MERIT BRIEF OF APPELLEE
IN THE SUPREME COURT OF OHIO
COLUMBUS, OHIO

STATE OF OHIO,	)	CASE NO. 2007-2310
	)	
PLAINTIFF-APPELLANT,	)	On Appeal from the Fifth
	)	District Court of Appeals,
VS.	)	Stark County
	)	Case No. 2007-CA-00139
	)	
ADAM DAVID JONES,	)	07-2311
	)	
DEFENDANT-APPELLEE	)	

BRIEF OF DEFENDANT-APPELLEE

RONALD MARK CALDWELL
REG. NO. 0030663
STARK COUNTY PROSECUTOR'S OFFICE
110 CENTRAL PLAZA, SOUTH
5TH FLOOR
CANTON, OHIO 44702
PHONE: (330) 451-0897
ATTORNEY FOR PLAINTIFF-APPELLANT

FILED
JUN 30 2008
CLERK OF COURT
SUPREME COURT OF OHIO

STEVEN A. REISCH
REG. NO. 0068310
STARK COUNTY PUBLIC DEFENDER'S OFFICE
200 TUSCARAWAS STREET WEST
SUITE 200
CANTON, OHIO 44702
PHONE: (330) 451-7209
ATTORNEY FOR DEFENDANT-APPELLEE

TABLE OF CONTENTS

	PAGE(S)
TABLE OF AUTHORITIES	ii
STATEMENT OF THE CASE AND FACTS	1
ARGUMENT	3
CONCLUSION	9
PROOF OF SERVICE	10
APPENDIX	11

City of Heath v. Johnson, Licking App. No. 04CA29, 2005-Ohio-485, 2005 WL 299710.

State v. Biehl, Summit App. No. 22054, 2004-Ohio-6532, 2004 WL 2806340.

State v. Marsh, Belmont App. No. 04 BE 18, 2005-Ohio-4690, 2005 WL 2172383.

R.C. §2935.03.

R.C. §4549.02.

TABLE OF AUTHORITIES

CASES CITED: **PAGE(S)**

Berkemer v. McCarthy (1984), 468 U.S. 420 3

City of Heath v. Johnson, Licking App. No. 04CA29,
2005-Ohio-485, 2005 WL 299710 ..... 4, 5

Delaware v. Prouse (1979), 440 U.S. 648 3

Illinois v. Wardlow (2000), 528 U.S. 119 6

Kettering v. Hollen (1980), 64 Ohio St.2d 232 ..... 3, 4

Mapp v. Ohio (1961), 367 U.S. 463 3

State v. Andrews (1991), 57 Ohio St.3d 86 6

State v. Biehl, Summit App. No. 22054,
2004-Ohio-6532, 2004 WL 2806340 8

State v. Bobo (1988), 37 Ohio St.3d 177 ..... 5, 6

State v. Fanning (1990), 70 Ohio App. 3d 648 3

State v. Klemm (1987), 41 Ohio App.3d 382 3

State v. McFarland (1982), 4 Ohio App.3d 158 3

State v. Marsh, Belmont App. No. 04 BE 18,
2005-Ohio-4690, 2005 WL 2172383 5

State v. Robinson (1979), 58 Ohio St.2d 478 3

State v. Weideman (2002) 94 Ohio St.3d 501 5

Terry v. Ohio (1968) 932 U.S. 1 ..... 3, 6

STATUTES:

R.C. §2935.03 ..... 4, 5

R.C. §4549.02 7

STATEMENT OF THE CASE AND FACTS

On November 2, 2006, the Defendant-Appellees 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. Both Appellants filed Motions to Dismiss and/or Suppress. The Trial Court held a Suppression Hearing and overruled the Defendant-Appellees' Motions to Suppress and they entered pleas of no contest. The Court of Appeals reversed the decision of The Trial Court and the State appealed to this Court.

On September 27, 2006, an East Canton Police Officer responded to a call regarding an automobile accident. (Supp. T. at 9). The witness at the scene explained that a red Ford Ranger pick-up truck had struck the rear of a full size van. (Supp. T. at 10). The driver of the van had approached the pick-up, exchanged words with its driver, and then drove off. (Supp. T. at 10). After the van left, the pick-up also drove away. (Supp. T. at 10). At the scene the Officer found some debris which appeared to be from a Ford Ranger. (Supp. T. at 11). Approximately ten minutes later, dispatch advised that a vehicle was "hiding" in the area of the Old Coyote Restaurant which is located to the west, outside of East Canton. (Supp. T. at 12). The Officer proceeded to the Old Coyote Restaurant, which is located in Osnaburg Township, however the vehicle was no longer in the area. (Supp. T. at 12-13, 20, 26-27). He found no evidence that the Ford Ranger had been there. (Supp. T. at 30-31). The Officer checked a nearby trailer park without success. (Supp. T. at 28). The Officer continued to drive west, further away from East Canton, in search of this vehicle. (Supp. T. at 13). The Officer had no new information that would indicate the suspect vehicle would be found in this direction. (Supp. T. at 37).

The Officer stopped to check a car wash parking lot, in Canton Township, when another motorist pulled up to him and complained of a westbound driver with no headlights who 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).

At the Suppression hearing held in this matter, 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 never tried to contact another department for assistance before he initiated the traffic stop. (Supp. T. at 29-30). Additionally, he had no reason to believe any felony had been committed. (Supp. T. at 36). The Officer stated that he was investigating a "hit skip accident." (Supp. T. at 20). Later he stated that he suspected the Appellants 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). His continuing pursuit was based upon a hunch. (Supp. T. at 35).

Almost immediately following the approach and encounter with the Defendants, both individuals indicated that there were guns in the vehicle. The Defendant-Appellees were subsequently arrested.

ARGUMENT

The only issue for review in this case is whether the Trial Court erred by denying the Defendant-Appellee' Motions to Suppress all evidence acquired as a result of the traffic stop of the Defendant-Appellees.

A law enforcement officer may detain an individual only upon an objectively reasonable suspicion that criminal activity has been or is in the process of being undertaken by an individual. *Terry v. Ohio* (1968) 932 U.S. 1; *Delaware v. Prouse* (1979), 440 U.S. 648. The focus is on whether the police officer has an "articulable and reasonable suspicion" that the individual was violating the law at the time the individual was observed. *Berkemer v. McCarthy* (1984), 468 U.S. 420; *State v. Fanning* (1990), 70 Ohio App. 3d 648. Additionally, in *State v. McFarland* (1982), 4 Ohio App.3d 158, the Eighth District Court of Appeals in Cuyahoga County reasoned that: "... we must examine the specific circumstances of the detention here to determine whether the extent of the police intrusion on the defendant's liberty was justified by a sufficiently strong suspicion based on specific and articulable facts." *Id.* at 160. Thus, evidence obtained as a result of an illegal search must be excluded as fruits of such illegality. *Mapp v. Ohio* (1961), 367 U.S. 463.

Whether a particular search is unconstitutional depends on the specific facts of each case. *State v. Klemm* (1987), 41 Ohio App.3d 382, citing *State v. Robinson* (1979), 58 Ohio St.2d 478. "Only searches that are unreasonable in a constitutional sense mandate the suppression of evidence" pursuant to the exclusionary rule announced in *Mapp v. Ohio* (1961), 367 U.S. 643. *Klemm, supra*, at 383; *Kettering v. Hollen* (1980), 64 Ohio St.2d 232 (holding that the statutory violation did not require suppression of the evidence because the officer had probable cause to arrest the defendant)." *Id.*

"As a general proposition, an extraterritorial arrest by a municipal police officer for an alleged misdemeanor is not authorized under existing Ohio law." *Hollen, supra* at 233. In *Hollen*, the arrest of the defendant was precipitated after the officer witnessed the incident while in his jurisdiction. In fact, the "arresting process" commenced while inside the Officer's jurisdiction. *Id.* at 234. To deal with extraterritorial arrests, the Ohio Legislature has enacted legislation to address territorial and jurisdictional issues related to police activity. In *City of Heath v. Johnson*, Licking App. No. 04CA29, 2005-Ohio-485, 2005 WL 299710, the Fifth District Court of Appeals illustrated the statutory elements of an effective investigatory detention as follows:

> R.C. 2935.03 sets forth the territorial jurisdiction in which an officer may effectuate an investigatory detention or arrest and states in pertinent part as follows:
>
> **{¶12}** (A)(1) "A sheriff, deputy sheriff, marshall, deputy marshall, municipal police officer, township constable, police officer of a township or joint township police district shall arrest and detain, until a warrant can be obtained, a person found violating, within the limits of the political subdivision- 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."
>
> **{¶13}** R.C. 2935.03(D) permits a police officer to pursue, arrest, and detain a person outside his jurisdiction until a warrant can be obtained if all the following apply:
>
> **{¶14}** (D)(1) The pursuit takes place without unreasonable delay after the offense is committed.
>
> **{¶15}** (2) The pursuit is initiated within the limits of the political subdivision in which the peace officer is appointed, employed or elected or within the limits of the territorial jurisdiction of the peace officer.
>
> **{¶16}** (3) The offense involves a felony, a misdemeanor of the first degree or a substantially equivalent municipal ordinance, or any offense for which points are chargeable, pursuant to section 4510.036 of the Revised Code.
>
> **{¶17}** R.C. 2935.03(E)(3) states, in pertinent part, that in addition to the authority granted in 2935.03(A) and (B), a police officer 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 Sections 2935.03(E)(1), 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 is appointed, elected, or employed.

Id. The Court more importantly ruled that "[e]vidence is not properly suppressed for a violation of R.C.2935.03." *Id.* In the case *sub judice*, however, the Court of Appeals found the stop of the defendant was not simply a statutory violation because the stop also violated "the reasonableness requirement of the Fourth Amendment." *State v. Jones*, Stark App. No. 2007-CA-139, 2007-Ohio-5818, 2007 WL3171206, at ¶22.

In *State v. Marsh*, Belmont App. No. 04 BE 18, 2005-Ohio-4690, 2005 WL 2172383, the 7th District Court of Appeals indicated that:

> 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. [citing]*State v. Weideman* (2002) 94 Ohio St.3d 501.

It is upon *Weideman* that the State bases much of its argument. In *Weideman*, this Court held that an extraterritorial stop based upon an offense observed outside the officer's jurisdiction is not unreasonable *per se* under the Fourth Amendment. *Id.* (syllabus). The facts of the preset case, however, differ from those in *Weideman* where the officer traveled only a short distance outside his jurisdiction for the legitimate purpose of checking on a fellow officer who had failed to report in. While a stop such as the one in *Weideman* is not *per se* unreasonable, the action of Officer Hershberger did constitute an unreasonable intrusion.

The Officer in the present case had no reasonable suspicion to believe criminal activity was taking place outside of his jurisdiction. The Ohio Supreme Court has ruled that "the propriety of an investigative stop by a police officer must be viewed in light of the totality of the surrounding circumstances." *State v. Bobo* (1988), 37 Ohio St.3d 177, (Paragraph one of Syllabus). A reasonable and prudent police officer at the scene reacting to events as they unfold

provides the basis from which to view the circumstances. *State v. Andrews* (1991), 57 Ohio St.3d 86, 87-88. Reasonable suspicion necessary to justify an investigatory stop requires that the officers must be able to point to "specific and articulable facts" warranting a rational belief that criminal behavior is imminent. T*erry v. Ohio* (1968) 392 U.S. 1, 21. A court cannot condone "intrusions upon constitutionally guaranteed rights based on nothing more substantial than inarticulate hunches." *Id.* at 22.

Reasonable suspicion is measured by an objective standard: "would the facts available to the officer at the moment of the seizure *** warrant a man of reasonable caution in the belief "that the action taken was appropriate?" *Bobo, Supra* at 178-79, quoting *Terry*, 392 U.S. at 21-22. Further investigation is warranted and justified when the totality of facts and circumstances are sufficiently suspicious. *Illinois v. Wardlow* (2000), 528 U.S. 119, 125.

In the present case, the Defendant-Appellees were stopped, questioned and searched in Canton Township at the corner of Trump Road and Lincoln Way (State Route 172). The East Canton Police were responding to a call concerning an accident "downtown" East Canton, at approximately the intersection of State Route 44 and State Route 172. Some ten (10) minutes later, the officer responded to a call that a vehicle matching the description of the vehicle of the Defendant-Appellees' was parked in a parking lot in Osnaburg Township, just outside of Municipal limits of East Canton, Ohio. The Officer found no evidence of the vehicle in the lot after having searched the premises and a nearby trailer park for this vehicle.

Without further incident or contact with any other witnesses, parties or evidence, the Officer proceeded west entering the third jurisdiction of Canton Township. There is no evidence that the Officer ever saw the vehicle or had formulated a reasonable belief or suspicion that criminal activity was underway further west on State Route 172. Nevertheless, the Officer continued west and almost two (2) miles from the scene of the accident that precipitated his

involvement, he was flagged down by an unknown motorist and told that a vehicle matching the Defendant-Appellees' had almost struck him. When the Officer turned around and began to head East on State Route 172, the vehicle driven by the Defendants was traveling West toward him. He initiated the stop as a result of the vehicle having no head lights.

What is essential to a reasonable Officer's interpretation of these circumstances, continued investigation and pursuit of the Defendant-Appellees, is the Officer's explanation of the facts that establish a reasonable and articulable suspicion at each point of the Officer's conduct, not mere hunch or conjecture. When the Officer responded to the accident call, he believed that a traffic offense had occurred, that being Failure to Stop After an Accident. R.C. 4549.02 states in part:

> In case of accident to or collision with persons or property upon any of the public roads or highways, due to the driving or operation thereon of any motor vehicle, the person driving or operating the motor vehicle, having knowledge of the accident or collision, immediately shall stop the driver's or operator's motor vehicle at the scene of the accident or collision and shall remain at the scene of the accident or collision until the driver or operator has given the driver's or operator's name and address and, if the driver or operator is not the owner, the name and address of the owner of that motor vehicle, together with the registered number of that motor vehicle, to any person injured in the accident or collision or to the operator, occupant, owner, or attendant of any motor vehicle damaged in the accident or collision, or to any police officer at the scene of the accident or collision.

R.C. 4549.02(A).

The State argues that Officer Hershberger was searching for the vehicles involved in a hit-skip accident. However, the Appellants were not the perpetrators of this offense. The driver of the other vehicle involved in the accident left the scene after the driver of both vehicles had a short conversation. There was no probable cause to believe that Mr. Jones had left the scene of an accident without exchanging information as required by R.C. 4549.02. The only other crime the Officer suspected had been committed was littering. When the Officer responded to the call

of a suspicious vehicle in Osnaburg Township, he was responding to a call outside of his jurisdiction. When the Officer turned west on State Route 172 and proceeded into yet a third jurisdiction, there can be no reasonable explanation of the activity that would result in an articulable suspicion to continue the Officer's investigation in that direction.

"The Officer's suspicion and a reasonable interpretation of the events that transpired must, therefore, show that the officers can articulate facts that justify their intrusion based on sufficiently strong suspicion that criminal activity was afoot. Otherwise the evidence subsequently seized must be suppressed." *State v. Biehl*, Summit App. No. 22054, 2004-Ohio-6532, 2004 WL 2806340.

What criminal activity did the officer witness? None. What flight did the Officer witness? None. What evasive behavior did the Officer witness? None. At the point the Officer crossed the limits of the jurisdiction and found no one in the parking lot in Osnaburg Township, he had commenced on a wild goose chase and had endeavored to follow a hunch, not reasonable articulable suspicions. There was no circumstance at the point of the Officer's movements outside of his jurisdiction that can be reasonably articulated to justify his movement further West, leading to the intrusion upon the Defendant-Appellees herein.

While this Court has held that an extraterritorial traffic stop is not *per se* unreasonable, when an officer travels two jurisdictions away from the one that employs him based upon a hunch that someone may have committed the crime of littering, his actions are unreasonable. In pursuing this vehicle so far from his jurisdiction the Officer acted unreasonably and the Defendant-Appellees were stopped in violation of their rights under the Fourth and Fourteenth Amendments of the United States Constitution and Article One of the Ohio Constitution protecting against unreasonable searches and seizures.

CONCLUSION

For the foregoing reasons, Defendant-Appellee prays that this Honorable Court affirm the decision of the Fifth District Court of Appeals.

Respectfully submitted,

STEVEN A. REISCH (0068310)
Assistant Public Defender
200 West Tuscarawas Street, Suite 200
Canton, Ohio 44702-2202
(330) 451-7209
Fax: (330) 451-7227
Attorney for Defendant-Appellee

PROOF OF SERVICE

A copy of the foregoing Brief of Defendant-Appellee was hand-delivered to the Stark County Prosecutor's Office, 110 Central Plaza S., 5th Floor, Canton, Ohio, and a copy was sent by Regular U.S. Mail to Thomas Winters and William Marshall, counsel for amicus curiae at the Office of the Ohio Attorney General, 30 East Broad Street, 17th Floor, Columbus, Ohio 43215. this 27th day of June, 2008..

STEVEN A. REISCH (#0068310)
Assistant Public Defender
200 West Tuscarawas Street, Suite 200
Canton, Ohio 44702-2202
(330) 451-7209
Fax: (330) 451-7227
Attorney for Defendant-Appellee

APPENDIX

APPENDIX[1]

Table of Contents

Unreported cases A-1

Statutes A-22

[1] In accordance with S.Ct. Prac.R. VI, Section 3, materials already provided in the appendix of the Appellant's brief are not duplicated herein.

CITY OF HEATH Plaintiff-Appellee
v.
BRIAN JOHNSON Defendant-Appellant
Case No. 04-CA-29

5th District Court of Appeals of Ohio, Licking County
Decided on February 3, 2005

Appeal from the County of Licking Municipal Court - Case Number 03-TRC-14448
Hon. John F. Boggins, P.J. Hon. Sheila G. Farmer, J. Hon. John W. Wise, J.

For Plaintiff-Appellee: JONATHAN C. DIERNBACH 40 W. Main Street - 4th Floor Newark, OH 43055

For Defendant-Appellant: DAVID N. STANSBURY 41 E. Church Street Newark, OH 43055

OPINION

Boggins, P.J.,

{¶1} Defendant-Appellant, Brian Johnson, appeals from the judgment of conviction and sentence entered after his no contest plea and finding of guilt for one count of Driving Under the Influence in violation of R.C. 4511.19(A)(1). A timely Notice of Appeal was filed, and on April 14, 2004, counsel for Appellant filed a brief pursuant to *Anders v. California* (1997), 388 U.S. 924, indicating that the within appeal was wholly frivolous. However, in said brief, counsel for Appellant raised one potential Assignment of Error.

{¶2} Thereafter, on July 9, 2004, counsel for Appellant filed a Motion to Withdraw as Counsel, and filed a certification wherein he certified that Appellant was notified of his right to file a pro se brief. Although Appellant has been duly notified, no pro se brief has been filed. We now turn to Appellant's potential Assignment of Error.

I.

{¶3} "THE TRIAL COURT COMMITTED HARMFUL ERROR IN DENYING THE DEFENDANT-APPELLANT'S MOTION TO DISMISS."

{¶4} In his proposed Assignment of Error, Appellant asserts that the trial court abused its discretion in failing to dismiss the DUI charge for the following reasons: (1) the officer lacked a reasonable, articulable suspicion necessary to effectuate a traffic stop; and, (2) the evidence regarding Appellant's alcohol intoxication should have been suppressed due to the fact that the officer was in violation of R.C. 2935.03 at the time of the arrest. Because we conclude that the officer had a reasonable, articulable suspicion to effectuate a traffic stop, and the officer did not violate 2935.03 in pursuing and arresting the Appellant, we affirm.

{¶5} The facts which give rise to this matter are as follows: on October 26, 2003, at approximately 3:30 A.M., Officer Phillips of the Heath City Police Department, was on routine patrol on Hopewell Drive in the City of Heath. While on patrol the officer observed a vehicle traveling in excess of the posted speed limit. The officer activated the cruiser's radar unit and clocked the Appellant's speed at 10 miles per hour over the 50 mile-per-hour posted speed limit. After observing the violation, the officer initiated a pursuit of Appellant's vehicle. Due to the oncoming traffic, the officer was not able to safely catch up to the Appellant's vehicle until the vehicle was approximately 1.7 miles outside the Heath City limits.

{¶6} Upon reaching Appellant's vehicle, the officer activated his emergency lights, thereby signaling Appellant to pull over. The Appellant continued to travel along the roadway, eventually turned into his driveway, pulled into his garage, exited his vehicle and attempted to enter his house. Upon exiting the vehicle, the officer observed the Appellant to be under the influence of alcohol. The officer then administered a breathalyzer test, which indicated that Appellant had a blood alcohol level of .212. The officer cited Appellant for speeding, in violation of the Heath City Ordinance, ORD 333.03, and placed him under arrest for Driving While Under the Influence of Alcohol, in violation of R.C. 4511.19.

{¶7} Appellant pled not guilty and moved to dismiss the charges and suppress the evidence of intoxication on the grounds that (1) the officer lacked reasonable suspicion for the traffic stop and, (2) the officer was outside his territorial jurisdiction when the arrest was made in violation of R.C. 2935.03. After the trial court denied the motion to dismiss, Appellant changed his not guilty plea to one of no contest to a violation of R.C. 4511.19(A)(1), and the Court made a finding of guilty. On the State's motion, the charge of Speeding was dismissed.

{¶8} In overruling the motion to dismiss, the trial court held that the officer had the requisite reasonable suspicion to effectuate an investigatory traffic stop of Appellant's vehicle. The Court also held that even if, at the time of the DUI arrest, the officer was in violation of R.C.2935.03, a statutory violation by a law enforcement officer does not require the same protection of the exclusion of evidence as a constitutional violation. We agree.

{¶9} When considering a motion to suppress, a trial court is in the best position to resolve factual questions and evaluate the credibility of witnesses. *State v. Mills* (1992), 62 Ohio St.3d 357, 366. When reviewing a trial court's ruling on a motion to suppress, an appellate court must accept the trial court's findings of fact if they are supported by competent, credible evidence. *State v. Guysinger* (1993), 86 Ohio App.3d 592, 594. An appellate court must independently determine, without deference to the trial court's conclusions, whether, as a matter of law, the facts meet the applicable standard. *State v. Klein* (1991), 73 Ohio App.3d 486, 488.

{¶10} In order to make an investigatory stop of a vehicle, a law enforcement officer need only have reasonable, articulable suspicion that an offense has been committed, not probable cause. *State v. Bobo* (1988), 37 Ohio St.3d 177, paragraph two of the syllabus.

"Reasonable suspicion means the officer 'must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion [or stop].' *Bobo* at 178, citing *Terry v. Ohio* (1968), 392 U.S. 1, 20-21.

{¶11} R.C. 2935.03 sets forth the territorial jurisdiction in which an officer may effectuate an investigatory detention or arrest and states in pertinent part as follows:

{¶12} (A)(1) "A sheriff, deputy sheriff, marshall, deputy marshall, municipal police officer, township constable, police officer of a township or joint township police district shall arrest and detain, until a warrant can be obtained, a person found violating, within the limits of the political subdivision- 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."

{¶13} R.C. 2935.03(D) permits a police officer to pursue, arrest, and detain a person outside his jurisdiction until a warrant can be obtained if all the following apply:

{¶14} (D)(1) The pursuit takes place without unreasonable delay after the offense is committed.

{¶15} (2) The pursuit is initiated within the limits of the political subdivision in which the peace officer is appointed, employed or elected or within the limits of the territorial jurisdiction of the peace officer.

{¶16} (3) The offense involves a felony, a misdemeanor of the first degree or a substantially equivalent municipal ordinance, or any offense for which points are chargeable, pursuant to section 4510.036 of the Revised Code.

{¶17} R.C. 2935.03(E)(3) states, in pertinent part, that in addition to the authority granted in 2935.03(A) and (B), a police officer 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 Sections 2935.03(E)(1), 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 is appointed, elected, or employed.

{¶18} In *State v. Shuttleworth*, this Court concluded that an officer could cite a defendant for an offense that had occurred adjacent to the officer's jurisdiction. *State v. Shuttleworth* (Sept. 19, 1999), Fairfield App. No. 99CA25, unreported. See also, *State v Davis*, Hamilton App. Nos. C-030660 and C-030661, 2004-Ohio-3134; In *State v Black*, the Court held that a police officer acted within his statutory authority in pursuing and stopping a defendant's vehicle, even though the officer did not immediately turn on his overhead lights upon initiating pursuit, and the officer was outside his territorial jurisdiction when he arrested defendant, where the pursuit was initiated within the limits of the officer's territorial jurisdiction for an offense for which points were chargeable, and the pursuit began without unreasonable delay, after the officer observed defendant's violation. *State v Black*, Fulton App. No. F-03-010, 2004-Ohio-218.

{¶19} Furthermore, evidence is not properly suppressed for a violation of R.C.2935.03. The exclusionary rule has been applied only to violations of a constitutional nature. 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. *Kettering v. Hollen* (1980), 64 Ohio St.2d 232, 234-235, 416 N.E.2d 598,600; *State v. Weidman* (2002), 94 Ohio St.3d 501, 764 N.E.2d 997; See also, *Stow v. Riggenbach* (1994), 97 Ohio App.3d 661, 647 N.E.2d 246; *State v. Filler* (1995), 106 Ohio App.3d 731, 667 N.E.2d 54 (For court to invoke exclusionary rule, police conduct ordinarily must rise to level of constitutional violation.) In Ohio, a warrantless arrest in a DUI case is constitutional so long as, at that moment, the officer had probable cause to make the arrest. *State v. Woodards* (1966), 6 Ohio St.2d 14.

{¶20} Upon review of the testimony presented at the suppression hearing, we find that competent and credible evidence supports the Court's finding that the officer had reasonable suspicion to stop Appellant for speeding, and the officer did not violate R.C.2935.03 in pursuing the Appellant into the adjacent jurisdiction. The officer testified that he observed the Appellant commit a speeding violation within his territorial jurisdiction to which points were chargeable. The officer then effectuated Appellant's investigatory traffic stop in the adjacent jurisdiction, without unreasonable delay and issued a speeding citation. Upon effectuating a lawful traffic stop, the officer observed Appellant to be under the influence of alcohol and calibrated Appellant as having a blood alcohol level of .212, thereby developing probable cause for the DUI arrest.

{¶21} Furthermore, even if the police officer, who stopped and arrested Appellant, was in violation of R.C. 2935.03, the misconduct would only have been a statutory violation, not a constitutional violation. Therefore, following *State v. Weidman* (2002), 94 Ohio St.3d 501, 764 N.E.2d 997, evidence obtained as a result of the stop and arrest need not have been excluded.

{¶22} The trial court did not abuse its discretion in overruling Appellant's motion to dismiss. Accordingly, we hereby overrule Appellant's potential Assignment of Error.

{¶23} For the reasons stated herein above, we hereby affirm the judgment of conviction and sentence entered in the Licking County Municipal Court.

By: Boggins, P.J. Farmer, J. and Wise, J. concur.

For the reasons stated in the Memorandum-Opinion on file, the judgment of conviction and sentence of the Licking County Municipal Court is affirmed. Counsel's Motion to Withdraw is hereby granted. Costs taxed to Appellant.

STATE OF OHIO, Appellant
v.
JEREMIAH BIEHL and MARK INGERSOLL, Appellees
C. A. No.22054

9th District Court of Appeals of Ohio, Summit County.
Decided on December 8, 2004.

APPEAL FROM JUDGMENT ENTERED IN THE AKRON MUNICIPAL COURT
COUNTY OF SUMMIT, OHIO CASE Nos. 04 CRB 1522 04 CRB 1523

This cause was heard upon the record in the trial court. Each error assigned has been reviewed and the following disposition is made:

BATCHELDER, Judge.

{¶1} Appellant, the State of Ohio, appeals from an order of the Akron Municipal Court which granted a motion to suppress made by criminal defendants Jeremiah Biehl and Mark Ingersoll. We reverse.

I.

{¶2} At approximately 11:30 p.m. on the evening of February 6, 2004, Officer Aaron Burnette of the University of Akron Police Department was on routine patrol. Officer Burnette was driving alone in the vicinity of the University of Akron campus, when he saw three people standing near a car in the parking lot of a private apartment complex. Although this parking lot is not on University property, under a Mutual Aid Agreement between the University and the City of Akron, the University of Akron's security officers may exercise police power on properties beyond the University confines, so long as they are within the specified geographic boundaries of the Agreement. Believing this particular parking lot to be within the prescribed boundaries, Officer Burnette turned his full attention on these three individuals and decided to investigate.

{¶3} As Officer Burnette drove into the lot, he saw one of the three people bend over, put an object on the ground, and walk away from the group. As he approached, Officer Burnette recognized the object as a can of beer and the three subjects as young men, two of whom are now the appellees in this case. Officer Burnette exited his car to question the young men as to their purpose for being there, to which they responded that they had been attending a party across the street and were merely socializing. Almost immediately upon confronting these three young men, Officer Burnette noticed that they smelled of alcohol and ordered that they produce identification. All three men were under the age of 21. Two other officers arrived, and Officer Burnette then commenced a pat-down search of the three suspects to ensure officer safety. It was not reported whether these two officers were University of Akron or City of Akron police officers, but it is clear that Officer Burnette maintained the primary role during the ensuing encounter. It is undisputed that none of the suspects consented to the search.

June 17, 2008

Corina Lillie #55207
Trumbull Correctional Camp
P.O. Box 640
Leavittsburg, OH 44430

Dear Ms. Lillie:

The Judge does not have to and in your case did not give a reason for denying a motion for judicial release. The granting of a motion for judicial release is completely at the discretion of the Judge. Generally, the Judge does not grant judicial release unless it was part of your original plea bargain. If you do want to file again, I suggest you wait at least 6 months.

Sincerely,

April R. Bible
Attorney at Law

{¶4} At the suppression hearing, Officer Burnette testified that the three suspects initially drew his attention because they "appeared to be suspicious in nature," but conceded that nothing particular in their conduct or appearance suggested such a conclusion. Rather, on direct examination, Officer Burnette testified that his suspicion was aroused entirely because of vague reports of recent car break-ins in the area. However, on cross-examination, Officer Burnette conceded that on approaching the suspects, he initially told them that his concern stemmed from reported drug activity in the area, and that he had immediately accused them of engaging in drug activity. Then, on further cross-examination, Officer Burnette retreated from both the break-in and drug activity theories, and insisted that once he saw the open beer can on the ground he was investigating underage drinking. He went on to explain that this was why he ordered the young men to produce identification, even though he did not know who had actually placed the beer can on the ground and the men had explained that they had been at a party across the street. Finally, Officer Burnette testified repeatedly, on both direct and cross-examination, that he performed the pat-down searches to ensure his personal safety.

{¶5} However, the trial court seemed to conclude that Officer Burnette patted down Mr. Ingersoll and Mr. Biehl in a search for alcohol, either because they denied they had been drinking or because they refused to answer his questions. As the trial court found, Officer Burnette began by patting down Mr. Ingersoll, found a can of beer in his pocket, and arrested him for being a minor in possession of alcohol. Next, Officer Burnette patted down Mr. Biehl. Although Officer Burnette did not find alcohol in Mr. Biehl's possession, he smelled alcohol on Mr. Biehl's breath, and arrested him for minor in possession (consumption). However, during the search, Officer Burnette found the keys to Mr. Beihl's car, and walked over to the locked car. Without any form of consent, Officer Burnette unlocked Mr. Biehl's car and searched the interior and then the trunk, where he found a case of beer. When the third suspect admitted to having drunk four beers that night, Officer Burnette released him with a warning.

{¶6} Thereafter, Mr. Biehl and Mr. Ingersoll were charged with violating R.C. 4301.69(E)(1), possession of alcohol by an underage person, a first degree misdemeanor. See R.C. 4301.99(C). They entered pleas of not guilty, and filed a motion to suppress the evidence seized from the encounter with Officer Burnette. The trial court conducted a hearing on this motion, during which Officer Burnette and Mr. Biehl testified. In ruling on the motion, the trial court discussed potential extraterritoriality issues of the arresting officer's jurisdiction, but founded its decision on the basic premise that investigative stops must be supported by reasonable suspicion of criminal activity, based on specific and articulable facts. Specifically, the court stated, "Officer Burnette had no reasonable suspicion of criminal activity on behalf of Defendants to justify approaching them." Thus, after expressing its own factual findings regarding the encounter, the court refuted the State's argument that the approach was justified on the basis that the parking lot was a high crime area, based on the court's finding an insufficiency of supporting fact. In concluding its order, the trial court expressly found that there were simply "not enough specific and articulable facts" to justify the search or seizure. Therefore, the motion to suppress was granted.

{¶7} The State timely appealed, asserting three assignment of error. Because the third assignment of error is ultimately dispositive of the issue, we will address it first and render the other two issues moot.

II.

A. Third Assignment of Error

"THE TRIAL COURT ERRED IN FINDING THAT THE ARRESTING OFFICER HAD NO REASONABLE SUSPICION OF CRIMINAL ACTIVITY ON BEHALF OF THE DEFENDANTS- APPELLEES TO JUSTIFY APPROACHING THEM."

{¶8} In this assignment of error, the State asserts that the trial court erred by suppressing the evidence collected from the investigatory stop, in that it was a justified encounter and a lawful search. We agree.

{¶9} A motion to suppress evidence under the Fourth Amendment involves mixed questions of law and fact. *Ornelas v. United States* (1996), 517 U.S. 690, 696-97, 134 L.Ed.2d 911; *State v. Booth*, 151 Ohio App.3d 635, 2003-Ohio-829, at ¶12. Therefore, this Court grants deference to the trial court's findings of fact, but conducts a de novo review of whether the trial court applied the appropriate legal standard to those facts. Id. Thus, we review "findings of historical fact only for clear error and to give due weight to inferences drawn from those facts by resident judges and local law enforcement officers." *State v. Jones* (Mar. 13, 2002), 9th Dist. No. 20810, quoting *Ornelas*, 517 U.S. at 699. Because the trial court "is in the best position to resolve questions of fact and evaluate credibility of witnesses[, an] appellate court, therefore, is bound to accept a trial court's factual findings that are supported by competent, credible evidence." (Internal citations and quotations omitted.) *Akron v. Bowen*, 9th Dist. No. 21242, 2003-Ohio-830, at ¶5. After allowing for the officers' reasonable inferences and acknowledging the trial court's superior position in weighing the facts, we "decide whether, under a standard of objective reasonableness, those facts would give rise to a reasonable suspicion justifying a stop or probable cause to search." (Internal citations and quotations omitted.) *State v. Reed* (Aug. 21, 1996), 9th Dist. No. 17635.

{¶10} Next, we recognize that police officers may engage citizens in conversation without such questioning necessarily becoming a detention. *Florida v. Royer* (1983), 460 U.S. 491, 497, 75 L.Ed.2d 229; *State v. Lawson*, 9th Dist. No. 21227, 2003-Ohio-1299, at ¶12. Furthermore, the officers need not expressly inform the citizen of the right to decline cooperation, or that they are free to leave. *United States v. Mendenhall* (1980), 446 U.S. 544, 555, 64 L.Ed.2d 497; *Ohio v. Robinette* (1996), 519 U.S. 33, 39-40, 136 L.Ed.2d 347.

"Even when officers have no basis for suspecting a particular individual, they may generally ask questions of that individual, ask to examine the individual's identification, and request consent to search his or her luggage, as long as police do not convey a message that compliance to their requests is required." (Internal edits omitted.) *Reed*, supra, quoting *Florida v. Bostick* (1991), 501 U.S. 429, 434-35, 115

L.Ed.2d 389. However, the critical premise underlying this right to approach an individual is the understanding that "the person stopped is not obliged to answer, answers may not be compelled, and refusal to answer furnishes no basis for an arrest." *Terry v. Ohio* (1968), 392 U.S. 1, 34, 20 L.Ed.2d 889 (White, J., concurring).

{¶11} Therefore, not every interaction between an officer and an individual is necessarily a seizure. "A `seizure' occurs only where the officer, through force or show of authority, has restrained the liberty of a person." *Reed*, supra. In the present case, Officer Burnette appropriately engaged the appellees in conversation, asked for identification and requested consent to search. See *Bostick*, 501 U.S. at 434-35. However, it is notable that this encounter with these appellees was confrontational from the outset, as demonstrated by Officer Burnette's own testimony. While he originally approached them with a suspicion that they were breaking into cars, he immediately accused them of drug activity and just as quickly turned his attention to underage drinking and demanded their identification. When he requested consent to search, the appellees refused. Thus, consistent with the trial court's conclusion that Officer Burnette conducted the patdown in response to their refusal to answer his questions, the facts indicate that the appellees were not free to walk away and that the encounter was a seizure from that point forward. Thus, while we may conclude that the initial approach falls within the bounds of a consensual encounter, we must determine the reasonableness of the ensuing seizure and subsequent search.

{¶12} As the United States Supreme Court expressed, "in determining whether the seizure and search were `unreasonable' our inquiry is a dual one -whether the officer's action was justified at its inception, and whether it was reasonably related in scope to the circumstances which justified the interference in the first place." *Terry*, 392 U.S. at 19-20. Accord *State v. Andrews* (1991), 57 Ohio St.3d 86, 87 (stating that "we must analyze: (1) the investigatory stop, and (2) the protective search"); *Jones*, supra (applying the two-step analysis).

"The typical *Terry* stop entails a brief detention sufficient for the police to ask questions pertaining to the suspicious circumstances. However, an officer does not have authority to automatically conduct a search of a detainee when a valid stop has been initiated. In order to conduct a patdown search for weapons, an officer must have reason to believe that an individual is armed and dangerous. *** Reasonableness is not determined by inchoate and unparticularized suspicions but rather by specific reasonable inferences an officer is entitled to draw from the circumstances in light of his experiences. This will enable an officer to pursue an investigation absent fear of violence. *The limited search is not intended to provide the officer with an opportunity to discover evidence of a crime.*" (Emphasis added; Internal citations and quotations omitted.) *Bowen* at ¶9.

Simply stated, the "purpose of a *Terry* stop is not to accuse, but to investigate." *Jones*, supra. See, also, *State v. Dietry*, 9th Dist. No. 03CA0052, 2004-Ohio-2661, ¶6 (warning against a valid search escalating beyond its allowable limit).

{¶13} The reasonable suspicion necessary to justify an investigatory stop requires that the officers must be able to point to "specific and articulable facts" warranting a rational belief that criminal behavior is imminent. *Terry*, 392 U.S. at 21. Accord *Andrews*, 57 Ohio St.3d at 87. We will not condone "intrusions upon constitutionally guaranteed rights based on nothing more substantial than inarticulate hunches." *Terry*, 392 U.S. at 22. Thus, reasonable suspicion is measured by an objective standard: "would the facts available to the officer at the moment of the seizure *** `warrant a man of reasonable caution in the belief' that the action taken was appropriate?" *State v. Bobo* (1988), 37 Ohio St.3d 177, 17879, quoting *Terry*, 392 U.S. at 21-22.

{¶14} The Ohio Supreme Court has identified certain specific and articulable facts to justify an investigatory stop by way of reasonable suspicion, factors which fall into four general categories: (1) location; (2) the officer's experience, training or knowledge; (3) the suspect's conduct or appearance; and (4) the surrounding circumstances. *Bobo*, 37 Ohio St.3d at 178-79; *Andrews*, 57 Ohio St.3d at 87-88. No single factor is dispositive; the decision must be viewed based on the totality of the circumstances. *Bobo*, 37 Ohio St.3d at paragraph one of the syllabus; *State v. Lively* (July 7, 1997), 9th Dist. No. 2632-M; *State v. Davison*, 9th Dist. No. 21825, 2004-Ohio-3358, at ¶6, 15.

{¶15} Location relates to whether the confrontation occurs in a reputed "high crime" area, an area of known drug activity, or perhaps a location under police surveillance. *Bobo*, 37 Ohio St.3d at 178-79 (heavy drug activity); *Andrews*, 57 Ohio St.3d at 88 (high crime); *Lively*, supra (officer specifically monitoring a school to prevent vandalism). But, see, *State v. Crosby* (1991), 72 Ohio App.3d 148, syllabus (holding that individuals talking in or near a car, even when parked in an area known for drug activity, does not, without more, justify a search); *Fairlawn v. Skoblar* (1997), 122 Ohio App.3d 464, 467-68 (holding prior incidents of vandalism in a cemetery insufficient to justify a search of late-night visitors); *State v. Davis* (2000), 140 Ohio App.3d 659, 664-65 (stating that merely departing a house that is under surveillance is insufficient to justify a search).

{¶16} The officer's experience carries certain authority. *Terry*, 392 U.S. at 5 (officer had 39 years of experience); *Bobo*, 37 Ohio St.3d at 178-79 (20 years); *Andrews*, 57 Ohio St.3d at 88 (12.5 years). Alternatively, an officer may be aware of particular crime or danger in the vicinity, or have particularized knowledge of how crimes, such as drug transactions, occur in the area. *Bobo*, 37 Ohio St.3d at 178-79; *Davison* at ¶9 (officer had previously arrested the suspect for a shooting incident, at which time the suspect had been armed).

{¶17} The suspect's conduct or appearance includes suspicious, inexplicable or furtive movements, such as watching-out, ducking, hiding, fleeing, or discarding an object. *Bobo*, 37 Ohio St.3d at 178-79 (suspect ducking out of sight and other furtive movements); *Andrews*, 57 Ohio St.3d at 88 (suspect running through a dark courtyard threw an object to the ground); *Lively*, supra (activities indicative of anticipated vandalism); *State v. Lee* (1998), 126 Ohio App.3d 147, 148 (cracked and burnt lips indicative of smoking crack cocaine).

{¶18} The surrounding circumstances include the time of day or night, because certain activities would not ordinarily occur late at night or because weapons would be less obvious in the dark. *Bobo*, 37 Ohio St.3d at 178-79 (night); *Andrews*, 57 Ohio St.3d at 88 (after nightfall, in a darkened area). Circumstances may also include an officer being out of a vehicle, away from protection, or without backup. *Bobo*, 37 Ohio St.3d at 178-79; *Andrews*, 57 Ohio St.3d at 88.

{¶19} In the present case, the State relies heavily on its knowledge that the parking lot where the encounter took place was a high crime area. In a similar situation, this Court previously affirmed a trial court's grant of a motion to suppress by refusing to give controlling authority to this single factor, stating:

> "This is the type of situation the Fourth Amendment was meant to protect against. The fact that the Defendant and two other persons were pulling out of a cemetery late at night does not provide facts sufficient for an investigatory stop. Although there had been problems in the past with vandalism, this does not give license to an officer to seize motorists." *Fairlawn*, 122 Ohio App.3d at 467.

Accordingly, we refuse to afford extra emphasis to the purported "high crime" status of the parking lot in the present case. We must also look to the other factors.

{¶20} Officer Burnette testified that he had been with the University of Akron Police Department for five years. While we realize that this is not the equivalent of the officers in those cases cited above, we think it is sufficient to establish that Officer Burnette had proper training and practical experience in recognizing potential criminals and negotiating potential criminal situations. While we also expect that, as an employee of the University of Akron, Officer Burnette's experience would aid him in recognizing these particular young men as college students socializing outside of a party, this would not prevent them from being, or appearing to be, criminals. Thus, Officer Burnette's experience would tend to support his reasonable suspicion.

{¶21} Officer Burnette testified that nothing in their conduct or appearance, other than their presence in the parking lot, gave rise to his opinion that they "appeared to be suspicious in nature." The only action he cited was that one of the men placed something on the ground. They were not on the lookout for his approach; they were standing in plain sight. They did not flee when he approached; they awaited him and, at first, answered his inquiries. They did not display a dangerous or threatening appearance; they explained they had recently left a nearby party. They made no furtive or inexplicable movements; they merely refused his request that they consent to a search. However, these three were lurking in a parking lot where at least one other break-in had occurred, without any evident purpose for being there. Upon his approach, Officer Burnette recognized the item on the ground, placed by one of the suspects, to be a can of beer. Furthermore, after exiting his car he noticed that the boys had reddened eyes and smelled of beer. At this point, Officer Burnette felt that he had reasonable suspicion to search them.

{¶22} Finally, we consider the surrounding circumstances. Although it was not particularly dark, it was almost midnight. Officer Burnette testified that there was snow

on the ground and, on cross-examination, insisted that the parking lot was well lit. However, he also testified that he pats down everyone he confronts in the dark, for his own safety. Although Officer Burnette had two other officers present to provide backup, he was out of his vehicle and it was possible that at least one of these boys, who had already established their belligerence by refusing to answer his questions or consent to the search, might choose to respond with violence or at least attempt to flee into the surrounding darkness. Therefore, Officer Burnette's testimony can be read to support his reasonable suspicion.

{¶23} Looking at the totality of the circumstances, we must disagree with the trial court that the evidence before us lacks a sufficient basis to justify even the initial approach. That is, this Court finds that these facts satisfy the requirements of reasonable suspicion. In so doing, we also recognize that the "Fourth Amendment does not require a policeman who lacks the precise level of information necessary for probable cause to arrest to simply shrug his shoulders and allow a crime to occur or a criminal to escape." (Internal quotations omitted.) *Bobo*, 37 Ohio St.3d at 180, quoting *Adams v. Williams* (1972), 47 U.S. 143, 14546, 32 L.Ed.2d 612. Thus, allowing for Officer Burnette's reasonable inferences, we conclude that the trial court erred in suppressing this evidence.

{¶24} In *Akron v. Bowen*, supra, this Court affirmed the suppression of evidence, even though seized during a valid investigatory stop, because the ensuing search was not justified. We applied the two-part test as follows:

> "Although there was reasonable suspicion to conduct an investigatory stop of Defendant's vehicle, there was no reasonable suspicion, based on the totality of the circumstances, that Defendant was armed. While Officer Schismenos stated that Defendant's vehicle was stopped for suspicious activity, he also remarked that `all [he] knew is she could have been casing the place for suspected robbers *** [or] maybe conducting some type of drug traffic.' Officer Schismenos did not relay any facts that would lead a reasonable individual to believe that his safety was jeopardized. Thus, the Officer was not entitled to initiate a protective search for the safety of himself and others." (Internal citations omitted.) *Bowen* at ¶14.

Looking to the record, we find that Officer Burnette testified that he conducted the pat-down searches for the protection of himself and others.

{¶25} On the one hand, the Ohio Supreme Court has explained that the "frisk, or protective search, approved in *Terry* is limited in scope to a pat-down search for concealed weapons when the officer has a reasonable suspicion that the individual whose behavior he is investigating at close range may be armed and dangerous." *Andrews*, 57 Ohio St.3d at 89, citing *Terry*, 392 U.S. at 27. However, on the other hand, we also recognize that the United States Supreme Court has expanded the bounds of such a search by way of the "plain feel" doctrine:

> "If a police officer lawfully pats down a suspect's outer clothing and feels an object whose contour or mass makes its identity immediately apparent, there has been no invasion of the suspect's privacy beyond that already authorized by the officer's

search for weapons; if the object is contraband, its warrantless seizure would be justified by the same practical considerations that inhere in the plain-view context." *Minnesota v. Dickerson* (1993), 508 U.S. 366, 375-76, 124 L.Ed.2d 334 (relying on the obviousness of the object's "incriminating character"). But, see, *Dietry* at ¶7 (the feel of the object does not require absolute certainty).

{¶26} When Officer Burnette performed his pat down of Mr. Ingersoll, he found a can of beer in his pocket. Because Mr. Ingersoll was underage, this beer was contraband. We conclude that the trial court improperly suppressed this evidence.

{¶27} When Officer Burnette patted down Mr. Biehl, he did not find a similar can of beer in Mr. Biehl's possession, or any other alcohol. However, Officer Burnette smelled alcohol on Mr. Biehl's breath, and deeming this probable cause, promptly arrested Mr. Biehl for possession/consumption per R.C. 4301.69(E)(1). See *State v. Nichols*, 3rd Dist. No. 13-03-75, 2004-Ohio-2355, at ¶3; *State v. Roop* (June 4, 1993), 3rd Dist. No. 2-93-1. Incident to this arrest, Officer Burnette again searched Mr. Biehl and found the keys to his car. Thereupon, Officer Burnette unlocked Mr. Biehl's car and proceeded to search the interior and then the trunk, where he found beer. See *Thornton v. United States* (2004), __ U.S. __, 158 L.Ed.2d 905, 914 (upholding a vehicle search incident to arrest, even when the suspect is encountered outside of the vehicle), extending *New York v. Belton*, 453 U.S. 454, 69 L.Ed.2d 768 (upholding search of a vehicle incident to arrest); *State v. Murrell* (2002), 94 Ohio St.3d 489, syllabus. See, also, *United States v. Ross* (1982), 456 U.S. 798, 824 (holding that probable cause to search the car extends to the entire car). Therefore, we conclude that the trial court improperly suppressed this evidence.

{¶28} The State's assignment of error is sustained.

B. First Assignment of Error

"THE TRIAL COURT COMMITTED PREJUDICIAL ERROR BY SUPPRESSING EVIDENCE ON GROUNDS WHICH WERE NOT RAISED IN DEFENDANTS-APPELLEES' MOTION TO SUPPRESS EVIDENCE."

Second Assignment of Error

"THE MUTUAL AID AGREEMENT BETWEEN THE UNIVERSITY OF AKRON AND THE CITY OF AKRON IS A VALID CONTRACT PURSUANT TO R.C. 3345.041. BECAUSE THE ENCOUNTER BETWEEN OFFICER BURNETTE AND THE DEFENDANTS-APPELLEES OCCURRED WITHIN THE GEOGRAPHIC BOUNDARIES CONTAINED IN THE MUTUAL AID AGREEMENT, THE TRIAL COURT ERRED IN RULING OFFICER BURNETTE'S STOP OF THE DEFENDANTS-APPELLEES `EXTRA-TERRITORIAL'."

{¶29} In its other assignments of error, the State challenges the trial court's raising of and finding on the issue of the officer's territorial jurisdiction. Because our decision in the above assignment of error is dispositive on the propriety of the motion to suppress, it

is unnecessary to address these other assignments of error. As such, the State's first and second assignments of error are rendered moot. See App.R. 12(A)(1)(c).

III.

{¶30} The State's third assignment of error is sustained, and its first two assignments of error are not addressed. The order of the Akron Municipal Court is reversed and the cause is remanded for further proceedings consistent with this decision.

Judgment reversed, and cause remanded.

The Court finds that there were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Akron Municipal Court, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30. Costs taxed to Appellee. Exceptions.

WILLIAM G. BATCHELDER FOR THE COURT

SLABY, J. CONCURS

CARR, P. J. CONCURS IN JUDGMENT ONLY

APPEARANCES:

MAX ROTHAL, Director of Law, DOUGLAS J. POWLEY, Chief City Prosecutor, and GERALD K. LARSON, Assistant City Prosecutor, 203 Stubbs Justice Center, 217 South High Street, Akron, Ohio 44308, for Appellant.

J. DEAN CARRO, Appellate Review Office, School of Law, The University of Akron, Akron, Ohio 44325-2901, for Appellees.

STATE OF OHIO, PLAINTIFF-APPELLEE,
v.
HAROLD W. MARSH, DEFENDANT-APPELLANT
CASE NO. 04 BE 18

7th District Court of Appeals of Ohio, Belmont County
Decided on September 1, 2005

Criminal Appeal from Belmont County Court, Northern Division, Case No. 03 TRC 02061.

Hon. Mary DeGenaro Hon. Gene Donofrio Hon. Joseph J. Vukovich

For Plaintiff-Appellee: Attorney Chris Berhalter Prosecuting Attorney Attorney Thomas Ryncarz Assistant Prosecuting Attorney 147 West Main Street St. Clairsville, OH 43950-9106

For Defendant-Appellant: Attorney John R. Tomlan Tomlan Law Offices 108 East Main Street St. Clairsville, OH 43950-9106

OPINION

DeGenaro, J.

{¶1} This timely appeal comes for consideration upon the record in the trial court, the parties' briefs and their oral arguments before this court. Appellant Harold Marsh appeals the decision of the Belmont County Court, Northern Division convicting him of driving under the influence.
{¶2} With this challenge, Marsh brings five assignments of error. Specifically, he claims the trial court erred in not granting his motion to suppress because 1) the arresting officer did not have jurisdiction and therefore made an unlawful arrest; 2) there was no evidence demonstrating that Marsh operated a vehicle; 3) there was no evidence establishing that Marsh's condition was due to the consumption of alcohol; 4) there was no articulable suspicion to justify Marsh's arrest; and, 5) his refusal to take a breath test allegedly came two hours after his arrest.

{¶3} The police had a reasonable, articulable suspicion to warrant an investigative stop and detention, as well as probable cause to arrest. Thus, the officer's extraterritorial arrest, while contrary to statute, is constitutional. Further, a driver sitting behind the wheel of a vehicle stopped in the middle of the road with the keys in the ignition is deemed to be operating a motor vehicle. Coupled with an admission of drinking and the smell of alcohol, there was probable cause to arrest Marsh for Driving Under the Influence. Accordingly, the trial court did not err in denying Marsh's motion to suppress, and his conviction is affirmed.

Facts

{¶4} On December 28, 2003, at the request of the Belmont County Sheriff, two Bridgeport Village police officers were dispatched to investigate a stopped vehicle one mile outside of Bridgeport's municipal limits. When the officers arrived at the scene, they found Marsh asleep at the wheel of his vehicle which was parked in the middle of the road with the keys in the ignition. After waking Marsh up, they arrested Marsh for driving under the influence based upon his physical condition, his behavior, and statements.

{¶5} Marsh filed a motion to suppress requesting that all evidence obtained from the officer's stop and detention be suppressed. The trial court overruled this motion. Marsh then entered a plea of no contest, as well as a motion for reconsideration with the trial court which was subsequently denied. Marsh now appeals the original judgment entry convicting him of driving under the influence.

Extraterritorial Arrest

{¶6} As his first assignment of error, Marsh claims:

{¶7} "The trial court erred in overruling Appellant's motion to Dismiss based upon the arresting officer's lack of territorial jurisdiction over the area where the arrest was made."

{¶8} R.C. 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 Marsh's vehicle was located one mile outside of the Bridgeport 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, 2002-Ohio-1484.

{¶9} 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.

{¶10} In *Weideman*, an officer who was a half mile out of his jurisdiction observed a vehicle traveling left of center, leave the road twice, and again travel left of center. The officer stopped the vehicle and requested assistance from the Ohio State Highway Patrol. The officer then observed that Weideman, the driver of the vehicle, had bloodshot eyes and smelled of alcohol. The officer detained Weideman who was subsequently arrested by a Highway Patrol officer for driving while under the influence of alcohol.

{¶11} Weideman filed a motion to suppress, arguing that the officer who pulled him over conducted an illegal stop because he was outside his jurisdiction. The Ohio Supreme Court, citing R.C. 2935.03(A)(1), noted that the officer had in fact violated the statute in stopping Weideman's vehicle outside of his jurisdiction. However, employing the balancing test of *Wyoming v. Houghton* (1999), 526 U.S. 295, to determine whether a

governmental action violates the reasonableness requirement of the Fourth Amendment, the Ohio Supreme Court concluded that:

{¶12} "[t]he state's interest in protecting the public from a person who drives an automobile in a manner that endangers other drivers outweighs Weideman's right to drive unhindered. These two factors demonstrate that [the officer's] violation of R.C. 2935.03 does not rise to the level of a constitutional violation." Id. at 506.

{¶13} In *State v. Fitzpatrick* 152 Ohio App.3d 122, 2003-Ohio-1405, the Sixth District came to the opposite conclusion where an officer outside his jurisdiction merely observed the defendant's vehicle "moving kind of slow." In that case, there was no testimony suggesting that the defendant's manner of driving presented a danger to other motorists. The officer had no reasonable suspicion of criminal activity on behalf of the defendant until after he had left his jurisdiction and discovered that defendant was in possession of illegal plates. Because this violation did not present an imminent safety danger to other motorists, the Sixth District could see no reason why the officer could not have alerted the police with jurisdictional authority to the general location of the vehicle so that they could make the stop. The court explained:

{¶14} "We conclude that the government's interest in making an extraterritorial stop and arrest for a fourth-degree-misdemeanor violation is minimal and outweighed by the serious intrusion upon a person's liberty and privacy that necessarily arises out of a stop and arrest. Therefore, Officer Snow's action in making an extraterritorial stop of appellant's vehicle violates the reasonableness requirement of the Fourth Amendment. Officer Snow's statutory violation in this case does require suppression of all evidence flowing from the stop." Id. at 126.

{¶15} In other cases, however, where traffic infractions occurred which could have endangered other drivers, courts have held that so long as there was probable cause to stop and detain the defendant, there was no constitutional violation necessitating the application of the exclusionary rule.

{¶16} For example, in *State v. Crump* (June 28, 2002), 2nd Dist. No. 19021, an officer witnessed the defendant weave, speed, and cross the center line several times before the defendant ran his car off the road and struck a tree. The defendant got out of his car and began walking away. The officer pulled up alongside of the defendant to check on him at which point the defendant tried to get into the officer's vehicle. While talking to the defendant about what happened, the officer observed that defendant's speech was slurred, his eyes were glassy, and he had difficulty walking. These signs, coupled with Defendant's erratic driving led the officer to believe that the defendant was driving under the influence of alcohol.

{¶17} The officer used his police radio to request that a Montgomery County Sheriff's deputy be sent to the scene. The officer did not arrest Defendant, however. Once the deputy sheriff arrived, the officer gave him the defendant's driver's license and related what he had observed and his belief that the defendant was under the influence of alcohol.

The deputy sheriff subsequently arrested the defendant for driving under the influence of alcohol.

{¶18} On appeal, the Second District denied the defendant's motion to suppress. The court concluded that the initial stop and detention did not rise to the level of a Fourth Amendment violation requiring the suppression of all evidence obtained as a result of that stop.

{¶19} Notably, the situation in *Crump* did not lead to an arrest by the officer outside of his jurisdiction, but instead involved only a stop and detention of the defendant until an officer with jurisdiction could arrive. However, other courts have extended the *Weideman* holding to cases where the officer made an arrest regardless of whether the officer called for assistance from someone with jurisdiction.

{¶20} The Second District in *State v. Pierce* (Dec. 31, 2003), 2nd Dist. No. 19926 held that any evidence obtained as result of defendant's arrest for driving under the influence outside an officer's jurisdiction was nevertheless admissible at trial. The court reasoned that, although the stop was in violation of territorial limits imposed by statute upon the police officer's extra-territorial arrest powers, the only impropriety with the stop was its alleged extra-territorial nature, which was, at most, a statutory violation, rather than a constitutional violation. See also *State v. Annis* (Oct. 25, 2002), 11th Dist. No. 2001-P-0151; *State v. Orihel* (Jan. 28, 2002), 4th Dist. No. 01CA33; *State v. Underwood* (Jan. 9, 2004), 5th Dist. No. 2003-AP-03 0022.

{¶21} In the present case, Officer Bolton testified that he was dispatched, at the request of the Belmont County Sheriff's Office, to investigate a stopped vehicle that was blocking both lanes of a public road. Officer Bolton and another officer arrived at the scene and discovered that the driver was unconscious, the car was parked in the middle of the road, the car was not running but the keys were still in the ignition. When Officer Bolton saw that the car was occupied, he called in a request to dispatch for assistance from the Ohio State Highway Patrol. However, according to the dispatcher, the OSHP were unable to respond because they were assisting the Belmont County Sheriff with an accident in Bethesda.

{¶22} Next, Officer Bolton attempted to wake Marsh who was still unconscious by knocking on the windows and shaking the vehicle. The other officer opened the driver side door and shook Marsh. When he came to, Marsh grabbed the keys from the ignition and threw them onto the passenger's seat. The officers asked Marsh to get out of the vehicle.

{¶23} Officer Bolton testified that when he first observed Marsh, he had mucous running out of his nose and he was slobbering all over his face. He smelled heavily of alcohol and had urinated in his pants. Officer Bolton further testified that Marsh appeared to be very incoherent and very drunk. The officers had to help Marsh out of the vehicle as he "staggered greatly." They brought him to the front of their vehicle and allowed him to sit on the hood. They were unable to conduct field sobriety tests because Marsh was unable to stand.

{¶24} Officer Bolton asked Marsh if he had been drinking, and if so, how much and how long ago. Marsh responded that he had been drinking at a friend's house that evening and "was unsure how he got where he was * * * and he was almost home. If he would have made it down to the bottom of Old Cadiz Road, he would have been home." The officers then placed Marsh under arrest and took him to the police department in Martin's Ferry. They attempted to get a BAC from the breathalyzer but Marsh refused to participate.

{¶25} We conclude that the officers in this case had reasonable suspicion to investigate Marsh's car which was parked in the middle of the road with its lights off. This clearly was a hazard to anyone driving on that road. Likewise, the officers properly continued to investigate when they saw Marsh unconscious in the vehicle. Finally, the officers had probable cause to arrest Marsh for driving under the influence based upon his physical condition, his behavior, and his statements to the police. Accordingly, despite the fact that the arresting officers were outside of their territorial jurisdiction when they arrested Marsh, the statutory violation did not rise to the level of a constitutional offense. This assignment of error is meritless.

Operating a Motor Vehicle While Under the Influence

{¶26} As his second assignment of error, Marsh claims:

{¶27} "The trial court erred in overruling Appellant's motion to dismiss based upon the lack of evidence that established defendant operated a motor vehicle."

{¶28} In *State v. Homan* (2000), 89 Ohio St.3d 421, 427 the Ohio Supreme Court set forth the standard of review for probable cause for an arrest of an individual for driving under the influence:

{¶29} "In determining whether the police had probable cause to arrest an individual for DUI, we consider whether, at the moment of arrest, the police had sufficient information, derived from a reasonably trustworthy source of facts and circumstances, sufficient to cause a prudent person to believe that the suspect was driving under the influence. In making this determination, we will examine the 'totality' of facts and circumstances surrounding the arrest."

{¶30} Marsh has narrowed the issue to whether or not the State could prove that he had driven the vehicle. He claims the State cannot prove that he had operated a vehicle since no one actually witnessed him driving. This type of argument has been made on numerous occasions to many other courts and it is almost always rejected.

{¶31} Notably, in *State v. Cleary* (1986), 22 Ohio St.3d 198,199 the Ohio Supreme Court stated that "[t]he term 'operating' encompasses a broader category of activities involving motor vehicles than does 'driving.' Many jurisdictions have found that a person may operate a vehicle even though the vehicle is not moving. Operation of a motor vehicle within contemplation of the statute is a broader term than mere driving and a person in the driver's position in the front seat with the ignition key in his possession

indicating either his actual or potential movement of the vehicle while under the influence of alcohol or any drug of abuse can be found in violation of R.C. 4511.19(A)(1)." Id. at 199.

{¶32} The Supreme Court reiterated this holding in *State. v. Gill*, 70 Ohio St.3d, 1994-Ohio-403 where it stated in its syllabus that "A person who is in the driver's seat of a motor vehicle with the ignition key in the ignition and who, in his or her body has a prohibited concentration of alcohol, is 'operating' the vehicle within the meaning of R.C. 4511.19 whether or not the engine of the vehicle is running."

{¶33} The Supreme Court explained:

{¶34} "Our holdings in *Cleary* and *McGlone* were never intended to require the state to prove that the defendant had started the vehicle's engine after consuming alcohol or that the engine was running at the time the defendant is apprehended. A clear purpose of R.C. 4511.19 is to discourage persons from putting themselves in the position in which they can potentially cause the movement of a motor vehicle while intoxicated or under the influence of any drug of abuse." Id. at 154.

{¶35} This rationale set forth in *Gill* was applied by the Eighth District in *City of Cleveland v. Duckworth* (July 3, 2002), 8th Dist. No. 880888. In *Duckworth*, the arresting officer testified that around 1:00 a.m. he found the defendant asleep behind the wheel. The defendant's vehicle was stopped incorrectly within an intersection and impeding the flow of traffic. It was necessary for the officer to make several progressively stronger attempts to awaken the appellant. A strong odor of alcohol emanated from both the defendant and the vehicle. And, finally, the officer testified that the defendant was glassyeyed and had an unsteady gait. After reviewing this evidence, the Eighth District concluded that the arresting officer had a reasonable suspicion that the defendant was operating a vehicle under the influence of alcohol.

{¶36} Significantly, in *State v. Draper* (Mar. 31, 2003), 5th Dist. No. 2002CA00297, the Fifth District found that where the defendant was found sitting in her vehicle in the driver's seat, with the keys on the floor mat, directly below the steering column, that the keys were sufficiently within her possession to constitute probable cause that she was operating the motor vehicle.

{¶37} In the present case, Marsh was found in the driver's seat with the keys in the ignition. Following the precedent set by the Supreme Court and other districts, we conclude the trial court did not err in finding that there was probable cause to believe that Marsh had in fact "operated" the vehicle. This assignment of error is also meritless.

Probable Cause for Arrest

{¶38} As his third and fourth assignments of error, Marsh claims respectively:

{¶39} "The trial court erred in overruling Appellant's motion to dismiss based upon the arresting officer's lack of evidence that established defendant's condition was due to consumption of alcohol."

{¶40} "The trial court erred in overruling Appellant's motion to dismiss based upon a lack of reasonable and articulable suspicion to justify Defendant's arrest."

{¶41} Marsh admitted to the officer at the scene that he had been drinking alcohol at a friend's house, and he smelled heavily of alcohol. And, as discussed in assignment of error number one, the officer not only had reasonable suspicion to suspect that Marsh was driving under the influence, he in fact had probable cause to make an arrest. Accordingly, these assignments of error are also meritless.

Refusal to Take Breath Test

{¶42} As his fifth and final assignment of error, Marsh claims:

{¶43} "The trial court erred in overruling Appellant's motion to exclude from evidence any comment that Defendant refused to submit to a breath test as the request that Defendant provide a breath sample was not made timely to entitle the arresting officer to claim defendant refused to take the chemical test required of him."

{¶44} Marsh has provided no authority in support of this argument and we can find nothing that would suggest this type of evidence would be inadmissible. In fact, it is clear that the refusal to submit to a breath test is relevant, admissible, and may be used against a defendant at trial. *South Dakota v. Neville* (1983), 459 U.S. 553; *Maumee v. Anistik*, 69 Ohio St.3d 339, 632 N.E.2d 497, 1994-Ohio-157. The Ohio Supreme Court explained in *Anistik:*

{¶45} "Where a defendant is being accused of intoxication and is not intoxicated, the taking of a reasonably reliable chemical test for intoxication should establish that he is not intoxicated. On the other hand, if he is intoxicated, the taking of such a test will probably establish that he is intoxicated. Thus, if he is not intoxicated, such a test will provide evidence for him; but, if he is intoxicated, the test will provide evidence against him. Thus, it is reasonable to infer that a refusal to take such a test indicates the defendant's fear of the results of the test and his consciousness of guilt, especially where he is asked his reason for such refusal and he gives no reason which would indicate that his refusal had no relation to such consciousness of guilt." Id. at 343 citing *Westerville v. Cunningham* (1968), 15 Ohio St.2d 121, 122.

{¶46} Applying the Ohio Supreme Court's rationale here, we find it wholly irrelevant when the officers asked Marsh to submit to the tests. If the refusal is relevant in that it serves as indicia of guilt, then it wouldn't matter if Marsh refused before or after the statutory two hour period. If Marsh would have agreed to take the breath test after the two hour limit, then he would have a viable argument that the results of that test should be suppressed. Because he refused to take the breath test, there is no bad evidence to suppress. This assignment of error is also without merit.

{¶47} Accordingly, the trial court did not err by denying Marsh's motion to suppress, and Marsh's conviction is affirmed.

Donofrio, P.J., concurs. Vukovich, J., concurs.

R.C. §2935.03 Authority to arrest without warrant - pursuit outside jurisdiction.

(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.

(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.

(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:

(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.

(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.

(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.

(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;

(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.

(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:

(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.

(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.

Effective Date: 01-01-2004; 05-17-2006; 07-01-2007; 2007 HB119 09-29-2007

R.C. §4549.02 Stopping after accident on public roads or highways.

(A) In case of accident to or collision with persons or property upon any of the public roads or highways, due to the driving or operation thereon of any motor vehicle, the person driving or operating the motor vehicle, having knowledge of the accident or collision, immediately shall stop the driver's or operator's motor vehicle at the scene of the accident or collision and shall remain at the scene of the accident or collision until the driver or operator has given the driver's or operator's name and address and, if the driver or operator is not the owner, the name and address of the owner of that motor vehicle, together with the registered number of that motor vehicle, to any person injured in the accident or collision or to the operator, occupant, owner, or attendant of any motor vehicle damaged in the accident or collision, or to any police officer at the scene of the accident or collision.

In the event the injured person is unable to comprehend and record the information required to be given by this section, the other driver involved in the accident or collision forthwith shall notify the nearest police authority concerning the location of the accident or collision, and the driver's name, address, and the registered number of the motor vehicle the driver was operating, and then remain at the scene of the accident or collision until a police officer arrives, unless removed from the scene by an emergency vehicle operated by a political subdivision or an ambulance.

If the accident or collision is with an unoccupied or unattended motor vehicle, the operator who collides with the motor vehicle shall securely attach the information required to be given in this section, in writing, to a conspicuous place in or on the unoccupied or unattended motor vehicle.

(B) Whoever violates division (A) of this section is guilty of failure to stop after an accident, a misdemeanor of the first degree. If the violation results in serious physical harm or death to a person, failure to stop after an accident is a felony of the fifth degree. The court, in addition to any other penalties provided by law, shall impose upon the offender a class five suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in division (A)(5) of section 4510.02 of the Revised Code. No judge shall suspend the first six months of suspension of an offender's license, permit, or privilege required by this division.

Effective Date: 01-01-2004