

IN THE SUPREME COURT OF OHIO  
COLUMBUS, OHIO

07-2310

STATE OF OHIO,

CASE NO. 2007-\_\_\_\_\_

Plaintiff-Appellant,

vs.

ADAM DAVID JONES,

Defendant-Appellee.

CLAIMED APPEAL OF RIGHT FROM  
THE OHIO COURT OF APPEALS FOR STARK COUNTY,  
FIFTH APPELLATE DISTRICT,  
CASE NO. 2007-CA-00139

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MEMORANDUM IN SUPPORT OF JURISDICTION  
OF PLAINTIFF-APPELLANT,  
STATE OF OHIO

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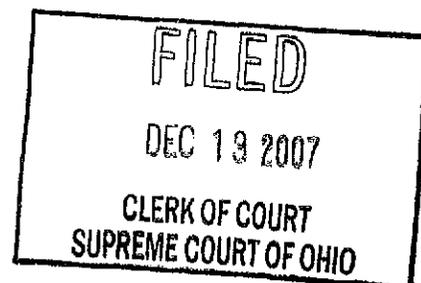
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## WHY THIS CASE SHOULD BE ACCEPTED FOR REVIEW

The Supreme Court of Ohio should accept this case for review because it involves a substantial constitutional question, and is of public or great general interest. The court of appeals held in this case that a traffic stop by a police officer outside of his territorial jurisdiction based on his personal observance of the vehicle committing a traffic offense is unconstitutional since the officer did not have reasonable suspicion to make the stop. The effect of this ruling is to preclude police officers from making extra-territorial traffic stops of motor vehicles (or seizures of individuals) when the officer had personally observed a traffic (or criminal) offense committed by the motor vehicle (or individual). In this case, the police officer pulled the vehicle over for driving without its headlights on at night, as well as its connection to an earlier hit-skip accident that left significant debris on the road. The court of appeals held this traffic stop, and the subsequent search, as unreasonable under the Fourth Amendment to the U.S. Constitution.

The appellate court's decision is wrong since it ignores this Court's syllabus holding in *Weideman*, as pointed out by the dissent by Judge Julie Edwards. In addition, however, this decision effectively precludes police officers from enforcing the laws they personally see being violated outside of their territorial jurisdictions. For example, the appellate decision would have precluded this officer from pulling over the vehicle in question for suspected DUI even though the officer personally observed the vehicle being driven very erratically or dangerously. Because he would be outside of his territorial jurisdiction, the appellate court would limit this officer's activities to merely following the vehicle while notifying law enforcement of that territorial jurisdiction, until the vehicle happened to enter that officer's jurisdiction.

Such a ruling will have a devastating impact upon law enforcement activities and practices within the Fifth Appellate District. Police often find themselves leaving their jurisdictions to investigate ongoing or recently committed crimes. In addition to the investigative motivation, officers are also motivated to protect the public at large, and not just those citizens within their territorial jurisdiction. This Court has held that the constitutions do not restrict law enforcement this way. Therefore, this Court should accept this case for review, reverse the court of appeals (for the reasons provided in Judge Edwards' dissent), and untie those restrictions.

#### **STATEMENT OF THE CASE AND FACTS**

In 2006, the Stark County Grand Jury returned an indictment charging Adam David Jones with one count each of carrying concealed weapons<sup>1</sup> and unlawful possession of a dangerous ordnance.<sup>2</sup> The indictment also charged a co-defendant, Shawn Skropits, with these offenses, and that each were either the principal offender or they aided and abetted each other. The men were charged with having four handguns and a sawed-off shotgun in their Ford Ranger, along with ammunition for the guns, when they were stopped after a traffic accident.<sup>3</sup> Jones was the driver of the vehicle and Skropits was his passenger. Jones pleaded not guilty to these charges, and the case proceeded in the Stark County Court of Common Pleas.

Before trial, Jones and Skropits filed separate motions to suppress the evidence against them, arguing that the officer stopped them outside of his jurisdiction, and thus the stop was

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<sup>1</sup>R.C. 2923.12(A)(2), a felony of the fourth degree.

<sup>2</sup>R.C. 2923.17(A), a felony of the fifth degree.

<sup>3</sup>T.(P) 4-5.

illegal. At the conclusion of the evidentiary portion of the hearing, the trial court determined what the parties agreed to with regard to the facts in this case. The parties agreed that it was dark at the time of the stop, that the police officer who made the stop was on his way back into his jurisdiction at the time he saw the vehicle Jones and Skropits were in, and that their vehicle had damage to the grill and was operating without its headlights on.<sup>4</sup> The trial court then asked defense counsel whether the officer had the legal right to stop such a vehicle under these conditions.

THE COURT: . . . Under your view of this case, if he's outside of his jurisdiction, he's going back towards his jurisdiction, he sees the vehicle after dark, when, when the vehicle should have headlights on, doesn't have headlights on, it has a smashed grill, he can't stop it, he just has to let it go?

MR. REISCH [JONES' ATTORNEY]: No, he should stop it, but then this Court should suppress it because he shouldn't be outside his jurisdiction. Yes.

. . . .

THE COURT: Mr. Urban, at this point in time would you say this case stands for the proposition that the officer should let the vehicle go?

I'm trying to –

MR. URBAN [SKROPITS' ATTORNEY]: I don't, I don't think it should stand for that proposition and I agree with what Mr. Reisch had indicated.

T.(S) 62.

The trial court attempted to clarify this apparently contradictory position taken by both

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<sup>4</sup>T.(S) 58-61.

Jones and Skroptis, i.e., that the officer had the legal authority to stop their vehicle, but also did not have this authority since he was outside of his jurisdiction at the time he saw their vehicle and stopped it.

THE COURT: So you all are saying since he went further in doing something about this investigation than he should have, then if he sees something on his way back that he could otherwise stop someone for, he can't stop them?

MR. REISCH [for JONES]: No, I think, as I said before, he should be able to stop the vehicle for, certainly for public safety, but then it's up to the Court to review whether that evidence should be suppressed, because he, there was no crime that took him outside.

. . . Right. He should, taken as a snapshot in that moment of time, yes, he should have stopped the vehicle.

T.(S) 64-65.<sup>5</sup>

The trial court further questioned counsel, setting forth the facts that seemed to be undisputed at the hearing, focusing on the issue of whether the officer had authority to go outside of his jurisdiction as part of his investigation into a hit-skip accident within his jurisdiction.

THE COURT: . . . But what we have here, for the sake of this argument, discussion, is that we have a police officer who was told about an incident that occurred and some type of incident between two vehicles that occurred within his jurisdiction, he went there, . . . , he cleaned the place up. He took the remedial action that he was supposed to take, kicked things off the road, get them off the side, looked around, didn't see anything.

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<sup>5</sup>Counsel for Skroptis seemed to diverge from this position, arguing that the officer did not have authority to be outside of his jurisdiction, and thus did not have the legal authority to make the stop. Counsel specifically made the analogy to the plain view situation, and whether an officer has a legal right to be where he was when he observed contraband or evidence in plain view. T.(S) 65.

Went back to the city hall, was getting ready to go into the city hall to perform his other duties, which he enumerated for us, doesn't even get out, fully into his car -- out of his car into the city hall, was radioed, told to go outside his jurisdiction because one of the vehicles may have been seen.

So he goes out there, nothing there, and then someone comes along, says -- well, gives him some information the vehicle he wants may be somewhere else, so he goes down there, to see if the vehicle is there. He goes away from his jurisdiction, doesn't, doesn't see anything.

He goes back to his jurisdiction, and sees a vehicle, a smashed-in grill, however you want to describe it, not having any headlights, and are we supposed to draw from the radical profiling, the facts that gave rise to, to the *Terry* case,<sup>6</sup> ah, that this is the same thing?

...

Okay. So you're, you're telling me that if, if a police officer gets what is arguably a valid call to go into a different jurisdiction to investigate, so see if there is something in that jurisdiction that may impact upon what happened in his jurisdiction, that he has to turn back around, if he doesn't see it, he has to turn back around and, ah, if he sees something then, it's okay?

But if he says, Hey, I'm just going to drive around the block, just going to go down to wherever, ah, other businesses are, where this place, where this car may have gone and stopped, whatever, that he can't do that, he has to just stop and go back? And if, if he --

...

If he stops and goes back and then if he sees the vehicle, then he can stop it?

But if he goes out and, as [the prosecutor] and as mister, as the sergeant said, he does a sweep and then is going back to this jurisdiction, he can't stop this car?

T.(S) 66-69 (footnote added).

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<sup>6</sup>*Terry v. Ohio* (1968), 392 U.S. 1.

Counsel for Skropits argued that the officer did not have reasonable articulable facts that justified continuing the investigation outside of the East Canton jurisdiction, characterizing the officer's search for one of the vehicles involved in the hit-skip accident as "a wild goose chase."<sup>7</sup>

The trial court rejected this characterization of the officer's investigation and overruled the suppression motions. In so doing, the trial court found that the officer reasonably pursued his investigation into the hit-skip accident into nearby areas that were just outside of his jurisdiction, and then reasonably stopped the suspected vehicle when he was on his way back to his jurisdiction.

What I'm looking at is that was a logical thing for a police officer to do, as part of his investigation. He had an investigation, he had an incident that occurred within his jurisdiction. He went there, ah, obviously because of the road debris, he, there had been something which had occurred.

Going back to city hall, was told, was dispatched to go outside of his jurisdiction in continuation of what had happened -- his investigation of what had happened in his jurisdiction.

Goes out there, doesn't see anything, gets some additional information, takes a final step in the, in his investigation, does the sweep, and then on his way back to the, back to his jurisdiction, he sees a vehicle, ah, which matches what had happened, ah, in his jurisdiction. Has a smashed in grill, it was driving after dark without headlights and he stopped it.

Just giving you my findings of fact and my conclusion of law, is that on the basis of that, ah, stopping that vehicle was not a violation of the constitutional rights of either Mr. Skropits or Mr. Jones. And I'm denying the motion to dismiss.

T.(S) 71-72.

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<sup>7</sup>T.(S) 69-70.

After the suppression motions were overruled, Jones (and Skropits) opted to plead no contest to the charges in the indictment. Based upon the evidence presented at the suppression hearing as well as the stipulated evidence of what was found in the Ford Ranger, the court found Jones guilty of these offenses, and ordered a probation investigation report. Upon the completion of this report, the court imposed a community control sanction for a period of two years.

Jones thereafter filed an appeal with the Court of Appeals for Stark County (Fifth Appellate District) to challenge the court's suppression ruling primarily on the extra-territorial nature of the traffic stop. The court of appeals, in a divided opinion, reversed the trial court. The appellate court held the police officer did not even have reasonable suspicion that a crime had been committed by the occupants of the Ford Ranger. The appeals court also found "that the officer did not have jurisdiction to pull over the vehicle in question based on the complaint he received while outside of his jurisdiction, from another motorist, that a vehicle driving without its headlights on had almost hit him," ignoring the undisputed fact that the police officer himself saw Jones' vehicle driving without its headlights on at night.<sup>8</sup>

Judge Julie Edwards dissented from the court's holding. Relying upon the syllabus law of this Court's opinion in *Weideman*, she noted that the police officer had personally observed Jones driving in the dark without his headlights on, and thus had reasonable suspicion to make the traffic stop, despite being outside of his territorial jurisdiction.<sup>9</sup>

The State of Ohio now files this claimed appeal as of right.

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<sup>8</sup>*State v. Jones*, Stark App. No. 2007-CA-00139, 2007-Ohio-5818, 2007 WL 3171206, at ¶ 20.

<sup>9</sup>*Jones*, supra, at ¶¶ 29-30 (Edwards, J., dissenting).

## ARGUMENT

### PROPOSITION OF LAW

#### **A POLICE OFFICER HAS PROBABLE CAUSE TO MAKE A TRAFFIC STOP FOR A TRAFFIC VIOLATION HE PERSONALLY OBSERVES EVEN THOUGH HE IS OUTSIDE OF HIS JURISDICTION.**

The trial court held that Officer Hershberger had probable cause to stop the Ford Ranger that Jones was driving because the officer observed Jones driving the vehicle without its headlights on in the dark, as well as its probable connection to an earlier hit-skip accident in his jurisdiction shortly before. The court of appeals, however, reversed the trial court, finding that Officer Hershberger did not even have reasonable suspicion of criminal activity to justify the traffic stop. As pointed out in the dissent of Judge Edwards, however, this ruling ignores this Court's clear holding in *Weideman*,<sup>10</sup> which held a police officer, acting outside of his territorial jurisdiction, who makes a traffic stop for a traffic offense the officer observed being committed outside of his jurisdiction is not unreasonable *per se*, and thus the officer's statutory violation does not require the suppression of the evidence seized from the stop. Not only did the court of appeals ignore this clear precedent, but the consequences of its holding essentially precludes police officers from making any search and seizure outside of their territorial jurisdiction, regardless of the facts and circumstances. Therefore, the Court should accept the case for review and reverse the court of appeals.

The exclusionary rule only applies to constitutional and not statutory violations (unless

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<sup>10</sup>*State v. Weideman*, 94 Ohio St.3d 501, 2002-Ohio-1484, 764 N.E.2d 997.

the statute should provide for such a remedy).<sup>11</sup> As this Court held in the *Hollen* case, violations of criminal statutes or rules do not warrant the application of the exclusionary rule.

The exclusionary rule has been applied by this court to violations of a constitutional nature only. In *State v. Myers* (1971), 26 Ohio St.2d 190, 196, 271 N.E.2d 245, this court enunciated the policy that the exclusionary rule would not be applied to statutory violations falling short of constitutional violations, absent a legislative mandate requiring the application of the exclusionary rule. In *State v. Downs* (1977), 51 Ohio St.2d 47, 63-64, 364 N.E.2d 1140, the violation of Crim.R. 41 with respect to the return of a search warrant was described as non-constitutional in magnitude and the exclusionary rule was not applied. Also, in *State v. Davis* (1978), 56 Ohio St.2d 51, 381 N.E.2d 641, it was held that fingerprint evidence obtained in violation of a statute does not have to be excluded.

It is clear from these cases that the exclusionary rule will not ordinarily be applied to evidence which is the product of police conduct violative of state law but not violative of constitutional rights.

*Hollen*, 64 Ohio St.2d at 234-235, 416 N.E.2d at 600.

The *Hollen* case is particularly apt to the instant case since it involved an extra-jurisdictional arrest in violation of Ohio's statute prescribing a police officer's territorial jurisdiction to effect an arrest. In upholding the evidence seized from an extra-territorial arrest, the supreme court held that the exclusionary rule did not apply to these statutory violations.

The exclusionary rule will not be applied to the testimony of an arresting police officer regarding the actions of a misdemeanor observed as a result of an extraterritorial warrantless arrest, even though the arrest is unauthorized under existing state law, if the arrest is based on probable cause that a crime was committed

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<sup>11</sup>See *City of Kettering v. Hollen* (1980), 64 Ohio St.2d 232, 18 O.O.3d 435, 416 N.E.2d 598; *State v. Wilmoth* (1986), 22 Ohio St.3d 251, 262, 490 N.E.2d 1236, 1244 ("This court has recognized that the suppression of evidence pursuant to the exclusionary rule applies only to those searches which were carried out in violation of an individual's constitutional rights.").

within the officer's jurisdiction, and if the officer was in hot pursuit of the misdemeanant.

*Hollen*, supra, at syllabus.

Therefore, to avoid the preclusive effect of the *Hollen* holding, Jones added a claim that the traffic stop was unconstitutional because Officer Hershberger did not have reasonable suspicion to stop Jones' vehicle. Under *Terry*, the police, in order to effect an investigative stop and search of a person, must demonstrate "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion."<sup>12</sup>

In *Terry*, the United States Supreme Court held that a police officer may stop and investigate unusual behavior, even without probable cause to arrest, when he reasonably concludes that the individual is engaged in criminal activity. In assessing that conclusion, the officer "must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *Id.* at 21, 88 S.Ct. at 1880. Furthermore, the standard against which the facts are judged must be an objective one: "[W]ould the facts available to the officer at the moment of the seizure or the search 'warrant a man of reasonable caution in the belief' that the action taken was appropriate?" *Id.* at 21-22, 88 S.Ct. at 1880.

*State v. Andrews* (1991), 57 Ohio St.3d 86, 87, 565 N.E.2d 1271, 1273, cert. denied (1991), 501 U.S. 1220.

This Court, furthermore, has noted that there is a split of authority on whether a traffic stop is constitutionally reasonable when supported by reasonable suspicion, or whether the heightened standard of probable cause is required.<sup>13</sup> After noting and acknowledging this split of authority and ambiguity over the appropriate standard, the supreme court nonetheless sidestepped

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<sup>12</sup>*Terry v. Ohio* (1968), 392 U.S. 1, 21.

<sup>13</sup>*City of Bowling Green v. Godwin*, 110 Ohio St.3d 58, 2006-Ohio-3563, 850 N.E.2d 698, ¶ 13.

the issue in *Godwin* and concluded that a police officer who personally observed a traffic violation has probable cause to make the stop.<sup>14</sup> As the court noted in assessing the probable cause determination in the context of a traffic stop:

Probable cause is determined by examining the historical facts, i.e., the events leading up to a stop or search, "viewed from the standpoint of an objectively reasonable police officer." *Ornelas v. United States* (1996), 517 U.S. 690, 696, 116 S.Ct. 1657, 134 L.Ed.2d 911. Determination of probable cause that a traffic offense has been committed, "like all probable cause determinations, is fact-dependent and will turn on what the officer knew at the time he made the stop." (Emphasis sic.) *Erickson*, 76 Ohio St.3d at 10, 665 N.E.2d 1091, quoting *United States v. Ferguson* (C.A.6, 1993), 8 F.3d 385, 391. Thus, the question whether a traffic stop violates the Fourth Amendment to the United States Constitution requires an objective assessment of a police officer's actions in light of the facts and circumstances.

*Godwin*, 110 Ohio St.3d 58, 2006-Ohio-3563, 850 N.E.2d 698, ¶ 14.

In the instant case, Officer Hershberger had probable cause to stop the red Ford Ranger. While searching for one of the vehicles in a hit-skip accident – and specifically for the red Ford Ranger that had apparently rear-ended into a van – Officer Hershberger was approached by the occupants of a pick-up truck who alerted him to a vehicle that had just almost run into them and

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<sup>14</sup>As the supreme court held:

Similarly, in this case, we conclude that the Bowling Green police officer, having observed the appellee violating the posted signs, had probable cause to believe that the offense of disregarding a traffic-control device had been committed. We therefore need not decide whether mere reasonable suspicion of the commission of a minor misdemeanor traffic offense, as opposed to probable cause, justifies an officer in stopping a driver.

*Godwin*, 110 Ohio St.3d 58, 2006-Ohio-3563, 850 N.E.2d 698, ¶ 13.

was driving without its headlights on. The vehicle was coming westbound towards them, so Hershberger proceeded on State Route 172 towards East Canton and the reported vehicle. Shortly afterwards, Hershberger saw the vehicle – a red Ford Ranger without its headlights on and with a smashed front – pass him. He immediately turned around and made the traffic stop for driving during in the dark without its headlights on. Hershberger personally observed this traffic violation and therefore had probable cause to make the traffic stop.<sup>15</sup>

In addition, Hershberger had probable cause to believe that this red Ford Ranger was the one involved in the earlier hit-skip accident in East Canton. Hershberger immediately responded to the call that an accident had occurred, but did not find the vehicles there. After talking to a witness to the accident, the officer spent about five minutes of cleaning the roadway of the debris left from the accident – debris from the front headlights of the red Ford Ranger identified by the witness. Hershberger then proceeded to the village hall, located about 30 yards from the accident site, when he received another dispatch call relative to the Ranger. He immediately proceeded to the old Coyote restaurant, located about a half mile from East Canton, where he looked for the vehicle there and at the nearby trailer park. Not finding the Ranger, Hershberger opted to continue westbound for another half mile to the intersection of State Route 172 and Trump Road. While in a parking lot at this intersection, Hershberger was confronted by the occupants in the pick-up truck about a vehicle driving without its headlights, despite it being dark outside, and had almost collided with the pick-up truck. Hershberger immediately left the parking lot, going

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<sup>15</sup>See R.C. 4513.03 (requiring lights on motor vehicles between sunset and sunrise and whenever there is insufficient light to see 1,000 feet ahead); R.C. 4513.04 (all motor vehicles must be equipped with at least two operable headlights); R.C. 4513.14 (two headlights must be displayed during the times prescribed in R.C. 4513.03); R.C. 4513.15 (headlight illumination required).

east towards East Canton, and passed the red Ford Ranger without its headlights on and its front smashed in. Given the closeness in time and location, Hershberger had probable cause to believe that this red Ford Ranger was the one that had shortly before rear-ended a van in East Canton and left the scene westbound.

In finding that Officer Hershberger did not have reasonable suspicion to make this stop, the court of appeals also found that he did not have jurisdiction to make this traffic stop since he was outside of his jurisdiction. In so ruling, the appeals court, while citing this Court's *Weideman* decision, nonetheless ignored its holding and import, as fact not lost in the dissent of Judge Edwards. In *Weideman*, this Court held specifically that such stops are not *per se* violations of the Fourth Amendment, and upheld the traffic stop by a city police officer, outside of his jurisdiction, for the commission of a traffic offense he personally observed.

Where a law enforcement officer, acting outside the officer's statutory territorial jurisdiction, stops and detains a motorist for an offense committed and observed outside the officer's jurisdiction, the seizure of the motorist by the officer is not unreasonable *per se* under the Fourth Amendment. Therefore, the officer's statutory violation does not require suppression of all evidence flowing from the stop.

*State v. Weideman*, 94 Ohio St.3d 501, 2002-Ohio-1484, 764 N.E.2d 997, syllabus.

The decision of the court of appeals in this case flies directly in the face of this Court's *Weideman* decision, and should be reversed on this ground alone.

Under these facts and circumstances, therefore, the trial court did not err in overruling Jones' suppression motion, finding that Hershberger had reasonable suspicion to stop Jones' vehicle and probable cause to make the arrest. The decision of the court of appeals should

accordingly be reversed.

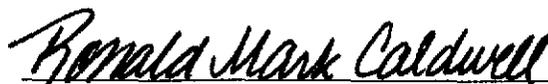
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STATE OF OHIO

Plaintiff-Appellee

-vs-

ADAM DAVID JONES

Defendant-Appellant

JUDGES:

Hon. Sheila G. Farmer, P. J.

Hon. John W. Wise, J.

Hon. Julie A. Edwards, J.

Case No. 2007 CA 00139

OPINION

CHARACTER OF PROCEEDING:

Criminal Appeal from the Court of Common  
Pleas, Case No. 2006 CR 01655(B)

JUDGMENT:

Reversed and Remanded

(B)

DATE OF JUDGMENT ENTRY:

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FILED  
NANCY S. REINGOLD, CLERK  
29-07

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*Wise, J.*

{¶1} Defendant-appellant Adam David Jones appeals his sentence and conviction entered in the Stark County Court of Common Pleas on one count of Carrying a Concealed Weapon, a felony of the fourth degree, and one count of Unlawful Possession of a Dangerous Ordnance, a felony of the fifth degree.

{¶2} Plaintiff-appellee is the State of Ohio.

### STATEMENT OF THE FACTS AND CASE

{¶3} On September 27, 2006, an East Canton Police Officer Mitchell Hershberger responded to a call regarding an automobile accident. (Supp. T. at 9). When he arrived at the location of the accident, 113 East Nassau Street in East Canton, neither vehicle was still at the scene. Officer Hershberger talked with a witness who worked at the nearby gas station, and was told that a small red Ford Ranger had struck the rear end of a full-size van. (Supp. T. at 10). The driver of the van got out and exchanged words with the driver of the Ford Ranger. (Supp. T. at 10). The driver of the van then got back into his vehicle, made a U-turn, and left the scene. (Supp. T. at 10). The Ford Ranger also left the scene, proceeding westbound on Nassau Street. (Supp. T. at 10)

{¶4} At the scene the officer found some debris which appeared to be from a Ford Ranger. (Supp. T. at 11). Approximately ten minutes later, after the officer had left the scene and had returned to the Town Hall where he was also bailiffing, the officer received a dispatch advising that a red Ford Ranger with a smashed front and headlights out was "hiding" in the area of the Old Coyote Restaurant, which is located in Osnauburg Township approximately one-half mile from East Canton. (Supp. T. at 12-13).

The officer proceeded to the Old Coyote Restaurant; however there was no sign of the vehicle as reported. (Supp. T. at 12-13, 20, 26-27). The officer continued to search for the vehicle, searching a nearby trailer park without success. (Supp. T. at 28). The officer next traveled westbound approximately another one-half mile on West Nassau Street/Lincolnway out to Trump Road to check the businesses located there, and then returned "doing a sweep back towards town." (Supp. T. at 13).

{¶15} The Officer stopped to check a car wash parking lot, in Canton Township, when another motorist pulled up to him and complained of a vehicle traveling westbound, which was driving without headlights, and which had nearly struck his vehicle. (Supp. T. at 14-15, 20). The Officer drove back east until he encountered a Ford Ranger pick-up truck. (Supp. T. at 15). The Officer then turned around and initiated a traffic stop. (Supp. T. at 15). The front end of the truck was damaged and the headlights were not on. (Supp. T. at 16). Adam Jones was driving the vehicle and Shawn Skropits was the only passenger. (Supp. T. at 17-18).

{¶16} Almost immediately following the approach and encounter with the occupants of the vehicle, both individuals indicated that there were guns in the vehicle. Both Appellant Adam David Jones and his passenger, Shawn Michael Skropits, were subsequently arrested.

{¶17} On November 2, 2006, Appellant Adam Jones and his passenger Shawn Skropits were each indicted on one count of Carrying a Concealed Weapon, a fourth degree felony, and one count of Unlawful Possession of a Dangerous Ordnance, a fifth degree felony. The indictments also charged that each were either the principal offender

or they aided and abetted each other. The men were charged with having four handguns and a sawed-off shotgun, along with ammunition for the guns, in the vehicle.

{¶18} On January 22, 2007, Appellant Adam Jones filed his Motion to Dismiss and/or Suppress.

{¶19} On January 30, 2007, the trial court held a Suppression Hearing.

{¶10} At said Suppression hearing, the Officer stated that he was not in "hot pursuit" of any vehicle during this investigation (Supp. T. at 25, 32). He also stated that he did not contact another police department for assistance before he initiated the traffic stop. (Supp. T. at 29-30). The Officer stated that he was investigating a "hit skip accident." (Supp. T. at 20). Later he stated that he suspected the suspect of littering by leaving part of the vehicle in the roadway. (Supp. T. at 41). Finally, the Officer admitted that, according to the only witness to the accident, the drivers of the two vehicles spoke briefly and the van left the scene first. (Supp. T. at 41).

{¶11} By Judgment Entry filed February 2, 2007, the trial court overruled Appellant's Motion to Suppress.

{¶12} After the suppression motion was overruled, Appellant Jones changed his former plea of not guilty to a plea of no contest to the charges in the indictment. Based upon the evidence presented at the suppression hearing, the trial court found Appellant Jones guilty as charged and ordered a probation investigation report. Upon the completion of this report, the trial court imposed a community control sanction for a period of two years.

{¶13} Appellant Jones thereafter filed the instant appeal to challenge the court's suppression ruling, assigning the following error for review:

**ASSIGNMENT OF ERROR**

{¶14} "I. THE TRIAL COURT ERRED IN NOT GRANTING THE APPELLANT'S MOTION TO SUPPRESS."

I.

{¶15} In his sole assignment of error, Appellant argues that the police had insufficient reasonable suspicion or probable cause to support their initial stop of his vehicle. We agree.

{¶16} Revised Code §2935.03(A)(1) governs a police officer's jurisdiction to arrest. It is undisputed in this case that the arresting officer was outside of his territorial jurisdiction when he made the arrest as the subject vehicle was located outside of the East Canton border. When determining whether an extraterritorial stop triggers the exclusionary rule, a court must determine, under the totality of the circumstances, whether the statutory violation rises to the level of a constitutional violation, i.e., whether the police officer had reasonable suspicion to stop and sufficient probable cause to arrest appellant. *State v. Weideman*, 94 Ohio St.3d 501, 764 N.E.2d 997, 2002-Ohio-1484.

{¶17} If the totality of the facts and circumstances demonstrate that police had a reasonable, articulable suspicion of criminal conduct sufficient to warrant the investigative stop and detention, and probable cause to arrest, then while that extraterritorial seizure may violate R.C. §2935.03, it does not rise to the level of a constitutional violation requiring suppression of all evidence derived from the stop. *Id.*

{¶18} The Fourth Amendment states that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and

seizures, shall not be violated \* \* \*." The amendment has been extended to seizures of passengers in traffic stops under the rationale that the amendment "protects people, not places." *Katz v. United States* (1967), 389 U.S. 347, 351, 88 S.Ct. 507, 19 L.Ed.2d 576. Using the reasonableness requirement of the amendment, the United States Supreme Court has held that a seizure must be reasonable both at its inception and throughout its duration. See *Terry v. Ohio* (1968), 392 U.S. 1, 20, 88 S.Ct. 1868, 20 L.Ed.2d 889.

{¶19} An investigatory stop is permissible if a law enforcement officer has a reasonable suspicion, based on specific and articulable facts, that the individual to be stopped may be involved in criminal activity. *Terry v. Ohio* (1968), 392 U.S. 1, 21-22, 88 S.Ct. 1868. When determining whether or not an investigative traffic stop is supported by a reasonable, articulable suspicion of criminal activity, the stop must be viewed in light of the totality of circumstances surrounding the stop. *State v. Bobo* (1988), 37 Ohio St.3d 177, 524 N.E.2d 489, paragraph one of the syllabus, cert. denied (1988), 488 U.S. 910, 109 S.Ct. 264.

{¶20} Upon review of the facts in the case sub judice, we do not find that the officer had reasonable suspicion, based on specific and articulable facts, that the driver of the vehicle or his passenger may have been involved in criminal activity. The dispatch call received by Officer Hershberger was for a traffic accident. Upon driving to the scene and finding that the vehicles were no longer there, he interviewed a witness who informed him that the two drivers involved in the accident spoke to one another and that both left the scene thereafter. Based on this information, Officer Hershberger had no reason to believe that a crime had occurred. Even after he received the second call about the red Ford Ranger "hiding" near the Coyote Restaurant, which was outside his

jurisdiction, he still had no reason to believe that a crime had been committed. He did not drive out of his jurisdiction in "hot pursuit". We further find that the officer did not have jurisdiction to pull over the vehicle in question based on the complaint he received while outside of his jurisdiction, from another motorist, that a vehicle driving without its headlights on had almost hit him.

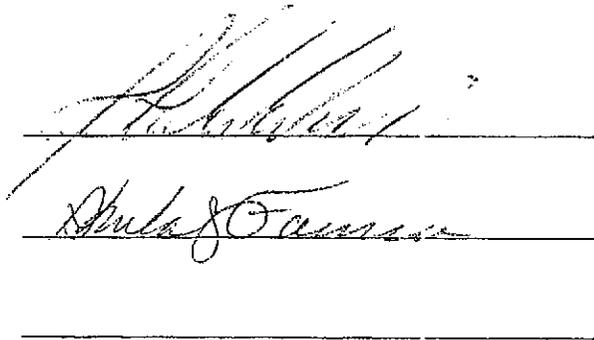
{¶21} Accordingly, we find the officer did not have a reasonable suspicion of criminal activity sufficient to justify the extra-territorial stop in the case sub judice.

{¶22} We therefore find that Officer Hershberger's action in making an extraterritorial stop of the vehicle in the case sub judice violates the reasonableness requirement of the Fourth Amendment. Officer Snow's statutory violation in this case therefore requires suppression of all evidence flowing from the stop.

{¶23} Accordingly, we hereby sustain Appellant's assignment of error.

{¶24} For the foregoing reasons, the judgment of the Court of Common Pleas of Stark County, Ohio, is reversed and this matter is remanded for further proceedings consistent with the law and this opinion.

By: Wise, J.  
Farmer, P. J., concurs.  
Edwards, J., dissents.



The image shows three handwritten signatures in cursive script, each written over a horizontal line. The signatures are arranged vertically, with the top signature being the largest and most prominent, followed by a smaller one, and then a third one at the bottom. The lines are solid black and extend across the width of the signature area.

JUDGES

EDWARDS, J., DISSENTING OPINION

{¶25} I respectfully dissent from the majority's analysis and disposition of appellant's sole assignment of error.

{¶26} The majority, in the case sub judice, finds that the officer did not have a reasonable suspicion of criminal activity sufficient to justify the extra-territorial stop in the case sub judice. The majority further finds that the officer's action in stopping the vehicle violated the reasonableness requirement of the Fourth Amendment.

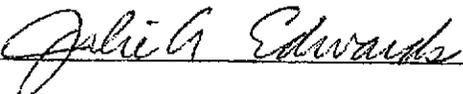
{¶27} The Ohio Supreme Court, in the syllabus of *State v. Weideman*, 94 Ohio St.3d 501, 2002-Ohio-1484, 764 N.E.2d 997, held as follows:

{¶28} "Where a law enforcement officer, acting outside the officer's statutory territorial jurisdiction, stops and detains a motorist for an offense committed and observed outside the officer's jurisdiction, the seizure of the motorist by the officer is not unreasonable *per se* under the Fourth Amendment. Therefore, the officer's statutory violation does not require suppression of all evidence flowing from the stop "

{¶29} At the suppression hearing in this matter, Officer Hershberger testified that he pulled over the vehicle because it had no headlights on. Supp. T. at 4C. There also was testimony adduced at the hearing that it was dark outside at that time.

{¶30} Based on *Weideman*, supra., I would find that the stop of the vehicle by the officer in this matter was not unreasonable *per se* under the Fourth Amendment and that the officer's statutory violation does not require suppression of all evidence flowing from the stop. As noted by appellee, the officer personally observing appellant driving in the dark without headlights and therefore had reasonable suspicion to make the traffic stop.

{¶31} Based on the foregoing, I would find that the trial court did not err in denying the Motion to Suppress in this case.

  
\_\_\_\_\_  
Judge Julie A. Edwards

JAE/dr/rmn

NANCY S. FEINBOLD  
CLERK OF COURT OF APPEALS  
STARK COUNTY, OHIO

IN THE COURT OF APPEALS FOR STARK COUNTY, OHIO  
FIFTH APPELLATE DISTRICT 07 OCT 29 PM 2: 51

STATE OF OHIO  
Plaintiff-Appellee

-vs-

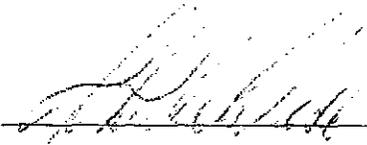
ADAM DAVID JONES  
Defendant-Appellant

JUDGMENT ENTRY

Case No. 2007 CA 00139

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas of Stark County, Ohio, is reversed and remanded for further proceedings consistent with this opinion.

Costs to appellee.

  
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JUDGES