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Police Use Unconscious Driver and Passenger as Anti-Drug Advertisement

BY [LEIGH SOLOMON](#) / ON SEPTEMBER 20, 2016

On Thursday, September 8th, 2016 Ohio police officers posted photographs of a couple and their son on Facebook[1]. The pictures display a woman and man, unconscious in the front seats of their vehicle, and a four-year-old child awake in the back seat. The city police took these pictures after conducting a traffic stop on September 7th; they had noticed the couple's car weaving between traffic lanes, and upon stopping the car, noticed "the man's head 'bobbing back and forth his speech was almost unintelligible[2].'" James Acord, the driver of the vehicle, informed officers that he was taking the passed out woman, Rhonda Pasek, to a hospital, after which he lost consciousness. An ambulance was called and paramedics administered Narcan, a medication used to block the effects of opioids, particularly during overdose[3].

Ohio has been suffering a major heroin epidemic, which has killed at least twenty-three Ohioans per week, as of April 2016[4]. The East Liverpool, Ohio police cite the epidemic as justification for their inclusion of the photographs of the unconscious couple and the young child in their Facebook post, stating, "We feel it necessary to show the other side of this horrible drug." They express that "it is time that the non drug using public sees what we are now dealing with on a daily basis...we are willing to fight this problem until it's gone and if that means we offend a few people along the way we are prepared to deal with that." [5] Both pictures included in the Facebook post feature the young child looking directly at the camera from the back seat. The child's face is digitally altered to protect his identity in news articles, yet the pictures in the Facebook post remain unaltered. Many public comments below the police department's Facebook posting express disapproval of the exposure of the child's identity.

Not as popular among the Facebook comments, however, is any objection to the invasion of privacy of the man and woman in the front seats of the vehicle. There are two photos in the Facebook post; in one, neither the face of the driver nor passenger is clearly visible, allowing the two to remain basically unidentifiable. However, in the second picture, not only is the camera closer to the adults' faces, but a police officer is clearly holding back the hair of the passenger so that her face is pointed directly at the camera and clearly visible. If the police department's objective in posting these pictures was to show the drastic effects of the heroin epidemic, they could have achieved their goal just as effectively without infringing upon the adults' Fourth Amendment rights. The Facebook post states that the city police department felt the "need to be a voice for the children caught up in this horrible mess." However, the driver and passenger remained voiceless while being photographed, as they laid unconscious in their vehicle.

The Supreme Court has held that "a person can have a legally sufficient interest in a place other than his own home so that the Fourth Amendment protects him from unreasonable governmental intrusion into that place."^[6] The Court in *Rakas v. Illinois* found it "unnecessary" to decide "whether the same expectations of privacy are warranted in a car as would be justified in a dwelling place..."^[7] In *Katz v. United States*, 389 U.S. 347 (1967), Justice Harlan's concurrence expressed that an expectation to be free from governmental intrusion must "be one that society is prepared to recognize as 'reasonable' in order to deserve the protection of the Fourth Amendment."^[8] It was without a doubt reasonable for the police to stop Acord and Pasek's vehicle once they noticed Acord's dangerous driving. It was also reasonable for the police to inquire further once they noticed the condition of both the driver and passenger, and the presence of a young child in the back seat. However, it was beyond reasonableness for the police department to photograph Acord and Pasek while unconscious, to fulfill the objective of creating an anti-drug advertisement on a Facebook page.

It is one thing for police to document a crime scene for later use in prosecution. It is another to publicize, on a public social media site, pictures of these individuals without consent. Facebook's online help center includes an entire section regarding "reporting photos & videos that violate your privacy rights."^[9] Facebook acknowledges that its website is an extremely public forum where Fourth Amendment rights can easily be violated. The driver and passenger, in this case, were in no condition to express an opinion about their photos being taken. While the two were undoubtedly putting their lives, the life of the young child, and the lives of anyone else driving on the same road at that point in time in great danger, a complete disregard of their personal privacy is nevertheless not warranted.

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^[1] City of East Liverpool, Ohio, Facebook (Sept. 8, 2016, 2:09 PM), <https://www.facebook.com/cityofeastliverpool/posts/879927698809767>.

^[2] Chris Boyette, *This is the devastating effect of heroin that Ohio city wants you to see*, CNN, (Sept. 10, 2016, 2:49 PM), <http://www.cnn.com/2016/09/09/health/heroin-effects-police-photo-trnd/index.html>.

^[3] Julia Jacobo, *Ohio Police Post Photo of Adults Apparently Unconsciously With 4-Year-Old in Backseat*, ABC News, (Sept. 9, 2016, 9:48 PM), <http://abcnews.go.com/US/ohio-police-post-photo-adults-allegedly-overdosed-heroin/story?id=41983034>.

[4] Bill Whitaker, *Heroin Epidemic Kills at Least 23 Ohioans Each Week*, (Apr. 24, 2016), CBS News, <http://www.cbsnews.com/news/60-minutes-heroin-epidemic-ohio-bill-whitaker/>.

[5] City of East Liverpool, Ohio, *supra* note 1.

[6] *Rakas v. Illinois*, 439 U.S. 128, 99 S. Ct. 421 (1978).

[7] *Id.*

[8] *Katz v. United States*, 389 U.S. 347 (1967).

[9] Facebook, <https://www.facebook.com/help/428478523862899/>. (last visited Sept. 11, 2016).