



Ohio Attorney General's
**Law Enforcement
Bulletin**



September 2012

Law Enforcement Conference offers great training, networking opportunities

Registration is under way for the Ohio Attorney General's 2012 Law Enforcement Conference, set for Oct. 25–26 at the Hyatt Regency Columbus. The annual event provides law enforcement and others with excellent training and networking opportunities.

The conference theme is Protecting Ohio's Children. The 30 workshops available fall into six course topic tracks:

- Emerging Crime Problems
- Officer Wellness
- Management/Technology
- Legal
- Gangs
- Keeping Ohio's Children Safe

In addition, the Ohio Peace Officer Training Academy will showcase its three new firearms simulators, which will be available for conference attendees to try out. OPOTA will use the MILO Range Pro simulators for regional firearms and use-of-force training. The simulators feature more than 425 scenarios, scenario-authoring software, and a library of firearms drills and exercises. They use high-definition video and recoil weapons, tasers, and other realistic equipment.

In terms of workshops, staples such as search and seizure law, gang intelligence, and civil liability law will be covered at the conference as an annual review. Also available will be new courses that incorporate current events and trending topics, such as Internet cafés and the use of GPS devices in investigations.

Also among the offerings is a workshop covering law enforcement's operational response to the Chardon school shooting in February. A law enforcement panel that includes Geauga County and Chardon officials will discuss valuable resources available to first responders, the investigation, family and community events, and media relations.

Another panel-oriented workshop, Investigations of Officer-Involved Shootings, will feature officials from Ohio's three largest law enforcement agencies. They will talk about the challenges facing officers and agencies following an officer-involved shooting and provide advice on how smaller departments can use existing resources when responding to and investigating these incidents.

Also planned is a workshop in the 2011 release of exotic animals in Muskingum County. The presenters will talk about related 911 calls, the experiences of first responders, efforts to locate the animals, and problems encountered throughout the ordeal. They also will discuss the media's role, the event's aftermath, and Ohio's new law addressing private ownership of exotic animals.

The conference will feature three guest speakers, including keynote speaker George Piro, an FBI special agent who interrogates detainees thought to have information that could help prevent terrorist attacks. Piro spent seven months interrogating Saddam Hussein and other Iraqi leaders. Also speaking are Jason Thomas, a former Marine who helped with 9/11 rescue efforts, and Jack Park, a local sports radio personality and leadership development consultant.

To register for this year's conference, visit www.OhioAttorneyGeneral.gov/LEConference. For more information, call 740-845-2684 or e-mail LEC@OhioAttorneyGeneral.gov.

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Law change affects possession of drug paraphernalia

Senate Bill 337 goes into effect Sept. 28, 2012. Among other things, SB 337 makes possession of drug paraphernalia *for the purpose of using marijuana* a minor misdemeanor. This means that if a suspect has marijuana drug paraphernalia, he is not subject to arrest for that offense alone. Possession of drug paraphernalia used for other kinds of drugs remains a fourth-degree misdemeanor.

Notable Cases

***United States v. Lyons* — Sixth Circuit Court of Appeals (Ohio, Tennessee, Michigan, Kentucky), July 25, 2012**

Question: Can peace officers rely on probable cause based on information from Drug Enforcement Administration (DEA) agents if their own pretextual reason to stop falls through?

Quick Answer: Yes, officers may rely on probable cause based on information obtained by fellow officers or DEA agents in order to conduct a stop even if the officers' pretextual reason to make the stop falls through.

Facts: The DEA was in the process of investigating a large-scale drug ring and Medicare fraud scheme. After tracking down a suspect through surveillance and wiretaps, DEA agents provided Michigan state troopers with descriptions of the car and driver and details regarding the investigation. Agents asked troopers to develop independent probable cause so the suspect wouldn't know she was under federal investigation. The troopers pulled over the suspect, Katrina Lyons, who was driving a minivan with Alabama plates, for a vision obstruction violation due to an air freshener and bead necklaces hanging from the rearview mirror. However, the officers mistakenly applied the vision obstruction statute. If the car is registered in another state,

Michigan's statute governing vision obstruction doesn't apply and, therefore, troopers did not have a valid reason to stop the car.

Why this case is important: The DEA had probable cause to stop Lyons, but the troopers relied on an incorrect belief that the driver was committing a traffic offense to effectuate a pretext stop. Here, even though the pretext stop was bad, the underlying probable cause from the DEA was still a sufficient basis to make the stop.

Keep in mind: Officers can draw on directions from other officers to generate reasonable suspicion or probable cause to stop a suspect. When a peace officer acts on information received from another, the acting officer must objectively rely on that information. The officer who gave the information must have facts supporting the level of suspicion required, and the stop shouldn't be any more intrusive than what would have been permissible for the officer who ordered it.

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

***United States v. Sharp* — Sixth Circuit Court of Appeals (Ohio, Tennessee, Michigan, Kentucky), July 27, 2012**

Question: If a narcotics detection dog jumps through an open window and sniffs the inside of a car, does that amount to a search that would violate the Fourth Amendment?

Quick Answer: No, if a trained canine instinctively jumps into a car without officers' encouragement or facilitation and sniffs the inside of the car, there is no Fourth Amendment violation.

Facts: David Sharp's car was stopped, and he was arrested on an unrelated warrant. When the K9 unit arrived at the scene, the driver's car window was down. The handler gave the dog the command to search for drugs, and the dog sniffed the exterior of the vehicle, starting at the front passenger's side. The dog passed the driver's door, went halfway down the rear driver's side door, stopped, turned his head back toward the driver's door, and walked to it. Then, without formally alerting to the presence of narcotics, the dog bounced once and jumped through the open driver's window into the car. After jumping through the window, the dog looked up or alerted to the front passenger seat. The handler asked the dog to "show me," and with his nose, the dog poked a shaving kit on the front passenger seat that contained drugs.

Why this case is important: The court found that as long as there has been no officer misconduct, the instinctive acts of trained dogs do not violate the Fourth Amendment. If the dog enters the vehicle *on its own* initiative and *is not* encouraged or placed into the vehicle by law enforcement, there is no violation. The court also found that since the car window was already open and law enforcement had not asked the driver to open the window, the instinctive jump was not a violation. If the officer asked the driver to open a window, door, or hatchback and the dog jumped inside, it would have been an illegal search.

Keep in mind: Peace officers cannot encourage canines to jump into vehicles or facilitate their entry by cuing them, placing them inside, or ordering them.

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

***United States v. Voustianiouk* — Second Circuit Court of Appeals (Connecticut, New York, Vermont), July 12, 2012**

Question: When a magistrate judge grants a search warrant of a specific apartment, can officers expand that search to other nearby apartments?

Quick Answer: No, when officers enter an apartment not specified in a search warrant without additional probable cause, it is an unconstitutional search because they knowingly stepped beyond the bounds of the search they were authorized to conduct.

Facts: Federal agents received information that child pornography had been downloaded through a particular Internet Protocol (IP) address. The agents learned that the IP address was assigned to Andrei Voustianiouk and, according to the Internet service provider, he lived in Apartment 1. The agents went to Voustianiouk's physical address and found a two-story building containing two apartments, one on the first floor and one on the second. The agents could not confirm which apartment was Voustianiouk's. The agents eventually obtained a warrant to search the first-floor apartment only. The agents intentionally omitted Voustianiouk's name from both the search warrant and the accompanying affidavit. When the agents arrived to conduct their search, they discovered that Voustianiouk lived in the second-floor apartment. The agents searched that apartment and discovered child pornography on Voustianiouk's computers.

Why this case is important: *When you execute a search warrant, you need to stay clearly within the bounds of the warrant.* The search warrant and accompanying affidavit explicitly authorized the search of the first-floor apartment and made no mention of the second-floor dwelling. Nothing in the warrant or accompanying affidavit provided any reason for these agents to conclude that the magistrate judge had authorized them to search the building's second floor, and neither document mentioned Voustianiouk as the occupant of the apartment that the agents were authorized to search.

Keep in mind: The agents should have gotten a new search warrant. Stepping outside the expressed scope of a search warrant increases the odds that the evidence will be suppressed and a criminal will go free.

Visit the [U.S. Court of Appeals for the Second Circuit website](#) to read the entire opinion.

***State v. Wilcox* — Second District Court of Appeals (Champaign, Clark, Darke, Greene, Miami, and Montgomery counties), July 27, 2012**

Question: May peace officers detain any passenger of a car while they write a citation for the driver?

Quick Answer: No, officers can't detain passengers at a traffic stop unless they have some reasonable, articulable basis for doing so.

Facts: While conducting a traffic stop, officers discovered that the driver had a suspended license. Because the driver was not allowed to drive the car away, officers approached the passenger, Robert Wilcox, to see if he had a valid license. Wilcox was unresponsive to officers' questions, was "barely conscious," and his speech was slurred — clearly in no condition to

drive. The officers ordered Wilcox to step out of the vehicle and patted him down. While Wilcox was outside the vehicle, he informed the officers that he needed to urinate and made numerous requests to use a restroom. The officers cautioned Wilcox that he would be arrested if he urinated in public. Wilcox was not under arrest at this point, but he was repeatedly told to sit inside the stopped vehicle. While one officer wrote the driver's citation for driving with a suspended license, Wilcox was seen urinating on the curb and grass. Wilcox was arrested for public indecency.

Why this case is important: This case demonstrates the difficulty of defining when a person at a scene must be released. Here, there was no evidence that Wilcox was committing a crime or posed a legitimate threat to officers. Therefore, there was no need to restrict his freedom to leave. It's important to remember that *every* stop impacts constitutional rights, and since there was no reasonable suspicion that Wilcox was committing a crime, the officers should have let him walk away. These are difficult calls to make in the field because while you think of every person as part of the "scene," the Constitution protects everyone individually.

Keep in mind: During a legitimate traffic stop, a request for identification from a passenger, followed by a computer check of that information, doesn't constitute an unreasonable search and seizure as long as the stop isn't extended in duration beyond the time reasonably necessary. However, passengers are not required to carry identification, and they are not obligated to produce an ID for officers. And if a passenger has committed no criminal offense and decides to leave, you should allow him to do so.

Visit the [Second District Court of Appeals website](#) to read the entire opinion.

***State v. Hammen* — Fifth District Court of Appeals, Aug. 6, 2012**

Question: Is "pacing" a car an acceptable manner for determining speed?

Quick Answer: Yes, pacing is an acceptable manner for determining speed when a peace officer can base a car's speed on his own perception and on years of experience and training in checking speed and pacing.

Facts: A trooper stopped defendant Ronald Hammen for speeding after watching him travel approximately 2,000 feet before turning right into the driveway of his home. Based on the timer associated with the trooper's car video system, it took Hammen's vehicle 31 seconds to travel the entire distance. Twenty-six seconds expired from the time Hammen's vehicle left an intersection to the time he applied his brakes and then his turn signal in preparation for the turn into his driveway. The officer estimated Hammen was traveling 54 to 56 miles per hour in a 45-mph zone.

Why this case is important: Visual and other non-technical estimations of speed have been under attack, and this decision reaffirms that an officer can rely on training and experience to make such determinations. This court found that an officer's visual perception that a vehicle was speeding, coupled with years of experience, constitutes specific and articulable facts that provide the officer with reasonable grounds to make an investigatory stop.

Keep in mind: The trooper who used this method of pacing did so by positioning his cruiser three to four car lengths behind the target vehicle and following it for two or three tenths of a mile. He kept the distance between the vehicles constant while monitoring the speed of his own cruiser.

Visit the [Fifth District Court of Appeals website](#) to read the entire opinion.

***State v. Walker* — Eleventh District Court of Appeals (Ashtabula, Geauga, Lake, Portage, and Trumbull counties), July 23, 2012**

Question: If an officer stops a car for failing to properly display a license plate, does his justification for the stop end once he gets close enough to the car to decipher the numbers on a temporary license tag hanging in the window?

Quick Answer: No, officers may detain the occupants for a period of time sufficient to run a computer check on the driver's license, registration, and vehicle plates and to issue the driver a warning or citation.

Facts: There was no license plate on the front or rear of Eric Walker's vehicle. The officer saw something in Walker's rear window, but he couldn't tell what it was. Once the vehicle was stopped, the officer walked past the rear bumper and determined that the object he had seen in defendant's rear window was a temporary license tag. He was unable to see it from his cruiser because it was lying down at an angle and almost flat. The officer called the numbers on the tag into dispatch, but before receiving a response, he approached the car to identify the driver and to advise him of the reason for the stop. The officer asked the occupants to produce their identification, and they complied. At that time, the officer smelled marijuana inside the car, and he removed the occupants from the car and searched the interior.

Why this case is important: This case is helpful when thinking about the *length and purpose* of a stop. Here, although the officer quickly determined the vehicle was properly registered, it was appropriate for the officer to prolong the stop in order to issue a citation because the license placard should be displayed in the rear window *in plain view from the rear of the vehicle*. The officer here witnessed a minor traffic violation and was justified in making a limited stop for the purpose of issuing a citation or warning for failure to display a license plate. However, during the brief detention, the officer smelled marijuana coming from the car and was able to prolong the stop further to investigate the newly discovered evidence of a drug crime.

Keep in mind: If a temporary tag is affixed in such a manner so that it cannot be read or officers cannot see the temporary tag until they reach the side of the car, it has not been displayed in plain view. This is a violation of the law, and the officer is permitted to ask to see the driver's license and detain him for a period of time sufficient to run a computer check.

Visit the [Eleventh District Court of Appeals website](#) to read the entire opinion.

***In re J.S.* — Twelfth District Court of Appeals, (Brown, Butler, Clermont, Clinton, Fayette, Madison, Preble, and Warren counties), Aug. 6, 2012**

Question: Are juveniles treated the same as adults when determining custody under *Miranda*?

Quick Answer: No. There is a heightened sensitivity to questioning juveniles, so you should be more careful about giving *Miranda* warnings sooner.

Facts: A detective instructed the father of 13-year-old J.S. to bring his son to the police station so officers could question the boy. However, while at the station, officers interviewed the boy without his father in the room. The detective testified at a hearing that he informed the boy he was not under arrest, but the videotape of the interview reveals that no such statement was made. Rather, the detective stated that J.S. would be returning home after the interview, implying at times that the interview would end once the boy finally told the truth. Further, officers never told him he had the right to end the interview at any time.

Why this case is important: When you're interviewing a juvenile witness, age matters. The *Miranda* rights will attach more quickly with juveniles than with adults. This court found that although the boy was not under formal arrest when interviewed, his freedom was restrained due to the following reasons: (1) He was 13 years old and, consequently, there was a likelihood that he was unaware of his rights, including the right to be silent or to request a lawyer. (2) His father was told by police to bring him to the police station for questioning. (3) His father was not permitted to accompany him during the interview. (4) He was not informed that he could leave at any time, but only that he would be allowed to go home with his father after the interview. Based on the circumstances, J.S. was in custody during the interview and, therefore, officers had a duty to advise him of his *Miranda* rights.

Keep in mind: Circumstances that wouldn't count as "custody" for an adult can constitute custody for a juvenile. Officers are not required to administer *Miranda* warnings to every person they question. But, if the person is a juvenile, you may want to give the warnings just to be on the safe side. This is particularly true the younger the person is. This opinion follows the U.S. Supreme Court's recent opinion in *J.D.B. v North Carolina*, stating that in cases involving a juvenile suspect, the juvenile's age may be analyzed as part of the court's determination of whether a custodial interrogation occurred.

Visit the [Twelfth District Court of Appeals website](#) to read the entire opinion.

***State v. Elliott* — Seventh District Court of Appeals, (Belmont, Carroll, Columbiana, Harrison, Jefferson, Mahoning, Monroe, and Noble counties), July 11, 2012**

Question: May a peace officer prolong the length of the traffic stop beyond the time necessary to issue a citation for a broken headlight in order to wait for the K-9 unit to arrive?

Quick Answer: No, an officer may only extend a traffic stop if there is reasonable suspicion. Otherwise, the officer must conduct a K-9 sniff of the vehicle *during* the time required to effectuate the original purpose of the stop.

Facts: An officer stopped defendant Curtis Elliott at 7:07 p.m. for having a broken taillight. According to the officer, Elliott's pupils were extremely dilated, and he seemed disoriented and lethargic. However, the officer didn't smell alcohol or marijuana. Elliott declined consent to search the car, but he did grant the officer consent to search his person, which resulted in finding nothing illegal. At 7:13 p.m., the officer went back in his cruiser and ran a check of the defendant's license on his computer. Sometime shortly thereafter, the officer requested a K-9

unit. Thirty-six minutes later, the officer was notified that the K-9 unit was not coming. At that point, the officer decided to administer the standard field sobriety tests. According to the officer, Elliott failed two of the three field sobriety tests and did not complete the third test. The officer then placed Elliott under arrest for OVI.

Why this case is important: When an officer stops a vehicle for a traffic violation, the officer may detain the driver for a period of time sufficient to issue the motorist a citation and to perform routine procedures such as a computer check on the driver's license, registration, and vehicle plates. If the circumstances give rise to reasonable suspicion of some other illegal activity, different from that which triggered the stop, the officer may detain the driver for as long as the new articulable reasonable suspicion exists. Without additional reasonable suspicion, the officer may conduct a K-9 sniff of the vehicle *during* the time required to effectuate the original purpose of the stop.

Keep in mind: When you make a traffic stop, the clock starts ticking immediately. If you call for a K-9 unit — but don't have any specific reason to believe there are drugs in the car — you *must* proceed with the stop normally. You cannot detain a person longer than necessary to complete the purpose of the stop. Here, the officer prolonged the traffic stop in order to wait for a K-9 unit to arrive. It was not until the officer was informed that the K-9 unit was not coming that he asked Elliott to submit to the field sobriety tests. Had the officer truly suspected Elliott was under the influence, he could have used the half-hour wait period to conduct the field sobriety tests and write the traffic citation for the broken taillight.

Visit the [Seventh District Court of Appeals website](#) to read the entire opinion.

Notable case with similar facts: *U.S. v. Riley* — Eighth Circuit Court of Appeals (Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, South Dakota), July 13, 2012

During the course of a valid traffic stop, the officer developed reasonable suspicion to detain Mario Riley to search his vehicle. First, Riley exhibited undue nervousness in the form of a visibly elevated heart rate, shallow breathing, and repetitive gesticulations, such as “wiping his face and scratching his head.” Second, Riley gave vague or conflicting answers to simple questions about his travel itinerary. Finally, Riley misrepresented his criminal history to the officer by omitting his prior drug violations and felony arrests.

The court held that the 54 minutes spent waiting for a drug-detection dog to arrive was reasonable. The officer called for the drug-detection dog within 11 minutes of his initial stop and immediately after he established reasonable suspicion that criminal activity was afoot. No drug-detection dogs were available in the area, so the officer called in an off-duty officer to come to the scene.

The court found that the amount of time spent waiting for the drug-detection dog to arrive was unavoidable and reasonable based on the diligence shown by the officer.

Visit the [Eighth Circuit Court of Appeals website](#) to read the entire opinion.