

IN THE SUPREME COURT OF OHIO

State of Ohio,)	On Appeal from the
)	Marion County Court
Plaintiff-Appellee)	of Appeals, Third
)	Appellate District
vs.)	
)	Court of Appeals
Thomas L. Davis)	Case No. 9-05-34
)	
Defendant-Appellant)	Supreme Court Case No. 06-826

**REPLY BRIEF OF *AMICUS CURIAE*
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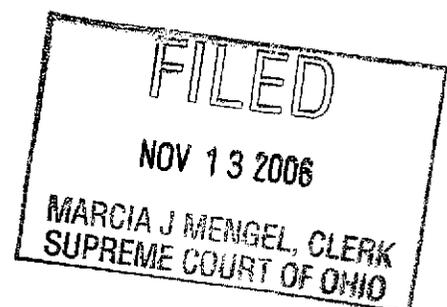


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STATEMENT OF THE CASE AND FACTS

The Appellant, Thomas Davis, was lawfully transporting an unloaded handgun in his 1985 Jimmy pick-up truck when he was stopped for a traffic offense. The handgun was in the original manufacture's closed plastic case under the seat of his truck, but was in plain sight. The handgun and magazine were stored inside the plastic case in the preformed storage locations designed by the manufacturer to transport them. The handgun was unloaded. The magazine was loaded and stored next to the handgun. Appellant does not have a concealed carry license issued pursuant to R.C. 2923.12 et seq.

Appellant was indicted for violating R.C. 2923.12(A), Carrying a Concealed Weapon by "knowingly carry or have, ...concealed ready at hand, a deadly weapon ... a firearm which was either loaded, or for which Defendant had ammunition ready at hand" The parties stipulated to the facts and submitted the case to the trial court. Appellant was found guilty on the trial court's determination that a cased, unloaded handgun, with a loaded magazine stored in the same case was a "firearm ... ready at hand and therefore constituted a violation of the Carrying Concealed Weapons statute." The Third District Court of Appeals affirmed the conviction and Appellant timely appealed to this Court.

INTRODUCTION

The Defendant-Appellant was lawfully transporting an unloaded handgun in his 1985 Jimmy pick-up truck in a closed plastic case located under his seat, yet clearly visible, and met all of the requirements of R.C. 2923.16(C)(1) in that he knowingly transported or had a firearm in a motor vehicle, unloaded and “in a closed package, box or case.” Appellee asks this Court to affirm the appellant’s conviction of violating R.C. 2923.12(A) “no person shall knowingly carry, or have, concealed on the person’s person or concealed ready at hand ... (2) a handgun....” on the basis that a unloaded handgun in a plastic case with a loaded magazine in the same case is “concealed” and “ready at hand.” This Court should resolve the obvious conflict between these two statutory provisions by holding R.C. 2923.12(A)(2) is unconstitutional because “ready at hand” does not permit a person of common intelligence to ascertain what conduct is prohibited and is void for vagueness.

ARGUMENT

Proposition of Law: R.C. 2923.12(A)(2) is unconstitutionally void for vagueness because a person of common intelligence is not able to ascertain what conduct is prohibited by “ready at hand” and it does not provide sufficient standards to prevent arbitrary and discriminatory enforcement.

A law that is written so that a person of common intelligence is not able to ascertain what conduct is prohibited, and provides insufficient standards to prevent arbitrary and discriminatory enforcement will not survive a void-for-vagueness challenge. *State v. Williams* (2000), 88 Ohio St.3d 513, 532; 728 N.E.2d 342, 361; 2000 Ohio LEXIS 428 (citations omitted). An individual transporting an unloaded handgun in a plastic case in a pick-up truck pursuant to R.C. 2923.16(C)(1) has no logical place to put it other than under the seat or, if possible, behind the seat. Either location would result in carrying a concealed handgun “ready at hand” according to

Appellee and trap the innocent by not providing fair warning that R.C. 2923.16(C)(1) is not a lawful manner to transport a handgun.¹

R.C. 2923.16(C) provides: “No person shall knowingly transport or have a firearm in a motor vehicle, unless it is unloaded and is carried in one of the following ways: (1) In a closed package, box, or case;” The stipulated facts clearly demonstrate that Appellant fully complied with these requirements. His handgun was located in an original manufacturer case made out of plastic that had two strips that snap holding it shut. The handgun was unloaded in the case under the seat still in plain sight. Consequently, Appellant was lawfully transporting his handgun.²

R.C. 2923.12(A) provides: “No person shall knowingly carry or have, ...concealed ready at hand, any of the following: ... (2) A handgun ...” The Appellee has asserted that a handgun is “ready at hand” regardless if it is loaded if there is ammunition “conveniently accessible and within immediate physical reach.”³ In other words, if an unloaded handgun is cased with its ammunition, it is “concealed ready at hand.” This overbroad and vague definition prohibits almost every possible manner to “carry or have” a handgun without a concealed carry license including target shooting and hunting.

For example, an individual going to a firing range to target shoot that places his ammunition and unloaded handgun in a range bag without a concealed carry license would

¹ Appellee ignores the plain language of the statute: “No person shall knowingly transport or have a firearm in a motor vehicle, unless it is unloaded and **is carried in one of the following ways: ...**” by arguing that Appellant could have lawfully transported his handgun pursuant to R.C. 2923.16(C)(2), (3), or (4) without violating R.C. 2923.12(A)(2) or conflicting with it. (Merit Brief of Appellee State of Ohio, pg. 8, emphasis added). All four ways provide lawful ways to transport a handgun and if the legislature intended only three ways to transport a handgun without a concealed carry license, it needed to clearly articulate it so that individuals would have warning.

² The Comment to 28 Ohio Jur. 3d Criminal Law § 1931 states: These provisions were designed to incorporate the manner in which responsible gun hobbyists and sportsmen agreed that firearms should be transported, both from the standpoint of safety and in the interest of protecting valuable weapons from damage. **If a firearm is transported in a motor vehicle in compliance with these provisions, the person transporting it cannot be guilty of carrying concealed weapons, even though the firearm is out of sight and thus is technically concealed.**” (1973 Ohio Legislative Service Commission Commentary to H. 511 following R.C. § 2923.16) (emphasis added).

³ Merit Brief of Appellee State of Ohio, pg. 6-7.

violate Appellee's expanded definition. As he is walking out to his automobile, he is 'carrying' a handgun "ready at hand" with the ammunition "conveniently accessible."

Likewise, a sportsman carrying and transporting an unloaded handgun would be in the same situation even if he had his handgun in one case and the ammunition in another case. The handgun would be "concealed" and the ammunition would be "conveniently accessible." Additionally, law abiding hunters could no longer hunt with a handgun without a concealed carry license. There is simply no lawful way for an individual to ascertain what manner of carrying an unloaded handgun with ammunition would be permissible or under what circumstances you could hunt with a handgun.

The **standards** for evaluating whether a statute is **unconstitutionally vague** are well settled:

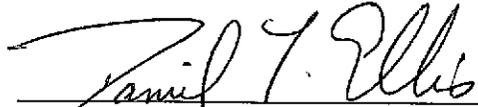
Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory application.

Wright v. New Jersey, 469 U.S. 1146, 105 S.Ct. 890 (1985) (citations omitted)

The Appellee's definition of "ready at hand" including an unloaded handgun in a closed package, box or case renders R.C. 2923.12(A)(2) unconstitutionally void for vagueness. It did not provide Appellant "fair warning" that transporting his handgun in a case with a loaded magazine would subject him to a felony conviction depriving him of other constitutionally

protected rights. This Court should hold 2923.12(A) unconstitutional as it applies to “ready at hand” and reverse the lower Court’s conviction of Appellant.

Respectfully submitted,

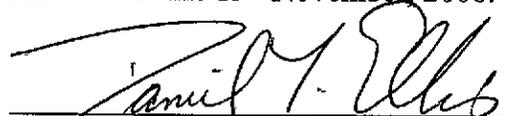


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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing *Brief of Amicus Curiae National Rifle Association -- ILA* has been served by ordinary U.S. Mail upon Clifford C. Spohn, Esq., 144 East Center Street, Marion, Ohio 43302 and Jim Slagle, Esq., Marion County Prosecutor, 142 East Center Street, Marion, Ohio 43302 this 13th November, 2006.



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