

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO

Appellee,

vs.

REGINALD ROBERSON

Appellant.

**SUPREME COURT CASE
NO. 2011-0643**

**ON APPEAL FROM THE
COURT OF APPEALS,
NINTH APPELLATE
DISTRICT 10CA009743**

**LORAIN COUNTY COMMON
PLEAS COURT CASE NO.
07CR074975**

**MEMORANDUM OF APPELLEE IN
OPPOSITION TO JURISDICTION**

DENNIS P. WILL, #0038129
Lorain County Prosecuting Attorney
Lorain County, Ohio
225 Court Street, 3rd Floor
Elyria, Ohio 44035
(440) 329-5389

JASON A. MACKE, #0069870
Assistant Public Defender
Office of the Ohio Public Defender
250 E. Broad Street, Suite 1400
Columbus, Ohio 43215
(614) 466-5394

BY: BILLIE JO BELCHER, #0072337
Assistant Prosecuting Attorney

COUNSEL FOR APPELLEE

COUNSEL FOR APPELLANT

FILED
MAY 06 2011
CLERK OF COURT
SUPREME COURT OF OHIO

TABLE OF CONTENTS

Table of Contents i

Table of Authorities ii

Explanation of Why This Case Does Not Involve a Substantial Constitutional
Question And Is Not a Case of Public or Great General Interest 1

Statement of the Case & Facts 1

LAW & ARGUMENT 3

RESPONSE TO SOLE PROPOSITION OF LAW

**EVEN WHEN THERE IS REASON TO BELIEVE A CRIME VICTIM
IS IN DANGER, POLICE MAY NOT DETAIN AN INDIVIDUAL FOR
INVESTIGATION UNLESS THERE IS REASONABLE SUSPICION TO
BELIEVE THAT THE PERSON BEING DETAINED HAD ENGAGED OR IS
ENGAGING IN CRIMINAL ACTIVITY** 3

Conclusion 8

Proof of Service 9

TABLE OF AUTHORITIES

CASES:

<i>Brigham City, Utah v. Stuart</i> , 547 U.S. 398, 403, 126 S. Ct. 1943, 164 L. Ed.2d 650 (2006) ..5, 8	
<i>Carroll v. United States</i> , 267 U.S. 132, 162 45 S. Ct. 280, 69 L. Ed. 543, T.D. 3686 (1925).....4	
<i>Illinois v. Wardlo</i> (2000), 528 U.S. 119	6
<i>Mincey v. Arizona</i> , 437 U.S. 385, 392, 98 S. Ct. 2408, 57 L. Ed.2d 290 (1978).....	5
<i>State v. Andrews</i> , 57 Ohio St.3d 86, 87, 565 N.E.2d 1271 (1991).....	4
<i>State v. Bobo</i> , 37 Ohio St.3d 177, 524 N.E.2d 489 (1988).....	4
<i>State v. Burnside</i> , 100 Ohio St.3d 152, 2003 Ohio 5372	3
<i>State v. Kodman</i> , 9 th Dist. No. 06CA0100-M, 2007 Ohio 5605	3
<i>State v. Metcalf</i> , 9 th Dist. No. 23600, 2007 Ohio 4001	3
<i>State v. Roberson</i> , 9 th Dist. No. 10CA009743, 2011 Ohio 998.....	2, 5
<i>Terry v. Ohio</i> , 392 U.S. 1, 21, 88 S. Ct. 1868, 20 L. Ed.2d 889 (1968).....	3, 5, 7

RULES & STATUTES:

R.C. 2905.01	1, 2
R.C. 2907.02	1
R.C. 2907.05	1
R.C. 2911.01	1, 2
R.C. 2921.33	1
R.C. 2923.12	1
R.C. 2923.16	1

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

This Honorable Court should not accept jurisdiction for the following reasons:

1. The decision of the Ninth Judicial District Court of Appeals to affirm the conviction and sentence of Appellant created no injustice as Appellant's arguments were addressed by existing case law.
2. No issue or substantial constitutional question exists in the Appellant's appeal to this Honorable Court. The attempted appeal further presents no viable question of general public interest so as to warrant the exercise of this Court's jurisdiction.

STATEMENT OF THE CASE & FACTS

On January 31, 2008, the Lorain County Grand Jury indicted Roberson, on two counts of Rape, violations of R.C. 2907.02, felonies of the first degree with two (2) firearm specifications and a repeat violent offender specification; two (2) counts of Aggravated Robbery, violations of R.C. 2911.01, felonies of the first degree with two (2) firearm specifications and a repeat violent offender specification; two (2) counts of Kidnapping, violations of R.C. 2905.01, felonies of the first degree with two (2) firearm specifications, a repeat violent offender specification and a sexual motivation specification; one (1) count of Having Weapons Under Disability, a violation of R.C. 2923.12, a felony of the third degree with two (2) firearm specifications; one (1) count of Gross Sexual Imposition, a violation of R.C. 2907.05, a felony of the fourth degree with two (2) firearm specifications; one (1) count of Carrying a Concealed Weapon, a violation of R.C. 2923.12, a felony of the fourth degree; one (1) count of Improper Handling of Firearms in a Motor Vehicle, a violation of R.C. 2923.16, a felony of the fourth degree with two (2) firearm specifications; and one (1) count of Resisting Arrest, a violation of R.C. 2921.33, a misdemeanor of the second degree.

On October 30, 2008, a supplemental indictment was filed by the Lorain County Grand Jury charging Roberson with two (2) counts of Kidnapping, violations of R.C. 2905.01, felonies of the first degree with two (2) firearm specifications, a repeat violent offender specification and a sexual motivation specification as well as two (2) counts of Aggravated Robbery, violations of R.C. 2911.01, felonies of the first degree with two (2) firearm specifications and a repeat violent offender specification.

On January 2, 2009, Roberson filed a Motion to Suppress. The trial court denied this motion on January 27, 2009. On January 27, 2009, Roberson waived his right to trial by jury as to count seven (7), Having Weapons Under Disability, of the indictment. By law, all repeat violent offender specifications were also tried to the trial court. The remaining counts and specifications were tried to a jury commencing on the same date.

On February 4, 2009, the jury returned a guilty verdict as to all counts and specifications presented for their consideration. On the same date, the trial court convicted Roberson of count seven (7) of the indictment as well as all repeat violent offender specifications.

On February 24, 2009, the trial court sentenced Roberson to an aggregate term of forty one (41) years incarceration. On March 7, 2011, the appellate court affirmed Roberson's conviction and sentence. See State v. Roberson, 9th Dist. No. 10CA009743, 2011 Ohio 998.

On April 21, 2011, Roberson filed for leave to file a discretionary appeal with this Honorable Court. Appellee now responds and urges this Court to decline jurisdiction over the instant case.

LAW & ARGUMENT

RESPONSE TO SOLE PROPOSITION OF LAW

I. EVEN WHEN THERE IS REASON TO BELIEVE A CRIME VICTIM IS IN DANGER, POLICE MAY NOT DETAIN AN INDIVIDUAL FOR INVESTIGATION UNLESS THERE IS REASONABLE SUSPICION TO BELIEVE THAT THE PERSON BEING DETAINED HAD ENGAGED OR IS ENGAGING IN CRIMINAL ACTIVITY.

Roberson contends the appellate court erred in affirming the denial of his pre-trial motion to suppress by altering the case law applicable to analyzing such claim of error. Roberson contends that he was unreasonably seized by the Lorain Police Department during his traffic stop following T.M.'s abduction from the Grown and Sexy Lounge at gunpoint on November 28, 2007. Roberson's contention lacks merit.

The appellate court discussion of the suppression issue is reproduced as follows from its opinion:

A motion to suppress evidence presents a mixed question of law and fact. State v. Burnside, 100 Ohio St. 3d 152, 2003 Ohio 5372, at ¶8, 797 N.E.2d 71. Generally, a reviewing court "must accept the trial court's findings of fact if they are supported by competent, credible evidence." *Id.* But see State v. Metcalf, 9th Dist. No. 23600, 2007 Ohio 4001, at ¶14 [**10] (Dickinson, J., concurring). The reviewing court "must then independently determine, without deference to the conclusion of the trial court, whether the facts satisfy the applicable legal standard." Burnside, 100 Ohio St. 3d 152, 2003 Ohio 5372, at ¶8, 797 N.E.2d 71.

REASONABLE SUSPICION

Mr. Roberson has argued that Officer Brillon lacked reasonable suspicion that justified stopping his car because he was legally parked in a church parking lot and committed no traffic violations after pulling out of the lot. HN2 "A police officer may stop a car if he has a reasonable, articulable suspicion that a person in the car is or has engaged in criminal activity." State v. Kodman, 9th Dist. No. 06CA0100-M, 2007 Ohio 5605, at ¶3). "[He] must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant [the] intrusion." Terry v. Ohio, 392 U.S. 1, 21, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968). "[I]t is imperative that the facts be judged against an objective standard: would the facts available to the officer at the

moment of the seizure or the search 'warrant a man of reasonable caution in the belief that the action taken was appropriate?' Id. at 21-22 (quoting Carroll v. United States, 267 U.S. 132, 162, 45 S. Ct. 280, 69 L. Ed. 543, T.D. 3686 (1925)).

The police officer's "objective and particularized suspicion that criminal activity was afoot must be based on the entire picture—a totality of the surrounding circumstances." State v. Andrews, 57 Ohio St. 3d 86, 87, 565 N.E.2d 1271 (1991); see State v. Bobo, 37 Ohio St. 3d 177, 178, 524 N.E.2d 489, (1988). "[The] circumstances are to be viewed through the eyes of the reasonable and prudent police officer on the scene who must react to events as they unfold." Andrews, 57 Ohio St. 3d at 87-88. "A court reviewing the officer's actions must give due weight to his experience and training and view the evidence as it would be understood by those in law enforcement." Id. at 88.

The trial court found Officer Brillon's testimony credible that he had viewed the surveillance tape from the bar and determined that the suspect was a black male in light colored sweatpants. It further found credible that, while canvassing the neighborhood, Officer Brillon observed a solitary car in a church parking lot at 2:25 A.M. with its lights on, which was unusual. When he performed a U-turn to investigate, Officer Brillon saw the car exiting the parking lot and observed that the driver was a black male. He then performed another U-turn and stopped the car.

Mr. Roberson has attempted to distinguish State v. Bobo, 37 Ohio St. 3d 177, 524 N.E.2d 489 (1988), from this case, arguing that, unlike Mr. Bobo, he had not been parked in an area "noted for the number of drug transactions which occurred there." Bobo, 37 Ohio St. 3d 177, 179, 524 N.E.2d 489 (1988). While it is true that the area in Bobo was a high drug area, an area's drug traffic is not the only factor in evaluating the totality of the circumstances.

In Bobo, the Ohio Supreme Court determined seven factors justified the officers' reasonable suspicion for stopping and searching the car: the high crime nature of the location, the time of night, the officer having twenty years of experience, the officer's knowledge of how drug crimes occurred in the area, Mr. Bobo's actions, the officer's experience recovering weapons after an individual made movements similar to Mr. Bobo's, and the officers being out of their vehicles and away from protection. State v. Bobo, 37 Ohio St. 3d at 179.

While the area around the church parking lot has not been described as a high crime area, it was in the immediate vicinity of an apparent kidnapping. The stop occurred at 2:25 in the morning, approximately two hours after the abduction. Officer Brillon had thirty years of experience and had patrolled the neighborhood for his entire career. In fact, he often used the church parking lot to write his reports. The car's presence was "very unusual." Further, when he returned to investigate, the car was driving away, but he did observe that the driver was a black male.

While the factors above would likely support stopping Mr. Roberson, they are not the only factors to consider. In determining whether a stop or seizure is reasonable, there must be a balancing between the government interest promoted by the search and the individual's constitutionally protected interests. Terry v. Ohio, 392 U.S. 1, 21, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968). In this case, the government interest went beyond the state's interest of preventing criminal conduct to the interest of protecting life. A woman had been abducted at gun point and a shot had been fired. "The need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency." Brigham City, Utah v. Stuart, 547 U.S. 398, 403, 126 S. Ct. 1943, 164 L. Ed. 2d 650 (2006) (quoting Mincey v. Arizona, 437 U.S. 385, 392, 98 S. Ct. 2408, 57 L. Ed. 2d 290 (1978)). A recent kidnapping certainly creates an emergency situation, which is a factor when considering the totality of the circumstances.

Officer Brillon did not pull over a random car driving through the neighborhood. It was a car parked, with its lights on, in an unusual location given the time of night. It was in the immediate vicinity of an abduction and only began driving away after Officer Brillon drove past in his marked cruiser. As far as Officer Brillon knew, T.M. was missing and being held by the kidnapper, presenting an emergency situation. Once Officer Brillon observed that the driver met a preliminary description of the man he had seen in the video, given the totality of the circumstances, Officer Brillon had reasonable suspicion that the driver was engaged in specific criminal activity, which justified the stop.

Officer Brillon's stop of Mr. Roberson was reasonable under the totality of the circumstances ***. Accordingly, Mr. Roberson's first assignment of error is overruled.

State v. Roberson, 9th Dist. No. 10CA009743, 2011 Ohio 998.

Despite the appellate court's well-reasoned analysis of the suppression issue, Roberson's argument consists of nothing more than alleged error correction, a function not to be conducted by this Court. ¹

Foremost, Roberson omits from his facts that law enforcement knew at the time of his stop that T.M. was abducted at gunpoint by a black male wearing light colored/grayish sweatpants. The male was observed to discharge the handgun during the abduction. The black male was observed to leave with the contents of the bar's cash register in his possession. T.M.

¹ The State does not believe that the appellate court committed error.

was alive when she was forced from the bar. When Brillon spotted the vehicle at the church parking lot, in the exact vicinity of the abduction, the vehicle was parked in an area where criminal activity had previously occurred. The vehicle had its headlights illuminated. The vehicle was in an area where Officer Brillon rarely saw other vehicles, given he had parked in that area for thirty (30) years to write his reports, on a nightly basis. It was after 2am in the morning. The vehicle was driven by a black male. When Roberson made visual contact with Officer Brillon, the driver fled the parking lot in the opposite direction of Officer Brillon. Roberson made no attempt to leave the lot until he was spotted by Brillon. Brillon made a U-turn to position his cruiser to stop Roberson's vehicle.

Roberson argues that his conduct during the early morning of November 28, 2007 was not suspicious and thus not the basis for a stop by Officer Brillon. Roberson inserts supposition as to how his conduct "could" have been interpreted by law enforcement; yet that is not how Roberson's conduct was perceived and these arguments were not made in the lower courts.² For example, Roberson cites to the case of Illinois v. Wardlo (2000), 528 U.S. 119³ in support of his argument that his conduct of leaving the parking lot after making visual contact with a law enforcement officer was subject to a myriad of interpretations. However, Officer Brillion testified that prior to him passing by Roberson in his marked police cruiser; Roberson did not attempt to exit the church parking lot. Moreover, Roberson took off in his vehicle in the direction opposite to that of Officer Brillon, thus, making his conduct similar to that in Wardlo. In fact, Brillion did not loop back until after he passed Roberson's vehicle, made visual contact,

² Roberson argues that he "could" have been preparing to leave the parking lot as the officer passed because his vehicle headlights were illuminated.

³ In Wardlo, Roberson represents that the case holds that where a defendant saw police and began running in direction opposite where he had been going, police had reasonable suspicion to detain.

and observed Roberson's vehicle flee the parking lot after he passed, necessitating Brillion to make another U-turn to approach Roberson's vehicle.

Roberson's argument to the contrary, the appellate court did not dispose of his issue as to the denial of his motion to suppress under a new, expanded legal theory. Rather, the appellate court disposed of the matter by applying the traditional Terry analysis. During this analysis, the appellate court discussed the emergency situation backdrop of the case in its overall analysis of the totality of the circumstances forming the basis of Roberson's stop. The appellate court did not lessen the applicable Terry standard or modify it in any fashion to conclude that Brillion's stop of Roberson was proper.⁴ It is clear that Roberson's conduct constituted the requisite reasonable suspicion necessary to stop his vehicle.

Roberson's argument also fails because no testimony existed in the record that multiple black men in the vicinity of the bar were stopped; the only black male in the vicinity of the tavern was Roberson. It is likewise evasive to assert that no evidence existed a vehicle was involved. It is a strong competing inference that Roberson and T.M. left the bar in an automobile. Simply because Roberson did not drive his vehicle into the bar for the security camera to capture its image did not mean Roberson did not utilize a vehicle in his criminal activities.⁵

Moreover, there is no requirement that a series of events that give rise to reasonable suspicion be illegal in and of themselves. Rather, the combination of the circumstances can constitute reasonable suspicion as did Roberson's conduct here. Roberson's conduct enhanced

⁴ Roberson asserts that this case is analogous to State v. Dunn, Ohio Supreme Court case number 2011-0213. This is inaccurate because no 'lesser standard of reasonable suspicion' was applied to determine the validity of Roberson's stop by the appellate court.

⁵ Testimony at the suppression and the trial reveal that Roberson utilized a motor vehicle during his criminal actions.

Brillon's suspicions as Roberson was in close proximity to the area where the crime occurred during a time of the early morning when foot and/or vehicle traffic was rare.

Also, the appellate court's reliance on United States Supreme Court cases was not improper. The appellate court utilized the cases to reinforce the concept that "[t]he role of a peace officer includes preventing violence and restoring order ***". Brigham City v. Stuart (2006), 547 U.S. 398. While the cases are factually different, the underlying principles embodied by the cases strike a similar chord to the instant matter and were worthy of consideration by the appellate court.

The appellate court applied the correct legal standard when it assessed the legality of the stop of Roberson's vehicle. The stop of Roberson's vehicle was proper. Accordingly, no reason exists to warrant this Court's exercise of jurisdiction in the instant case.

CONCLUSION

For the foregoing reasons, Appellee respectfully requests that this Honorable Court decline jurisdiction over the instant matter.

Respectfully Submitted,

DENNIS P. WILL, #0038129
Prosecuting Attorney
Lorain County, Ohio

By: 

BILLIE JO BELCHER, #0072337
Assistant Prosecuting Attorney
225 Court Street, 3rd Floor
Elyria, Ohio 44035
(440) 329-5389

PROOF OF SERVICE

A copy of the foregoing Memo in Opposition to Jurisdiction was sent by regular U.S. Mail to Jason Macke, Esq., Counsel for Roberson, 250 E. Broad Street, Suite 1400, Columbus, Ohio 43215, this 10th day of May, 2011.



Billie Jo Belcher
Assistant Prosecuting Attorney