

Case No. 08-1499

In the Supreme Court of Ohio

APPEAL FROM THE COURT OF APPEALS
FIFTH APPELLATE DISTRICT
STARK COUNTY, OHIO
CASE NO. 2007CA0027

STATE OF OHIO,
Plaintiff-Appellant,

v.

ANTHONY D. JACKSON,
Defendant-Appellee.

Memorandum in Support of Jurisdiction of Amici Curiae City of Canton,
Ohio Municipal League, City of Massillon, and Buckeye State Sheriffs'
Association, on Behalf of Appellant, State of Ohio

JOHN D. FERRERO (0018590)
KATHLEEN O. TATARSKY (0017115)
Stark County Prosecutor's Office
110 Central Plaza South, Suite 510
Canton, Ohio 44702
330.451.7883; Fax: 330.451.7965
*Attorneys for Appellant,
State of Ohio*

BRADLEY R. IAMS (0019009)
220 Market Avenue South, Suite 400
Canton, Ohio 44702
330.452.6400
*Attorney for Appellee,
Anthony D. Jackson*

FILED

JUL 31 2008

CLERK OF COURT
SUPREME COURT OF OHIO

KEVIN R. L'HOMMEDIU (0066815)
Canton Law Department
218 Cleveland Avenue, S.W.
Canton, Ohio 44701-4218
330.438.4337; Fax: 330.489.3374
kevin.l'hommedieu@cantonohio.gov
*Attorney for Amicus Curiae,
City of Canton*

STEPHEN L. BYRON (0055657)
Schottenstein, Zox and Dunn, Co., LPA
4230 State Rt. 306, Suite 240
Willoughby, Ohio 44094
440.951.2303; Fax: 216.621.5341
sbyron@szd.com
*Attorney for Amicus Curiae,
Ohio Municipal League*

STEPHEN J. SMITH (0001344)
Schottenstein, Zox and Dunn, Co., LPA
250 West Street
Columbus, Ohio 43215
614.462.2700; Fax: 614.462.5135
ssmith@szd.com

PERICLES G. STERGIOS (0034537)
City of Massillon Law Director
Massillon Law Department
Two James Duncan Plaza
Massillon, Ohio 44646
330.830.1718; Fax: 330.833.7144

ROBERT L. BERRY (0007896)
Robert L. Berry, Co. LPA
503 South High Street, Suite 200
Columbus, Ohio 43215-5660
614.221.1215; Fax: 614.221.4161
rberrylaw@ameritech.net
*Attorney for Amicus Curiae,
Buckeye State Sheriff's Association*

TABLE OF CONTENTS

Why This Case is Involves a Substantial Constitutional Question and is of Public or Great General Interest	1
Statement of Interest of Amici Curiae.	7
Statement of the Case and Facts.	8
Argument.	10
Proposition of Law	10
When a public employer compels an employee to give a statement under threat of removal from office, <i>Garrity v. New Jersey</i> prohibits the direct or derivative use of the statement in a subsequent criminal trial, but it does not prohibit a prosecutor’s knowledge, or “non-evidentiary” use of it.	
Conclusion	15
Certificate of Service.	17

WHY THIS CASE INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION AND IS OF GREAT PUBLIC OR GENERAL INTEREST

This case presents a significant constitutional question and involves the protections afforded to public employees under the United States Supreme Court's decision in *Garrity v. New Jersey*, which permitted a public employer's right to compel an employee to answer questions that might carry criminal liability, but prohibited the use of the answers in subsequent criminal trials.¹ The Fifth Appellate District, however, expanded *Garrity's* protection and prohibits a prosecutor from not just directly or derivatively *using* a *Garrity* statement, but from even *knowing* of its contents. As a result, public employees enjoy greater Fifth Amendment protections than the public they serve.

This case is also of great public or general interest for two reasons. First, it may discourage public employers in the Fifth Appellate District from fully investigating wrongdoing of its employees, and casts doubt on how employers outside the court's jurisdiction do so. Second, this Court has never considered this issue and doing so here provides this Court with the opportunity to resolve the confusion and conflict among Ohio's courts. Even federal courts have split on the issue of whether *Garrity* prohibits knowledge as well as use of a public employee's compelled statement.

This case began when the appellee, Anthony Jackson, a suspended Canton police officer, entered a bar in Perry Township with a concealed gun. The Stark County Grand Jury indicted Jackson for illegal possession of a firearm in liquor permit premises, but the trial

¹ *Garrity v. New Jersey*, 385 U.S. 493 (1967).

court dismissed the charge because the prosecutor had knowledge of a statement Jackson had made to internal affairs (“I.A.”) investigators in accordance with *Garrity*. The trial court acknowledged that the prosecutor had not actually used the *Garrity* statement in obtaining the indictment and would not need it to convict Jackson at the trial. But the trial court dismissed the charge anyway, holding that the prosecutor had violated *Garrity* simply by having *knowledge* of the *Garrity* statement, which might have “non-evidentiary” impact on the prosecutor, such as affecting his decision to plea bargain or influencing his trial strategy.

On appeal, the Fifth Appellate District disagreed that dismissal was the proper remedy, but agreed that a *Garrity* violation occurred, embracing the trial court’s conclusion that *Garrity* prohibited the prosecutor’s mere knowledge of the statement, even if he never used, nor intended to use the statement or evidence derived from it. So on remand, the court ordered the appointment of an out-of-county prosecutor to prosecute Jackson, but only after the Stark County Prosecutor had purged his file of the entire I.A. file, including Jackson’s *Garrity* statement.²

If allowed to stand, the Fifth Appellate District’s decision would create two different remedies for an alleged Fifth Amendment violation, one for public employees and one for the public at large. On the one hand, police may use illegal physical or psychological pressure to coerce a possibly unreliable confession from an uncounseled, in-custody citizen in the secrecy of an interrogation room. By contrast, I.A. investigators conduct a civil, administrative interview of a police officer familiar with such a format, affording them many

² *State of Ohio v. Jackson*, 5th Dist. No. 2007CA00274, 2008-Ohio2944, at ¶¶30, 34, and 37.

procedural protections, often including representation by a union official and an attorney. Not only does the law allow the prosecutor to have knowledge of the illegal confession, it permits its use at trial for some purposes, including impeachment.³ The decision of the Fifth Appellate District, by contrast, prohibits that same prosecutor from *even seeing* the *Garrity* statement. Placing greater restrictions on the use of a *Garrity* statement than on a coerced confession is constitutionally unsound.

In a similar vein, the Fifth Appellate District's decision contributes to the already confusing and conflicting body of case law decided by Ohio's courts. On one end of the spectrum, the Tenth Appellate District found that although the contents of a police officer's *Garrity* statement had been both known and used by the prosecutor in a post-conviction hearing to withdraw her guilty plea, it amounted to harmless error.⁴ The Fourth Appellate District also applied a harmless error analysis to the use of a *Garrity* statement to obtain the phone number of a witness whom the prosecutor later subpoenaed to testify at the trial.⁵

By contrast, a divided Second Appellate District embraced the view that *Garrity* prohibited a prosecutor's knowledge of a statement when it affirmed the dismissal of an indictment where the prosecutor had "made use of" a police officer's *Garrity* statement in "solidifying her decision to charge him."⁶ The undisputed facts in this case allow this Court the opportunity to settle this conflict among Ohio's courts.

³ *Oregon v. Hass*, 420 U.S. 714, 722-24 (1975).

⁴ *State v. Horton-Alomar*, 10th Dist. No. 04AP-744, 2005-Ohio-1537.

⁵ *State v. Parsons*, 4th Dist. No. 07CA2, 2007-Ohio-4812, at ¶¶25-26.

⁶ *State of Ohio v. Brocious*, 2002CA89, 2003-Ohio-4708, at ¶15.

Just as important, the Fifth Appellate District's decision compromises, and even cripples, the ability of public employers to investigate wrongdoing on the part of their employees. Many public employers will now be unwilling to risk that a possible criminal prosecution would be barred if there was even the slightest revelation of the *Garrity* statement, and therefore abandon *Garrity* interviews altogether. Without affording *Garrity* protections, public employers could not terminate the employee for failing to answer the investigator's questions. As such, public employees, especially police officers knowledgeable in investigative techniques, will likely refuse to answer questions, rendering any investigation toothless and inert. The public deserves accountability from its employees, but will not get it if the Fifth Appellate District's decision is allowed to stand. This case provides this Court with the opportunity to correct this result and preserve the public trust in its employees.

In addition, a decision by this Court would prevent disastrous results to other prosecutions. The Fifth Appellate District did not just prevent the prosecutor's knowledge of a *Garrity* statement, it also barred the testimony of investigators with knowledge of *Garrity* statements.⁷ While that might not be an obstacle in this case because the alleged crime was committed outside the jurisdiction where Jackson worked, it would be a problem if he had done so in Canton. That is because although Canton has an I.A. division separate from a detective bureau, it is often more efficient for I.A. to perform both investigations. In

⁷ *State v. Jackson*, 2008-Ohio-2944, at ¶37 (In addition, we order the exclusion of Lieutenant Davis [who took Jackson's *Garrity* interview, but testified at the grand jury only about Jackson's employment status, relevant to an affirmative defense Jackson was advancing] as a witness.")

that case, the I.A. investigator necessary for a criminal prosecution would be barred from testifying under the Fifth Appellate District's decision simply because that investigator may have also been responsible for taking the accused's *Garrity* statement. Even if departments like Cleveland are large enough to guarantee complete separation between its I.A. and criminal investigations, Ohio's smaller departments do not have that luxury. Those departments have no choice but to complete both investigations. Therefore, those departments will be forced to choose between fully investigating wrongdoing of its employees by ordering a *Garrity* interview, or forfeit any possible prosecution for doing so.

Moreover, the Fifth Appellate District's ruling cannot be reconciled with Ohio's Public Records laws. Under most circumstances, entire contents of IA files are public records.⁸ So, in this case for example, the Canton Repository would be entitled to report on the contents of Jackson's *Garrity* statement, and the public entitled to read about it. Yet according to the Fifth Appellate District, not only is the prosecutor prohibited from viewing the IA file, they could not even read about it in the newspaper. In fact, a visiting prosecutor would appear to be prohibited from even reading the Fifth Appellate District's decision, which contains facts in Jackson's I.A. file. There are countless scenarios whereby a prosecutor might be accused of having knowledge of a *Garrity* statement, and every one of them would operate as a bar on prosecution according to the Fifth Appellate District.

⁸ R.C. 149.43(G); *State ex rel. Akron Beacon Journal Publishing Co. v. City of Akron*, 104 Ohio St.3d 399, 2004-Ohio-6557, at ¶50.

Even in the unlikely chance that a prosecutor was completely insulated from having knowledge of a *Garrity* statement, allowing them to proceed with the prosecution, any conviction could be unsound if the *Garrity* statement contained, or led to, exculpatory evidence. As this Court is aware, under *Brady v. Maryland*⁹ prosecutors are responsible for disclosing to the defense “any favorable evidence known to the others acting on the government’s behalf . . . including the police.”¹⁰ Under the Fifth Appellate District’s decision, a prosecutor would be reluctant to examine an I.A. file to see if it contained exculpatory evidence. This would result in a “Hobsen’s choice” for the prosecutor: either jeopardize the prosecution by violating *Garrity* or risk doing so by violating *Brady*. Such a choice cannot possibly have been contemplated by *Garrity* and demands correction by this Court.

By holding that a prosecutor is barred from not just directly or derivatively using a *Garrity* statement, but also their knowledge of it, the Fifth Appellate District’s decision compromises a public employer’s ability to investigate wrongdoing on the part of its employees, and places every prosecution in peril. Doing so by affording greater Fifth Amendment protection to public employees than the public they serve is constitutionally infirm and will serve only to erode the public trust. For these reasons, the amici curiae respectfully request that this Court accept jurisdiction of this case.

⁹ 373 U.S. 83 (1963).

¹⁰ *Kyles v. Whitley*, 514 U.S. 419, 437 (1995). See also Professional Rule of Conduct Rule 3.8(d) (“The prosecutor in a criminal case shall not . . . fail to make the timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense. . . .”)

INTEREST OF THE AMICI CURIAE

The Ohio Municipal League is an Ohio non-profit corporation incorporated in 1952 by city and village officials who recognized the need for a statewide association to serve the interests of Ohio municipal governments. Since then, its membership has grown to approximately 750 cities and villages, including two other amici curiae here, the cities of Canton and Massillon, and are collectively dedicated to improving municipal government and administration, and promoting the general welfare of their residents.

The Buckeye State Sheriffs' Association is a non-profit organization representing all sheriffs of the State of Ohio and is dedicated to providing quality, professional law enforcement.

All of the amici curiae are interested in this case because it affects their ability to provide fair and effective law enforcement as well as their obligations as employers. As public employers, the amici curiae are responsible for investigating alleged wrongdoing of their employees. Thorough investigations often require compelling an employee's statement under *Garrity*. But the Fifth Appellate District's decision casts doubt on the wisdom of requiring a *Garrity* statement for fear it might jeopardize any future prosecution of that employee. This will force public employers to choose between their responsibility as an employer to conduct a thorough internal investigation and their responsibility to administer the law. Public employers must not be forced to make that choice, they must be allowed to accomplish both objectives in order to ensure that they can be responsible and accountable to those they serve.

The amici curiae urge this Court to accept jurisdiction of this case in order to reconcile a public employee's rights under *Garrity* with a public employer's obligation to thoroughly investigate that employee, all without compromising a prosecutor's ability to later prosecute them.

STATEMENT OF THE CASE AND FACTS

The amici curiae agrees with and incorporates by reference the statement of the case and facts set forth by appellant State of Ohio.

ARGUMENT

Proposition of Law:

When a public employer compels an employee to give a statement under threat of removal from office, Garrity v. New Jersey prohibits the direct or derivative use of the statement in a subsequent criminal trial, but it does not prohibit a prosecutor's knowledge, or "non-evidentiary" use of it.

1. *Compelled statements under Garrity are entitled to Fifth Amendment protection.*

At the center of this case is the United States Supreme Court's decision in *Garrity v. New Jersey* in which several police officers were questioned about fixing traffic tickets as part of an internal investigation.¹¹ The officers answered the questions after they were told that their refusal to do so would result in their termination. The officers challenged the introduction of their answers at trial, arguing they were coerced.

¹¹ *Garrity*, 385 U.S. at 494.

The Court held that, just as in *Miranda*,¹² the defendants' "Hobson's choice," which was either to forfeit their jobs or to incriminate themselves, is "the antithesis of free choice to speak out or to remain silent."¹³ The Court wrote, "[w]e now hold the protection of the individual under the Fourteenth Amendment against coerced statements prohibits use in subsequent criminal proceedings of statements obtained under threat of removal from office."¹⁴

Although the *Garrity* Court relied solely on the Fourteenth Amendment, in subsequent cases the Court relied on the Fifth Amendment for the proposition that police officers' statements were analogous to formally immunized testimony.¹⁵ It was therefore clear that the United States Supreme Court intended that the restrictions on the use of immunized *Garrity* statements were to be identical to those applied to coerced confessions. But the type of immunity – whether use or transactional – was not yet resolved by the Court.

2. *Officers who provide Garrity statements are only entitled to use immunity and are therefore subject to prosecution for matters related to the statement.*

The United States Supreme Court rejected full transactional immunity for compelled statements in *Kastigar v. U.S.*¹⁶ The Court reasoned that transactional immunity afforded

¹² *Miranda v. Arizona* 384 U.S. 436 (1964).

¹³ *Garrity*, 385 U.S. at 497; *Kelley v. Johnson*, 425 U.S. 238, 248 (1976).

¹⁴ *Garrity*, 385 U.S. at 501; *Malloy v. Hogan*, 378 U.S. 1 (1964).

¹⁵ See, e.g., *Kelley*.

¹⁶ *Kastigar*, 406 U.S. at 453.

greater protection than the Fifth Amendment required and that use immunity is “coextensive with the scope of the privilege” against self-incrimination.¹⁷

Because an officer who gives a *Garrity* statement is only entitled to use immunity, the officer may still be prosecuted for matters related to the statement. In that event, however, the Court imposes the “heavy burden” “on the prosecution the affirmative duty to prove that the evidence it proposes to use is derived from a legitimate source wholly independent of the compelled testimony.”¹⁸

Although the prosecution's task has been characterized as a "heavy burden," it is clear that it is required to prove an absence of taint only by a preponderance of the evidence.¹⁹ Negation of all abstract possibility of taint is not necessary.²⁰ This Court followed *Kastigar* in *State v. Conrad*.²¹

3. *Use immunity under Garrity and Kastigar prohibit only direct or derivative use of a Garrity statement, and does not prohibit a prosecutor's knowledge, or so-called "non-evidentiary" use of the statement.*

Although non-evidentiary use is a nebulous term barely capable of an agreed-upon definition, it is generally thought to include such things as deciding to initiate the prosecution, interpreting evidence, and planning trial strategy.

¹⁷ *Id.* at 449.

¹⁸ *Id.* at 460.

¹⁹ *United States v. Byrd*, 765 F.2d 1524, 1529 (11th Cir.1985).

²⁰ *Id.*

²¹ (1990), 50 Ohio St.3d 1.

Neither the United States Supreme Court nor this Court has considered whether knowledge or “non-evidentiary” uses are prohibited. And of the courts that have, most have answered the question in the negative. But a handful of courts took a more promiscuous turn and imposed greater restrictions on immunized statements than had ever been applied to coerced confessions. The primary case relied upon by Jackson was the Eighth Circuit’s opinion in *U.S. v. McDaniel*.²² There, the prosecutor inadvertently reviewed immunized testimony before charging the defendant. Using the *Kastigar* analysis the trial court determined that the prosecutor had presented only evidence that derived from a source independent of the immunized statement. Still, the Eighth Circuit reversed the conviction based upon its belief that the statement had an “immeasurable subjective effect” on the prosecutor. It could, according to the court, be used for such non-evidentiary purposes as interpreting evidence, planning cross-examination, and “generally planning trial strategy.” As such, the prosecutor had an “insurmountable task in discharging the heavy burden of proof imposed by *Kastigar*.”²³ This was the first time a prosecution had been barred not by a prosecutor’s use of a *Garrity* statement, but by his knowledge of it. And it should have been the last.

Like the *McDaniel* Court, the trial court here had no idea how non-evidentiary use could be made of Jackson’s *Garrity* statement, admitting: “[I] am not able to aptly describe the [non-evidentiary] . . . effect” on Jackson, hypothesizing that perhaps it “influence[d] trial

²² 482 F.2d 305 (8th Cir. 1973).

²³ *Id.* at 311.

strategy.” But hypothetical concerns and speculation do not invoke the Fifth Amendment, which protects against real dangers, not remote and speculative possibilities.²⁴ Courts hold that the time for protection will come when, if ever, the prosecution attempts to use the information against the defendant at trial. Courts do not assume that the prosecution will make such use, or if it does, that a court will allow it to do so.²⁵ Self policing by the prosecution is frequent in criminal proceedings. There is a presumption that the government obeys the law.²⁶

Moreover, non-evidentiary use is not capable of being defined and is a constantly moving target. As such, non-evidentiary use could be arguably linked to almost every action and decision that a prosecutor makes – or doesn’t make, for that matter. Without a definition, a prosecutor cannot possibly overcome the *Kastigar* standard.

Perhaps no weakness of the *McDaniel* decision is more obvious or fatal than its complete abandonment of the *Kastigar* burden. *Kastigar* held that a prosecutor is only required to prove by a preponderance of the evidence that the evidence it proposes to use is derived from a legitimate source wholly independent of the immunized testimony. This implies that the prosecutor has access to the immunized testimony in the first instance. But the *McDaniel* Court ignored that standard altogether by holding that a prosecutor with access

²⁴ *Zicarelli v. New Jersey State Commission of Investigation*, 406 U.S. 472, 478 (1972); *In re Grand Jury Subpoena v. United States*, 40 F.3d 1096, 1103 (10th Cir. 1994).

²⁵ *Stover*, 40 F.3d at 1103.

²⁶ *In re Grand Jury Subpoena*, 75 F.3d 446, 448 (9th Cir. 1995), citing *In re Grand Jury Proceedings*, 555 F.2d 686 (9th Cir. 1977).

to the immunized statement, in fact, cannot overcome the *Kastigar* burden, which the court called “insurmountable.”²⁷ In so doing, the *McDaniel* Court, and the Fifth Appellate District in this case, essentially eliminated the *Kastigar* standard altogether, gutting the entire holding.

Additionally, nothing in the *Kastigar* case even remotely suggests that knowledge or “non-evidentiary” uses were contemplated. The Court specifically limited the prosecutor’s burden to showing that the evidence it “*proposes to use* is derived from a legitimate source wholly independent from the compelled testimony.”²⁸ This indicates that the Court is referencing evidentiary usage and not something as intangible as a prosecutor’s motivation in bringing a case, or something even more ambiguous – if that is even possible – the “immeasurable subjective effect” on the prosecutor.²⁹

In addition to rewriting *Kastigar*’s burden and ignoring its precise language, the *McDaniel* Court also jettisoned its rationale. The *Kastigar* Court assumed the restrictions on use of immunized testimony were the same as those applied to coerced confessions in accordance with the Fifth Amendment. Yet in forging its “non-evidentiary” use prohibition, the *McDaniel* Court concocted a restriction that no court had ever applied to a coerced confession.³⁰ The *Kastigar* Court would never have sanctioned such a result.

²⁷ *McDaniel*, 482 U.S. at 311

²⁸ *Kastigar*, 406 U.S. at 460. (Emphasis added.)

²⁹ See *Rameses v. Kernan*, Case No. CIV S-04-1173 GEB GGH P (E.D. Cal. Nov. 27, 2007).

³⁰ *U.S. v. Serrano*, 870 F.2d 1, 18 (1st Cir. 1989) (“[N]o case involving a coerced confession has prohibited the non-evidentiary use of an involuntary statement.”)

The Supreme Court's focus on protecting against improper use – and not simple possession – of compelled statements is further illustrated by refusals to quash grand jury subpoenas seeking disclosure of *Garrity* statements.³¹

Perhaps because of its obvious flaws, most federal courts correctly reject *McDaniel*'s prohibition on non-evidentiary use, including the First,³² Second,³³ Third,³⁴ Seventh,³⁵ Ninth,³⁶ and Eleventh Circuits.³⁷

CONCLUSION

For the foregoing reasons, amici curiae respectfully request that this Court accept discretionary jurisdiction of the instant case.

³¹ See, e.g. *In re Grand Jury Subpoena*, 75 F.3d at 447.

³² *Serrano*, 870 F.2d at 18.

³³ *U.S. v. Schwimmer*, 924 F.2d 443, 446 (2nd Cir. 1990).

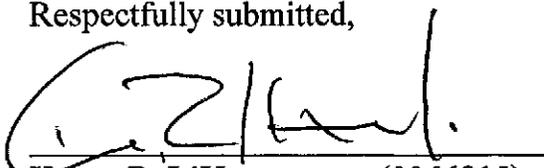
³⁴ *U.S. v. Semkiw*, 712 F.2d 891 (3rd Cir. 1983).

³⁵ *U.S. v. Bolton*, 977 F.2d 1196, 1199 (7th Cir. 1992).

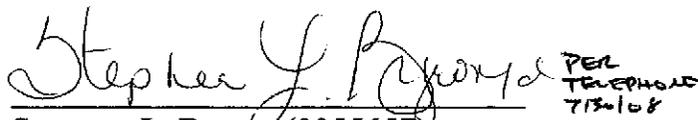
³⁶ *U.S. v. Gwillim*, 929 F.2d 465 (9th Cir. 1991). But see *U.S. v. Mapelli*, 971 F.2d 284, 287 (9th Cir. 1992).

³⁷ *U.S. v. Schmidgall*, 25 F.3d 1523, 1528-29 (11th Cir. 1994). See also, *State v. Parsons*, 4th Dist. No. 07CA2, 2007-Ohio-4812 (Court held that prosecutor's actual use of *Garrity* statement was harmless because it demonstrated an independent source for the information.); *Ohio v. Horton-Alomar*, 10th Dist. No. 04AP-744, 2005-Ohio-1537, at ¶13.

Respectfully submitted,



KEVIN R. L'HOMMEDIU (0066815)
Canton Law Department
218 Cleveland Avenue, S.W.
Canton, Ohio 44701-4218
330.438.4337; Fax: 330.489.3374
kevin.l'hommedieu@cantonohio.gov
*Attorney for Amicus Curiae,
City of Canton*



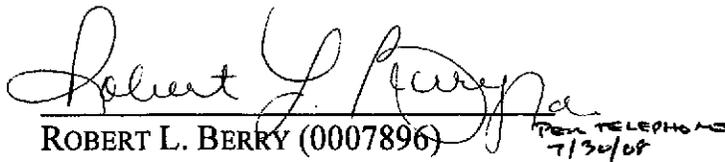
PER TELEPHONE
7/30/08

STEPHEN L. BYRON (0055657)
STEPHEN J. SMITH (0001344)
4230 State Route 306, Suite 240
Willoughby, Ohio 44094
440.951.2303; Fax: 216.621.5341
sbyron@szd.com
*Attorney for Amicus Curiae,
Ohio Municipal League*



PER TELEPHONE
7/30/08

PERICLES G. STERGIOS (0034537)
City of Massillon Law Director
Massillon Law Department
Two James Duncan Plaza
Massillon, Ohio 44646
330.830.1718; Fax: 330.833.7144
*Attorney for Amicus Curiae,
City of Massillon*



PER TELEPHONE
7/30/08

ROBERT L. BERRY (0007896)
Robert L. Berry, Co. LPA
503 South High Street, Suite 200
Columbus, Ohio 43215-5660
614.221.1215; Fax: 614.221.4161
*Attorney for Amicus Curiae,
Buckeye State Sheriff's Association*

Certificate of Service

I certify that I sent a copy of the foregoing Memorandum in Support of Jurisdiction by regular U.S. Mail this 30th day of July, 2008 to:

JOHN D. FERRERO
KATHLEEN O. TATARSKY
Stark County Prosecutor's Office
110 Central Plaza South, Suite 510
Canton, Ohio 44702
*Attorneys for Appellant,
State of Ohio*

BRADLEY R. IAMS
220 Market Avenue South, Suite 400
Canton, Ohio 44702
*Attorney for Appellee,
Anthony D. Jackson*

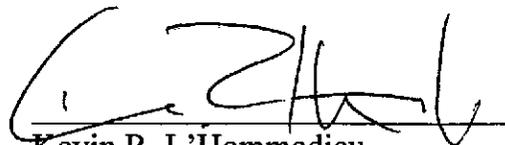
PERICLES G. STERGIOS
City of Massillon Law Director
Municipal Government Center
Upper Level
One James Duncan Plaza, S.E.
Massillon, Ohio 44646
*Attorney for Amicus Curiae,
City of Massillon*

ROBERT L. BERRY
Robert L. Berry, Co. LPA
503 South High Street, Suite 200
Columbus, Ohio 43215-5660
*Attorney for Amicus Curiae,
Buckeye State Sheriff's Association*

STEPHEN L. BYRON
Schottenstein, Zox and Dunn, Co., LPA
4230 State Route 306, Suite 240
Willoughby, Ohio 44094
sbyron@szd.com
*Attorney for Amicus Curiae,
Ohio Municipal League*

JUDITH ANTON LAPP
230 East Ninth Street, Suite 400
Cincinnati, Ohio 45202
*Attorney for Amicus Curiae,
Ohio Prosecuting Attorneys' Association*

STEPHEN J. SMITH
Schottenstein, Zox and Dunn, Co., LPA
250 West Street
Columbus, Ohio 43215


Kevin R. L'Hommedieu