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THE ROOKIE

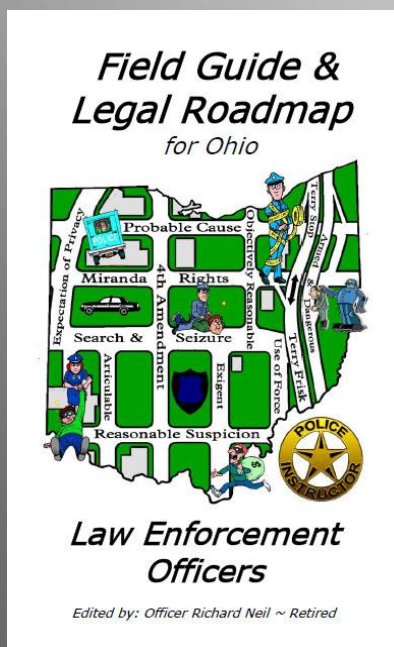
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IT'S BEEN A WHILE

Sorry I've been away for a while. I required another spinal implant, as many of the cadets know from my absence. There are some new and interesting cases for review in this issue of The Rookie. Make sure you share this information with other LEOs on your agencies. We only get better as a profession when we work together and share resources, information, and training. No one benefits when a fellow officer fails from a lack of information that was readily available. Training doesn't just mean going to the range and the gym. Knowledge of Ohio statutes and case law are just as important to a successful career. After all we are "Law Enforcement" professionals.

Over the years I have collected case laws that affect Ohio LEOs. As a Legal Instructor for the OPOTC I have benefited from great training and resources as well. I have put the information I use the most to teach recruits as well as in-service officers into a handbook. I hope to add more to the handbook and eventually publish it and use part of the proceeds for our fallen officers. The PDF version of the handbook will always be free for you to download.



The handbook will guide you through the sections of law most pertinent to Ohio LEOs. The information is combined from several sources including the Federal Law Enforcement Training Center, U.S. Supreme Court, Ohio Supreme Court, Sixth Circuit Court of Appeals (federal), and other government agencies. When in doubt always contact your local prosecutor or city law director.

Download the Field Guide & Legal Roadmap for Ohio Law Enforcement Officers at www.officerneil.com.



There is no
greater
love than to
lay down
one's life
for one's
friends.

~John
15:13

DEPUTY SUZANNE HOPPER FUNDRAISER

As you know Deputy Sheriff Suzanne Hopper, a 40-year-old mother-of-two, was killed as she was investigating reports of gunfire at Enon Beach in Clark County. There will be a fundraiser in her honor to benefit her family and others affected by the incident.

The fundraiser will be at the Huber Heights Athletic Foundation on Fishburg Road. It is just west of State Route 201 (Brandt Pike) in Huber Heights, Ohio at 5367 Fishburg Road. The Foundation's number is 937-233-8618. The event held this Friday, February 11th, will start at 7pm and last until 1am. There will be over \$20,000 in raffle prizes given out, including autographed sports memorabilia.

The cost is \$15 at the door and that will include food, beer, and other drinks. There will be a bagpipe dedication during the event. Officer Jeremy Blum who was shot during the incident is also expected at the event and will be honored during the night.





The Ohio
Second District
Court of Appeals
includes
Champaign,
Clark, Darke,
Greene, Miami,
as well as
Montgomery
Counties.

STATE V. CLACK, 2010-OHIO-5747 “REASONABLE SUSPICION”

COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

At approximately 3:44 a.m., Officer Scott Fitzgerald, a 17-year veteran with the Miami Township Police Department, was patrolling the area of Studio Six in a marked police cruiser. Officer Fitzgerald described Studio Six as a “low-end motel” known for prostitution and drug activity. In fact, Officer Fitzgerald had made several drug and prostitution arrests at Studio Six.

Officer Fitzgerald observed a Chevy Silverado, driven by a white male, pass by his police cruiser. Officer Fitzgerald ran the Silverado’s license plate; it had been reported stolen from the city of Dayton. Officer Fitzgerald requested back-up.

Within 15 seconds, Officer Ooten, also a 17-year veteran of the Miami Township Police Department, arrived at the scene. Each officer secured a side of the hotel. As Officer Fitzgerald pulled further into the parking lot, he observed two individuals walking from the south parking area, where the truck was parked. The two individuals were walking toward the middle door of the hotel, which was being held open by a black male, later identified as Clack.

Officer Fitzgerald stated that he was unable to say if Clack had been in the vehicle. Officer Fitzgerald noted that Clack was a person of interest in his investigation of the stolen truck; however, there is nothing in the record to suggest this was the case other than the fact Clack was at a doorway and appeared to be holding the door open for someone. Officers Fitzgerald and Ooten then approached the three individuals, all of whom were outside the hotel.

Being that a stolen vehicle was involved, Officer Fitzgerald was concerned for his and Officer Ooten's safety. Therefore, each individual, including Clack, was detained and handcuffed and a pat-down search for weapons was conducted. No weapons were found on Clack's person.

Officer Duffey then arrived at the scene. Officer Duffey observed Clack "moving around." As he approached Clack, he noticed a baggie containing a white substance lying on the ground within several inches of his hand.

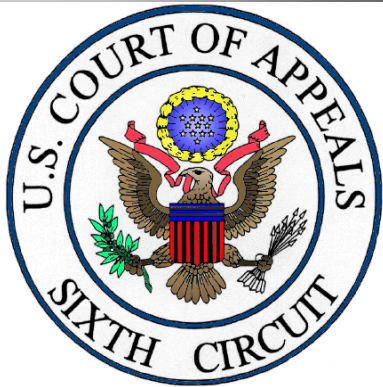
Clack was indicted on one count of possession of drug abuse instruments, one count of possession of drug paraphernalia, and one count of possession of cocaine.

"The Arresting Officer's Reliance on Another Party Driving a Stolen Vehicle is Insufficient to Establish the Reasonable Suspicion to Stop the Appellant under Terry v. Ohio."

"The investigative stop exception to the Fourth Amendment warrant requirement allows a police officer to stop and briefly detain an individual if the officer possesses a reasonable suspicion, based upon specific and articulable facts, that criminal activity 'may be afoot.' To justify an investigative stop, the officer must be able to articulate specific facts which would warrant a person of reasonable caution in the belief that the person stopped has committed or is committing a crime.

"A valid investigative stop must be based upon more than a mere 'hunch' that criminal activity is afoot."

Officer Fitzgerald testified that he could not say if Clack had been "inside the hotel, if he was in the truck, or [if] he was milling around in the parking lot." While Officer Fitzgerald stated that, at this point, he considered Clack, along with the driver and the female, to be persons of interest in the investigation of the stolen vehicle, he was unable to articulate any facts that could connect Clack to the vehicle in any way. The entire focus of the investigative stop was to determine who was responsible for the stolen vehicle, but there was no reason to believe it was Clack. The record contains no suggestion of furtive movements or gestures. His conduct was more consistent with innocent behavior than with theft of the vehicle in question.



Decisions from the Sixth Circuit Court of Appeals are binding on Ohio as well as Kentucky, Michigan, and Tennessee.

The court is located in Cincinnati, Ohio.

The fact this was a high crime area does not persuade us to believe that it was reasonable to handcuff and detain Clack. As this court has previously held, “the fact the investigative detention occurred in a high crime area is not by itself sufficient to justify the stop.” *State v. Sheppard* (1997). This confirmed the position stated by the Supreme Court of Ohio and this court that “to hold otherwise would result in the wholesale loss of the personal liberty of those with the misfortune of living in high crime areas.” *State v. Carter* (1994)

We find that the above circumstances, when taken as a whole, failed to establish a reasonable, articulable suspicion that Clack was engaged in illegal activity, and, therefore, the officers’ detention and investigatory stop violated the Fourth Amendment.





Chuck Norris sells his beard trimmings to the local police department to make bullet-proof vests.

True Story!

STATE V. BAUGHMAN, 2011-OHIO-162 "FAKE TIP ARREST" 12TH CIRCUIT

On April 28, 2010, Officer Heath Martin of the Springboro Police Department received a 911 dispatch regarding a possibly intoxicated driver heading toward Springboro. A man who identified himself as "John Simpson" called 911 and reported seeing a small, red car driving erratically in the vicinity of State Route 741. The informant provided the license plate number of the vehicle and suggested that the driver may be diabetic or intoxicated.

Using the details provided by the informant, Officer Martin located a red Pontiac traveling on SR 741. The license plate number of the vehicle matched the number provided by the informant. Officer Martin followed the vehicle for a block or so, then initiated a traffic stop without having observed any traffic violations. The officer stopped the vehicle solely on the basis of "John Simpson's" tip.

Officer Martin approached the vehicle and identified the driver as Shawna Baughman. He detected a strong odor of an alcoholic beverage about her person and observed that her eyes were watery, glassy, and bloodshot. Shawna admitted to consuming one beer. The officer asked her to exit the vehicle to perform field sobriety tests. Shawna indicated that she was a registered nurse and knew she would not pass the tests. Shawna was placed under arrest and transported to the Springboro police station where she submitted to a blood alcohol content (BAC) test.

Unbeknownst to Officer Martin at the time of the arrest, the tipster who identified himself as "John Simpson" was actually Shawna's husband, Frank Baughman. According to Frank, he did not provide his real name to the 911 dispatcher because he did not want Shawna to know he was the tipster due to their impending divorce. When Shawna retrieved the children, Frank claimed he saw her "stumble a little bit" as she opened her car door. He also indicated that he "thought he smelled something" about Shawna's person. At the suppression hearing, Frank admitted that he phoned 911 partly because he was angry with Shawna following the custody exchange. He did not actually observe her driving erratically or crossing the double line as he told the 911 dispatcher.

Shawna subsequently filed a motion to suppress. Following a hearing, the trial court granted the motion. The court reasoned that Frank's tip was not reliable and that there was no independent observation of Shawna's impairment by Officer Martin, rendering the stop invalid. Then came the appeal and an unexpected reversal (at least in my opinion).

In view of these falsities, it is not surprising that the trial court found Frank to be an unreliable informant. But was "John Simpson's" unreliability evident from the perspective of an objectively reasonable police officer on the scene guided by his experience and training and reacting to circumstances as they unfolded? *Bobo*, 37 Ohio St.3d at 179. We think not, and find the trial court's failure to view the case from this perspective to be an improper application of the law.

When objectively viewing the circumstances, Officer Martin had no reason to doubt the reliability of the tip when he initiated the traffic stop. On its face, the "John Simpson" tip qualified as an identified citizen informant tip. There was absolutely no indication that the tip was based on rumor or speculation; to the contrary, it was purportedly based on direct observation.

Officer Martin rationally relied on the tip, giving rise to a reasonable and articulable suspicion sufficient to justify initiating the stop. The stop did not violate Shawna's right to be free from unreasonable searches and seizures under the 4th Amendment.

Admittedly, the facts of this case are worrisome. We do not wish to encourage private citizens to fabricate tips of criminal activity in furtherance of some petty grudge or ill will. Presumably, such citizens will be deterred by the possibility of criminal prosecution.

The propriety of applying the exclusionary rule turns on the culpability of the police and the potential for exclusion to deter wrongful police conduct. *Herring v. United States* (2009), 555 U.S. 135, 129 S.Ct. 695, 698. Upon analyzing these two objectives, we find that the application of the exclusionary rule is inappropriate in this case.

Under the facts and circumstances of the case, there is nothing blameworthy in Officer Martin's reliance upon what appeared to be a valid identified citizen informant tip. Shawna offered no evidence to support that the officer acted in a dishonest manner when he initiated the stop based upon the tip.

The officer did not deliberately disregard Shawna's Fourth Amendment rights, nor can we say that his conduct rises to the level of recklessness or gross negligence based upon the totality of the circumstances.

Moreover, exclusion of the evidence in this case based upon Frank's lies "will not further the ends of the exclusionary rule in any appreciable way; for * * * [the officer was] acting as a reasonable officer would and should act in similar circumstances. Excluding the evidence can in no way affect [the officer's] future conduct unless it is to make him less willing to do his duty."



“OPEN CARRY” DOES NOT = INDUCING PANIC

As the Attorney General indicates in his Concealed Carry Law Handbook below “open carry” is legal in Ohio. Like it or not. Some officers say they like open carry because there is no secret in such cases. It is the concealed carry that worries them. Others don’t like it at all. One of the most common statements I hear from cops, young and old, is that they will arrest the person for Inducing Panic. A few officers have found out the hard way that it is not a crime unless there is other behavior present. When you review the law you will find that there is a requirement of an “offense” to meet the elements of Inducing Panic. Since “open carry” is legal it cannot count as an offense.

2917.31(A)3 Inducing panic:

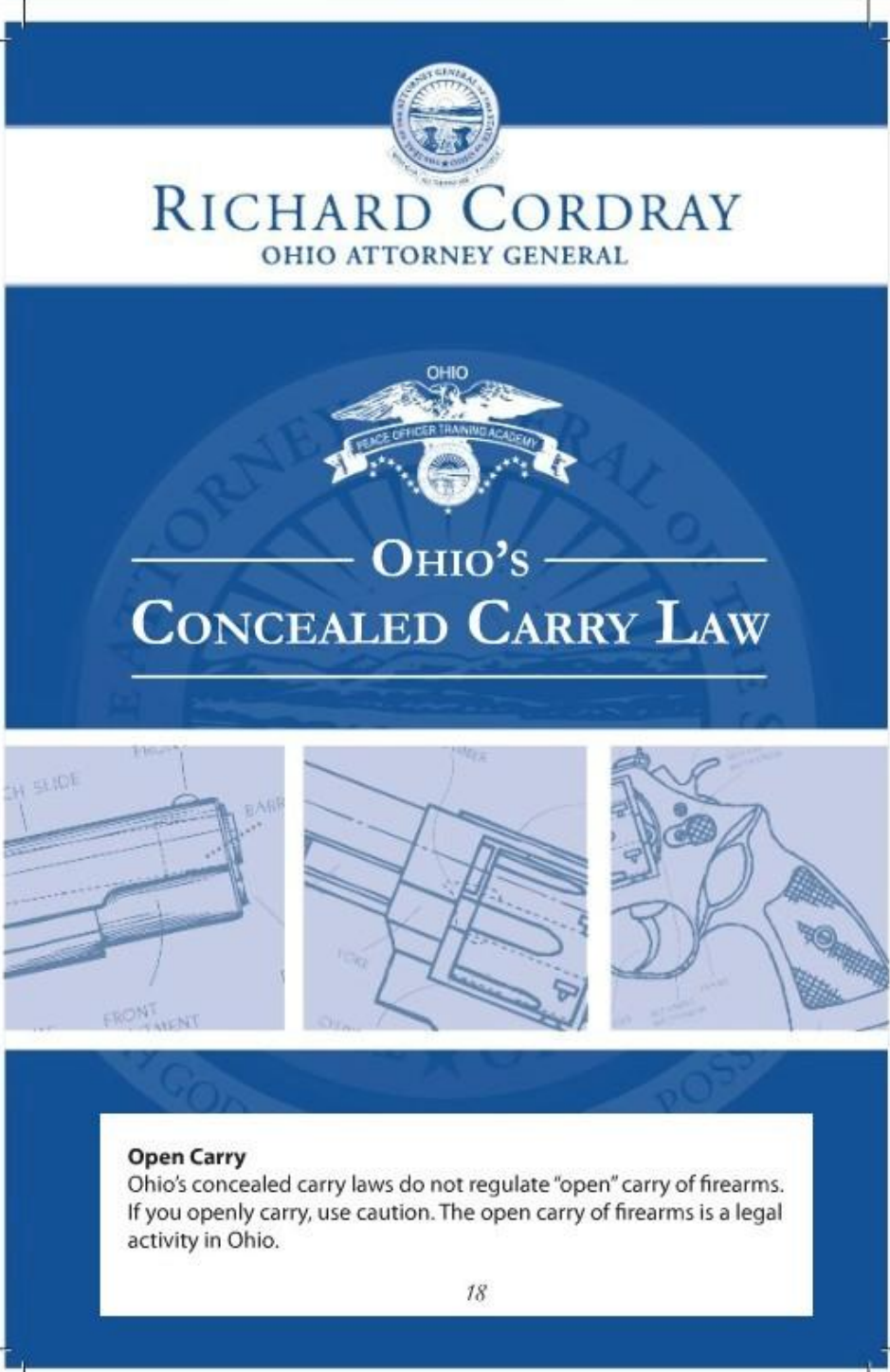
No person shall cause the evacuation of any public place, or otherwise cause serious public inconvenience or alarm, by doing any of the following: Committing any offense, with reckless disregard of the likelihood that its commission will cause serious public inconvenience or alarm.


So as you can see without some other offense the elements are not present for Inducing Panic. It requires other actions on behalf of the person besides the open carry of a firearm. And since open carry falls under the Ohio Constitution it is a right that we swore to protect, not violate. Some communities have decided to pass their own laws to stop the open carry of firearms in their jurisdictions. That won’t work either. The Ohio Supreme Court recently ruled on such an attempt by the City of Cleveland. I’ll give you the short version.

Cleveland v. State, 2010-Ohio-6318

“ONLY federal or state regulations can limit an Ohioan’s individual right to bear arms”

Short of a state level statute, open carry will remain legal in our state.




RICHARD CORDRAY
OHIO ATTORNEY GENERAL

OHIO
PEACE OFFICER TRAINING ACADEMY

OHIO'S
CONCEALED CARRY LAW

Open Carry
Ohio's concealed carry laws do not regulate "open" carry of firearms. If you openly carry, use caution. The open carry of firearms is a legal activity in Ohio.

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MCKENNA V. HONSOWETZ, 2010 U.S. SIXTH CIRCUIT

Officers responded to McKenna's home in response to a call to 911 that stated he was having a medical seizure. During their encounter with McKenna the officers repeatedly tried to get him to put on his pants, and tried to force him to rise, in the face of his request that they stop. Completely unprovoked by any aggressive or dangerous behavior, they then rolled him over, pinned him on his stomach with their knees, and handcuffed his arms behind his back and his ankles. After McKenna had been taken away to the hospital, the officers searched a dresser drawer in his bedroom and the medicine cabinet in the bathroom. In the process, they knocked down everything on top of the dresser and threw out his children's baby-teeth collection. One of the officers also ran a check on McKenna's license plate. Their actions violated McKenna's right to be free from unreasonable searches and seizures and the denial of qualified immunity was proper.

U.S. V. LANHAM, 2010 U.S. SIXTH CIRCUIT

Lanham and Freeman worked as jailers at the Grant County, Kentucky, Detention Center. Along with their supervisor the defendants decided to "scare" an individual, who had been arrested for a traffic violation, by placing him in a general population jail cell. As a result the victim was beaten and sexually assaulted by other inmates.

Lanham and his supervisor mocked the victim about his slight appearance, and he was present when his supervisor said that the victim would make a "good girlfriend" for the other inmates. When the supervisor stated that they needed to teach the victim a lesson, Lanham quickly volunteered that he knew a prisoner in Cell 101. Lanham talked to Inmate Wright, within earshot of other inmates, and explained that the guards would be bringing a new prisoner down and that they wanted the prisoners to "f-ck with" him. The evidence also showed that the inmates cheered at this news when Lanham was present, and that Lanham knew of that particular cell-block's reputation for violence. Lanham admitted that he had asked Inmate Wright to teach the victim a lesson. The deputies were rightly convicted of civil rights violations and lost their qualified immunity.

February 2011



*"Blessed are the peacemakers, for they shall be called children of God."
~Matthew 5:9*

www.OfficerNeil.com



THE ROOKIE

