




Ohio Attorney General's Law Enforcement Bulletin



September 2015

State v. Salinas 2015 Ohio 3501

Question: Can an officer continue to interrogate a suspect after locating contraband and placing him in handcuffs?

Quick Answer: Generally, no. Miranda must be read and waived in order for the officer to continue any questioning designed to elicit an incriminating response.

Facts: A trooper conducted a traffic stop on Salinas for following too closely. Upon making contact it was determined that Salinas did not have a driver's license. Salinas was asked to exit the car, and prior to being placed in the cruiser, the trooper asked for and received consent to pat Salinas down. During the pat down the trooper felt a plastic baggie and asked what it was. Salinas remarked "you got me" and pulled out a plastic baggie with suspected cocaine from his pants pocket. After handcuffing Salinas, the trooper continued questioning, and Salinas made incriminating statements relating to being in the country illegally, planning to sell the cocaine locally, and referencing how much cocaine he possessed. The court concluded the encounter became custodial when Salinas was handcuffed and the trooper asked questions eliciting these responses. Since the trooper did not Mirandize Salinas before continuing with this line of questioning, the court suppressed Salinas' incriminating statements.

Keep in Mind: As a general rule, roadside questioning during a routine traffic stop is not considered to be a custodial interrogation. However, if the encounter becomes custodial in nature, officers must read Miranda prior to further questioning.

State v. Taylor 2015 Ohio 3252

Question: Can officers continue to search a vehicle after discovering the contraband that prompted the search?

Quick Answer: Yes. As long as probable cause exists to believe additional contraband may be concealed in the area to be searched.

Facts: Officers conducted a traffic stop for excessive window tint and failure to signal a turn. As they approached the car, both officers noticed a strong odor of marijuana coming from the vehicle. Having

probable cause based on the odor, officers searched the car. During the search, officers located two marijuana cigarettes and a magazine of live ammunition. Officers also found a set of keys that opened the glove box where they recovered an unloaded handgun. The defendant argued that police exceeded the scope of the search of his car without probable cause when they continued to search after finding marijuana cigarettes (*the source of the smell prompting the search*). The court concluded the smell of marijuana provided the officers with probable cause to search the passenger compartment of the suspect's car and the probable cause does not end once some drugs are found.

Keep in Mind: When probable cause exists to search a vehicle, officers are permitted to search anywhere the item of contraband may be located, including the glove box and other closed containers.

Salgado v. Montgomery County Sheriff's Office 2015 Ohio 3387

Question: Can a sheriff's office deny a carrying concealed weapon (CCW) application on the sole basis of an applicant being convicted on a misdemeanor of the fourth degree drug paraphernalia charge for possessing a marijuana pipe?

Quick Answer: No. In 2012, the Ohio legislature modified ORC 2925.14 and enacted ORC 2925.141 to reclassify the charge of possessing drug paraphernalia relating to the use of marijuana which was previously a misdemeanor of the fourth degree (M4), to a minor misdemeanor (MM).

Facts: In 2004, Salgado was convicted of possession of drug paraphernalia under ORC 2925.14, an M4. In 2012, the legislature reclassified this provision (2925.141) as a MM when the paraphernalia involved the use of marijuana. Salgado applied for and was denied a permit to carry a concealed handgun in 2014 based solely on his 2004 conviction. The CCW statute (2923.125) prohibits issuing a permit to a person who has been convicted of an offense involving the illegal use of a drug of abuse as long as the offense is *not classified as a minor misdemeanor*. In determining Salgado's eligibility, the court considered the spirit of the legislature's intent to distinguish marijuana from other drugs of abuse. In doing so, although Salgado had been convicted of an M4, the court concluded under the new statute this would be a minor misdemeanor thus making Salgado otherwise eligible.

Keep in Mind: Our criminal code often undergoes changes. While some may seem minimal, it is important to remember that these changes can have an impact on charging considerations, sentencing, and even application processes such as CCW permitting.

State v. Foster 2015 Ohio 3401

Question: Are officers permitted to search any area for evidence of criminal activity while conducting a sweep of a residence for possible intruders?

Quick Answer: No. Officers may only search areas in which an intruder may be hidden.

Facts: Officers responded to an alarm call at a residence to find the front door slightly ajar. Officers entered the home to check for intruders and once inside smelled raw marijuana and saw paraphernalia in plain view. They continued their sweep in a bathroom where they observed a shelf that was deep enough to conceal a person. Officers checked the shelf and found a Crown Royal whiskey bag and a loosely tied

plastic grocery bag. Officers opened the grocery bag to discover crack cocaine. After this discovery, they obtained a warrant to search the house. At suppression, the officers admitted the bag was not large enough to contain a person and that they could not see the bag's contents without opening it. The court upheld the initial entry in to the home to search for intruders, based on exigent circumstances. However, the appellate court ruled the evidence found in the bags should have been suppressed as the items were too small to contain a person and the bags had to be opened to view the contents.

Keep in Mind: As a general rule, officers are permitted to conduct protective sweeps inside a residence; however, the scope is limited to only those areas where a person may be concealed. If probable cause exists to search further, officers should obtain a warrant before doing so.