

In the
Supreme Court of Ohio

STATE OF OHIO,	:	Case No. 2007-2310 & 2007-2311
	:	
Plaintiff-Appellant,	:	
	:	On Appeal from the
v.	:	Stark County
	:	Court of Appeals,
ADAM DAVID JONES,	:	Fifth Appellate District
SHAWN MICHAEL SKROPITS,	:	
	:	Court of Appeals Cases
Defendants-Appellees.	:	No. 2007-CA-00139
	:	No. 2007-CA-00098

MERIT BRIEF OF *AMICUS CURIAE*
OFFICE OF THE OHIO ATTORNEY GENERAL
IN SUPPORT OF PLAINTIFF-APPELLANT STATE OF OHIO

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INTRODUCTION

This case calls upon the Court to apply well-settled Fourth Amendment principles to particular facts, and in doing so, to correct the Fifth District's misstatement and misapplication of the law. Sergeant Mitchell Hershberger of the East Canton Police Department pulled over a pickup truck that was on a public road after sunset without its headlights on. The truck contained Defendants Adam David Jones and Shawn Michael Skropits, and they told the officer that they had guns in the truck. After being indicted on weapons charges, Defendants argued that the stop—but not the search—was unreasonable under the Fourth Amendment because it took place outside Sgt. Hershberger's jurisdiction, so the evidence against them should be suppressed. The trial court did not accept this argument, but the Fifth District did and thus erroneously reversed both Defendants' convictions. This Court should reaffirm controlling Fourth Amendment principles and correct the Fifth District's error.

First, the Court should reaffirm that as long as an officer has probable cause to believe that a motorist committed a traffic offense, stopping the car is reasonable under the Fourth Amendment. Although both this Court and the U.S. Supreme Court have recognized and applied this principle repeatedly, the Fifth District ignored these precedents and instead held that the stop was unreasonable because “the officer did not have a reasonable suspicion of *criminal activity* sufficient to justify the extra-territorial stop.” *State v. Jones* (5th Dist.), 2007-Ohio-5818, ¶ 22 (emphasis added); *State v. Skropits* (5th Dist.), 2007-Ohio-5817, ¶ 22 (emphasis added). Critically, the Fifth District seemed to use this term “criminal activity” to mean something more than traffic infractions, as it was undisputed that the officer here personally witnessed the traffic offense of driving at night without headlights on. But requiring suspicion of criminal activity is as unworkable as it is inconsistent with settled precedent, for requiring suspicion of criminal activity would render the lion's share of traffic ordinances unenforceable.

Second, the Court should reaffirm the settled principle that the reasonableness of police action does not depend on the officer's being within his or her own jurisdiction when undertaking the action. Indeed, this Court has recognized that whether a stop occurs within or beyond an officer's jurisdiction is simply irrelevant to the stop's constitutional reasonableness, and during this Term, the U.S. Supreme Court held in *Virginia v. Moore* (Apr. 23, 2008), 2008 U.S. Lexis 3674, that an officer's engaging in police action that state law does not authorize will not render the police action unreasonable per se. Instead, constitutional reasonableness is wholly independent of state law.

Third, the Court should reaffirm its recognition that law enforcement's interest in safeguarding law-abiding motorists from reckless drivers outweighs a driver's interest in continuing on his or her path uninterrupted. And consistent with the reaffirmation of these settled principles, the Court should hold that Sgt. Hershberger did not violate the Defendants' Fourth Amendment rights and should reverse the Fifth District's erroneous conclusion to the contrary.

STATEMENT OF AMICUS INTEREST

The Ohio Attorney General acts as Ohio's chief law officer. R.C. 109.02. Accordingly, he has a strong interest in ensuring rigorous and consistent enforcement of Ohio's criminal laws. Additionally, the Attorney General has a strong interest in having the constitutional scope of law enforcement conduct clearly defined.

STATEMENT OF THE CASE AND FACTS

On the evening of September 27, 2006, Sgt. Hershberger of the East Canton Police Department received a call dispatching him to 113 East Nassau Street to investigate a possible hit-skip accident reported by the counter clerk of a gas station at that address. Suppression Hearing Transcript (Tr.) 9. Sgt. Hershberger spoke to the clerk, an acquaintance of his, who said

that a red Ford Ranger struck the rear of a full-size van, and that the drivers then had a brief conversation, got back into their vehicles, and then drove off. Tr. 10. From the clerk's description, Sgt. Hershberger believed that the conversation between the two drivers was not long enough for them to exchange information as R.C. 4549.02(A) requires, and therefore both drivers violated the statute. Tr. 44. Sgt. Hershberger investigated the scene and found debris in the roadway that appeared to be from the Ford Ranger, including what appeared to be pieces of the front headlights. Tr. 10, 39.

After clearing the debris, Sgt. Hershberger left the scene and returned to the Village Hall about a block and half away where he had been previously on duty. Tr. 23-25. As he was exiting his police cruiser, however, he received another dispatch indicating that a vehicle possibly involved in the accident was hiding out at the Coyote Restaurant about a half mile down State Route 172. Tr. 25-26. The dispatch referenced a red Ranger with a smashed front end. Tr. 26. Sgt. Hershberger drove to the restaurant—outside his jurisdiction—in an attempt to locate the vehicle. Tr. 27-28. After checking the restaurant's parking lot, the surrounding businesses, and a trailer park behind the restaurant, Sgt. Hershberger did not locate the red Ford Ranger. *Id.*

Operating on the belief that the Ford Ranger was heading west toward the City of Canton, Sgt. Hershberger drove down Rt. 172 approximately another half mile outside of his jurisdiction toward Canton, checking the parking lots of other businesses. Tr. 12-14. When he reached Trump Road, he began searching the parking lots of nearby businesses. *Id.* During this period, a motorist at a car wash told Sgt. Hershberger that a vehicle driving without headlights almost hit him. *Id.* Sgt. Hershberger then drove off in the direction indicated by the motorist, and he encountered a red Ford Ranger on State Route 172 driving with a smashed front end and no headlights on. Tr. 15-16.

Sgt. Hershberger effected a traffic stop because the vehicle fit the description of the red Ford Ranger involved in the accident and the driver was operating without headlights on at night. *Id.* Sgt. Hershberger believed the driver violated at least two statutes: (1) R.C. 4513.03(A), which prohibits operating a vehicle without headlights after sunset, and (2) R.C. 4549.02(A), which prohibits leaving the scene of an accident without exchanging information or contacting the police. Tr. 44-45.

Sgt. Hershberger approached the vehicle, which had two occupants. He asked the driver of the vehicle, later identified as Defendant Jones, if there were any guns or drugs in the vehicle. Def.'s Mot. to Dismiss, R. 22; Resp. to Disc. Req., R. 11. Jones said that there were guns in the back. *Id.* Sgt. Hershberger found four handguns, a sawed-off shotgun, and ammunition behind the seat, so he arrested Jones and the vehicle's passenger, Defendant Skropits. A grand jury indicted both defendants on two counts—one count of carrying concealed weapons in violation of R.C. 2923.12(A)(2) and/or (A)(3), and one count of carrying a dangerous ordinance in violation of R.C. 2923.17(A). Indictment, R. 5.

ARGUMENT

Amicus Curiae Attorney General's Proposition of Law:

A police officer does not violate a motorist's Fourth Amendment rights by conducting an extraterritorial traffic stop when the officer has probable cause to believe that the motorist committed a traffic infraction.

The Fifth District erred by concluding that the stop at issue violated the Fourth Amendment and accordingly, that evidence of the contraband found in the truck must be suppressed. Two aspects of the Fifth District's opinion render this error manifest. First, the Fifth District erred by applying the wrong standard. As various courts have held, an officer need not suspect *criminal activity* to justify stopping a vehicle. Instead, probable cause of a traffic infraction is sufficient. Second, the Fifth District erred by emphasizing that the stop occurred outside Sgt. Hershberger's jurisdiction, and by suggesting that the extraterritorial nature of the stop affected the constitutional analysis. Under precedents from both this Court and the U.S. Supreme Court, such considerations are wholly irrelevant to the constitutional calculus. For these reasons, the Court should reverse the Fifth District's judgment.

A. A traffic stop is reasonable under the Fourth Amendment if the officer has probable cause that the driver committed a traffic infraction; suspicion of criminal activity is unnecessary.

The Fifth District erred by applying the wrong standard. The lower court repeatedly emphasized that Sgt. Hershberger lacked a basis to believe that a crime occurred. See *Jones*, 2007-Ohio-5818, ¶¶ 17, 19-21; *Skropits*, 2007-Ohio-5817, ¶¶ 17, 19-22. But suspicion of *criminal activity* is not the sine qua non of a valid stop.

To the contrary, probable cause of a *traffic violation* is all that is necessary to render stopping a vehicle a reasonable exercise of police power under the Fourth Amendment. In *City of Dayton v. Erickson*, 76 Ohio St. 3d 3, 1996-Ohio-431, this Court held that the officer did not violate the Fourth Amendment by stopping a motorist who committed a minor traffic offense—

failing to signal a turn. *Id.* at 11. Although the defendant in *Erickson* argued that the traffic violation was actually a pretext and that the officer conducted the stop hoping to investigate other criminal wrongdoing, nowhere does the *Erickson* Court's analysis suggest that such suspicion is necessary before an officer can reasonably pull over a motorist. Instead, the Court held that so long as an officer has "probable cause that a traffic violation has occurred or [i]s occurring," stopping the vehicle is constitutionally reasonable. *Id.*; see also *Whren v. United States* (1996), 517 U.S. 806, 810 (holding that, "[a]s a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred").

Further, the underlying traffic citation need not be valid for the ensuing stop to be constitutionally reasonable. In *City of Bowling Green v. Godwin*, 110 Ohio St. 3d 58, 2006-Ohio-3563, this Court upheld a defendant's DUI conviction, even though the offense for which the officer initially stopped the driver was later thrown out. The officer observed the defendant exiting a parking lot in violation of posted signs, so he pulled the defendant over and then discovered that the defendant was driving under the influence. The defendant moved to suppress evidence gleaned from the stop, arguing that the relevant signs were not posted consistently with municipal ordinances, and thus could not support the cited violation. This Court held that even if the signs were not validly posted, the "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." *Id.* ¶ 13. Accordingly, the stop did not violate the Fourth Amendment.

The Court should correct the Fifth District's misstatement of the law. If adopted, the Fifth District's standard would preclude officers from enforcing traffic laws at all, with the exception of those traffic offenses that qualify as crimes. Such a Fourth Amendment regime would prove

unworkable, which is why the *Erickson*, *Whren*, and *Godwin* Courts have properly recognized that probable cause of a traffic violation justifies a traffic stop. In this case, the Court should reinforce this proposition of law.

Alternatively, even if the Fifth District were correct that an officer must suspect criminal activity before pulling over a vehicle, its conclusion was still wrong. This is so because under Ohio law driving at night without headlights illuminated is a criminal offense. See R.C. 4513.99 (stating that violating R.C. 4513.03(A)'s headlights-after-sunset requirement is a misdemeanor). Thus, even under the Fifth District's erroneous standard, the stop was reasonable.

B. That the stop occurred outside Sgt. Hershberger's jurisdiction is irrelevant to the constitutional analysis.

The Fifth District's opinion improperly emphasizes that the stop took place outside Sgt. Hershberger's jurisdiction—a fact that is wholly irrelevant to the reasonableness of the stop. In concluding that Sgt. Hershberger violated the Fourth Amendment by stopping Jones's vehicle, the court emphasized that the officer left his jurisdiction without being in "hot pursuit," and 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 almost hit him." *Jones*, 2007-Ohio-5818, ¶ 20; *Skropits*, 2007-Ohio-5817, ¶ 21.

That the stop occurred outside Sgt. Hershberger's jurisdiction is irrelevant to the constitutional analysis. Indeed, the U.S. Supreme Court held just this Term that the constitutional reasonableness of police action is wholly independent of state law. See *Virginia v. Moore*, 2008 U.S. Lexis 3674. Accordingly, in *Moore*, the Court upheld a conviction that was based on evidence found during a post-arrest search, even though state law denied officers the power to arrest the suspect in the first place. *Id.* at *21. Because the officers had probable cause

to believe that the suspect broke the law, the Court held, the arrest was constitutionally reasonable, notwithstanding that it violated state law. Just the same, whether Ohio law authorizes Sgt. Hershberger to stop vehicles for traffic offenses he observes outside his jurisdiction is beside the point. As long as an officer has probable cause to believe that a motorist violated a traffic rule, stopping the motorist is constitutionally reasonable.

This Court's precedent confirms that Sgt. Hershberger's asserted lack of jurisdiction does not render the stop unreasonable. In *City of Kettering v. Hollen* (1980), 64 Ohio St. 2d 232, this Court held that an extraterritorial arrest does not violate the Fourth Amendment when it is based on probable cause that the perpetrator committed a crime in the officer's jurisdiction. *Id.* at syllabus. Even when Ohio law does not authorize such an arrest, the Court concluded, the arrest "does not offend either the United States or Ohio Constitution." *Id.* at 235.

More recently, the Court extended this holding in *State v. Weideman*, 94 Ohio St. 3d 501, 2002-Ohio-1484, and expressly held that extraterritorial stops are not unreasonable for Fourth Amendment purposes. Specifically, the Court held that when "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." *Id.* at syllabus. The *Weideman* Court reached this conclusion even though the officer had not been in "hot pursuit" before pulling over the defendant and even though the traffic offense motivating the stop (traveling left-of-center) took place outside the officer's jurisdiction. The only consideration relevant to the constitutional analysis, held *Weideman*, was the balance between the government's interest in effecting the stop and the citizen's interest in traveling unimpeded. *Id.* at 506. And this balance tips overwhelmingly in favor of the stop's constitutionality. See *infra* Pt. C.

Importantly, this case does not feature a scenario in which a police officer attempted to enforce another jurisdiction's traffic ordinance. Instead, the traffic offense that Sgt. Hershberger witnessed—failing to illuminate headlights while driving after sunset—applies statewide. See R.C. 4513.03(A). And this Court's precedent nowhere suggests that the reason why Sgt. Hershberger was outside his jurisdiction is relevant to the constitutional question that Defendants raise. Accordingly, that Sgt. Hershberger effected the stop outside of his jurisdiction is wholly irrelevant to the stop's constitutionality, and the only question necessary to resolve the Fourth Amendment inquiry in this case is whether probable cause of a traffic infraction supported Sgt. Hershberger's decision to stop the Ford Ranger.

C. Because Sgt. Hershberger had probable cause to believe that Jones committed a traffic violation, his decision to stop Jones's vehicle did not violate the Fourth Amendment.

Sgt. Hershberger's stop did not violate the Fourth Amendment because he had personally observed the vehicle's committing a traffic infraction. R.C. 4513.03(A) states, "Every vehicle upon a street or highway within this state during the time from sunset to sunrise . . . shall display lighted lights and illuminating devices[.]" Neither Defendant disputes that Sgt. Hershberger saw the Ford Ranger in motion after dark without its headlights illuminated. Accordingly, Sgt. Hershberger did not just have probable cause of a traffic violation. Instead, he *witnessed* a traffic violation, so pulling the vehicle over was reasonable and permissible under the Fourth Amendment. Cf. R.C. 4513.99 (stating that violating R.C. 4513.03's illuminating-devices requirement constitutes a misdemeanor); *Moore*, 2008 U.S. Lexis 3674, at *12 ("In a long line of cases, we have said that when an officer has probable cause to believe a person committed even a minor crime in his presence, the balancing of private and public interests is not in doubt. The arrest is constitutionally reasonable.").

The applicable balancing test reinforces this conclusion. To determine whether police action is reasonable, courts apply a two-part test. First, they “determine whether the action was regarded as an unlawful seizure when the Fourth Amendment was adopted.” *Weideman*, 94 Ohio St. 3d at 505-06. If that inquiry proves inconclusive, then the reasonableness of the police action at issue “is judged by weighing the competing interests involved.” *Id.* at 506 (quoting *State v. Jones* (2000), 88 Ohio St. 3d 430, 437). In cases involving vehicle stops, the first step is inconclusive, so the second prong controls. *Id.* at 506. And the balancing test tips overwhelmingly in the State’s favor in this case: “The state’s interest in protecting the public from a person who drives an automobile in a manner that endangers others outweighs [a driver’s] right to drive unhindered.” *Id.*; see also *id.* (“The government’s interest in promoting public safety by stopping and detaining persons driving erratically outweighs the momentary restriction of the driver’s freedom.”). Here, Sgt. Hershberger saw the Ford Ranger being operated in a dangerous manner (without headlights illuminated after sunset) and also received a report that the vehicle had almost hit another motorist. Under these circumstances, the government’s twin interests in enforcing its traffic laws and in protecting other motorists from a reckless driver justified the stop.

For each of these reasons, the vehicle stop at issue did not violate the Fourth Amendment, so the Court should reverse the Fifth District’s erroneous judgment.

CONCLUSION

For the foregoing reasons, this Court should reverse the judgment below.

Respectfully submitted,

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I certify that a copy of the foregoing Merit Brief of *Amicus Curiae* Office of the Ohio Attorney General in Support of Plaintiff-Appellant State of Ohio was served by U.S. mail this 23rd day of May, 2008, upon the following counsel:

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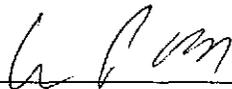
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