

IN THE SUPREME COURT OF OHIO
COLUMBUS, OHIO

STATE OF OHIO,

CASE NOS. 2007-2310 and
2007-2311

Plaintiff-Appellant,

vs.

ADAM DAVID JONES, and
SHAWN MICHAEL SKROPITS,

Defendants-Appellees.

ON APPEAL FROM
THE OHIO COURT OF APPEALS FOR STARK COUNTY,
FIFTH APPELLATE DISTRICT,
CASE NOS. 2007-CA-00139 and 2007-CA-00098

MERIT BRIEF
OF PLAINTIFF-APPELLANT,
STATE OF OHIO

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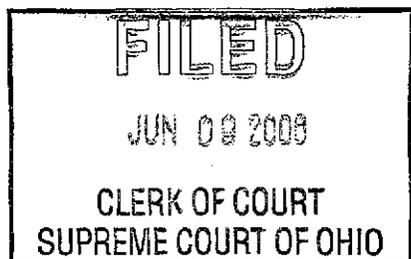


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STATEMENT OF THE CASE AND FACTS

In 2006, the Stark County Grand Jury returned an indictment charging Adam David Jones and Shawn Michael Skropits each with one count each of carrying concealed weapons¹ and unlawful possession of a dangerous ordnance.² The indictment charged both Jones and Skropits as either the principal offender or as accomplices who 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. Jones was the driver of the vehicle and Skropits was his passenger. Both men pleaded not guilty to these charges, and the case proceeded in the Stark County Court of Common Pleas.

Before trial, Skropits and Jones filed separate motions to suppress the evidence against them, arguing that the officer stopped them outside of his jurisdiction, and thus the stop was 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.³ The trial court then asked defense counsel whether the officer had the legal right to stop such a vehicle under these

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

²R.C. 2923.17(A), a felony of the fifth degree.

³T.(S) 58-61. The record on appeal for this case consists of two volumes of transcripts – one for the suppression hearing, and one for the sentencing hearing. Skropits did not include a transcript of the no contest plea hearing. In the appeal of his co-defendant, Adam David Jones, only the transcript of the no contest plea hearing was transmitted as part of the record in his appeal. References to the transcript of the suppression hearing in this brief will be “T.(S).”

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 Jones and SKROPITS, 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) 64-65.⁴

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.

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,⁵ ah, that this is the same thing?

⁴Counsel for Skropits 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 had a legal right to be where he was when he observed contraband or evidence in plain view. T.(S) 65.

⁵*Terry v. Ohio* (1968), 392 U.S. 1.

. . . .

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 Mr. Burnworth 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).

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 officers search for one of the vehicles involved in the hit-skip accident as "a wild goose chase."⁶

The trial court rejected this characterization of the officer's investigation and overruled the suppression motions. In so doing, the 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.

⁶T.(S) 69-70.

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.

After the suppression motions were overruled, Skropits opted to plead no contest to the charges in the indictment. Based upon the evidence presented at the suppression hearing, the court found both Jones and Skropits guilty of the charged 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 and Skropits both appealed their convictions and sentences to the Court of Appeals for Stark County (Fifth Appellate District), challenging solely the trial court's suppression ruling. The court of appeals sustained their lone assignments of error and reversed the trial court, concluding that it had erred in not sustaining their suppression motions. In so ruling, the appellate court held that the extraterritorial stop by the officer in this case violated the

reasonableness requirement of the Fourth Amendment, and hence invalidated the stop and subsequent search of the motor vehicle.⁷

Judge Julie A. Edwards dissented in both cases. Judge Edwards reasoned that this Court's *Weideman* decision⁸ was controlling in these cases. Pursuant to this case, Judge Edwards would have held that the stop in this case was not unreasonable since the police officer observed a traffic violation being committed by the vehicle driven by Jones and Skropits, i.e., driving at night without its headlights on, and thus the trial court did not err in overruling the suppression motions.

The State of Ohio appealed these two cases to this Court, which accepted for cases for review⁹ and ordered them consolidated.¹⁰

The facts of this case are not complicated. On September 27, 2006, Officer Mitchell Hershberger of the East Canton Police Department was dispatched to an accident scene to investigate the collision of two motor vehicles. When he arrived at the location of the accident – 113 East Nassau Street in East Canton – neither vehicle was still at the scene. 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. The driver of the van got out and exchanged

⁷*State v. Jones*, Stark App. No. 2007-CA-00139, 2007-Ohio-5818, 2007 WL 3171206; *State v. Skropits*, Stark App. No. 2007-CA-00098, 2007-Ohio-5817, 2007 WL 3171209.

⁸*State v. Weideman*, 94 Ohio St.3d 501, 2002-Ohio-1484, 764 N.E.2d 997.

⁹*State v. Jones*, 117 Ohio St.3d 1438, 2008-Ohio-1279, 883 N.E.2d 456 (appeal allowed); and *State v. Skropits*, 117 Ohio St.3d 1423, 2008-Ohio-969, 882 N.E.2d 444 (appeal allowed).

¹⁰*State v. Skropits*, 117 Ohio St.3d 1450, 2008-Ohio-1427, 883 N.E.2d 1075 (cases consolidated).

words with the driver of the Ford Ranger. The driver of the van then got back into his vehicle, made a U-turn, and left the scene. The Ford Ranger also left the scene, proceeding westbound on Nassau Street.¹¹

Hershberger next examined the accident site, and noticed debris from the Ford Ranger on the street. He specifically found debris of the front turn signal light from the Ranger. The officer cleared the street of this debris, which took about five minutes, and then proceeded to the town's village hall (as he was also the bailiff for mayor's court that night). The village hall was about 30 yards from the accident scene. As he was exiting his cruiser, Hershberger received a dispatch call that a red Ford Ranger with a smashed front and headlights out was hiding at the old Coyote Restaurant, which was located on the Osnaburg Township - Canton Township boundary line. The restaurant was about a half mile from East Canton. Hershberger knew that there was a trailer park there.¹²

Hershberger investigate the old restaurant area and the trailer park,¹³ but did not find the red Ford Ranger. Thinking that the vehicle might be going to the City of Canton, Hershberger opted to continue west of Nassau Street (which turned into Lincoln Street) to Trump Road, which was about a half mile from his location. At the intersection of Trump Road and State Route 172, there is a McDonald's Restaurant and a Speedway, as well as a drive-through, a motel, and a car wash. As Hershberger pulled into the parking lot of this area, a pick-up truck approached him.

¹¹T.(S) 8-10, 21, 42-43.

¹²T.(S) 11-13, 22-25, 26, 38, 42.

¹³The Coyote was not in the East Canton jurisdiction, but was just across the line in Canton Township. The trailer court was east of the old restaurant, in Osnaburg Township, between the city limits of East Canton and Canton Township. T.(S) 26-27.

Hershberger estimated that it took him about two minutes to get here from the village hall. The men in this pick-up truck told the officer that a motor vehicle with no headlights on almost hit them, and that this vehicle was coming westbound. Hershberger immediately proceeded eastbound on State Route 172, heading back to East Canton, when he saw the red Ford Ranger without its headlights on and its front end smashed. The officer turned around and followed the Ranger, eventually turning on his lights to make a traffic stop.¹⁴

The traffic stop occurred about 1 1/4 miles from the East Canton accident site. Hershberger noted that the red Ford Ranger fit the description of the vehicle that rear-ended the van in East Canton. Hershberger pulled the vehicle over for driving without its headlights on, for leaving the scene of an accident, and for littering the roadway with injurious material. Given the information that the gas station clerk who had witnessed the accident had given him, Hershberger felt that the drivers did not take the time to exchange insurance information but had simply left the scene after exchanging words.¹⁵ Hershberger felt that while he was not in hot pursuit of a driver who had fled this accident scene, he was nonetheless in fresh pursuit. And he pulled over the Ranger for driving without its headlights on, he asked the dispatcher to contact the Ohio Highway Patrol to come to the scene, but was told that they were not available.¹⁶

¹⁴T.(S) 13-16, 25.

¹⁵This clerk had mimicked the driver of the van in telling Hershberger about the accident, and the driver appeared to be animated when talking with the driver of the Ford Ranger. T.(S) 41.

¹⁶T.(S) 19, 20, 25, 29, 40-41, 42-45.

ARGUMENT

PROPOSITION OF LAW

THE TRAFFIC STOP OF A MOTOR VEHICLE BY A POLICE OFFICER OUTSIDE OF HIS JURISDICTION IS NOT UNREASONABLE UNDER THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION WHEN THAT OFFICER HAS PROBABLE CAUSE TO MAKE THE TRAFFIC STOP FOR A TRAFFIC VIOLATION HE PERSONALLY OBSERVED.

The court of appeals in this case held that Hershberger's stop of the vehicle outside of his jurisdiction violated the Fourth Amendment rights of Jones and Skropits¹⁷ even though Hershberger had probable cause to make the stop after personally observing a traffic violation committed by the vehicle, i.e., driving at night without headlights on. The court also ruled that Hershberger did not even had reasonable suspicion to take the traffic stop, given the vehicle's tenuous connection with the accident shortly before in East Canton. As a result, the appellate court ruled that the evidence seized – the numerous guns found inside the Ranger – should have been suppressed.

The appellate court's decision, however, was not unanimous. Judge Edwards dissented from the majority's opinion, correctly pointing out that this Court's *Weideman* decision held that an extraterritorial traffic stop for an offense committed and observed by a police officer outside

¹⁷Skropits, as a passenger in a vehicle stopped by police, has standing to challenge the stop under the Fourth Amendment. See *Brendlin v. California* (2007), ___ U.S. ___, 127 S.Ct. 2400, 2403, 168 L.Ed.2d 132 (holding that passenger in motor vehicle has standing to challenge constitutionality of the stop of that motor vehicle by police); *State v. Carter* (1994), 69 Ohio St.3d 57, 63, 630 N.E.2d 355, 360 (“Both passengers and the driver have standing regarding the legality of a stopping because when the vehicle is stopped, they are equally seized, and their freedom of movement is equally affected.”).

of his jurisdiction is not unreasonable per se under the Fourth Amendment. And since Hershberger had observed their vehicle driving without its headlights on in the dark, the officer had probable cause to make the stop. For these reasons, the court of appeals erred in its ruling, and its decision should be reversed.

In addition, the exclusionary rule only applies to constitutional and not statutory violations (unless the statute should provide for such a remedy).¹⁸ As this Court noted in *Hollen*, 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

¹⁸See *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.").

jurisdiction to effect an arrest. In upholding the evidence seized from an extra-territorial arrest, the 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 within the officer's jurisdiction, and if the officer was in hot pursuit of the misdemeanor.

Hollen, supra, at syllabus.

Therefore, to avoid the preclusive effect of the *Hollen* holding, Jones and Skropits had to elevate their suppression claim into a constitutional one in order to gain benefit of the exclusionary rule. They attempted to do so by claiming that Officer Hershberger did not have reasonable suspicion to stop the Ford Ranger. 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."¹⁹

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.

¹⁹*Terry v. Ohio* (1968), 392 U.S. 1, 21.

The *Andrews* Court further noted the sometimes elusive concept of “reasonable suspicion,” given the fact-specific nature of the analysis and the myriad factual situations that can occur.

Since *Terry*, courts have struggled with the elusive concept of what comprises a reasonable suspicion that someone is engaging in, or about to engage in, criminal activity. "Terms like 'articulable reasons' and 'founded suspicion' are not self-defining; they fall short of providing clear guidance dispositive of the myriad factual situations that arise." *Cortez*, supra, 449 U.S. at 417, 101 S.Ct. at 695. Fleshing these terms out, courts have concluded that an objective and particularized suspicion that criminal activity was afoot must be based on the entire picture--a totality of the surrounding circumstances. *Id.* at 417-418, 101 S.Ct. at 694-695; *State v. Bobo* (1988), 37 Ohio St.3d 177, 524 N.E.2d 489; *United States v. Rickus* (C.A.3, 1984), 737 F.2d 360, 365. Furthermore, these circumstances are to be viewed through the eyes of the reasonable and prudent police officer on the scene who must react to events as they unfold. *United States v. Hall* (C.A.D.C.1976), 525 F.2d 857, 859; *State v. Freeman* (1980), 64 Ohio St.2d 291, 295, 18 O.O.3d 472, 474, 414 N.E.2d 1044, 1047. A court reviewing the officer's actions must give due weight to his experience and training and view the evidence as it would be understood by those in law enforcement. *Cortez*, supra.

Andrews, 57 Ohio St.3d at 87-88, 565 N.E.2d at 1273 (footnote omitted).²⁰

²⁰In the omitted footnote, the supreme court quoted a particularly relevant passage in the United States Supreme Court's *Cortez* decision:

In *Cortez*, the United States Supreme Court explained an assessment of the circumstances in their entirety as follows: "The analysis proceeds with various objective observations, information from police reports, if such are available, and consideration of certain kinds of lawbreakers. From these data, a trained officer draws inferences and makes deductions--inferences and deductions that might well elude an untrained person.

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.²¹ After noting and acknowledging this split of authority and ambiguity over the appropriate standard, the Court nonetheless sidestepped the issue in *Godwin* and concluded that a police officer who personally observed a traffic violation has probable cause to make the stop.²² As the court noted in assessing the probable cause determination in the context of a traffic stop:

"The process does not deal with hard certainties, but with probabilities. Long before the law of probabilities was articulated as such, practical people formulated certain common-sense conclusions about human behavior; jurors as factfinders are permitted to do the same--and so are law enforcement officers. Finally, the evidence thus collected must be seen and weighed not in terms of library analysis by scholars, but as understood by those versed in the field of law enforcement." *Cortez*, supra, 449 U.S. at 418, 101 S.Ct. at 695.

Andrews, 57 Ohio St.3d at 88 n.2, 565 N.E.2d at 1273 n.2.

See also *United States v. Cortez* (1981), 449 U.S. 411.

²¹*City of Bowling Green v. Godwin*, 110 Ohio St.3d 58, 2006-Ohio-3563, 850 N.E.2d 698, ¶ 13.

²²As 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.

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 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.²³

²³See 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).

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 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.

The court of appeals also found that the stop and search violated the Fourth Amendment because Hershberger was outside of his jurisdiction when he observed the traffic violation of driving at night without headlights and when he made the traffic stop and search of the vehicle. The appellate court ruled that this extraterritorial conduct on Hershberger's part was unreasonable under the Fourth Amendment. In other words, Hershberger should have simply

followed the vehicle and notified the appropriate law enforcement officers for the jurisdiction where the vehicle was located. And since the vehicle was moving, he would have to notify potentially more than one law enforcement agency since the vehicle could conceivably move to another jurisdiction before the notified one reached the scene. The appellate court's conception of reasonableness under these circumstances strains both logic and common sense, and is not required by the Fourth Amendment.

As noted by Judge Edwards in her dissent, this case is controlled by this Court's *Weideman* decision. In that decision, the Court specifically held in its syllabus that extraterritorial traffic stops, if supported by probable cause based upon a police officer observing a traffic violation, are not unreasonable per se under the Fourth Amendment.

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.

Weideman, supra, at syllabus.

The instant case presents facts that fall squarely within the syllabus holding of *Weideman*. Officer Hershberger personally observed the Ford Ranger driving without its headlights on at night. Hershberger was admittedly outside of his jurisdiction at this time, as well as when he immediately pulled the Ford Ranger over. Therefore, under *Weideman*, this traffic stop was not unreasonable per se, and the court of appeals erred in holding that it was unreasonable in this case.

The rationale of *Weideman* is further supported by the recent decision of the United States

Supreme Court in *Virginia v. Moore*.²⁴ In *Moore*, the Supreme Court upheld a search after an arrest for a traffic violation (driving with a suspended license), even though state law precluded an arrest in this case and required instead the issuance of a summons. According to the Court, the search and seizure did not offend the Fourth Amendment since the police had probable cause to believe an offense had been committed, even though the arrest violated state law. Similarly in the instant case, Hershberger's violation of Ohio's territorial jurisdiction law did not constitutionally invalidate the traffic stop since he had probable cause to make the stop.

CONCLUSION

The effect of the ruling of the court of appeal in this case 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*. In addition, the appellate court's 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

²⁴*Virginia v. Moore* (2008), ___ U.S. ___, 128 S.Ct. 1598, ___ L.Ed.2d ___.

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 reverse the decision of the court of appeals and untie those restrictions.

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By:



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PROOF OF SERVICE

A copy of the foregoing **MERIT BRIEF** was sent by ordinary U.S. mail this 6th day of June, 2008, to STEVEN ALAN REISCH, counsel of record for defendant-appellee [ADAM DAVID JONES], at Stark County Public Defender's Office, 200 West Tuscarawas Street, N.W., Canton, Ohio 44702, and to GEORGE URBAN, counsel of record for defendant-appellee [SHAWN MICHAEL SKROPITS], at 111 Second Street, N.W., Suite 302, Canton, Ohio 44702.

An additional copy of the foregoing **MERIT BRIEF** was sent by ordinary U.S. mail this 6th day of June, 2008, to THOMAS R. WINTERS and WILLIAM P. MARSHALL, counsel for amicus curiae, the Office of the Ohio Attorney General, at Office of the Ohio Attorney General, 30 East Broad Street, 17th Floor, Columbus, Ohio 43215.

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Counsel for Plaintiff-Appellant

APPENDIX

STATE OF OHIO,

Plaintiff-Appellant,

v.

ADAM DAVID JONES, and
SHAW MICHAEL SKROPITS,

Defendants-Appellees.

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

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

07 OCT 29 PM 2: 51

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:

APPEARANCES:

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6

Wise, J.

{11} 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.

{12} Plaintiff-appellee is the State of Ohio.

STATEMENT OF THE FACTS AND CASE

{13} 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)

{14} 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 Osnaburg 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).

{¶5} 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).

{¶6} 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.

{¶7} 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.

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

{¶9} 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.

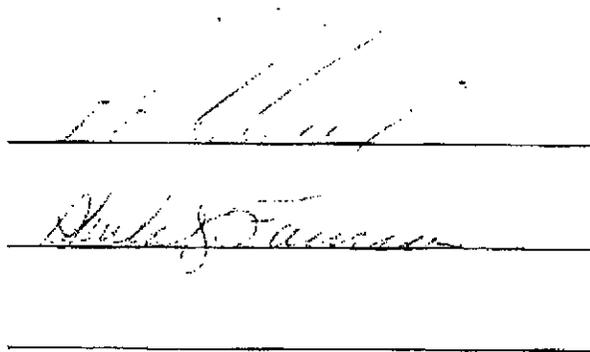
{¶21} Accordingly, we find the officer did not have a reasonable suspicion of criminal activity sufficient to justify the extra-territorial stop in the case sub judice.

{¶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 horizontal lines representing signature lines. The top line has a handwritten signature that appears to be 'W. J. Wise'. The middle line has a handwritten signature that appears to be 'P. J. Farmer'. The bottom line is empty.

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.

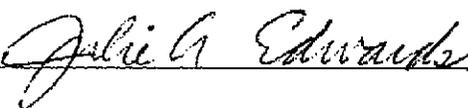
{¶27} The Ohio Supreme Court, in the syllabus of *State v. Weideman*, 94 Ohio St.3d 501, 2002-Ohio-1484, 764 N.E.2d 997, held as follows:

{¶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 40. 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

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

NANCY G. REINHOLD
CLERK OF COURT OF APPEALS
STARK COUNTY, OHIO

07 OCT 29 PM 2:50

STATE OF OHIO

Plaintiff-Appellee

-vs-

SHAWN MICHAEL SKROPITS

Defendant-Appellant

JUDGES:

Hon. Sheila G. Farmer, P. J.

Hon. John W. Wise, J.

Hon. Julie A. Edwards, J.

Case No. 2007 CA 00098

OPINION

CHARACTER OF PROCEEDING:

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

JUDGMENT:

Reversed and Remanded

(B)

DATE OF JUDGMENT ENTRY:

APPEARANCES:

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Wise, J.

{¶1} Defendant-appellant Shawn Skropits 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

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)

{¶3} 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 Osnaburg 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).

{¶4} 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).

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

{¶6} On November 2, 2006, Appellants Shawn Skropits and Adam Jones 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.

{¶7} On January 17, 2007, Appellant Shawn Skropits filed a Motion to Dismiss and/or Suppress.

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

{¶9} 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 both Motions to Suppress.

{¶12} After the suppression motions were overruled, Appellant Skropits 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 Skropits 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 Skropits 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."

1.

{¶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 the vehicle in which he was a passenger. 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} Ohio Courts have held that a passenger as well as the driver of a vehicle has standing to challenge the lawfulness of a traffic stop. *State v. Amburgy* (1997), 122 Ohio App.3d 277, 282-83. The United States Supreme Court recently reached the same conclusion and found that "[a] traffic stop necessarily curtails the travel a passenger has chosen just as much as it halts the driver ... and the police activity that normally amounts to intrusion on the privacy and personal security does not normally (and does not here) distinguish between passenger and driver." *Brendlin v. California* (2007), 127 S.Ct. 2400, 168 L.E.2d 132.

{¶21} 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.

{¶22} 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.

{¶23} 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.

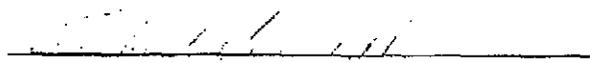
{¶24} Accordingly, we hereby sustain Appellant's assignment of error.

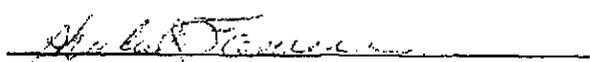
{¶25} For the foregoing reasons, the judgment of the Court of Common Pleas of Stark County, Ohio, is reversed and this matter is remanded for further proceedings consistent with the law and this opinion.

By: Wise, J.

Farmer, P. J., concurs.

Edwards, J., dissents.





JUDGES

JWW/d 924

EDWARDS, J., DISSENTING OPINION

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

{¶27} 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.

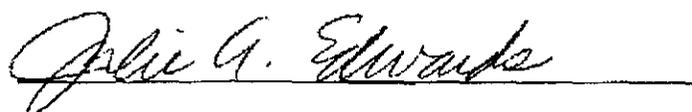
{¶28} The Ohio Supreme Court, in the syllabus of *State v. Weideman*, 94 Ohio St.3d 501, 2002-Ohio-1484, 764 N.E.2d 997, held as follows:

{¶29} "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."

{¶30} 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 40. There also was testimony adduced at the hearing that it was dark outside at that time.

{¶31} 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.

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

A handwritten signature in cursive script, reading "Julie A. Edwards", is written over a solid horizontal line.

Judge Julie A. Edwards

JAE/dr/rmn

IN THE COURT OF APPEALS FOR STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

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

07 OCT 29 PM 2:50

STATE OF OHIO

Plaintiff-Appellee

-vs-

SHAWN MICHAEL SKROPITS

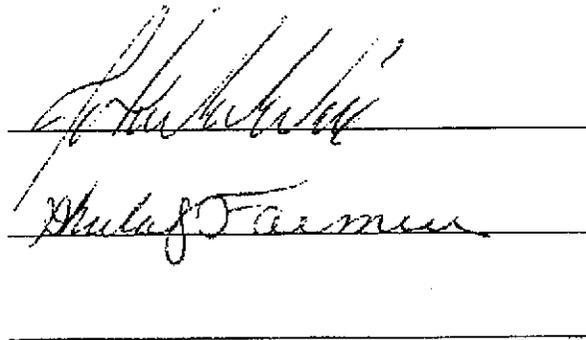
Defendant-Appellant

JUDGMENT ENTRY

Case No. 2007 CA 00098

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 assessed to appellee.



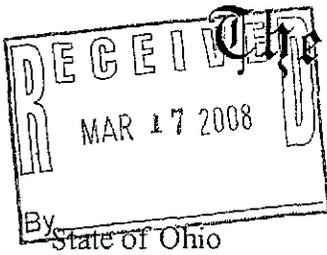
Two handwritten signatures are written over two horizontal lines. The first signature is in cursive and appears to be 'J. H. ...'. The second signature is also in cursive and appears to be 'M. J. ...'.

JUDGES

FILED

MAR 12 2008

CLERK OF COURT
SUPREME COURT OF OHIO



The Supreme Court of Ohio

Case No. 2007-2311

ENTRY

v.

Shawn Michael Skropits

Upon consideration of the jurisdictional memoranda filed in this case, the Court accepts the appeal. The Clerk shall issue an order for the transmittal of the record from the Court of Appeals for Stark County, and the parties shall brief this case in accordance with the Rules of Practice of the Supreme Court of Ohio.

(Stark County Court of Appeals; No. 2007CA00098)



THOMAS J. MOYER
Chief Justice

The Supreme Court of Ohio

FILED

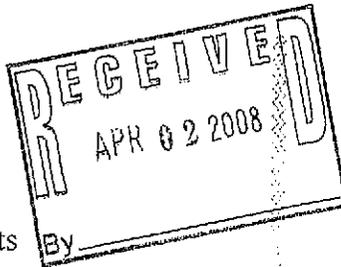
MAR 28 2008

CLERK OF COURT
SUPREME COURT OF OHIO

State of Ohio

v.

Shawn Michael Skropits



Case No. 2007-2311

ENTRY

This cause is pending before the Court as an appeal from the Court of Appeals for Stark County. It is ordered by the Court, sua sponte, that this cause is consolidated with Supreme Court Case No. 2007-2310, *State of Ohio v. Adam David Jones*.

It is further ordered by the Court that the briefing in Case Nos. 2007-2311 and 2007-2310 shall be consolidated. The parties shall file two originals of each of the briefs permitted under S.Ct.Prac.R. VI and include both case numbers on the cover page of the briefs.

The parties shall otherwise comply with the requirements of S.Ct.Prac.R. VI and briefing in Case Nos. 2007-2310 and 2007-2311 shall commence upon the filing of the record in Case No. 2007-2310.

(Stark County Court of Appeals; No. 2007CA00098)

A handwritten signature in black ink, appearing to read "Thomas J. Moyer", written over a horizontal line.

THOMAS J. MOYER
Chief Justice

The Supreme Court of Ohio

FILED

MAR 26 2008

CLERK OF COURT
SUPREME COURT OF OHIO

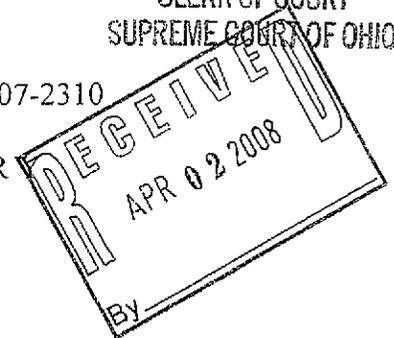
State of Ohio

v.

Adam David Jones

Case No. 2007-2310

ENTR



Upon consideration of the jurisdictional memoranda filed in this case, the Court accepts the appeal.

It is ordered by the Court, sua sponte, that this cause is consolidated with Supreme Court Case No. 2007-2311, *State of Ohio v. Shawn Michael Skropits*.

It is further ordered by the Court that the briefing in Case Nos. 2007-2310 and 2007-2311 shall be consolidated. The parties shall file two originals of each of the briefs permitted under S.Ct.Prac.R. VI and include both case numbers on the cover page of the briefs.

The parties shall otherwise comply with the requirements of S.Ct.Prac.R. VI and briefing in Case Nos. 2007-2310 and 2007-2311 shall commence upon the filing of the record in Case No. 2007-2310.

It is further ordered that the Clerk shall issue an order for the transmittal of the record from the Court of Appeals for Stark County.

(Stark County Court of Appeals; No. 2007CA00139)

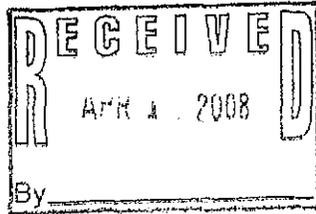
THOMAS J. MOYER
Chief Justice

The Supreme Court of Ohio

OFFICE OF THE CLERK
65 SOUTH FRONT STREET, COLUMBUS, OH 43215-3431

CHIEF JUSTICE
THOMAS J. MOYER

JUSTICES
PAUL E. PFEIFER
EVELYN LUNDBERG STRATTON
MAUREEN O'CONNOR
TERRENCE O'DONNELL
JUDITH ANN LANZINGER
ROBERT R. CUPP



TELEPHONE 614.387.9530
FACSIMILE 614.387.9539
www.supremecourtsohio.gov

April 08, 2008

Ronald Mark Caldwell
Stark County Prosecutors Office
110 Central Plaza, South
Suite #510
Canton, OH 44702

Re: 2007-2310
State of Ohio
v.
Adam David Jones

Dear Ronald Mark Caldwell:

This is to notify you that the record in the above-styled case was filed with the Clerk's Office on April 7, 2008.

If, after reviewing the Supreme Court Rules of Practice, you have any questions about filing deadlines in the case, please feel free to call a deputy clerk at (614) 387-9530.

Sincerely,

A handwritten signature in cursive script that reads "Amie Vetter".

Amie Vetter
Records Assistant

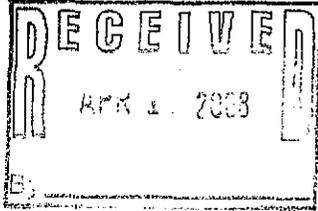
The Supreme Court of Ohio

OFFICE OF THE CLERK

65 SOUTH FRONT STREET, COLUMBUS, OH 43215-3431

CHIEF JUSTICE
THOMAS J. MOYER

JUSTICES
PAUL E. PFEIFER
EVELYN LUNDBERG STRATTON
MAUREEN O'CONNOR
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JUDITH ANN LANZINGER
ROBERT R. CUPP



TELEPHONE 614.387.9530
FACSIMILE 614.387.9539
www.supremecourtsohio.gov

April 08, 2008

Ronald Mark Caldwell
Stark County Prosecutors Office
110 Central Plaza, South
Suite #510
Canton, OH 44702

Re: 2007-2311

State of Ohio

v.

Shawn Michael Skropits

Dear Ronald Mark Caldwell:

This is to notify you that the record in the above-styled case was filed with the Clerk's Office on April 7, 2008.

If, after reviewing the Supreme Court Rules of Practice, you have any questions about filing deadlines in the case, please feel free to call a deputy clerk at (614) 387-9530.

Sincerely,

A handwritten signature in cursive script that reads "Amie Vetter". The signature is written in black ink and is positioned above the printed name.

Amie Vetter
Records Assistant

***65161 R.C. § 2935.03**

**BALDWIN'S OHIO REVISED
 CODE ANNOTATED
 TITLE XXIX. CRIMES--
 PROCEDURE
 CHAPTER 2935. ARREST,
 CITATION, AND
 DISPOSITION
 ALTERNATIVES
 ARREST**

*Current through 2008 File 50 of the 127th
 GA (2007-2008), apv. by 2/21/08, and filed
 with the Secretary of State by 2/21/08.*

**2935.03 Arrest and detention until warrant
 can be obtained**

(A)(1) A sheriff, deputy sheriff, marshal, deputy marshal, municipal police officer, township constable, police officer of a township or joint township police district, member of a police force employed by a metropolitan housing authority under division (D) of section 3735.31 of the Revised Code, member of a police force employed by a regional transit authority under division (Y) of section 306.35 of the Revised Code, state university law enforcement officer appointed under section 3345.04 of the Revised Code, veterans' home police officer appointed under section 5907.02 of the Revised Code, special police officer employed by a port authority under section 4582.04 or 4582.28 of the Revised Code, or a special police officer employed by a municipal corporation at a municipal airport, or other municipal air navigation facility, that has scheduled operations, as defined in section 119.3 of Title 14 of the Code of Federal Regulations, 14 C.F.R. 119.3, as amended, and that is required to be under a security program and is governed by aviation security rules of the transportation security administration of the United States department of transportation as provided in Parts 1542. and 1544. of Title 49 of the Code of Federal Regulations, as amended, shall arrest and detain, until a warrant can be obtained, a person found violating, within the limits of the political subdivision, metropolitan housing authority

housing project, regional transit authority facilities or areas of a municipal corporation that have been agreed to by a regional transit authority and a municipal corporation located within its territorial jurisdiction, college, university, veterans' home operated under Chapter 5907. of the Revised Code, port authority, or municipal airport or other municipal air navigation facility, in which the peace officer is appointed, employed, or elected, a law of this state, an ordinance of a municipal corporation, or a resolution of a township.

***65162 (2)** A peace officer of the department of natural resources or an individual designated to perform law enforcement duties under section 511.232, 1545.13, or 6101.75 of the Revised Code shall arrest and detain, until a warrant can be obtained, a person found violating, within the limits of the peace officer's or individual's territorial jurisdiction, a law of this state.

(3) The house sergeant at arms if the house sergeant at arms has arrest authority pursuant to division (E)(1) of section 101.311 of the Revised Code and an assistant house sergeant at arms shall arrest and detain, until a warrant can be obtained, a person found violating, within the limits of the sergeant at arms's or assistant sergeant at arms's territorial jurisdiction specified in division (D)(1)(a) of section 101.311 of the Revised Code or while providing security pursuant to division (D)(1)(f) of section 101.311 of the Revised Code, a law of this state, an ordinance of a municipal corporation, or a resolution of a township.

(B)(1) When there is reasonable ground to believe that an offense of violence, the offense of criminal child enticement as defined in section 2905.05 of the Revised Code, the offense of public indecency as defined in section 2907.09 of the Revised Code, the offense of domestic violence as defined in section 2919.25 of the Revised Code, the offense of violating a protection order as defined in section 2919.27 of the Revised Code, the offense of menacing by stalking as defined in section 2903.211 of the Revised Code, the offense of aggravated trespass as defined in section 2911.211 of the Revised Code, a theft offense as defined in section 2913.01 of the Revised Code, or a felony drug abuse offense as

defined in section 2925.01 of the Revised Code, has been committed within the limits of the political subdivision, metropolitan housing authority housing project, regional transit authority facilities or those areas of a municipal corporation that have been agreed to by a regional transit authority and a municipal corporation located within its territorial jurisdiction, college, university, veterans' home operated under Chapter 5907. of the Revised Code, port authority, or municipal airport or other municipal air navigation facility, in which the peace officer is appointed, employed, or elected or within the limits of the territorial jurisdiction of the peace officer, a peace officer described in division (A) of this section may arrest and detain until a warrant can be obtained any person who the peace officer has reasonable cause to believe is guilty of the violation.

***65163** (2) For purposes of division (B)(1) of this section, the execution of any of the following constitutes reasonable ground to believe that the offense alleged in the statement was committed and reasonable cause to believe that the person alleged in the statement to have committed the offense is guilty of the violation:

(a) A written statement by a person alleging that an alleged offender has committed the offense of menacing by stalking or aggravated trespass;

(b) A written statement by the administrator of the interstate compact on mental health appointed under section 5119.51 of the Revised Code alleging that a person who had been hospitalized, institutionalized, or confined in any facility under an order made pursuant to or under authority of section 2945.37, 2945.371, 2945.38, 2945.39, 2945.40, 2945.401, or 2945.402 of the Revised Code has escaped from the facility, from confinement in a vehicle for transportation to or from the facility, or from supervision by an employee of the facility that is incidental to hospitalization, institutionalization, or confinement in the facility and that occurs outside of the facility, in violation of section 2921.34 of the Revised Code;

(c) A written statement by the administrator of

any facility in which a person has been hospitalized, institutionalized, or confined under an order made pursuant to or under authority of section 2945.37, 2945.371, 2945.38, 2945.39, 2945.40, 2945.401, or 2945.402 of the Revised Code alleging that the person has escaped from the facility, from confinement in a vehicle for transportation to or from the facility, or from supervision by an employee of the facility that is incidental to hospitalization, institutionalization, or confinement in the facility and that occurs outside of the facility, in violation of section 2921.34 of the Revised Code.

(3)(a) For purposes of division (B)(1) of this section, a peace officer described in division (A) of this section has reasonable grounds to believe that the offense of domestic violence or the offense of violating a protection order has been committed and reasonable cause to believe that a particular person is guilty of committing the offense if any of the following occurs:

***65164** (i) A person executes a written statement alleging that the person in question has committed the offense of domestic violence or the offense of violating a protection order against the person who executes the statement or against a child of the person who executes the statement.

(ii) No written statement of the type described in division (B)(3)(a)(i) of this section is executed, but the peace officer, based upon the peace officer's own knowledge and observation of the facts and circumstances of the alleged incident of the offense of domestic violence or the alleged incident of the offense of violating a protection order or based upon any other information, including, but not limited to, any reasonably trustworthy information given to the peace officer by the alleged victim of the alleged incident of the offense or any witness of the alleged incident of the offense, concludes that there are reasonable grounds to believe that the offense of domestic violence or the offense of violating a protection order has been committed and reasonable cause to believe that the person in question is guilty of committing the offense.

(iii) No written statement of the type described

in division (B)(3)(a)(i) of this section is executed, but the peace officer witnessed the person in question commit the offense of domestic violence or the offense of violating a protection order.

(b) If pursuant to division (B)(3)(a) of this section a peace officer has reasonable grounds to believe that the offense of domestic violence or the offense of violating a protection order has been committed and reasonable cause to believe that a particular person is guilty of committing the offense, it is the preferred course of action in this state that the officer arrest and detain that person pursuant to division (B)(1) of this section until a warrant can be obtained.

If pursuant to division (B)(3)(a) of this section a peace officer has reasonable grounds to believe that the offense of domestic violence or the offense of violating a protection order has been committed and reasonable cause to believe that family or household members have committed the offense against each other, it is the preferred course of action in this state that the officer, pursuant to division (B)(1) of this section, arrest and detain until a warrant can be obtained the family or household member who committed the offense and whom the officer has reasonable cause to believe is the primary physical aggressor. There is no preferred course of action in this state regarding any other family or household member who committed the offense and whom the officer does not have reasonable cause to believe is the primary physical aggressor, but, pursuant to division (B)(1) of this section, the peace officer may arrest and detain until a warrant can be obtained any other family or household member who committed the offense and whom the officer does not have reasonable cause to believe is the primary physical aggressor.

***65165** (c) If a peace officer described in division (A) of this section does not arrest and detain a person whom the officer has reasonable cause to believe committed the offense of domestic violence or the offense of violating a protection order when it is the preferred course of action in this state pursuant to division (B)(3)(b) of this section that the officer arrest that person, the officer shall articulate in the written report of

the incident required by section 2935.032 of the Revised Code a clear statement of the officer's reasons for not arresting and detaining that person until a warrant can be obtained.

(d) In determining for purposes of division (B)(3)(b) of this section which family or household member is the primary physical aggressor in a situation in which family or household members have committed the offense of domestic violence or the offense of violating a protection order against each other, a peace officer described in division (A) of this section, in addition to any other relevant circumstances, should consider all of the following:

(i) Any history of domestic violence or of any other violent acts by either person involved in the alleged offense that the officer reasonably can ascertain;

(ii) If violence is alleged, whether the alleged violence was caused by a person acting in self-defense;

(iii) Each person's fear of physical harm, if any, resulting from the other person's threatened use of force against any person or resulting from the other person's use or history of the use of force against any person, and the reasonableness of that fear;

(iv) The comparative severity of any injuries suffered by the persons involved in the alleged offense.

(e)(i) A peace officer described in division (A) of this section shall not require, as a prerequisite to arresting or charging a person who has committed the offense of domestic violence or the offense of violating a protection order, that the victim of the offense specifically consent to the filing of charges against the person who has committed the offense or sign a complaint against the person who has committed the offense.

(ii) If a person is arrested for or charged with committing the offense of domestic violence or the offense of violating a protection order and if the victim of the offense does not cooperate with the

involved law enforcement or prosecuting authorities in the prosecution of the offense or, subsequent to the arrest or the filing of the charges, informs the involved law enforcement or prosecuting authorities that the victim does not wish the prosecution of the offense to continue or wishes to drop charges against the alleged offender relative to the offense, the involved prosecuting authorities, in determining whether to continue with the prosecution of the offense or whether to dismiss charges against the alleged offender relative to the offense and notwithstanding the victim's failure to cooperate or the victim's wishes, shall consider all facts and circumstances that are relevant to the offense, including, but not limited to, the statements and observations of the peace officers who responded to the incident that resulted in the arrest or filing of the charges and of all witnesses to that incident.

***65166** (f) In determining pursuant to divisions (B)(3)(a) to (g) of this section whether to arrest a person pursuant to division (B)(1) of this section, a peace officer described in division (A) of this section shall not consider as a factor any possible shortage of cell space at the detention facility to which the person will be taken subsequent to the person's arrest or any possibility that the person's arrest might cause, contribute to, or exacerbate overcrowding at that detention facility or at any other detention facility.

(g) If a peace officer described in division (A) of this section intends pursuant to divisions (B)(3)(a) to (g) of this section to arrest a person pursuant to division (B)(1) of this section and if the officer is unable to do so because the person is not present, the officer promptly shall seek a warrant for the arrest of the person.

(h) If a peace officer described in division (A) of this section responds to a report of an alleged incident of the offense of domestic violence or an alleged incident of the offense of violating a protection order and if the circumstances of the incident involved the use or threatened use of a deadly weapon or any person involved in the incident brandished a deadly weapon during or in relation to the incident, the deadly weapon that was used, threatened to be used, or brandished

constitutes contraband, and, to the extent possible, the officer shall seize the deadly weapon as contraband pursuant to Chapter 2981. of the Revised Code. Upon the seizure of a deadly weapon pursuant to division (B)(3)(h) of this section, section 2981.12 of the Revised Code shall apply regarding the treatment and disposition of the deadly weapon. For purposes of that section, the "underlying criminal offense" that was the basis of the seizure of a deadly weapon under division (B)(3)(h) of this section and to which the deadly weapon had a relationship is any of the following that is applicable:

(i) The alleged incident of the offense of domestic violence or the alleged incident of the offense of violating a protection order to which the officer who seized the deadly weapon responded;

(ii) Any offense that arose out of the same facts and circumstances as the report of the alleged incident of the offense of domestic violence or the alleged incident of the offense of violating a protection order to which the officer who seized the deadly weapon responded.

(4) If, in the circumstances described in divisions (B)(3)(a) to (g) of this section, a peace officer described in division (A) of this section arrests and detains a person pursuant to division (B)(1) of this section, or if, pursuant to division (B)(3)(h) of this section, a peace officer described in division (A) of this section seizes a deadly weapon, the officer, to the extent described in and in accordance with section 9.86 or 2744.03 of the Revised Code, is immune in any civil action for damages for injury, death, or loss to person or property that arises from or is related to the arrest and detention or the seizure.

***65167** (C) When there is reasonable ground to believe that a violation of division (A)(1), (2), (3), (4), or (5) of section 4506.15 or a violation of section 4511.19 of the Revised Code has been committed by a person operating a motor vehicle subject to regulation by the public utilities commission of Ohio under Title XLIX of the Revised Code, a peace officer with authority to enforce that provision of law may stop or detain the person whom the officer has reasonable cause

to believe was operating the motor vehicle in violation of the division or section and, after investigating the circumstances surrounding the operation of the vehicle, may arrest and detain the person.

(D) If a sheriff, deputy sheriff, marshal, deputy marshal, municipal police officer, member of a police force employed by a metropolitan housing authority under division (D) of section 3735.31 of the Revised Code, member of a police force employed by a regional transit authority under division (Y) of section 306.35 of the Revised Code, special police officer employed by a port authority under section 4582.04 or 4582.28 of the Revised Code, special police officer employed by a municipal corporation at a municipal airport or other municipal air navigation facility described in division (A) of this section, township constable, police officer of a township or joint township police district, state university law enforcement officer appointed under section 3345.04 of the Revised Code, peace officer of the department of natural resources, individual designated to perform law enforcement duties under section 511.232, 1545.13, or 6101.75 of the Revised Code, the house sergeant at arms if the house sergeant at arms has arrest authority pursuant to division (E)(1) of section 101.311 of the Revised Code, or an assistant house sergeant at arms is authorized by division (A) or (B) of this section to arrest and detain, within the limits of the political subdivision, metropolitan housing authority housing project, regional transit authority facilities or those areas of a municipal corporation that have been agreed to by a regional transit authority and a municipal corporation located within its territorial jurisdiction, port authority, municipal airport or other municipal air navigation facility, college, or university in which the officer is appointed, employed, or elected or within the limits of the territorial jurisdiction of the peace officer, a person until a warrant can be obtained, the peace officer, outside the limits of that territory, may pursue, arrest, and detain that person until a warrant can be obtained if all of the following apply:

(1) The pursuit takes place without unreasonable delay after the offense is committed;

***65168** (2) The pursuit is initiated within the limits of the political subdivision, metropolitan housing authority housing project, regional transit authority facilities or those areas of a municipal corporation that have been agreed to by a regional transit authority and a municipal corporation located within its territorial jurisdiction, port authority, municipal airport or other municipal air navigation facility, college, or university in which the peace officer is appointed, employed, or elected or within the limits of the territorial jurisdiction of the peace officer;

(3) The offense involved is a felony, a misdemeanor of the first degree or a substantially equivalent municipal ordinance, a misdemeanor of the second degree or a substantially equivalent municipal ordinance, or any offense for which points are chargeable pursuant to section 4510.036 of the Revised Code.

(E) In addition to the authority granted under division (A) or (B) of this section:

(1) A sheriff or deputy sheriff may arrest and detain, until a warrant can be obtained, any person found violating section 4503.11, 4503.21, or 4549.01, sections 4549.08 to 4549.12, section 4549.62, or Chapter 4511. or 4513. of the Revised Code on the portion of any street or highway that is located immediately adjacent to the boundaries of the county in which the sheriff or deputy sheriff is elected or appointed.

(2) A member of the police force of a township police district created under section 505.48 of the Revised Code, a member of the police force of a joint township police district created under section 505.481 of the Revised Code, or a township constable appointed in accordance with section 509.01 of the Revised Code, who has received a certificate from the Ohio peace officer training commission under section 109.75 of the Revised Code, may arrest and detain, until a warrant can be obtained, any person found violating any section or chapter of the Revised Code listed in division (E)(1) of this section, other than sections 4513.33 and 4513.34 of the Revised Code, on the portion of any street or highway that is located

immediately adjacent to the boundaries of the township police district or joint township police district, in the case of a member of a township police district or joint township police district police force, or the unincorporated territory of the township, in the case of a township constable. However, if the population of the township that created the township police district served by the member's police force, or the townships that created the joint township police district served by the member's police force, or the township that is served by the township constable, is sixty thousand or less, the member of the township police district or joint police district police force or the township constable may not make an arrest under division (E)(2) of this section on a state highway that is included as part of the interstate system.

***65169** (3) A police officer or village marshal appointed, elected, or employed by a municipal corporation may arrest and detain, until a warrant can be obtained, any person found violating any section or chapter of the Revised Code listed in division (E)(1) of this section on the portion of any street or highway that is located immediately adjacent to the boundaries of the municipal corporation in which the police officer or village marshal is appointed, elected, or employed.

(4) A peace officer of the department of natural resources or an individual designated to perform law enforcement duties under section 511.232, 1545.13, or 6101.75 of the Revised Code may arrest and detain, until a warrant can be obtained, any person found violating any section or chapter of the Revised Code listed in division (E)(1) of this section, other than sections 4513.33 and 4513.34 of the Revised Code, on the portion of any street or highway that is located immediately adjacent to the boundaries of the lands and waters that constitute the territorial jurisdiction of the peace officer.

(F)(1) A department of mental health special police officer or a department of mental retardation and developmental disabilities special police officer may arrest without a warrant and detain until a warrant can be obtained any person found committing on the premises of any

institution under the jurisdiction of the particular department a misdemeanor under a law of the state.

A department of mental health special police officer or a department of mental retardation and developmental disabilities special police officer may arrest without a warrant and detain until a warrant can be obtained any person who has been hospitalized, institutionalized, or confined in an institution under the jurisdiction of the particular department pursuant to or under authority of section 2945.37, 2945.371, 2945.38, 2945.39, 2945.40, 2945.401, or 2945.402 of the Revised Code and who is found committing on the premises of any institution under the jurisdiction of the particular department a violation of section 2921.34 of the Revised Code that involves an escape from the premises of the institution.

(2)(a) If a department of mental health special police officer or a department of mental retardation and developmental disabilities special police officer finds any person who has been hospitalized, institutionalized, or confined in an institution under the jurisdiction of the particular department pursuant to or under authority of section 2945.37, 2945.371, 2945.38, 2945.39, 2945.40, 2945.401, or 2945.402 of the Revised Code committing a violation of section 2921.34 of the Revised Code that involves an escape from the premises of the institution, or if there is reasonable ground to believe that a violation of section 2921.34 of the Revised Code has been committed that involves an escape from the premises of an institution under the jurisdiction of the department of mental health or the department of mental retardation and developmental disabilities and if a department of mental health special police officer or a department of mental retardation and developmental disabilities special police officer has reasonable cause to believe that a particular person who has been hospitalized, institutionalized, or confined in the institution pursuant to or under authority of section 2945.37, 2945.371, 2945.38, 2945.39, 2945.40, 2945.401, or 2945.402 of the Revised Code is guilty of the violation, the special police officer, outside of the premises of the institution, may pursue, arrest, and detain that person for that violation of section

2921.34 of the Revised Code, until a warrant can be obtained, if both of the following apply:

*65170 (i) The pursuit takes place without unreasonable delay after the offense is committed;

(ii) The pursuit is initiated within the premises of the institution from which the violation of section 2921.34 of the Revised Code occurred.

(b) For purposes of division (F)(2)(a) of this section, the execution of a written statement by the administrator of the institution in which a person had been hospitalized, institutionalized, or confined pursuant to or under authority of section 2945.37, 2945.371, 2945.38, 2945.39, 2945.40, 2945.401, or 2945.402 of the Revised Code alleging that the person has escaped from the premises of the institution in violation of section 2921.34 of the Revised Code constitutes reasonable ground to believe that the violation was committed and reasonable cause to believe that the person alleged in the statement to have committed the offense is guilty of the violation.

(G) As used in this section:

(1) A "department of mental health special police officer" means a special police officer of the department of mental health designated under section 5119.14 of the Revised Code who is certified by the Ohio peace officer training commission under section 109.77 of the Revised Code as having successfully completed an approved peace officer basic training program.

(2) A "department of mental retardation and developmental disabilities special police officer" means a special police officer of the department of mental retardation and developmental disabilities designated under section 5123.13 of the Revised Code who is certified by the Ohio peace officer training council under section 109.77 of the Revised Code as having successfully completed an approved peace officer basic training program.

*65171 (3) "Deadly weapon" has the same meaning as in section 2923.11 of the Revised Code.

(4) "Family or household member" has the same meaning as in section 2919.25 of the Revised Code.

(5) "Street" or "highway" has the same meaning as in section 4511.01 of the Revised Code.

(6) "Interstate system" has the same meaning as in section 5516.01 of the Revised Code.

(7) "Peace officer of the department of natural resources" means an employee of the department of natural resources who is a natural resources law enforcement staff officer designated pursuant to section 1501.013 of the Revised Code, a forest officer designated pursuant to section 1503.29 of the Revised Code, a preserve officer designated pursuant to section 1517.10 of the Revised Code, a wildlife officer designated pursuant to section 1531.13 of the Revised Code, a park officer designated pursuant to section 1541.10 of the Revised Code, or a state watercraft officer designated pursuant to section 1547.521 of the Revised Code.

(8) "Portion of any street or highway" means all lanes of the street or highway irrespective of direction of travel, including designated turn lanes, and any berm, median, or shoulder.

(2007 H 119, eff. 9-29-07; 2006 H 241, eff. 7-1-07; 2005 H 68, eff. 6-29-05; 2002 H 675, § 1.04, eff. 1-1-04; 2002 H 675, § 1.01, eff. 3-14-03; 2002 H 545, eff. 3-19-03; 2002 S 123, eff. 1-1-04; 2000 S 317, eff. 3-22-01; 2000 S 137, eff. 5-17-00; 1998 S 187, eff. 3-18-99; 1997 S 1, eff. 10-21-97; 1996 S 285, eff. 7-1-97; 1996 H 670, eff. 12-2-96; 1996 S 269, eff. 7-1-96; 1995 S 2, eff. 7-1-96; 1994 H 335, eff. 12-9-94; 1994 S 82, eff. 5-4-94; 1993 H 42, eff. 2-9-94; 1992 H 536; 1991 H 77; 1990 H 669, H 88; 1988 H 708, § 1)

<General Materials (GM) - References, Annotations, or Tables>

*100665 R.C. § 4513.03

**BALDWIN'S OHIO REVISED
CODE ANNOTATED
TITLE XLV. MOTOR
VEHICLES--AERONAUTICS--
WATERCRAFT
CHAPTER 4513. TRAFFIC
LAWS--EQUIPMENT; LOADS
LIGHTS**

*Current through 2008 File 50 of the 127th
GA (2007-2008), apv. by 2/21/08, and filed
with the Secretary of State by 2/21/08.*

4513.03 Lighted lights required

(A) Every vehicle upon a street or highway within this state during the time from sunset to sunrise, and at any other time when there are unfavorable atmospheric conditions or when there is not sufficient natural light to render discernible persons, vehicles, and substantial objects on the highway at a distance of one thousand feet ahead, shall display lighted lights and illuminating devices as required by sections 4513.04 to 4513.37 of the Revised Code, for different classes of vehicles; except that every motorized bicycle shall display at such times lighted lights meeting

the rules adopted by the director of public safety under section 4511.521 of the Revised Code. No motor vehicle, during such times, shall be operated upon a street or highway within this state using only parking lights as illumination.

Whenever in such sections a requirement is declared as to the distance from which certain lamps and devices shall render objects visible, or within which such lamps or devices shall be visible, such distance shall be measured upon a straight level unlighted highway under normal atmospheric conditions unless a different condition is expressly stated.

Whenever in such sections a requirement is declared as to the mounted height of lights or devices, it shall mean from the center of such light or device to the level ground upon which the vehicle stands.

(B) Whoever violates this section shall be punished as provided in section 4513.99 of the Revised Code.

(2002 S 123, eff. 1-1-04; 2000 H 484, eff. 10-5-00; 1992 S 98, eff. 11-12-92; 1977 S 100; 1973 H 272; 129 v 232; 1953 H 1; GC 6307-76)

<General Materials (GM) - References, Annotations, or Tables>

***100674 R.C. § 4513.04**

Pre-1953 H 1 Amendments: 119 v 766, § 77

**BALDWIN'S OHIO REVISED
CODE ANNOTATED
TITLE XLV. MOTOR
VEHICLES--AERONAUTICS--
WATERCRAFT
CHAPTER 4513. TRAFFIC
LAWS--EQUIPMENT; LOADS
LIGHTS**

*Current through 2008 File 50 of the 127th
GA (2007-2008), apv. by 2/21/08, and filed
with the Secretary of State by 2/21/08.*

4513.04 Headlights

(A) Every motor vehicle, other than a motorcycle, and every trackless trolley shall be equipped with at least two headlights with at least one near each side of the front of the motor vehicle or trackless trolley.

Every motorcycle shall be equipped with at least one and not more than two headlights.

(B) Whoever violates this section shall be punished as provided in section 4513.99 of the Revised Code.

(2002 S 123, eff. 1-1-04; 1953 H 1, eff. 10-1-53; GC 6307-77)

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL NOTES

**HISTORICAL AND STATUTORY
NOTES**

REFERENCES

CROSS REFERENCES

Penalty: 4513.99(C)

**OHIO ADMINISTRATIVE CODE
REFERENCES**

Accessory lamps, OAC 4501-15-09

RESEARCH REFERENCES

Encyclopedias

OH Jur. 3d Automobiles & Other Vehicles § 390, Generally; Time for Display.

OH Jur. 3d Automobiles & Other Vehicles § 391, Headlights.

OH Jur. 3d Criminal Law § 1683, Other Violations.

ANNOTATIONS

NOTES OF DECISIONS

Constitutional issues 2

Negligence 1

Strict liability 3

1. Negligence

Erroneous admission of opinion of investigating officer that plaintiff's failure to yield at intersection was sole factor contributing to, or causing accident, did not require reversal of verdict in favor of defendant in automobile negligence case; there was still sufficient competent evidence upon which jury could have based its verdict in favor of defendant, particularly testimony of eyewitness who was driving just behind plaintiff immediately prior to accident that she noticed defendant's car approaching intersection at some distance, despite fact that car had only one headlight. *Petti v. Perna* (Hancock 1993) 86 Ohio App.3d 508, 621 N.E.2d 580. Appeal And Error ↻ 1050.1(12)

***100706 R.C. § 4513.14**

(2002 S 123, eff. 1-1-04; 1992 S 98, eff. 11-12-92; 128 v 1180; 1953 H 1; GC 6307-87)

**BALDWIN'S OHIO REVISED
CODE ANNOTATED
TITLE XLV. MOTOR
VEHICLES--AERONAUTICS--
WATERCRAFT
CHAPTER 4513. TRAFFIC
LAWS--EQUIPMENT; LOADS
LIGHTS**

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL NOTES

**HISTORICAL AND STATUTORY
NOTES**

Pre-1953 H 1 Amendments: 119 v 766, § 87

REFERENCES

CROSS REFERENCES

*Current through 2008 File 50 of the 127th
GA (2007-2008), apv. by 2/21/08, and filed
with the Secretary of State by 2/21/08.*

4513.14 Two lights displayed

Penalty: 4513.99(C)

**OHIO ADMINISTRATIVE CODE
REFERENCES**

(A) At all times mentioned in section 4513.03 of the Revised Code at least two lighted lights shall be displayed, one near each side of the front of every motor vehicle and trackless trolley, except when such vehicle or trackless trolley is parked subject to the regulations governing lights on parked vehicles and trackless trolleys.

Motor vehicle equipment standards for lighting, OAC 4501:2-1-09

RESEARCH REFERENCES

The director of public safety shall prescribe and promulgate regulations relating to the design and use of such lights and such regulations shall be in accordance with currently recognized standards.

Encyclopedias

OH Jur. 3d Automobiles & Other Vehicles § 391, Headlights.

OH Jur. 3d Criminal Law § 1683, Other Violations.

ANNOTATIONS

(B) Whoever violates this section shall be punished as provided in section 4513.99 of the Revised Code.

NOTES OF DECISIONS

Constitutional issues 1

*100708 R.C. § 4513.15

**BALDWIN'S OHIO REVISED
CODE ANNOTATED
TITLE XLV. MOTOR
VEHICLES--AERONAUTICS--
WATERCRAFT
CHAPTER 4513. TRAFFIC
LAWS--EQUIPMENT; LOADS
LIGHTS**

*Current through 2008 File 50 of the 127th
GA (2007-2008), apv. by 2/21/08, and filed
with the Secretary of State by 2/21/08.*

4513.15 Headlights required

(A) Whenever a motor vehicle is being operated on a roadway or shoulder adjacent thereto during the times specified in section 4513.03 of the Revised Code, the driver shall use a distribution of light, or composite beam, directed high enough and of sufficient intensity to reveal persons, vehicles, and substantial objects at a safe distance in advance of the vehicle, subject to the following requirements;

(1) Whenever the driver of a vehicle approaches an oncoming vehicle, such driver shall use a distribution of light, or composite beam, so aimed that the glaring rays are not projected into the eyes of the oncoming driver.

(2) Every new motor vehicle registered in this

state, which has multiple-beam road lighting equipment shall be equipped with a beam indicator, which shall be lighted whenever the uppermost distribution of light from the headlights is in use, and shall not otherwise be lighted. Said indicator shall be so designed and located that, when lighted, it will be readily visible without glare to the driver of the vehicle.

(B) Whoever violates this section shall be punished as provided in section 4513.99 of the Revised Code.

(2002 S 123, eff. 1-1-04; 1953 H 1, eff. 10-1-53; GC 6307-88)

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL NOTES

**HISTORICAL AND STATUTORY
NOTES**

Pre-1953 H 1 Amendments: 119 v 766, § 88

REFERENCES

CROSS REFERENCES

Penalty: 4513.99(C)

**OHIO ADMINISTRATIVE CODE
REFERENCES**

Motor vehicle equipment standards for lighting, OAC
4501:2-1-09

IN THE SUPREME COURT OF OHIO
COLUMBUS, OHIO

STATE OF OHIO,

Plaintiff-Appellant

-vs-

Case No. 2007-07-2310

On Appeal from the
Court of Appeals for Stark
County, Fifth Appellate District
Case No. 2007-CA-00139

ADAM DAVID JONES,

Defendant-Appellee.

NOTICE OF APPEAL OF PLAINTIFF-APPELLANT,
THE STATE OF OHIO

JOHN D. FERRERO
PROSECUTING ATTORNEY,
STARK COUNTY, OHIO

By: RONALD MARK CALDWELL
Ohio Sup. Ct. Reg. No. 0030663
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Counsel for Defendant-Appellee

FILED
DEC 13 2007
CLERK OF COURT
SUPREME COURT OF OHIO

NOTICE OF APPEAL OF APPELLANT STATE OF OHIO

The State of Ohio, hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Court of Appeals for Stark County, Fifth Appellate District, entered in the case of *State of Ohio v. Adam David Jones*, Court of Appeals Case No. 2007-CA-00139, on October 29, 2007.

This case raises a substantial constitutional question and is one of public or great general interest.

Respectfully submitted,
JOHN D. FERRERO
STARK COUNTY PROSECUTING ATTORNEY

BY: Ronald Mark Caldwell
RONALD MARK CALDWELL
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Counsel for Plaintiff-Appellant

PROOF OF SERVICE

A copy of the foregoing NOTICE OF APPEAL was sent by ordinary U.S. mail this 12th day of December, 2007, to STEVEN A. REISCH, Stark County Public Defender, 200 West Tuscarawas Street, Suite 200, Canton, Ohio 44702.

Ronald Mark Caldwell

RONALD MARK CALDWELL

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Counsel for Plaintiff-Appellant

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

W. NANCY S. REINGOLD
CLERK OF COURT OF APPEALS
STARK COUNTY, OHIO

07 OCT 29 PM 2:51

STATE OF OHIO
Plaintiff-Appellee

JUDGES:
Hon. Sheila G. Farmer, P. J.
Hon. John W. Wise, J.
Hon. Julie A. Edwards, J.

-vs-

Case No. 2007 CA 00139

ADAM DAVID JONES
Defendant-Appellant

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:

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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FILED
CLERK OF COURT
2007 OCT 29

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Stark County, Case No. 2007 CA 00139

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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 Osnaburg Township approximately one-half mile from East Canton. (Supp. T. at 12-13).

Stark County, Case No. 2007 CA 00139

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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 Ordinance, a fifth degree felony. The indictments also charged that each were either the principal offender

Stark County, Case No. 2007 CA 00139

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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.

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

{¶9} 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:

Stark County, Case No. 2007 CA 00139

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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 99", 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

Stark County, Case No. 2007 CA 00139

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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.

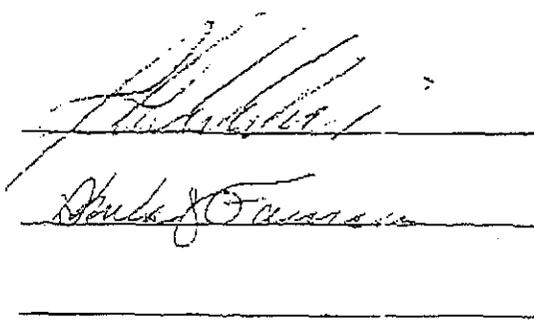
{¶21} Accordingly, we find the officer did not have a reasonable suspicion of criminal activity sufficient to justify the extra-territorial stop in the case sub judice.

{¶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.



JUDGES

JWWW/d 924

Stark County Appeals Case No. 2007 CA 00139

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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 987, 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 "

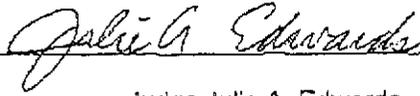
{¶29} At the suppression hearing in this matter, Officer Hershberger testified that he pulled over the vehicle because it had no headlights on. Supp. T. at 40. There also was testimony adduced at the hearing that it was dark outside at that time.

{¶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.

Stark County Appeals Case No. 2007 CA 00139

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

A handwritten signature in cursive script, reading "Julie A. Edwards", is written over a horizontal line.

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

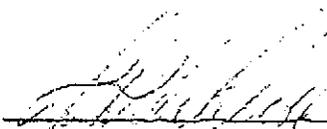
Defendant-Appellant

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.





JUDGES

IN THE SUPREME COURT OF OHIO
COLUMBUS, OHIO

STATE OF OHIO,

Case No. 07-2311
2007

Plaintiff-Appellant

On Appeal from the
Court of Appeals for Stark
County, Fifth Appellate District
Case No. 2007-CA-00098

-vs-

SHAWN MICHAEL SKROPITS,

Defendant-Appellee.

NOTICE OF APPEAL OF PLAINTIFF-APPELLANT,
THE STATE OF OHIO

JOHN D. FERRERO
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FILED
DEC 13 2007
CLERK OF COURT
SUPREME COURT OF OHIO

NOTICE OF APPEAL OF APPELLANT STATE OF OHIO

The State of Ohio, hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Court of Appeals for Stark County, Fifth Appellate District, entered in the case of *State of Ohio v. Shawn Michael Skropits*, Court of Appeals Case No. 2007-CA-00098, on October 29, 2007.

This case raises a substantial constitutional question and is one of public or great general interest.

Respectfully submitted,
JOHN D. FERRERO
STARK COUNTY PROSECUTING ATTORNEY

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PROOF OF SERVICE

A copy of the foregoing NOTICE OF APPEAL was sent by ordinary U.S. mail this 12th day of December, 2007, to GEORGE URBAN, 111 Second Street, N.W., Suite 302, Canton, Ohio 44702.

Ronald Mark Caldwell

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COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

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

07 OCT 29 PM 2:50

STATE OF OHIO

Plaintiff-Appellee

-vs-

SHAWN MICHAEL SKROPITS

Defendant-Appellant

JUDGES:

Hon. Sheila G. Farmer, P. J.
Hon. John W. Wise, J.
Hon. Julie A. Edwards, J.

Case No. 2007 CA 00098

OPINION

CHARACTER OF PROCEEDING:

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

JUDGMENT:

Reversed and Remanded

(B)

DATE OF JUDGMENT ENTRY:

APPEARANCES:

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* TIME OUT
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Wise, J.

{11} Defendant-appellant Shawn Skropits 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.

{12} Plaintiff-appellee is the State of Ohio.

STATEMENT OF THE FACTS AND CASE

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)

{13} 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 Osnaburg 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

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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).

{14} 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).

{15} Almost immediately following the approach and encounter with the occupants of the vehicle, both individuals indicated that there were guns in the vehicle. Both Shawn Skropits and Adam Jones were subsequently arrested.

{16} On November 2, 2006, Appellants Shawn Skropits and Adam Jones 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.

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{¶7} On January 17, 2007, Appellant Shawn Skropits filed a Motion to Dismiss and/or Suppress.

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

{¶9} 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 both Motions to Suppress.

{¶12} After the suppression motions were overruled, Appellant Skropits 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 Skropits 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 Skropits thereafter filed the instant appeal to challenge the court's suppression ruling, assigning the following error for review:

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ASSIGNMENT OF ERROR

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

1.

{¶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 the vehicle in which he was a passenger. 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

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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} Ohio Courts have held that a passenger as well as the driver of a vehicle has standing to challenge the lawfulness of a traffic stop. *State v. Amburgy* (1997), 122 Ohio App.3d 277, 282-83. The United States Supreme Court recently reached the same conclusion and found that "[a] traffic stop necessarily curtails the travel a passenger has chosen just as much as it halts the driver ... and the police activity that normally amounts to intrusion on the privacy and personal security does not normally (and does not here) distinguish between passenger and driver." *Brendlin v. California* (2007), 127 S.Ct. 2400, 168 L.E.2d 132.

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{¶21} 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.

{¶22} 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.

{¶23} 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.

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

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{¶25} 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, each written over a horizontal line. The top signature is the most legible and appears to be 'J. Wise'. The middle signature is less legible but appears to be 'P. J. Farmer'. The bottom signature is also less legible and appears to be 'J. Edwards'. There is a fourth horizontal line below the third signature, which is not signed.

JUDGES

JWW/d 924

EDWARDS, J., DISSENTING OPINION

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

{¶27} 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.

{¶28} 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:

{¶29} "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."

{¶30} 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 40. There also was testimony adduced at the hearing that it was dark outside at that time.

{¶31} 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.

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

A handwritten signature in cursive script, reading "Julie A. Edwards", is written over a solid horizontal line.

Judge Julie A. Edwards

JAE/dr/rmn

IN THE COURT OF APPEALS FOR STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

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

07 OCT 29 PM 2:50

STATE OF OHIO

Plaintiff-Appellee

-vs-

SHAWN MICHAEL SKROPITS

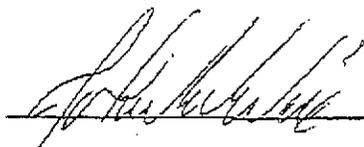
Defendant-Appellant

JUDGMENT ENTRY

Case No. 2007 CA 00098

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 assessed to appellee.





JUDGES