



# Ohio Attorney General's Law Enforcement Bulletin



**November 2014**

## **Don't give up: Assisting the reluctant domestic violence victim**

He remembers the day the police came to his house after his dad beat his mom. The officers told his dad to leave and cool down. At only eight-years-old, he remembers wondering how he was going to protect his family when the police left. That day he decided to become a cop.

And Annie Murray remembers him. Murray, director of the domestic violence and stalking unit at the Columbus City Attorney's Office, heard this story from one of the police recruits she taught in her class on domestic violence. "In every class we have several recruits inform us, sometimes in front of the class, but usually in private, that they are survivors [of domestic violence]," she said.

For many victims, domestic violence leads to personal shame, destroys hope, and fosters a sense of worthlessness. It becomes a trap, a lifestyle like a broken record constantly skipping over the same track.

Law enforcement officers who have witnessed the cycle of domestic violence may often wonder why someone would stay in a relationship that perpetuates that cycle. "It is so easy to be frustrated with the victim if you don't understand where they are in the cycle," stated Sandy Huntzinger, victim services coordinator with the Ohio Attorney General's Crime Victim Services Section.

That's why it's hard to understand how a battered victim can go from begging for your help to recanting — from "please help me," to "it was my fault, don't arrest him," right in front of you. It makes you wonder why they called in the first place if they don't want your help. Huntzinger suggests that it is because the victim sees that 911 call differently than you. "When law enforcement is called out on domestic violence, their job is to make an arrest. The victim, however, may be looking for intervention from the officers, not removal of the abuser," she explains. In other words, law enforcement tries to prevent future crime, but the victim is more focused on ending the violence at that moment.

A common question raised is why do victims stay in abusive relationships? Amanda\*, a victim of domestic violence shared, "There is apparently a common thought that those who are abused stay because they are 'in love'. [Victims] take a lot of blame from others for the abuse — being [thought of as] 'stupid' or 'weak' because they didn't leave."

Amanda was a victim of both mental and physical abuse. She stayed "because he slowly and passively broke me down, isolated me before the violence, and threatened my well-being and those closest to me. By the time I realized the trouble I was in, I saw no safe way out."

Amanda is the kind of person one might expect to leave. She is a young professional, financially independent, and has no children depending on her to stay. She still found it difficult to leave.

By contrast, many victims are financially dependent on their abusers or terrified for their children. Victims with little money may not have a place to go or a way to sustain their family. When this happens, the prospect of the abuser going to jail — and losing the financial support the victim needs — can be more intimidating than staying with the abuser. “When the partner goes to jail, it disrupts the victim’s life, impacting things like finances, transportation, and child care,” stated Huntzinger.

Law enforcement officers are not social workers and can’t make every victim see that he or she should leave. But you can choose not to give up on any of them, no matter how many times they recant or go back to their abuser. Whether or not you can make an arrest, there are several ways to help victims.

First, let the victim know there are people on the outside paying attention. It may be that the interview is the only time the victim tells the story, making you the only person to ever hear it. “Of course, law enforcement officers are not psychologists or counselors, but sometimes they are the only outside contact an abused person might have to get help,” said Amanda.

Huntzinger shared that one of the officers she regularly works with “tells the perpetrator, in front of the victim, that he believes the perpetrator did in fact harm the victim. Then he tells the victim, in front of the perpetrator, that they don’t deserve to be treated in that manner.” By making a statement like this, it reinforces that someone on the outside does care.

Second, ask probing questions when talking to the victim. “Remember, the victim may be at the peak of trauma when you arrive and is unable to clearly articulate what happened,” said Huntzinger. “Give time for the context of the situation to be revealed.” Asking more questions of the victim also sends a message to the abuser that you are interested in finding out more. Even though an arrest may not happen that particular day, they are put on notice you are watching.

Third, involve a victim advocate. “It is an advocate’s job to be the social worker, connect the victim to resources, help develop a safety plan, and figure out where the victim is in the process,” shared Huntzinger. Every county has a victim witness advocate program. Get business cards from advocates and pass them out to victims. Even if they are not ready to call, they’ll have the number when they are. “The sooner a victim works with a victim advocate, the faster they can get out of the cycle of abuse,” added Murray.

Lastly, get trained about domestic violence (DV). Staying up-to-date on legal changes, tactical response, and resources available in the community will help you protect yourself and provide assistance to a victim. By understanding the cycle of violence and providing resources for assistance, you could save a life.

As law enforcement, just by showing up you may be a victim’s best hope for survival. Murray recalled when one recruit came up after training and told her, “You guys put my dad in jail for DV. That gave me and my mom time to get away. You saved me.”

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## Proper Protocol (Warrant Affidavit: Trash Pulls and Stale Information): *State of Ohio v. Goble*

**Question:** Have you established probable cause for a search warrant by only the mention of one trash pull and information from several years ago?

**Quick Answer:** No. Facts that are stale and/or are not corroborated do not establish probable cause for a search warrant.

### [State of Ohio v. Goble](#), Sixth Appellate District, Huron County, Sept. 12, 2014

**Facts:** In July of 2013, law enforcement executed a warrant to search the residence of Eddie Goble finding containers of marijuana leaves and seeds, pipes, and a hidden room with marijuana growing material. The warrant was based on alleged marijuana cultivation and trafficking. No plants were discovered.

The search warrant was based on two sets of facts. First, in 2010 a knock and talk was performed at Goble's residence. Goble gave officers consent to search his home. Marijuana and grow equipment were seized. Goble told law enforcement that he would continue to grow for his own personal use. No charges were filed as a result of this seizure. Second, in July of 2013, law enforcement received an anonymous complaint about a possible grow operation at Goble's residence. The next day a trash pull was done from the curb of Goble's home. Inside, law enforcement found marijuana stems, marijuana roaches, and a prescription bottle with Goble's name and address.

Following the search warrant, Goble filed a motion to suppress. He argued that the warrant lacked probable cause based on the single trash pull and information from 2010.

### **Importance:**

**Stale Information:** An affidavit for a search warrant must be based on probable cause and present timely information. The key question is whether your facts get to the conclusion that the thing you are searching for is probably at the location—right now. Although there is no time when information becomes stale, the older the information is, the more it must relate to or corroborate a recent event. Whether information is stale depends on the nature of the crime, the criminal, the thing to be seized, and the place to be searched. In this case the affidavit provided 3-year-old information that was neither related to nor corroborated a recent investigation. The statements made three years prior, although about the same topic, did not provide probable cause that there was a current grow operation happening in the residence. As a result, the information was stale and did not provide probable cause for the warrant.

**Single Trash Pulls:** A single trash pull is not sufficient when it is the only evidence offered for probable cause. Trash pulls are, however, a legitimate means to corroborate statements made by informants and prove illegal activity. In this case, the single trash pulled was not offered as corroboration, but as the probable cause. Without also providing sufficient documentation, evidence of investigation, or evidence of a controlled drug-buy, the single trash pull was insufficient to establish probable cause.

Consider the following cases on single trash-pulls:

- **Single Trash Pull Suppressed:** A single-trash pull was performed at the home of Lauren Jones, a suspected methamphetamine manufacture, and empty chemical bottle, plastic tubing, used coffee filters, and a plastic bottle containing methamphetamine oil were found. Based on this, a warrant was issued to search the home, uncovering more evidence of a meth lab. The court ultimately suppressed the evidence finding the single trash pull did not establish probable cause because there was no supporting evidence;

such as surveillance of the house, additional trash pulls, or details about the usage, trafficking or other circumstances of drug activity at the home. The contraband recovered from the trash, while evidence of recent criminal activity, did not necessarily show the probability of presence of methamphetamine in the home. [State of Ohio v. Jones](#), Eight Appellate District, Cuyahoga County, Nov. 7, 2013

- **Single Trash Pull as Corroboration:** A single trash-pull finding two large marijuana stems was probable cause for a warrant, but only when offered as corroboration to the facts that a concerned neighbor made a complaint about a possible drug growing operation and that an officer's investigation of high home energy usage indicated a drug grow operation at the residence. The trash-pull was considered as part of the totality of the circumstances to establish probable cause for the warrant. [State of Ohio v. Swift](#), Twelfth Appellate District, Butler County, May 12, 2014

**Keep in mind:** You probably know that the good-faith exception allows evidence to come in when it has been obtained by an officer who had an objectively reasonable belief that the warrant was good even though the warrant was later found to lack probable cause. The key part of this exception is the phrase "objectively reasonable belief". In this case, the court determined the information from three years prior and a single trash pull would not be reasonable for any officer to rely on as probable cause, especially when the affidavit lacked detail, evidence of investigation, and did not support the search outlined. Here, the exception did not apply. In essence, the court said that for this warrant, no well-trained, reasonable officer could rely on it. You certainly don't want to be on this side of a court opinion. Remember to investigate through several methods (informants, tips, trash-pulls, independent research, drug-buys, etc.) not just one. And, fully detail your investigation in your affidavit, carefully linking evidence to show why the thing you want is in the location to be searched—right now.

### More on Proper Protocol

**Toledo Municipal Court Warrants are Unconstitutional:** On November 4, the Ohio Supreme Court issued its opinion in *State v. Hoffman*, examining the practice of the Toledo Municipal Court and how it issues arrest warrants. [State v. Hoffman](#), Slip Opinion No. 2014-Ohio-4795, Nov. 4, 2014.

The Ohio Supreme Court determined that for 17 years the procedure used by the Toledo Municipal Court was unconstitutional because magistrates failed to make probable cause determinations before issuing warrants. Although the court found the procedure of the court was unconstitutional, it determined that the exclusionary rule applied to cases where the warrants were already executed.

Local authorities have shared that the policy and procedures for the issuance of arrest warrants changed on September 7, 2012, and they believe warrants issued on or after that date are constitutionally valid. Therefore, any warrant issued by the Toledo Municipal Court between at least 1995 to September 6, 2012, must be verified by the Toledo Municipal Clerk of Courts to determine if a probable cause determination occurred.

Please contact the Toledo Municipal Court or your local legal counsel prior to making an arrest or stop based on warrants issued before September 7, 2012. For more information see: [Court Must Find Probable Cause Before Issuing Arrest Warrants](#), Ohio Supreme Court News, Nov. 4, 2014; [Toledo Municipal Court Website](#)

**16-year-old with priors can waive *Miranda*:** You apprehend a teenage suspect who was thought to be involved in a felonious assault, kidnapping, and several robberies. He is taken in for questioning, given *Miranda*, and waives his rights. The suspect, who has past involvement with the system, never asks for a

parent during the two-hour interview. He admits to being involved in the robberies and takes you to an abandoned house where stolen items are discovered. Was the confession given voluntarily and intelligently even though the suspect was a child? The court in *Anderson* says yes. Rickym Anderson was 16-years-old with prior experience with the criminal justice system. When giving *Miranda* the officers explained each right to him, and he confirmed he understood. The interview itself was short, and the officers would have given breaks if Anderson asked. The court determined the waiver was valid given these factors. As a note, Ohio law also does not require a parent or guardian be present during the custodial interrogation of a minor, but the court can look at this fact to determine if the waiver of *Miranda* was valid. [State of Ohio v. Anderson](#), Second Appellate District, Montgomery County, Sept. 26, 2014.

**K-9 Alert—drugs or dog food?** While on patrol you notice a motorhome traveling an unsafe distance behind a semi-truck and make a traffic stop. The driver and passenger explain they are traveling across the country to play roller derby. Both are very nervous. They give you the motorhome rental agreement showing a rental cost of \$5000.00 from a Nevada company. Suspicious of the story and high price of the rental, you call for the canine unit. The canine arrives 14 minutes later and quickly alerts on an external side compartment of the motorhome. You search the compartment to find a partial bag of dog food and other items. You then search the interior and find 195 pounds of marijuana. Did you have probable cause to search the interior of the motorhome? The court in *Cruz* said yes. Although the external compartment where the dog alerted did not contain contraband, the alert did provide probable cause to search the interior because the dog would only alert to narcotics, not to dog food. If a trained narcotics dog alerts to the odor of drugs from a lawfully detained vehicle, an officer has probable cause to search the vehicle for contraband. The false location of the alert could have been produced by the direction of the wind or the location where the drugs were hidden inside. [State of Ohio v. Cruz](#), Twelfth Appellate District, Preble County, Sept. 29, 2014

### **Search & Seizure (Mistaken Identify, Common Authority, and Consent to Search): *State of Ohio v. Portman***

**Question:** Is consent from a third-party valid if they lie about their identity resulting in your mistaken belief that they have authority to give the consent?

**Quick Answer:** Maybe. If the information you are given by the person seems reliable and leads you to the reasonable conclusion that they are able to give actual consent to search, then your reliance on their information is justified, even if they are lying.

[State of Ohio v. Portman](#), Second Appellate District, Clark County, Sept. 26, 2014

**Facts:** A female escort was repeatedly raped in the basement of a clothing shop owned by Duane Portman. She identified Portman as the perpetrator alleging he threatened her with a gun. At one point there was a scuffle and she grabbed his gun, shooting in Portman's direction as she ran away. She then went to the hospital. Later that evening Portman drove himself to another hospital with a gunshot wound to the face. His injuries drew suspicion in light of the reported sexual assault and shooting. When Portman's girlfriend arrived at the hospital she identified herself as his "wife" and gave police permission to search "their" vehicle and "their" business—even giving officers a set of keys to open the clothing shop door. Portman also identified the girlfriend as his wife to hospital staff so she was allowed to visit in his room. Upon search of the store and car, blood was found in both locations, with a handgun in plain view in the basement of the store. Based on this, officers obtained a warrant to search the vehicle and business.

Portman alleges the evidence should be suppressed because the girlfriend lacked authority to give consent.

**Importance:** Consent to search can be obtained from the individual who owns the property or from a third-party who has common authority over the property—actual ownership/authority is not necessary. Common authority means the third-party has joint access, control, or mutual use of the property. A person with common authority can consent to a search in areas they control or are common. Even if the officer erroneously believes a third-party is authorized to give consent, the consent is valid if the officer could reasonably conclude that the third-party had apparent authority to consent. Here, the officers were dealing with a woman who claimed she was married to Portman and had joint ownership of the business and car. She also produced keys to the business. Based on these facts, reliance on the girlfriend's representations was reasonable and the consent was deemed to be authorized.

**Keep in mind:** The determination about whether or not the person has common authority is one of objective reasonableness. In other words, the reasonableness of your determination is judged against what an objective officer would believe under the same facts. In this case, the officers were told by Portman and the girlfriend that she was his wife. She also had keys and referred to the property and vehicle as "ours". A reasonable officer in the same situation would believe she had the authority to consent. In fact, most of the officers dealing with the situation believed she was his wife and documented that fact in the reports.

**Another Look:** Consider the following cases addressing the question of common authority and consent to search:

- **Ex-girlfriend with a key and personal items in residence is a close call:** John Bump was accused of sexually abusing two children. One child was the son of live-in-girlfriend Lora Carmen. Carmen kept all of her possessions in the home and shared joint access to the computer. When Carmen learned of the allegations she stopped sleeping at his residence and moved some of her personal items out. The police then called Carmen to obtain her permission to search the residence. She agreed, explained the current living situation, and met the officers at the residence. At no time did she tell officers she had permanently moved out. Carmen unlocked the door and let the officers into the residence. The computer and other evidence were seized. The court determined it was a close call whether the police had a reasonable belief that Carmen had authority over Bump's residence at the time of the search. Ultimately, the court determined that possession of the key to the residence and the fact she still had items there were major factors in showing authority over the property. As a result, her consent was valid. [State of Ohio v. Bump](#), Third Appellate District, Logan County, Mar. 18, 2013

- **Estranged girlfriend gives consent for a general search, reasonable to include examination of specific items:** Police responded to a call on an alleged shooting, taking Bobby Lee Roberts into custody. Upon entering the home, the officer detected the odor of gunpowder, saw a .40 caliber casing on the floor, and an apparent bullet hole in the wall. The officer asked the victim, Robert's girlfriend, where the guns were kept in the house. She showed him a closet in the bedroom and asked the officer to remove all the weapons. The officer searched the closet finding a number of firearms, as well as a cigar box that contained drug paraphernalia. Roberts argued his estranged girlfriend was not able to give valid consent to search the cigar box, even if the closet was considered "common". The scope of a search is generally defined by its expressed object and in this case the girlfriend testified that she specifically gave the officer permission to search for guns. There was no indication that she limited the scope of the search or that she

told the officer how many guns were in the closet. Based on the totality of the circumstances, the girlfriend's consent to search the closet for firearms, specifically a handgun, would reasonably include the cigar box. [State of Ohio v. Roberts](#), Ninth Appellate District, Medina County, Sept. 22, 2014

### **More on Search and Seizure**

**Not a seizure if the person is sleeping:** While on patrol you notice a vehicle back into a parking space in an apartment complex. After a few minutes, you note the car is still running and no one had exited. Finding that suspicious, you approach and notice a man slumped over the driver's seat. You knock on the window and the man does not respond. Your partner opens the passenger door, reaches inside, turns off the engine, and removes the key. At this point, the man wakes up and you ask him a few questions. The man is very confused. You note a strong odor of alcohol and bloodshot, glassy eyes. A field sobriety test confirms the man is impaired and you arrest him. Was entry into the car a seizure? The court in *Ridley* says no. Because Brian Ridley was not capable of deciding whether he was free to leave because he was sleeping and unaware of the officers, the officers' approach to his car cannot be considered a restraint of his personal liberty and therefore not a seizure under the Fourth Amendment. The person must be aware of the restraint to trigger their Constitutional rights. [City of Columbus v. Ridley](#), Tenth District, Franklin County, Sept. 30, 2014

**Consent to search a purse means I can search the wallet too:** You stop a vehicle with a headlight out and expired tags. After obtaining the driver's information, you determine the car should be towed and order the driver and passenger to get out. You ask the passenger for identification. She gives you her name and social security number. A search in LEADS comes back clean, but you remember her name as someone possibly associated in a theft case. The passenger denies any involvement in the case. You ask to search her purse and she agrees. Inside you find her wallet containing identification cards that are not hers. One of the cards has the name of a theft victim. You arrest the passenger. By opening and searching the wallet did you go beyond the scope of consent? The court in *Korb* said no. Under the circumstances the officer reasonably understood the scope of the consent to include the wallet because it was contained in the purse. At no point did Ashley Korb give limitations to or state an objection about the search. She stood next to the officer and was cooperative during the entire process. [State of Ohio v. Korb](#), Eleventh Appellate District, Lake County, Oct. 14, 2014

### **OVI (Coerced Blood Draw): State v. Brunty**

**Question:** When attempting to obtain a blood sample, is consent from the suspect valid if you say "you can consent or I will get a sample by force".

**Quick Answer:** No. A statement like this is coercive in nature. The individual is not given a real choice because any reasonable person would choose to say yes rather than have their blood taken by force.

[State of Ohio v. Brunty](#), Eleventh Appellate District, Ashtabula County, Sept. 30, 2014

**Facts:** As a result of a vehicle collision resulting in death, the prosecutor ordered a blood sample, without a warrant, to be taken from Jeffery Brunty by using any reasonable force necessary. The trooper indicated there was no suspicion that Brunty was under the influence during the clearing of the accident scene. Troopers asked Brunty if he would voluntarily provide a blood sample, and he responded he would not. The trooper then informed him he could obtain it by force, if necessary. Brunty then said he did not wish to

give one, but would go with the trooper and take the test. The blood sample indicated Brunty had methamphetamine in his system. Brunty filed a motion to suppress claiming the consent to the blood draw was not voluntary.

**Importance:** When police request the extraction of blood from an individual, that request constitutes a search and seizure. A warrant or voluntary consent is required to proceed with the test. Although Brunty eventually did agree, the consent was determined not to be voluntary, but coerced. This is because the question was posed by the officer really wasn't a question. This was because a typical reasonable person in this same situation would consent to the test rather than be subject to a forcible withdrawal. The fact that the officer told Brunty he would take the same by force coerced Brunty into saying yes. In essence, Brunty had the choice to give blood by force or voluntarily—either way his blood was being taken. Brunty had no real choice in the matter at all.

**Keep in mind:** You may be thinking that this outcome doesn't seem right because in OVI homicide cases you know you can get a blood test no matter what the person says, right? So why wasn't that the case here? Well, implied consent is only triggered when an officer has reasonable grounds to believe the person was operating or in physical control of a vehicle under the influence. Here, the troopers did not believe Brunty was under the influence at the scene so implied consent did not apply. That is why the voluntariness of Brunty's consent mattered. Otherwise, a warrant would have been required to obtain the blood. Ohio's implied consent statute can be found at [R.C. 4511.191](#).

## More on OVI

**Physical control from the passenger seat?** A dispatch call comes in that a vehicle is pulled over on the Ohio Turnpike and a female is walking away from it. You arrive at the mile marker, but find neither a vehicle nor a female. About 20 minutes later you find an intoxicated female walking along the road. You take her to the nearest travel plaza where she identifies the vehicle she had been in. There is a man sitting in the passenger seat, and the keys are under his leg. You notice a strong smell of alcohol and his red, glassy eyes. The man refuses to answer questions or take sobriety tests. Based on your experience and training you know he is under the influence. The vehicle is secured, and you place the man in the patrol car. You arrest him for OVI. Did you have probable cause for an OVI since the man was in the passenger seat? The court in *Rodich* says yes. [R.C. 4511.19](#) defines physical control of a vehicle when someone is in the driver's seat and has possession of the vehicle's ignition key. Based on facts that the vehicle moved from the point the female exited to the travel plaza, Michael Rodich was inside the vehicle with the keys, and no other person was around the car, circumstantial evidence reasonably leads to the conclusion Michael Rodich drove the vehicle to the plaza. As a result, he was in physical control of the vehicle while under the influence, and the arrest was proper. [State of Ohio v. Rodich](#), Sixth Appellate District, Sandusky County, Oct. 3, 2014

## Intoxilyer 8000 Round Up:

- **Accused may contest test results and operability of Intoxilyzer 8000:** The Ohio Supreme Court in *Cincinnati v. Ilg*, says a person charged with OVI now has the right to challenge the accuracy, competence, admissibility, relevance, authenticity, or credibility of the results of the Intoxilyzer 8000. The person may also challenge whether the machine was operated properly at the time of the test. This means facts like how you perform the test, your certification, and whether the machine is functioning properly will be called in to question more by criminals. Make sure you are properly trained and your machine is certified and



working properly before giving tests. Also remember to properly document the testing process and results. [Cincinnati v. Ilg](#), Ohio Supreme Court, Hamilton County, Oct. 1, 2014

- **Dry gas control test not necessary between first and second subject test:** Karin Love stuck and killed a person waiting on the side of the highway near his broken down vehicle. She was given a breathalyzer test and failed. Love claimed that O.A.C. [3701-53-04](#)(B) was not complied with when the machine did not run a dry gas control test between subject test 1 and subject test 2. The court determined that the rule did not require a dry gas control test to be run between the subject tests but only before the test 1 and after test 2. [State of Ohio v. Love](#), Eleventh Appellate District, Ashtabula County, Sept. 30, 2014

- **The meaning of “calendar year” for the proficiency exam:** Blaine Michael was pulled over and charged with OVI. He argued that the officer failed to take the [proficiency examination once-per-calendar year](#) because more than 365 days had gone by since the last successful examination. The court determined that calendar year meant the period of time from January 1 through December 31. This means an officer can take the examination at any time during the calendar year to be certified for that year. As a result, an officer has until the end of the year to take the examination, even if in real-time more than 365 days elapsed since the last successful examination. [State of Ohio v. Michael](#), Third Appellate District, Allen County, Oct. 14, 2014