

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

Plaintiff-Appellee,

v.

TERRANCE C. HENDERSON,

Defendant-Appellant.

SUPREME COURT CASE NO.  
08-2398

FIFTH DISTRICT CASE NO.  
07-COA-031

ASHLAND COUNTY COMMON  
PLEAS CASE NO. 06-CRI-082

---

STATE'S RESPONSE TO APPELLANT'S  
MEMORANDUM IN SUPPORT OF JURISDICTION

---

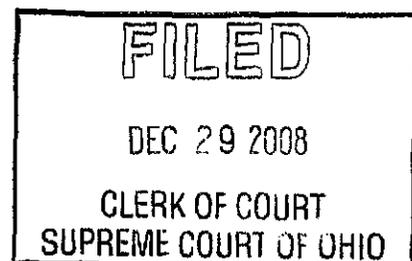
RAMONA FRANCESCONI ROGERS  
#0031149  
Ashland County Prosecuting Attorney  
307 Orange Street Square  
Ashland, Ohio 44805  
(419) 289-8857  
Fax No. (419) 281-3865

PAUL T. LANGE #0078466  
Assistant Ashland County Prosecuting  
Attorney  
(COUNSEL OF RECORD)

COUNSEL FOR PLAINTIFF-APPELLEE,  
STATE OF OHIO

TERRANCE C. HENDERSON  
Inmate No. A-530688  
c/o Richland Correctional Institution  
1001 Olivesburg Road  
Post Office Box 8107  
Mansfield, Ohio 44901-8107

(APPELLANT – PRO SE)



**THIS IS NOT A CASE OF GREAT PUBLIC INTEREST AND DOES NOT INVOLVE A  
SUBSTANTIAL CONSTITUTIONAL QUESTION**

The issues raised by the Appellant are not of great public interest and do not involve any substantial questions of constitutional law. The Appellant's first proposition of law concerns the propriety of an inventory search. The fact of the matter is that the car the Appellant was driving was a rental vehicle which was neither rented by the Appellant nor the only other person in the car. At the time of the inventory search, law enforcement could not confirm how the Appellant came to be in possession of it or even if the car had been stolen. Neither the Appellant nor the passenger even had a valid driver's license. Law enforcement was left in the situation of either towing the car or leaving it by the side of a busy road with two individuals, neither of whom were permitted to drive the car, who had no right to the car whatsoever. The Appellant did not have standing to raise the claim and, additionally, the search was indeed a valid inventory search. This Court has already held that law enforcement has discretion in deciding whether to impound a motor vehicle. *Blue Ash v. Kananagh*, 113 Ohio St. 3d 1487.

In regards to the Appellant's second proposition of law, the Appellant alleges that the jury's verdict was against the manifest weight of the evidence. The Appellant was convicted of Possession of Marihuana, a felony of the third degree. The evidence presented at trial established the Appellant's guilt beyond a reasonable doubt. The five pounds of marihuana at issue was found in a duffle bag in the trunk of a car driven by the Appellant. Further, the Appellant's fingerprint was found on one of the plastic bags containing the marihuana. Finally, the Appellant placed a phone call from the Ashland County Jail shortly after the five pounds of

marihuana was discovered. After being asked how bad is it, the Appellant responded "Not bad... just five."

Finally, the Appellant alleges that he was not provided with a transcript of the proceedings. The State did provide the Appellant with a transcript of the proceedings during his appeal to the Fifth Appellate District. The Appellant has apparently had some difficulty in obtaining the transcript from his attorney. The State has no obligation to pay for a second transcript for an appellant.

This is not a case of great public interest and does not involve a substantial question of constitutional law. This Court should, therefore, decline to accept jurisdiction.

#### **STATEMENT OF THE CASE AND FACTS**

On March 13, 2006, a car driven by the Appellant was stopped for a speeding violation. (Transcript of Proceedings, hereinafter T., 210). During the course of the traffic stop, it was discovered that neither the Appellant nor the passenger, Bruce Davis, was a properly licensed driver. (T., 212-213). Further, the car they were in was a rental vehicle which had not been rented to either the Appellant or the passenger in the vehicle. Given that the car was by the side of a busy road; that neither the Appellant nor the passenger had a valid driver's license; and that it was unclear how the Appellant came to be in possession of this rental car, law enforcement decided to have the car towed. Prior to having the car towed, law enforcement conducted an inventory search of the vehicle. During the course of the inventory search, officers located a large green duffle bag containing five plastic bags, each containing approximately one pound of marihuana. (T., 214-216). These five bags were all of similar size, appearance, and weight; further, all of these bags were packed together in the main compartment of this large green duffle

bag. Lab experts determined that the suspected marihuana in these five bags was indeed marihuana and, further, that the total weight of this marihuana was 2,252 grams, or five pounds. (T., 163-165).

Lab experts were able to further locate a single fingerprint on the bags which possessed enough detail so that it could be compared to a known fingerprint. A fingerprint expert positively matched the fingerprint found on the bag to that of the Appellant. (T., 305-316).

Further, the State presented during trial a recording of a telephone call placed by Appellant shortly after the five pounds of marihuana was discovered in the trunk of the car he was driving. (T., 271-272). During the phone call, Appellant is asked by the other person involved in the conversation "How bad is it?". The Appellant responds "Not bad... just five." (State's Trail Exhibit No. 9). This language clearly links Appellant to the five one pound bags of Marihuana discovered in the trunk of the car he was driving.

The Ashland County Grand Jury indicted the Appellant on one count of Possession of Marihuana, a felony of the third degree. Following the indictment, the Appellant filed a Motion to Suppress the evidence found in the trunk of the car he was driving. The trial court held that the Appellant had failed to establish standing to bring this claim. Ultimately, the case proceeded to a jury trial after which the Defendant was found guilty of Possession of Marihuana.

The Appellant appealed a number of issues to the Fifth District Court of Appeals. These issues included the trial court's decision in regards to the Appellant's Motion to Suppress, a speedy trial claim, and a claim that the jury's verdict was against the manifest weight of the evidence. On September 26, 2008, the Fifth District Court of Appeals affirmed the jury's verdict and found that the Appellant's speedy trial rights were not violated and that the search of the car he was driving was indeed proper. Pursuant to Rule 26(A) of the Ohio Rules of Appellate

Procedure, the Appellant filed a Motion to Reconsider with the Fifth District Court of Appeals. On November 26, 2008, the Fifth District denied that motion.

On December 16, 2008, the Appellant filed a Notice of Appeal and a Memorandum in Support of Jurisdiction with this Honorable Court. The State has filed a Motion to Dismiss the appeal as the Appellant failed to timely file his Notice of Appeal in regards to his first two propositions of law.

## LAW & ARGUMENT

### **APPELLANT'S FIRST PROPOSITION OF LAW**

In his first proposition of law, the Appellant contends essentially that law enforcement was not permitted to conduct an inventory search as it had not lawfully impounded the vehicle he was driving. Appellant alleges that the vehicle was legally parked and, therefore, law enforcement could not impound the vehicle. This Court, however, has held that law enforcement does indeed have discretion in determining whether to impound a vehicle.

In the case of *Blue Ash v. Kananagh*, 113 Ohio St. 3d 1487, this Court recognized that: "The authority of police to seize and remove from the streets vehicles impeding traffic or threatening public safety and convenience is beyond challenge." *Id* at ¶11, quoting the United States Supreme Court decision in *South Dakota v. Opperman* (1976), 428 U.S. 364, 368-369. This Court further recognized that Section 4513.61 of the Ohio Revised Code bestows upon law enforcement discretion as to impounding vehicles. The Appellant has failed to recognize these precedents

The trial court in the current case found that Appellant was operating the rental vehicle in which the drugs were found. The evidence established that Avis Rental was the owner of the vehicle and that someone other than the Appellant or the passenger had rented the car. (Motion to Suppress Judgment Entry, hereinafter Supp. J.E., 2). There was absolutely no evidence presented that Appellant was authorized by the rental agreement to operate the vehicle. Additionally, there is no evidence presented that Appellant was authorized to use the rental vehicle by the person who rented the vehicle. As a result, there was no evidence presented that Appellant was in lawful possession of the vehicle.

At the time law enforcement made the decision to tow the vehicle, all the officers knew was that the car was a rental vehicle; the person who rented the vehicle was not in the vehicle; the car was parked by a busy road way as the morning rush hour was about to begin; and that neither the Appellant nor the passenger were validly licensed to drive the vehicle. For all law enforcement knew, or the trial court during the suppression hearing, the vehicle could have been stolen. Given that the Appellant was not the owner of the vehicle and that he was not even suppose to be driving any vehicles without a properly licensed driver, law enforcement made the decision to tow the vehicle rather than leave it by a busy road way.

The Appellant alleges that the case of *State v. Ramos*, 155 Ohio App. 3d 396, provides support for his position. This case, however, is not relevant towards the issues present here. The issue in *Ramos, supra*, did not concern the impoundment of a vehicle. Rather, the case concerned whether the police had detained a driver for too long while awaiting a drug dog. *Id.* The Fifth District certainly has no obligation to follow precedent set by the Second District Court of Appeals, especially since the issues in these two cases are dissimilar.

The Appellant has never established that he had any right to this vehicle nor that it was even his vehicle. The evidence presented at the suppression hearing established that the vehicle was a rental car and that someone other than the Appellant or the other passenger in the vehicle had rented the vehicle. No evidence was presented to establish how the Appellant came to be in possession of the vehicle at issue. Law enforcement certainly had no knowledge as to when a person with an actual right to the vehicle would be able to retrieve it from the side of the busy roadway, so the decision to tow the vehicle was fully justified to ensure public safety and the rights of the true owner of the car.

The officers here exercised their discretion and decided to impound the vehicle. The Appellant has failed to establish that this is a case of great public interest or that it involves a substantial question of constitutional law.

#### **APPELLANT'S PROPOSITION OF LAW II**

In the Appellant's second proposition of law, the Appellant alleges that the jury's verdict was against the manifest weight of the evidence. The evidence at trial, however, established Appellant's guilt beyond a reasonable doubt. Therefore, the jury's verdict was properly affirmed by the Fifth District Court of Appeals.

In the case of *State v. Jenks* (1991), 61 Ohio St. 3d 259, 273, 574 N.E. 2d 492, this Honorable Court held that when reviewing such a claim the reviewing court must "...examine the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt. The relevant inquiry is whether, after viewing the evidence *in a light most favorable to the prosecution*, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable

doubt." (Emphasis Added). Guilt may be proved by circumstantial or direct evidence. *State v. Griffin* (1979), 13 Ohio App. 3d 376, 377, 469 N.E. 2d 1329. It is the jury's function to make those inferences reasonably supported by the evidence. *State v. Vondenberg* (1980), 61 Ohio St. 2d 285, 401 N.E. 2d 437.

The proper standard of review on a manifest weight challenge to a criminal conviction is that "The Court, reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered." *State v. Martin* (1983), 20 Ohio App. 3d 172, 175, 485 N.E. 2d 717. See also, *State v. Thompkins* (1997), 78 Ohio St. 3d 380, 678 N.E. 2d 541. The granting of a new trial "should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction." *Martin* at 175.

During the course of the trial, the State proved the Defendant's guilt beyond a reasonable doubt. The evidence revealed that on March 13, 2006, a car driven by the Appellant was stopped for a speeding violation. (Transcript of Proceedings, hereinafter T., 210). During the course of the traffic stop, it was discovered that neither Appellant nor the passenger, Bruce Davis, was a properly licensed driver. (T., 212-213). Further, law enforcement discovered that the car was a rental car that had not been rented by either the Appellant or the passenger. Given that neither the Appellant nor the passenger were properly licensed drivers, law enforcement decided to tow the vehicle and conduct an inventory search. During the course of the inventory search, law enforcement located a large green duffle bag containing five plastic bags, each containing approximately one pound of marihuana. (T., 214-216). These five bags were all of similar size, appearance, and weight; further, all of these bags were packed together in the main compartment

of this large green duffle bag. Lab experts determined that the suspected marihuana in these five bags was indeed marihuana and, further, that the total weight of this marihuana was 2,252 grams, or five pounds. (T., 163-165).

Lab experts were able to further locate a single fingerprint on the bags which possessed enough detail so that it could be compared to a known fingerprint. A fingerprint expert positively matched the fingerprint found on the bag to that of the Appellant. (T., 305-316).

Appellant alleges that the State's fingerprint expert could not positively identify the fingerprint as belonging to him. This is completely false and is clearly an attempt to mislead this Court. The truth is that in addition to the fingerprint which was positively identified as belonging to the Appellant, other partial fingerprints were found on the bags of marihuana which were at issue. None of these partial fingerprints, however, had enough detail for experts to attempt to identify the person who left them on the bags.

Further, the State presented a recording of a telephone call placed by Appellant, from the Ashland County Jail, shortly after the discovery of the five pounds of marihuana in the trunk of the car he was driving. (T., 271-272). During the phone call, Appellant is asked by the other person involved in the conversation "How bad is it?". The Appellant responds "Not bad... just five." (State's Trail Exhibit No. 9). This language links Appellant to the five one pound bags of Marihuana discovered in the trunk of the car he was driving. The five bags collectively carried five pounds of marihuana. The jury drew the reasonable inference that when the Appellant stated "just five", he was referring to the five bags and five pounds of marihuana which were found to be in his possession.

The Appellant was in possession of the car in which the marihuana was found; his fingerprint was located on one of the bags of marihuana; and Appellant's own statement fully

support the jury's decision to find Appellant guilty of Possession of Marihuana, a felony of the third degree.

Given that the State met its burden in establishing the Defendant's guilt beyond a reasonable doubt, the Fifth District Court of Appeals properly affirmed the jury's verdict.

### **APPELLANT'S PROPOSITION OF LAW III**

In regards to the Appellant's Third Proposition of Law, this claim only goes to the Fifth District Court of Appeal's decision not to provide him with an additional copy of the transcript for this case. During the Appellant's initial appeal, he was provided with a full transcript of the proceedings which included a three day jury trial and a suppression hearing. The Appellant has not provided any reason for why the State should have to pay for an additional copy of the transcript for the proceedings when it has already provided him with one. The Appellant's request to the Fifth District Court of Appeals was for a "loner copy." There's no such thing as a "loner copy" of a court record. The issue here is between the Appellant and his attorney. This request does not pose a question of great public interest nor a substantial question of constitutional law. The Court should, therefore, decline to accept jurisdiction over this claim.

**CONCLUSION**

This is not a case of great public interest and does not involve a substantial question of constitutional law. Based upon the foregoing arguments and law the State of Ohio requests this Honorable Court decline to accept jurisdiction.



---

Paul T. Lange (0078466)  
Assistant Prosecuting Attorney  
307 Orange Street  
Ashland, Ohio 44805  
(419) 289-8857

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing State's Response to Appellant's Memorandum in Support of Jurisdiction was served on the Appellant, Terrance C. Henderson, Inmate No. A530688, c/o Richland Correctional Institution, 1001 Olivesburg Road, Post Office Box 8107, Mansfield, Ohio 44901-8107, by regular U.S. mail postage prepaid on the 26<sup>th</sup> day of December 2008.



---

Paul T. Lange (0078466)  
Assistant Prosecuting Attorney