




Ohio Attorney General's Law Enforcement Bulletin



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State v. Calvin, 2015 Ohio 4801

Question: For purposes of inventory search, is there a distinction between vehicles being “towed” and vehicles being “impounded”?

Quick Answer: No. These terms are often used interchangeably in case law for purposes of inventory searches.

Facts: A trooper stopped Calvin for speeding and discovered he was driving under suspension and placed him under arrest. The trooper decided to tow the vehicle since Calvin was from out of state and there was no other reasonable alternative to safely secure the vehicle as it was located on the interstate. After calling for a tow truck, the trooper inventoried the vehicle, locating a plastic bag containing narcotics. At suppression Calvin argued that mere towing does not fall within the scope of the inventory exception to the warrant requirement. Rather, he argued that the only situations triggering this exception are those in which law enforcement takes “physical possession of the vehicle” (impoundment). The court held case law does not support a legal distinction between these two terms, finding that tow and impound are used interchangeably to refer to situations where law enforcement officials take control of a vehicle away from the driver/owner. The court noted no difference between a private tow truck/lot and a police-operated tow truck/lot. The property left in a vehicle would be subject to the same risk of being lost or stolen, and the dangerous items in the vehicle still potentially harmful, regardless of who retains custody.

Keep in Mind: Agency inventory policies often give officers discretion on whether to tow a vehicle. Be sure to review your policy and be able to articulate *why* you decided to tow a vehicle pursuant to your policy (i.e., maintain greater security, criminal investigation, etc.).

State v. Ebert, 2015 Ohio 5012

Question: Is a person approached and questioned by officers, based on an anonymous tip, seized for purposes of the Fourth Amendment?

Quick Answer: No. Merely asking questions does not automatically convert a consensual encounter into an investigative detention.

Facts: While working at the Regional Transit Authority hub in Dayton, officers received an anonymous tip that a white male passenger named Andrew Ebert on Bus 7 was carrying a green tote bag containing a gun. When the bus arrived, two officers along with two security guards observed Ebert get off Bus 7 carrying a green tote bag. Officers encountered Ebert on the platform with what appeared to be blood on his face. They asked for his name and advised him they had been looking for him. They also asked if he had anything on him they needed to know about, to which he responded that there was a gun in the tote bag. At suppression, Ebert argued he was seized and in custody when questioned by officers. The court concluded the evidence demonstrated the interaction between Ebert and officers was a consensual encounter, not becoming a detention until the presence of the gun was disclosed. There was no evidence that the officers surrounded Ebert, brandished weapons, or otherwise acted in a threatening manner.

Keep in Mind: It is important to note an officer's word and actions can convert an otherwise lawful consensual encounter into an investigative detention. In the present case, the officers did nothing to indicate that Ebert had been seized or was not free to leave.

State v. Frazee, 2015 Ohio 4786

Question: Can a jacket, worn and removed by a suspect immediately preceding his arrest, be searched incident to arrest?

Quick Answer: Yes, so long as the arrestee has the item within his immediate control near the time of the arrest.

Facts: A deputy on patrol engaged in a consensual encounter with Frazee and his girlfriend as they were walking in a high crime area. After requesting and receiving Frazee's identification, the deputy confirmed Frazee had an outstanding warrant for his arrest. Upon advising Frazee of the warrant and ordering him to put his hands behind his back, Frazee asked to remove one of the two coats he was wearing. Since the coats were bulky, the deputy allowed Frazee to remove his exterior coat so he could be handcuffed more comfortably. After removing the coat, the deputy placed it on the trunk of his cruiser, handcuffed and searched Frazee's person and placed him into the back of the patrol car. The deputy then retrieved the coat and searched it, finding heroin in one of the pockets. The appellate court, which overturned the trial court's order to suppress the evidence, noted "the right to search incident to arrest exists even if the item is no longer accessible to the arrestee at the time of the search."

Keep in Mind: This case is distinguishable from *Gant*, which dealt with automobile searches. The court reminded that *Gant* was narrowly confined to vehicles and this case involved the search of an item that was on Frazee's person.

State v. Adams, 2015 Ohio 5072

Question: When may officers arrest for a minor misdemeanor offense?

Quick Answer: Generally, officers shall not arrest for a minor misdemeanor. However, O.R.C. 2935.26 sets forth exceptions to this general rule.

Facts: A trooper on patrol followed Adams leaving a known drug location and initiated a traffic stop for a non-working brake light. The trooper noticed the smell of raw marijuana emanating from the car as he spoke with Adams. The trooper asked Adams to step out of the car and Adams admitted to having a small amount of marijuana in his pocket. Adams was handcuffed, Mirandized, thoroughly searched and placed in the back seat of the cruiser. During the search, the trooper felt a lump at the rear of Adams' pants, but upon a second pass, the lump had disappeared. Adams' car was then towed and a second search of his person was conducted, which included shaking his pants leg. A baggie of cocaine fell from his pants. The court suppressed the cocaine, finding that Adams' arrest was unlawful. Consequently, the evidence resulting from the search was excluded. The court explained that the initial stop was for a brake light violation, which is a minor misdemeanor. The amount of marijuana in Adams' possession was only sufficient to establish another misdemeanor. Because an arrest is regarded as a "serious personal intrusion" in Ohio, an individual may be arrested for a minor misdemeanor in only limited circumstances, none of which applied in this case.

Keep in Mind: O.R.C. 2935.26 carves out exceptions to this general rule, which include: 1) the offender requires medical care or is unable to provide for his own safety; 2) the offender won't offer satisfactory evidence of his identity; 3) the offender refuses to sign the citation; 4) the offender has previously been issued a citation for committing that misdemeanor, and has failed to appear in court or pay the fine.