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## Meeting high ethical standards takes forethought, determination

*“The ethics of excellence are grounded in action — what you actually do, rather than what you say you believe. Talk, as the saying goes, is cheap.”*

— Price Prichett,  
*Business advisor, speaker, author*

Peace officers have the monumental responsibility of protecting the public and enforcing the law — duties that require far more than simply following statutes and department protocols. They are grounded in an overarching expectation to meet the highest possible ethical standards.

In a general sense, ethics are the moral actions, conduct, motives, and character of an individual. They involve a person’s values and integrity, such as knowing what is right and being able to do the right thing under pressure. An ethical person practices personal responsibility, fairness, objectivity, and trust.

In theory, high ethical standards sound easy to meet, not requiring much more than common sense. However, when presented with real-life dilemmas, a peace officer may find that practicing ethical behavior is not so clear-cut.

For example, imagine you found out that your partner took \$1,500 cash from a suspect’s vehicle during a traffic stop and OVI arrest. You know your partner should have reported the money as part of the inventory process, but you also know he has been having financial problems at home. What would you do?

Situations like this are difficult to discuss, but it’s good to think about your response before you are presented with an ethical problem. The Ohio Peace Officer Training Academy can help law enforcement officers accomplish that. OPOTA offers helpful online and regional courses on ethics and professionalism that provide examples of ethical scenarios for peace officers to think through.

It’s important to recognize the factors that could trigger an officer’s unethical behavior. Some of these are (1) trying to find a healthy work and family balance; (2) having poor leadership in the department; (3) consistently working long hours and facing a heavy workload; (4) receiving little or no recognition; and (5) having insufficient resources. These problems may cause peace officers to cut corners in their work quality, abuse leave time, lie, and put inappropriate pressure on others.

In fact, the most common unethical behavior among peace officers is falsifying reports. An officer may distort the truth for his own benefit by “forgetting” or exaggerating details. This behavior is a

slippery slope that can lead to more dishonesty, such as lying under oath at a hearing or trial or lying during an internal investigation against a fellow officer.

To avoid these pitfalls, remember the importance of serving the public with objectivity at all times. Don't let your personal beliefs interfere with your day-to-day tasks, no matter how difficult. And don't allow your emotions to impair your judgment of what is fair. Instead, try to maintain self-respect, uphold the law, treat everyone with courtesy, and display professional behavior at all times.

Also, think about the ramifications of your decision. A peace officer's unethical behavior on- or off-duty may subject that individual to disciplinary action, humiliation, loss of trust, civil liability, or incarceration. An officer's actions also may negatively affect his family, friends, department, and community.

So, when presented with a problem, ask yourself three questions that will guide you through many decisions you may encounter on the job:

- Is what I'm doing legal?
- Is what I'm doing fair?
- Are there any alternatives that may be better suited to address the problem?

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### **Important Resources**

For information on OPOTA online and regional courses covering ethics and professionalism, visit [www.OhioAttorneyGeneral.gov/OPOTA](http://www.OhioAttorneyGeneral.gov/OPOTA) or e-mail [askOPOTA@OhioAttorneyGeneral.gov](mailto:askOPOTA@OhioAttorneyGeneral.gov)

***Seremeth v. Board of County Commissioners* — Fourth Circuit Court of Appeals (Maryland, North Carolina, South Carolina, Virginia, West Virginia), March 12, 2012**

**Question:** Does the Americans with Disabilities Act (ADA) apply to criminal investigations?

**Quick answer:** Yes. If you don't provide the suspect with reasonable accommodations for his disability, you may be civilly liable.

**Facts:** Sheriff's deputies received a dispatch call about domestic abuse at plaintiff Robert Seremeth's home. The deputies had been to Seremeth's house three or four times before, all in response to alleged domestic disputes, but no arrests had been made. The deputies also knew that the entire Seremeth family was deaf, so the dispatcher had a third deputy respond to the call because she was learning American Sign Language at the time. The sheriff's office had emergency interpreting services available through a government contractor, but those interpreters were given one hour to arrive at the scene.

When the first two deputies arrived at the home, Seremeth answered the door. The deputies drew their weapons and cuffed Seremeth's hands behind his back, placing him outside to kneel along the sidewalk. He was unable to communicate with his hands or write notes to the officers. When he tried to speak to them, they put a finger up to their mouths, indicating that Seremeth should not talk. An officer wrote a note that they were waiting on an interpreter to arrive but never explained why they were there. Seremeth was kept outside for 30 to 45 minutes before officers woke Seremeth's children and parents to help interpret. The third deputy then arrived but also was unsuccessful in interpreting for Seremeth. Over an hour later, the sheriff's deputies determined that no domestic abuse had occurred, so they released Seremeth and left. He later sued the sheriff's office and the county commissioners for violating the ADA by prohibiting him from communicating with his hands and not providing a sign-language interpreter.

**Why the case is important:** The court held that the ADA's "reasonable accommodations" requirement applies to interrogations, but that the officers reasonably accommodated Seremeth under the circumstances. The deputies were responding to a domestic abuse call, which presents some of the most dangerous situations for law enforcement. Responding to violent crimes creates an exigency that should be considered when deciding if law enforcement's accommodations for a suspect are reasonable.

Here, the officers handcuffed Seremeth behind his back and removed him from the home as the standard procedure for responding to and securing any domestic disturbance scene. And even though emergency interpreters were available through a government contractor, it was reasonable under the circumstances for the deputies to attempt communication through Seremeth's family and another deputy. Law enforcement officers must make snap judgments in their line of work, especially during domestic disputes.

**Keep in mind:** Make sure you know your department's protocol in dealing with suspects, victims, or witnesses with disabilities. If the department has a contract with qualified interpreters, as in this case, make sure you know what the procedure is for requesting their assistance during both routine and emergency calls. Otherwise, always attempt to make reasonable accommodations when communicating with individuals with disabilities during a criminal investigation so you can avoid civil liability.

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

***United States v. McCraney*— Sixth Circuit Court of Appeals (Kentucky, Michigan, Ohio, Tennessee), March 21, 2012**

**Question:** Can a peace officer search a suspect’s car incident to an arrest?

**Quick answer:** It depends. If the arrested suspect was secured and not within reaching distance of the car’s interior, then you cannot justify a warrantless search of the car under the search incident to arrest exception.

**Facts:** About 1 a.m., a police officer on routine traffic patrol passed a car that did not dim its bright lights as it passed. The officer made a U-turn and began to follow the car. During that time, he watched both the driver and passenger lean over toward the floor of the car, making him think drugs or contraband were in the vehicle. The officer never turned on his siren or police lights, but the car began to flag the officer down. He drove to a nearby parking lot, with the car following. After backup arrived, the officers determined that the passenger, Dejuan McCraney, owned the vehicle, and that both McCraney and the driver had suspended licenses.

The first officer told the two men that he couldn’t let them drive the vehicle, but allowed McCraney to call his aunt to pick him up and drive his car. Minutes later, after five other police officers showed up, the first officer arrested McCraney for unlawful entrustment and patted him down for weapons. The officer did not handcuff McCraney or the driver, but had the two stand two or three feet from the car’s rear bumper, with three officers standing around them. Police found a gun under the driver’s seat, so they handcuffed McCraney and took him away in a cruiser. The car was later impounded and towed. McCraney was charged with being a felon in possession of a firearm.

**Why the case is important:** This case highlights the nuances of search and seizure law. The Sixth Circuit held that the peace officers’ search was unconstitutional because it did not meet one of the two exemptions for a vehicle search “incident to a lawful arrest”: (1) where the recent occupant is unsecured and within reaching distance of inside the car at the time of the search or (2) where it is reasonable for officers to believe that the vehicle contains evidence of the arresting offense.

Here, the underlying offense was wrongful entrustment, and it would be unreasonable to believe evidence of wrongful entrustment was on the floor of the car. And, at the time of the arrest, McCraney and the car’s driver were not handcuffed or secured in the back of a patrol car, but were standing two to three feet away from the car while surrounded by three officers. Under these facts, McCraney was not “within reaching distance” of his car, so the officers’ search was not justified incident to arrest.

The court also held that there was no reasonable suspicion to *Terry* frisk McCraney’s car for dangerous weapons because, even though they twice witnessed McCraney and the driver lean forward in the vehicle, the *arresting officer admitted that he would have let McCraney drive away if his license weren’t suspended*. McCraney’s unlawful entrustment arrest also didn’t provide any reasonable suspicion that McCraney was dangerous.

**Keep in mind:** The search incident to arrest warrant exception is narrower than ever before. A warrantless and suspicionless search of a vehicle still can happen either shortly before or after a suspect's arrest. But the constitutionality of that search now factors on whether the suspect was a recent occupant of the vehicle and if, during the search, was still within reaching distance of the car's interior. This scenario is rare, so justifying a search under the search incident to arrest exception may not be as readily available to you.

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

***United States v. Hampton* — Seventh Circuit Court of Appeals (Illinois, Indiana, Wisconsin), March 27, 2012**

**Question:** Must peace officers ask clarifying questions when a suspect hedges on whether he wants an attorney present for questioning?

**Quick answer:** No. If the suspect is ambiguous in requesting an attorney, officers are not constitutionally required to further clarify the suspect's request and do not have to end questioning.

**Facts:** Police recovered a gun that defendant Deandre Hampton dumped during a foot chase, leading to felon in possession of a firearm charges. Two officers asked to question Hampton in jail about the charge. Hampton agreed to sign a *Miranda* waiver form and began giving a statement when he suddenly changed his mind and requested an attorney. The officers ended the interview and called for Hampton to be taken back to his cell. Once the jail deputy arrived, though, Hampton again changed his mind. The officers then chose to record the rest of their conversation with Hampton. They renewed his *Miranda* warnings and again asked if he wanted counsel present. He responded, "Yeah, I do, but ...," so the officers explained that they couldn't talk to him if he wanted an attorney. Hampton paused for five seconds before asking how an attorney's presence would change anything. The officers would not answer his question. Instead, they insisted he either request an attorney and stop the questioning or continue talking with them without an attorney. Hampton continued to hedge on whether he wanted an attorney, even trying to talk about the facts of his charge. But the officers repeatedly insisted that he clarify his choice. Finally, Hampton unequivocally told them, "No, I don't want no attorney for right now" and gave a statement.

**Why the case is important:** The court of appeals found no constitutional violation because, after Hampton reinitiated the police interview, he never again made an unambiguous request for counsel. For a suspect to invoke his *Miranda* rights, the request for an attorney must be unequivocal. At most, Hampton only indicated that he *might* want counsel present: "Yeah, I do but ... I think, I, I felt like [there] should have been an attorney here because that's what I asked for." Those indecisive comments did not require the officers to end their questioning. Also, Hampton had already signed a written *Miranda* waiver, unambiguously requested an attorney, but then re-commenced the interview on his own. He knew how to make an explicit request for counsel. And the officers' clarification of Hampton's request, although encouraged, is not required by the Constitution.

**Keep in mind:** If a suspect unambiguously requests counsel, you *must* provide counsel or stop questioning. However, if the suspect is ambiguous or unsure, you aren't in danger of violating *Miranda*.

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

***U.S. v. Cowan* — Eighth Circuit Court of Appeals (Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota), March 23, 2012**

**Question:** An officer found a key fob in a suspect's pocket and used the fob's remote panic alert to identify the suspect's vehicle in a parking lot. Was a warrant required?

**Quick answer:** No. If there is reasonable suspicion for a pat-down, an officer can remove keys if there is probable cause to believe they were incriminating evidence. And using the keys to locate a vehicle falls into the automobile exception when it is likely to lead to incriminating evidence.

**Facts:** From surveillance, a confidential informant's tip, and a controlled drug buy, police officers believed that crack cocaine was being transported by car from Chicago to an apartment in Davenport, Iowa. Police got a warrant to search the apartment, the apartment's owner, and the surrounding parking areas for "indicia of occupancy, residency, rental and/or ownership of the premises . . . including . . . keys." Upon entering, the officers saw at least eight adults and two children inside. Police immediately handcuffed all the adults and *Terry* frisked them for officer safety. One officer frisked defendant Mauriosantana Cowan and asked how he got to the apartment. Cowan answered that he rode a bus from Chicago. From the frisk, the officer noticed that Cowan had keys in his front pocket. He removed the keys and questioned Cowan about them. Cowan responded that they were keys to his Cadillac back in Chicago. The officer quickly realized that the keys didn't belong to a Cadillac.

Police searched the apartment and found crack cocaine. The officer who took Cowan's keys uncuffed Cowan and told him if the keys didn't belong to any of the cars in the parking lot, Cowan could leave. The officer used the key fob's emergency button and found that the keys belonged to a car in the parking lot. Cowan was then re-handcuffed. Officers walked a drug dog around the car, who alerted that drugs were inside. Police searched Cowan's car and found more crack cocaine.

**Why the case is important:** The court of appeals found that obtaining the key fob and identifying Cowan's car did not violate the Fourth Amendment. First, the officer's seizure of the keys was constitutionally valid. During a lawful pat-down, if an officer can plainly feel an object and immediately believes it is incriminating evidence, the officer can reach into the suspect's clothing to retrieve it. Here, the police officer immediately knew that Cowan had keys in his pocket, and removing the keys was lawful because the search warrant specifically authorized the seizure of keys.

Second, the officer's use of the key fob also didn't violate the Constitution. There is no reasonable expectation of privacy in the identity of a person's vehicle, and using the key fob only identified Cowan's car. It didn't reveal the car's contents. Plus, because the fob was lawfully seized, the officer didn't physically intrude into a constitutionally protected area (as in the March 2012 Law Enforcement Bulletin's *U.S. v. Jones* case). The automobile exception applied to the officer's warrantless use of the key fob because the fob, as a part of an automobile, is readily mobile, and there was probable cause to believe the keys belonged to a vehicle involved in the trafficking: (1) Cowan told an officer that he was from Chicago, where officers thought the drugs were from; (2) it was obvious to the officer that Cowan's keys didn't belong to a Cadillac, as Cowan claimed; and (3) during surveillance outside the apartment, officers saw several cars come and go, believing the cars to be involved in trafficking the drugs.

**Keep in mind:** First, don't forget the "plain feel" rule when you're patting down a suspect. If during the pat-down you notice an object that is not a weapon or contraband, but have probable cause to believe it could be incriminating evidence, you may seize it.

And, second, the use of a fob to locate a vehicle can fall into the Fourth Amendment's automobile exception, if the circumstances allow, because the fob is part and parcel to an automobile.

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

***State v. Holmes* — Fifth District Court of Appeals (Ashland, Coshocton, Delaware, Fairfield, Guernsey, Holmes, Knox, Licking, Morgan, Morrow, Muskingum, Perry, Richland, Stark, and Tuscarawas counties), March 26, 2012**

**Question:** Can a peace officer pat down someone walking through a parking lot in a high-crime area when the person appears to be avoiding the officer?

**Quick answer:** No, not without reasonable, individualized suspicion that the person is involved in criminal activity.

**Facts:** Early one morning, a police sergeant and his partner were providing extra security for a local apartment complex. The complex had a high volume of drug and violent crime activity, including criminal trespass to buy drugs. The complex management had complained specifically about apartment buildings 901 and 921. About 1 a.m., the sergeant saw defendant Joseph Holmes leave building 901 and walk through the parking lot of the building. About 15 to 20 seconds later, Holmes noticed the officers and appeared to quickly change directions as if to avoid them. The sergeant told the other officer that they needed to talk to Holmes to see if he was visiting the building and had a visitor's pass. In their cruiser, the officers caught up with Holmes on the street and asked him some questions about who he was and who he had been visiting. Holmes couldn't provide a name or apartment number where he visited, so the sergeant got out of the cruiser and patted Holmes down. When the sergeant patted Holmes' right pants pocket, he felt what he thought was a plastic baggie that may have held crack cocaine. But before the officer could do anything else, Holmes leaned over the front of the police cruiser. The sergeant then arrested him. He reached into Holmes's pants pocket and found two plastic baggies with crack cocaine. Holmes was charged with cocaine possession.

**Why the case is important:** The appeals court found that the police sergeant violated the Fourth Amendment when he stopped and frisked Holmes. Before the *Terry* pat-down, the sergeant only observed Holmes for 15 to 20 seconds. In that amount of time, neither police officer saw Holmes engage in any criminal activity, and they had no suspicion that he was carrying a weapon or was dangerous. The officers stopped him for merely being present in a high-crime area, which is not enough to provide reasonable, *individualized* suspicion that Holmes was involved in criminal activity or was armed. Plus, the officer admitted that, when he felt the plastic baggie in Holmes' pocket, the criminality of what was in the baggie was not immediately apparent.

**Keep in mind:** "Reasonable suspicion" is different than a "hunch." Your instincts might tell you that a person is probably a criminal, but you need actual, individualized evidence before you can stop him. For example, you can't frisk a person for merely being present in a high-crime area or for



simply turning to avoid contact with you. You must have some reasonable *facts* that the specific person you are patting down has committed or is about to commit a crime.

And while the suspect leaned over the front of the car, essentially admitting guilt, he did so *after* the unconstitutional frisk, making all the resulting evidence inadmissible.

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

***State v. Henderson* — Sixth District Court of Appeals (Erie, Fulton, Huron, Lucas, Ottawa, Sandusky, Williams, and Wood counties), March 30, 2012**

**Question:** Does a single-photo lineup violate a suspect’s constitutional due process?

**Quick answer:** No, not if the lineup is used to confirm the identity of an already known suspect.

**Facts:** On Nov. 4, 2009, victim Troy Moody was walking his dog outside his house when a car pulled up alongside Moody. The driver knew Moody from school, and the two talked for a few minutes before ending their conversation. Before driving away, the backseat passenger in the car, defendant Dontae Henderson, yelled for Moody to come back towards the car. Moody also recognized Henderson from school. Henderson asked Moody if he was homosexual, which Moody denied while calling Henderson a racial slur. Henderson got angry at the slur, got out of the car, and showed Moody a gun in his waistband, threatening to shoot him with it. He then demanded Moody turn over his coat, and when Moody refused, Henderson fired a shot at Moody’s dog, which missed. He then fired a shot that hit Moody in the leg. Henderson quickly got back in the car, and the driver sped away. Moody made it home, and relatives drove him to the hospital while he called the police.

A detective arrived at the emergency room to investigate the crime. Moody described Henderson to the detective as “a young black male, about 6 feet tall.” Moody also explained that he knew the suspect from childhood and a social networking site, calling him “Dontae” or “Little Tae Woods.” Two days later, the detective met with Moody at his home and had him again explain the crime. Moody told the detective that he went to school with Henderson and that he would be able to identify him if he had a picture. The detective had a school picture of Henderson with him, so he showed Moody, telling him that he “may or may not know this suspect.” Moody immediately recognized Henderson’s photo as “Dontae.” Moody signed and dated the back of Henderson’s photo.

**Why the case is important:** The court held that the police detective’s single-photo identification was not unduly suggestive, and did the court find Moody’s ID unreliable. Although a single photo array does appear suggestive, that alone isn’t conclusive. Other factors must be considered, such as if the victim knew the defendant. The victim’s knowledge of the defendant doesn’t have to be extensive; he would only need to know the defendant’s face and name. In Henderson’s case, though, Moody already knew Henderson before the crime, from childhood, school, and online. His previous knowledge of Henderson before seeing the picture was highly reliable, which shows that the one-photo ID did not affect Moody’s original identification of Henderson even if it was suggestive. Plus, the length of time, time of day, and physical proximity of Moody’s encounter with Henderson all indicate that Moody’s identification of Henderson was reliable.



**Keep in mind:** Any type of police-led identification will always have some level of suggestiveness to it. To combat that problem, always try to have the victim give as many specific details of the suspect as he can, if able. Those details will help you decide what type of identification procedure would best suit your case in getting a reliable ID. And if the victim at least knows of the suspect, you may be able to use a single-photo identification in your case.

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

### ***State v. Johnson* — Eighth District Court of Appeals (Cuyahoga County), March 29, 2012**

**Question:** Can a police dispatch call provide the probable cause needed to justify a warrantless entry of a home?

**Quick answer:** Yes, if the call reveals that exigent circumstances exist.

**Facts:** On Nov. 16, 2012, police received a dispatch call that someone fired shots from an AK-47 assault rifle in a duplex apartment and that a person had been shot inside the residence. Police learned that defendant Larry Johnson was a possible suspect and that a brown Oldsmobile might be involved in the crime. Police officers arrived, surrounded the duplex home, and spoke with Johnson's downstairs neighbor. She explained that she recently saw Johnson run from a black car and head upstairs. Police headed upstairs, where they heard noises inside the apartment and saw a light turn on. However, no one answered the door when they knocked. The dispatcher then reported that a dead body was inside the home along with drugs, so the officers forcibly entered the home and secured the scene. Johnson and two other men were inside. No one was injured, and no dead bodies or assault rifles were found. The officers smelled marijuana, and Johnson admitted he had smoked marijuana and also possessed marijuana. He consented to a search of his home. Police found marijuana, crack cocaine, powder cocaine, drug paraphernalia, and a gun.

**Why the case is important:** The officers were justified in making a warrantless entry into Johnson's home. The many dispatch calls they received established probable cause for the entry based on exigent circumstances. It considered a number of factors in deciding that exigent circumstances were present: "(1) the gravity of the offense; (2) that the suspect is reasonably believed to be armed; (3) probable cause that the suspect committed the crime; (4) a strong reason to believe that the suspect is in the premises being entered; (5) a likelihood that the suspect will escape if not swiftly apprehended; (6) that the entry is made peaceably; and (7) the time of entry."

In Johnson's case, because officers worried that someone might be dead or dying inside the apartment, they chose to force their way in without a warrant. Their actions were justified by the exigent circumstances warrant exception. The warrantless search of Johnson's apartment also was justified under the warrant's consent exception. The officers didn't search Johnson's apartment until after they had smelled marijuana, read Johnson his *Miranda* rights, and then read and had him sign a consent form.

**Keep in mind:** It's always best to first get a search warrant before entering someone's home, but sometimes you aren't able to. If you reasonably believe that a person's life or safety is at risk or that a suspect is destroying evidence of felony crime, then you can make a warrantless entry into the home without worry of violating the Fourth Amendment, even if you later find out that some of the information wasn't true.

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

### ***State v. Eal*— Tenth District Court of Appeals (Franklin County), March 29, 2012**

**Question:** (1) When you get a warrant for child pornography, do you need to attach images? (2) Does a search warrant for digital evidence become stale when there are months between the alleged crime and the warrant’s issue date?

**Quick answer:** (1) No. However, you should be as specific as possible in describing the content of the images so it is clear they are contraband. (2) No. Digital evidence tends to be persistently kept, so a search warrant can be issued months after a transaction.

**Facts:** On Sept. 7, 2009, a Franklin County task force received a “cyber tip” from the National Center for Missing and Exploited Children (NCMEC) that an IP address registered to defendant Nathan Eal’s house had uploaded 14 files of possible child pornography to the Internet. The images had been uploaded in April, almost five months earlier. The NCMEC forwarded a disk with copies of the uploaded images. Then, on Sept. 14, 2009, the task force received another tip from the Seattle, Wash., Police Department, explaining that a Yahoo account holder using Eal’s IP address had uploaded potential child porn photos to a website. One of the task force’s members reviewed the images to confirm they were child porn under the Ohio Revised Code’s definition. That same day, the task force used both tips to obtain a search warrant of Eal’s home to seize all computers in the residence. The warrant affidavit described the photos as “young preteen boys who were in various stages of undress.” On Sept. 16, the task force executed the warrant and interviewed Eal during the search. Eal’s personal computer was seized, and a later forensic search revealed images of child pornography that confirmed the two tips. Eal was charged with multiple counts of pandering sexually oriented material involving a minor.

**Why the case is important:** The court found that, although a “close call,” the task force’s warrant affidavit established probable cause. Even though the images were not attached to the affidavit, and the description of the photos caused the magistrate to subjectively decide if they were actually “child pornography,” the totality of the circumstances showed that probable cause existed. The warrant affidavit also included (1) two separate tips from separate agencies that child porn was being uploaded from Eal’s IP address; (2) the account names of the individual who uploaded the images, “luvsboys69” and “blpicmaster”; and (3) the task force’s experience that suspects who collected child pornography typically kept the porn on digital media for a lengthy amount of time. Plus, the fact that the task force called the images “child pornography” also helped establish probable cause because it doesn’t take an expert to recognize it.

Next, the court held that the task force’s warrant was not stale under the circumstances. Although at least five months had passed since the images were uploaded to the Internet, staleness has to do with more than the amount of time between the alleged crime and warrant’s issue date. Other things to consider are the character of the crime, the criminal, if the items to be seized are perishable, the place to be searched, and whether the incident is isolated or an ongoing criminal activity. In Internet child porn cases, these factors are closely related, and technology’s capabilities also play a role in deciding if a warrant is stale. Conduct involving child porn is continuing in nature. Plus, technology allows for a large amount of digital media storage. The task force had evidence that the crime was ongoing, with two separate tips involving different instances a month apart. Also, the task force

explained that child porn collectors tended to keep their images for long periods of time, which created a probability that the images were still located on a computer in Eal's home at the time the task force got the search warrant.

**Keep in mind:** When drafting a warrant affidavit to search a computer for digital images, remember to be as specific as possible in your descriptions to eliminate any later challenges to the warrant. Digital media is more difficult to specifically describe, so you should try to collect other evidence to include in the affidavit, if possible.

However, one benefit to searching digital media is that the chances of your warrant becoming stale may be reduced. Crimes involving digital technology allow for a massive amount of information to remain on a computer for long periods of time. So your warrant may not be in danger of becoming stale even if there are months between the alleged crime and the issue date on the warrant. That being said, you still must be diligent in executing a warrant in as timely a way as possible, no matter the crime.

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