

IN THE SUPREME COURT OF OHIO

ORIGINAL

STATE OF OHIO,
APPELLEE

-vs-

ANTOINE JEFFERSON
APPELLANT

: On Appeal from the Delaware
: County Court of Appeals
: Fifth Appellate District

: Court of Appeals
: Case No. 11CAA-04-0033

12-0363

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

CAROL HAMILTON O'BRIEN (0026965)
Delaware County Prosecuting Attorney

BENJAMIN A. TRACY (0087090)
(Counsel of Record)

DOUGLAS DUMOLT (0080866)
Assistant Prosecuting Attorney
140 N. Sandusky St., 3rd Floor
Delaware, Ohio 43015
(740) 833-2690
(740) 833-2689 FAX

JAMES D OWEN (0003525)
The Owen Firm, LLC
5354 North High Street
Columbus, Ohio 43214
(614) 454-5010
(614) 454-0503 (Fax)

COUNSEL FOR APPELLEE

COUNSEL FOR APPELLANT

FILED
APR 02 2012
CLERK OF COURT
SUPREME COURT OF OHIO

TABLE OF CONTENTS

TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iii
STATEMENT REGARDING LACK OF SUBSTANTIAL CONSTITUTIONAL QUESTIONS AND QUESTIONS OF GREAT PUBLIC INTEREST.....	1
STATEMENT OF FACTS.....	3
RESPONSE TO APPELLANT’S PROPOSITIONS OF LAW	
First Proposition of Law	8
Second Proposition of Law.....	11
Third Proposition of Law	14
CERTIFICATE OF SERVICE.....	16

TABLE OF AUTHORITIES

Cases

<i>Blakemore v. Blakemore</i> (1983), 5 Ohio St.3d 217.....	12
<i>City of Akron v. Holmes</i> -2004-Ohio-832 (Ohio App. Dist. 9 February 25,2004).....	8
<i>State v. Ali</i> , 2003-Ohio-5150 (Ohio App. Dist. 7 September 23 2003).....	8, 9
<i>State v. Batchili</i> , 113 Ohio St.3d 403	14
<i>State v. Bobo</i> (1988), 37 Ohio St.3d 177	9
<i>State v. Burns</i> , 2010-Ohio-2831, (Ohio App. Dist. 2 June 18 2010).....	9
<i>State v. Cossack</i> , 2005-Ohio-965 (Ohio App. Dist. 7 March 4, 2005).....	8
<i>State v. Dunlap</i> (1995), 73 Ohio St.3d 308	11
<i>State v. Freeman</i> , 2002-Ohio-918, (Ohio App. Dist. 2 Feb. 15, 2002).	9
<i>State v. Moore</i> (2000), 90 Ohio St.3d 47.....	11
<i>State v. Sage</i> (1987), 31 Ohio St.3d 173.....	12
<i>State v. Suiste</i> , 2008-Ohio-5012, (Ohio App. Dist. 5 September 29, 2008).....	9,10

Statutes

R.C. 2921.31	13
--------------------	----

THIS CASE DOES NOT INVOLVE ANY SUBSTANTIAL CONSTITUTIONAL QUESTIONS OR ANY QUESTIONS OF GREAT GENERAL INTEREST

In his memoranda in support of jurisdiction, Appellant offers three propositions of law he asserts are substantial constitutional questions or questions of great general interest. However, the propositions of law put forth by the Appellant are heavily fact dependent, case specific, applications of well-settled principals of constitutional law. Furthermore, while the proposed propositions of law are undoubtedly of great interest to the Appellant, technical evidentiary issues such as these rarely generate significant interest in the general public.

The first proposition of law put forth by Appellant relates to whether or not a drug canine “alert” on a motor vehicle provides probable cause to search the person of the driver of that vehicle when no contraband is located within the vehicle.¹ Rather than being a novel constitutional issue, the only question here is whether or not the totality of the circumstances justified the trooper’s search of Appellant’s person. The “alert” of the canine unit was merely one pertinent factor contributing to the trooper’s probable cause to search Appellant’s person. While Appellant may disagree with the trial court’s finding that the totality of the circumstances amounted to probable cause, dissatisfaction with the trial court’s conclusion does not create a substantial constitutional question or a question of great general interest.

Appellant’s second proposition of law is that certain testimony relating to the tactile sensations of a trooper during the challenged search should have been excluded at trial. However, the decision whether or not to admit testimony at trial is within the sound discretion of the trial court. Assuming *arguendo* and *dubitante* that the trial court erred in

¹ The Fifth District Court of Appeals never addressed this issue because the conduct for which Appellant was convicted constituted independent criminal acts that occurred after the challenged search.

admitting testimony relating to the trooper's tactile sensations during the challenged search, testimony mistakenly admitted at trial, to which Appellant failed to object, does not constitute a substantial constitutional question or one of great general interest.

In Appellant's third proposition of law, he renews his argument that the traffic stop was impermissibly extended. This argument was first rejected by the trial court and then again by the Fifth District Court of Appeals as it is simply not supported by the facts. Both lower courts found the trooper had reasonable suspicion to believe appellant had an expired license and that prior to receiving information to the contrary, the canine unit had alerted on Appellant's vehicle. While Appellant may not agree with the factual findings of the lower courts, such a disagreement does not generate a substantial constitutional question or one of great general interest.

STATEMENT OF FACTS

On April 8, 2010 Trooper Matthew Himes of the Ohio State Highway Patrol was working drug interdiction on Interstate 71 in Delaware County Ohio. Sup. Trans. 6:4-18. At approximately 10:00 he was stationary, in a marked patrol car, watching traffic pass by. Sup. Trans. 6:19-24. At approximately 10:05 A.M., Trooper Himes observed a green Land Rover travelling northbound on I-71. Sup. Trans. 7:1 As the vehicle passed the trooper, he ran its license plate through the Law Enforcement Automated Data Systems (LEADS); LEADS showed that the Ohio driver's license of the vehicle's registered owner expired in 1999. Sup. Trans. 7:9, 9:4. Further, it showed the vehicle was purchased in July of 2009 in Ohio. Sup. Trans. 7:16-25. Trooper Himes pulled up beside the vehicle, identified the driver as the registered owner by his physical description, and initiated a traffic stop for driving without a valid license. Sup. Trans. 7:17-25.

Once the vehicle was stopped, Trooper Himes approached the vehicle and made contact with Appellant, the driver of the vehicle. Sup. Trans. 10:3-9. When asked, Appellant indicated that he did not have an Ohio driver's license. He indicated that he has a Georgia driver's license and is a Georgia resident. Sup. Trans. 10:7-9. Appellant gave his Georgia driver's license to Trooper Himes, who returned to his cruiser to check its validity. Sup. Trans. 10:19-22. At the time Trooper Himes requested a canine unit, he did not yet know if the Appellant was required to have a valid Ohio driver's license. Sup. Trans. 7:15, 23:2-13. However, he had learned that just four days prior to the traffic stop, Appellant had been convicted of driving without a valid license in Mansfield Municipal Court. Sup. Trans. 62:22-25. He learned that the vehicle had been purchased in Ohio in July of 2009. Sup. Trans. 12:6. He knew that while Appellant claimed to reside in

Georgia, nine months after the purchase of the vehicle in Ohio, he was operating the vehicle with Ohio Plates, without a valid Ohio driver's license. Sup. Trans. 12:5, 36:13.

While Trooper Himes was still determining the status of the Appellant's license and checking his criminal history, Trooper David Norman and his canine partner arrived on the scene. Sup. Trans. 12:20-25. Trooper Norman had his canine partner conduct a free-air sniff around the vehicle. Sup. Trans. 12:23. At that time, the canine alerted on the vehicle for the odor of narcotics. Sup. Trans. 13:1-15. When the canine alerted on Appellant's vehicle, the Troopers conducted a probable cause search of his motor vehicle. Sup. Trans. 13:7-9. The Appellant and his passenger were removed from the vehicle, read his Miranda rights and then placed, without handcuffs, in the back of Trooper Himes' cruiser while the search was conducted. Sup. Trans. 13:1-15.

While the other troopers were continuing the search of Appellant's vehicle, Trooper Himes returned to his cruiser and spoke with Appellant about the odor of narcotics in his vehicle. Appellant stated that there were no narcotics in the vehicle and he had the vehicle cleaned a few days prior to the traffic stop. Sup. Trans. 14:21-25. The vehicle was very clean and the passenger compartment was very thoroughly searched. Sup. Trans. 72:14-19. After questioning the Appellant, Trooper Himes left his cruiser and returned to Troopers Norman and Wilson who were at the front of Appellant's vehicle. Sup. Trans. 16:3-15. It was at this time that Trooper Wilson approached the Appellant and Trooper Himes attempted to search the engine compartment of the motor vehicle for concealed contraband. Sup. Trans. 16:14-23. Based on Trooper Himes' training and experience, contraband can be hidden in the engine compartment or under the fenders. Sup. Trans. 26:11-16.

While Trooper Himes was attempting to locate a hood release for Appellant's vehicle, he noticed Trooper Wilson and the Appellant in a struggle. Sup. Trans. 17:1-10, 26:1-10. Trooper Himes ran back to assist, but before he got back to his cruiser, Appellant had fallen down, gotten up, and was climbing over a barbed wire fence. Sup. Trans. 17:10-19. Deputy Himes deployed his taser, but it was ineffective. Sup. Trans. 17:19-25.

In the moments leading up to this altercation and pursuit, Trooper Wilson had approached Appellant who was seated in Trooper Himes' cruiser. Trial Trans. 110:23. Having concerns that Trooper Himes had not done a thorough search of the Appellant's person, he asked the Appellant to exit the cruiser. Sup. Trans. 73:9-18, Trial Trans. 110:24. Trooper Wilson had noticed a heightened level of nervousness throughout the traffic stop that did not dissipate as it does in the course of typical traffic stops. Sup. Trans. 74:13-23. Trooper Wilson was clear that this was not a Terry pat down, but rather was a consensual search for drugs based on the "nervousness" of Appellant, positive canine hit, and absence of contraband in the vehicle. Sup. Trans. 74:12-23, Trial Trans. 111:19.

When the Appellant exited the vehicle, Trooper Wilson asked him for permission to "check him" or "pat you down" in a "polite" voice; Trooper Wilson was unequivocal that he phrased this in the form of a question. Sup. Trans. 75:2-16, 79:5-9, 86:3-12. He indicated that the Appellant gave verbal consent to the search. Sup. Trans. 75:20, 78:16. At no point did the Appellant indicate he did not want to be searched, nor did he give any nonverbal cues that he did not wish to be searched. Sup. Trans. 78:16-23, 107:13-19.

Trooper Wilson never raised his voice and never did anything threatening. Sup. Trans. 97:3-11.

During the pat down, Trooper Wilson started on Appellant's right side and came down his right front pocket, down the side of his right leg, and back up the inside of his right leg. At no point did he manipulate any object to determine its identity. Trial Trans. 113:4-10. When he reached the inside of Appellant's right leg, he felt what his training and experience led him to believe was a plastic baggie containing crack cocaine. Trial Trans. 11-25. When Trooper Wilson touched the baggie, Appellant nearly "came out of his skin", started shaking, and was looking around for a place to run. Trial Trans. 116:1.

Seeing Appellant was about to run, Trooper Wilson attempted to get the attention of Sergeant Kemmer and Trooper Himes; he also tried to calm Appellant down and told him not to run. Trial Trans. 117:9-17. At that point, Appellant attempts to elbow Trooper Wilson in the head and started to run. Trooper Wilson grabbed his sweatshirt, held on, and attempted to throw him to the ground. Unable to do so, Trooper Wilson spun him in a circle and let go. Trial Trans. 110:16-25. When Appellant got up, he took off running; three troopers were in pursuit yelling for him to stop. Trial Trans. 118:1-25. Two troopers attempted to stun Appellant with their tasers, but were unable to stop him from climbing over a barbed wire fence near the highway and fleeing the scene. Trial Trans. 119:1-14, 122:2. These actions delayed the officers in the completion of their traffic stop. Trial Trans. 118:9.

Trooper Himes, Trooper Norman, and Trooper Wilson pursued Appellant over the fence while Sergeant Kemmer stayed with Appellant's companion and the cruisers. Trial Trans. 122:7-24. The troopers continue to chase Appellant for approximately two

hundred yards and they reached a small lake. Trial Trans. 123:1-7. Appellant jumped into the lake, but the troopers did not pursue as the temperature was approximately forty degrees. Trial Trans. 123:7-13. The troopers watched Appellant swim out approximately thirty yards into the “muck,” roughly chest deep in the water, and saw him destroy the suspected contraband. Trial Trans. 123:14-24. Trooper Wilson saw Appellant put his hands in front of his pants, make short downward motions, and then attempted to disburse something into the murky water. Trial Trans. 124:1-7. Trooper Norman testified that Appellant reached into his pants, retrieved something, and attempted to push it under him. Trial Trans. 163:2-10. When Appellant returned to shore, his pants were around his legs and he had cuts from the pursuit. Trial Trans. 139:14-21. A squad was called to treat Appellant’s injuries. Trial Trans. 124:18-25.

RESPONSE TO APPELLANT'S FIRST PROPOSITION OF LAW

In Appellant's First Proposition of Law, he argues that the troopers did not have probable cause to search his person. Based upon the totality of the circumstances, the trial court found there was probable cause. However, the Fifth District Court of Appeals declined to address the constitutionality of the challenged search Appellant now appeals. Relying on internal precedent, as well as decisions from the Seventh, Ninth, and Second District Courts of Appeal, the Fifth District found that because the actions for which Appellant was charged and convicted constituted independent criminal actions entirely distinct from the challenged search, they were not subject to suppression.

In reaching this decision, the Court explained that the Fourth Amendment does not sanction violence as an acceptable response to allegedly improper police conduct. If police misconduct amounts to a constitutional violation, the exclusionary rule may be triggered and evidence may be suppressed. However, Ohio Courts of Appeal have consistently held that where a person who is being arrested commits a new crime during or after the arrest, the conduct after the alleged violation that constitutes the new crime need not be suppressed merely because the initial arrest, which may be the motive for the new crime, turns out to be unlawful. See State v. Ali, 2003-Ohio-5150 (Ohio App. Dist. 7 September 23 2003) at ¶ 11; City of Akron v. Holmes-2004-Ohio-832 (Ohio App. Dist. 9 February 25, 2004) at ¶ 13; State v. Cossack, 2005-Ohio-965 (Ohio App. Dist. 7 March 4, 2005) at ¶ 26-29.

In Ali, it was undisputed that the officers had unlawfully seized the suspect in violation of the Fourth Amendment. The Seventh District Court of Appeals explained that if the suspect had drugs on her person or in her car, those drugs would be suppressed

as fruits of the illegal search and seizure. However, if the suspect had shot and killed an officer who illegally seized her, the conduct would not be suppressed as it constituted new crime that occurred during or after the arrest. Ali at ¶ 11. The court reasoned that because the threatening statements made to officers during the unlawful arrest was an independent criminal act, rather than merely evidence that was already in existence at the time of the unlawful arrest, the exclusionary rule did not apply.

Similarly, the Second District found the exclusionary rule inapplicable when a suspect shot at police officers who had unlawfully entered his residence. State v. Freeman, 2002-Ohio-918, (Ohio App. Dist. 2 Feb. 15, 2002). Evidence that the suspect shot at the police would not be suppressed simply because their entry into the house had been unlawful. The Second District recently relied upon that ruling in the context of obstructing official business and resisting arrest. State v. Burns, 2010-Ohio-2831, (Ohio App. Dist. 2 June 18 2010) at ¶ 39 -43. In Burns, the defendant had argued the conduct for which he was charged was directly caused by the unlawful search of his residence. In declining to address the merits of whether or not the officer conducted an illegal search, the court found that the defendant's convictions were based upon distinct conduct that occurred after the search. Id at ¶ 39-40.

Finally, the Fifth District previously adopted the reasoning employed in the line of cases discussed above. State v. Suiste, 2008-Ohio-5012, (Ohio App. Dist. 5 September 29, 2008) at ¶ 23-24. In Suiste the court found that it need not reach the issue of the legality of a search and seizure as the conduct and observations that provided the basis for conviction were observations of fresh crimes committed during the arrest and would not be suppressed as fruit of the poisonous tree even if the seizure was in fact unlawful.

Id. at ¶ 23. Based upon its own precedent and the well-reasoned decisions of the Second, Seventh and Ninth District Courts of Appeal, the Fifth District Court of Appeals properly found that the legality of the challenged search was immaterial.

In this case, Appellant attempted to strike the trooper during the challenged search. At that point, a struggle ensued between Appellant and the trooper. Trial Trans. 110:16-25. As Appellant fled the scene on foot, he crossed a barbed wire fence and ran through the woods. Despite repeated orders from the troopers to stop, he continued to flee. Trial Trans. 119:1-14, 122:2-6. The pursuit of Appellant only ended when he jumped into a small lake. When the troopers caught up to him, they observed him reach into his pants, remove an object, break the object up, and disburse it into the water. Trial Trans. 124:1-7, 163:2-10. While the troopers believed that object was contraband, its recovery would have been valuable regardless of its composition. Its retrieval would have either confirmed or disproved the troopers' suspicion that he possessed drugs. However, Appellant's actions *in the lake* concealed and destroyed the object of evidentiary value. Based upon the facts of the case at bar, the lower court was correct that the constitutionality of the challenged search was immaterial.

Assuming *arguendo* that the Fifth District erred in failing to determine the propriety of the challenged search, the trial court found that the search was supported by probable cause. Appellant proceeds from the false premise that the sole basis for the search of his person was the fact that the trained drug dog "alerted" on his motor vehicle. Based upon the totality of the circumstances, the trial court found that the troopers had probable cause to extend their search of the motor vehicle to Appellant's person. Oct. 18, 2010 Opinion and Order Denying Defendant's Motion to Suppress Evidence.

Because the trial court was in the best position to evaluate all of the evidence and observe the witnesses as they testified, the factual determinations of the trial court should not be disturbed upon appeal. State v. Dunlap (1995), 73 Ohio St.3d 308, 314. Based upon Appellant's responses to questioning regarding his operator's license, the troopers had reason to believe he was being less than honest. Unlike a typical traffic stop, Appellant's level of anxiety increased, rather than decreased, through the duration of the stop. Appellant was the registered owner and driver of the motor vehicle on which a trained canine unit alerted on for the odor of narcotics. Sup. Trans. 7:17-22, 12:55. He indicated no one else would have had drugs in the vehicle. The troopers had conducted an extensive search of Appellant's vehicle and found no contraband or anything that would have caused the canine unit to alert. Sup. Trans. 72:4-19. Additionally, they found his vehicle to be exceptionally clean and Appellant indicated he had it cleaned just two days before the stop. Sup. Trans. 14:21-25. Based upon his behavior, statements, and their investigation, the trial court found the troopers possessed particularized probable cause to search Appellant's person.² While Appellant may disagree that the totality of the circumstances amounted to probable cause to search his person, such a belief does not elevate this issue to one involving substantial constitutional issues or one of great general interest.

RESPONSE TO APPELLANT'S SECOND PROPOSITION OF LAW

While Appellant does not appear to dispute the Fifth District's conclusion that his unlawful acts after the challenged search are not subject to suppression, he argues that testimony regarding Trooper Wilson's tactile sensations during the challenged search

² Exigent circumstances obviated the warrant requirement as narcotics are "easily and quickly hidden or destroyed." See e.g., State v. Moore (2000), 90 Ohio St.3d 47, 52 (a warrantless search of defendant's person was justified based upon the odor of burnt marijuana in the vehicle and about defendant's person).

should have been suppressed. Assuming, *arguendo*, that the trial court erred in admitting certain portions of Trooper Wilson's testimony to which Appellant failed to object at trial, such a decision was at most harmless error. Moreover, this issue does not involve substantial constitutional questions and is not of great public interest.

As discussed above, the independent criminal acts committed by the Appellant during and after the search would not be subject to suppression. The decision whether or not to admit the testimony of Trooper Wilson regarding the events leading up to Appellant's unlawful conduct was within the sound discretion of the trial court. See State v. Sage (1987), 31 Ohio St.3d 173, paragraph two of the syllabus (the admission or exclusion of relevant evidence rests within the sound discretion of the trial court). Absent an abuse of discretion, evidentiary rulings of the trial court should not be disturbed on appeal. An abuse of discretion requires more than an error of law; it requires that the judgment of the trial court was unreasonable, arbitrary, or unconscionable. See Blakemore v. Blakemore (1983), 5 Ohio St.3d 217. Regardless of the merits of the trial court's determination, there is nothing in the record to suggest that the trial court's judgment was unreasonable, arbitrary, or unconscionable.

Appellant directs the Court's attention to the testimony of Trooper Wilson. At trial, Trooper Wilson testified regarding the procedure by which he searches individuals, the manner by which he searched Appellant, and Appellant's reaction to that search. Trial Trans. 113. This testimony was not offered to prove that Appellant possessed contraband. Rather it was offered to inform the jury that there was still an ongoing investigation of Appellant when he attempted to strike Trooper Wilson and fled the scene. Because

Appellant was charged with obstructing official business in violation of R.C. 2921.31, the State was required to offer evidence of this nature.

In retrospect, is possible that the jury could have considered Trooper Wilson's testimony as circumstantial evidence in support of the tampering with evidence charge. Trooper Wilson did testify he felt what he believed to be crack cocaine during the challenged search. Trial Trans. 114:13. If the trial court erred, and the challenged search was unlawful, a limiting instruction informing the jury to consider Trooper Wilson's testimony regarding the challenged search only as it related to the obstructing official business charge may have been warranted. However, Appellant never objected to the testimony relating to the challenged search and never requested a limiting instruction be given to the jury. Had the introduction of this testimony been so unreasonable, arbitrary, or unconscionable, Appellant should have objected to alert the trial court to his concerns. The trial court's failure to provide a limiting instruction which was never requested is not unreasonable, arbitrary, or unconscionable.

Appellant asserts that had this testimony been suppressed, "it is hard to envision how a reasonable juror could have found Jefferson guilty..." However, this assertion ignores the fact that two troopers directly observed Appellant removing an object from his pants. When Appellant waded out in the lake at the end of the pursuit, he was seen retrieving something from his pants and disbursing it under the water. Trial Trans. 123:14-24, 124:1-7, 163:2-10. The conduct for which Appellant was convicted occurred entirely independently from the search. Moreover, even if limited testimony was admitted in error, such error does not itself generate a substantial constitutional question or one of great public interest.

RESPONSE TO APPELLANT'S THIRD PROPOSITION OF LAW

In Appellant's third proposition of law he asserts that the traffic stop was impermissibly extended to enable the canine unit to sniff his vehicle. As both lower courts correctly determined, this assertion is unsupported by the facts. When detaining a motorist for a traffic violation, an officer may delay a motorist for a time period sufficient to issue a ticket or a warning. This measure includes the period of time sufficient to run a computer check on the driver's license, registration, and vehicle plates. Further, in determining if an officer completed these tasks within a reasonable length of time, the court must evaluate the duration of the stop in light of the totality of the circumstances and consider whether the officer diligently conducted the investigation. State v. Batchili, 113 Ohio St.3d 403, 406.

At approximately 10:06 A.M., Trooper Himes initiated a traffic stop of Appellant's green Land Rover based upon a reasonable articulable suspicion that he was driving with an expired operator's license. Sup. Trans. 20:14. Approximately ten minutes after Appellant's vehicle was stopped, the canine unit had alerted on his motor vehicle. However, Trooper Himes did not know that Appellant possessed a valid Georgia's operator's license until 10:19:33. Sup. Trans. 46:24. Prior to obtaining that information, the canine unit had alerted on the motor vehicle and provided justification to extend the traffic stop beyond its original purpose.

Appellant argues that traffic stop was impermissibly extended, for approximately forty five seconds, when Trooper Himes requested the presence of the canine unit before he requested additional information regarding Appellant's license status through dispatch. This argument presupposes that but for the delay, the stop would have been completed

earlier. The ten minute period between when Appellant was stopped and when the canine unit alerted on his vehicle was insufficient for the trooper to investigate Appellant's license status, check for outstanding warrants, determine Appellant's state of residency, and write the citation he was ultimately issued. Sup. Trans. 47:19, 48:8. Trooper Himes did not even have confirmation that Appellant had a Georgia operator's license until several minutes after the canine alerted on his vehicle. Moreover, Trooper Himes was still questioning Appellant about his license and residency when the video of the traffic stop shows Trooper Norman walking his canine unit around Appellant's vehicle. Sup. Trans. 22:7-25. The forty five second "delay" in this case did not extend the traffic stop even momentarily.

CONCLUSION

For the foregoing reasons Appellee respectfully requests this honorable court decline jurisdiction in the above captioned case as Appellant's propositions of law do not involve substantial constitutional issues or issues of great general or public interest.

Respectfully submitted,
CAROL HAMILTON O'BRIEN,
PROSECUTING ATTORNEY

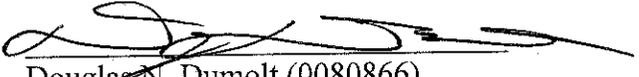


Douglas N. Dumolt (0080866)
Assistant Prosecuting Attorney
Delaware County
140 N. Sandusky Street
Delaware, Ohio 43015
(740) 833-2690
(740) 833-2689 FAX
ddumolt@co.delaware.oh.us
COUNSEL FOR APPELLEE

CERTIFICATE OF SERVICE

The undersigned Attorney hereby certifies that a true and accurate copy of the foregoing document was served upon the following counsel via ordinary mail on this second day of April, 2012.

Benjamin A. Tracy (0087090) (Counsel of Record)
The Owen Firm, LLC
5354 North High Street
Columbus, Ohio 43214
(614) 454-5010


Douglas N. Dumolt (0080866)