Ohio Attorney General's
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Bulletin

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Consider a Crime Scene Investigation Refresher Course

Crime scene investigation is one of law enforcement's most prominent responsibilities. And while many of the skills required for successful investigations are taught in basic training, it's wise to consider an occasional refresher course given today's constantly evolving technology and investigation procedures.

The Attorney General's Ohio Peace Officer Training Academy (OPOTA) offers a Basic Crime Scene Investigation course that covers this topic in depth. In addition, agencies that don't have the resources to collect and process crime scene evidence can seek assistance from the Attorney General's Bureau of Criminal Investigation (BCI), which is available at no cost.

It's crucial for investigators to remember that, once responding officers have secured a crime scene, law enforcement *must* get a warrant before entering and searching the area. *There is no "crime scene exception" to the Fourth Amendment's warrant requirement.* To ensure your search is constitutional and evidence won't be suppressed, get a warrant.

Once a warrant has been secured, here are your next steps:

- Take a preliminary survey of the crime scene to evaluate the possibilities for potential evidence. Create a narrative of the scene, being as detailed as possible. Write down the exact times you learned of the crime, arrived at the scene, and cleared the scene. Keep a record of the personnel who are present during the investigation.

- Note all of your observations. Document (1) the presence or absence of any expected or unexpected items; (2) the lighting and weather conditions; (3) whether doors and windows are open or shut, locked or unlocked; and (4) any odors you may notice. Also note any victim, witness, or suspect who was interviewed or arrested.

- Begin searching for and collecting physical evidence, including photographs of the scene; fingerprints; footwear impressions; tire impressions; firearms; DNA; trace evidence such as hair, fibers, and paint chips; and any other evidence. Investigators should practice the latest procedures in collecting and preserving these various pieces of evidence.

  For example, when taking photographs, use a digital camera for crime scene and evidence photos; it doesn't require a photo log. The camera records the date and time of the photo and embeds that information in the digital file.

If photographing a crime scene, begin by taking wider shots of the overall scene and then proceed with close-up shots of specific areas. Photograph the room or scene from eye level. When photographing evidence, take a close-up picture from above — at 90 degrees to the evidence. Include a photo evidence scale if one is available. If not, use a tape measure, ruler, or even a quarter to illustrate the size of the item being photographed.

When collecting fingerprints, take pictures of them before trying to lift them, and include both a scale and a placard in some of the photos. There are three types of fingerprints to search for: (1) patent prints, which are visible without enhancement; (2) latent prints, which are visible only with enhancement; and (3) plastic prints, which are visible only in a pliable material, such as window putty, a bar of soap, or tape.

For prints that require enhancement, investigators have a number of tools at their disposal to enhance and lift the best possible prints. The most common tool is conventional fingerprint powder. Also available are magnetic powder, fluorescent powder, cyanoacrylate (super glue), and iodine fuming. Once you've enhanced the prints, the most standard ways to lift them are with tape, casting putty, casting silicone, and school glue. Place the lifted prints on a transparency sheet while noting their exact original location and orientation.

- It's also crucial to package evidence properly for trial. Use breathable packaging materials and seal the packages with tape to prevent evidence contamination. Label the package with your name, the address where it was collected, the date of collection, the contents of the package, and your initials across the taped seal to verify you collected and packaged the evidence.

- Finally, write a report of your work and take a final survey of the area before releasing the scene.

For more information about OPOTA's Basic Crime Scene Investigation and other courses, visit www.OhioAttorneyGeneral.gov/OPOTA or www.OHLEG.com or e-mail askOPOTA@OhioAttorneyGeneral.gov. For assistance with crime scene investigations, contact BCI at 855-BCI-OHIO (224-6446).

Morgan A. Linn
Assistant Attorney General and Legal Analyst

BCI can reimburse costs related to sex offender extradition

The Ohio Attorney General's Bureau of Criminal Investigation (BCI) makes available grant funding to reimburse sheriffs or prosecutors for the costs associated with the extradition of absconded sex offenders wanted in Ohio.

County offices throughout Ohio can take advantage of this grant money when pursuing sex offenders of any classification who are registered in their county but have absconded. If a sheriff or prosecutor chooses to extradite an offender, BCI will reimburse the expenses up to $2,000 per offender, including but not limited to officer overtime (excluding fringe benefits), meals,

lodging, airfare, parking, car rental, or other transportation costs. (Reimbursement rates may not exceed those included in the State of Ohio Travel Rule, Ohio Administrative Code 126102.)

Visit the Attorney General's website for a copy of the reimbursement request form.

***Hagans v. Franklin County Sheriff's Office* — Sixth Circuit Court of Appeals (Ohio, Tennessee, Michigan, Kentucky), Aug. 23, 2012**

Question: Is it excessive force for an officer to repeatedly deploy his taser against a suspect who actively resists arrest?

Quick Answer: It depends. If a suspect actively resists arrest and refuses to be handcuffed, officers do not violate the Fourth Amendment by using a taser to subdue him.

Facts: Peace officers were dispatched to Patrick Hagans' house in response to a 911 call. The first officer on the scene saw Hagans running toward him and ordered him to stop. Hagans ignored the officer, ran around the house, and tried to open the locked driver's side door of a police cruiser. Hagans, who refused to be handcuffed, fought with the two officers. During the struggle, a third officer arrived and tasered Hagan in the back. When the initial shock did not subdue Hagans, the officer tasered him a second time. Hagans continued to fight with the officers and grabbed for the taser. The officer tasered Hagans two to four more times. When the officer realized the shocks were not working, he joined the other officers in trying to subdue Hagans by hand. After the officers secured Hagans with handcuffs and leg shackles, he lost consciousness and stopped breathing.

Why this case is important: If a suspect actively resists arrest and refuses to be handcuffed, an officer may subdue the person using a taser. Regardless of the crime committed or flight risk — and even if the suspect hasn't injured or threatened officers — they may use a taser against a suspect if he continues to forcefully resist arrest.

Keep in mind: This court found that a peace officer exercises excessive force when using a taser against a suspect who is cooperative or has stopped resisting. A suspect's active resistance may mark the line between reasonable and unreasonable use of a taser.

Visit the U.S. Court of Appeals for the Sixth Circuit website to read the entire opinion.

***U.S. v. Scott* — Sixth Circuit Court of Appeals (Ohio, Tennessee, Michigan, Kentucky), Sept. 10, 2012**

Question: Does a suspect invoke his right to counsel when he writes "no" in response to the written question, "Having these rights in mind, do you wish to talk to us now?"

Quick Answer: Yes, the written response of "no" to the question regarding his desire to speak with police articulates his desire to have counsel present.

Facts: Tennessee peace officers believed Anthony Scott was involved in a string of robberies. The police took Scott to the Memphis Robbery Bureau, where officers read Scott his *Miranda* rights and gave him an Advice of Rights form. Below the warning, the form included two questions and space where Scott replied: "Q: Do you understand each of these rights I've explained to you? A: Yes. Q: Having these rights in mind, do you wish to talk to us now? A: No." At that point, the officers ceased questioning.

Why this case is important: The court found that Scott invoked his right to counsel by indicating he did not wish to talk with police. If a suspect's only reference to an attorney is ambiguous, then the peace officer may continue questioning. Here, the court found a reasonable officer would conclude Scott was invoking his right to counsel. The Advice of Rights form uses the phrase "these rights" in reference to *all* rights articulated in a *Miranda* warning, including the right to counsel. This court found the rights were invoked by a "no" answer.

Keep in mind: Peace officers should focus on a suspect's response if they ask written or verbal questions such as, "Having these rights in mind, do you wish to talk to us now?" Invoking the right to counsel requires, at a minimum, some statement that can reasonably be construed to be an expression of a desire for the assistance of an attorney. If a suspect expressed his desire to have counsel present and peace officers initiate further communication in the absence of counsel, the suspect's statements are presumed involuntary and therefore inadmissible in court.

Visit the U.S. Court of Appeals for the Sixth Circuit website to read the entire opinion.

U.S. v. Harrison **— Third Circuit Court of Appeals (Delaware, New Jersey, Pennsylvania), Aug. 7, 2012**

Question: If officers reasonably believe that a house is abandoned, is their warrantless entry justified even when the house is not actually abandoned?

Quick Answer: Yes, if the officers' observations over time suggest that any expectation of privacy in the property was relinquished, then the officers' mistake of fact is reasonable.

Facts: Philadelphia officers observed the house in this case several times, and the condition of the house never changed. The exterior was in a severe state of disrepair, and trash was strewn across the overgrown lawn. In addition, the windows on both levels were either boarded up or wide open, and the front door was left open. They also knew that the house was a drug den and would routinely enter it to kick out drug dealers and users. The interior matched the rundown condition of the exterior: There were no furnishings other than a single mattress on the top floor; human waste filled the bathtub and toilets; and there was no running water or electricity. In addition, officers said that they would routinely enter the house to kick out drug dealers and users. The event that gave rise to this case occurred when peace officers entered the house without a warrant because they believed it was abandoned. Inside, officers found defendant Khayree Harrison sitting in a chair with a gun, scales, pills, and cocaine on a table next to him.

Why this case is important: If you *reasonably* believe that property is abandoned, you can enter without a warrant — even when there is an occupying homeowner. This case is exceptional

because the officers observed the property in a dilapidated condition over the course of several months, and it appeared to be unoccupied the entire time.

Keep in mind: The law often will excuse a factual mistake when it is based on a reasonable belief. The totality of the officers' experience with the house reasonably suggested that it was abandoned.

Visit the U.S. Court of Appeals for the Third Circuit website to read the entire opinion.

***U.S. v. Duenas* — Ninth Circuit Court of Appeals (Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington), Aug. 16, 2012**

Question: Are members of the media permitted to enter a home, curtilage, or place where private owners have a reasonable expectation of privacy while officers are executing a search warrant?

Quick Answer: Yes, as long as media presence doesn't expand the scope of the search. Here, the search was carried out by the officers themselves, and the reporters didn't aid the search by touching, moving, or handling anything in the residence.

Facts: Local and federal officers executed a search warrant on Raymond and Lourdes Duenas' property for evidence of narcotics trafficking. Although up to 40 officers were present, no single officer was clearly in charge of managing the scene. Members of the media and other civilians were allowed on the property during the search to film and photograph the scene. The media members were instructed to remain in the front yard and were not permitted past a certain area. However, some journalists were escorted beyond the front yard to photograph a marijuana patch in the backyard. The presence of the general public contributed to the chaos at the search scene.

Why this case is important: The court held that the Duenas' front yard was not part of the curtilage; therefore, the presence of the media didn't violate the Fourth Amendment. It wasn't classified as curtilage because the front yard was not enclosed; there was no evidence as to how the yard was used; nor was there evidence that the Duenases tried to protect the yard from observation. The court held that as long as the media did not discover or develop any of the evidence later used at trial, the evidence didn't have to be suppressed. In this case, the media did not expand the scope of the search warrant and did not assist officers or touch, handle, or taint the admitted evidence in any way.

Keep in mind: Properly managing a crime or search warrant scene to avoid media or public interference is important. Officers should only allow authorized personnel to touch, move, or handle evidence.

Visit the U.S. Court of Appeals for the Ninth Circuit website to read the entire opinion.

***State v. Jackson* — Ninth District Court of Appeals, (Lorain, Medina, Summit, and Wayne), Aug. 22, 2012**

Question: When a polygraph examiner encourages a suspect to tell the truth and explain himself during a polygraph examination, are the suspect's subsequent statements coerced?

Quick Answer: No, if a suspect voluntarily submits to a polygraph examination, encouragement to tell the truth isn't necessarily coercive or threatening.

Facts: Jason Jackson agreed to submit to a polygraph examination. The peace officer scheduled the examination at the Bureau of Criminal Investigation (BCI). Jackson declined the officer's offer to drive Jackson to BCI, so the two drove separately. On the morning of the examination, Jackson followed the officer to BCI. After Jackson finished the polygraph examination, the examiner informed him that several of his answers were deceptive in nature and asked him to explain himself. Jackson then verbally confessed to rape. Jackson then left BCI, and he was not arrested until nearly two weeks later.

Why this case is important: When a person voluntarily submits to a polygraph examination they are not in custody for *Miranda* purposes. Jackson voluntarily agreed to take the examination, drove to the examination of his own accord, and left in the same manner when the examination concluded. The consent to interview form that Jackson signed before the polygraph stated that he was informed of his right to refuse to submit to the examination and that he was undergoing the examination on his own free will. Although the examiner encouraged Jackson to explain himself and tell the truth, this wasn't a threat or coercion.

Keep in mind: A confession is not voluntary if the defendant's will is overborne. In determining whether a confession was voluntary, the court considers the totality of the circumstances, including the defendant's age, mentality, and prior criminal experience; the length, intensity, and frequency of interrogation; the existence of physical deprivation or mistreatment; and the existence of threat or inducement.

Visit the Ninth District Court of Appeals website to read the entire opinion.

State v. Bonham **— Fifth District Court of Appeals, Aug. 28, 2012**

Question: Does the odor of marijuana and observation of marijuana "shake" inside a car give peace officers probable cause for a warrantless search of the trunk?

Quick Answer: Yes, however, odor emanating from the car alone would not allow officers to search the trunk.

Facts: Sidney Bonham was stopped for a marked lane violation. During the stop, the officer detected the smell of marijuana coming from Bonham's car, and he searched the vehicle. As the officer conducted the vehicle search, he observed marijuana shake — loose particulates of marijuana — on the floorboards, the driver's armrest, and the driver's door handle. As he was searching the back seat, he detected a stronger odor of raw marijuana coming from the back seat. The officer opened the trunk of the vehicle and found 15 one-gallon sealed plastic bags containing marijuana.

Why this case is important: The court found that the combination of the odor of marijuana coming from the vehicle, the presence of marijuana shake in the passenger compartment, and

the smell of raw marijuana in the back seat gave the officer probable cause to believe the vehicle contained contraband. Therefore, he was entitled to search the entire vehicle.

Keep in mind: If officers smell burned marijuana emanating from a vehicle, they may search the passenger compartment. There is no authority to search the trunk based solely on the smell of burned marijuana coming from inside the vehicle.

Visit the Fifth District Court of Appeals website to read the entire opinion.

State v. Browning **— Ninth District Court of Appeals, (Lorain, Medina, Summit, and Wayne), Sept. 5, 2012**

Question: If a peace officer observes a car with an out-of-state license plate proceeding down a private drive, does he have reasonable suspicion that the occupant is engaged in criminal activity?

Quick Answer: No, officers must be able to point to a specific offense that a person has committed, or is in the process of committing, prior to initiating a traffic stop.

Facts: Bret Browning got into his vehicle and drove down a private drive with no outlet. The officer thought the defendant's car was suspicious because it was late at night, the car had out-of-state license plates, and the officer had never observed an out-of-state plate at any of the three private homes on the drive. The officer parked near the outlet of the private drive. About three minutes later, the driver exited the private drive, turned onto a state highway, and drove away without violating any traffic laws. Based on his observations, the officer followed and stopped Browning's car.

Why this case is important: The court found that the officer's observations did not constitute a sufficient basis for a valid stop of Browning's vehicle. Even if the activities seemed suspicious, there was no reasonable suspicion that the driver was committing an offense.

Keep in mind: An investigatory traffic stop is justified only when police have specific and articulable facts that, when taken together with rational inferences, reasonably warrant that intrusion. An officer's reliance upon a mere hunch is not sufficient to justify a stop. Browning was stopped essentially because the officer wanted to see what he was doing. There was no crime report and no suspicious activity in the area. The stop was unreasonable.

Visit the Ninth District Court of Appeals website to read the entire opinion.