

IN THE SUPREME COURT OF OHIO

STATE OF OHIO : Case No.: 2011-2075
Appellant/Cross-Appellee : 2011-2178
-vs- : On appeal from the Hamilton County
Court of Appeals, First Appellate District
JULIAN STEELE : Court of Appeals
Appellee/Cross-Appellant : Case No.: B0903495

**MERIT BRIEF FOR
APPELLEE/CROSS-APPELLANT
JULIAN STEELE**

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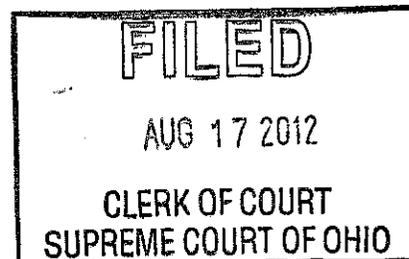


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STATEMENT OF FACTS

FACTS: In May of 2009, Appellee-Cross-Appellant, Detective Julian Steele (hereinafter "Detective Steele") investigated a series of robberies that were occurring in a neighborhood called Northside. On May 5, 2009 at approximately 12:40 a.m., two people were robbed, being assaulted as property was taken from them. An unidentified witness saw two suspects get into a blue Cadillac that was being driven by another male black. The witness followed the blue Cadillac, got the license plate number and gave that information to the police. (T.P. 360-361, 388-391)

The vehicle was owned by Alicia Maxton, and there were three male blacks that were connected to the vehicle: her 17 year old son Ramone Maxton (hereinafter "Maxton"), her 16 year old son Lamont Green, and a 17 year old named AJ Griffin. They all lived together in Bahama Terrace, which was a housing community that was a mile or so north of the community where the robberies were taking place. (T.P. 378, 660, 644, 645, 673)

Between May 5 and May 6, 2009, Detective Steele viewed photos of the three teens, and attempted to contact the victims. He decided to interview the three male black teens based upon the license plate information, the general descriptions of the offenders and the vehicle, and the vehicle leaving the scene and traveling in the direction of Bahama Terrace, and the information that three black males were involved in the robberies. (T.P. 434-451)

On May 6, Detective Steele and his partner, Detective Calvin Mathis went to the high school to talk to the teens, but the teens were absent from school. Their absence from school the day after the robbery was suspicious to the detectives because in their experience, it is normal behavior for perpetrators to miss work or school after committing a crime in an effort to lay low for a while. (T.P. 378, 423, 425-427, 429)

On May 7, Detectives Steele and Mathis went back to the school with uniformed police officers. All three teens were handcuffed by a uniformed officer, put into police cruisers, and taken to the district. Upon arrival, the handcuffs were removed and each suspect was questioned about the robberies. Lamont, who did not confess, was released. Maxton confessed to the robberies and was arrested. AJ Griffin confessed to the robbery and was arrested too. Maxton and AJ implicated each other. (T.P. 429, 393, 650, 654, 696-723, 448, 398, 953-954)

At the time that AJ's case was presented to the grand jury, Detective Steele spoke with an assistant prosecuting attorney, Megan Shanahan, about Maxton's arrest. Her testimony was that Detective Steele told her that he knew Maxton was innocent. Her testimony, however, did not reveal when Steele allegedly knew Maxton was innocent. (T.P. 484-487)

Subsequent to his conversation with Shanahan, Detective Steele was secretly recorded by an investigator for the prosecutor's office. Investigator Bob Randolph was a colleague of Detective Steele as a police officer with the Cincinnati Police Division, and they had known each other for twenty years. Officer Randolph's purpose for the secret recording was to question Detective Steele about Shanahan's allegations that he arrested Maxton knowing he was innocent. Steele told Officer Randolph that it was not until he did more follow-up in the investigation that he felt that Maxton gave a false confession. (T.P. 917-921, State's Exhibit 16)

ARGUMENT IN OPPOSITION
TO APPELLANT/CROSS-APPELLEE'S PROPOSITION OF LAW

PROPOSITION OF LAW I: In instructing a jury on a crime, which contains among its elements the concept of "privilege" or lack thereof, the definition of "privilege" contained in Ohio Revised Code section 2901.01(A)(12) is proper and sufficient.

The First District Court of Appeals relied on *State v. Cooperrider*, 4 Ohio St.3d 226 (1983) and *State v. Long*, 53 Ohio St.2d 91 (1978) for the proposition that a conviction should

be set aside when there has been a manifest miscarriage of justice regarding improper jury instructions. In the case at bar, a jury convicted a police officer on two counts of abduction, on the ground that the arrest lacked probable cause, using standard jury instructions for the definition of “privilege.”

The appellate court reversed the abduction convictions because the jury instructions were improper. The jury instructions were tailored to fit the state’s theory that police officers commit the criminal offense of abduction when they arrest individuals without “reasonable suspicion” or “probable cause” to arrest.

In reversing these convictions, the First District acted in accordance with this court’s decision in *State ex rel. Cooper v. Savord*, 153 Ohio St. 367 (1950). The appellate court understood that applying the abduction statute to police officers would lead to unreasonable and absurd results. Therefore, the appellate court designed another jury instruction to fit the scenario of a police officer making an arrest without probable cause. The decision states in relevant part:

The jury in this criminal case should have been instructed that a police officer loses the privilege to arrest when that officer knows, at the time of the arrest, that the person to be arrested had not committed the crime or that no crime had been committed.

Decision at ¶ 19.

This Court should affirm the decision of the appellate court in reversing the abduction convictions, but this Court should also find that police officers in Ohio should never face a potential felony charge of abduction when they make an arrest under the scenario of the instant case.

The appellate court relied upon Section 1983 case law for guidance in reaching its decision to reverse the abduction convictions. *Decision* at ¶ 15. The court of appeals acknowledged that arresting officers have immunity in civil cases when they mistakenly

conclude that probable cause in present when it is not present. Decision at ¶ 16. Based on civil immunity laws, the appellate court concluded that police officers should not be penalized for reasonable mistakes. *Decision* at ¶ 17.

Since police officers have civil immunity, they should also have criminal immunity. The abduction statute should never apply to police officer using their discretionary authority to make an arrest pursuant to R.C. 2935.03. It is important that the courts do not infringe upon police officers who risk their lives to make the streets safe from violent offenders.

In the case at bar, there were a series of violent robberies in the North side neighborhood of Cincinnati. Steele was the detective assigned to investigate those robberies. Based upon the facts known to him at the time, he arrested three people. At the time of the arrests, Detective Steele could not have known that Maxton did not commit the crime. There were facts indicating Maxton's involvement. Detective Steele was wrong, but he was on the right track.

The only reason Detective Steele was investigated for Maxton's arrest was because Maxton's mother made an allegation that Steele forced her to engage in sexual relations. The jury found Detective Steele not guilty of all counts related to the mother's allegations. Therefore, those allegations are not relevant to the instant case.

If the state has its way, police officers in Ohio could be charged with abduction if they make a false arrest. This court should emphatically state that it is not unlawful for a police officer to make a decision, right or wrong, regarding an arrest. As the appellate court stated, "probable-cause determinations are far from clear cut." Decision at ¶ 14. Thus, the abduction convictions should remain reversed and the defendant should also be discharged.

ARGUMENT IN SUPPORT OF
APPELLEE/CROSS-APPELLANT'S PROPOSITION OF LAW NO. III

PROPOSITION OF LAW III: The crime of intimidation as set forth in Ohio Revised Code Section 2931.03(B) (sic) does not apply to police officers when they interrogate a suspect.

R.C. 2901.04(A) states that the definition of “offenses or penalties shall be strictly construed against the state, and liberally construed in favor of the accused.” In *State v. Davis*, 132 Ohio St.3d 25 (2012) and *State v. Malone*, 121 Ohio St.3d 224 (2009), this Court applied the plain language of the witness intimidation statute (former R.C. 2921.04) to determine whether it applied in the state’s efforts to obtain a conviction for witness intimidation. In *Davis*, this court stated, “[W]e are limited by the language chosen by the General Assembly to define the crime of witness intimidation, and we cannot apply that language to conduct outside the statute.” *Id.*, at ¶ 19. In *Malone*, this court stated, “The statute requires a witness’s involvement in a criminal action or proceeding, not his or her potential involvement.” *Id.*, at ¶ 21. These cases provide guidance for the instant matter even though the statutory language is different.

R.C. 2921.03(A) states:

No person, knowingly and by force, by unlawful threat of harm to any person or property, or by filing, recording, or otherwise using a materially false or fraudulent writing with malicious purpose, in bad faith, or in a wanton or reckless manner, shall attempt to influence, intimidate, or hinder a public servant, party official, or witness in the discharge of the person's duty.

According to the state, Detective Steele was guilty of intimidation because Maxton was intimidated when he was arrested and incarcerated. (T.P. 1030-1031) First, this statute does not apply to the instant case because Maxton was not a public servant, party official or a witness at the time that he testified that he claims he was intimidated by Detective Steele. He was a suspect.

Second, Detective Steele was actively engaged in his duties as a police officer. Therefore, he had the authority to interrogate Maxton about the robberies and to arrest Maxton after he confessed.

Third, if the intimidation conviction is upheld, every police officer in Ohio is potentially subject to criminal prosecution for intimidation whenever they make an arrest, interrogate a suspect, and charge them with a crime. This would be an unconscionable result. Police officers should be free to use their discretion when investigating violent crimes.

If this court determines that the intimidation statute is applicable to police interrogations, it still should not apply in this case. In its opinion, the First District Court primarily relied upon the testimony of the suspect to support the intimidation conviction: 1. Maxton's testimony that he was not involved in the robberies, 2. Maxton's testimony that he only confessed because Steele told him that if he did not confess, his mother would be arrested and his siblings would be in foster care, and 3. Maxton's testimony that Steele told him what to say when he confessed. Decision at ¶ 25. The court of appeals, however, did not consider Maxton testimony about knowing who committed the robberies and then going shopping afterwards. Maxton testified, on direct examination:

Q. All right. Now did you become aware one night that Marcus and AJ had been involved in some theft-type offense, robberies?

A. Yes, sir.

Q. How did you find out about that?

A. When they told me about it.

....

Q. Okay. Tell me, where were you at the time that you heard anything from those two?

A. In my room, laying down.

...

Q. And what were you doing in your room?

A. Laying down, texting.

Q. Okay. Had you been anywhere earlier that day?

A. Excuse me?

Q. Had you been anywhere earlier that day?

A. Well, I was at work then, before I came home, and then I went shopping.

Q. Okay. And who did you go shopping with?

...

A. I went shopping with my mother AJ and Marcus.

(T.P. 677-678) Based upon Maxton testimony on direct examination, Maxton knew AJ and Marcus were involved in the robbery and also went shopping with them and his mother after the robbery. During Maxton's interrogation, he made a conscious decision not to tell Detective Steele that his mother's boyfriend, Marcus, helped to commit the robberies. As such, Maxton's own testimony reveals that he really was not intimidated into making a false confession. He simply chose not to tell the truth. The intimidation conviction must be reversed and the defendant discharged.

CONCLUSION

Based upon the foregoing, the Appellee/Cross-Appellant requests this court affirm the decision of the appellate court in reversing the abduction convictions, that this court reverse the decision of the appellate court and reverse the intimidation conviction, and that this court discharge the defendant from further prosecution.

Respectfully submitted,



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PROOF OF SERVICE

I certify that a copy of this Motion was sent by ordinary U.S. Mail to counsel for Appellant/cross-appellee, Daniel Breyer, Special Prosecuting Attorney, Clermont County Prosecutor's Office, 123 North 3rd Street, Batavia, OH 43103 on this 17th day of August 2012.



Gloria L. Smith (0061231)

APPENDIX

STATE v. STEELE, OSC NO. 2011-2075 & 2011-2178

2935.03 Authority to arrest without warrant – Pursuit outside jurisdiction.

(A)(1) A sheriff, deputy sheriff, marshal, deputy marshal, municipal police officer, township constable, police officer of a township or joint police district, member of a police force employed by a metropolitan housing authority under division (D) of section 3735.31 of the Revised Code, member of a police force employed by a regional transit authority under division (Y) of section 306.35 of the Revised Code, state university law enforcement officer appointed under section 3345.04 of the Revised Code, veterans' home police officer appointed under section 5907.02 of the Revised Code, special police officer employed by a port authority under section 4582.04 or 4582.28 of the Revised Code, or a special police officer employed by a municipal corporation at a municipal airport, or other municipal air navigation facility, that has scheduled operations, as defined in section 119.3 of Title 14 of the Code of Federal Regulations, 14 C.F.R. 119.3, as amended, and that is required to be under a security program and is governed by aviation security rules of the transportation security administration of the United States department of transportation as provided in Parts 1542. and 1544. of Title 49 of the Code of Federal Regulations, as amended, shall arrest and detain, until a warrant can be obtained, a person found violating, within the limits of the political subdivision, metropolitan housing authority housing project, regional transit authority facilities or areas of a municipal corporation that have been agreed to by a regional transit authority and a municipal corporation located within its territorial jurisdiction, college, university, veterans' home operated under Chapter 5907. of the Revised Code, port authority, or municipal airport or other municipal air navigation facility, in which the peace officer is appointed, employed, or elected, a law of this state, an ordinance of a municipal corporation, or a resolution of a township.

(2) A peace officer of the department of natural resources, a state fire marshal law enforcement officer described in division (A)(23) of section 109.71 of the Revised Code, or an individual designated to perform law enforcement duties under section 511.232, 1545.13, or 6101.75 of the Revised Code shall arrest and detain, until a warrant can be obtained, a person found violating, within the limits of the peace officer's, state fire marshal law enforcement officer's, or individual's territorial jurisdiction, a law of this state.

(3) The house sergeant at arms, if the house sergeant at arms has arrest authority pursuant to division (E)(1) of section 101.311 of the Revised Code, and an assistant house sergeant at arms shall arrest and detain, until a warrant can be obtained, a person found violating, within the limits of the sergeant at arms's or assistant sergeant at arms's territorial jurisdiction specified in division (D)(1)(a) of section 101.311 of the Revised Code or while providing security pursuant to division (D)(1)(f) of section 101.311 of the Revised Code, a law of this state, an ordinance of a municipal corporation, or a resolution of a township.

(B)(1) When there is reasonable ground to believe that an offense of violence, the offense of criminal child enticement as defined in section 2905.05 of the Revised Code, the offense of public indecency as defined in section 2907.09 of the Revised Code, the offense of domestic violence as defined in section 2919.25 of the Revised Code, the offense of violating a protection order as defined in section 2919.27 of the Revised Code, the offense of menacing by stalking as defined in section 2903.211 of the Revised Code, the offense of aggravated trespass as defined in section 2911.211 of the Revised Code, a theft offense as defined in section 2913.01 of the Revised Code, or a felony drug abuse offense as defined in section 2925.01 of the Revised Code, has been committed within the limits of the political subdivision, metropolitan housing authority housing project, regional transit authority facilities or those areas of a municipal corporation that have been agreed to by a regional transit authority and a municipal corporation located within its territorial jurisdiction, college, university, veterans' home operated under Chapter 5907. of the Revised Code, port authority, or municipal airport or other municipal air navigation facility, in which the peace officer is appointed, employed, or elected or within the limits of the territorial jurisdiction of the peace officer, a peace officer described in division (A) of this section may arrest and detain until a warrant can be obtained any person who the peace officer has reasonable cause to believe is guilty of the violation.(2) For purposes of division (B)(1) of this section, the execution of any of the following constitutes reasonable ground to believe that the offense alleged in the statement was committed and reasonable cause to believe that the person alleged in the statement to have committed the offense is guilty of the violation:(a) A written statement by a person alleging that an alleged offender has committed the offense of menacing by stalking or aggravated trespass;

(b) A written statement by the administrator of the interstate compact on mental health appointed under section 5119.51 of the Revised Code alleging that a person who had been hospitalized, institutionalized, or confined in any facility under an order made pursuant to or under authority of section 2945.37, 2945.371, 2945.38, 2945.39, 2945.40, 2945.401, or 2945.402 of the Revised Code has escaped from the facility, from confinement in a vehicle for transportation to or from the facility, or from supervision by an employee of the facility that is incidental to hospitalization, institutionalization, or confinement in the facility and that occurs outside of the facility, in violation of section 2921.34 of the Revised Code;

(c) A written statement by the administrator of any facility in which a person has been hospitalized, institutionalized, or confined under an order made pursuant to or under authority of section 2945.37, 2945.371, 2945.38, 2945.39, 2945.40, 2945.401, or 2945.402 of the Revised Code alleging that the person has escaped from the facility, from confinement in a vehicle for transportation to or from the facility, or from supervision by an employee of the facility that is incidental to hospitalization, institutionalization, or confinement in the facility and that occurs outside of the facility, in violation of section 2921.34 of the Revised Code.

(3)(a) For purposes of division (B)(1) of this section, a peace officer described in division (A) of this section has reasonable grounds to believe that the offense of domestic violence or the offense of violating a protection order has been committed and reasonable cause to believe that a particular person is guilty of committing the offense if any of the following occurs:

(i) A person executes a written statement alleging that the person in question has committed the offense of domestic violence or the offense of violating a protection order against the person who executes the statement or against a child of the person who executes the statement.

(ii) No written statement of the type described in division (B)(3)(a)(i) of this section is executed, but the peace officer, based upon the peace officer's own knowledge and observation of the facts and circumstances of the alleged incident of the offense of domestic violence or the alleged incident of the offense of violating a protection order or based upon any other information, including, but not limited to, any reasonably trustworthy information given to the peace officer by the alleged victim of the alleged incident of the offense or any witness of the alleged incident of the offense, concludes that there are reasonable grounds to believe that the offense of domestic violence or the offense of violating a protection order has been committed and reasonable cause to believe that the person in question is guilty of committing the offense.

(iii) No written statement of the type described in division (B)(3)(a)(i) of this section is executed, but the peace officer witnessed the person in question commit the offense of domestic violence or the offense of violating a protection order.

(b) If pursuant to division (B)(3)(a) of this section a peace officer has reasonable grounds to believe that the offense of domestic violence or the offense of violating a protection order has been committed and reasonable cause to believe that a particular person is guilty of committing the offense, it is the preferred course of action in this state that the officer arrest and detain that person pursuant to division (B)(1) of this section until a warrant can be obtained.

If pursuant to division (B)(3)(a) of this section a peace officer has reasonable grounds to believe that the offense of domestic violence or the offense of violating a protection order has been committed and reasonable cause to believe that family or household members have committed the offense against each other, it is the preferred course of action in this state that the officer, pursuant to division (B)(1) of this section, arrest and detain until a warrant can be obtained the family or household member who committed the offense and whom the officer has reasonable cause to believe is the primary physical aggressor. There is no preferred course of action in this state regarding any other family or household member who committed the offense and whom the officer does not have reasonable cause to believe is the primary physical aggressor, but, pursuant to division (B)(1) of this section, the peace officer may arrest and detain until a warrant can be obtained any other family or household member who committed the offense and whom the officer does not have reasonable cause to believe is the primary physical aggressor.

(c) If a peace officer described in division (A) of this section does not arrest and detain a person whom the officer has reasonable cause to believe committed the offense of domestic violence or the offense of violating a protection order when it is the preferred course of action in this state pursuant to division (B)(3)(b) of this section that the officer arrest that person, the officer shall articulate in the written report of the incident required by section 2935.032 of the Revised Code a clear statement of the officer's reasons for not arresting and detaining that person until a warrant can be obtained.

(d) In determining for purposes of division (B)(3)(b) of this section which family or household member is the primary physical aggressor in a situation in which family or household members have committed the offense of domestic violence or the offense of violating a protection order against each other, a peace officer described in division (A) of this section, in addition to any other relevant circumstances, should consider all of the following:

(i) Any history of domestic violence or of any other violent acts by either person involved in the alleged offense that the officer reasonably can ascertain;(ii) If violence is alleged, whether the alleged violence was caused by a person acting in self-defense;

(iii) Each person's fear of physical harm, if any, resulting from the other person's threatened use of force against any person or resulting from the other person's use or history of the use of force against any person, and the reasonableness of that fear;

(iv) The comparative severity of any injuries suffered by the persons involved in the alleged offense.

(e)(i) A peace officer described in division (A) of this section shall not require, as a prerequisite to arresting or charging a person who has committed the offense of domestic violence or the offense of violating a protection order, that the victim of the offense specifically consent to the filing of charges against the person who has committed the offense or sign a complaint against the person who has committed the offense.

(ii) If a person is arrested for or charged with committing the offense of domestic violence or the offense of violating a protection order and if the victim of the offense does not cooperate with the involved law enforcement or prosecuting authorities in the prosecution of the offense or, subsequent to the arrest or the filing of the charges, informs the involved law enforcement or prosecuting authorities that the victim does not wish the prosecution of the offense to continue or wishes to drop charges against the alleged offender relative to the offense, the involved prosecuting authorities, in determining whether to continue with the prosecution of the offense or whether to dismiss charges against the alleged offender relative to the offense and notwithstanding the victim's failure to cooperate or the victim's wishes, shall consider all facts and circumstances that are relevant to the offense, including, but not limited to, the statements and observations of the peace officers who responded to the incident that resulted in the arrest or filing of the charges and of all witnesses to that incident.

(f) In determining pursuant to divisions (B)(3)(a) to (g) of this section whether to arrest a person pursuant to division (B)(1) of this section, a peace officer described in division (A) of this section shall not consider as a factor any possible shortage of cell space at the detention facility to which the person will be taken subsequent to the person's arrest or any possibility that the person's arrest might cause, contribute to, or exacerbate overcrowding at that detention facility or at any other detention facility.(g) If a peace officer described in division (A) of this section intends pursuant to divisions (B)(3)(a) to (g) of this section to arrest a person pursuant to division (B)(1) of this section and if the officer is unable to do so because the person is not present, the officer promptly shall seek a warrant for the arrest of the person.(h) If a peace officer described in division (A) of this section responds to a report of an alleged incident of the offense of domestic violence or an alleged incident of the offense of violating a protection order and if the circumstances of the incident involved the use or threatened use of a deadly weapon or any person involved in the incident brandished a deadly weapon during or in relation to the incident, the deadly weapon that was used, threatened to be used, or brandished constitutes contraband, and, to the extent possible, the officer shall seize the deadly weapon as contraband pursuant to Chapter 2981. of the Revised Code. Upon the seizure of a deadly weapon pursuant to division (B)(3)(h) of this section, section 2981.12 of the Revised Code shall apply regarding the treatment and disposition of the deadly weapon. For purposes of that section, the "underlying criminal offense" that was the basis of the seizure of a deadly weapon under division (B)(3)(h) of this section and to which the deadly weapon had a relationship is any of the following that is applicable:

(i) The alleged incident of the offense of domestic violence or the alleged incident of the offense of violating a protection order to which the officer who seized the deadly weapon responded;

(ii) Any offense that arose out of the same facts and circumstances as the report of the alleged incident of the offense of domestic violence or the alleged incident of the offense of violating a protection order to which the officer who seized the deadly weapon responded.

(4) If, in the circumstances described in divisions (B)(3)(a) to (g) of this section, a peace officer described in division (A) of this section arrests and detains a person pursuant to division (B)(1) of this section, or if, pursuant to division (B)(3)(h) of this section, a peace officer described in division (A) of this section seizes a deadly weapon, the officer, to the extent described in and in accordance with section 9.86 or 2744.03 of the Revised Code, is immune in any civil action for damages for injury, death, or loss to person or property that arises from or is related to the arrest and detention or the seizure.

(C) When there is reasonable ground to believe that a violation of division (A)(1), (2), (3), (4), or (5) of section 4506.15 or a violation of section 4511.19 of the Revised Code has been committed by a person operating a motor vehicle subject to regulation by the public utilities commission of Ohio under Title XLIX of the Revised Code, a peace officer with authority to enforce that provision of law may stop or detain the person whom the officer has reasonable cause to believe

was operating the motor vehicle in violation of the division or section and, after investigating the circumstances surrounding the operation of the vehicle, may arrest and detain the person.

(D) If a sheriff, deputy sheriff, marshal, deputy marshal, municipal police officer, member of a police force employed by a metropolitan housing authority under division (D) of section 3735.31 of the Revised Code, member of a police force employed by a regional transit authority under division (Y) of section 306.35 of the Revised Code, special police officer employed by a port authority under section 4582.04 or 4582.28 of the Revised Code, special police officer employed by a municipal corporation at a municipal airport or other municipal air navigation facility described in division (A) of this section, township constable, police officer of a township or joint police district, state university law enforcement officer appointed under section 3345.04 of the Revised Code, peace officer of the department of natural resources, individual designated to perform law enforcement duties under section 511.232, 1545.13, or 6101.75 of the Revised Code, the house sergeant at arms if the house sergeant at arms has arrest authority pursuant to division (E)(1) of section 101.311 of the Revised Code, or an assistant house sergeant at arms is authorized by division (A) or (B) of this section to arrest and detain, within the limits of the political subdivision, metropolitan housing authority housing project, regional transit authority facilities or those areas of a municipal corporation that have been agreed to by a regional transit authority and a municipal corporation located within its territorial jurisdiction, port authority, municipal airport or other municipal air navigation facility, college, or university in which the officer is appointed, employed, or elected or within the limits of the territorial jurisdiction of the peace officer, a person until a warrant can be obtained, the peace officer, outside the limits of that territory, may pursue, arrest, and detain that person until a warrant can be obtained if all of the following apply:

- (1) The pursuit takes place without unreasonable delay after the offense is committed;
- (2) The pursuit is initiated within the limits of the political subdivision, metropolitan housing authority housing project, regional transit authority facilities or those areas of a municipal corporation that have been agreed to by a regional transit authority and a municipal corporation located within its territorial jurisdiction, port authority, municipal airport or other municipal air navigation facility, college, or university in which the peace officer is appointed, employed, or elected or within the limits of the territorial jurisdiction of the peace officer;
- (3) The offense involved is a felony, a misdemeanor of the first degree or a substantially equivalent municipal ordinance, a misdemeanor of the second degree or a substantially equivalent municipal ordinance, or any offense for which points are chargeable pursuant to section 4510.036 of the Revised Code.

(E) In addition to the authority granted under division (A) or (B) of this section:

(1) A sheriff or deputy sheriff may arrest and detain, until a warrant can be obtained, any person found violating section 4503.11, 4503.21, or 4549.01, sections 4549.08 to 4549.12, section 4549.62, or Chapter 4511. or 4513. of the Revised Code on the portion of any street or highway that is located immediately adjacent to the boundaries of the county in which the sheriff or deputy sheriff is elected or appointed.

(2) A member of the police force of a township police district created under section 505.48 of the Revised Code, a member of the police force of a joint police district created under section 505.482 of the Revised Code, or a township constable appointed in accordance with section 509.01 of the Revised Code, who has received a certificate from the Ohio peace officer training commission under section 109.75 of the Revised Code, may arrest and detain, until a warrant can be obtained, any person found violating any section or chapter of the Revised Code listed in division (E)(1) of this section, other than sections 4513.33 and 4513.34 of the Revised Code, on the portion of any street or highway that is located immediately adjacent to the boundaries of the township police district or joint police district, in the case of a member of a township police district or joint police district police force, or the unincorporated territory of the township, in the case of a township constable. However, if the population of the township that created the township police district served by the member's police force, or the townships and municipal corporations that created the joint police district served by the member's police force, or the township that is served by the township constable, is sixty thousand or less, the member of the township police district or joint police district police force or the township constable may not make an arrest under division (E)(2) of this section on a state highway that is included as part of the interstate system.

(3) A police officer or village marshal appointed, elected, or employed by a municipal corporation may arrest and detain, until a warrant can be obtained, any person found violating any section or chapter of the Revised Code listed in division (E)(1) of this section on the portion of any street or highway that is located immediately adjacent to the boundaries of the municipal corporation in which the police officer or village marshal is appointed, elected, or employed.(4) A peace officer of the department of natural resources, a state fire marshal law enforcement officer described in division (A)(23) of section 109.71 of the Revised Code, or an individual designated to perform law enforcement duties under section 511.232, 1545.13, or 6101.75 of the Revised Code may arrest and detain, until a warrant can be obtained, any person found violating any section or chapter of the Revised Code listed in division (E)(1) of this section, other than sections 4513.33 and 4513.34 of the Revised Code, on the portion of any street or highway that is located immediately adjacent to the boundaries of the lands and waters that constitute the territorial jurisdiction of the peace officer or state fire marshal law enforcement officer.(F)(1) A department of mental health special police officer or a department of developmental disabilities special police officer may arrest without a warrant and detain until a warrant can be obtained any person found committing on the premises of any institution under the jurisdiction of the particular department a misdemeanor under a law of the state.

A department of mental health special police officer or a department of developmental disabilities special police officer may arrest without a warrant and detain until a warrant can be obtained any person who has been hospitalized, institutionalized, or confined in an institution under the jurisdiction of the particular department pursuant to or under authority of section 2945.37, 2945.371, 2945.38, 2945.39, 2945.40, 2945.401, or 2945.402 of the Revised Code and who is found committing on the premises of any institution under the jurisdiction of the particular department a violation of section 2921.34 of the Revised Code that involves an escape from the premises of the institution.

(2)(a) If a department of mental health special police officer or a department of developmental disabilities special police officer finds any person who has been hospitalized, institutionalized, or confined in an institution under the jurisdiction of the particular department pursuant to or under authority of section 2945.37, 2945.371, 2945.38, 2945.39, 2945.40, 2945.401, or 2945.402 of the Revised Code committing a violation of section 2921.34 of the Revised Code that involves an escape from the premises of the institution, or if there is reasonable ground to believe that a violation of section 2921.34 of the Revised Code has been committed that involves an escape from the premises of an institution under the jurisdiction of the department of mental health or the department of developmental disabilities and if a department of mental health special police officer or a department of developmental disabilities special police officer has reasonable cause to believe that a particular person who has been hospitalized, institutionalized, or confined in the institution pursuant to or under authority of section 2945.37, 2945.371, 2945.38, 2945.39, 2945.40, 2945.401, or 2945.402 of the Revised Code is guilty of the violation, the special police officer, outside of the premises of the institution, may pursue, arrest, and detain that person for that violation of section 2921.34 of the Revised Code, until a warrant can be obtained, if both of the following apply:

(i) The pursuit takes place without unreasonable delay after the offense is committed;

(ii) The pursuit is initiated within the premises of the institution from which the violation of section 2921.34 of the Revised Code occurred.

(b) For purposes of division (F)(2)(a) of this section, the execution of a written statement by the administrator of the institution in which a person had been hospitalized, institutionalized, or confined pursuant to or under authority of section 2945.37, 2945.371, 2945.38, 2945.39, 2945.40, 2945.401, or 2945.402 of the Revised Code alleging that the person has escaped from the premises of the institution in violation of section 2921.34 of the Revised Code constitutes reasonable ground to believe that the violation was committed and reasonable cause to believe that the person alleged in the statement to have committed the offense is guilty of the violation.

(G) As used in this section:

(1) A “department of mental health special police officer” means a special police officer of the department of mental health designated under section 5119.14 of the Revised Code who is certified by the Ohio peace officer training commission under section 109.77 of the Revised Code as having successfully completed an approved peace officer basic training program.

(2) A “department of developmental disabilities special police officer” means a special police officer of the department of developmental disabilities designated under section 5123.13 of the Revised Code who is certified by the Ohio peace officer training council under section 109.77 of the Revised Code as having successfully completed an approved peace officer basic training program.

(3) “Deadly weapon” has the same meaning as in section 2923.11 of the Revised Code.

(4) “Family or household member” has the same meaning as in section 2919.25 of the Revised Code.

(5) “Street” or “highway” has the same meaning as in section 4511.01 of the Revised Code.

(6) “Interstate system” has the same meaning as in section 5516.01 of the Revised Code.

(7) “Peace officer of the department of natural resources” means an employee of the department of natural resources who is a natural resources law enforcement staff officer designated pursuant to section 1501.013 of the Revised Code, a forest officer designated pursuant to section 1503.29 of the Revised Code, a preserve officer designated pursuant to section 1517.10 of the Revised Code, a wildlife officer designated pursuant to section 1531.13 of the Revised Code, a park officer designated pursuant to section 1541.10 of the Revised Code, or a state watercraft officer designated pursuant to section 1547.521 of the Revised Code.

(8) “Portion of any street or highway” means all lanes of the street or highway irrespective of direction of travel, including designated turn lanes, and any berm, median, or shoulder.

R.C. § 2935.03

Amended by 129th General Assembly File No. 28, HB 153, § 101.01, eff. 9/29/2011.

Amended by 128th General Assembly ch. 7, SB 79, § 1, eff. 10/6/2009.

Effective Date: 01-01-2004; 05-17-2006; 07-01-2007; 2007 HB119 09-29-2007; 2008 HB562 09-22-2008

2901.04 Rules of construction for statutes and rules of procedure.

(A) Except as otherwise provided in division (C) or (D) of this section, sections of the Revised Code defining offenses or penalties shall be strictly construed against the state, and liberally construed in favor of the accused.

(B) Rules of criminal procedure and sections of the Revised Code providing for criminal procedure shall be construed so as to effect the fair, impartial, speedy, and sure administration of justice.

(C) Any provision of a section of the Revised Code that refers to a previous conviction of or plea of guilty to a violation of a section of the Revised Code or of a division of a section of the Revised Code shall be construed to also refer to a previous conviction of or plea of guilty to a substantially equivalent offense under an existing or former law of this state, another state, or the United States or under an existing or former municipal ordinance.

(D) Any provision of the Revised Code that refers to a section, or to a division of a section, of the Revised Code that defines or specifies a criminal offense shall be construed to also refer to an existing or former law of this state, another state, or the United States, to an existing or former municipal ordinance, or to an existing or former division of any such existing or former law or ordinance that defines or specifies, or that defined or specified, a substantially equivalent offense.

Effective Date: 03-23-2000; 09-23-2004

Former R.C. 2921.04 (B)

No person, knowingly and by force or by unlawful threat of harm to any person or property, shall attempt to influence, intimidate, or hinder the victim of a crime in the filing or prosecution of criminal charges or an attorney or witness involved in a criminal action or proceeding in the discharge of the duties of the attorney or witness.