



# Ohio Attorney General's Law Enforcement Bulletin



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## **Organized Crime Not Unique to Big Cities**

What do you think when you hear the words “organized crime”? Maybe gangsters, big cities, drug rings, or a large crime family? Do you think of a small Ohio town?

Smaller communities throughout Ohio are seeing a fair share of organized crime. And as Springboro Police Chief Jeff Kruithoff — a member of the Attorney General’s Ohio Organized Crime Investigations Commission (OOCIC) — points out, organized crime is much more than a godfather-type organization.

“Human trafficking, drug dealing, financial scams, retail theft operations, and large theft operations are just a small number of criminal issues that can be classified as organized crime,” Kruithoff said.

Under [Ohio law](#), organized criminal activity is defined as engaging in a pattern of corrupt activity, including conspiracy. These types of crime can hit small towns just as easily as big cities — it just may be harder to detect.

“Because every investigation is unique, OOCIC can tailor its support to each case or task force,” OOCIC Executive Director Rocky Nelson said. “OOIC assists local law enforcement in three main areas: technical, administrative, and prosecution, and we can bring local, state, and federal agencies together to combat crime in any size jurisdiction.”

Jurisdictional boundaries don’t matter to criminals. In a large city, police may be dealing with a retail theft group that may hit several locations around town in a day. An agency may be able to quickly identify and address this type of fast-moving organized crime problem. Outside a big city, this same crime group could hit several malls in a 15-mile radius spanning several communities, counties, or suburbs.

“In a smaller agency, it is imperative that we work together with our neighbors to alert them of potential problems heading their way,” Kruithoff said, stressing the need for good communications across jurisdictional lines.

Technology certainly makes it easier to communicate among agencies. For example, in the Dayton area, any officer is able to place an alert through the Tactical Crime Suppression Unit within moments of a crime. “That alert will go throughout the Miami Valley region to ensure the activities of a roaming group of criminals is shared among all other agencies,” Kruithoff said. However, “integrating the use of (real-time) technology into the information-sharing process is a large challenge for small agencies due to cost and manpower shortages.”

In a slow-moving organized crime, such as a drug-trafficking operation, the criminal players take time to plan activities. Drug traffickers will come into the state and travel through large cities, small towns,

and rural communities. These crime rings build distribution networks, transportation routes, and manufacturing or growing headquarters.

“The operation moves seamlessly across jurisdictional lines, and intelligence efforts can become fractured among the different police agencies involved,” Kruithoff said.

When small communities are faced with this kind of criminal activity, OOCIC can create a task force as a resource.

“These task forces eliminate many jurisdictional issues about law enforcing authority and also provide a number of support systems to attack an organized crime activity that spans a large geographical area,” Kruithoff said.

**For more information:** Agencies interested in more information on OOCIC can visit <http://www.OhioAttorneyGeneral.gov/OOCIC> or call 614-277-1000. In addition, the Ohio Peace Officer Training Academy offers several courses related to organized crime, including Investigative Resources, Drug Identification and Field Testing, Internet Investigation, and Human Trafficking. For more information, visit the online course catalog at [www.OhioAttorneyGeneral.gov/OPOTACourses](http://www.OhioAttorneyGeneral.gov/OPOTACourses).

### **Additional reading**

You also might enjoy these articles related to organized crime in Ohio:

- “[The Life and Hard Times of Cleveland’s Mafia: How Danny Greene’s Murder Exploded the Godfather Myth](#)” by Edward P. Whelan, [www.clevelandmagazine.com](http://www.clevelandmagazine.com)
- “[Organized Crime in Rural Ohio’s Backyard](#)” by Maria Monte, Heidelberg University Writer’s Block student publication

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## **Search and Seizure (GPS Surveillance): *State v. Wilcox***

**Question:** What information do you need to give the court to get a warrant for surveillance on a vehicle?

**Quick Answer:** You need to tell the court specific information about the vehicle, including the VIN number, ownership, and where the car is normally located. You also need to give the court a link between the crime and the vehicle, leading it to conclude, “Yes, this vehicle was probably involved in the criminal offense, so now you have probable cause.”

[\*State of Ohio v. Wilcox\*](#), Fifth Appellate District, Coshocton County, Aug. 1, 2013

**Facts:** On April 15, 2012, Paul Wilcox was taken into custody after being found to be a passenger in a stolen tractor-trailer. The tractor-trailer was driven by Lucas Fine, Wilcox’s roommate. Wilcox was released with no charges, but was placed under surveillance. Police then asked the court for permission to place a GPS monitor on Wilcox’s car. Wilcox argued that the affidavit supplied by police

to obtain the GPS did not establish probable cause because it failed to provide a nexus between his vehicle and the criminal investigation. The affidavit linked Wilcox to the vehicle through the VIN number, ownership, and identity of the commonly found location, in this case Wilcox's home. It also laid out facts and circumstances allowing the court to find probable cause that Wilcox's vehicle was linked to the criminal activity. The court determined that based upon the facts and inferences stated in the affidavit, Wilcox and his wife, via their own transportation, facilitated the theft of the tractor-trailer. As a result, there was enough probable cause to issue the GPS warrant.

**Importance:** Your affidavit must give the court a clear description of the vehicle, its location, and identity (VIN number). Second, the affidavit must give specific facts, observations, or circumstances to link the vehicle to criminal activity. Your goal is to establish probable cause that the vehicle is involved in the criminal activity.

**Keep in Mind:** Anytime you're asking for a warrant, you need to show the court that you've got the right evidence. For example, in this case, the police department detailed a situation in which Wilcox was in the same county around the same time as the stolen tractor-trailer. Officers obtained independent information from another police department as well as information from their own surveillance team. All of this information allowed the court to make the link necessary to get to probable cause.

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

**What's that under your mattress? Plain view due to "innocent inadvertence":** During a protective sweep of a home where a potential abduction victim is being held, you go to search under a bed by lifting up the mattress, only the mattress slips from your grasp and the box spring falls, revealing a gun. Is this evidence in plain view? Yes. The weapons in this case were in plain view due to the "innocent inadvertence" of the officer losing his grip on the mattress when he was looking for the victim. When he lifted the mattress, he found four weapons. [\*State of Ohio v. Hunter\*](#), Second Appellate District, Montgomery County, Aug. 9, 2013.

## **Traffic Stops (Marked Lane Violations): The Cases of *Muller*, *Thomas*, *Parker*, and *Shaffer***

**Question:** When do you have reasonable, articulable suspicion to pull someone over for a marked lane violation?

**Quick Answer:** When a vehicle crosses a marked lane for reasons other than safety, you are able to pull someone over for a marked lane violation.

[\*State of Ohio v. Muller\*](#), Fifth Appellate District, Delaware County, July 29, 2013

[\*State of Ohio v. Thomas\*](#), Twelfth Appellate District, Warren County, Aug. 5, 2013

[\*State of Ohio v. Parker\*](#), Sixth Appellate District, Ottawa County, Aug. 9, 2013

[\*State of Ohio v. Shaffer\*](#), Third Appellate District, Paulding County, Aug. 19, 2013

Each of these cases deals with a traffic stop under Ohio Revised Code (ORC) 4511.33(A)(1) for a marked lane violation that led to arrest on other criminal violations. In general, the law requires

drivers to stay, as much as possible, within a single lane and to not move from their lane without first making sure it's safe to do so.

**Facts:**

*Muller:* A trooper watched Eugene Muller drive 10 miles under the speed limit and stated that he saw the car cross over the right white fog line by two to three tire widths. The court reviewed the footage from the dash camera and found that as Muller rounded a curve to the right, the right rear tire completely crossed the white fog line by one tire width. The court found that based on a totality of the circumstances, the trooper had a reasonable and articulable suspicion to stop Muller and upheld the OVI.

*Thomas:* A deputy saw Winston Thomas' vehicle slow down quickly, almost causing a collision, then drift over the marked center line and back into its original lane. Based on a totality of the circumstances, the deputy had reasonable and articulable suspicion to stop Thomas. Once the stop was made, drugs were found in the vehicle.

*Parker:* A trooper noticed a vehicle weaving several times inside the lane and pulled Matthew Parker over on a marked lane violation. At trial, the trooper testified that a marked lane violation generally occurred when a vehicle crossed a designated line on a roadway. After reviewing the dash camera footage, the court noted that Parker drove on the line a few times, but never crossed it; as a result, the trooper did not have a reasonable and articulable suspicion to stop Parker.

*Shaffer:* A trooper pulled Kimberly Shaffer over after her passenger side tire drove onto and over the white fog line once for three seconds. The court looked at the language "as nearly as is practicable," concluding that the statute doesn't preclude all movement from the lane. For example, movement can be made to avoid debris or to initiate a safe lane change. It determined that without additional evidence of the surrounding circumstances, traffic, and road conditions, the act of Shaffer driving onto the white fog line one time for three seconds was not sufficient to establish reasonable and articulable suspicion. The court did not find the vehicle had gone over the line. The court also stated it would not adopt the "tire-rule" approach from the 11th District.

**Importance:** These four cases highlight four different courts' views. Each came to the same conclusion on the law: The car MUST cross the line for a reason other than safety to be a proper marked lane violation. What that means: If a car merely drives on the line, near the line, or crosses over the line safely, there is no violation. What you are looking for is evidence that the driver is distracted, impaired, or driving recklessly. That could be weaving repeatedly over the line, crossing the center line when there is no one to pass, or driving way over the fog line. This is important because if you don't pull someone over correctly, the remainder of the criminal actions may be thrown out. In half of these cases, the courts said the officers didn't have enough cause to pull the drivers over. So in those two cases, drunk drivers may have gotten off. Remember, small mistakes can lead to huge consequences.

**Keep in Mind:** When a court and attorneys get ahold of your report, dash cam, and interview, everything will come down to those few moments on the road when you made the decision to pull someone over. There is nothing like putting less than five minutes of your life under a microscope for attorneys and the court to tear apart. A court's job is to look at the facts of your case, look at the law, and determine if under your facts, the law was violated. And while different courts can come to different decisions based on similar facts, you can minimize the possibility of getting evidence suppressed by knowing the law cold.

## ***More on Vehicle Stops***

**Wait here. I'm going to get my drug-sniffing dog:** You pull over a van, and the driver and passenger give you conflicting stories. They are traveling across state lines, seem nervous during questioning, and have air fresheners hanging in the back of the van. Do you have articulable suspicion to request a K-9 unit to do a walk-around? Yes. Based on the totality of the circumstances, the car may be detained for a reasonable time to perform the K-9 walk-around. In the *Thomas* case, Deputy Brian Lewis was in the process of investigating the traffic violation when the K-9 unit was called in to perform the walk-around. The circumstances of the stop gave Lewis articulable suspicion to permit the continuance of the traffic stop long enough for the K-9 unit to arrive and perform the walk-around. [\*State of Ohio v. Thomas\*](#), Twelfth Appellate District, Warren County, Aug. 5, 2013

**Fidgety driver + past arrest record + reasonable individualized suspicion = bag of heroin:** You pull a suspect over who seems to be manipulating something around his leg, under his pants. You also know the suspect has a past arrest record and seems nervous during the stop. Can you ask him to get out of the vehicle for a pat-down? Yes. In *Tritt*, the court found that Officer Mark Orick of the Dayton Police Department had a reasonable individualized suspicion that the suspect was armed and dangerous and was justified in asking him to exit the vehicle and perform a pat-down, resulting in the discovery of heroin. [\*State of Ohio v. Tritt\*](#), Second Appellate District, Montgomery County, Aug. 23, 2013.

## **OVI Tests (Intoxilyzer 8000): *State of Ohio v. Lambert***

**Questions:** 1) Does the certification for the Intoxilyzer 8000 have to be done at the patrol station if it had been done prior to transport? 2) Do you have to do the Intoxilyzer 8000 dry gas control test after each breath test?

**Quick Answers:** 1) No, if the certification was done prior to transport to the patrol station and diagnostic tests were run on delivery, there has been compliance with the rules governing certification. 2) No, a dry control test is done before the subject's first breath and after the second breath, but not in between.

[\*State of Ohio v. Lambert\*](#), First Appellate District, Hamilton County, Aug. 21, 2013

**Facts:** After a traffic stop, Roger Lambert was taken to the Cincinnati Police District One post for a breath-alcohol test on the Intoxilyzer 8000. After OVI charges were filed, Lambert argued that the test should be thrown out because the dry gas control test was not tested prior to, and after, every subject test. He also argued that the instrument certification was not properly done because certification was made in Columbus and not when the instrument was placed at the post. When examining the instrument certification, the court looked to the language in Ohio Administrative Code (OAC) [3701-53-04\(D\)](#) and found that the rule does not require the certification to be performed at the time of installation at a location. The court found it sufficient that when the instrument was taken to District One, diagnostic tests were run to make sure it was working properly. The court also determined that under OAC 3701-53-04(B), the instrument must automatically perform a dry gas control test before and after every subject test. The term "subject test" means a single test that is comprised of two different breath samples. As a result, the rule requires a dry gas control test before a person's first breath sample and after the second breath sample, but not in between the two samples.

**Importance:** It is important to make sure the machines are working properly and used appropriately. If you are called to court to describe how you used the machine, make sure you are able to fully explain the steps you followed and how those steps are in compliance with law. In this case, both the officers and employees of the Ohio Department of Health testified. If a breath test is thrown out, make sure you have other evidence to back up your arrest. This includes a detailed report of your observations and results of the field tests.

**Keep in Mind:** On the same day the decision in this case was issued in Hamilton County, a judge in Marietta Municipal Court issued a ruling that the Intoxilyzer 8000 was unreliable in nine cases. With the recent media attention and difference of opinion by the courts in Ohio, be sure to document all other evidence leading to OVI arrests and charges. For this particular machine, the [Ohio Department of Health](#) can provide technical support, [the operator's manual](#), and training.

Here are links to news stories on these cases:

- [Channel 6 News](#), Columbus, "Ohio Judge Rules that Breathalyzer is Unreliable," Aug. 21, 2013
- [Parkersburg News and Sentinel/Marietta Times](#), *Marietta May Appeal Ruling in OVI Case*, Aug. 22, 2013

### **More on OVI Tests**

**You mean I can't shorten the test? NHTSA Standards:** There is no short version of the test recognized by the National Highway Traffic Safety Administration. The officer performed a "condensed" horizontal gaze nystagmus (HGN) test, finger dexterity test, and number count and alphabetic recitation while the individual was still seated in the vehicle. Even though the suspect failed the tests given, the court suppressed the results because the testing standards were not met. To perform the test properly, the suspect must exit the vehicle. Otherwise, the results of the test will be thrown out. [State of Ohio v. Gettings](#), Eighth Appellate District, Berea Municipal Court, Aug. 15, 2013

## **Proper Protocol (Dereliction of Duty): *State v. Beggs***

**Question:** Is it a dereliction of an officer's duty to leave an intoxicated individual unattended after picking him up from the scene of a one-car accident and hearing of various complaints of his reckless driving?

**Quick Answer:** Yes.

[State of Ohio v. Beggs](#), Fifth Appellate District, Delaware County, Aug. 6, 2013

**Facts:** Several motorists called law enforcement about the erratic driving of Uriel Juarez-Popoca. The man had jammed his truck between the guardrail and wires in a median strip, apparently while attempting a U-turn. Upon arrival, deputies found multiple license plates and empty beer cans in Popoca's truck. Yet they called the case back to dispatch as a disabled vehicle, not as a potential OVI. Popoca spoke little English, so deputies communicated with him through a corrections officer who had minored in Spanish in college. They ultimately dropped off Popoca at a nearby fast-food restaurant to await a ride from a friend. One of the deputies told the corrections officer, "That stupid

idiot, he has no idea what's going on even after you tried to talk to him." Popoca made a disturbance at the restaurant, prompting the manager to call 911. While awaiting a deputy's arrival, the manager locked Popoca out of the restaurant, and Popoca walked to another fast-food restaurant. A deputy arrived and remained in the restaurant about 15 minutes before being seen leaving in the direction of the station. That evening, Popoca was struck and killed by a car about a mile from the second restaurant. His blood alcohol level was .23. Both deputies in the case were convicted of dereliction of duty.

**Importance:** Sometimes you're almost at the end of your shift, or you've already dealt with enough drunks in a given evening, and you find yourself trying to talk to someone drunk out of his mind and incoherent. A language barrier doesn't help. So you're going to "cut this guy some slack" and drop him off to get a ride home. But when that guy ends up dead, it's on you. That's what "dereliction of duty" means. You didn't sign up to be anyone's babysitter, but when you wear the badge, you have a duty to protect people. And sometimes that means protecting them from themselves. Popoca clearly was drunk. The motorists around him reported him driving recklessly before he rammed a guardrail. There were beer cans in his car. One deputy said he was so out of it that he had no idea what was going on. The manager of a fast-food restaurant frequented by late-night revelers locked the doors on him. And his blood-alcohol level — a whopping .23 *after* being in custody, transported, walking a mile, and dying — was the final testament to his condition. The duty to apprehend an individual means taking the individual into custody until the threat of danger to him and others has passed. When the officers left Popoca at the restaurant, they did so knowing he was intoxicated and could not communicate. The man was still a danger to himself and others. Instead of a fast-food joint, the officers could have dropped the man off at the station or a hospital to sober up. Or they could have just arrested him for drunk driving.

## **Constitutional Requirements (Miranda): *State v. Matthews***

**Question:** When a suspect refuses to waive *Miranda* but keeps talking and offers voluntary statements about the case, can those statements be used against the suspect?

**Quick Answer:** Yes, if you don't ask him any questions or otherwise provoke, coerce, or induce him to talk.

[\*State v. Matthews\*](#), Twelfth Appellate District, Butler County, Aug. 12, 2013

**Facts:** Detective Paul Davis had spoken with Sean Matthews on two occasions regarding allegations of child enticement, gross sexual imposition, and public indecency. The first was at his home and the second was at the station. During the second discussion, Matthews was placed under arrest, and Davis read Matthews his *Miranda* rights. Matthews refused to sign the card waiving his rights, but continued to talk and say he had done nothing wrong. Davis asked no questions of Matthews. During the booking process, Matthews remained chatty and told Davis he had driven his roommate's vehicle on the days of the incidents in question, but said nothing had happened. (The alleged misconduct reportedly took place in that vehicle.) Davis then asked Matthews why he had lied to him about driving the car in an earlier interview, and Matthews said it was because he was driving under suspension. Matthews later was convicted and asked the court to suppress his statements. Although Matthews refused to sign a waiver, he continued to make statements during booking. The court determined that Matthews had been properly given his *Miranda* warnings and most of his statements were not in response to an interrogation, therefore the waiver was not necessary. There was no

evidence that the statements were provoked, coerced, or otherwise induced by police. The only statement that the court suppressed was the response to the direct question concerning lying in a previous interview. All of the other statements were determined to be voluntary.

**Importance:** If you have a chatty suspect who does not waive *Miranda*, it may be best to let him keep talking without asking questions. There is a fine line between voluntary statements and a suspect arguing the statements were provoked, especially when you ask a question.

**Keep in Mind:** When a suspect has not waived *Miranda*, you are not to question him without his attorney present.

### ***More on Constitutional Requirements***

**Terry stops with weapons drawn:** You learn that a suspect in a home invasion was tracked down at a local hotel. En route to the hotel, you learn that another individual, who is now waiting in the adjacent fast-food parking lot, has dropped off the suspect. You have a warrant, and because you believe the suspect is dangerous, you wait for him to make a move. You watch as the suspect walks out of the hotel room and the car flashes its light twice. While other officers apprehend the suspect, you go to the vehicle with your gun drawn. You order the individual out of the car, but he reaches for his waistband. You remove him from the vehicle, handcuff him, and pat him down, finding a gun and drugs. You arrest him. Did this lawful investigatory stop turn into an unlawful arrest? No. In *U.S. v. Davis*, the court determined that based on the conduct and behavior of both the suspect and driver, the officers were justified in taking precautions by drawing and displaying weapons, removing the driver from the car, and handcuffing him for their own safety. The court also determined the officers had reasonable suspicion to investigate the vehicle for evidence related to the home invasions. [\*U.S. v. Davis\*](#), Sixth Circuit, Western Michigan, Aug. 12, 2013.