

IN THE SUPREME COURT OF OHIO

State of Ohio, : S.Ct. Case No. 08-0536
 : C.A. Case Nos. E-07-049
 Appellee : E-07-050
 : E-07-051
v. :
 :
William Coburn :
Todd Parkison :
Marvin Coburn :
 :
Appellant :
 :
 :

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APPEAL FROM THE SIXTH APPELLATE DISTRICT
ERIE COUNTY, OHIO

MEMORANDUM IN OPPOSITION OF JURISDICTION

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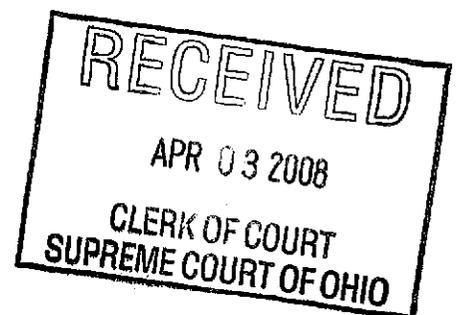
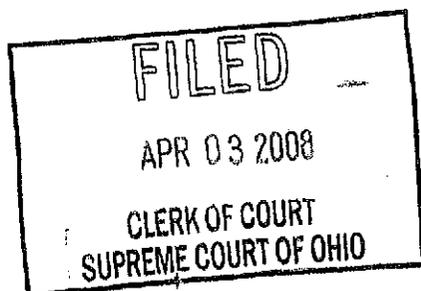


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WHY LEAVE TO APPEAL SHOULD BE DENIED

Appellants have failed to demonstrate in their Memorandum in Support of Jurisdiction that this case involves a substantial constitutional question or that this case is one of public or great general interest. The Sixth District Court of Appeals correctly reversed the trial court's decision to dismiss the charges against appellants.

The reviewing court found that the trial court erred in ignoring a wildlife officer's authority to enter private property to check hunting licenses and bag limits pursuant to Ohio Revised Code Ann. §1531.14 (hereinafter "O.R.C."). The court found that once the wildlife officer observed people hunting, O.R.C. §1531.14 provided the officer with the requisite authority to enter appellant's land to ensure that the hunters were lawfully hunting pursuant to O.R.C. §1531.13. The Sixth District Court of Appeals did properly note that O.R.C. §1531.14 does not provide "unfettered" access to private property. What was important in the case at bar was that the officer observed hunters on the property before entering.

Appellants have failed to demonstrate that this case involves a substantial constitutional question or that this case is one of public or great general interest.

STATEMENT OF THE CASE AND FACTS

On September 1, 2006, appellants, William Coburn

(hereinafter "William"), Marvin Coburn (hereinafter "Marvin"), and Todd Parkinson (hereinafter "Todd"), were hunting mourning doves on Williams' property. Wildlife Officer Jared Abele (hereinafter "Abele") observed appellants hunting and identified William. Abele observed William walk to his residence while Marvin and Todd continued hunting. Abele then observed William enter a SUV and drive back to where Marvin and Todd were hunting. Abele approached appellants to check for their hunting licenses and bag limit compliance. During contact with appellants, Abele noticed wheat seed scattered in piles along the ground in plain view. Abele left the property.

A short time later, Abele returned to the property with Agent Jay Harnish (hereinafter "Harnish"). Harnish and Abele discovered more wheat seed located near the hunting location. Appellants were charged with hunting migratory game birds on or over a baited area.

Upon motion of appellants, the trial court dismissed the charges as evidenced by entry filed on July 20, 2007.

Appellee filed a notice of Appeal in the Sixth District Court of Appeals on the judgment entry filed July 20, 2007. The court of appeals reversed the judgment of the trial court finding that the trial court ignored a wildlife officers authority to enter private property pursuant to O.R.C. §1531.14. **State v. Coburn**, 2008 WL 303138, 2008-Ohio-371, (Ohio App. 6

Dist.).

Appellants filed a notice of appeal in the Ohio Supreme Court on the judgment entry of the Sixth District Court of Appeals filed February 1, 2008.

ARGUMENT

PROPOSITION OF LAW NO. ONE: PURSUANT TO OHIO REVISED CODE ANN. §1531.14, A WILDLIFE OFFICER NEED NOT SHOW "GOOD CAUSE" TO ENTER PRIVATE LANDS TO CHECK FOR HUNTING LICENSES AND BAG LIMITS. Division of Wildlife v. Freed (1995), 101 Ohio App.3d 709.

The Sixth District Court of Appeals properly found that the trial court erred in ignoring the authority granted to wildlife officers pursuant to O.R.C. §1531.14. Therefore, appellant's argument fails to demonstrate a substantial constitutional question or that this case is one of public or great general interest.

It has been held that officers have the right to enter private property in the exercise of their official duties. See State v. Israel, Case No. C961006, 1997 WL 598396, (Ohio App. 1 Dist., Sept. 26, 1997). See also, State v. Huff, Case No. 98CA23, 1999 WL 402222, (Ohio App. 4 Dist., June 10, 1999); State v. Namey, Case No. 99A0003, 2000 WL 1487638, (Ohio App. 11 Dist., Oct. 6, 2000).

O.R.C. §1531.13 specifically provides that a wildlife officer may, at any time or place, except within a building, check for bag limits of wild animals. State v. Ohio v. Apthorpe,

Case No. 1235, 1983 WL 6237, (Ohio App. 11 Dist. April 15, 1983). A wildlife officer also has the statutory authority to enter private property, and remain on the property, to inquire of possible gaming law violations. O.R.C. §1531.14. **See also, State v. Davis**, 2004 WL 958051, 2004-Ohio-2255, (Ohio App. 5 Dist.).

Pursuant to O.R.C. §1533.14, "[e]very person, while hunting on the lands of another, shall carry the persons hunting license on the persons own self and exhibit it to any wildlife officer..." (Emphasis added) A wildlife officer does not need probable cause to ask a hunter to exhibit his hunting license. **Division of Wildlife v. Freed** (1995), 101 Ohio App.3d 709, 711.

In **Freed**, defendant and two others were hunting on private property when they were approached by officers checking hunting licenses. Defendant was with the owner of the property. After determining that the licenses were valid, officers left. Subsequently, it was determined that the property was owned by someone else. As a result, defendant was charged and convicted of hunting on lands of another without permission. On appeal defendant argued that the officer did not have probable cause to stop him. The court held that, pursuant to O.R.C. §1533.14, the officer did not need probable cause to stop defendant and request defendant exhibit his hunting license.

In **State v. Rohr** (1988), 53 Ohio App.3d 132, defendant was

convicted of hunting without a license and hunting without a deer permit. Defendant appealed the trial court's denial of his motion to suppress. Defendant argued that the officer did not have probable cause for the stop and arrest. The reviewing court found that the officer saw in plain view that defendant was not wearing his license on his back, and when the officer requested defendant's license, defendant was unable to produce the license. The court held that it was obvious to the officer that defendant was not displaying his license on his back. Thus, the officer had the authority to check for defendant's license pursuant to O.R.C. §1533.14. The court further held that it was "analogous to a situation where the officer saw hunters walking in a field without having their licenses displayed on their backs. *The officer would have the statutory authority to stop these hunters and inquire about their licenses...*" (Emphasis added) Rohr, 53 Ohio App. 3d at

In the case at bar, appellants are clearly misconstruing O. R.C. §§1531.13, 1531.14, and 1533.14. O.R.C. §1531.13 states that "[t]he chief of the division of wildlife, wildlife officers, and such other employees of the division as the chief of the division of wildlife designates, and other officers who are given like authority, shall enforce all laws pertaining to the taking, possession, protection, preservation, management, and propagation of wild animals and all division rules."

(Emphasis added)

O.R.C. §1531.14 states, in pertinent part, that a wildlife officer "in the enforcement of laws or division rules relating to *game or fish*... may enter upon, cross over, be upon, and remain upon privately owned lands for such purposes..."

O.R.C. §1533.14 simply provides that one must carry their hunting license while hunting on the lands of another and must exhibit the same if a wildlife officer should ask.

Appellants suggest that O.R.C. §1533.14 does not provide officers with the authority to enter private property while knowing that the hunter is the owner. However, nowhere within the statute does it state, nor can it be interpreted, that if one of the hunters is known by the officer to be the owner of the property, then the other hunters accompanying the owner are exempt from carrying their license while hunting and exhibiting the same to an officer. Thus, pursuant to O.R.C. §1533.14, Abele lawfully entered the property to check for hunting licenses.

Appellants argue that, pursuant to O.R.C. §1531.13, Abele should have had good cause to enter upon Williams's property. This argument is without merit. Although O.R.C. §1531.13 states that in order for an officer to conduct a "search" of any place, he must have good cause. In the instant case, Abele was not on the property to conduct a search. Abele was on the property to check hunting licenses and bag limit compliance. Consequently,

Abele noticed wheat seed scattered in piles along the ground in plain view, which is violation of the law.

Appellants are correct in that O.R.C. §§1531.13, 1531.14, and 1533.14 should be read in harmony with each other in defining the role and authority of wildlife officers. In reading §§1531.13, 1531.14, and 1533.14 together, and as the Sixth District Court of Appeals found, the officer saw appellants hunting and then entered the property. The court then stated that once the officer saw appellants hunting, O.R.C. §1531.14 gave the officer the authority to enter the land in pursuit of the officer's duties pursuant to O.R.C. 1531.13. Probable cause is not needed for a wildlife officer to enter upon private property in the exercise of his official duties to check hunting licenses and bag limits. Division of Wildlife v. Freed (1995), 101 Ohio App.3d 709, 711.

In Davis, supra, the court addressed the constitutionality of O.R.C. §1531.14 regarding a warrantless search without probable cause. The court stated that:

{¶ 35} Statutes enacted in Ohio are presumed to be constitutional. See State ex rel. Jackman v. Cuyahoga Cty. Court of Common Pleas (1967), 9 Ohio St.2d 159, 161-162,...This presumption of constitutionality remains unless it is proven beyond a reasonable doubt that the legislation is clearly unconstitutional. See, Roosevelt Properties Co. v. Kinney (1984), 12 Ohio St.3d 7, 13,...See State v. Williams (2000), 88 Ohio St.3d 513....

{¶ 36} Upon review, appellant has not proven, beyond a reasonable doubt, the unconstitutionality of the R.C. Section 1531.14 . The statute reads:

{¶ 37} "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."

{¶ 38} Clearly, the statute authorized Officer Carter to enter upon and remain upon the property. While on the property, Officer Carter inquired of appellant as to the possible violation of gaming laws. Appellant told Officer Carter of the presence of a firearm in his vehicle. Upon approach of the vehicle, Carter observed a shotgun in plain view with the action closed, in violation of Ohio law. Accordingly, in the case sub judice, we do not find appellant has proven beyond a reasonable doubt the unconstitutionality of the statute on its face or as applied. The warrantless search of the vehicle was proper, not based upon R.C. Section 1531.14, but, rather, as we found above, upon the "plain view" of an illegal firearm while lawfully on the property.

Davis 2004 WL 958051, 4.

Contrary to appellant's argument, the fact that hunters were hunting is "good cause" to enter the property to comply with the requirements of O.R.C. §1531.13. What appellant seeks from this Court is a holding that the officer must have either a

reasonable suspicion of criminal activity or the higher standard of probable cause to enter the property. This standard is not required by law.

CONCLUSION

Because appellants have failed to demonstrate that this Court has original or appellate jurisdiction or why this case involves a substantial constitutional question or that this case is one of public or great general interest, appellee respectfully requests that appellants memorandum in support of jurisdiction be dismissed.

Respectfully submitted,



Mary Ann Barylski (0038856)
Assistant Prosecuting Attorney

CERTIFICATION

This is to certify that a copy of appellee's Motion to Dismiss Appeal has been sent to John Climaco, Attorney for appellant's, 55 Public Square, Suite 1950, Cleveland, Ohio 44113, this 1st day of April, 2008, by regular U.S. Mail.



Mary Ann Barylski #0038856
Assistant Prosecutor