upon asking for his Social Security number, Clelland provided a seven-digit number. Asked if he had any outstanding warrants, Clelland replied, "Yeah, I think I do." When Officer Smith's partner opened his door, Clelland fled on foot. Upon apprehending Clelland, officers found crack cocaine on his person. Clelland filed a motion to suppress, which was denied by the trial court. He appealed, arguing the police officer's subjective intent in questioning him rendered the encounter a seizure. The court noted the proper test is an objective one. Based on the facts – the officers were seated in a cruiser; they didn't activate their lights or siren; they remained seated with weapons holstered until Clelland admitted to having warrants – the court upheld the denial of the motion to suppress.

Keep in Mind: In determining whether an encounter is consensual, it is important to consider whether a reasonable person in the suspect's position would feel free to leave.

State v. Dowty, 2016 Ohio 4719

Question: Does the Ohio Revised Code require a motorist to signal for at least 100 feet when turning from a private parking lot onto a roadway?

Quick Answer: No, given that many private parking lots would not allow a vehicle to even travel this far, stopping and activating a turn signal prior to entering the roadway complies with the statute.

Facts: A Dayton police officer observed a vehicle traveling in a private parking lot. As the vehicle reached the exit, the driver turned on the left-turn signal and then engaged the right-turn signal before proceeding onto the public roadway. The officer stopped the driver for a violation of a Dayton city ordinance which is identical to ORC 4511.39. After stopping the vehicle, the officer subsequently discovered Dowty with syringes and heroin in her possession. Dowty filed a motion to suppress the evidence, challenging the reasonable suspicion for the stop. During the hearing, the evidence was undisputed that the vehicle only traveled about 30 feet in the parking lot and the driver signaled a right-hand turn prior to the vehicle entering the roadway. The trial court determined the cited traffic violation does not require the activation of a turn signal 100 feet prior to entering a highway from a private parking lot, thus there was nothing that reasonably justified the stop. As a result, the court granted Dowty's motion to suppress the evidence obtained from her. The state appealed and the appellate court noted that the vehicle did signal prior to entering the public roadway and there was no safety concern. Additionally, the court noted no reasonable interpretation of the statute would require a driver to signal for 100 feet in a parking lot that is only 30 feet long. Therefore, the trial court's ruling was upheld and the evidence was suppressed.

Keep in Mind: This ruling specifically applies to vehicles traveling in private parking lots and not those traveling on public roadways.