




# Ohio Attorney General's Law Enforcement Bulletin



**February 2016**

## **State v. Elmore, 2016 Ohio 129**

Question: Does a trespasser have a reasonable expectation of privacy on the real property in which they are trespassing?

Quick Answer: No. When a person is trespassing he has no reasonable expectation of privacy on the property of another.

Facts: A deputy on patrol observed a campfire and car parked in a wooded area near the Tuscarawas River. Having never known of this area to be used for camping, the deputy stopped to investigate. As he approached he observed three people sitting around the fire and two behind a tent. The subjects admitted they did not have permission to be there and did not know who owned the property. Both men behind the tent, which included Elmore, had outstanding warrants and appeared to be under the influence of a drug based on their actions. On the ground where they had been standing he observed coffee filters, marijuana, and a clear liquid in a plastic bottle. Upon viewing the car from the outside he located additional items consistent with manufacturing methamphetamines. He returned to the tent and lifted the corner finding methamphetamines. Inside the tent he found more items used to manufacture the drug. All denied ownership of the items. The appeals court overturned the trial court, which initially concluded the search was unlawful, finding Elmore had no reasonable expectation of privacy in the property as a trespasser. In addition, the car did not belong to him and no one claimed ownership of the tent or bag containing methamphetamines.

Keep in Mind: In making a determination whether a search was lawful, the court must consider whether the person challenging has a reasonable expectation of privacy in the area or item to be searched. Asking questions to establish ownership will help determine whether the person has a legitimate expectation of privacy.

## **State v. Williams, 2016 Ohio 439**

Question: When responding to a shots-fired call, observing fresh blood outside the residence door and hearing a commotion inside, may officers enter the dwelling without a warrant?

Quick Answer: Yes. When someone may be in need of immediate assistance police may enter a dwelling for the purpose of rendering aid.

Facts: Officers responded to a 911 call wherein the caller said someone was yelling inside an apartment and “busting off caps.” When the officers arrived they observed fresh blood directly outside the apartment door. They knocked and when someone eventually answered they entered the apartment and went from room to room to determine if anyone was injured or determine if someone inside had a weapon. Inside they located drugs, drug paraphernalia, and a handgun. Williams, who was present inside the apartment, admitted he lived there, slept in the room the drugs were found, knew the gun was in the apartment, and handled it previously. On appeal, Williams challenged the entry and subsequent search of the apartment. The Court pointed out the emergency exception to the search warrant requirement, based on specific and articulable facts, permitted officers to enter and search for someone in need of immediate assistance or an assailant with a weapon. Once they observed the items in plain view they were subject to a lawful seizure.

Keep in Mind: In an emergency situation, officers are limited to search only those areas in which a person may be. Once the emergency is resolved, officers must obtain a search warrant to justify a further search for evidence.

## **State v. Leak, 2016 Ohio 154**

Question: Does the mere arrest of an occupant of a lawfully parked vehicle trigger police impoundment and a warrantless inventory or search of the vehicle?

Quick Answer: No. Officers must have a reasonable belief the vehicle contains evidence of the offense for which the suspect was arrested or the vehicle was impounded in accordance with a state statute or city ordinance and inventoried pursuant to an agency inventory policy.

Facts: In an attempt to serve a domestic violence warrant on Leak, an officer was given a description of a vehicle Leak was purported to be in and his alleged location. The officer located the vehicle and observed Leak in the passenger seat. He ordered Leak from the vehicle and placed him under arrest, into handcuffs and in the back of the patrol car. After verifying the person in the driver’s seat had no warrants, all remaining occupants were removed from the vehicle. The officer called for a tow truck and conducted an inventory of the vehicle, finding a handgun under the passenger seat, which Leak admitted was his. Leak filed a motion to suppress the handgun and the Fifth District upheld the search. The Ohio Supreme Court reversed and excluded the evidence. First, the Court examined whether a search was proper incident to Leak’s arrest. Since there was no reasonable belief the vehicle contained evidence relating to the domestic violence warrant, the court considered the basis of the impoundment. In reviewing the revised code along with Mansfield Codified Ordinances, there were no provisions justifying the impoundment of the legally parked vehicle. Therefore, the accompanying inventory was unreasonable and the evidence was excluded.

Keep in Mind: The arrest of a recent occupant of a legally parked vehicle does not, by itself, establish reasonableness to justify a warrantless search of the vehicle the arrestee had been riding in.

## **Bachynski v. Stewart, 2015 U.S. App. Lexis 22492 (6<sup>th</sup> Circuit)**

Question: Can an arrested suspect who invokes right to counsel later waive that right while speaking to officers assisting the suspect in contacting an attorney?

Quick Answer: Yes. The right may later be waived as long as the suspect reinitiates discussion about the suspect's case and police secure a subsequent waiver.

Facts: Bachynski was arrested for three murders. After being taken to the police station detectives read her Miranda warnings and she requested an attorney. About 30 minutes after being returned to her cell, detectives realized she did not have the tools to contact an attorney and offered to call her family or provide a phone book for her. At this point Bachynski said she wanted to change her mind and speak with the detectives. She was read and waived her Miranda rights again and provided a full confession. On appeal, the 6<sup>th</sup> Circuit noted that "...suspects who invoke their *Miranda* rights remain free to change their minds. When the suspect initiates a case related discussion, the right to have a lawyer present can be waived." The Court noted that officers attempt to facilitate the exercise of her right to an attorney by providing her with tools to do so is counterintuitive to the notion this was a ruse to get her to waive her rights.

Keep in Mind: When a suspect unambiguously invokes right to counsel, officers must scrupulously honor such a request. Any later case-related discussions must be initiated by the suspect and officers must secure a valid waiver prior to questioning.