ORIGINAL

IN THE SUPREME COURT OF OHIO

LEA D. SMITH,	:	CASE NO. 10-0809
Plaintiff/Appellant,	:	[Appeal from Franklin County Court of Appeals, Tenth Appellate District Case No 09APE-06-0571]
vs.	:	
VASHAWN L. MCBRIDE, et al.,	:	
Defendants/Appellees.	:	

MERIT BRIEF OF DEFENDANTS-APPELLEES CLINTON TOWNSHIP, OHIO AND SGT. TRAVIS D. CARPENTER

Jeffrey C. Turner (0063154)
Boyd W. Gentry (0071057) (Counsel of Record)
Joshua R. Schierloh (0078325)
SURDYK, DOWD & TURNER CO., LPA
1 Prestige Place, Suite 700
Miamisburg, Ohio 45342
Tel.: (937) 222-2333
Fax: (937) 222-1970
jturner@sdtlawyers.com
bgentry@sdtlawyers.com
jschierloh@sdtlawyers.com
Counsel for Defendants/Appellees Sgt. Travis D. Carpenter and Clinton Township

Brian G. Miller (0063241)
Brian G. Miller Co., LPA
326 South High Street, Suite 500
Columbus, Ohio 43215
Tel.: (614) 221-4035
Fax: (614) 222-1899
bgm@bgmillerlaw.com
Counsel for Plaintiff/Appellant Lea D. Smith

RECEIVED
DEC 22 2010
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FILED
DEC 22 2010
CLERK OF COURT
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STATEMENT OF THE CASE

This case arises from a motor vehicle accident. Sgt. Travis Carpenter of the Clinton Township Police Department was responding to a call from a sheriff's deputy when the car Plaintiff/Appellant Lea D. Smith was riding in struck his police cruiser. The deputy had requested assistance in apprehending a fleeing suspect just outside of Clinton Township. The deputy was in a high crime area. Recognizing the need for an immediate response, Sgt. Carpenter responded. Sgt. Carpenter was outside of the township limits when his cruiser was struck by the car in which Plaintiff was a passenger. Defendant Vashawn McBride's car was driving that car.

At the time of the accident, Plaintiff/Appellant Lea D. Smith was sleeping as a passenger. McBride's vehicle struck the police cruiser operated by Sgt. Carpenter at the intersection of Morse Road and Chesford Road in Columbus.

Appellant filed a civil complaint in the Franklin County Common Pleas Court for personal injuries resulting from this accident. Appellant's Complaint named Vashawn McBride, Sgt. Carpenter, and the Clinton Township Police Department as defendants. After engaging in discovery, Sgt. Carpenter and the Clinton Township Police Department (collectively referred to herein as "Appellees") moved for Summary Judgment relying in part on R.C. §§ 2744.02 and 2744.03.

The trial court granted Appellees' motion for summary judgment. Specifically, the trial court determined that Sgt. Carpenter did not act in a wanton or reckless manner. Consequently, Sgt. Carpenter was afforded immunity pursuant to R.C. § 2744.03(A)(6). Further, the trial court dismissed the township police department from the action as not being *sui juris*. The trial court noted that "had Plaintiff taken the correct steps to name Clinton Township as a party to this action, Clinton Township would likewise be entitled to immunity." (Decision and Entry Granting Defendants' Motion For Summary Judgment [herein "Decision"], p.3, attached as Appendix 1 to Appellant's Brief.) The trial court analyzed the township's immunity under R.C.

§ 2744.02.

Appellant appealed to the Tenth District Court of Appeals, and subsequently moved for leave to amend her Complaint to name the township – rather than the police department – as a defendant. The trial court granted that leave: The township was added and the police department dropped.

The court of appeals affirmed, holding that Sgt. Carpenter was on an "emergency call" at the time of the accident and did not operate his cruiser in a willful, wanton or reckless manner.

Appellant now disputes the conclusion that Sgt. Carpenter was on an "emergency call" when the accident occurred. Appellant contends that Sgt. Carpenter had no authority to act outside of the township, in the absence of a mutual aid pact or equivalent legislative enactment. Thus, Appellant concludes that Sgt. Carpenter could not have been responding to a call to duty so as to invoke R.C. §§ 2744.02(B)(1)(a) and 2744.03(A)(6).

R.C. §§ 2744.02 and 2744.03 are not limited by geography. Ohio courts have recognized that point and awarded immunity for extra-territorial acts, even without a mutual aid pact. For the reasons discussed herein, the Tenth District's decision and judgment should be affirmed.

STATEMENT OF FACTS

Before the accident, Plaintiff and Defendant Vashawn McBride had been drinking at two bars. (Supplement of Appellant ["Supp."] p.38, Deposition Transcript of Appellant Lea D. Smith [hereafter "App. dep.] p. 9; See also, Supp. p.39, App. depo. p. 12; Supp. 40, App. dep. pp. 15-16.) Plaintiff consumed two (2) alcoholic drinks at the first bar. (Id.) She met Defendant Vashawn McBride (hereafter "McBride") at the bar, they had drinks, and then left around 10:30 p.m. (Supp. pp. 38-39, App. dep. pp. 9-10; Supp. p.42, App. dep. p. 25) (Supp. p. 40, App. dep. p.15.)

McBride drove Plaintiff to another bar. (Supp. p.43, App. dep. p. 26.) Upon leaving the second bar, Plaintiff immediately fell asleep in McBride's car. (Supp. p. 38, App. dep. p. 8;

Supp. pp.44-45, App. dep. pp. 33-36.)

At that time, Sgt. Carpenter was on duty and overheard a dispatch call from a Franklin County sheriff's deputy involved in a foot chase with a fleeing suspect. (Supp. p. 17, Deposition Transcript of Sgt. Travis D. Carpenter [hereafter "Carpenter dep."] p. 63.) At the time of the call, Sgt. Carpenter was nearby at the Clinton Township Police Department. (Id., see also Supp. p. 20, Carpenter dep. pp.75-77.) Sgt. Carpenter determined that an immediate response was necessary due to (1) the nature of the call (officer in need of assistance in a foot chase), and (2) it was a high crime area known for arrests involving weapons and drugs. (Supp. p. 34, Carpenter depo. p. 132.) Sgt. Carpenter was aware that foot chases are dangerous situations in which officers have been injured or killed. (Supp. p. 33, Carpenter dep. p. 129). Sgt. Carpenter, therefore, felt compelled to respond to the deputy's call. (Supp. p. 18, Carpenter depo. p. 66, ln. 13.) Also, Sgt. Carpenter believed that the township had entered into a mutual aid pact with the county. (Id.)

Sgt. Carpenter responded to the call in a marked police cruiser. (Supp. p. 7, Carpenter dep. p. 23.) Sgt. Carpenter traveled eastbound on Morse Road. (Supp. p. 9, Carpenter dep. p. 31.) Traffic conditions on Morse Road were "light." (Supp. p. 11, Carpenter dep. p. 41.) As Sgt. Carpenter approached the intersection of Morse Road and Chesford Road he had a green light to pass through the intersection. (Supp. p. 9, Carpenter dep. p. 32.) A car turned left from westbound Morse Road onto southbound Chesford Road as Sgt. Carpenter neared the intersection. (Supp. p. 10, Carpenter dep. p. 37.) Sgt. Carpenter slowed down to allow that car to safely complete its turn. (Supp. p. 16, Carpenter dep. p. 60.)

Directly behind that car was McBride's Mazda 626, with Plaintiff as the passenger. (Supp. p. 8, Carpenter dep. pp. 28-29). As the first car turned through the intersection, McBride followed closely, turning southbound onto Chesford Road. (Supp. p. 11, Carpenter dep. p. 38.) McBride failed to yield, turned directly into Sgt. Carpenter's path, and McBride's Mazda

collided with Sgt. Carpenter's cruiser. (Id., see also, Supp. p. 16, Carpenter depo. p. 61.) Ultimately, McBride was cited by the Columbus Police Department as the at-fault driver. (Supp. p. 44, App. dep. p.33.)

ARGUMENT

Proposition of Law No. 1: R.C. §§ 2744.02 and 2744.03 are not limited by geography.

A. One purpose of R.C. §§ 2744.02 and 2744.03 is to allow police officers to respond to calls for assistance without fear of personal liability.

In response to the judicial abrogation of common-law sovereign immunity, the General Assembly enacted the Political Subdivision Tort Liability Act in 1985. The Act, as codified in R.C. Chapter 2744, generally provides that political subdivisions and their employees are immune from liability for alleged tort claims. *Wilson v. Stark Cty. Dept. of Human Serv.* (1994), 70 Ohio St.3d 450, 453, 639 N.E.2d 105, citing *Franks v. Lopez* (1994), 69 Ohio St.3d 345, 347, 632 N.E.2d 502. The primary statutory purpose of Chapter 2744 is the preservation of the financial stability and fiscal integrity of political subdivisions. Id. Chapter 2744 provides a three-tiered analysis. The first tier establishes the defense of immunity. R.C. § 2744.02(A). The next carves out certain exceptions to immunity. R.C. § 2744.02(B). Finally, if one of the exceptions applies, the third tier provides defenses to reinstate immunity. See, *e.g., Franks v. Lopez* (1994), 69 Ohio St.3d 345, 347, 632 N.E.2d 502, 504.

There is no question that R.C. § 2744.02(A) applies here. The parties dispute whether R.C. § 2744.02(B)(1) provides an exception to immunity in this case. If R.C. § 2744.02(B)(1) applies, a political subdivision still has immunity if "a member of a municipal corporation police department . . . was operating a motor vehicle while responding to an *emergency call*, and the operation of the vehicle did not constitute willful or wanton misconduct." See R.C. § 2744.02(B)(1)(a) (emphasis added).

Appellant argues that immunity under R.C. §§ 2744.02 and 2744.03 is not available if a police officer acts outside of his employer's geographical limits, absent a mutual aid pact. A review of R.C. §§ 2744.01, 2744.02 and 2744.03 fails to reveal any language restricting immunity to geographical limits. R.C. Chapter 2744 has no geographical limit. Townships and their police officers do not lose immunity when they act beyond the township.

Nonetheless, Appellant seeks a geographical restriction to Chapter 2744. Appellant asks this Court to limit the phrase "emergency call" to only those situations that occur within the township. Appellant's position, however, contains a *caveat*; immunity would remain intact during extra-territorial responses if a "Mutual Aid Pact" exists.

Reversal here could expose police officers to personal liability for the acts they commit in the line of duty. Police officers are trained to inject themselves into dangerous situations. The citizens of Ohio expect and rely upon police officers to provide assistance, even when such need is beyond town limits. Under Appellant's theory, police officers would first hesitate to think about whether a mutual aid pact has been signed or timely renewed. A main purpose of the Political Subdivision Tort Liability Act was to encourage government officials to act in the line of duty by limiting exposure to monetary damages. Appellant's position undermines that intent. The safeguards protecting the public from abuse of power are already in R.C. §§ 2744.02 and 2744.03 as exceptions or limits of immunity. The General Assembly chose not to limit immunity by geography.

B. The existence of a mutual aid pact is irrelevant to the application of R.C. §§ 2744.02 and 2744.03.

In *Perry v. City of East Cleveland* (Feb. 16, 1996), Eleventh Dist. No. 95-L-111, 1996 WL 200558, the Eleventh District Court of Appeals addressed the merits of Appellant's contention that a police officer engaged in a governmental function outside of his or her

jurisdictional limits is not protected by the immunity provisions of R.C. 2744, et seq. *Perry* at *4. The court stated:

> Nothing within the statute limits those governmental or proprietary functions to actions which occur within the jurisdictional boundaries of the political subdivision. Furthermore, this court is unable to locate any statutory provision limiting a political subdivision from acting outside its geographic boundaries or requiring them to forego immunity for acts which would be shielded from tort liability if undertaken within its boundaries. * * * Applying the foregoing, we conclude that acts or decisions relating to or occurring in part on extra-territorial property, would be entitled to the same immunity provisions as lands within the borders of the municipality subject to the exceptions enumerated in R.C. 2744 *et seq.*, so long as such function is otherwise within the fulcrum of proper police activity.

Id. In addition, the Eleventh District's decision in *Perry* is buttressed by the language contained in R.C. § 2744.02(A)(2). Pursuant to this section, "[t]he defenses and immunities conferred under this chapter apply in connection with all governmental and proprietary functions performed by a political subdivision and its employees, *whether performed on behalf of the political subdivision or on behalf of another political subdivision.*" (emphasis added.) The implication of the italicized language is that the immunity afforded under Chapter 2744 travels with the employee when he is on neighboring soil while acting on behalf or assisting another political subdivision. Had the General Assembly wished to institute boundary limitations it would have expressly done so in R.C. § 2744.01, et seq.

There are numerous instances when a police officer must act outside his jurisdiction, i.e. transporting a detainee to detention facility; responding to court to testify in a criminal matter; locating and interviewing witnesses residing in neighboring jurisdictions, etc. Although not exhaustive, the foregoing examples provide a glimpse of an officer's extra-territorial obligations. It is roundly accepted that a police officer is engaged in an "emergency call" while transporting a prisoner. *Rambus v. Toledo* (Aug. 22, 2008), Sixth Dist. No. L-07-1378, 2008-Ohio-4283. Police jurisdictions commonly utilize a central detention facility operated by the county or state. A police officer, on occasion, may have to travel outside her jurisdiction to deliver a detainee to

said detention facility. If this Court were to accept Appellant's argument, the officer would be only protected when transporting a detainee across territorial lines if a mutual aid agreement exists. Such result is absurd and would only serve to frustrate an officer from accomplishing her obligations.

Furthermore, political subdivisions have been granted immunity for engaging other types of extra-territorial activities. *Hunsche v. City of Loveland* (1999), 133 Ohio App.3d 535, 729 N.E.2d 393 (operation of park outside territorial boundaries protected by immunity), see also, *McNamara v. City of Rittman* (1998), 125 Ohio App.3d 33, 707 N.E.2d 967 (operation of wellfield outside city limits is protected by immunity). It is illogical to assume that the General Assembly intended to protect political subdivisions for acts committed outside their physical boundaries, *except* when such acts involve police services. The General Assembly has not mandated the existence of an agreement between contiguous jurisdictions before immunity should apply. Accordingly, Appellant's arguments lack merit and the lower courts' decisions must be affirmed.

C. Mutual Aid Pacts do not provide immunity.

The General Assembly did not leave the application of immunity to the various political subdivisions. A mutual aid pact is nothing more than a written agreement where two or more political subdivisions agree to share in the expense and or provision of law enforcement services. Police officers do not control whether a mutual aid agreement exists or is timely renewed. Such agreements and/or legislative enactments are promulgated by elected officials and policy makers. Mutual aid among contiguous jurisdictions is not always feasible. Many political and financial concerns dictate whether jurisdictions enter into mutual aid pacts. Appellant ignores the restraints preventing political subdivisions from engaging in mutual aid agreements; i.e., sharing financial resources and staffing concerns, competing political opinions, etc. These are only a few examples of the road blocks which may prevent political subdivisions from agreeing to

mutual aid pacts.

Appellant also ignores the most obvious problem with her position: It is not feasible for a township to enter into a mutual aid pact with every political subdivision through which its employees might travel. For example, police officers often travel through many political subdivisions when transporting detainees.

D. Appellant's position would lead to negative consequences.

Should this Court accept Appellant's arguments, police officers will effectively become land-locked and unable to perform their extra-territorial responsibilities. Officers are often required to transport detainees outside their borders. In the absence of a mutual aid agreement, Appellant suggests that officers would do so without the immunity provided under R.C. § 2744.01, et seq. As a result, police officers would be left to choose between their duties and immunity. That would frustrate the intent of the Political Subdivision Tort Liability Act.

The boundaries of political subdivisions are not cleanly aligned, cookie-cutter designs. While on patrol, police officers may momentarily find themselves traveling within a neighboring jurisdiction (e.g., to get fuel for a cruiser). Further, while responding to a call to service, officers may unintentionally pass through the boundaries. According to Appellant, without a mutual aid pact, the immunity provided to townships and their employees flickers on-and-off with each passing street. Under that framework, Police officers would be left continually guessing at the parameters of their immunity. That would create confusion (particularly in off-road areas) and ultimately diminish police services. Of course, the citizens requesting police assistance would receive the brunt of the harm.

Adopting Appellant's position could also negatively impact other types of governmental services. Imagine a scenario where township paramedics are transporting a patient who sustained serious injuries. Without question, those paramedics would be on an "emergency call." In the case of an expired mutual aid pact, the paramedics (and the township) might lose

immunity if they traveled to a hospital beyond the township limits. The General Assembly did not intend to force paramedics (or other local government employees) to first verify the current status of a mutual aid pact before providing emergency services.

E. Appellees are entitled to immunity despite the absence or existence of Mutual Aid Pact.

A political subdivision is entitled to immunity when "a member of a municipal corporation police department or any other police agency was operating a motor vehicle while responding to an emergency call, and the operation of the vehicle did not constitute willful or wanton misconduct." See R.C. § 2744.02(B)(1)(a) (emphasis added).

Conversely, R.C. § 2744.03(A)(6) sets forth the conditions entitling an employee of the political subdivision to immunity. Under that section, the employee is immune unless one of the following applies:

> (a) The employee's acts were manifestly outside the scope of the employees employment or official responsibilities;
>
> (b) The employee's acts or omissions were with malicious purpose, in bad faith, or in a wanton or reckless manner;
>
> (c) Civil liability is expressly imposed upon the employee by a section of the Ohio Revised Code.

R.C. § 2477.03(A)(6)(a) – (c). Section 2744.03(A)(6) does not require an emergency call for immunity to attach. Appellant fails to recognize that Sgt. Carpenter's immunity under R.C. § 2744.03(A)(6), as opposed to the political subdivision, is not conditioned upon the existence of an "emergency call." Pursuant to this section, a police officer is immune unless his acts are outside the scope of employment or are committed with a malicious purpose, in bad faith, or in a wanton or reckless manner. R.C. § 2744.03(A)(6). It is incorrect to suggest that an officer responding to the call of neighboring jurisdiction is acting outside the course and scope of his or her employment.

Appellant's position would have this Court find that a township police officer is immune when acting beyond his township, even without a mutual aid pact, but the political subdivision remains exposed to liability. Such an inconsistent interpretation of R.C. § 2744.02 and R.C. § 2744.03 should not be adopted. Accordingly, Appellant's position that immunity is subject to the existence of a mutual aid pact is refuted by the plain and ordinary language found in R.C. §§ 2744.02(A), (B) and 2744.03.

The present appeal does not involve the purported recklessness of Sgt. Carpenter or whether his actions constitute wanton conduct so as to breach the township's immunity under Chapter 2744. Those issues were decided in Appellees' favor and are not before this Court.

F. "Emergency Call"

This appeal concerns the definition of term "emergency call" as used in R.C. § 2744.02(B)(1)(a). An "emergency call" is

> . . . a call to duty, including, but not limited to, communications from citizens, police dispatches, and personal observations by peace officers of inherently dangerous situations that demand an immediate response on the part of a peace officer.

R.C. § 2744.01(A).

Appellant contends that "a call to duty" can only occur within geographical limits. However, nothing in R.C. § 2744.02 or 2744.03 discusses geography. See *Perry v. City of East Cleveland* (Feb. 16, 1996), Eleventh Dist. No. 95-L-111, 1996 WL 200558; see also, *Shalkhauser v. City of Medina* (2002), 148 Ohio App.3d 41, 772 N.E.2d 129, 2002-Ohio-222; *Stover v. Hamilton* (October 15, 1982), Fifth Dist. No. CA-2056, 1982 WL 3083.

Appellant relies upon *Sawicki v. Ottawa Hills* (1988), 37 Ohio St. 3d 222, 525 N.E.2d 468 in support of her position that "in the absence of a mutual aid pact or similar agreement, there can be no requirement or professional obligation to respond, and therefore, any 'officer who respond[s] [will do] so with only the authority and the insurance protection of an ordinary

citizen'." (Merit Brief of Appellant, p. 7.) Appellant misconstrues *Sawicki*. It is important to note that this Court did not address the issues of "Emergency Call" or "professional obligation to respond" in *Sawicki*. In fact, Appellant recognizes that *Sawicki* arose before R.C. Chapter 2744 was enacted. (Id., at 225.)

Sawicki involved a police officer's liability for failing to respond to an emergency call outside his political subdivision. The fear expressed in *Sawicki* was deprivation of insurance coverage and workers' compensation benefits for officer responding beyond a geographical limit. (Id. at 226.) Appellant interprets *Sawicki* to stand for the position that absent a mutual aid agreement, an officer can never have a professional obligation necessitating his/her extra-territorial response. Such an expansive view of *Sawicki* is unsupported and misplaced. Appellant fails to realize that the definition of "Emergency Call" under R.C. § 2744.01(A) is not limited by geographical boundaries.

G. "A call to duty" often occurs beyond territorial limits.

While it is true that an officer's arrest powers outside of his jurisdiction may be limited, "a call to duty" or professional obligation implies more than just arrest powers.[1] For example, detectives are expected to interview witnesses in other towns or states; officers are often required to transport detainees to detention facilities located in another town; police officers routinely testify in courts in other towns or counties.

Moreover, police officers have specific authority to act outside of their employer's territorial limits. R.C. § 2935.03(E)(3) provides that a police officer may detain any person found violating any provision in Chapter 4511 on a street or highway that is located immediately adjacent to the boundaries of the municipal corporation which employs the officer. That section makes no reference to a mutual aid pact. In addition, R.C. § 737.10 provides that in case of a riot

[1] The record fails to disclose that Sgt. Travis Carpenter responded outside of his jurisdiction to make an arrest. Rather, he was responding to another jurisdiction's call for assistance. Specifically, Sgt. Carpenter was responding to an officer's call for help in apprehending a fleeing suspect. Sgt. Carpenter's response to provide assistance should not be interpreted to mean that he intended to make an arrest.

or other like emergency, police officers may be directed to assist a neighboring jurisdiction. Once again, no reference is made to a mutual aid pact. Do officers providing assistance to quell a riot outside their territory act without the protection of immunity? Clearly not.

Ohio Courts have addressed the issue of whether extra-territorial police conduct affects statutory immunity. See *Perry v. City of East Cleveland* (Feb. 16, 1996), Eleventh Dist. No. 95-L-111, 1996 WL 200558; *Shalkhauser v. City of Medina* (2002), 148 Ohio App.3d 41, 772 N.E.2d 129, 2002-Ohio-222 (officer entitled to statutory immunity for an automobile accident that occurred during high speed pursuit outside of jurisdiction); *Stover v. Hamilton* (October 15, 1982), Fifth Dist. No. CA-2056, 1982 WL 3083; *Jennings v. Grayczyk* (Jan. 16, 1987), Sixth Dist. No. L-86-242, 1987 WL 5483.

In *Stover*, *supra*, the officer responded to an automobile fire outside the territory of his employer, the Village of Plymouth. *Stover*, at *1. While responding, Officer Stover was involved in a motor vehicle accident. Id. The record revealed that Officer Stover was responding to a call issued from outside the Village limits. Id. There was no formal agreement by which the village police department answered calls or provided services outside the village limits. Id. Nonetheless, the court determined that an "emergency call" existed necessitating the officer's response.

Stover concerned the officer's immunity from personal liability as a result of the accident. Id. at *2. Specifically, under former R.C. § 701.02, "Policemen shall not be personally liable for damages for injury or loss to persons or property and for death caused while engaged in the operation of a motor vehicle while responding to an emergency call."[2] In ruling that Officer Stover was entitled to immunity, the court was not persuaded that the absence of a mutual aid agreement precluded the protection of R.C. § 701.02. Further, the court ruled that R.C. § 701.02 was a "full defense to an action for damages for personal injury against a policeman for

[2] R.C. § 701.02 was replaced by R.C. § 2744.02 of the Political Subdivision Tort Liability Act.

negligence while engaged in the operation of a motor vehicle while responding to an emergency call" and that a "policeman is entitled, as a matter of law, to accept the call (from fellow officer or dispatcher) at face value and has no duty to independently determine whether an actual emergency exists." Id. Accordingly, Officer Stover was immune from liability.

Furthermore, in *Jennings v. Grayczyk* (Jan. 16, 1987), Sixth Dist. No. L-86-242, 1987 WL 5483, the Sixth District Court of Appeals addressed the issue of whether a police officer should be protected by immunity when acting outside his employer's territory in the absence of a mutual aid pact. The city officer received a radio call from the dispatcher requesting a response to a potential burglary in progress. In responding to the call, the officer exceeded the city limits and crossed into the neighboring township. Id. at *2. While in the township (not the city), the officer was in a motor vehicle accident. Id. The Court stated:

> Under these facts we are simply not prepared to say that Officer Grayczyk's perhaps mistaken entrance into another jurisdiction while in route to an emergency within his jurisdiction divested him of the cloak of immunity provided by R.C. § 701.02.

Id. Thus, the fact that the motor vehicle accident occurred outside of the officer's territorial boundaries without a mutual aid contract did not persuade the Court to deprive the officer of his statutory immunity. In addition to R.C. § 701.02, the Sixth District determined that Officer Grayczyk would likewise be immune under R.C. § 2744.02.

Although Sgt. Carpenter testified that a mutual aid pact existed, the three-tier analysis in R.C. §§ 2744.02 and 2744.03 does not permit the courts to grant or deny immunity based upon its existence. As in *Stover* and *Jennings*, the absence of such agreement with a contiguous entity does not bar the application of R.C. § 2744.01, et seq. As such, Appellant's assertion that the protections of R.C. § 2744.02 and 2744.03 only apply to "contracting political subdivisions" is incorrect. The absence of a mutual aid pact does not preclude a finding that Sgt. Carpenter possessed a professional obligation to respond.

H. R.C. §§ 505.43 and 505.431 do not bar immunity under R.C. Chapter 2744.

Appellant relies heavily on R.C. §§ 505.43, 505.431 in support of her argument that to receive immunity under R.C. § 2744.02(B)(1)(a), the officer must have been rendering services pursuant to a mutual aid agreement or equivalent legislative enactment.[3] Those sections provide authority to Ohio townships to engage in agreements for mutual aid or enact legislation for the same. Within those sections, Appellant cites to the following language:

> Chapter 2744 of the Revised Code, insofar as it is applicable to the operation of police departments, applies to the contracting political subdivisions and police department members when the members are rendering service outside their own subdivision pursuant to the contract.

Appellant interprets that language to deprive a police officer of immunity when acting outside his subdivision without a mutual aid pact. [("[I]n the absence of a mutual aid pact or agreement, or a legislative resolution, an officer does not have extra-jurisdictional authority or duty to act, and therefore, cannot be considered on an emergency call wit the protection of R.C. § 2744 immunity.") (Merit Brief of Appellant, p. 10)] By enacting statutory provisions such as R.C. §§ 505.43, 505.431, it cannot be said that the desire of the General Assembly was to limit the immunity under R.C. § 2744.01, et seq. See *Perry, supra, Jennings*, supra.

Appellant's argument is exclusively one of statutory construction. It is elemental that where the language of a statute is plain and unambiguous and conveys a clear and definite meaning there is no occasion for resorting to the rules of statutory interpretation. *McCormick v. Alexander*, 2 Ohio 65; *Sears v. Weimer*, 143 Ohio St. 312, 55 N.E.2d 413; *Wachendorf v. Shaver* (1948), 149 Ohio St. 231, 236, 78 N.E.2d 370. Neither is it the function of a court to set forth what it thinks the statute under consideration should provide, or to give to the statute an operation which the Legislature does not intend. Nothing may be read into or out of the statute which is not within the manifest intention of the Legislature or gathered from the act itself. *Sears*

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[3] Appellant also refers this Court to R.C. §§ 737.04, 737.041 and 311.29. These sections allow for municipalities and counties to request and provide police protection pursuant to contract. Because the instant matter involves a township, the analysis herein is restricted to R.C. §§ 505.43, 505.431.

v. Weimer, supra. The question is not *what did the General Assembly intend to enact*, but what is the meaning of that which it did enact. *Slingluff v. Weaver* (1902), 66 Ohio St. 621, 64 N.E. 574. (emphasis added.)

"[W]here the language of a statute is clear and unambiguous, it is the duty of the court to enforce the statute as written, making neither additions to the statute nor subtractions therefrom." *Hubbard v. Canton City School Bd. of Edn.,* 97 Ohio St.3d 451, 2002-Ohio-6718, 780 N.E.2d 543, ¶ 14. "If it is ambiguous, we must then interpret the statute to determine the General Assembly's intent. If it is not ambiguous, then we need not interpret it; we must simply apply it." *State v. Hairston,* 101 Ohio St.3d 308, 2004-Ohio-969, 804 N.E.2d 471, ¶ 13.

In examining a statute, if the language is ambiguous, a court may consider laws upon the same or similar subjects in order to determine legislative intent. R.C. § 1.49(D). "Statutes relating to the same matter or subject, although passed at different times and making no reference to each other, are *in pari materia* and should be read together to ascertain and effectuate if possible the legislative intent." *State ex rel. Pratt v. Weygandt* (1956), 164 Ohio St. 463, 58 O.O. 315, 132 N.E.2d 191, paragraph two of the syllabus. Further, in reading such statutes and construing them together, we must arrive at a reasonable construction giving the proper force and effect, if possible, to each statute. *Maxfield v. Brooks* (1924), 110 Ohio St. 566, 144 N.E. 725.

R.C. §§ 2744.01, 2744.02 and 2744.03 have no provision limiting immunity in this case to geographical boundaries. Sections 505.43 and 505.431 likewise have no express language limiting statutory immunity. R.C. §§ 505.43 and 505.431 do not state that an officer is deprived of immunity when a mutual aid pact does not exist. Appellant supports her arguments by relying solely on the *inference* that the language in R.C. §§ 505.43 and 505.431 give immunity to police officers providing mutual aid pursuant to contract. There is no express statutory language or other authority affirming this interpretation. In evaluating both R.C. § 2744.02 and R.C. §§ 505.43 and 505.431, this Court should not reach the conclusion that and R.C. §§ 505.43 and

505.431 limit the application of R.C. §§ 2744.02 and 2744.03. To find otherwise would adopt an intention not enacted by the General Assembly.

I. Sgt. Carpenter was engaged in an "Emergency Call."

Appellant also disputes the factual basis the lower courts relied upon to conclude that Sgt. Carpenter was engaged in an "Emergency Call." (Merit Brief of Appellant, pp. 11-15.) This issue of whether the facts of this matter are sufficient to render such conclusion is not presently before the Court. Instead, the issue framed for this Court's review is whether an "Emergency Call" exists for purposes of statutory immunity, *when the officer responds outside his jurisdiction without a mutual aid agreement.* The factual issue now presented by Appellant was not previously presented, let alone accepted by this Court for review. Thus, this Court should refrain from reviewing the decisions of both the trial court and the appellate court in determining that the factual assertions presented in this matter support the conclusion that Sgt. Carpenter was engaged in an "Emergency Call."

Notwithstanding, Appellant presents three (3) arguments in support of her position that Sgt. Carpenter was not on an emergency call: (1) Sgt. Carpenter did not observe any illegal conduct but overheard a radio dispatch; (2) Sgt. Carpenter was not specifically dispatched to the scene but unilaterally decided to respond; and (3) Sgt. Carpenter did not activate lights and sirens pursuant to R.C. § 4513.21. Appellant's arguments lack merit and do not justify reversal of the lower courts' decisions.

Here, a nearby officer (Sgt. Carpenter) received a police dispatch concerning a deputy in a neighboring jurisdiction attempting to apprehend a fleeing suspect. Recognizing the urgency for help, Sgt. Carpenter was available and willing to provide the necessary assistance.

As defined above, an emergency call means "a call to duty, included but not limited to communications from citizens, police dispatchers, and personal observations by peace officers of inherently dangerous situations that demand an immediate response on the part of a peace

officer." R.C. § 2744.01(A). This Court has explained that in the context of an emergency call, a "call to duty" is defined as "obligatory tasks, conduct, service, or functions enjoined by order or usage according to rank, occupation or profession." *Colbert v. Cleveland* (2003), 99 Ohio St.3d 215, 790 N.E. 2d 781, 2003-Ohio-3319, ¶ 13. This Court has determined that the definition of "emergency call" is broad, not limited to circumstances where an officer is personally and explicitly instructed to report to the scene of a crime. *McGuire v. Lovell* (1999), 85 Ohio St.3d 1216, 1999-Ohio-296, 709 N.E.2d 841. An immediate or exigent circumstance is not necessary. *Fogle v. Bentleyville* (July 24, 2008) Eighth Dist. No. 88375, 2008-Ohio-3660, ¶40, citing *Rutledge v. O'Toole*, (March 10, 2005), Eighth Dist. No. 84843, 2005-Ohio-1010.

In other words, R.C. §§ 2744.01 and 2744.02 do not restrict emergency calls to officers *who are specifically dispatched to a situation. Marchant v. Gouge*, 187 Ohio App.3d 551, 557, 932 N.E.2d 960, 2010-Ohio-2273. This Court has likewise held that R.C. § 2744.02 does not require a police officer to operate his lights and sirens in order to be deemed on an "emergency call." *Moore v. City of Columbus* (1994), 98 Ohio App.3d 701, 649 N.E.2d 850; see also, *Neuman v. City of Columbus*, 1995 WL 518851 *3-5 (Ohio App. 10th Dist.). Rather, "an emergency call involves a situation to which a response by a peace officer is required by the officer's professional obligation." (Decision p.4, citing *Colbert*, supra, at syllabus.)

Law enforcement officers, responding to an emergency call, are entitled, as a matter of law, to accept dispatches at face value and have no duty to independently determine whether an actual emergency exists, or to question the judgment of the officer issuing such message. *Stover*, supra, *3, citing *Agnew v. Porter* (1970), 23 Ohio St.2d 18, 260 N.E.2d 830. Thus, an officer does not have to witness illegal activity before deciding when to respond and may rely on a request for assistance by another officer.

In finding that Sgt. Carpenter was on an emergency call, the trial court and appellate court relied on the decision in *VanDyke v. Columbus* (June 3, 2008), Tenth Dist. No. 07AP-0918,

2008-Ohio-2652. In *VanDyke*, a city of Columbus police officer was on duty and responding to a radio request for assistance from another officer pursuing a suspect who was fleeing on foot. Id. at ¶10. The Columbus police procedures required the officer to respond to this call for assistance without lights or sirens. Id. Additionally, the officer requesting assistance did not communicate that he or others were in immediate danger of harm, nor did the officer observe illegal conduct. Id. The plaintiff in this case was injured when he pulled from a side street onto West Broad Street in Columbus and struck the police cruiser driven by the responding officer without lights or sirens. Id. at ¶6. Subsequently, the plaintiff filed suit against the city of Columbus and the responding officer. In determining that the city was immune, the court stated that "the fact that the requesting officer did not communicate that he or others were in immediate danger of harm does not, pursuant to *Colbert* and *Moore*, take Officer Shannon's response out of the description of an emergency call." Id. at ¶10. The Tenth District Court of Appeals opined that the responding officer was on an emergency call. Id.

Here, it is undisputed that Sgt. Carpenter heard a dispatch call from a Franklin County Sheriff's deputy involved in a foot chase with a fleeing suspect. (Supp. pp. 6, 17, Carpenter dep. p. 20, 63.) At the time of the call, Sgt. Carpenter was a short distance from the deputy's location. (Supp. p. 17, 20, Carpenter dep. pp. 63, 75-77.) After hearing the call, Sgt. Carpenter made the decision to respond due to (1) the nature of the call, and (2) the fact that the deputy was located in a high crime area known for arrests involving weapons and drugs. (Supp. p. 34, Carpenter dep. p. 132.) The deputy was involved in a highly dangerous situation while chasing a suspect on foot. Sgt. Carpenter testified as follows:

> Q: Did you believe that it was important that you arrive at the scene of this officer['s] foot pursuit quickly?
>
> A: Yes, sir.
>
> Q: And why did you believe that?

A: Due to the nature, it's a high crime area that we work in, a lot of guns, drugs, there was reason that gentleman was running from the police officer and for officer safety thought it was necessary to respond as quick as possible to render him aid and to help him out.

(Id. at p. 132). Similar to *VanDyke*, Directive 3.29 of the Clinton Township Police Department rules and regulations dictated when Sgt. Carpenter was permitted to utilize his lights and sirens while responding to certain situations. (See Supp. p. 61, **Township 0265.**) The deputy's distress call did not specifically state a "Code 44." Thus, Sgt. Carpenter followed procedure by not initiating his overhead lights and sirens. (Carpenter depo. p.80-83.)

Although Sgt. Carpenter (1) did not witness any illegal conduct; (2) was not specifically directed to respond; and (3) responded without using his lights and sirens, the lower courts were correct in determining that he was responding to an "Emergency Call."

J. This Court should not impose a bright-line standard for determining an officer's ability to respond to an extra-jurisdictional emergency.

Appellants asks this Court to create a bright line standard with respect to the application of immunity under R.C. § 2744.01 et seq. to extra-jurisdictional responses. Ultimately, Appellant seeks to have this Court adopt the position that without a Mutual Aid Pact, or legislative equivalent, police officers have no immunity under R.C. § 2744.01, et seq., when responding outside their jurisdiction. Appellant's proposition would have a chilling effect on the ability of police officers to perform the functions of their job, as well as the protections provided to them by R.C. § 2744.01 et seq. Furthermore, Appellant seeks a decision from this Court which, in essence, will force public entities to engage in a legislative act or, otherwise, forego the immunities and protections bestowed upon them by the General Assembly.

Appellant's position, if adopted, would have the effect of limiting a police officer's decision to assist a fellow officer. Appellant desires a concrete rule of law stating that an officer has no professional obligation to respond to an extra-jurisdictional request for assistance without an identifiable and clearly outlined Mutual Aid Pact. As discussed herein, R.C. § 2744.01, et

seq., contains no language limiting the protections of statutory immunity to a law enforcement officer's geographic jurisdiction. Appellant's request for clear-cut guidelines would effectively force political subdivisions to engage in legislative efforts this Court is without authority to enforce. Appellant proposes a rule that would force public entities to contract with contiguous jurisdictions for mutual aid or, otherwise, forego their statutory immunity.

Appellant once again ignores the restraints preventing political subdivisions from engaging in mutual aid agreements; i.e., sharing financial resources and staffing concerns, competing political opinions, etc. As stated, many political and financial concerns dictate whether jurisdictions enter into mutual aid agreements.

Furthermore, Appellant's arguments imply that a police officer should never cross jurisdictional boundaries to engage in law enforcement services; even when evidence of a crime exists. It is illogical to assume that the Ohio legislature drafted R.C. §§ 505.43, 505.431, 737.04 and 737.041 with the intent to deter police officers from performing their job responsibilities. There are many reasons why a political subdivision may not enter into a mutual aid pact with many different political subdivisions. Officers should not be frustrated from providing assistance because policy makers and officials do not agree to mutual aid pacts.

Proposition of Law No. 2: The existence of a *written* "Mutual Aid Pact", or equivalent legislative resolution, is irrelevant for purposes of determining whether the immunity provided under R.C. § 2744.01, et seq. is applicable.

Appellant contends that valid mutual aid agreements or similar legislative resolutions should be supported by a written document which defines the interchange of police services. That is a matter for the legislature, not the courts. Notwithstanding, a mutual aid agreement, either written or verbal, has no effect on the application of immunity.

Although statutes exist limiting a police officer's authority to make an extra-territorial *arrest*, those statutes do not limit the immunity provided to police officers when acting outside their jurisdiction. Appellant's position hinging statutory immunity on a written mutual aid

agreement is, therefore, irrelevant and inconsequential. Even if this Court determines that public policy requires mutual aid pacts to be in written form, that conclusion would have no effect on whether immunity applies.

Appellant's argument expresses her frustration with the Tenth District's determination that Sgt. Carpenter was acting pursuant to mutual aid. (Merit Br. pp. 22-23.) Appellant continues to express her detest with the appellate court's reliance on Sgt. Carpenter's testimony that he was responding pursuant to mutual aid. (Id., see also Supp. p. 18, Carpenter depo. p. 66, ln. 13.) Appellant asserts that such testimony is unsubstantiated and unreliable and thus, a disputed issue of material fact remains unresolved. Appellant's arguments were the subject of a Motion for Reconsideration directed to the Tenth District Court of Appeals. (Supp. pp. 3-6.) In refusing to alter its decision, the appellate court stated:

> First we note that our finding that Sergeant Carpenter was on an emergency call was not based solely on the existence of a Mutual Aid Agreement. Secondly, we note that Sergeant Carpenter testified as to the existence of a Mutual Aid Agreement. Appellant, however, presented no evidence to the contrary, not even an affidavit from one connected with either law enforcement agency stating that such agreement failed to exist. Instead, appellant relied solely on the unsupported statement in her brief, which is not sufficient to require the denial of summary judgment. *Wyche v. Kessler* (May 9, 1989), 10th Dist. No. 89AP-51.
>
> With respect to our analysis of whether Sergeant Carpenter's actions constituted wanton or reckless conduct, we do not find appellant calls to our attention an obvious error, nor does she raise an issue not considered at all, or not fully considered by this court. *Matthews*, supra. Instead, appellant is attempting to re-argue the merits of her appeal. Contrary to appellant's assertions, this court fully considered the arguments advanced in appellant's merit brief, including all evidence pertaining to the speeds of the vehicle, which are now re-asserted in her application for reconsideration. Disagreement with this court's conclusions and analysis is insufficient to meet the test for granting reconsideration. See *Nunley v. Wayne Builders Corp.* (Aug. 12, 1999), 10th Dist. No. 98AP-1202.

Appellant's Second Proposition of Law does not raise an issue for this Court to review. Primarily, the issue of whether the appellate court properly relied on the testimony of Sgt. Carpenter was not presented for this Court's criticism or approval. The specific issue this Court

has been asked to resolve is whether a police officer remains entitled to statutory immunity when acting outside his jurisdictional boundaries without a Mutual Aid Agreement. Appellant is once again attempting to re-litigate the merits of this case though the arguments proposed in her Second Proposition of Law. As noted by the Tenth District, however, no evidence was provided by Plaintiff to rebut the testimony of Sgt. Carpenter. Appellant's unsupported statement that a mutual aid contract did not exist was insufficient to prevent summary judgment in Appellees' favor.

Furthermore, Appellant's request for a hard-and-fast rule requiring Mutual Aid Agreements to be substantiated by a written contract demands this Court to provide an advisory opinion. This Court should not issue an advisory opinion. *Armco, Inc. v. Pub. Util. Comm.* (1982), 69 Ohio St.2d 401, 406, 433 N.E.2d 923. "It has been long and well established that it is the duty of every judicial tribunal to decide actual controversies between parties legitimately affected by specific facts and to render judgments which can be carried into effect." *Fortner v. Thomas* (1970), 22 Ohio St.2d 13, 14, 257 N.E.2d 371. Because this Court cannot reach the issue of whether Mutual Aid Agreements should be committed to written contracts, it should not do so.

CONCLUSION

Based on the foregoing, the Decisions of the Franklin County Common Pleas Court and the Tenth District Court of Appeals must be affirmed.

Respectfully submitted,

SURDYK, DOWD & TURNER CO., L.P.A.

Jeffrey C. Turner (0063154)
Boyd W. Gentry (0071057) (Counsel of Record)
Joshua R. Schierloh (0078325)
1 Prestige Place, Suite 700
Miamisburg, Ohio 45342

Tel.: (937) 222-2333
Fax: (937) 222-1970
jturner@sdtlawyers.com
bgentry@sdtlawyers.com
jschierloh@sdtlawyers.com
Counsel for Appellee-Defendants Sgt. Travis D. Carpenter and Clinton Township

CERTIFICATE OF SERVICE

A copy of the foregoing has been forwarded via U.S. Mail to the following on December 21, 2010:

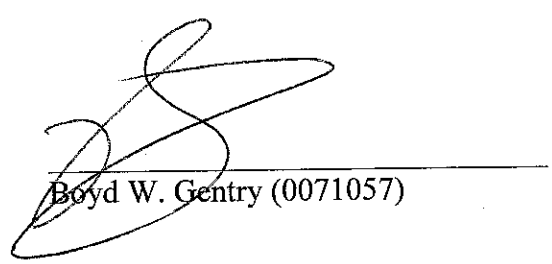
COUNSEL FOR APPELLANT
Brian G. Miller
Brian G. Miller Co., LPA
326 S. High Street, Suite 500
Columbus, Ohio 43215

CO-COUNSEL FOR APPELLANT
Craig T. Smith
Scott W. Schiff & Associates
88 West Main Street
Columbus, Ohio 43215

CO-COUNSEL FOR APPELLANT
Seth K. Kleinman
David A. Goldstein Co., L.P.A.

COUNSEL FOR AMICUS CURIAE OACTA
Jay D. Patton, Esq.
SCHROEDER, MAUNDRELL, BARBIERE & POWERS
5300 Socialville-Foster Road, Suite 200
Mason, Ohio 45040

COUNSEL FOR AMICUS CURIAE
THE OHIO ASSOCIATION FOR JUSTICE
Margaret M. Murray
(Counsel of Record)
Michael Stewart
MURRAY & MURRAY CO., L.P.A.
111 East Shoreline Drive
Sandusky, Ohio 44870



Boyd W. Gentry (0071057)