



Ohio Attorney General's Law Enforcement Bulletin



May 2013

AG provides districts with school safety videos

School districts across the state have received a training video on school safety developed by the Attorney General's Ohio Peace Officer Training Academy (OPOTA) and intended to arm administrators, teachers, and school employees with knowledge should they ever face a school shooting crisis.

The video, "School Shootings: How to be Aware, Prepare, and be a First Responder in a Crisis," was sent to all Ohio school districts in April. It is identical to the in-person training that OPOTA began offering to educators around the state in January. Dozens of trainings have been held, drawing more than 4,000 participants. About 40 more sessions are scheduled before the end of the year.

"Quite frankly, I hope it's knowledge no one in Ohio will ever have to use from this day forward," Attorney General Mike DeWine said. "But the reality is, if there's a school shooting, teachers, principals, janitors, and others who work in that school become first responders. Our goal is to help them plan, train, and prepare with the help of local law enforcement partners."

The in-person training and video highlight what authorities have learned about shooters in prior incidents, such as those at Chardon High School, Columbine High School, and Virginia Tech University. The course also covers how to identify potential threats and reduce the danger of deadly escalation, how to school administrators and law enforcement should coordinate in the face of a real-time threat, and most importantly, how to save lives.

Attorney General DeWine encourages law enforcement and school personnel to coordinate when attending the course or showing the video.

Dave Phalen, who is in his 13th year as Fairfield County's sheriff, said although law enforcement is knowledgeable about many of the concepts discussed in the training, his deputies gained insight into warning signs of troubled students and benefited from talking with school officials. He encouraged law enforcement around the state to "take time out to be part of this."

"We all came away with a better understanding of the profiles of some of the people who historically have been responsible for school shootings," he said. "It also helps to build relationships."

Phalen's department has been involved in the development of school safety plans in his county, and the collaboration is valuable, he said, adding, "I think we'll be seeing more of that in the future."

Law enforcement officers and educators can contact OPOTA with questions about the video or in-person training by e-mailing AskOPOTA@OhioAttorneyGeneral.gov or calling 740-845-2700.

Two clips from the training video can be seen below:

[School Shootings: How to be Aware, Prepare, and be a First Responder in a Crisis: Ohio Attorney General Mike DeWine](#)

[School Shootings: How to be Aware, Prepare, and be a First Responder in a Crisis: James Burke](#)

Workshops Cover Tools, Trends in Fraud Investigations

The Ohio Attorney General's Office will offer several workshops during this year's Emerging Trends in Fraud Investigation and Prevention Conference, set for June 3-4 at the Hilton Columbus at Easton. The annual conference is presented by the Ohio Auditor's Office.

Participants will hear from highly trained anti-fraud specialists who will share the most up-to-date tools and current trends for detecting and preventing fraud.

Workshops presented by the Attorney General's Office include:

- Multijurisdictional Fraud Cases
- Detecting Vendor Collusion and Fraud in Public Contracting
- Case Study of Augustine Kotee
- Utilizing Analytical Products to Enhance Your Case
- The BCI Teamwork Approach
- Ohio Casinos: A View from the Ohio Casino Control Commission Enforcement Division
- Interview and Interrogation

Those interested in participating can register at <http://www.ohioauditor.gov/conferences/default.htm>.

Missouri v. McNeely, U.S. Supreme Court, April 17, 2013

Question: Does the natural dissipation of alcohol in a drunk driver's bloodstream *always* create circumstances that allow officers to require a blood draw without a warrant or consent?

Quick Answer: No. The mere fact that alcohol dissipates from the bloodstream does not automatically justify a warrantless blood draw.

Facts: An officer patrolling the highway stopped Tyler McNeely for speeding and repeated lane violations. The officer observed that McNeely had red eyes, slurred speech, and an odor of alcohol on his breath. McNeely admitted to consuming alcohol earlier that evening. The officer had him step out of the vehicle to perform field sobriety tests (FSTs). McNeely had an unsteady gait as he stepped out of his car, and he performed poorly on the FSTs, so the officer asked him to take a preliminary breath test. When McNeely refused, the officer arrested McNeely for drunk driving. En route to the police station, McNeely again told the officer that he refused to take any breath test, so the officer changed his mind and took McNeely to the hospital to get blood drawn.

When they arrived at the hospital, the officer asked McNeely for consent to take a blood sample, and McNeely refused, even after the officer read McNeely the state's implied consent law that could prompt a one-year license suspension. The officer directed a lab technician to draw blood, and McNeely's blood alcohol concentration (BAC) measured at .154 percent, well above the legal limit. McNeely was charged with driving while intoxicated, and he moved to suppress the blood test results based on the warrantless blood draw.

Why this case is important: The Supreme Court held that it would not create a categorical rule that exigent circumstances *always* exist in drunk driving investigations. Instead, the court said it depends on the totality of the circumstances in each case.

In routine drunk driving investigations, the natural dissipation of alcohol in the bloodstream alone isn't enough to be considered an "exigent circumstance." Plus, destruction of evidence of a person's BAC is different than other destruction-of-evidence cases, such as those involving drugs, because a person's BAC isn't easily disposable. It metabolizes in the bloodstream in a gradual and somewhat predictable way. Also, because it takes time to transport a typical OVI suspect to a medical professional, regardless of whether a warrant is obtained, it is difficult to argue that there is an exigent circumstance that prevents an officer from getting a warrant.

In 1966, the Supreme Court held in *California v. Schmerber* that a warrantless blood draw was constitutional based on exigent circumstances, but *Schmerber* was very fact-specific. And the facts in that case are different than what happened here. In *Schmerber*, the suspect had been injured in a car crash and rushed to the hospital. Officers stayed at the crash scene to investigate and later traveled to the hospital. Because so much time had passed at that point, exigent circumstances supported the decision to take the suspect's blood without a warrant or consent. Those circumstances didn't exist in *Missouri v. McNeely*. The officer was conducting a routine drunk driving investigation in which no injuries or crash scene processing would have significantly delayed the officer from obtaining a warrant. Plus, in the 47 years since *Schmerber* was decided, officers are able to obtain warrants quicker.

Keep in mind: During a drunk driving investigation, whether you can take a blood sample from the suspect is going to depend on the facts and circumstances of your case. The Supreme Court says it loud and clear: There's no *per se* rule permitting law enforcement to draw blood without a warrant or consent during a drunk driving investigation. You need additional facts to exist, such as in *Schmerber*, that would justify the warrantless draw. Therefore, when you are able, you should get a warrant for the blood sample.

Visit the [U.S. Supreme Court's website](#) to view the entire opinion.

United States v. Rose, U.S. Sixth Circuit Court of Appeals, April 18, 2013

Question: Is a warrant to search premises sufficient if it does not link the address to be searched with the crime or suspect?

Quick Answer: No. In order to establish probable cause, an affidavit for a search warrant should explicitly link the suspect or crime with the address.

Facts: Officers received information that Kenneth Rose sexually abused minors and had shown them pornographic images on the computer in his bedroom. The officers obtained a warrant listing Rose as the suspect, and indicating that the name "Rose" appeared above apartment #1. And it listed 709 Elberon Ave. as the address to be searched. However, the warrant did not say that Rose lived at 709 Elberon Ave., or that any criminal conduct occurred at that address. The court determined that because the warrant did not explicitly link Rose or the crime with 709 Elberon Ave., there was no probable cause to search 709 Elberon Ave.

The court ultimately denied Rose's request to suppress the evidence on the good-faith exception. The good-faith exception allows an officer to rely on a search warrant issued by a neutral judicial officer as long as the warrant is not patently illegal. The court found that the good-faith exception applied because, "rather than fears of police misconduct, this case merely raises the concerns about sloppiness in drafting affidavits within" the police department.

Why this case is important: Although the good-faith exception saved this case, you never want to rely on a court ruling that you acted in good faith. Instead, you need to be careful and conscientious about the information you provide when you get a warrant. When you are looking to search a home, it is especially important that you directly link the home with the crime or the suspect.

Keep in mind: It's easy to assume links based on information you know. The court recognized that the officer in this case probably quickly discovered Rose's address during the course of the investigation. But courts are confined to look only at the information contained in the affidavit and the warrant. Here, although it seemed obvious that Rose *probably* lived at 709 Elberon Ave., there was no actual information that he did.

Visit the [U.S. Sixth Circuit Court of Appeals](#) website to view the entire opinion.

State v. Maddox, Eighth District Court of Appeals (Cuyahoga County), April 18, 2013.

Question: If a suspect opens his door when officers knock, can the officers enter the home and arrest the suspect without a warrant?

Quick answer: No. An officer who enters a home without a warrant in order to arrest a suspect violates the suspect's constitutional rights.

Facts: Adrian Maddox was stopped by an officer in the area of a reported break-in. Although he was questioned by the officer, he ultimately was released because there was nothing to link him to the crime. Later, when the police reviewed video surveillance of the break-in, they saw that the suspect wore clothes similar to the ones Maddox had been wearing. Three days later, officers went to Maddox's building to arrest him, without a warrant. Maddox opened his door when the officers knocked, but then did not respond to their question about whether he was alone, other than to look over his shoulder. The officers placed Maddox under arrest inside his apartment because Maddox had stepped back into his hallway. They then searched the apartment and discovered additional evidence.

The court found that the officers breached the sanctity of Maddox's home by entering his apartment and placing him under arrest without a warrant.

Why this case is important: Some courts have held that when a person voluntarily exposes themselves to arrest (that is, by opening their door to police), a warrant is not necessary to enter and arrest. However, the Eighth District disagreed, particularly under the facts of this case. Here, the officers were in plain clothes and did not announce themselves as officers when they knocked. So, a reasonable homeowner in Maddox's situation would not have known he was opening the door to police in the first place.

But more importantly, the court determined a person is not consenting to allow an officer to enter his house and arrest him even if he knows there are police on the other side of the door. The court noted that most people will open their door to the police, but that does not mean they are consenting to the police entering.

Keep in mind: The court in this case agreed that there was probable cause to arrest the suspect, but found that the officers nonetheless violated the Constitution by entering the suspect's house without a warrant. When deciding how to approach a warrantless interaction, you should try to imagine yourself in a similar situation. For example, if a salesman knocked on your door, you might open it, talk with the salesman briefly, and close the door to terminate the conversation. This is, essentially, what a knock-and-talk is. But if the salesman stepped into your house without your permission (as the officers did here), you would probably consider him an intruder. So, if you are doing something different than what a common homeowner would expect in a normal civilian interaction, you should get a warrant.

View the [Ohio Eighth District Court of Appeals website](#) to view the entire opinion.

State v. Hullum, Eighth District Court of Appeals (Cuyahoga County), April 11, 2013

Question: Can an agency search containers inside an impounded vehicle as part of an inventory search?

Quick Answer: Yes, but only if the agency has a *specific* policy that deals with searching containers inside vehicles.

Facts: Dominique Hullum was arrested for a hit-skip, and his vehicle was impounded. Prior to towing the vehicle, the officers conducted an inventory search. Upon opening the trunk, they discovered a backpack. They opened the backpack and discovered oxycodone, a bag of marijuana, and drug scales. Hullum then was indicted on drug trafficking charges. Later, the arresting officers testified that it was the policy of the agency to search the contents of an impounded vehicle, including all closed containers. At trial, the state admitted into evidence the agency's written policy that "an inventory of the contents" of vehicles will be made whenever they are impounded.

The Court of Appeals concluded that the policy was insufficient to authorize the search of closed containers in vehicles and the drug evidence should have been suppressed.

Why this case is important: In order to satisfy the Constitution, an inventory search must be done in good faith and in accordance with a reasonable standardized procedure or established routine. Further, if a closed container is to be searched, the standardized procedure must include specific policy dealing with closed containers.

In this case, the agency's written policy dealt only with general searches, not with closed containers. Even though the impounding officer testified that they always searched closed containers, there was no specific agency policy requiring or regulating it.

Keep in mind: Check your agency's policy on inventory searches. If it does not specifically mention closed containers (or if you do not have some other articulable policy on closed containers), a search

of a closed container could result in suppressed evidence. If your agency wants to search closed containers during inventory searches, it should have a specific policy allowing it to do so.

View the [Ohio Eighth District Court of Appeals website](#) to view the entire opinion.

State v. Baker, Third District Court of Appeals (Allen, Auglaize, Crawford, Defiance, Hancock, Hardin, Henry, Logan, Marion, Mercer, Paulding, Putnam, Seneca, Shelby, Union, Van Wert and Wyandot counties), April 29, 2013

Question: After a suspect invokes his right to counsel under *Miranda*, can an officer initiate conversation with the suspect without additional *Miranda* warnings?

Quick Answer: No. When a suspect invokes his right to counsel, all interrogation must cease.

Facts: Travis Jay Baker was indicted on multiple charges, assigned counsel, and incarcerated in jail pending his trial. The detective on the case visited Baker in the jail and attempted to question him. However, Baker repeatedly invoked his right to counsel. The detective continued to press Baker to cooperate and speak to him, but Baker continued to refuse. Eventually, the detective turned off his tape recorder — presumably ending the interrogation — but he kept talking to Baker in hopes Baker would talk. Baker eventually incriminated himself.

The court found that the continuing conversation — which the detective initiated — violated Baker’s constitutional right against self-incrimination and found the statement should have been suppressed.

Why this case is important: *Miranda* is difficult to master and full of pitfalls for officers.

In this case, the detective said, “Look, you know, if you change your mind and you want to talk, let us know. We’re just trying to figure out if somebody else was involved” and “I know you feel bad.” Many officers would not consider this “questioning” or “interrogation” that required additional *Miranda* warnings. However, what an officer thinks of as “just having a conversation,” a court may well see as a subtle continuation of an interrogation.

Keep in mind: The U.S. Supreme Court has said that once a suspect invokes his right to counsel, a valid waiver of that right cannot be established by showing only that he responded to further police-initiated custodial interrogation even if he has been advised of his rights. In other words, when a suspect asks for his attorney, nothing he says after that is admissible unless 1) he initiates the conversation without police prompting, or 2) he expressly waives his right to counsel.

View the [Ohio Third District Court of Appeals website](#) to view the entire opinion.

State v. Allen, First District Court of Appeals (Hamilton County), April 16, 2013

Question: Can an officer pre-sign and date blank complaints and have another officer fill in the facts later?

Quick Answer: No. Officers must follow Criminal Rule 3 and have their complaints made under oath.

Facts: An officer working an undercover vice operation signed a batch of blank complaints and then began her shift posing as a prostitute. When she was solicited for sex by Keith Allen, he was arrested and a different officer filled in the complaint. When the pre-signing practice came to light during trial, Allen moved to have the case dismissed under Criminal Rule 3.

The court held that Criminal Rule 3 requires all complaints to be made under oath. In Ohio, a complaint is made under oath if the party signing the complaint reviews the complaint to ensure its accuracy, and if the complaint is *then* signed by both the officer and the witness. Because the officer in this case signed complaints that were blank, she could not have ensured their accuracy before signing.

Why this case is important: Under the Criminal Rules, when a complaint is not made under oath, the court lacks subject matter jurisdiction. This case went all the way through a trial and the conviction was overturned on appeal solely because of when the complaint was signed.

Keep in mind: Although it may seem more efficient to pre-sign complaints, doing so violates the Criminal Rules. It doesn't matter who fills in the complaint, but the person who signs it should review the complaint for its accuracy before signing it.

View the [Ohio First District Court of Appeals website](#) to view the entire opinion.

State v. Dukes, Second District Court of Appeals (Champaign, Clark, Darke, Greene, Miami and Montgomery), April 26, 2013.

Question: Can an officer pull over a vehicle for being on a "tow-in" list for unpaid parking tickets because he has been ordered to do so?

Quick answer: No, not unless there is some other criminal activity afoot.

Facts: The city of Dayton issued a directive that if officers encountered a vehicle that had two or more unpaid parking tickets assessed to it, they could stop and tow the vehicle. Following this directive, an officer ran the plates of a vehicle that Edward Dukes was a passenger in, discovered that it had three unpaid parking tickets assessed to it, and stopped the vehicle. Upon stopping the vehicle, the officer noticed that there were open containers of alcohol in it and removed both occupants. The officer went to remove the bottles and discovered a small bag of crack cocaine. Dukes was charged with possession.

The court held that the executive order was not a sufficient basis to stop a vehicle. It noted that parking tickets are civil infractions, not crimes and that the officer observed no criminal activity.

Why this case is important: The officer here was doing exactly what he was required to do, but nonetheless violated the Constitution. As the court noted: “The protections guaranteed by the Fourth Amendment cannot be altered by means of an Executive Order issued to police department personnel.” In other words, although the officer was following his agency’s policy, the policy itself was unconstitutional.

Keep in mind: The Constitution protects citizens from unreasonable government interference. It is a check against the power of the state. In this case, the officer had no reason to believe his stop was unlawful, as he was relying upon the validity of a directive from his agency. If you find yourself in such a situation, you should consider trying to develop an independent basis for reasonable suspicion to stop a suspect.

View the [Ohio Second District Court of Appeals website](#) to view the entire opinion.