IN THE SUPREME COURT OF OHIO

STATE OF OHIO DIVISION OF WILDLIFE	)	SUPREME COURT CASE NO.: 2008-0536
Plaintiff/Appellee	)	On Appeal from the Erie County, Ohio Court of Appeals, Sixth Appellate District
v.	)	CASE NO. E-07-049 E-07-050 E-07-051
WILLIAM R. COBURN TODD R. PARKISON MARVIN D. COBURN	)	
Defendants/Appellants	)	

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I. INTRODUCTION

This case requires this Honorable Court to interpret O.R.C. §§1531.13, 1531.14, 1533.14 and 1533.10 *in pari materia* to determine whether an Ohio wildlife officer, who is aware that one of the hunters who was observed hunting, owns the land on which the hunters are hunting, may without good cause enter upon the landowner's land to check for hunting licenses and bag limits. Further, this Honorable Court will determine whether the Fourth District Court of Appeals' ("Court of Appeals") decision which allows wildlife officers to enter onto private land without good cause, is contrary to the Fourth Amendment, as well as Article 1, §14 of the Ohio Constitution and what constitutes "good cause".

The Court of Appeals (and the Erie County Prosecuting Attorney) interpreted only O.R.C. §1531.14 in deciding that simply observing individuals hunting gives a wildlife officer, in pursuit of his duties, the authority to enter privately owned land on which the owner is hunting to ensure that the observed hunters are lawfully hunting. The decision of the Court of Appeals is clearly contrary to the plain language of O.R.C. §1533.10 which provides:

> The owner of lands in the state and the owner's children of any age and grandchildren under the age of eighteen years may hunt on the lands without a hunting license. The tenant and children of the tenant, residing on lands in the state, may hunt on them without a hunting licenses.

Further, O.R.C. § 1531.13 provides: "Any regularly employed salaried wildlife officer may enter any private lands or waters if the wildlife officer has ***good cause*** to believe and does believe that a law is being violated." Finally, the Court of Appeals erred when it failed to construe all the relevant statutes *in pari materia* as required by Ohio law.

The implications of the Court of Appeals' error is much farther reaching than simply erring on the facts of this case and siding with the Ohio Department of Natural Resources,

Division of Wildlife ("ODNR"). The decision of the Court of Appeals is directly in conflict with the Fourth Amendment to the U.S. Constitution, as well as Article 1; §14 of the Ohio Constitution and the well established case law that supports a person's expectation of privacy under both the federal and state constitutions. To allow such a decision to stand deprives the citizens of Ohio of their constitutional right to expect that they will not be harassed on their own private land without a demonstration of good cause.

In this case, the owner of the land, his father and one of their friends, all three of whom were hunting on the land owned by one of them, were confronted by an Ohio Wildlife Officer, and eventually were charged with hunting over a baited field. The principal issue involved is that the officer was without cause to enter upon the land owned by one of the hunters. The language found throughout Title XV of the Ohio Revised Code providing a wildlife officer with the authority to investigate and enforce wildlife rules cannot, nor was it intended to, supplant constitutional protections.

II. STATEMENT OF THE CASE AND FACTS

On September 1, 2006, Appellant/Defendant, William Coburn ("Coburn") invited his father and their friend to hunt mourning doves on Coburn's private land. (Defendants' Motion to Dismiss filed December 1, 2006 in the Erie County Court of Common Pleas Motion to Dismiss"[1], p. 2) Coburn's guests, Co-Appellants/Co-Defendants herein, were his father Marvin Coburn, ("Marvin") and Catawba Police Officer, Todd Parkison (herein after "Officer Parkison"), (Motion to Dismiss, p. 2).

For approximately three years, one of Coburn's neighbors was Erie County Wildlife Officer Jared R. Abele, #1282 ("Officer Abele"). Officer Abele resided at a rental land adjacent

[1] Motion to Dismiss at Supplement, p. 1

to Coburn's private land. (Motion to Dismiss, pg. 1.) In his Law Enforcement Statements regarding this incident (collectively referred to as "Statements")[2], Officer Abele reported that he observed and identified Coburn and his guests hunting on Coburn's private land. Officer Abele's landlord is Mr. John Fitz. Mr. Fitz is the uncle to Mary Fitz Coburn, who at that time of this incident was the estranged spouse of Coburn. (Motion to Dismiss, pg. 1).

Coburn and Mary Fitz Coburn have recently concluded a fairly contentious divorce in the Erie County Court of Common Pleas, Case No. 2006 DR 031.[3] (Motion to Dismiss, pg. 1) Mary Fitz Coburn's mother, Kathleen Fitz is a neighbor to both Coburn and Officer Abele. Officer Abele performs landscaping services for Kathleen Fitz, trimming her bushes, cutting her grass and planting. (*Id.* at pgs. 1-2.) Officer Abele is a hunter and has hunted deer from a tree stand built by Coburn on Kathleen Fitz's land. (*Id.*) Coburn had been advised, prior to the incident of September 1, 2006, that he was no longer permitted to hunt on the land owned by his mother-in-law Kathleen Fitz. He had also been advised that only Officer Abele was permitted to hunt on the land owned by Kathleen Fitz. (*Id.*) Officer Abele clearly knew and understood that Coburn owned the land upon which Coburn and his friends were hunting which was adjacent to land owned by Kathleen Fitz. (Motion to Dismiss, p. 1).

On several occasions, Officer Abele witnessed Coburn hunt on land he owned, either alone and with invited guests, including Coburn's father. During the three years prior to September 1, 2006, Officer Abele never entered the land owned by Coburn to check for bag limits, demanding to see hunters' licenses or to otherwise investigate any alleged violation of the law. (*Id.* at pg. 2.)

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[2]The Statements for each Defendant/Appellant (Supplement, p. 248) attached to Appellee's Court of Appeals Brief (Supplement, p. 133).

[3] The divorce was finalized on January 30, 2008.

According to Officer Abele's Statements, at 7:35 a.m. on September 1, 2006, he observed three hunters hunting mourning doves on Coburn's land. (Statements) At 7:38 a.m., he witnessed three hunters shooting at mourning doves on Coburn's land. (Statements) Officer Abele identified one of the hunters as Coburn, the land owner. (Statements) It was clear to Officer Abele that Coburn and his guests were hunting on land owned by Coburn and that the two remaining hunters, Marvin Coburn and Officer Parkison were Coburn's invited guests. Officer Abele's Statements report that within minutes of his observations, Coburn left the hunting area and returned to his residence which is located on the same land where the dove hunting was ongoing. (Statements). One hour later, at 8:25 a.m., Officer Abele observed Coburn return to the hunting area and rejoined his father and friend. (Statements). As soon as Coburn returned, Officer Abele entered Coburn's land and made "contact" with Coburn and his invited guests. (Statements).

Officer Abele's Statements *do not articulate one fact, suspicion, or even a mere hunch* that prior to his entry onto Coburn's private land, *he had reason to believe*, or that he in fact did believe that any law was being violated. (Statements) Consequently, Officer Abele acted contrary to law and in violation of the lawful responsibility and authority vested in him as a Wildlife Officer. Officer Abele's entrance onto the private lands of Coburn was without good cause as he failed to observe, let alone, articulate a belief that a law was being violated which would warrant his entrance upon Coburn's private land.

According to Officer Abele's Statements, it was only after he entered the land owned by Coburn that he first observed what he alleged to be a violation of O.R.C. §1531.02 and O.A.C. Ann. 1501:31-7-02 (2008) prohibiting the hunting of migratory game birds by the aid of baiting.

(Statements). Although the hunting violation was alleged to have been observed on September 1, 2006, the State of Ohio did not serve citations until October 17, 2006, approximately six weeks following the incident. (Motion to Dismiss, p. 3).

Appellant Officer Parkison is a law enforcement officer with the Catawba Police Department. *Id.* Subsequent to September 1, 2006, but prior to October 17, 2006 when the citations were served, on two occasions Officer Parkison was offered the opportunity to "save himself" and to help the ODNR "**get Coburn**". *Id.* Officer Parkison told ODNR official(s) that they were without truthful evidence to "get Coburn." *Id.* Subsequently, the citations were issued to the three Defendants. (*Id.*)

On July 20, 2007, in the Erie County Court, Milan, Ohio, the trial court correctly dismissed this case when it granted Defendants'/Appellants' Motion to Dismiss stating, "This court must apply the plain meaning of 'good cause' as contained in O.R.C. §1531.13 to mean that the legislature intended that wildlife officers do not have the unfettered right of intrusion upon private property unless 'good cause' exists." (July 20, 2007 Judgment Entry, provided at Appendix, p. 1. The trial court further found that there was no factual evidence of "good cause" for Officer Abele's entrance upon Coburn's private property. (*Id.*) The State of Ohio filed a Notice of Appeal with the Fourth District Court of Appeals on August 15, 2007. (August 15, 2007 Notice of Appeal provided at Supplement, p. 95).

On February 1, 2008, the Court of Appeals reversed the judgment of the trial court and remanded the case to the trial court for further proceedings stating that the trial court erred when it ignored the authority granted to the wildlife officers pursuant to O.R.C. §1531.14.[4] (The February 1, 2008 Decision of the Court of Appeals is provided at Appendix, p. 3). Coburn filed

[4] The trial court did not actually ignore R.C. 1531.14, because that particular statute was never brought up in the trial court and was first raised by the State of Ohio on appeal.

his Notice of Appeal and Memorandum in Support of Jurisdiction with this Honorable Court on March 17, 2008 and this Honorable Court granted *certiorari* on or about June 18, 2008. (The Notice of Appeal is provided at Appendix, p. 8; the Memorandum in Support of Jurisdiction is provided at Appendix, p. 11 and the Notice of Certification is provided at Appendix, p. 31).

III. ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

Proposition of Law No. 1: A State of Ohio Wildlife Officer is without legal authority to enter the land of the owner of private land to inspect whether the land owner is hunting without a license.

O.R.C. § 1533.10 is clear that "...an owner of land may hunt on his land without a license." Consequently, an individual hunting on his own land is legally entitled to do so without interference by anyone, including a State of Ohio Wildlife Officer.

O.R.C. § 1531.14 provides:

> Any person regularly employed by the division of wildlife for the purpose of conducting research and investigation of game or fish or their habitat conditions or engaged in restocking game or fish or in any type of work involved in or incident to game or fish restoration projects or in the enforcement of laws or division rules relating to game or fish, or in the enforcement of section 1531.29 or 3767.32 of the Revised Code, other laws prohibiting the dumping of refuse in or along streams, or watercraft laws, *while in the normal, **lawful**, and peaceful pursuit of such investigation, work, or enforcement may enter upon, cross over, be upon, and remain upon privately owned lands for such purposes* and shall not be subject to arrest for trespass while so engaged or for such cause thereafter. (Emphasis added.)

A State of Ohio Wildlife Officer who observes the owner of land hunting on the owner's land, violates the law (O.R.C. § 1531.14) when he enters upon the lands of the owner/hunter without good cause as required by O.R.C. § 1531.33. A State of Ohio Wildlife Officer is not

excused from violating O.R.C. § 1531.33 and entering the land upon which the owner is hunting simply because the owner has invited guests hunting with the owner's permission.

<u>Proposition of Law No. 2:</u> The mere observance by a State of Ohio Wildlife Officer of the owner of private land and two guests, one of whom is the land owner's father, to be hunting, in the absence of other articulable facts, does not create good cause to enter upon the private land of the owner to check for hunting licenses and bag limits under color of statutory authority

The law created by the Court of Appeals abrogates and nullifies the right of an owner to hunt on his land without governmental intrusion and interference. The Court of Appeals wrongfully decided that a wildlife officer, who simply observes hunters, hunting on land he recognizes as being owned by one of the hunters, the officer has good cause to enter upon the private land to confront the hunters. This decision affects every hunter hunting on his own land. It affects every rural land owner in the State of Ohio. It provides wildlife officers with the unfettered ability to unlawfully enter upon private land without good cause as required by O.R.C. §1531.13. This is directly contradictory to the well established case law regarding an investigative stop. *Terry v. Ohio* (1968) 392 U.S. 1.

It has been almost forty years since the Supreme Court of the United States clearly articulated now the well-settled legal principle that in order for an officer to *lawfully* perform an investigative stop, he must have ample articulable facts that justify such a stop. *Terry v. Ohio* (1968) 392 U.S. 1. To determine if just cause exists to warrant such a stop, one must look at the totality of the circumstances. *Id.* This is a clearly defined rule which, when applied here, warrant a reversal of the decision of the Court of Appeals.

The trial court did just that, looked at the totality of the circumstances and found there was no factual evidence to support the claim that good cause existed to enter land owned by Coburn and therefore properly dismissed the case.

The Court of Appeals failed to consider the totality of the circumstances when it reversed the trial court. Instead, the Court of Appeals stated that merely because the wildlife officer observed the men hunting, he had the authority to enter the private land.

> In this case, Officer Abele saw [Appellants] hunting and then he entered the property to check their licensing and bags. Once he saw people hunting, O.R.C. §1531.14 gave him the authority to enter the land in pursuit of his duties, one of which is to ensure that people are hunting lawfully. . . . *What is important for purposes of this case is that Officer Abele first saw Appellees hunting and then he entered the property.* Accordingly, we find the trial court erred in ignoring the authority granted to Officer Abel (sic) pursuant to O.R.C. §1531.14. [Emphasis Added].[5]

(Court of Appeals Decision, p. 4).

In so deciding, the Court of Appeals disregarded O.R.C. § 1533.10 which specifically permits an owner of private land to hunt without a license. Therefore, the Court of Appeals erred in overturning the decision of the trial court because it failed to consider the totality of the circumstances in rendering its decision. The Court of Appeals considered O.R.C. §1531.14 in isolation and not in combination with other relevant statutes. In particular, the Court of Appeals failed to even recognize O.R.C. §1531.33 and O.R.C. § 1533.10 let alone read all statutes involved *in pari materia* as required by Ohio law. Specifically, the Court of Appeals ignored the fact that the wildlife officer was aware that one of the hunters owned the land and that Officer Abele knew about the very contentious divorce proceedings in which Coburn and his wife were engaged.[6] Further, the Court of Appeals ignored the fact that in the three years prior to

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[5] If the Court of Appeals decision is upheld, the mere act of hunting in Ohio will be good cause to justify a Stop, Search and Frisk.

[6] While the divorce proceeding did not influence the outcome of this case, the fact that Officer Abele had aligned himself with Coburn's ex-spouse and former mother-in-law should have been considered as a motivating factor as to why a Wildlife Officer would ignore his obligation to comply with applicable law which allowed Coburn to hunt on his property without a license.

September 1, 2006, Officer Abele never entered Coburn's land under the color of his position as a wildlife officer. Finally, Officer Abele could not set forth one articulable fact from which one could reasonably surmise that Coburn or his guests were violating any law or ODNR regulation pertaining to hunting. In effect, the Court of Appeals determined that the mere observation of a man hunting on his own land established good cause to enter upon that private land, without consideration of the rights afforded to citizens under the U.S. Constitution and the Ohio Constitution.

The Fourth Amendment of the United States Constitution as well as Article 1, §14 of the Ohio Constitution protect persons from unreasonable search and seizure, mandating that probable cause is necessary before a warrant will issue. The rights and protections provided by the U.S. Constitution and the Ohio Constitution must be considered when applying the relevant sections of the Ohio Revised Code. The statutes relevant to this case are O.R.C. §§1531.13, 1531.14, 1533.14, 1533.10 and 1.47. The relevant statues must be read, interpreted and applied *in pari materia.*

O.R.C. §1533.10 states in relevant part:

> ***. . . [T]hat an owner of land may hunt on his land without a license.***

O.R.C. §1531.13 states in relevant part:

> They [wildlife officers] shall enforce all laws against hunting ***without permission of the owner*** or authorized agent of the land on which the hunting is done. They may arrest on view and without issuance of a warrant. They may inspect any container or package at any time except when within a building and the owner or person in charge of the building objects. The inspection shall be only for ***bag limits*** of wild animals taken in open season or for wild animals taken during the closed season, or for any kind or species of those wild animals...

* * *

> Any regularly employed salaried wildlife officer may enter any private lands or waters ***if the wildlife officer has good cause to believe and does believe that a law is being violated.*** (Emphasis added.)

O.R.C. §1531.14 states in relevant part:

> Any person regularly employed by the division of wildlife for the purpose of conducting research and investigation of game or fish or their habitat conditions or engaged in restocking game or fish or in any type of work involved in or incident to game or fish restoration projects or in the enforcement of laws or division rules relating to game or fish, or in the enforcement of section 1531.29 or 3767.32 of the Revised Code, other laws prohibiting the dumping of refuse in or along streams, or watercraft laws, *while in the normal,* ***lawful,*** *and peaceful pursuit of such investigation, work, or enforcement may enter upon, cross over, be upon, and remain upon privately owned lands for such purposes* and shall not be subject to arrest for trespass while so engaged or for such cause thereafter. (Emphasis added.)

O.R.C. §1533.14 states, in relevant part:

> Every person, while hunting or trapping on the lands of ***another***, shall carry the person's hunting license on the person's own self and exhibit it to any wildlife officer, constable, sheriff, deputy sheriff, or police officer, or ***to the owner or person in lawful control*** of the land upon which the person is hunting or trapping, or to any other person. Failure to so carry or exhibit such a license constitutes an offense under this section. This section and Section 1531 of the Revised Code do not allow any person to hunt or trap on any land without the written consent of the owner thereof. (Emphasis added.)

R.C. §1.47 states the presumptions in enactment of statutes:

> In enacting a statute, it is presumed that:

(A) Compliance with the constitutions of the state and of the United States is intended.

Because these statutes relate to the 'division of wildlife' and 'hunting and fishing', the statutes need to be read together, construed together, and applied to the facts of this case *in toto*. *United Telephone Company of Ohio v. Limbach,* (1994) 71 Ohio St.3d. 369, 372. (Internal citations omitted.)

The State of Ohio's argument incorrectly applied the facts of this case to only O.R.C. § 1531.14 without considering the remaining statutes, especially O.R.C. § 1533.10, that relate to the same subject matter. In accepting the Erie County Prosecutor's rationale, the Court of Appeals ignored this Honorable Court's clear holdings dealing with basic statutory interpretation as set forth in *United Telephone Company of Ohio v. Limbach,* (1994) 71 Ohio St.3d. 369.

In determining whether the Ohio legislature provided a wildlife officer the unfettered authority to enter upon private property to check for hunting licenses (or even bag limits), this Honorable Court should look to not only §1531.14, but also to §1531.13, §1533.14 and §1533.10. Interpreted together, these statutes say absolutely nothing that could be constitutionally interpreted to provide wildlife officers with the authority to enter onto private land to check the hunting license of the owner of the land and his invited guests *with the prior knowledge that the hunter owns the land* –simply because the wildlife officer observes the owner and two guests hunting. Merely observing a person hunting on his own land does not create probable cause or even the reasonable suspicion that the individual is hunting in violation of any hunting laws or regulations. In this case, the wildlife officer, during a one (1) hour period, observed no violations of law, by either the land owner or his guests.

A wildlife officer's authority to inspect bag limits is derived from O.R.C. §1531.13, which makes it abundantly clear that a wildlife officer must have ***good cause*** to enter upon private land. Nevertheless, the Court of Appeals, without considering whether good cause existed, held that the ***trial court acted contrary to O.R.C. §1531.14.*** The Court of Appeals disregarded the constitutional and statutory requirement that good cause must first be determined to support an Ohio wildlife officer's entry onto private land to check the hunting license of the owner of the land and his invited guests. A plain reading of O.R.C. §1531.14 demonstrates that this statute should be interpreted to prevent *unlawful* hunting on the land of *another*. Coburn and his invited guests were hunting on Coburn's land. Further, Officer Abele admitted in his Statements that prior to unlawfully entering upon Coburn's land; he identified Coburn as one of the hunters and acknowledged that he knew it was Coburn's land.

Further support is given to this interpretation when O.R.C. §1531.14 and O.R.C. §1533.14 are read in combination with O.R.C. §1531.13 which defines the role and authority of a wildlife officer: "They (wildlife officers) *shall enforce all laws against hunting without permission of the owner* or authorized agent of the land on which the hunting is done."

O.R.C. §1531.14 permits a wildlife officer to enter upon privately owned lands while in the "normal, *lawful*, and peaceful pursuit of such investigation, work..." The State of Ohio incorrectly suggests that this code section standing alone justifies Officer Abele's entrance onto Coburn's private land. However, this code section pre-supposes that Officer Abele had a *lawful* purpose for entering private land. He did not! Officer Abele overstepped his authority, and violated the very law he swore to uphold when he entered onto the land of Coburn—*knowing* that it was Coburn and his invited guests hunting on Coburn's private land. O.R.C. §1533.14

does not provide Officer Abele the authority to enter upon private land while possessing knowledge that the hunter owns the land.

When this O.R.C. §1533.14 is read together with O.R.C. §1531.13 (which defines the role and authority of a wildlife officer) it is clear that to *lawfully* enter upon Coburn's land, Officer Abele was required to have "good cause." Probable cause has been defined as "a fair probability that contraband or evidence of a crime will be committed." *Illinois v. Gates*, 462 U.S. at 213. If officer Abele did not have "good cause" to enter the land, he could not lawfully enter upon Coburn's private land. Officer Abele's Statements reflect that his purpose for entering Coburn's private land was to check for licenses and bag limits. However, he articulated no reason to suspect that the three men were hunting without licenses or that there was a violation of any hunting law. To accept the State of Ohio's argument, as confirmed by the Court of Appeals, that §1531.14 allows a wildlife officer free access to another's private land is the same as removing the word "lawful" from the statute.

A plain reading of the statutes demonstrates that the legislature intended that the statutes should be interpreted to confer wildlife officers with the *lawful* ability to enter private land in pursuit of his duties. O.R.C. §1531.14. The legislature even stated that good cause was required to have that lawful ability. One cannot constitutionally, lawfully enter the private land of the hunter, while hunting on his own land to check his license when O.R.C §1533.10 explicitly states he doesn't need one.

Officer Abele did not articulate one fact that could be interpreted to lead one to believe a law was being violated. For example, Officer Abele did not state he heard excessive shots being fired (to make him suspicious as to the number of doves being killed); he did not observe "over bagging"; he did not state that Coburn and his guests had a history of violating hunting laws; he

did not indicate the existence of any circumstances that suggested that a crime was being committed or was going to be committed; and, finally, he did not provide details as to any apparently innocent acts which, considered together, gave rise to the suspicion that illegal activity had, or was about to, occur.[7] To *lawfully* perform an investigative stop, Officer Abele must have had ample articulable facts to justify such a stop.

> In *Gates*, the court instructed that the relevant inquiry in determining whether probable cause exists is not whether particular conduct is 'innocent' or 'guilty', but the degree of suspicion that attaches to particular types of non-criminal acts.

State of Ohio v. Althiser, 97-LW-5049 (4th Dist. Ct. App.) *citing Illinois v. Gates* (1983), 462 US 213 at 243-244. *See also, Terry v. Ohio* (1968) 392 U.S. 1.

Looking at the totality of the circumstances, Officer Abele did not have the authority under the above cited statutes or any other authority to enter onto Coburn's land.

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[7] Compare the facts herein to *State v. Hopkins*, 95 LW 3825, 4th Dist. Ct. of Appeals, where, over a period of several hours, State Wildlife Officials observed the suspects engaging in seemingly innocent behavior which, when the officers reviewed as a whole, ultimately concluded were indicative of illegal poaching of freshwater mussels from the Muskingham River. The officers came to these conclusions after they conducted a stakeout and full investigation into the suspects' activities. The 4th Dist. Court of Appeals held that the officers did not act on mere suspicion and that they had probable cause to stop and arrest the suspects.

Likewise, in *State v. Althiser*, 97 LW 5049 (4th Dist. Ct. of Appeals) officers of the Ohio Department of Natural Resources began an investigation of the suspects for possible mussel poaching. The officers observed the suspects with a boat not showing its registration numbers, which was docked at the courtesy dock of a hotel. The officers further observed sand in the boat, empty gunnysacks and a fishing rod and reel in the boat. After the suspects were observed putting the boat on a trailer, they towed the boat to a local storage facility. The officers followed the suspects and witnessed the suspects unloading the truck and saw bulging gunnysacks lines up against the wall of the storage facility. When the officers entered the storage unit, the suspects lied about the contents of the bags which the officers determined contained live mussels. The suspects were subsequently arrested and charged. The court found probable cause existed for the stop and arrest.

In each of these cases, the searches and arrests were lawful because the officers had good reason to believe that criminal activity was taking place.

The State of Ohio incorrectly convinced the Court of Appeals that O.R.C. §1531.13 "specifically provides that a wildlife officer may, *at any time or place,* except within a building, check for bag limits of wild animals." (State of Ohio/Appellant's Brief at 2). O.R.C. §1531.13 does not state "**or place.**" The State of Ohio added this language in its interpretation of O.R.C. §1531.13. The language of the statute is clear. To enter upon private lands, not only must the wildlife officer have good cause to believe a law is being violated—but must also *believe* that a law is being violated. The clear language of O.R.C. §1531.13 cannot simply be ignored -- to do so is to simply ignore the Fourth Amendment and Article 1, §14, which the legislature did not do when it drafted the statute. O.R.C. §1531.13 is not in conflict with the constitutional protections as the Fourth Amendment. *State v. Hopkins,* 1995 WL 34786 (Ohio App. 4 Dist.) at *4.

Whether "good cause" exists is a factual determination. *State v. Freed,* 101 Ohio App.3d 709, 711.[8] The issue is one of credibility of witnesses to be determined by the trier of fact. *Id.* Findings of fact by the trial court shall not be set aside by a reviewing court unless it is clear that the trial court has manifestly disregarded the weight of evidence. *Id, citing, Bowlin v. Black and White Cab Co.* (1966), 7 Ohio App. 2d 133. In the case *sub judice* the trial court held, "The Court having no facts before it to find such "good cause" to enter upon private land, Defendants' Motion to Dismiss is [Granted]." Therefore, the trial court, in its role as trier of fact determined that Officer Abele did not have good cause to enter upon the private land of Coburn.

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[8] *Freed* is quite distinct from the case at hand in that the defendant in *Freed* was unknown to the officers and the defendant lied to the officers regarding ownership of the property in question. Officer Abele on the other hand, admits he recognized Coburn and his invited guests were hunting on Coburn's private property. Being Coburn's neighbor, this is knowledge that Officer Abele was already in possession of—not something he needed to inquire about.

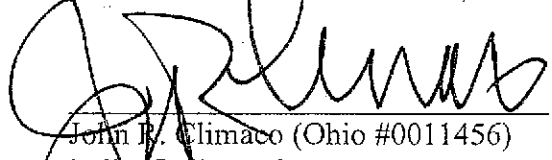
(Judgment Entry dated July 20, 2007, attached at Appendix, p. 1) The trial court correctly dismissed the case.

IV. CONCLUSION

When O.R.C. §1531.14, §1531.13, §1533.14 and §1533.10 are read and interpreted *in pari materia* together it is clear that the Ohio legislature did not intend for wildlife officers to have lawful authority to enter private land to investigate hunters without good cause. The mere sight of hunters, one of whom is known by the wildlife officer to own the private land upon which the hunters were hunting, in the absence of other articulable facts, did not create good cause to enter upon private land to check for hunting licenses and bag limits. A wildlife officer is not conferred with any greater power than any other law enforcement official. This Honorable Court should reverse the decision of the Court of Appeals and affirm the decision of the trial court.

Respectfully submitted,

CLIMACO, LEFKOWITZ, PECA,
WILCOX & GAROFOLI CO., L.P.A.



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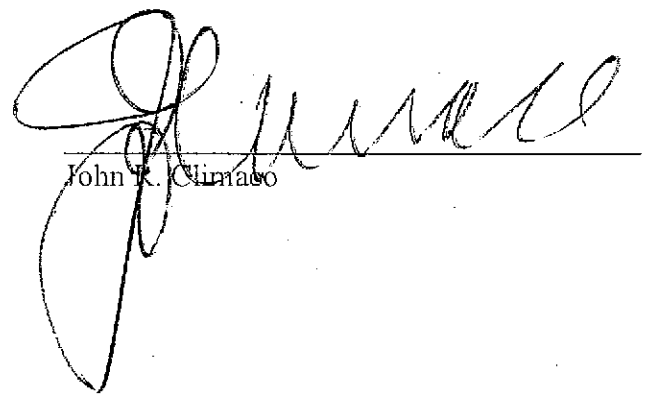
CERTIFICATE OF SERVICE

This is to certify that a copy of the Merit Brief of Defendants/ Appellants William R. Coburn, Todd R. Parkison, and Marvin Coburn was served upon Kevin J. Baxter, Prosecuting Attorney, Mary Ann Barylski and Trevor Hayberger, Assistant Prosecuting Attorneys, 247 Columbus Ave., Suite 319, Sandusky, Ohio 44870 this 1st day of August, 2008, by overnight delivery.



John R. Climaco

APPENDIX

FILED

IN THE ERIE COUNTY COURT 2007 JUL 20 AM 10 18

MILAN, OHIO ERIE COUNTY COURT

State of Ohio
Division of Wildlife

Case No. CRB 0600444

vs

JUDGMENT ENTRY

Coburn, William R.

* *

This matter came on before the Court pursuant to Defendant's Motion to Dismiss.

It is undisputed that the wildlife officer in question entered upon private property to check hunting licenses and bag limits. No factual evidence is before this Court indicating any type of probable cause or even reasonable suspicion that the laws of the State of Ohio concerning hunting licenses and bag limits were being violated. Once upon the subject property, the officer observed seed spread about the ground, which lead to the " baiting" charge herein. Defendant raises a series of issues in his Motion to Dismiss, and the Court will first address the entry upon private property.

Ohio Revised Code 1531.13 authorizes a wildlife officer to enter upon private lands or waters within the State if "the wildlife officer has good cause to believe and does believe that a law is being violated". There is absolutely no factual evidence before this Court to suggest that the checking of licenses and/or bag limits was anything but routine. This Court must apply the plain meaning of "good cause" as contained in Ohio Revised Code Section 1531.13 to mean that the legislature intended that wildlife officers not have the unfettered right of intrusion upon private

property unless "good cause" exists.

The Court having no facts before it to find such "good cause" to enter upon private property, Defendant's Motion to Dismiss is hereby GRANTED.

IT IS SO ORDERED.

Judge Paul G. Lux

PGL/cw
cc: Trevor Hayberger
John F.Corrigan
William R. Coburn
Jared Abele

[Cite as *State v. Coburn*, 2008-Ohio-371.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
ERIE COUNTY

State of Ohio

Appellant

v.

William Coburn
Todd Parkinson
Marvin Coburn

Appellees

Court of Appeals Nos. E-07-049
E-07-050
E-07-051

Trial Court Nos. CRB 0600444
CRB 0600445
CRB 0600446

DECISION AND JUDGMENT ENTRY

Decided: February 1, 2008

* * * * *

Kevin J. Baxter, Erie County Prosecuting Attorney, Mary Ann Barylski and Trevor Hayberger, Assistant Prosecuting Attorneys, for appellant.

John R. Climaco and Terri A. Lightner, for appellees.

* * * * *

SINGER, J.

{¶ 1} In this consolidated appeal, appellant, the state of Ohio, appeals from a decision of the Erie County Court, Milan, Ohio, dismissing the charges of unlawful

taking of migratory game birds against appellees, William Coburn, Todd Parkinson and Marvin Coburn. For the reasons that follow, we reverse.

{¶ 2} On October 23, 2006, Erie County Wildlife Officer, Jared R. Abele, filed three separate, identical complaints against each of the appellees. According to the complaints, Abele witnessed appellees hunting mourning doves on William Coburn's property on September 1, 2006. Abele approached appellees to check on the validity of their hunting licenses and their bag limit compliance. While doing so, Abele noticed wheat seed in piles and scattered along the ground where appellees were hunting. As a result, Able charged each of the appellees with violating R.C. 1531.02 and O.A.C. 1501:31-7-02(A)(9) which states:

{¶ 3} "(A) It shall be unlawful to hunt or take migratory game birds:

{¶ 4} "* * *

{¶ 5} "(9) By the aid of baiting or on or over any baited area."

{¶ 6} O.A.C. 1501:31-1-02(VV) defines baiting as:

{¶ 7} "* * * the placing, exposing, depositing, distributing, or scattering of shelled, shucked, or unshelled corn, wheat or other grain, salt or other feed so as to constitute for such wild turkeys, mourning doves or migratory birds, a lure, attraction or enticement to, on or over any area where hunters are attempting to take them."

{¶ 8} On December 4, 2006, appellees filed motions to dismiss their charges. In their motions to dismiss, appellees argued that Officer Abele unlawfully entered William Coburn's private property without good cause to believe that a law was being violated.

On July 20, 2007, the trial court granted appellees' motions. The state of Ohio now appeals setting forth the following assignment of error:

{¶ 9} "I. Whether the trial court erred in granting the dismissal of the case when the court held, contrary to Ohio Rev. Code Ann. 1531.14, that a wildlife officer must demonstrate good cause in order to enter private lands to check for hunting licenses and bag limits."

{¶ 10} Our standard of review is whether the trial court erred as a matter of law in determining that the state's complaint did not allege facts constituting a crime under Ohio law. *N. Olmsted v. Bullington* (2000), 139 Ohio App.3d 565.

{¶ 11} The state contends that Abele lawfully entered William Coburn's land. In support, the state cites R.C. 1531.14 which states:

{¶ 12} "Any person regularly employed by the division of wildlife for the purpose of conducting research and investigation of game or fish or their habitat conditions or engaged in restocking game or fish or in any type of work involved in or incident to game or fish restoration projects or in the enforcement of laws or division rules relating to game or fish, or in the enforcement of section 1531.29 or 3767.32 of the Revised Code, other laws prohibiting the dumping of refuse in or along streams, or watercraft laws, while in the normal, lawful, and peaceful pursuit of such investigation, work, or enforcement may enter upon, cross over, be upon, and remain upon privately owned lands for such purposes and shall not be subject to arrest for trespass while so engaged or for such cause thereafter."

{¶ 13} In granting appellees' motions to dismiss, the trial court relied on R.C. 1531.13 which states in pertinent part: "Any regularly employed salaried wildlife officer may enter any private lands or waters if the wildlife officer has good cause to believe and does believe that a law is being violated." The court stated:

{¶ 14} "There is absolutely no factual evidence before this court to suggest that the checking of licenses and/or bag limits was anything but routine. This court must apply the plain meaning of 'good cause' as contained in Ohio Revised Code Section 1531.13 to mean that the legislature intended that wildlife officers not have the unfettered right of intrusion upon private property unless 'good cause' exists."

{¶ 15} In this case, Abele saw appellees hunting and then he entered the property to check their licenses and bags. Once he saw people hunting, R.C. 1531.14 gave him the authority to enter the land in pursuit of his duties, one of which is to ensure that people are hunting lawfully. R.C. 1531.13. We disagree with the trial court that R.C. 1531.14 gives wildlife officers "unfettered" access to private property. Nothing in our decision today should be read to say that wildlife officers can enter private property at any time for any reason. What is important for purposes of this case is that Abele first saw appellees hunting and then he entered the property. Accordingly, we find that the trial court erred in ignoring the authority granted to Able pursuant to R.C. 1531.14. The state's sole assignment of error is found well-taken.

{¶ 16} On consideration whereof, the judgment of the Erie County Court, Milan, Ohio, is reversed and this matter is remanded to the trial court for further proceedings.

Appellees are ordered to pay the costs of this appeal pursuant to App.R. 24. Judgment for the clerk's expense incurred in preparation of the record, fees allowed by law, and the fee for filing the appeal is awarded to Erie County.

JUDGMENT REVERSED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J. _____ JUDGE

Mark L. Pietrykowski, P.J. _____ JUDGE

Arlene Singer, J. _____ JUDGE
CONCUR.

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.

IN THE SUPREME COURT OF OHIO

STATE OF OHIO DIVISION OF WILDLIFE Plaintiff, Appellee v. WILLIAM R. COBURN TODD R. PARKISON MARVIN D. COBURN Defendants/Appellants	)))))))))))))	On Appeal from the Erie County, Ohio Court of Appeals, Sixth Appellate District CASE NO. E-07-049 E-07-050 E-07-051 08-0536

NOTICE OF APPEAL OF DEFENDANTS/APPELLANTS WILLIAM R. COBURN, TODD R. PARKINSON, MARVIN COBURN

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FILED
MAR 17 2008
CLERK OF COURT
SUPREME COURT OF OHIO

PS

NOTICE OF APPEAL OF DEFENDANTS/APPELLANTS WILLIAM R. COBURN, TODD R. PARKINSON, MARVIN COBURN

Defendants/Appellants William R. Coburn, Todd R. Parkinson, and Marvin Coburn, hereby give notice of appeal to the Supreme Court of Ohio from the consolidated judgment of the Erie County Court of Appeals Sixth Appellate District, journalized in the Court of Appeals Case Nos.: E-07-049, E-07-050 and E-07-051on February 1, 2008, a copy of which is attached hereto.

Pursuant to the Rules of Practice of the Supreme Court of Ohio, S.Ct. R. II § 1(A)(2) and §1(A)(3) this appeal raises a substantial constitutional question as well as a substantial question of public or great general interest.

Respectfully Submitted,

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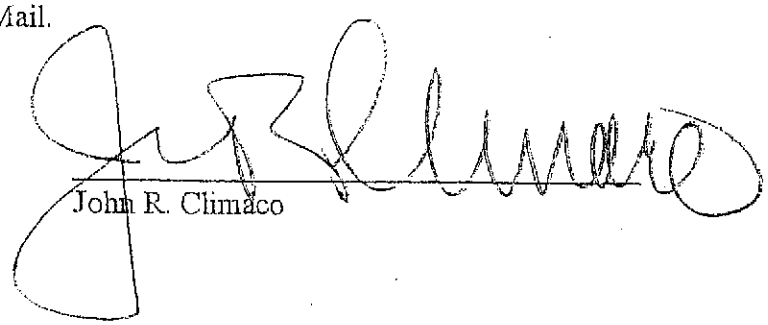
Attorneys for William R. Coburn, Todd Parkinson, and Marvin Coburn

CERTIFICATE OF SERVICE

This is to certify that a copy of the Notice of Appeal to the Supreme Court of Ohio was served upon Kevin J. Baxter, Prosecuting Attorney, Mary Ann Barylski and Trevor Hayberger, Assistant Prosecuting Attorneys, 247 Columbus Ave., Suite 319, Sandusky, Ohio 44870 this 14th day of March, 2008, by regular United States Mail.



John R. Climaco

IN THE SUPREME COURT OF OHIO

STATE OF OHIO DIVISION OF WILDLIFE Plaintiff/Appellee v. WILLIAM R. COBURN TODD R. PARKISON MARVIN D. COBURN Defendants/Appellants	)))))))))))))	On Appeal from the Erie County, Ohio Court of Appeals, Sixth Appellate District CASE NO. E-07-049 E-07-050 E-07-051 08-0536

MEMORANDUM IN SUPPORT OF JURISDICTION OF DEFENDANTS/APPELLANTS WILLIAM R. COBURN, TODD R. PARKISON, AND MARVIN COBURN

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APPENDIX

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Decision and Judgment Entry, Erie County Court of Appeals, Sixth Appellate District (February 1, 2008) P1

Judgment Entry, Erie County Court (July 20, 2007) P6

I. EXPLANATION OF WHY THIS CASE RAISES A SUBSTANTIAL CONSTITUTIONAL QUESTION AND IS OF PUBLIC OR GREAT GENERAL INTEREST.

This case arises from the Sixth District Court of Appeals' ("Court of Appeals") consolidated decision in State of Ohio v. William Coburn et al., Erie County Court of Appeals Case No.: E-07-049, E-07-050, and E-07-051. It raises the substantial constitutional questions of what constitutes "good cause" for a wildlife officer to enter private property under Ohio Revised Code §§ 1531.13, 1531.14, 1533.14, and 1533.10 and whether R.C. § 1531.14 provides wildlife officers with the authority to enter private property to stop and search *the known owner of that private property* while he is hunting on his own property with invited guests merely because a wildlife officer observed the men hunting. The Court of Appeals held that R.C. § 1531.14 provides wildlife officers with the authority to enter private property to stop and search the known owner of that private property while he is hunting on his own property with invited guests merely because a wildlife officer observed the men hunting. Its decision is contrary to the Fourth Amendment of the United States Constitution, ("Fourth Amendment") as well as Article 1, §14 of the Ohio Constitution and the well established case law on the issue of an investigatory stop.

This appeal also raises a question of substantial public or great general interest. In the year 2006 alone there were 2,118,488 Ohio hunting and fishing licenses and permits sold.[1] Obviously, thousands of hunters hunt on their own land. The Ohio Department of Natural Resources website states that wildlife officers make approximately 10,000 arrests per year.[2] This

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[1] Ohio Department of Natural Resources Website; http://www.ohiodnr.com/wildlife/dow/regulations/historical.aspx;

[2] http://www.dnr.state.oh.us/wildlife/Home/wild_resourcessubhomepage/

case generated so much public interest that an article regarding the Court of Appeals decision was printed in the Toledo Blade and then reprinted in Ohio Outdoor News. In the Toledo Blade article, the wildlife officers involved in the arrest applauded the decision, stating that:

> State wildlife authorities were pleased with the reversal.
>
> "This is very good news," said Gino Barna, a wildlife officer supervisor for the Division of Wildlife in northwest Ohio.
>
> Wildlife investigator Jay Harnish agreed.
>
> "I was very happy to see that decision." Had the original finding stood up, he added, "our right to enter private property would have been jeopardized. Hat's off to Trevor and the Erie County prosecutor's office for going the distance on this."
>
> * * *
>
> Had the lower court decision been upheld, the state wildlife decision ultimately might have had to seek relief from state lawmakers in other to properly perform their duties, Harnish said.

Obviously, the attention this case received and the comments from these wildlife officers demonstrate that the scope of a wildlife officer's duties/actions is a matter of public or great general interest.

By accepting jurisdiction over this appeal, this Court will have the opportunity to clarify that the scope of actions taken by wildlife officers under R.C. §§ 1531.13, 1531.14, 1533.14, and 1533.10 is no greater than that permitted by the Fourth Amendment, as well as Article 1, §14 of the Ohio Constitution. On the other hand, allowing the Court of Appeals decision to stand creates the ability for wildlife officers to enter onto private property without good cause contrary to the Fourth Amendment, as well as Article 1, §14 of the Ohio Constitution as was done in this case. Significantly, it also negates R.C. § 1533.10, which provides that the owner of lands in the

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state may hunt on their lands *without* a license.

Specifically, this case calls upon the Court to interpret R.C. §§ 1531.13, 1531.14, 1533.14, and 1533.10 to determine if a wildlife officer must have "good cause" to enter upon private property to check for hunting licenses and bag limits when the wildlife officer is aware that one of the hunters owns the private property, and what it is that constitutes that "good cause". In this case, the Court of Appeals (and the prosecutor), interpret only one of these sections, R.C. § 1531.14, to come to a determination that simply observing hunters gives a wildlife officer the authority to enter the privately owned land on which the owner is hunting, in pursuit of his duties, one of which is to ensure that people are hunting lawfully. This interpretation is contrary to the plain language of § 1531.13 which specifically states, "Any regularly employed salaried wildlife officer may enter any private lands or waters if the wildlife officer has good cause to believe and does believe that a law is being violated." It also fails to recognize R.C. § 1533.10 permits owners the ability to hunt on their own lands without a license.

The implications of the Court of Appeals error is much farther reaching than simply erring on the facts of this case and siding with the State. The error of the Court of Appeals is directly in conflict with the Fourth Amendment, as well as Article 1, §14 of the Ohio Constitution and the well established case law that supports a person's expectation of privacy under both constitutions. To allow such a decision to stand strips the citizens of Ohio of their constitutional right to expect that they will not be harassed on their own private property without a demonstration of good cause. In this case, three men, including the owner of the property, were stopped without good cause. The language found throughout Title XV of the Revised Code providing a wildlife officer with the authority to investigate and enforce wildlife rules cannot, nor was it intended to, supplant constitutional protections. Finally, pursuant to R.C. 1533.10, the

owner of the property is allowed to hunt on his own land without a hunting license.

II. STATEMENT OF THE CASE AND FACTS

On September 1, 2006, Appellant/Defendant, William Coburn (hereinafter "William") invited guests to his private property, upon which sits his home, to hunt mourning doves on the morning of September 1, 2006. His guests, and Co-Appellants/Co-Defendants herein were Marvin Coburn, his father (hereinafter "Marvin") and Catawba Police Officer, Todd Parkison (herein after "Officer Parkison")

Wildlife Officer Abele, a three year neighbor of William's, entered the private lands of William without good cause to believe or a belief that a law was being violated. According to Officer Abele's own report, it was only subsequent to entering the private property of William, that "During [his] contact with the three hunters, [that he] noticed..." (what he alleges to be) a violation of R.C. 1531.02 and O.A.C./1501:31-7-02 (A)(9) prohibiting the hunting of migratory game birds by the aid of baiting.

On July 20, 2007, in the Erie County Court, Milan, Ohio, the trial court correctly dismissed this case when it granted Defendants'/Appellants' Motion to Dismiss stating, "This court must apply the plain meaning of "good cause" as contained in Ohio Revised Code Section 1531.13 to mean that the legislature intended that wildlife officers not have the unfettered right of intrusion upon private property unless "good cause" exists." The trial court further found that there was no factual evidence of "good cause" for Officer Abele's entrance upon William's private property. (*Id.*) The State filed a Notice of Appeal on August 15, 2007.

On February 1, 2008, the Court of Appeals reversed the judgment of the trial court and remanded the case to the trial court for further proceedings stating that the trial court erred when

it ignored the authority granted to the wildlife officers pursuant to R.C. § 1531.14.[3]

III. ARGUMENT IN SUPPORT OF PROPOSITION OF LAW

Proposition of Law No. 1: The mere sight of the owner of private property and two guests, one of whom is his father, hunting in the absence of other articulable facts, does not create good cause to enter upon the private property of the owner to check for hunting licenses and bag limits.

The Fourth Amendment of the United States Constitution as well as Article 1, §14 of the Ohio Constitution protect persons from unreasonable search and seizure, mandating that probable cause is necessary before a warrant will issue.

R.C. §1531.13 states in relevant parts:

> They [wildlife officers] shall enforce all laws against hunting **without permission of the owner** or authorized agent of the land on which the hunting is done. They may arrest on view and without issuance of a warrant. They may inspect any container or package at any time except when within a building and the owner or person in charge of the building objects. The inspection shall be only for **bag limits** of wild animals taken in open season or for wild animals taken during the closed season, or for any kind or species of those wild animals...(emphasis added.)
>
> ***
>
> Any regularly employed salaried wildlife officer may enter any private lands or waters **if the wildlife officer has *good cause to believe and does believe* that a law is being violated.** (Emphasis added.)

R.C. §1531.14 states in relevant part:

> Any person regularly employed by the division of wildlife for the purpose of conducting research and investigation of game or fish or their habitat conditions or engaged in restocking game or fish or in any type of work involved in or incident to game or fish restoration projects or in the enforcement of laws or division rules relating to game or fish, or in the enforcement of section 1531.29 or 3767.32 of the Revised Code, other laws prohibiting the

[3] The trial court did not actually ignore R.C. 1531.14, because that particular statute was never brought up in the trial court and was only raised by the State on appeal.

> dumping of refuse in or along streams, or watercraft laws, *while in the normal,* **lawful,** *and peaceful pursuit of such investigation, work, or enforcement may enter upon, cross over, be upon, and remain upon privately owned lands for such purposes* and shall not be subject to arrest for trespass while so engaged or for such cause thereafter. (Emphasis added.)

R.C. §1533.14 states in relevant part:

> Every person, while hunting or trapping on the lands of *another*, shall carry the person's hunting license on the person's own self and exhibit it to any wildlife officer, constable, sheriff, deputy sheriff, or police officer, or *to the owner or person in lawful control* of the land upon which the person is hunting or trapping, or to any other person. Failure to so carry or exhibit such a license constitutes an offense under this section. This section and Section 1531 of the Revised Code do not allow any person to hunt or trap on any land without the written consent of the owner thereof. (Emphasis added.)

O.R.C § 1533.10 provides:

> that an owner of land may hunt on his land without a license.

R.C. § 1.47 states the presumptions in enactment of statutes:

> In enacting a statute, it is presumed that:
> (A) Compliance with the constitutions of the state and of the United States is intended.

The implication that can be taken from the Court of Appeals decision is that simply because a wildlife officer observes hunters he is provided with the authority to enter upon private property to stop the hunters. This decision affects every wildlife officer and hunter in the state. It provides wildlife officers with the ability to unlawfully enter upon private property lacking the good cause required by R.C. § 1531.13. This is directly contradictory to the well established case law on the matter of an investigative stop. *Terry v. Ohio* (1968) 392 U.S. 1. Observing a hunter does not create probable cause or even reasonable suspicion that the individual is hunting in violation of any hunting laws or regulations. Similarly, an observation of an adult operating a

P10

motor vehicle does not create probable cause that the person is operating the vehicle without a license. The Fourth Amendment, as well as Article 1, §14 of the Ohio Constitution are meant to protect people from unreasonable governmental intrusion. Not surprisingly, wildlife officers of this state now believe that they are exempt from this constitutional mandate.

It has been almost forty years since the Supreme Court of the United States clearly stated that for an officer to *lawfully* perform an investigative stop he must be have ample articulable facts that justify such a stop. *Terry v. Ohio* (1968) 392 U.S. 1. To determine if cause exists one must look at the totality of the circumstances. *Id.* The trial court did just that, looked at the totality of the circumstances and found there was no factual evidence to support good cause existed to enter the private property and so properly dismissed the case. The Court of Appeals did not look at the totality of the circumstances when it reviewed this case. Instead the Court of Appeals stated that merely because the wildlife officer observed the men hunting, he had the authority to enter the private property. This decision was despite the fact that the wildlife officer was aware that one of the hunters owned the property and despite the fact that the wildlife officer set forth not one additional articulable fact from which one could reasonably surmise a law was being violated. In effect, the Court of Appeals has determined that mere observation of a man hunting equates with good cause.

Statutes relating to the same subject matter should be construed to exist harmoniously unless the statutes are irreconcilable and hopelessly conflict. *United Telephone Company of Ohio v. Limbach*, (1994) 71 Ohio St.3d. 369, 372. (Internal citations omitted.)

Since R.C. §§1531.13, 1531.14, 1533.14, and 1533.10 all relate to the subject of the 'division of wildlife' and 'hunting and fishing' the statutes need to be read together, construed together, and *together* applied to the facts of this case. The Court of Appeals incorrectly applied

the facts of this case to one statute in isolation of the remaining statutes, ignoring the plain language of R.C. §1531.13 that mandates a wildlife officer must have good cause to enter upon private property. The Court of Appeals simply ignored basic statutory interpretation requirements as set forth by the Supreme Court of Ohio. *United Telephone Company of Ohio v. Limbach*, (1994) 71 Ohio St.3d. 369, 372.

In determining whether the legislature has provided a wildlife officer the unfettered authority to enter upon private property to check for hunting licenses (or even bag limits), this Honorable Court should look to not only §1531.14, but also to §1531.13 and §1533.14 and §1533.10. Interpreted together these statutes say absolutely nothing that could be constitutionally interpreted to provide wildlife officers the authority to enter onto private property to check the hunting license of the owner of the property and his invited guests *with the prior knowledge that the hunter owns the property* –simply because the wildlife officers see men hunting.

A plain reading of the statutes demonstrates that the legislature intended that the statutes should be interpreted to confer wildlife officers with the *lawful* ability to enter private property in pursuit of his duties. R.C. §1531.14. The legislature even stated what was needed to have that lawful ability… "good cause." R.C. §1531.13. One cannot constitutionally, lawfully enter the private property of a hunter, while hunting on his own property to check his license when O.R.C § 1533.10 explicitly states he doesn't need one. William and his invited guests were hunting on William's property. Officer Abele admitted that prior to unlawfully entering upon William's property he identified William as one of the hunters and acknowledged that he knew it was William's property. Simply, Officer Abele admitted he did not have good cause to enter William's property because aside from stating he wanted to check licenses and bag limits,

Officer Abele did not articulate one fact that could be interpreted to lead one to believe a law was being violated. He did not for example state he heard excessive shots being fired (to make him suspicious as to the number of doves being hunted), he did not state his past experience with William and his guests was one of a history of them violating hunting laws. To *lawfully* perform an investigative stop Officer Abele must have had ample articulable facts to justify such a stop. *See, Terry v. Ohio* (1968) 392 U.S. 1. Looking at the totality of the circumstances, Officer Abele did not have the authority under the above cited statutes or any other authority to enter onto William's property.

Despite the fact that in *United Telephone Company of Ohio v. Limbach*, (1994) 71 Ohio St.3d. 369, 372, this Court explained that statutes relating to the same subject matter should be construed to exist harmoniously unless the statutes are irreconcilable and hopelessly conflict, the Court of Appeals ignored every statute relevant to this case except R.C. § 1531.14. R.C. § 1531.13 plainly states that a wildlife officer needs "good cause" to enter upon private property. The Court of Appeals determined that the officer had authority to enter the private property because he saw the men hunting. To assert that the mere site of men hunting, in the absence of additional articulable facts, creates "good cause" is contradictory to the Fourth Amendment, as well as Article 1, §14 of the Ohio Constitution and contrary to the well established case law of an investigative stop.

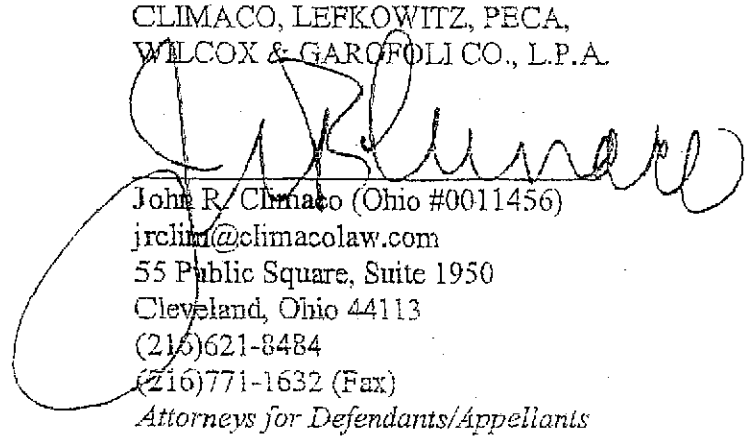
IV. CONCLUSION

When R.C. §1531.14, §1531.13, §1533.14 and §1533.10 are read and interpreted together it is clear that the Ohio legislature did not intend for wildlife officers to enter private property without good cause. The mere sight of hunters, one of which is known by the officer to own the private property they are hunting on, in the absence of other articulable facts, does not create

good cause to enter upon the private property to check for hunting licenses and bag limits. A wildlife officer is not conferred with any greater power than any other law enforcement official. This Honorable Court should accept jurisdiction of this case so that it may clarify that the language found throughout Title XV of the Revised Code providing a wildlife officer with the authority to investigate and enforce wildlife rules cannot, nor was it intended to, supplant constitutional protections.

Respectfully submitted,

CLIMACO, LEFKOWITZ, PECA,
WILCOX & GAROFOLI CO., L.P.A.



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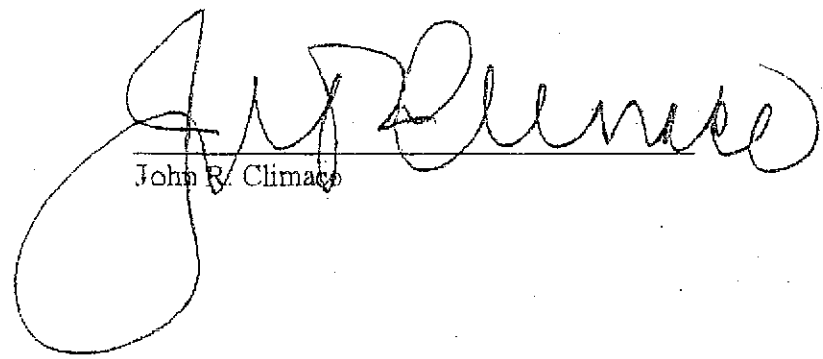
P22

CERTIFICATE OF SERVICE

This is to certify that a copy of the Memorandum in Support of Jurisdiction of Defendants/ Appellants William R. Coburn, Todd R. Parkison, and Marvin Coburn was served upon Kevin J. Baxter, Prosecuting Attorney, Mary Ann Barylski and Trevor Hayberger, Assistant Prosecuting Attorneys, 247 Columbus Ave., Suite 319, Sandusky, Ohio 44870 this 13 day of March, 2008, by regular United States Mail.



John R. Climaco

FILED
COURT OF APPEALS
ERIE COUNTY, OHIO
2008 FEB -1 AM 8:03
BARBARA J. JOHNSON
CLERK OF COURTS

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
ERIE COUNTY

State of Ohio

Appellant

v.

William Coburn
Todd Parkinson
Marvin Coburn

Appellees

Court of Appeals Nos. E-07-049
E-07-050
E-07-051

Trial Court Nos. CRB 0600444
CRB 0600445
CRB 0600446

DECISION AND JUDGMENT ENTRY

Decided: FEB 0 1 2008

* * * * *

Kevin J. Baxter, Erie County Prosecuting Attorney, Mary Ann Barylski and Trevor Hayberger, Assistant Prosecuting Attorneys, for appellant.

John R. Climaco and Terri A. Lightner, for appellees.

* * * * *

SINGER, J.

{¶1} In this consolidated appeal, appellant, the state of Ohio, appeals from a decision of the Erie County Court, Milan, Ohio, dismissing the charges of unlawful

J28/62
2-1-08
C.7

taking of migratory game birds against appellees, William Coburn, Todd Parkinson and Marvin Coburn. For the reasons that follow, we reverse.

{¶ 2} On October 23, 2006, Erie County Wildlife Officer, Jared R. Abele, filed three separate, identical complaints against each of the appellees. According to the complaints, Abele witnessed appellees hunting mourning doves on William Coburn's property on September 1, 2006. Abele approached appellees to check on the validity of their hunting licenses and their bag limit compliance. While doing so, Abele noticed wheat seed in piles and scattered along the ground where appellees were hunting. As a result, Able charged each of the appellees with violating R.C. 1531.02 and O.A.C. 1501:31-7-02(A)(9) which states:

{¶ 3} "(A) It shall be unlawful to hunt or take migratory game birds:

{¶ 4} "* * *

{¶ 5} "(9) By the aid of baiting or on or over any baited area."

{¶ 6} O.A.C. 1501:31-1-02(VV) defines baiting as:

{¶ 7} "* * * the placing, exposing, depositing, distributing, or scattering of shelled, shucked, or unshelled corn, wheat or other grain, salt or other feed so as to constitute for such wild turkeys, mourning doves or migratory birds, a lure, attraction or enticement to, on or over any area where hunters are attempting to take them."

{¶ 8} On December 4, 2006, appellees filed motions to dismiss their charges. In their motions to dismiss, appellees argued that Officer Abele unlawfully entered William Coburn's private property without good cause to believe that a law was being violated.

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On July 20, 2007, the trial court granted appellees' motions. The state of Ohio now appeals setting forth the following assignment of error:

{¶ 9} "I. Whether the trial court erred in granting the dismissal of the case when the court held, contrary to Ohio Rev. Code Ann. 1531.14, that a wildlife officer must demonstrate good cause in order to enter private lands to check for hunting licenses and bag limits."

{¶ 10} Our standard of review is whether the trial court erred as a matter of law in determining that the state's complaint did not allege facts constituting a crime under Ohio law. *N. Olmsted v. Bullington* (2000), 139 Ohio App.3d 565.

{¶ 11} The state contends that Abele lawfully entered William Coburn's land. In support, the state cites R.C. 1531.14 which states:

{¶ 12} "Any person regularly employed by the division of wildlife for the purpose of conducting research and investigation of game or fish or their habitat conditions or engaged in restocking game or fish or in any type of work involved in or incident to game or fish restoration projects or in the enforcement of laws or division rules relating to game or fish, or in the enforcement of section 1531.29 or 3767.32 of the Revised Code, other laws prohibiting the dumping of refuse in or along streams, or watercraft laws, while in the normal, lawful, and peaceful pursuit of such investigation, work, or enforcement may enter upon, cross over, be upon, and remain upon privately owned lands for such purposes and shall not be subject to arrest for trespass while so engaged or for such cause thereafter."

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{¶ 13} In granting appellees' motions to dismiss, the trial court relied on R.C. 1531.13 which states in pertinent part: "Any regularly employed salaried wildlife officer may enter any private lands or waters if the wildlife officer has good cause to believe and does believe that a law is being violated." The court stated:

{¶ 14} "There is absolutely no factual evidence before this court to suggest that the checking of licenses and/or bag limits was anything but routine. This court must apply the plain meaning of 'good cause' as contained in Ohio Revised Code Section 1531.13 to mean that the legislature intended that wildlife officers not have the unfettered right of intrusion upon private property unless 'good cause' exists."

{¶ 15} In this case, Abele saw appellees hunting and then he entered the property to check their licenses and bags. Once he saw people hunting, R.C. 1531.14 gave him the authority to enter the land in pursuit of his duties, one of which is to ensure that people are hunting lawfully. R.C. 1531.13. We disagree with the trial court that R.C. 1531.14 gives wildlife officers "unfettered" access to private property. Nothing in our decision today should be read to say that wildlife officers can enter private property at any time for any reason. What is important for purposes of this case is that Abele first saw appellees hunting and then he entered the property. Accordingly, we find that the trial court erred in ignoring the authority granted to Able pursuant to R.C. 1531.14. The state's sole assignment of error is found well-taken.

{¶ 16} On consideration whereof, the judgment of the Erie County Court, Milan, Ohio, is reversed and this matter is remanded to the trial court for further proceedings.

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Appellees are ordered to pay the costs of this appeal pursuant to App.R. 24. Judgment for the clerk's expense incurred in preparation of the record, fees allowed by law, and the fee for filing the appeal is awarded to Erie County.

JUDGMENT REVERSED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

Mark L. Pietrykowski, P.J.

Arlene Singer, J.
CONCUR.

JUDGE

JUDGE

JUDGE

I HEREBY CERTIFY THIS TO BE
A TRUE COPY OF THE ORIGINAL
FILED IN THIS OFFICE.
BARBARA J. JOHNSON, CLERK OF COURTS
Erie County, Ohio
By

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.

FILED

IN THE ERIE COUNTY COURT 2007 JUL 20 AM 10 18

MILAN, OHIO ERIE COUNTY COURT

State of Ohio
Division of Wildlife

Case No. CRB 0600444

vs

JUDGMENT ENTRY

Coburn, William R.

* *

This matter came on before the Court pursuant to Defendant's Motion to Dismiss.

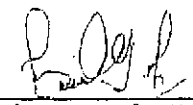
It is undisputed that the wildlife officer in question entered upon private property to check hunting licenses and bag limits. No factual evidence is before this Court indicating any type of probable cause or even reasonable suspicion that the laws of the State of Ohio concerning hunting licenses and bag limits were being violated. Once upon the subject property, the officer observed seed spread about the ground, which lead to the " baiting" charge herein. Defendant raises a series of issues in his Motion to Dismiss, and the Court will first address the entry upon private property.

Ohio Revised Code 1531.13 authorizes a wildlife officer to enter upon private lands or waters within the State if "the wildlife officer has good cause to believe and does believe that a law is being violated". There is absolutely no factual evidence before this Court to suggest that the checking of licenses and/or bag limits was anything but routine. This Court must apply the plain meaning of "good cause" as contained in Ohio Revised Code Section 1531.13 to mean that the legislature intended that wildlife officers not have the unfettered right of intrusion upon private

property unless "good cause" exists.

The Court having no facts before it to find such "good cause" to enter upon private property, Defendant's Motion to Dismiss is hereby GRANTED.

IT IS SO ORDERED.



Judge Paul G. Lux

PGL/cw
cc: Trevor Hayberger
John F. Corrigan
William R. Coburn
Jared Abele

FILED

The Supreme Court of Ohio

JUN 18 2008

CLERK OF COURT
SUPREME COURT OF OHIO

To the Clerk of Court of Appeals for

Erie County,

Sandusky, Ohio

ORDER TO CERTIFY RECORD

S.C. Case No. 2008-0536

C.A. Case No. E07051, E07050, and E07049

State of Ohio

v.

William Coburn, Todd Parkison, and Marvin Coburn

Pursuant to Rule V, Sections 3 and 5, of the Rules of Practice of the Supreme Court of Ohio, you are hereby ordered to prepare and forward to the Clerk's Office the record in the above-captioned case as follows:

- The record shall consist of the original papers and exhibits to those papers; the transcript of proceedings and exhibits, along with a computer diskette of the transcript, if available; and certified copies of the journal entry and the docket prepared by the clerk of the court or other custodian of the original papers.

- The record shall be transmitted along with an index that lists all items included in the record. All exhibits listed in the index shall be briefly described, and a copy of the index must be sent to all counsel of record in the case.

- The following items shall not be transmitted at this time:

  - any physical exhibits, other than videotapes and documents such as papers, maps, or photographs;
  - documents of unusual size, bulk, or weight.

  Any exhibits or documents that are not transmitted shall be designated in the index. The custodian of those exhibits or documents must also be identified in the index.

- The record shall be transmitted to the Clerk's Office within 20 days of the date of this order.

THOMAS J. MOYER
Chief Justice

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* THIS DOCUMENT IS CURRENT THROUGH OHIO REGISTER FOR THE WEEK OF JULY 7-11, 2008 *

1501:31 Division of Wildlife
Chapter 1501:31-7 Migratory Game Birds

OAC Ann. 1501:31-7-02 (2008)

1501:31-7-02. Prohibited methods of taking migratory game birds.

(A) It shall be unlawful to hunt or take migratory game birds:

(1) With a trap, snare, net, crossbow and arrow, rifle, pistol, swivel gun, punt gun, machine gun, pumpkin ball, or rifled slug, fish hook, poison, drug, explosive, or stupefying substance.

(2) With a shotgun of any description originally capable of holding more than three shells, unless the magazine has been cut off, altered, or plugged with a one piece filler incapable of removal without disassembling the gun, so as to reduce the capacity of the said gun to not more than three shells in the magazine and chamber combined.

(3) From or by means, aid, or use of a sinkbox, motor-driven conveyance, motor vehicle, or aircraft of any kind.

(4) From any motorboat, or other craft having a motor attached, or any sailboat, unless the motor has been completely shut off and/or the sails furled, and the craft has come to rest. A craft under power may be used to retrieve dead or crippled birds; however, crippled birds may not be shot from such craft when under power.

(5) By the use or aid of livestock as a blind or means of concealment.

(6) By the use or aid of live birds as decoys. No person shall take migratory waterfowl on an area where tame or captive live ducks or geese are present unless such birds are and have been for a period of ten consecutive days prior to such taking, confined within an enclosure which substantially reduces the audibility of their calls and totally conceals such birds from the sight of wild migratory waterfowl.

(7) By the use or aid of recorded bird calls or sounds, or recorded or electrically amplified imitations of bird calls or sounds.

(8) By means or aid of any motor-driven land, water or air conveyance or any sailboat used for the purpose of or resulting in the concentrating, driving, rallying, or stirring up of waterfowl or coots.

(9) By the aid of baiting or on or over any baited area.

(B) It shall be unlawful for any person to construct or place a permanent blind on a wildlife hunting area or any other state or federal property unless approved by the chief of the division of wildlife further, any portable blind placed or constructed on a public hunting area shall be removed immediately upon the completion of the day's hunt.

(C) Non-toxic shot shall mean, shot comprised totally of steel, steel shot coated with copper, or any shot which has been approved by the U.S. fish and wildlife service. It shall be unlawful to possess any shot other than non-toxic shot while hunting migratory waterfowl, rails, common snipe, or gallinules.

(D) It shall be unlawful to use or possess, at any time, shells or shot for any gauge shotgun loaded with shot other than non-toxic shot while hunting waterfowl.

(E) It shall be unlawful to place or set any decoys on a wildlife area or in waters of the state which are left unattended before or after legal shooting hours. All decoys shall be removed at the end of each day's hunt.

(F) It shall be unlawful to hunt with or possess any shot except non-toxic shot on Metzger marsh wildlife area, Mallard Club wildlife area, Pipe creek wildlife area, Magee marsh wildlife area, Toussaint wildlife area, and Little Portage wildlife area.

(G) All definitions set forth in *section 1531.01 of the Revised Code* and rule 1501:31-1-02 of the Administrative Code shall apply to this rule.

History:R.C. 119.032 reveiw dates: 06/11/2007 and 06/01/2012.

Promulgated Under: 119.03.

Statutory Authority: 1531.06, 1531.08, 1531.10.

Rule amplifies: 1531.08.

Prior Effective Dates: 8-31-73; 9-22-77; 9-6-78; 6-1-79; 7-11-80; 6-1-82; 4-20-87; 7-31-90; 6-7-93; 5-16-94; 8-15-95; 8-10-97.

LEXSTAT U.S. CONST. AMEND. 4

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CONSTITUTION OF THE UNITED STATES OF AMERICA
AMENDMENTS
AMENDMENT 4

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USCS Const. Amend. 4

Review expert commentary from The National Institute for Trial Advocacy

THE CASE NOTES SEGMENT OF THIS DOCUMENT HAS BEEN SPLIT INTO 7 DOCUMENTS.
THIS IS PART 1.
USE THE BROWSE FEATURE TO REVIEW THE OTHER PART(S).

Unreasonable searches and seizures.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

LEXSTAT OHIO CONST. I 14

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*** CURRENT THROUGH LEGISLATION PASSED BY THE 127TH OHIO GENERAL ASSEMBLY AND FILED WITH THE SECRETARY OF STATE THROUGH JUNE 23, 2008 ***
*** ANNOTATIONS CURRENT THROUGH APRIL 1, 2008 ***
*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JUNE 15, 2008 ***

CONSTITUTION OF THE STATE OF OHIO
ARTICLE I. BILL OF RIGHTS

Go to the Ohio Code Archive Directory

Oh. Const. Art. I, § 14 (2008)

§ 14. Search warrants and general warrants

The right of the people to be secure in their persons, houses, papers, and possessions, against unreasonable searches and seizures shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, particularly describing the place to be searched and the person and things to be seized.

LEXSTAT ORC ANN. 1531.02

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*** CURRENT THROUGH LEGISLATION PASSED BY THE 127TH OHIO GENERAL ASSEMBLY AND FILED WITH THE SECRETARY OF STATE THROUGH JUNE 23, 2008 ***
*** ANNOTATIONS CURRENT THROUGH APRIL 1, 2008 ***
*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JUNE 15, 2008 ***

TITLE 15. CONSERVATION OF NATURAL RESOURCES
CHAPTER 1531. DIVISION OF WILDLIFE

Go to the Ohio Code Archive Directory

ORC Ann. 1531.02 (2008)

§ 1531.02. State ownership of wild animals; prohibitions

The ownership of and the title to all wild animals in this state, not legally confined or held by private ownership legally acquired, is in the state, which holds such title in trust for the benefit of all the people. Individual possession shall be obtained only in accordance with the Revised Code or division rules. No person at any time of the year shall take in any manner or possess any number or quantity of wild animals, except wild animals that the Revised Code or division rules permit to be taken, hunted, killed, or had in possession, and only at the time and place and in the manner that the Revised Code or division rules prescribe. No person shall buy, sell, or offer any part of wild animals for sale, or transport any part of wild animals, except as permitted by the Revised Code or division rules. No person shall possess or transport a wild animal that has been taken or possessed unlawfully outside the state.

A person doing anything prohibited or neglecting to do anything required by this chapter or Chapter 1533. of the Revised Code or contrary to any division rule violates this section. A person who counsels, aids, shields, or harbors an offender under those chapters or any division rule, or who knowingly shares in the proceeds of such a violation, or receives or possesses any wild animal in violation of the Revised Code or division rule, violates this section.

HISTORY:

GC § 1391; 108 v Ptl, 577, § 2; 116 v 310; 119 v 369; 123 v 84 (129), § 2; Bureau of Code Revision, 10-1-53; 130 v H 573 (Eff 9-30-63); 130 v Ptll, 102 (Eff 12-16-64); 131 v 514 (Eff 11-9-65); 132 v H 1 (Eff 2-21-67); 141 v H 848 (Eff 2-27-87); 142 v S 256 (Eff 7-20-88); 145 v S 182 (Eff 10-20-94); 147 v S 103. Eff 6-1-98; 151 v H 443, § 1, eff. 4-6-07.

NOTES:

Section Notes

EFFECT OF AMENDMENTS

151 v H 443, effective April 6, 2007, inserted "or possessed" in the first paragraph; deleted the last sentence from the end of the second paragraph, which read "No person shall use a rifle, at any time, in taking migratory game birds"; and made minor stylistic changes.

Related Statutes & Rules

Cross-References to Related Statutes

Penalties, *RC § 1531.99.*

Falconry, *RC § 1533.05.*

Liability for costs of investigation of death of wild animal. *RC § 1531.20.2.*

Prosecution for violation of division rule, *RC § 1533.69.*

Suspend or revoke license or permit, *RC § 1533.68.*

OH Administrative Code

Deer regulations. *OAC 1501:31-15-11.*

Urban deer zones. *OAC 1501:31-15-12.*

ALR

Construction of statute or ordinance prohibiting or regulating sports and games on Sunday. 24 ALR2d 813.

Power of state to prohibit or restrict exportation of natural resources. 32 A.L.R. 331.

Right of public to fish in stream notwithstanding objection by riparian owner. 47 ALR2d 381.

Title to fish and game taken by trespasser. 23 A.L.R. 1402.

LexisNexis 50 State Surveys, Legislation & Regulations

Fish and Game

Case Notes & OAGs

ANALYSIS Action by state for damages Administrative authority Artificial lakes Captive animals Civil proceedings Construction Dog training Governmental immunity Governmental powers Hunting on Sunday Hunting out of season Ineffective assistance of counsel Injunction Jurisdiction Liability Municipalities --License Pollution Possession of animal carcass Search and seizure Separate offenses Speedy trial Trespass

ACTION BY STATE FOR DAMAGES.

Where an injury to or destruction of wild animals, the property of the state of Ohio, is an accomplished fact, the state can bring an action for damages against the person causing such injury or destruction: *1946 OAG No. 785 (1946).*

ADMINISTRATIVE AUTHORITY.

The division of wildlife had authority to issue a deer culling permit for certain park areas to protect biodiversity and the health of the deer population: In *Defense of Deer v. Cleveland Metroparks, 138 Ohio App. 3d 153, 740 N.E.2d 714, 2000 Ohio App. LEXIS 2472 (2000).*

The requirement of *OAC 1501:31-15-02(U)* that a hunter wear "hunter orange" while deer hunting with guns relates to the manner in which deer may be hunted and as such does not exceed the rulemaking authority granted to the Chief of the Division of Wildlife in *RC § 1531.08*: *State v. Swartzentruber, 52 Ohio Misc. 2d 1, 556 N.E.2d 531 (MC 1989).*

The chief of the division of wildlife, acting pursuant to *RC § 1531.08* et seq, has authority to limit the hunting of wild animals in an area including private property even though such limitation is not uniformly applied throughout the state: *1964 OAG No. 770 (1964).*

ARTIFICIAL LAKES.

The state does not lose its title to and ownership of fish stocked in artificial lakes owned and controlled by municipalities: *1932 OAG No. 4573 (1932).*

CAPTIVE ANIMALS.

A bear which has been transported into Ohio from outside the United States and has been in captivity is not a wild bear within the meaning of *RC § 1531.02*: *State v. Murray, 9 Ohio Misc. 97, 210 N.E.2d 308 (MC 1965).*

CIVIL PROCEEDINGS.

Revised Code § 1531.02, criminalizing certain conduct with respect to wildlife resources, does not detract from the ability of the state to proceed civilly, nor does it limit such proceedings to "persons" as defined in *RC § 1531.01*: *State v. Bowling Green, 38 Ohio St. 2d 281, 313 N.E.2d 409 (1974).*

CONSTRUCTION.

The words "waters of the state" in *RC § 1533.32* do not include a privately owned nonnavigable lake even though fish may freely swim back and forth between such lake and public waters or waters owned by others: *Ohio Water Service Co. v. Ressler, 173 Ohio St. 33, 180 N.E.2d 2 (1962).*

DOG TRAINING.

The owner of a dog has the right to train his dog during the closed season, providing there is no intent to kill or injure game and that such game is not in fact killed or injured :*1932 OAG No. 4200* followed]: *1933 OAG No. 959 (1933).*

GOVERNMENTAL IMMUNITY.

The state may not be sued for damages caused by deer to private property as a result of the Division of Wildlife's management of deer which has allowed the deer population to increase very substantially: *Bowers v. Ohio Dept. of Natural Resources, 34 Ohio App. 3d 347, 518 N.E.2d 952 (1986).*

GOVERNMENTAL POWERS.

The ownership of game animals and birds is in the state in its sovereign capacity; and ownership of such by an individual is not a matter of private right but of public policy, and the legislature may regulate such individual ownership: *Fitton v. State, 1 Ohio N.P. (n.s.) 133 (CP 1903).*

HUNTING ON SUNDAY.

Unlawful to hunt on commercial pheasant-shooting preserve on Sunday: *1953 OAG No. 2256 (1953).*

HUNTING OUT OF SEASON.

Trial court properly refused to instruct jury that a landowner was allowed to hunt on his land without a license where defendant was charged with hunting out of season; absent evidence that defendant had a deer damage permit, a jury instruction on such a permit was inapplicable. *State v. Monteith, 2003 Ohio App. LEXIS 3902, 2003 Ohio 4392,* (2003).

INEFFECTIVE ASSISTANCE OF COUNSEL.

Defense counsel did not provide ineffective assistance of counsel under the Sixth Amendment as counsel's failure to present the testimony of defendant or his friend and counsel's cross-examination of the State's sole witness were matters of trial tactics, which could not form the basis of an ineffective assistance of counsel claim. The decision not to have defendant or his friend testify was not error as defendant failed to show how testimony that he delayed tagging a deer for an hour might have impacted upon his conviction for failing to immediately tag the deer he had killed in violation of *Ohio Rev. Code Ann. § 1531.02* and *OAC 1501:31-15-11(O). State v. Nesbit, 2006 Ohio App. LEXIS 812, 2006 Ohio 921,* (Mar. 1, 2006).

INJUNCTION.

The conservation and natural resources commission has the authority to bring an action in the name of the state of Ohio to enjoin a threatened injury to or destruction of wild animals, which are the property of the state of Ohio, by the

introduction into a stream or lake in this state of a substance which injures or kills such wild animals: *1946 OAG No. 785 (1946).*

JURISDICTION.

The justice without a jury has jurisdiction under GC §§ 1448 (*RC § 1531.18*) and 1454 (*RC § 1533.68, 1533.69*), of prosecution under this section (now *RC § 1531.02*) for hunting game birds on Sunday: *Newland v. State, 29 Ohio App. 135, 163 N.E. 56 (1928).*

One accused of hunting game birds on Sunday (now *RC § 1531.02*) is not entitled to jury trial, since GC § 1454 (*RC §§ 1533.68, 1533.69*) merely imposes fine, case being within jurisdiction of justice under GC § 1448 (*RC § 1531.18*): *Newland v. State, 29 Ohio App. 135, 163 N.E. 56 (1928).*

By virtue of GC §§ 13770, 13771 and 13772 (*RC §§ 159.03* to *159.05*), the state of Ohio has no jurisdiction over fish and game on lands owned by the United States, unless such jurisdiction has been reserved to the state by special statute: *1940 OAG No. 2890 (1940).*

LIABILITY.

A municipal corporation is liable to the state of Ohio for taking or killing fish, regardless of the method used, by reason of the statutory liability created by *RC § 1531.02*, and related statutes: *State v. Bowling Green, 63 Ohio Op. 2d 109 (App. 1972).*

MUNICIPALITIES.

--LICENSE.

A municipal ordinance requiring a municipal license to hunt or trap within the boundaries of that municipality is an invalid exercise of municipal power since such an ordinance is in conflict with the general laws. A municipal ordinance allowing only residents of the municipality to hunt within the municipal boundaries is invalid: OAG No. 66-151 (1966).

POLLUTION.

In the event of the pollution of a stream or lake which injures or kills wild animals, the property of the state of Ohio, and also violates the laws governing public health, the division should, if possible, cooperate with the department of health in correcting the violation: *1946 OAG No. 785 (1946).*

POSSESSION OF ANIMAL CARCASS.

Possessing a Florida bobcat carcass is unlawful in Ohio only if it was not lawfully acquired and transported to Ohio in accordance with Florida law: *State v. Adams, 105 Ohio App. 3d 492, 664 N.E.2d 588, 1995 Ohio App. LEXIS 3234 (1995).*

SEARCH AND SEIZURE.

Trial court properly denied suppression based upon the stop of defendant's vehicle, where such was based on a deputy's reasonable suspicion that defendant might have been in possession of stolen property and then, in plain view, observed a deer which had not be properly tagged, in violation of *RC § 1531.02* and *Ohio Admin. Code § 1501:31-15-11(Q)*; moreover, defendant's ultimate consent to a search further supported the order of denial. *State v. Cline, 2003 Ohio App. LEXIS 5330, 2003 Ohio 6003,* (2003).

Incident to enforcement of Ohio Wildlife Laws, Section 1531.02 et seq., Revised Code, it is mandatory for a game protector to obtain a search warrant, when investigating for a violation of Ohio Wildlife Laws, only when the search is of a building, as prescribed by the fifth sentence of the first paragraph of *Section 1531.13, Revised Code: State v. Putzke, 7 Ohio App. 2d 18, 218 N.E.2d 627 (1966).*

A game protector may search, without a warrant, any boat or place, except a building, which he has good reason to believe is used in the taking or possessing of fish in violation of Ohio Wildlife Laws, Section 1531.02 et seq., Revised Code, by reason of the first sentence of the third paragraph of *Section 1531.13, Revised Code: State v. Putzke, 7 Ohio App. 2d 18, 218 N.E.2d 627 (1966).*

Deer antlers that have been lost, abandoned, stolen, seized pursuant to a search warrant, or otherwise lawfully seized or forfeited, and that are in the custody of the division of wildlife of the department of natural resources, are the property of the division. The division may determine a reasonable manner in which to dispose of the deer antlers: OAG No. 94-064 (1994).

SEPARATE OFFENSES.

Defendant can be convicted of only one offense for the unlawful taking of eight fish in one net at one time. Unlawful possession of fish, however, is a separate offense for purposes of *RC § 2941.25*: *State v. Fisher, 52 Ohio App. 2d 133, 368 N.E.2d 324 (1977).*

SPEEDY TRIAL.

Where the State of Ohio, Division of Wildlife, originally filed charges against defendant for illegal possession of deer parts, in violation of *Ohio Rev. Code Ann. § 1531.01*, which were dismissed when the trial court indicated that suppression of those parts would be granted, and the Division then charged defendant with unlawfully taking a deer out of season, in violation of *Ohio Rev. Code Ann. § 1531.02*, the trial court properly found that defendant's speedy trial rights were violated and it dismissed that pending charge. The two sets of charges arose from the same set of facts, as possession of the deer parts was only illegal because they were taken in violation of *Ohio Rev. Code Ann. § 1531.02* and *OAC 1501:31-15-11*, and the Division's delay in bringing the second charge constituted a constitutional speedy trial violation pursuant to Ohio Rev. Code Ann. art. 1, § 10 and *U.S. Const. amends. VI* and *XIV*, as well as a statutory speedy trial violation under *Ohio Rev. Code Ann. § 2945.71(B)(1)*, as more than 45 days had elapsed from the time of the first charges to the time that the dismissal motion was filed. *State v. Brumley, 2005 Ohio App. LEXIS 2108, 2005 Ohio 2226,* (2005).

TRESPASS.

A person may not be found guilty of trespass upon a state game refuge in violation of *RC § 1531.02* and contrary to emergency division of wildlife order, rule No. 175-63, section (F), subsection (1), when the boundaries of the refuge are not designated by that order or by any other valid order of the division of wildlife: *State v. Bruns, 6 Ohio App. 2d 105, 216 N.E.2d 629 (1966).*

LEXSTAT OHIO REV. CODE ANN. 1531.13

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*** CURRENT THROUGH LEGISLATION PASSED BY THE 127TH OHIO GENERAL ASSEMBLY AND FILED WITH THE SECRETARY OF STATE THROUGH JUNE 23, 2008 ***
*** ANNOTATIONS CURRENT THROUGH APRIL 1, 2008 ***
*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JUNE 15, 2008 ***

TITLE 15. CONSERVATION OF NATURAL RESOURCES
CHAPTER 1531. DIVISION OF WILDLIFE
DIVISION OF WILDLIFE

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ORC Ann. 1531.13 (2008)

§ 1531.13. Wildlife officers and other law enforcement officers

The law enforcement officers of the division of wildlife shall be known as "wildlife officers." The chief of the division of wildlife, wildlife officers, and such other employees of the division as the chief of the division of wildlife designates, and other officers who are given like authority, shall enforce all laws pertaining to the taking, possession, protection, preservation, management, and propagation of wild animals and all division rules. They shall enforce all laws against hunting without permission of the owner or authorized agent of the land on which the hunting is done. They may arrest on view and without issuance of a warrant. They may inspect any container or package at any time except when within a building and the owner or person in charge of the building objects. The inspection shall be only for bag limits of wild animals taken in open season or for wild animals taken during the closed season, or for any kind or species of those wild animals.

The chief may visit all parts of the state and direct and assist wildlife officers and other employees in the discharge of their duties. The owners or tenants of private lands or waters are not liable to wildlife officers for injuries suffered while carrying out their duties while on the lands or waters of the owners or tenants unless the injuries are caused by the willful or wanton misconduct of the owners or tenants. Any regularly employed salaried wildlife officer may enter any private lands or waters if the wildlife officer has good cause to believe and does believe that a law is being violated.

A wildlife officer, sheriff, deputy sheriff, constable, or officer having a similar authority may search any place which the officer has good reason to believe contains a wild animal or any part of a wild animal taken or had in possession contrary to law or division rule, or a boat, gun, net, seine, trap, ferret, or device used in the violation, and seize any the officer finds so taken or possessed. If the owner or person in charge of the place to be searched refuses to permit the search, upon filing an affidavit in accordance with law with a court having jurisdiction of the offense and upon receiving a search warrant issued, the officer forcibly may search the place described, and if in the search the officer finds any wild animal or part of a wild animal, or any boat, gun, net, seine, trap, ferret, or device in the possession of the owner or person in charge, contrary to this chapter or Chapter 1533. of the Revised Code or division rule, the officer shall seize it and arrest the person in whose custody or possession it was found. The wild animal or parts of a wild animal or boat, gun, net, seine, trap, ferret, or device so found shall escheat to the state.

Each wildlife officer shall post a bond in a sum not less than one thousand dollars executed by a surety company authorized to transact business in this state for the faithful performance of the duties of the wildlife officer's office.

The chief and wildlife officers have the authority specified under *section 2935.03 of the Revised Code* for peace officers of the department of natural resources for the purpose of enforcing the criminal laws of the state on any property owned, controlled, maintained, or administered by the department of natural resources and may enforce *sections 2923.12, 2923.15*, and *2923.16 of the Revised Code* throughout the state and may arrest without warrant any person who, in the presence of the chief or any wildlife officer, is engaged in the violation of any of those laws.

A wildlife officer may render assistance to a state or local law enforcement officer at the request of that officer or may render assistance to a state or local law enforcement officer in the event of an emergency. Wildlife officers serving outside the division of wildlife under this section shall be considered as performing services within their regular employment for the purposes of compensation, pension or indemnity fund rights, workers' compensation, and other rights or benefits to which they may be entitled as incidents of their regular employment.

Wildlife officers serving outside the division of wildlife under this section retain personal immunity from civil liability as specified in *section 9.86 of the Revised Code* and shall not be considered an employee of a political subdivision for purposes of Chapter 2744. of the Revised Code. A political subdivision that uses wildlife officers under this section is not subject to civil liability under Chapter 2744. of the Revised Code as the result of any action or omission of any wildlife officer acting under this section.

HISTORY:

GC § 1441; 109 v PtI, 577 (599), § 51; 113 v 551 (586); 118 v 83 (94); 119 v 369; 120 v 241; 123 v 84 (155), § 2; Bureau of Code Revision, 10-1-53; 130 v H 573 (Eff 9-30-63); 130 v PtII, 105 (Eff 12-16-64); 135 v H 453 (Eff 11-20-73); 139 v H 424 (Eff 7-6-82); 143 v H 669 (Eff 1-10-91); 145 v S 182 (Eff 10-20-94); 147 v S 187. Eff 3-18-99.

NOTES:

Related Statutes & Rules

Cross-References to Related Statutes

Disposition of fishing license fees, *RC § 1533.33.*

Harassment of hunters, trappers and fishermen, *RC § 1533.03.*

Permit for handling fish at wholesale, *RC § 1533.63.1.*

Permit for transporting fish, *RC § 1533.30.1.*

Submerged lands preserves; enforcement of provisions, *RC § 1506.35.*

Wildlife officer defined as--

Department of natural resources law enforcement officer, *RC § 742.64.*

Peace officer, *RC § 109.71.*

Public employee, *RC § 145.01.*

Ohio Constitution

Search warrants and general warrants, *OConst art I, § 14.*

Ohio Rules

Search and seizure, *CrimR 41.*

OH Administrative Code

Office of the attorney general, peace officer training council--

Basic training program. OAC ch. 109:2-1.

Police and fire pension fund--

Membership; retirement; death benefit. OAC ch. 742-1 et seq.

Case Notes & OAGs
ANALYSIS Authority of officer Bonds Construction with other laws Damages Employees Game protectors Injunction Pollution Search warrants

AUTHORITY OF OFFICER.

The enforcement officers specified in this section (now *RC § 1531.13*) have authority to enforce the fish and game laws on a body of water created by damming a flowing stream where such stream either continuously or seasonally provides a passageway for fish to public waters or waters situated on the land of another: *1948 OAG No. 4006 (1948).*

BONDS.

Appellant's argument that the game protector was not sufficiently bonded because he did not pay the premium himself was without merit, since nothing in *RC § 1531.13* requires each game protector to personally pay the bond premium, which in this case was paid by the state: *Division of Wildlife v. Freed, 101 Ohio App. 3d 709, 656 N.E.2d 694, 1995 Ohio App. LEXIS 953 (1995).*

CONSTRUCTION WITH OTHER LAWS.

For purposes of execution of a bench or arrest warrant issued by a judge or clerk of a municipal court, or by an officer of the court designated by the judge pursuant to *CrimR 4(A)(1)*, such execution by arrest may be made by (1) a sheriff, sheriff's deputy, municipal police officer, and a state highway patrolman pursuant to *CrimR 4(A)(1)*, *4(D)(1)* and *9(C)(1)*; and (2) a game protector of the Division of Wildlife of the Ohio Department of Natural Resources pursuant to *CrimR 4(A)(1)*, *4(D)(1)*, and *9(C)(1)*, within the limitations of *CrimR 2* and *RC § 1531.13*, and when enforcing the provisions of *RC §§ 2923.12* and *2923.16*: OAG No. 84-004 (1984).

DAMAGES.

Where the injury or destruction of such habitat, food supply or other environmental conditions has already taken place the state can bring an action for damages against the person or persons causing such injury or destruction: *1948 OAG No. 4095 (1948).*

EMPLOYEES.

Because forest officers under *RC § 1503.29*, preserve officers under *RC § 1517.10*, wildlife officers under *RC § 1531.13*, park officers under *RC § 1541.10*, and watercraft officers under *RC § 1547.52.1* are not peace officers described in *RC § 2935.03(B)(1)*, the officers are not subject to the domestic violence arrest provisions of *RC § 2935.03(B)(3)*, and the department is not required to adopt a domestic violence policy pursuant to *RC § 2935.03.2*: OAG No. 96-014 (1996).

GAME PROTECTORS.

The impersonation of a game protector of the State of Ohio constitutes a violation of *RC § 2917.35* (now *RC § 2913.44*): OAG No. 65-211 (1965).

Game protectors are specially appointed police officers who are appointed in pursuance of law and are therefore permitted to bear arms while in the performance of their duty, provided they have first given bond to the state of Ohio as provided by law: *1950 OAG No. 2074 (1950).*

The commissioner of conservation and natural resources does not have the authority to appoint as a game protector an individual who is not an employee of the division of conservation and natural resources: *1943 OAG No. 6308 (1943).*

Game protectors may be transferred from one county to another: *1927 OAG p. 2370 (1927).*

INJUNCTION.

When the habitat, food supply and other environmental conditions of fish are threatened with injury or destruction by the discharge of deleterious substances into the waters of the state, the commissioner may bring an action in the name of the state for an injunction: *1948 OAG No. 4095 (1948).*

POLLUTION.

It is the duty of the commissioner, game protectors and other employees of the division to cause proceedings to be instituted under GC §§ 12646 and 12647 (*RC §§ 3767.13* and *3767.14*), when such sections are being violated by the discharging of coal dirt, coal slack, coal screenings or refuse from coal mines into streams and watercourses which are the habitat of fish: *1948 OAG No. 4095 (1948).*

SEARCH WARRANTS.

A game protector may search, without a warrant, any boat or place, except a building, which he has good reason to believe is used in the taking or possessing of fish in violation of Ohio wildlife laws, *RC §§ 1531.02* et seq, by reason of the first sentence of the third paragraph of *RC § 1531.13*: *State v. Putzke, 7 Ohio App. 2d 18, 218 N.E.2d 627 (1966).*

Incident to enforcement of Ohio wildlife laws, *RC § 1531.02* et seq, it is mandatory for a game protector to obtain a search warrant, when investigating for a violation of Ohio wildlife laws, only when the search is of a building, as prescribed by the fifth sentence of the first paragraph of *RC § 1531.13*: *State v. Putzke, 7 Ohio App. 2d 18, 218 N.E.2d 627 (1966).*

LEXSTAT ORC ANN. 1531.14

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TITLE 15. CONSERVATION OF NATURAL RESOURCES
CHAPTER 1531. DIVISION OF WILDLIFE
DIVISION OF WILDLIFE

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ORC Ann. 1531.14 (2008)

§ 1531.14. Entry on land for research or investigation

Any person regularly employed by the division of wildlife for the purpose of conducting research and investigation of game or fish or their habitat conditions or engaged in restocking game or fish or in any type of work involved in or incident to game or fish restoration projects or in the enforcement of laws or division rules relating to game or fish, or in the enforcement of *section 1531.29* or *3767.32 of the Revised Code*, other laws prohibiting the dumping of refuse in or along streams, or watercraft laws, while in the normal, lawful, and peaceful pursuit of such investigation, work, or enforcement may enter upon, cross over, be upon, and remain upon privately owned lands for such purposes and shall not be subject to arrest for trespass while so engaged or for such cause thereafter.

Any such person, upon demand, shall identify himself to the owner, tenant, or manager of such privately owned lands by means of a badge or card bearing his name and certifying his employment by the division.

HISTORY:

GC § 1441-1; 124 v 264 (284), § 10; Bureau of Code Revision, 10-1-53; 130 v H 573 (Eff 9-30-63); 132 v S 345 (Eff 6-5-68); 134 v S 304 (Eff 12-10-71); 145 v S 182. Eff 10-20-94.

NOTES:

Related Statutes & Rules

Ohio Constitution

Inviolability of private property, *OConst art I, § 19.*

Case Notes & OAGs

CONSTITUTIONALITY.

Where a wildlife officer, pursuant to *Ohio Rev. Code Ann. § 1531.14*, entered upon defendant's property to investigate possible violations of gaming laws, defendant told him he had a firearm in his truck, and the officer saw in the truck, in plain view, a shotgun with the action closed, in violation of Ohio law, defendant failed to prove beyond a reasonable doubt the unconstitutionality of § 1531.14 on its face or as applied. *State v. Davis, 2004 Ohio App. LEXIS 2006, 2004 Ohio 2255,* (2004).

LEXSTAT O R C ANN 1531.33

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TITLE 15. CONSERVATION OF NATURAL RESOURCES
CHAPTER 1531. DIVISION OF WILDLIFE
FUNDS

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ORC Ann. 1531.33 (2008)

§ 1531.33. Wildlife habitat fund

The wildlife habitat fund is hereby created in the state treasury. The fund shall consist of the investment earnings of the wildlife habitat trust fund created in *section 1531.32 of the Revised Code*; gifts, donations, bequests, and other moneys contributed to the division of wildlife for the purposes of the fund; moneys collected under division (H) of *section 1531.06 of the Revised Code*; and moneys received by the division pursuant to negotiated mitigation settlements from persons who have adversely affected fish and wildlife, or their habitats, over which the division has jurisdiction under this chapter or Chapter 1533. of the Revised Code other than fish and wildlife of the Ohio river or their habitats.

The fund shall be used by the division to acquire and develop lands for the preservation, propagation, and protection of wild animals. All expenditures from the wildlife habitat fund shall be approved by the director of natural resources. Quarterly each fiscal year, the treasurer of state shall transfer the investment earnings of the wildlife habitat trust fund to the wildlife habitat fund.

HISTORY:

144 v H 268 (Eff 9-17-91); 147 v S 187. Eff 3-18-99.

NOTES:

Related Statutes & Rules

Cross-References to Related Statutes

Acquisition of lands and waters; powers and duties of chief, *RC § 1531.06*.

Wildlife habitat trust fund, *RC § 1531.32*.

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TITLE 15. CONSERVATION OF NATURAL RESOURCES
CHAPTER 1533. HUNTING; FISHING

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ORC Ann. 1533.10 (2008)

§ 1533.10. Hunting license; apprentice or youth license; nonresident small game license; education and conservation course

Except as provided in this section or division (A)(2) of *section 1533.12 of the Revised Code*, no person shall hunt any wild bird or wild quadruped without a hunting license. Each day that any person hunts within the state without procuring such a license constitutes a separate offense. Except as otherwise provided in this section, every applicant for a hunting license who is a resident of the state and eighteen years of age or more shall procure a resident hunting license, or an apprentice resident hunting license, the fee for which shall be eighteen dollars unless the rules adopted under division (B) of *section 1533.12 of the Revised Code* provide for issuance of a resident hunting license to the applicant free of charge. Except as provided in rules adopted under division (B)(2) of that section, each applicant who is a resident of this state and who at the time of application is sixty-six years of age or older shall procure a special senior hunting license, the fee for which shall be one-half of the regular hunting license fee. Every applicant who is under the age of eighteen years shall procure a special youth hunting license, or an apprentice youth hunting license, the fee for which shall be one-half of the regular hunting license fee. The owner of lands in the state and the owner's children of any age and grandchildren under eighteen years of age may hunt on the lands without a hunting license. The tenant and children of the tenant, residing on lands in the state, may hunt on them without a hunting license. Except as otherwise provided in division (A)(1) of *section 1533.12 of the Revised Code*, every applicant for a hunting license who is a nonresident of the state and who is eighteen years of age or older shall procure a nonresident hunting license or an apprentice nonresident hunting license, the fee for which shall be one hundred twenty-four dollars, unless the applicant is a resident of a state that is a party to an agreement under *section 1533.91 of the Revised Code*, in which case the fee shall be eighteen dollars. Apprentice resident hunting licenses, apprentice youth hunting licenses, and apprentice nonresident hunting licenses are subject to the requirements established under *section 1533.102 [1533.10.2] of the Revised Code* and rules adopted pursuant to it.

The chief of the division of wildlife may issue a small game hunting license expiring three days from the effective date of the license to a nonresident of the state, the fee for which shall be thirty-nine dollars. No person shall take or possess deer, wild turkeys, fur-bearing animals, ducks, geese, brant, or any nongame animal while possessing only a small game hunting license. A small game hunting license or an apprentice nonresident hunting license does not authorize the taking or possessing of ducks, geese, or brant without having obtained, in addition to the small game hunting license or the apprentice nonresident hunting license, a wetlands habitat stamp as provided in *section 1533.112 [1533.11.2] of the Revised Code*. A small game hunting license or an apprentice nonresident hunting license does not authorize the taking or possessing of deer, wild turkeys, or fur-bearing animals. A nonresident of the state who wishes to take or possess deer, wild turkeys, or fur-bearing animals in this state shall procure, respectively, a deer or wild tur-

key permit as provided in *section 1533.11 of the Revised Code* or a fur taker permit as provided in *section 1533.111 [1533.11.1] of the Revised Code* in addition to a nonresident hunting license, an apprentice nonresident hunting license, a special youth hunting license, or an apprentice youth hunting license, as applicable, as provided in this section.

No person shall procure or attempt to procure a hunting license by fraud, deceit, misrepresentation, or any false statement.

This section does not authorize the taking and possessing of deer or wild turkeys without first having obtained, in addition to the hunting license required by this section, a deer or wild turkey permit as provided in *section 1533.11 of the Revised Code* or the taking and possessing of ducks, geese, or brant without first having obtained, in addition to the hunting license required by this section, a wetlands habitat stamp as provided in *section 1533.112 [1533.11.2] of the Revised Code*.

This section does not authorize the hunting or trapping of fur-bearing animals without first having obtained, in addition to a hunting license required by this section, a fur taker permit as provided in *section 1533.111 [1533.11.1] of the Revised Code*.

No hunting license shall be issued unless it is accompanied by a written explanation of the law in *section 1533.17 of the Revised Code* and the penalty for its violation, including a description of terms of imprisonment and fines that may be imposed.

No hunting license, other than an apprentice hunting license, shall be issued unless the applicant presents to the agent authorized to issue the license a previously held hunting license or evidence of having held such a license in content and manner approved by the chief, a certificate of completion issued upon completion of a hunter education and conservation course approved by the chief, or evidence of equivalent training in content and manner approved by the chief. A previously held apprentice hunting license does not satisfy the requirement concerning the presentation of a previously held hunting license or evidence of it.

No person shall issue a hunting license, except an apprentice hunting license, to any person who fails to present the evidence required by this section. No person shall purchase or obtain a hunting license, other than an apprentice hunting license, without presenting to the issuing agent the evidence required by this section. Issuance of a hunting license in violation of the requirements of this section is an offense by both the purchaser of the illegally obtained hunting license and the clerk or agent who issued the hunting license. Any hunting license issued in violation of this section is void.

The chief, with approval of the wildlife council, shall adopt rules prescribing a hunter education and conservation course for first-time hunting license buyers, other than buyers of apprentice hunting licenses, and for volunteer instructors. The course shall consist of subjects including, but not limited to, hunter safety and health, use of hunting implements, hunting tradition and ethics, the hunter and conservation, the law in *section 1533.17 of the Revised Code* along with the penalty for its violation, including a description of terms of imprisonment and fines that may be imposed, and other law relating to hunting. Authorized personnel of the division or volunteer instructors approved by the chief shall conduct such courses with such frequency and at such locations throughout the state as to reasonably meet the needs of license applicants. The chief shall issue a certificate of completion to each person who successfully completes the course and passes an examination prescribed by the chief.

HISTORY:

GC § 1431; 108 v Pt1, 577(594), § 41; 111 v 496; 117 v 77; 119 v 695; 122 v 422; 124 v 264(280), § 5; Bureau of Code Revision, 10-1-53; 127 v 113 (Eff 9-13-57); 130 v S 310 (Eff 9-17-63); 132 v H 243 (Eff 8-31-67); 134 v H 963 (Eff 1-14-72); 135 v H 399 (Eff 10-31-73); 136 v S 243 (Eff 8-15-75); 136 v H 165 (Eff 2-20-76); 137 v S 419 (Eff 9-1-79); 139 v H 371 (Eff 2-9-82); 141 v H 848 (Eff 2-27-87); 143 v H 111 (Eff 7-1-89); 144 v H 298 (Eff 7-26-91); 145 v H 152 (Eff 9-1-94); 145 v H 715 (Eff 7-22-94); 145 v S 182 (Eff 10-20-94); 147 v H 203 (Eff 2-25-98); 147 v S 103 (Eff 6-1-98); 147 v S 187. Eff 3-18-99; 150 v H 95, § 1. eff. 9-26-03; 151 v H 66, § 101.01, eff. 9-29-05; 151 v H 296, § 1, eff. 5-17-06; 151 v H 443, § 1, eff. 4-6-07.

NOTES:

Section Notes

The provisions of § 7 of 151 v H 443 read as follows:

SECTION 7. *Section 1533.10 of the Revised Code* is presented in this act as a composite of the section as amended by both Am. Sub. H.B. 66 and H.B. 296 of the 126th General Assembly. * * * The General Assembly, applying the principle stated in division (B) of *section 1.52 of the Revised Code* that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composites are the resulting versions of the sections in effect prior to the effective date of the sections as presented in this act.

The effective date is set by § 612.03 of 151 v H 66.

The effective date is set by section 179 of H.B. 95 (150 v --).

EFFECT OF AMENDMENTS

151 v H 443, effective April 6, 2007, deleted "special" preceding "deer" in the second and fourth paragraphs.

151 v H 296, effective May 17, 2006, substituted "eighteen" for "sixteen" throughout; twice inserted "or an apprentice youth hunting license"; five times inserted "or an apprentice nonresident hunting license"; in the first paragraph, inserted "or an apprentice resident hunting license"; added the last sentences to the first and seventh paragraphs; twice inserted "other than an apprentice hunting license"; in the eighth paragraph, inserted "except an apprentice hunting license"; and, in the final paragraph, inserted "other than buyers of apprentice hunting licenses".

151 v H 66, effective September 29, 2005, in the first paragraph, substituted "eighteen" for "sixteen" three times, and added the exception to the beginning of the last sentence; and corrected internal references.

H.B. 95, Acts 2003, effective September 26, 2003, rewrote the first two paragraphs.

COMMENT, LEGISLATIVE SERVICE COMMISSION

Section 1533.10 of the Revised Code is amended by H.B. 226 and Am. Sub. H.B. 66 of the 126th General Assembly. Comparison of these amendments in pursuance of *section 1.52 of the Revised Code* discloses that they are not irreconcilable so that they are required by that section to be harmonized to give effect to each amendment.

Related Statutes & Rules

Cross-References to Related Statutes

Dating and recording licenses and permits, *RC § 1533.15.*

Division of civilian conservation, *RC § 1553.01.*

Effect of child support default, *RC § 1533.82.*

Gift certificates for licenses, permits, and stamps, *RC § 1533.13.1.*

Nonresident licenses, *RC § 1533.80.*

Special deer or turkey hunting permits; wildlife refunds fund, *RC § 1533.11.*

Wetlands habitat stamp needed to hunt ducks, geese or brant, exceptions, *RC § 1533.11.2.*

OH Administrative Code

Department of job and family services, division of public assistance--

Suspension of recreational license issued by the department of natural resources upon default of child support order; notice and enforcement methods. OAC 5101:1-30-882.

Hunter safety and trapper education courses. OAC ch. 1501:31-29

Hunting and trapping regulations for furbearing animals. *OAC 1501:31-15-09.*

ALR

Rights, title, and remedies of hunter in respect of game which he is pursuing or has killed or wounded. 49 A.L.R. 1498.

Case Notes & OAGs
ANALYSIS Generally Construction with other law License Municipalities

GENERALLY.

A resident of Ohio, for the purpose of the Fish and Game Act, is a citizen of the United States and who has lived in the state of Ohio for not less than one year next preceding the date of application for a fishing or hunter's and trapper's license: *1935 OAG No. 4551 (1935).*

CONSTRUCTION WITH OTHER LAW.

When a regulation, which allows landowners but not tenants to obtain antlerless deer hunting permits conflicts with a statute that requires equal treatment of landowners and tenants as to the hunting of deer, the statute shall control: *State v. McDaniel, 23 Ohio St. 3d 35, 490 N.E.2d 612 (1986).*

LICENSE.

The requirement of a hunter's license (*RC § 1533.10*) applies to those who hunt for sport, pleasure or profit; it has no application to one who kills a fur-bearing animal which has caused a property loss and has become a nuisance: Fenner v. State, 22 Ohio L. 371 (App 1923).

Under the provisions of GC § 1431 (*RC § 1533.10*), a non-resident may not lawfully hunt or trap on lands owned by him within this state without first having secured an Ohio nonresident hunting license: *1939 OAG No. 779 (1939).*

It is not necessary to secure a hunter and trapper's license before pursuing, capturing or killing groundhogs on the lands of another when such person has the consent of the one in control of the land: *1923 OAG p. 653 (1923).*

Hunters must obtain a license to hunt wild birds or animals on water bordering the state of Ohio or within the jurisdiction of the state of Ohio: 1920 OAG vol. 2, p. 1055 (1920).

MUNICIPALITIES.

A municipal ordinance allowing only residents of the municipality to hunt within the municipal boundaries is invalid: OAG No. 66-151 (1966).

A municipal ordinance requiring a municipal license to hunt or trap within the boundaries of that municipality is an invalid exercise of municipal power since such an ordinance is in conflict with the general laws: OAG No. 66-151 (1966).

LEXSTAT ORC ANN. 1533.14

PAGE'S OHIO REVISED CODE ANNOTATED

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*** CURRENT THROUGH LEGISLATION PASSED BY THE 127TH OHIO GENERAL ASSEMBLY AND FILED WITH THE SECRETARY OF STATE THROUGH JUNE 23, 2008 ***
*** ANNOTATIONS CURRENT THROUGH APRIL 1, 2008 ***
*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JUNE 15, 2008 ***

TITLE 15. CONSERVATION OF NATURAL RESOURCES
CHAPTER 1533. HUNTING; FISHING

Go to the Ohio Code Archive Directory

ORC Ann. 1533.14 (2008)

§ 1533.14. License or stamp not transferable, to be carried and exhibited

Unless otherwise provided by division rule, no hunting license or wetlands habitat stamp is transferable and no hunter shall carry a hunting license or wetlands habitat stamp that was issued in the name of another person or that does not contain the signature of the agent issuing it.

Every person, while hunting or trapping on the lands of another, shall carry the person's hunting license on the person's own self and exhibit it to any wildlife officer, constable, sheriff, deputy sheriff, or police officer, to the owner or person in lawful control of the land upon which the person is hunting or trapping, or to any other person. Failure to so carry or exhibit such a license constitutes an offense under this section. This chapter and Chapter 1531. of the Revised Code do not allow any person to hunt or trap on any land without the written consent of the owner thereof.

Such a license entitles a nonresident to take from this state game birds or game quadrupeds killed and possessed by the nonresident as provided by law or division rule.

HISTORY:

GC § 1434; 108 v PtI, 577(596), § 44; 117 v 46; 119 v 695; 123 v 84; 124 v 264(281), § 7; Bureau of Code Revision, 10-1-53; 130 v H 573 (Eff 9-30-63); 130 v PtII, 114 (Eff 12-16-64); 135 v H 453 (Eff 11-20-73); 137 v S 419 (Eff 1-27-79); 145 v S 182 (Eff 10-20-94); 147 v H 203. Eff 2-25-98.

NOTES:

lated Statutes & Rules

ss-References to Related Statutes

Penalties, *RC § 1533.99*.

Notes & OAGs

YSIS License Penalties

LICENSE.

Probable cause is not required for a game protector to ask a hunter for his hunting license: *Division of Wildlife v. Freed, 101 Ohio App. 3d 709, 656 N.E.2d 694, 1995 Ohio App. LEXIS 953 (1995).*

PENALTIES.

A game protector has the authority to issue citations in lieu of arrest for hunting license and special deer permit violations where there is ample evidence of articulable facts to justify an investigative stop under *Terry v. Ohio (1968), 392 U.S. 1*, if the defendant is in fact stopped, and there are facts creating probable cause to believe the defendant has committed an offense: *State v. Rohr, 53 Ohio App. 3d 132, 560 N.E.2d 244 (1988).*