

TABLE OF CONTENTS

Page

I. EXPLANATION OF WHY THIS CASE RAISES A SUBSTANTIAL CONSTITUTIONAL QUESTION AND IS OF PUBLIC OR GREAT GENERAL INTEREST. 1

II. STATEMENT OF THE CASE AND FACTS 4

III. ARGUMENT IN SUPPORT OF PROPOSITION OF LAW NO. 1 5

Proposition of Law No. 1: The mere sight of the owner of private property and two guests, one of whom is his father, hunting in the absence of other articulable facts, does not create good cause to enter upon the private property of the owner to check for hunting licenses and bag limits. 5

IV. CONCLUSION 9

CERTIFICATE OF SERVICE 11

APPENDIX

Appx. Page

Decision and Judgment Entry, Erie County Court of Appeals, Sixth Appellate District (February 1, 2008) P1

Judgment Entry, Erie County Court (July 20, 2007) P6

I. EXPLANATION OF WHY THIS CASE RAISES A SUBSTANTIAL CONSTITUTIONAL QUESTION AND IS OF PUBLIC OR GREAT GENERAL INTEREST.

This case arises from the Sixth District Court of Appeals' ("Court of Appeals") consolidated decision in State of Ohio v. William Coburn et al., Erie County Court of Appeals Case No.: E-07-049, E-07-050, and E-07-051. It raises the substantial constitutional questions of what constitutes "good cause" for a wildlife officer to enter private property under Ohio Revised Code §§ 1531.13, 1531.14, 1533.14, and 1533.10 and whether R.C. § 1531.14 provides wildlife officers with the authority to enter private property to stop and search *the known owner of that private property* while he is hunting on his own property with invited guests merely because a wildlife officer observed the men hunting. The Court of Appeals held that R.C. § 1531.14 provides wildlife officers with the authority to enter private property to stop and search the known owner of that private property while he is hunting on his own property with invited guests merely because a wildlife officer observed the men hunting. Its decision is contrary to the Fourth Amendment of the United States Constitution, ("Fourth Amendment") as well as Article 1, §14 of the Ohio Constitution and the well established case law on the issue of an investigatory stop.

This appeal also raises a question of substantial public or great general interest. In the year 2006 alone there were 2,118,488 Ohio hunting and fishing licenses and permits sold.¹ Obviously, thousands of hunters hunt on their own land. The Ohio Department of Natural Resources website states that wildlife officers make approximately 10,000 arrests per year.² This

¹ Ohio Department of Natural Resources Website;
<http://www.ohiodnr.com/wildlife/dow/regulations/historical.aspx>;

² http://www.dnr.state.oh.us/wildlife/Home/wild_resourcessubhomepage/

case generated so much public interest that an article regarding the Court of Appeals decision was printed in the Toledo Blade and then reprinted in Ohio Outdoor News. In the Toledo Blade article, the wildlife officers involved in the arrest applauded the decision, stating that:

State wildlife authorities were pleased with the reversal.

“This is very good news,” said Gino Barna, a wildlife officer supervisor for the Division of Wildlife in northwest Ohio.

Wildlife investigator Jay Harnish agreed.

“I was very happy to see that decision.” Had the original finding stood up, he added, “our right to enter private property would have been jeopardized. Hat’s off to Trevor and the Erie County prosecutor’s office for going the distance on this.”

* * *

Had the lower court decision been upheld, the state wildlife decision ultimately might have had to seek relief from state lawmakers in order to properly perform their duties, Harnish said.

Obviously, the attention this case received and the comments from these wildlife officers demonstrate that the scope of a wildlife officer’s duties/actions is a matter of public or great general interest.

By accepting jurisdiction over this appeal, this Court will have the opportunity to clarify that the scope of actions taken by wildlife officers under R.C. §§ 1531.13, 1531.14, 1533.14, and 1533.10 is no greater than that permitted by the Fourth Amendment, as well as Article 1, §14 of the Ohio Constitution. On the other hand, allowing the Court of Appeals decision to stand creates the ability for wildlife officers to enter onto private property without good cause contrary to the Fourth Amendment, as well as Article 1, §14 of the Ohio Constitution as was done in this case. Significantly, it also negates R.C. § 1533.10, which provides that the owner of lands in the

[about the division landingpage/employemployee/tabid/5726/Default.aspx](http://about.the.division.landingpage/employemployee/tabid/5726/Default.aspx)

state may hunt on their lands *without* a license.

Specifically, this case calls upon the Court to interpret R.C. §§ 1531.13, 1531.14, 1533.14, and 1533.10 to determine if a wildlife officer must have “good cause” to enter upon private property to check for hunting licenses and bag limits when the wildlife officer is aware that one of the hunters owns the private property, and what it is that constitutes that “good cause”. In this case, the Court of Appeals (and the prosecutor), interpret only one of these sections, R.C. § 1531.14, to come to a determination that simply observing hunters gives a wildlife officer the authority to enter the privately owned land on which the owner is hunting, in pursuit of his duties, one of which is to ensure that people are hunting lawfully. This interpretation is contrary to the plain language of § 1531.13 which specifically states, “Any regularly employed salaried wildlife officer may enter any private lands or waters if the wildlife officer has good cause to believe and does believe that a law is being violated.” It also fails to recognize R.C. § 1533.10 permits owners the ability to hunt on their own lands without a license.

The implications of the Court of Appeals error is much farther reaching than simply erring on the facts of this case and siding with the State. The error of the Court of Appeals is directly in conflict with the Fourth Amendment, as well as Article 1, §14 of the Ohio Constitution and the well established case law that supports a person’s expectation of privacy under both constitutions. To allow such a decision to stand strips the citizens of Ohio of their constitutional right to expect that they will not be harassed on their own private property without a demonstration of good cause. In this case, three men, including the owner of the property, were stopped without good cause. The language found throughout Title XV of the Revised Code providing a wildlife officer with the authority to investigate and enforce wildlife rules cannot, nor was it intended to, supplant constitutional protections. Finally, pursuant to R.C. 1533.10, the

owner of the property is allowed to hunt on his own land without a hunting license.

II. STATEMENT OF THE CASE AND FACTS

On September 1, 2006, Appellant/Defendant, William Coburn (hereinafter “William”) invited guests to his private property, upon which sits his home, to hunt mourning doves on the morning of September 1, 2006. His guests, and Co-Appellants/Co-Defendants herein were Marvin Coburn, his father (hereinafter “Marvin”) and Catawba Police Officer, Todd Parkison (herein after “Officer Parkison”)

Wildlife Officer Abele, a three year neighbor of William’s, entered the private lands of William without good cause to believe or a belief that a law was being violated. According to Officer Abele’s own report, it was only subsequent to entering the private property of William, that “During [his] contact with the three hunters, [that he] noticed...” (what he alleges to be) a violation of R.C. 1531.02 and O.A.C./1501:31-7-02 (A)(9) prohibiting the hunting of migratory game birds by the aid of baiting.

On July 20, 2007, in the Erie County Court, Milan, Ohio, the trial court correctly dismissed this case when it granted Defendants’/Appellants’ Motion to Dismiss stating, “This court must apply the plain meaning of “good cause” as contained in Ohio Revised Code Section 1531.13 to mean that the legislature intended that wildlife officers not have the unfettered right of intrusion upon private property unless “good cause” exists.” The trial court further found that there was no factual evidence of “good cause” for Officer Abele’s entrance upon William’s private property. (*Id.*) The State filed a Notice of Appeal on August 15, 2007.

On February 1, 2008, the Court of Appeals reversed the judgment of the trial court and remanded the case to the trial court for further proceedings stating that the trial court erred when

it ignored the authority granted to the wildlife officers pursuant to R.C. § 1531.14.³

III. ARGUMENT IN SUPPORT OF PROPOSITION OF LAW

Proposition of Law No. 1: The mere sight of the owner of private property and two guests, one of whom is his father, hunting in the absence of other articulable facts, does not create good cause to enter upon the private property of the owner to check for hunting licenses and bag limits.

The Fourth Amendment of the United States Constitution as well as Article 1, §14 of the Ohio Constitution protect persons from unreasonable search and seizure, mandating that probable cause is necessary before a warrant will issue.

R.C. §1531.13 states in relevant parts:

They [wildlife officers] shall enforce all laws against hunting **without permission of the owner** or authorized agent of the land on which the hunting is done. They may arrest on view and without issuance of a warrant. They may inspect any container or package at any time except when within a building and the owner or person in charge of the building objects. The inspection shall be only for **bag limits** of wild animals taken in open season or for wild animals taken during the closed season, or for any kind or species of those wild animals...(emphasis added.)

Any regularly employed salaried wildlife officer may enter any private lands or waters **if the wildlife officer has good cause to believe and does believe that a law is being violated.** (Emphasis added.)

R.C. §1531.14 states in relevant part:

Any person regularly employed by the division of wildlife for the purpose of conducting research and investigation of game or fish or their habitat conditions or engaged in restocking game or fish or in any type of work involved in or incident to game or fish restoration projects or in the enforcement of laws or division rules relating to game or fish, or in the enforcement of section 1531.29 or 3767.32 of the Revised Code, other laws prohibiting the

³ The trial court did not actually ignore R.C. 1531.14, because that particular statute was never brought up in the trial court and was only raised by the State on appeal.

dumping of refuse in or along streams, or watercraft laws, *while in the normal, lawful, and peaceful pursuit of such investigation, work, or enforcement may enter upon, cross over, be upon, and remain upon privately owned lands for such purposes* and shall not be subject to arrest for trespass while so engaged or for such cause thereafter. (Emphasis added.)

R.C. §1533.14 states in relevant part:

Every person, while hunting or trapping on the lands of *another*, shall carry the person's hunting license on the person's own self and exhibit it to any wildlife officer, constable, sheriff, deputy sheriff, or police officer, or *to the owner or person in lawful control* of the land upon which the person is hunting or trapping, or to any other person. Failure to so carry or exhibit such a license constitutes an offense under this section. This section and Section 1531 of the Revised Code do not allow any person to hunt or trap on any land without the written consent of the owner thereof. (Emphasis added.)

O.R.C § 1533.10 provides:

that an owner of land may hunt on his land without a license.

R.C. § 1.47 states the presumptions in enactment of statutes:

In enacting a statute, it is presumed that:

(A) Compliance with the constitutions of the state and of the United States is intended.

The implication that can be taken from the Court of Appeals decision is that simply because a wildlife officer observes hunters he is provided with the authority to enter upon private property to stop the hunters. This decision affects every wildlife officer and hunter in the state. It provides wildlife officers with the ability to unlawfully enter upon private property lacking the good cause required by R.C. § 1531.13. This is directly contradictory to the well established case law on the matter of an investigative stop. *Terry v. Ohio* (1968) 392 U.S. 1. Observing a hunter does not create probable cause or even reasonable suspicion that the individual is hunting in violation of any hunting laws or regulations. Similarly, an observation of an adult operating a

motor vehicle does not create probable cause that the person is operating the vehicle without a license. The Fourth Amendment, as well as Article 1, §14 of the Ohio Constitution are meant to protect people from unreasonable governmental intrusion. Not surprisingly, wildlife officers of this state now believe that they are exempt from this constitutional mandate.

It has been almost forty years since the Supreme Court of the United States clearly stated that for an officer to *lawfully* perform an investigative stop he must be have ample articulable facts that justify such a stop. *Terry v. Ohio* (1968) 392 U.S. 1. To determine if cause exists one must look at the totality of the circumstances. *Id.* The trial court did just that, looked at the totality of the circumstances and found there was no factual evidence to support good cause existed to enter the private property and so properly dismissed the case. The Court of Appeals did not look at the totality of the circumstances when it reviewed this case. Instead the Court of Appeals stated that merely because the wildlife officer observed the men hunting, he had the authority to enter the private property. This decision was despite the fact that the wildlife officer was aware that one of the hunters owned the property and despite the fact that the wildlife officer set forth not one additional articulable fact from which one could reasonably surmise a law was being violated. In effect, the Court of Appeals has determined that mere observation of a man hunting equates with good cause.

Statutes relating to the same subject matter should be construed to exist harmoniously unless the statutes are irreconcilable and hopelessly conflict. *United Telephone Company of Ohio v. Limbach*, (1994) 71 Ohio St.3d. 369, 372. (Internal citations omitted.)

Since R.C. §§1531.13, 1531.14, 1533.14, and 1533.10 all relate to the subject of the 'division of wildlife' and 'hunting and fishing' the statutes need to be read together, construed together, and *together* applied to the facts of this case. The Court of Appeals incorrectly applied

the facts of this case to one statute in isolation of the remaining statutes, ignoring the plain language of R.C. §1531.13 that mandates a wildlife officer must have good cause to enter upon private property. The Court of Appeals simply ignored basic statutory interpretation requirements as set forth by the Supreme Court of Ohio. *United Telephone Company of Ohio v. Limbach*, (1994) 71 Ohio St.3d. 369, 372.

In determining whether the legislature has provided a wildlife officer the unfettered authority to enter upon private property to check for hunting licenses (or even bag limits), this Honorable Court should look to not only §1531.14, but also to §1531.13 and §1533.14 and §1533.10. Interpreted together these statutes say absolutely nothing that could be constitutionally interpreted to provide wildlife officers the authority to enter onto private property to check the hunting license of the owner of the property and his invited guests *with the prior knowledge that the hunter owns the property*—simply because the wildlife officers see men hunting.

A plain reading of the statutes demonstrates that the legislature intended that the statutes should be interpreted to confer wildlife officers with the *lawful* ability to enter private property in pursuit of his duties. R.C. §1531.14. The legislature even stated what was needed to have that lawful ability... “good cause.” R.C. §1531.13. One cannot constitutionally, lawfully enter the private property of a hunter, while hunting on his own property to check his license when O.R.C § 1533.10 explicitly states he doesn’t need one. William and his invited guests were hunting on William’s property. Officer Abele admitted that prior to unlawfully entering upon William’s property he identified William as one of the hunters and acknowledged that he knew it was William’s property. Simply, Officer Abele admitted he did not have good cause to enter William’s property because aside from stating he wanted to check licenses and bag limits,

Officer Abele did not articulate one fact that could be interpreted to lead one to believe a law was being violated. He did not for example state he heard excessive shots being fired (to make him suspicious as to the number of doves being hunted), he did not state his past experience with William and his guests was one of a history of them violating hunting laws. To *lawfully* perform an investigative stop Officer Abele must have had ample articulable facts to justify such a stop. *See, Terry v. Ohio* (1968) 392 U.S. 1. Looking at the totality of the circumstances, Officer Abele did not have the authority under the above cited statutes or any other authority to enter onto William's property.

Despite the fact that in *United Telephone Company of Ohio v. Limbach*, (1994) 71 Ohio St.3d. 369, 372, this Court explained that statutes relating to the same subject matter should be construed to exist harmoniously unless the statutes are irreconcilable and hopelessly conflict, the Court of Appeals ignored every statute relevant to this case except R.C. § 1531.14. R.C. § 1531.13 plainly states that a wildlife officer needs "good cause" to enter upon private property. The Court of Appeals determined that the officer had authority to enter the private property because he saw the men hunting. To assert that the mere site of men hunting, in the absence of additional articulable facts, creates "good cause" is contradictory to the Fourth Amendment, as well as Article 1, §14 of the Ohio Constitution and contrary to the well established case law of an investigative stop.

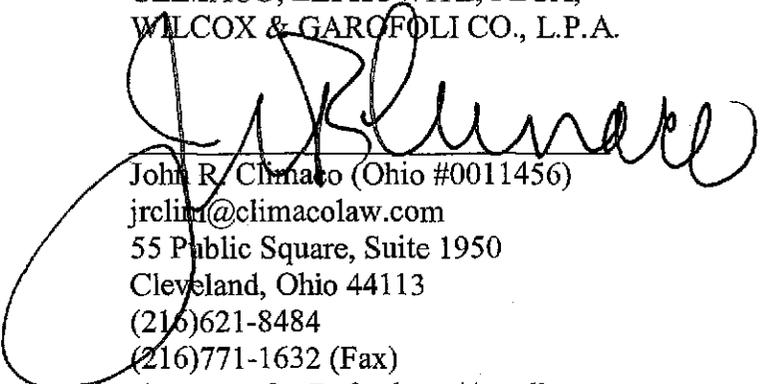
IV. CONCLUSION

When R.C. §1531.14, §1531.13, §1533.14 and §1533.10 are read and interpreted together it is clear that the Ohio legislature did not intend for wildlife officers to enter private property without good cause. The mere sight of hunters, one of which is known by the officer to own the private property they are hunting on, in the absence of other articulable facts, does not create

good cause to enter upon the private property to check for hunting licenses and bag limits. A wildlife officer is not conferred with any greater power than any other law enforcement official. This Honorable Court should accept jurisdiction of this case so that it may clarify that the language found throughout Title XV of the Revised Code providing a wildlife officer with the authority to investigate and enforce wildlife rules cannot, nor was it intended to, supplant constitutional protections.

Respectfully submitted,

CLIMACO, LEFKOWITZ, PECA,
WILCOX & GAROFOLI CO., L.P.A.



John R. Climaco (Ohio #0011456)

jrclim@climacolaw.com

55 Public Square, Suite 1950

Cleveland, Ohio 44113

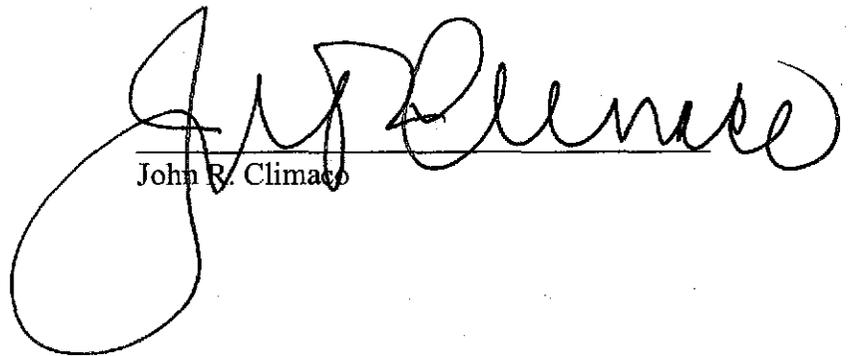
(216)621-8484

(216)771-1632 (Fax)

Attorneys for Defendants/Appellants

CERTIFICATE OF SERVICE

This is to certify that a copy of the Memorandum in Support of Jurisdiction of Defendants/
Appellants William R. Coburn, Todd R. Parkison, and Marvin Coburn was served upon Kevin J.
Baxter, Prosecuting Attorney, Mary Ann Barylski and Trevor Hayberger, Assistant Prosecuting
Attorneys, 247 Columbus Ave., Suite 319, Sandusky, Ohio 44870 this 13 day of March, 2008,
by regular United States Mail.



John R. Climaco

FILED
COURT OF APPEALS
ERIE COUNTY, OHIO
2008 FEB -1 AM 8:03
BARBARA J. JOHNSON
CLERK OF COURTS

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
ERIE COUNTY

State of Ohio

Court of Appeals Nos. E-07-049

E-07-050

Appellant

E-07-051

v.

Trial Court Nos. CRB 0600444

CRB 0600445

CRB 0600446

William Coburn

Todd Parkinson

Marvin Coburn

DECISION AND JUDGMENT ENTRY

Appellees

Decided:

FEB 0 1 2008

Kevin J. Baxter, Erie County Prosecuting Attorney, Mary Ann Barylski and Trevor Hayberger, Assistant Prosecuting Attorneys, for appellant.

John R. Climaco and Terri A. Lightner, for appellees.

SINGER, J.

{¶ 1} In this consolidated appeal, appellant, the state of Ohio, appeals from a decision of the Erie County Court, Milan, Ohio, dismissing the charges of unlawful

1.

J28/62
2-1-08
C.A.

taking of migratory game birds against appellees, William Coburn, Todd Parkinson and Marvin Coburn. For the reasons that follow, we reverse.

{¶ 2} On October 23, 2006, Erie County Wildlife Officer, Jared R. Abele, filed three separate, identical complaints against each of the appellees. According to the complaints, Abele witnessed appellees hunting mourning doves on William Coburn's property on September 1, 2006. Abele approached appellees to check on the validity of their hunting licenses and their bag limit compliance. While doing so, Abele noticed wheat seed in piles and scattered along the ground where appellees were hunting. As a result, Abele charged each of the appellees with violating R.C. 1531.02 and O.A.C. 1501:31-7-02(A)(9) which states:

{¶ 3} "(A) It shall be unlawful to hunt or take migratory game birds:

{¶ 4} " * * *

{¶ 5} "(9) By the aid of baiting or on or over any baited area."

{¶ 6} O.A.C. 1501:31-1-02(VV) defines baiting as:

{¶ 7} " * * * the placing, exposing, depositing, distributing, or scattering of shelled, shucked, or unshelled corn, wheat or other grain, salt or other feed so as to constitute for such wild turkeys, mourning doves or migratory birds, a lure, attraction or enticement to, on or over any area where hunters are attempting to take them."

{¶ 8} On December 4, 2006, appellees filed motions to dismiss their charges. In their motions to dismiss, appellees argued that Officer Abele unlawfully entered William Coburn's private property without good cause to believe that a law was being violated.

On July 20, 2007, the trial court granted appellees' motions. The state of Ohio now appeals setting forth the following assignment of error:

{¶ 9} "I. Whether the trial court erred in granting the dismissal of the case when the court held, contrary to Ohio Rev. Code Ann. 1531.14, that a wildlife officer must demonstrate good cause in order to enter private lands to check for hunting licenses and bag limits."

{¶ 10} Our standard of review is whether the trial court erred as a matter of law in determining that the state's complaint did not allege facts constituting a crime under Ohio law. *N. Olmsted v. Bullington* (2000), 139 Ohio App.3d 565.

{¶ 11} The state contends that Abele lawfully entered William Coburn's land. In support, the state cites R.C. 1531.14 which states:

{¶ 12} "Any person regularly employed by the division of wildlife for the purpose of conducting research and investigation of game or fish or their habitat conditions or engaged in restocking game or fish or in any type of work involved in or incident to game or fish restoration projects or in the enforcement of laws or division rules relating to game or fish, or in the enforcement of section 1531.29 or 3767.32 of the Revised Code, other laws prohibiting the dumping of refuse in or along streams, or watercraft laws, while in the normal, lawful, and peaceful pursuit of such investigation, work, or enforcement may enter upon, cross over, be upon, and remain upon privately owned lands for such purposes and shall not be subject to arrest for trespass while so engaged or for such cause thereafter."

{¶ 13} In granting appellees' motions to dismiss, the trial court relied on R.C. 1531.13 which states in pertinent part: "Any regularly employed salaried wildlife officer may enter any private lands or waters if the wildlife officer has good cause to believe and does believe that a law is being violated." The court stated:

{¶ 14} "There is absolutely no factual evidence before this court to suggest that the checking of licenses and/or bag limits was anything but routine. This court must apply the plain meaning of 'good cause' as contained in Ohio Revised Code Section 1531.13 to mean that the legislature intended that wildlife officers not have the unfettered right of intrusion upon private property unless 'good cause' exists."

{¶ 15} In this case, Abele saw appellees hunting and then he entered the property to check their licenses and bags. Once he saw people hunting, R.C. 1531.14 gave him the authority to enter the land in pursuit of his duties, one of which is to ensure that people are hunting lawfully. R.C. 1531.13. We disagree with the trial court that R.C. 1531.14 gives wildlife officers "unfettered" access to private property. Nothing in our decision today should be read to say that wildlife officers can enter private property at any time for any reason. What is important for purposes of this case is that Abele first saw appellees hunting and then he entered the property. Accordingly, we find that the trial court erred in ignoring the authority granted to Abele pursuant to R.C. 1531.14. The state's sole assignment of error is found well-taken.

{¶ 16} On consideration whereof, the judgment of the Erie County Court, Milan, Ohio, is reversed and this matter is remanded to the trial court for further proceedings.

Appellees are ordered to pay the costs of this appeal pursuant to App.R. 24. Judgment for the clerk's expense incurred in preparation of the record, fees allowed by law, and the fee for filing the appeal is awarded to Erie County.

JUDGMENT REVERSED.

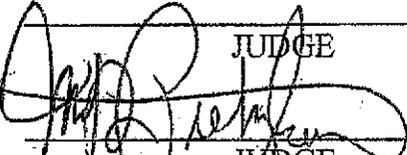
A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

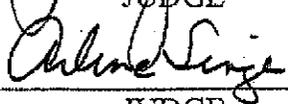
Peter M. Handwork, J.

Mark L. Pietrykowski, P.J.

Arlene Singer, J.

CONCUR.



JUDGE


JUDGE

JUDGE

I HEREBY CERTIFY THIS TO BE
A TRUE COPY OF THE ORIGINAL
FILED IN THIS OFFICE.

BARBARA J. JOHNSON, CLERK OF COURTS
Erie County, Ohio

By Betty A. Martin

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.

IN THE ERIE COUNTY COURT 2007 JUL 20 AM 10 18

MILAN, OHIO

ERIE COUNTY COURT

State of Ohio
Division of Wildlife

Case No. CRB 0600444

vs

JUDGMENT ENTRY

Coburn, William R.

* * * * *

This matter came on before the Court pursuant to Defendant's Motion to Dismiss.

It is undisputed that the wildlife officer in question entered upon private property to check hunting licenses and bag limits. No factual evidence is before this Court indicating any type of probable cause or even reasonable suspicion that the laws of the State of Ohio concerning hunting licenses and bag limits were being violated. Once upon the subject property, the officer observed seed spread about the ground, which lead to the "baiting" charge herein. Defendant raises a series of issues in his Motion to Dismiss, and the Court will first address the entry upon private property.

Ohio Revised Code 1531.13 authorizes a wildlife officer to enter upon private lands or waters within the State if "the wildlife officer has good cause to believe and does believe that a law is being violated". There is absolutely no factual evidence before this Court to suggest that the checking of licenses and/or bag limits was anything but routine. This Court must apply the plain meaning of "good cause" as contained in Ohio Revised Code Section 1531.13 to mean that the legislature intended that wildlife officers not have the unfettered right of intrusion upon private

property unless "good cause" exists.

The Court having no facts before it to find such "good cause" to enter upon private property, Defendant's Motion to Dismiss is hereby GRANTED.

IT IS SO ORDERED.



Judge Paul G. Lux

PGL/cw

cc: Trevor Hayberger
John F. Corrigan ✓
William R. Coburn
Jared Abele