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Cell phones: A 'gold mine' for criminal investigations

It's easy to understand why cell phones are commonly used in drug-related offenses. But with technology advancing so quickly, criminals are able to use smart phones to commit more complex crimes such as elaborate money laundering and human trafficking schemes. And, of course, they're the primary tool used in sexting and cyber stalking.

It only makes sense for law enforcement to take advantage of these "gold mines" when investigating a crime, and the Ohio Peace Officer Training Academy can help.

OPOTA offers a free advanced course that teaches officers to use seized cell phones as a criminal investigative tool. The course details what information can be obtained from a suspect's phone and how to preserve it. For example, two types of evidence can be collected from cell phones: electronic and retained data.

Electronic evidence can be found on the phone itself, subscriber identity module (SIM) cards, and memory cards. To collect this type of evidence, an officer should check a cell phone's call history, contacts, text messages, e-mails, voicemails, and audio recordings. You also might find valuable information by looking at the suspect's calendar appointments, pictures, Internet usage history, task entries, and social networking applications.

This information can give you valuable leads about criminal activity, such as if a crime occurred, the nature of the crime, when it occurred, and who was involved. *But remember, collecting this evidence requires either a search warrant or exigent circumstances, even if the phone was lawfully seized.*

Electronic evidence can be easily lost or destroyed, though, so law enforcement should take precautions to preserve the information. For instance, cell phone providers don't keep a lengthy record of the phone's text messages. To prevent losing those messages, you should send a preservation letter to the service provider, if known. That should preserve the phone's last 48 hours of text messages for an additional 90 days. During this time, you should follow up the preservation letter with a court order for the texts. However, you still need a search warrant for the phone's contents.

Service providers now offer their customers a "remote wipe" of lost cell phones, which erases all the electronic data stored on the phone and can further complicate officers' efforts to preserve electronic evidence. A peace officer should try to avoid this problem by turning off the seized phone, wrapping it in three to five layers of aluminum foil, or placing it in "airplane mode." If you

find a phone that's already turned off, keep it off to prevent a remote wipe. Then try to identify the cell phone provider and get a court order to have the account locked down.

If the phone appears to be damaged or inoperable, law enforcement still can recover all the electronic data by using the phone's serial number or international mobile equipment identity (IMEI) number, located behind the phone battery. With this number, you can recover basic records for the owner's account. You need only a subpoena to collect this information, and from there you can get a search warrant to search the phone's contents.

Retained data also can be collected from a cell phone. It includes service provider records and cell phone tracking. The data reveals the owner's past calls, duration of the calls, and geographic location when the calls were made. This information can help tie a suspect to a crime, but officers must get a court order, based on reasonable suspicion, before a service provider will turn over that information.

This kind of data also allows service providers to set up live tracking of a cell phone, giving peace officers the suspect's current geographic locations, commonly called "pings." A search warrant is needed for this type of tracking.

Like electronic evidence, retained data evidence has some drawbacks. For example, the live tracking "pings" can be obtained only every 15 minutes, which may present a problem with a suspect who is a flight risk. The live tracking also may not work if the suspect has his cell phone turned off, is in an area with poor service, or has switched off the phone's GPS.

However, despite the problems sometimes associated with electronic and retained data evidence, cell phone analysis can prove invaluable in law enforcement investigations.

Morgan A. Linn
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Important Resources

For your convenience, a template preservation letter has been provided for your department's use. To access it, visit www.OhioAttorneyGeneral.gov/LawEnforcementBulletin/PreservationLetter.

For information on OPOTA online and regional courses covering cell phone investigative analysis, visit www.OhioAttorneyGeneral.gov/OPOTA or e-mail askOPOTA@OhioAttorneyGeneral.gov.

Training offers insight into active shooter situations

A new Ohio Peace Officer Training Academy (OPOTA) course is designed to give law enforcement, prosecutors, dispatchers, and school teachers and administrators insight into the thoughts and actions of active school shooters before they commit their crimes. OPOTA will offer the Profile of an Active Shooter course free of charge throughout the state in October and November.

Taught by James Burke, an OPOTA law enforcement training officer, the course incorporates Lt. Dan Marcou's "Five Phases of the Active Shooter." Marcou is a retired SWAT officer, experienced trainer, and veteran of an active shooter incident.

The course will help law enforcement handle active shooter situations by illustrating how the Virginia Tech and Columbine shooters followed each of the five phases.

Course dates and locations are as follows (with all sessions running from 9 a.m. to noon):

Oct. 4 — OPOTA Richfield, 4055 Highlander Parkway, Richfield, Ohio; OPOTA Course 55-508-12-01

Oct. 16 — Owens Community College, Law Enforcement and Fire Science Building, Room 145/147, 30335 Oregon Road, Perrysburg, Ohio; OPOTA Course 05-508-12-01

Nov. 13 — Columbus Police Academy, 1000 N. Hague Ave., Columbus, Ohio; OPOTA Course 05-508-12-02

Nov. 20 — Cincinnati Police Academy, 800 Evans St., Cincinnati, Ohio; OPOTA Course 05-508-12-03

Anyone interested in taking the course may register using OPOTA's online registration form at www.OhioAttorneyGeneral.gov/OPOTARegistration. Law enforcement officers who pre-register will receive an OPOTA certificate at the conclusion of the training.

***United States v. Shrader*— Fourth Circuit Court of Appeals (Maryland, North Carolina, South Carolina, Virginia, West Virginia), April 4, 2012**

Question: Can a co-tenant give consent to search a shared home even though the suspect has previously refused consent?

Quick answer: Yes. If the suspect is not physically present to dispute the consent, a co-tenant may subsequently consent to a search of the premises.

Facts: In 1975, defendant Thomas Shrader began to stalk his ex-girlfriend, and he eventually shot and killed her mother and a family friend. Shrader was sentenced to life with the possibility of parole for the murders. He was paroled from prison in 1993 and finished parole in 1999. In 2008, he obtained his ex-girlfriend's phone number and began threatening her by phone.

In 2009, the ex-girlfriend received a 32-page letter from Shrader discussing delusions he had about the 1970s murders as well as opportunities he had to kill her. The ex-girlfriend and her husband contacted the FBI, which sent agents to the home Shrader shared with his aunt to execute an arrest warrant. Shrader admitted there were guns in the home, but he refused to consent to a search of the house. Agents took him into custody and waited for his aunt to come home. When she arrived, she consented to a search of the house. Law enforcement recovered three firearms.

Why the case is important: The agents did not violate the Fourth Amendment by obtaining the aunt's consent to search. Law enforcement doesn't need a suspect's consent to prove that a search was consensual. Proof can come from consent by a third party who has common authority over the premises. Here, Shrader's aunt also lived in the home, so she had the authority to consent to a search. Shrader's earlier refusal did not remain in effect indefinitely. In order to override his aunt's consent, Shrader had to be physically present and expressly refusing consent *at the time his aunt gave permission to search*. And because the arrest warrant was a lawful reason to remove Shrader from the home, he couldn't show that the agents removed him only in an attempt to get consent later from his aunt.

Keep in mind: If multiple co-tenants are present when you want to search a home, all it takes is one co-tenant's refusal to prevent the search. But if only one tenant is present, and that tenant consents to a search, there's no constitutional violation even if the other co-tenants had previously refused consent. Be careful, though, not to abuse this rule by removing the objecting tenant as a pretext to get consent from a co-tenant.

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

***United States v. Burgard*— Seventh Circuit Court of Appeals (Illinois, Indiana, Wisconsin), April 2, 2012**

Question: Did police violate the Fourth Amendment when they waited six days before getting a warrant to search a suspect's lawfully seized cell phone?

Quick answer: No, but only because there were legitimate reasons for the delay.

Facts: A friend of defendant Joshua Burgard spoke with a police officer, telling him that Burgard had images of young girls (possibly under 14) on his cell phone and had bragged about having sex with them. The friend agreed to act as an informant and text the officer when he was with Burgard and when Burgard had the phone on him. When the officer later received the text, he stopped Burgard's car and seized his phone. Burgard then went to the police station and requested a property receipt for his phone.

The officer didn't immediately apply for a search warrant. Instead, he wrote a report about the cell phone seizure and forwarded it to a cybercrimes detective. Because of scheduling issues, the detective wasn't able to begin drafting a search warrant affidavit until two days after the phone was seized. On that same day, an armed robbery caused the detective's attention to shift away from the search warrant. Four days later, the detective and a federal district attorney drafted the warrant application and presented it to a federal magistrate judge, who signed the warrant that day. The detective promptly searched the phone and found numerous sexually explicit images of young girls. Burgard moved to suppress the images because he alleged that the six-day delay in getting a warrant was unreasonable under the Fourth Amendment.

Why the case is important: The Seventh Circuit found that the reasons for the six-day delay were not enough to find the phone's seizure and later search a Fourth Amendment violation. Warrantless seizures of personal property generally are unreasonable unless law enforcement obtains a search warrant within a reasonable period of time after the seizure. Here, the court found the delay was reasonable because the detective was inexperienced in drafting cell phone search warrants. For that reason, he took a little longer to draft the warrant application, and he enlisted the help of a district attorney. Such careful, attentive police work shouldn't be discounted, even if it appears that the detective could have moved more quickly.

Keep in mind: You can seize a suspect's personal property without a warrant as long as you get a warrant within a reasonable time after the seizure. There is no bright-line test to know when a delay has become unreasonable, but if you seize a suspect's personal property without a warrant, try to get one as soon as reasonably possible. The longer you keep the property without getting a warrant, the more likely a court will suppress the incriminating evidence you find.

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

***Phillips v. Community Insurance Corp.* — Seventh Circuit Court of Appeals (Illinois, Indiana, Wisconsin), April 27, 2012**

Question: Did officers use excessive force when they fired an SL6 riot gun four times at a non-resisting, intoxicated suspect?

Quick answer: Yes, so they are not entitled to qualified immunity.

Facts: Officers received a dispatch call reporting a possibly intoxicated driver. There was some initial confusion about the status of the reported vehicle. At first, the vehicle license plate was reported as belonging to a black Nissan Maxima that had been reported stolen. However, a later dispatch call corrected that, stating the stolen vehicle with that license plate number was actually a silver Honda Civic. Both the Honda and Nissan were registered to the same person, plaintiff Tamara

Phillips. From this conflicting information, officers assumed the car they were looking for was stolen. Within several minutes of receiving the dispatch calls, the officers located the black Nissan. They treated the traffic stop as “high-risk” because the car was still running, was stopped in a residential area, and was believed to be stolen. Seven cruisers surrounded the car, where its only occupant, Phillips, was sitting in the driver’s seat with her legs outside the car window.

Officers identified themselves and commanded her to show her hands and get out of the car. Phillips didn’t comply, but instead stayed in the vehicle while lighting a cigarette. She also continued to hang her feet out the driver’s side window while leaning back near the center console. For the next ten minutes, Phillips remained non-compliant with the officers’ repeated demands to exit the vehicle, so they decided to use a “less lethal” SL6 riot gun. Officers first fired a warning shot that hit Phillips’ car on the driver-side door. In response, she opened the door and put her feet on the ground. She didn’t respond to their commands to exit the car, so officers aimed and fired the SL6 at Phillips’ legs. They hit her legs three more times before she slumped out of the car and onto the ground. Officers then arrested her. Phillips received a large cut on her right leg along with other leg injuries. She sued the officers for excessive use of force.

Why the case is important: The Seventh Circuit found that the force used to arrest Phillips was unreasonable under the circumstances. To make its decision, the court considered (1) the severity of the crime, (2) whether Phillips posed an immediate threat to anyone’s safety, and (3) whether she actively resisted or evaded arrest. First, although officers were justified to initially treat the stop as “high risk” because they believed the Nissan Maxima was stolen, it was unreasonable for them to ignore the later dispatch call explaining that the stolen car was actually a silver Honda Civic. The officers also learned that both cars were registered to Phillips, so at that point, their decision to treat the black Nissan as stolen was objectively unreasonable. Second, any threat that Phillips posed to the officers was substantially contained by surrounding her vehicle with seven police cruisers.

Finally, the officers were aware that Phillips had a diminished capacity because the dispatch call reported that the driver of the black Nissan was possibly intoxicated. And even though she was noncompliant with law enforcement’s commands, she never actively resisted or evaded arrest. Her conduct was more of a “passive resistance,” which warrants only a minimal use of force. The facts here did not reveal a rapidly evolving situation requiring the officers to make split-second decisions. Therefore, firing a high-powered SL6 riot gun four times at Phillips’ legs was excessive force, and the officers were not entitled to qualified immunity for their conduct.

Keep in mind: The extent of force you may use to arrest a suspect depends on the facts and circumstances of the crime as well as the suspect’s conduct. For that reason, you should consider *all the information* you receive from dispatch before deciding how to respond, especially when presented with conflicting information.

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

***United States v. Ramirez*— Eighth Circuit Court of Appeals (Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota), April 26, 2012**

Question: Is an officer's warrantless entry into a hotel room justified by exigent circumstances if he believes that evidence will be destroyed?

Quick answer: No, not without actual proof that an exigency exists.

Facts: Officers arrested two men at a charter bus terminal in Omaha, Neb., for smuggling heroin in their shoes. One of the men revealed that they were traveling with a third male who also had heroin in his shoes. A quick investigation led the officers to defendant Carlos Ramirez. That afternoon, officers tracked down Ramirez and two additional men at a local hotel. The hotel clerk identified one of the men with Ramirez and gave officers Ramirez's room key. They located the room and attempted to enter by swiping the key card, but it didn't work. They knocked on the door and announced "housekeeping." One of the men with Ramirez started to open the door but quickly closed it once he saw it was police. The officers used a ram tool to enter the hotel room. Once inside, they secured the suspects and performed a cursory sweep. In plain view, one officer saw two pairs of shoes that matched the men's shoes from the heroin arrest earlier that day. No one claimed the shoes. The officers eventually searched inside the shoes to find heroin in each pair. Ramirez filed a motion to suppress the heroin based on a Fourth Amendment search violation.

Why the case is important: The appeals court found no exigent circumstances to justify the warrantless entry into the hotel room. A warrantless search is reasonable under certain exceptions, such as exigent circumstances, where police are justified in taking immediate action without a warrant if (1) lives are threatened, (2) a suspect's escape is imminent, or (3) evidence is about to be destroyed. To know if exigent circumstances exist, courts consider what a reasonable, experienced police officer would believe. Also, when the exigency at issue is the destruction of evidence, officers must show that they had a sufficient basis to believe that someone in the residence would destroy evidence. Here, there was no evidence that Ramirez or the other two men knew that police were following them. The officers could only speculate on that belief. They had no actual proof that evidence was being destroyed in the hotel room, either, because they didn't hear anything suspicious from inside before trying to unconstitutionally enter with the key card. Even when one of the men shut the door in the officers' faces, no exigency was created to permit a warrantless entry.

Keep in mind: When peace officers knock on a residence door without a warrant, they have no more rights than a private citizen would have to enter. The occupants inside the residence have the right to ignore the knock and may refuse to speak to you. But if you have a *reasonable* belief that the occupants are destroying evidence (for example, you can actually hear them rushing around or hear toilets begin to flush), then you can enter the residence without a warrant under the exigent circumstances exception. Otherwise, you'll need the occupants' consent or a warrant.

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

***State v. Miller*— Fourth District Court of Appeals (Adams, Athens, Gallia, Highland, Hocking, Jackson, Lawrence, Meigs, Pickaway, Pike, Ross, Scioto, Vinton, and Washington counties), April 17, 2012**

Question: (1) Must a suspect’s consent to a search be explicit? (2) Must a peace officer inform a suspect that he has a right to refuse consent?

Quick answer: (1) No. A suspect’s consent may be implied by his conduct. (2) No. An individual doesn’t need to be aware of his right to refuse consent to a search.

Facts: While on patrol, a state trooper noticed that a vehicle on the highway had a defective windshield, so he pulled the vehicle over. The car pulled into a gas station, and once it came to a stop, the passenger, defendant Scott Miller, got out of the car. The trooper told him to stay inside the vehicle. He approached the driver to ask for his license and registration and then learned that the car’s plates were expired and the driver’s license was suspended. The trooper asked the driver to follow him back to his cruiser. He questioned the driver about what might be inside the vehicle until the driver finally admitted that Miller had marijuana. The trooper then approached Miller and asked him to step out of the car. He also asked Miller about what might be inside the car and asked if he could pat down Miller’s clothing. Miller’s responses to the questions were inaudible on the trooper’s cruiser camera. The trooper performed the pat-down anyway and asked Miller what was in his pants pockets. Miller removed a pack of cigarettes, a cell phone, and eventually removed a small bag of Diazepam pills. The trooper arrested Miller for drug possession, and, in a search incident to arrest, he discovered marijuana in Miller’s underwear. Miller filed a motion to suppress the drugs because he never consented to the pat-down and search of his clothing.

Why this case is important: The court found that Miller voluntarily consented to the trooper’s pat-down and search. Warrantless searches generally are unreasonable, but a warrant and probable cause are not needed when a suspect consents to a search. A suspect’s consent may be implied from the surrounding circumstances, the suspect’s previous actions or agreements, or his failure to object to the search. However, consent isn’t voluntary if it was obtained by coercive threats, force, or in an officer’s claim of lawful authority.

Here, Miller’s actions and behavior implied that he voluntarily consented to the trooper’s request to pat him down and search his clothing. The trooper requested Miller’s consent, and Miller gave no explicit indication that he refused. In fact, when the trooper asked Miller what was in his pockets, Miller willingly pulled out the cigarettes, his phone, and the bag of pills. Also, the trooper’s initial command for Miller to stay in the car and his later request for Miller to “hop out” of the car were not coercive or threatening acts that affected the voluntariness of Miller’s consent. Traffic stops carry inherent dangers, so law enforcement officers are entitled to exercise authority over the driver and any passengers for safety purposes. Finally, the trooper had no constitutional requirement to inform Miller that he had a right to refuse consent. Because Miller’s conduct never specifically showed that he didn’t consent to the trooper’s requests, his consent was voluntary.

Keep in mind: A suspect may voluntarily consent even when he has not explicitly said, “I give you my permission to search.” There is no bright-line test to know whether a suspect has implied consent, so beyond a suspect’s words, you should observe his conduct to see if he appears cooperative. Also, you may request consent to search without any constitutional obligation to tell the suspect that he has a right to refuse.

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

***State v. Burnap* — Fifth District Court of Appeals (Ashland, Coshocton, Delaware, Fairfield, Guernsey, Holmes, Knox, Licking, Morgan, Morrow, Muskingum, Perry, Richland, Stark, and Tuscarawas counties), May 7, 2012**

Question: Can a peace officer solely rely on a citizen informant’s tip as the reasonable suspicion to stop a possible drunk driver?

Quick answer: No, not when the citizen informant doesn’t specifically describe what he has observed from the “drunk” driver.

Facts: A gas station employee called police to report what he thought was a drunk driver in a white truck. The employee identified himself, provided the truck’s license plate number, and told police what direction it was headed. However, the employee never said if he witnessed the white truck driving erratically. He also didn’t indicate that he had any personal interaction with the driver, defendant Christopher Burnap, to know that Burnap was drunk. A police officer responding to the call spotted the truck at a fast food carryout window. The officer instructed Burnap to pull over into a parking space. He never observed Burnap commit a traffic offense, but he still arrested Burnap for OVI. Burnap filed a motion to suppress based on an unconstitutional stop.

Why this case is important: This court found that, although the citizen’s tip was reliable, it didn’t provide reasonable suspicion that Burnap was driving drunk. An investigative stop does not violate the Fourth Amendment if police have reasonable suspicion that the person stopped is, or is about to be, engaged in criminal activity. And tips from identified citizen informants may provide the required reasonable suspicion because they are weighed with a high level of reliability. However, when the citizen informant only provides neutral details or conclusory statements (“The driver is drunk”) without any specific information that the informant actually observed erratic driving, this does not provide reasonable suspicion. The officer also would have to observe the driver commit a traffic offense or drive recklessly before he would be justified in stopping the suspect. Here, the informant told the dispatch operator only that Burnap was “driving drunk,” not that he saw reckless driving or smelled alcohol on Burnap before Burnap drove away. And the officer failed to indicate if he witnessed any traffic violations or evidence of impaired driving to corroborate that Burnap was “drunk.” Therefore, Burnap’s arrest was based on a suspicionless stop.

Keep in mind: You may rely on citizen informant tips as the reasonable suspicion needed for a criminal investigation, but do so only if the informant has indicated that he actually observed a traffic offense or erratic driving. A tip that gives conclusory statements may still help establish reasonable suspicion, but only if the tip is verified through your own observations.

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

***State v. Clark* — Eighth District Court of Appeals (Cuyahoga County), May 10, 2012**

Question: Is consent to search voluntarily given when it's in the presence of numerous peace officers during a "knock and talk"?

Quick answer: Probably not.

Facts: Police had received several anonymous tips that defendant Claudius Clark was selling drugs in his apartment and the nearby parking lot. Police set up surveillance of Clark's apartment but witnessed no criminal activity. Six officers decided to conduct a "knock and talk" with Clark to see if any of the anonymous tips had merit. They could smell burnt marijuana coming from Clark's apartment as they stood outside in the hall. They knocked, and when Clark answered the door, they identified themselves and asked Clark if they could come in to discuss the complaints about him. The officers' account and Clark's account differ from here. The officers explained that Clark allowed them to come inside the apartment. Once inside, police asked him about both the burnt marijuana and raw marijuana odors, and Clark told the officers he smoked marijuana every day and just wanted them to arrest him. He asked to get his shoes from the bedroom, so an officer followed him. The officer spotted loose marijuana on Clark's nightstand wrapped up in paper, and another officer checked the closet and found a shotgun, a digital scale, plastic baggies, rubber bands, and marijuana residue.

Clark's account of what occurred is much different: He said he never invited the officers into his home; he explained that they forced their way in, claiming at the outset that Clark was under arrest. He told them they couldn't be in his home without a warrant, but they insisted that they knew marijuana was being kept there. He told them to wait by the door so he could put some clothes on, but one officer followed him and picked up the papers on his nightstand to find marijuana wrapped inside. Police arrested Clark and secured a warrant. A later search of his apartment revealed 10 pounds of packaged marijuana. They had Clark sign a *Miranda* waiver at the police station, but he refused to sign a consent form for searching his apartment. He later filed a motion to suppress the evidence based on the warrantless entry and search of his apartment.

Why this case is important: This court found that Clark did not voluntarily consent to the officers' warrantless entry and search of his apartment. To determine if consent is voluntary, courts will look at the totality of the circumstances, which includes (1) the suspect's custodial status and the length of the initial detention; (2) whether consent was given in public or at a police station; (3) the presence of threats, promises, or coercive police procedures; (4) the words and conduct of the suspect; (5) the extent and level of suspect cooperation with police; (6) the suspect's awareness of his right to refuse consent; (7) the suspect's education and intelligence; and (8) the suspect's belief that no incriminating evidence will be found. In Clark's case, when he answered the door, there were six officers there to speak with him. The officer presence alone was an overwhelming show of force and inherently coercive considering the purpose of a "knock and talk" was just to "engage a suspect in conversation." Also, the officers' forcible entry, if true, was a coercive tactic. Finally, the fact that there was an overwhelming smell of marijuana in the apartment showed that Clark knew he had incriminating evidence inside and never would have consented to a police entry and search. For these reasons, the officers violated the Constitution.

Keep in mind: Because peace officers use the "knock and talk" tactic when they don't have probable cause or a warrant, they face some limitations. A suspect is free to ignore the knock or

refuse to answer questions, so any search that follows from the “knock and talk” must be based on probable cause and a warrant exception, such as consent. Remember, though, that law enforcement presence during a “knock and talk” may later invalidate the consent if there are a large number of officers present.

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

***State v. Jackson* — Eleventh District Court of Appeals (Ashtabula, Geauga, Lake, Portage, and Trumbull counties), May 14, 2012**

Question: (1) May peace officers order a driver to get out of a lawfully detained vehicle without additional reasonable suspicion or probable cause? (2) Does on-scene investigative questioning trigger a suspect’s Fifth Amendment *Miranda* rights?

Quick answer: (1) Yes. (2) No.

Facts: A police officer stopped a vehicle because it was continuously drifting over the center-lane line. When the officer requested the driver’s license and registration information, he noticed that the defendant, Robert Jackson, was bending over and moving around in the back seat. The officer asked Jackson to stop. The driver, Priscilla Jones, didn’t have any license, registration, or insurance papers, so the officer asked Jones to get out of the car. He frisked her, finding drug paraphernalia, and she also revealed that Jackson had drugs with him inside the car. The officer then asked Jackson to get out of the car. As Jackson exited the backseat, the officer saw a knife on the floor with white residue on it. He started asking Jackson a number of questions, such as if he had any weapons or drugs on him. Jackson responded that he had a knife in his back pocket, so the officer searched him, finding another knife with white residue and \$230. At that point, the officer read Jackson his *Miranda* rights and placed him under arrest. A later search of the car uncovered a large amount of crack cocaine in the backseat. Jackson filed a motion to suppress the incriminating evidence based on a prolonged traffic stop and a Fifth Amendment *Miranda* violation.

Why this case is important: The court held that no constitutional violations occurred. First, Jackson’s stop was not unconstitutionally prolonged by an officer “fishing expedition.” Under the U.S. Supreme Court’s decision in *Pennsylvania v. Mimms*, a peace officer may order a driver or passenger out of a lawfully stopped vehicle so long as the intrusion is minimal and meant to advance officer safety. This is commonly called a “*Mimms* order.” Here, once Jones was asked out of the car, she admitted that Jackson had drugs in the backseat. Her admission gave the officer probable cause to continue a secondary drug investigation by asking Jackson to step out of the car. And when the officer saw a residue-covered knife in the backseat, this gave him probable cause not just to frisk Jackson, but to fully search him.

Second, the officer didn’t violate Jackson’s *Miranda* rights when he questioned Jackson during the pat-down. Peace officers are permitted to conduct on-scene questioning without triggering the Fifth Amendment. In this case, the officer’s questions involved where Jackson was coming from and what the officer would find on him during the lawful pat-down. There was no need for the officer to provide Jackson with any *Miranda* warnings.

Keep in mind: If you have lawfully seized a vehicle, you can make a “*Mimms* order” without any additional level of suspicion. Just make sure, though, that the order is for the purpose of officer safety because it is still considered an intrusion into the occupant’s personal liberty, however small. Also, there is no need to issue *Miranda* warnings during any on-scene questioning unless you’ve placed the suspect in “custody” under the Fifth Amendment.

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