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**THIS FELONY CASE INVOLVES A SUBSTANTIAL CONSTITUTIONAL
QUESTION, IS OF PUBLIC OR GREAT GENERAL INTEREST, AND THE
SUPREME COURT OF OHIO SHOULD ACCEPT JURISDICTION**

On December 6, 2013, the Sixth District Court of Appeals issued a decision and judgment in this case (Appendix 1), in which it concluded that the trial court should have granted Defendant-Appellee's ("**Defendant's**") motion to suppress. The appellate court ruled that a township police officer's extraterritorial stop of Defendant on an interstate highway was reasonable under the Fourth Amendment to the United States Constitution, but it was *unreasonable* under Article 1, Section 14 of the Ohio Constitution. See, Appendix 1, ¶ 20. The appellate court, thus, reversed the trial court's judgment and concluded that the trial court should have suppressed the fruits of the township police officer's stop, search, and seizure because it violated Article I, Section 14 of the Ohio Constitution. See, Appendix 1, ¶ 22.

The appellate court's decision in this case is not simply 'erroneous' or a mere discretionary aberration; it creates constitutional problems on several fronts. And it will serve as dangerous precedent for lower courts, causing for improper interpretations of the Ohio Constitution.

The appellate court's decision constitutes a drastic departure from well-established constitutional principles. It contravenes numerous cases in which this Court has ruled that a statutory violation does not ordinarily rise to the level of a constitutional violation, and, therefore, the exclusionary rule should not be applied. It also contravenes this Court decisions in *State v. Robinette* (80 Ohio St.3d 234, 238-239, 685 N.E.2d 762 (1997)), and its progeny, where this Court ruled that, absent "persuasive reasons" to find otherwise, Article I, Section 14 of the Ohio Constitution provides the same protections as

the Fourth Amendment to the United States Constitution, and Ohio's courts should harmonize the two constitutions. The appellate court's decision also implicitly rejects the constitutional test for extraterritorial stops, which this Court recently set forth in *State v. Jones* (121 Ohio St.3d 103, 2009-Ohio-316, 902 N.E.2d 464). In doing so, the appellate court's decision has created several intra-district and inter-district conflicts.

This Court should accept jurisdiction in this case and rule that a violation of R.C. § 4513.39 does not constitute a violation of Article 1, Section 14 of the Ohio Constitution or the Fourth Amendment to the United States Constitution, and the exclusionary rule is, therefore, inapplicable.

STATEMENT OF THE CASE

On May 19, 2011, the Wood County Grand Jury returned a true-bill indictment against the Defendant, charging him with Aggravated Possession of Drugs, in violation of R.C. § 2925.11(A) and (C)(1)(d), a felony of the second degree.

On February 21 and 22, 2012, the Defendant filed a motion to suppress and a revised motion to suppress, respectively.

On June 14, 2012, the trial court held an evidentiary hearing on those motions.

On June 20, 2012, the trial court journalized an order, denying the motion to suppress.

Subsequently, on September 14, 2012, the Defendant tendered a no-contest plea to an amended charge of Aggravated Possession of Drugs, in violation of R.C. § 2925.11(A) and (C)(1)(c), a felony of the second degree.

And, on November 26, 2012, the trial court sentenced the Defendant to a mandatory three-year prison term.

The Defendant timely appealed to the Sixth District Court of Appeals, challenging the trial court's denial of his motions to suppress. On December 6, 2013, the appellate court journalized its decision and judgment (Appendix 1) in favor of Defendant.

The State of Ohio has timely appealed that decision to this Court.

STATEMENT OF FACTS

On March 16, 2011, Officer Kelly Clark, a Lake Township police officer, was driving her marked police cruiser southbound on I-280, an interstate route that runs through the heart of Lake Township. While doing so, she observed the Defendant's vehicle commit a "marked lanes" violation (*i.e.*, a violation of R.C. § 4511.33). Specifically, Officer Clark saw the passenger-side tires of the Defendant's vehicle cross over the white edge line of the road for approximately a hundred feet while negotiating a curve in the road.

Officer Clark called in the license plates and initiated a traffic stop on I-280. Upon her initial approach, she learned that the driver (the Defendant herein) had a suspended driver's license. And, during the traffic stop, Officer Clark – who is a seasoned canine handler and felony-interdiction officer – observed several "criminal indicators," factors that lead her to believe that the Defendant and his female companion might be engaged in other, more-serious, criminal activity. As a result, Officer Clark called for backup.

After backup arrived, Officer Clark deployed her drug-dog, Bruno, and conducted an exterior sniff of the Defendant's vehicle. Bruno positively and objectively alerted/indicated to the Defendant's vehicle. Shortly thereafter, officers began a

warrantless search of the Defendant's vehicle, at which time they too noticed the odor of marijuana in the vehicle. Ultimately, officers discovered and seized a plastic bag containing 120 oxycodone pills and another plastic bag containing marijuana. The officers' discoveries lead to the Defendant's arrest and the Defendant's ensuing indictment by the Wood County Grand Jury.

In the trial court, the Defendant filed two motions to suppress: one was filed on February 21, 2012, and a revised motion was filed the next day. Neither motion asserted (expressly or otherwise) that Article I, Section 14 of the Ohio Constitution provided greater protection than the Fourth Amendment to the United States Constitution. The trial court's order, in which it denied the Defendant's motions to suppress, never considered or determined (expressly or otherwise) that Article I, Section 14 of the Ohio Constitution provided greater protection than the Fourth Amendment to the United States Constitution

On appeal, the Defendant never asserted (expressly or otherwise) that Article I, Section 14 of the Ohio Constitution provided greater protection than the Fourth Amendment to the United States Constitution. In its merit brief, therefore, the State of Ohio never refuted the idea that Article I, Section 14 of the Ohio Constitution provided greater protection than the Fourth Amendment to the United States Constitution; rather, it proceeded under the precepts of well-established law that the constitutional protections were equal and coextensive.

In its decision and judgment, the Sixth District Court of Appeals took a different approach, *sua sponte*. It determined that Officer Clark's extraterritorial stop, which violated R.C. § 4513.39(A), did not violate the Fourth Amendment to the United States

Constitution. But the appellate court also ruled, sua sponte, (1) that Article I, Section 14 of the Ohio Constitution provided greater protection than the Fourth Amendment to the United States Constitution, and (2) that Officer Clark's extraterritorial stop, which violated R.C. § 4513.39(A), also violated Article I, Section 14 of the Ohio Constitution. The appellate court, therefore, concluded that the trial court should have invoked the exclusionary rule and suppressed the fruits of the traffic stop.

Nowhere in the appellate court's decision did that court ever posit any reasons, persuasive or otherwise, in support of its conclusion that Article I, Section 14 of the Ohio Constitution provided greater protection than the Fourth Amendment to the United States Constitution. See, generally, Appendix 1.

LAW AND ARGUMENT

SOLE PROPOSITION OF LAW: A violation of R.C. § 4513.39 does not rise to the level of a constitutional violation under Article 1, Section 14 of the Ohio Constitution or the Fourth Amendment to the United States Constitution; therefore, the exclusionary rule cannot be invoked to suppress the fruits of any such statutory violation.

I. Introduction.

The appellate court's decision in this case is not simply 'erroneous' or a mere discretionary aberration; it creates constitutional problems on several fronts. If left untouched, it will serve as dangerous precedent for lower courts to engage in improper interpretations of the Ohio Constitution.

This Court should accept jurisdiction in this case and rule that a violation of R.C. § 4513.39(A) does not constitute a violation of Article 1, Section 14 of the Ohio Constitution or the Fourth Amendment to the United States Constitution; therefore, the

exclusionary rule does not apply to otherwise suppress the fruits of such a statutory violation.

II. A statutory violation does not traditionally rise to the level of a constitutional violation; therefore, it is improper for a court to utilize the exclusionary rule to suppress evidence derived from a statutory violation alone.

This Court has consistently ruled that the exclusionary rule will not ordinarily be applied to evidence that is the product of police conduct that violates state law but does not violate constitutional rights. See, e.g., *State v. Wilmoth*, 22 Ohio St.3d 251, 262, 490 N.E.2d 1236 (1986); *Kettering v. Hollen*, 64 Ohio St.2d 232, 235, 416 N.E.2d 598 (1980); *State v. Myers*, 26 Ohio St.2d 190, 196, 271 N.E.2d 245 (1971); *State v. Downs*, 51 Ohio St.2d 47, 63-64, 364 N.E.2d 1140 (1977); *Hilliard v. Elfrink*, 77 Ohio St.3d 155, 672 N.E.2d 166 (1996); *State v. Droste*, 83 Ohio St.3d 36, 697 N.E.2d 620 (1998); *State v. Davis*, 56 Ohio St.2d 51, 55-56, 381 N.E.2d 641 (1978). The United States Supreme Court agrees. See, *Atwater v. Lago Vista*, 532 U.S. 318, 354, 121 S.Ct. 1536, 149 L.Ed.2d 549 (2001); *Virginia v. Moore*, 535 U.S. 164, 170-171, 128 S.Ct. 1598, 170 L.Ed.2d 559 (2008).

Indeed, in this case, the appellate court acknowledged this well-established principle. Appendix, ¶¶ 11 and 13. But the appellate court nonetheless invoked the exclusionary rule on the premise that the statutory violation in this case rose to the level of a constitutional violation under Article I, Section 14 of the Ohio Constitution.

In doing so, the appellate court's decision defies the well-established maxim that a statutory violation, which does not rise to the level of a constitutional violation, does not warrant application of the exclusionary rule.

III. Ordinarily, the protections provided by Article I, Section 14 of the Ohio Constitution are coextensive with those provided by the Fourth Amendment to the United States Constitution, and the Ohio Constitution should not be construed to provide greater protection unless there are persuasive reasons to do so.

This Court has consistently ruled that the language of Article I, Section 14 of the Ohio Constitution is ‘nearly identical’¹ to that found in the Fourth Amendment to the United States Constitution; therefore, the protections provided by Article I, Section 14 of the Ohio Constitution are, generally, coextensive with those provided by the Fourth Amendment to the United States Constitution. See, e.g., *State v. Robinette*, 80 Ohio St.3d 234, 238-239, 685 N.E.2d 762 (1997); *State v. Murrell*, 94 Ohio St.3d 489, 493-494, 764 N.E.2d 986 (2002); *State v. Jordan*, 104 Ohio St.3d 21, 2004-Ohio-6085, 817 N.E.2d 864, ¶ 55; *State v. Buzzard*, 112 Ohio St.3d 451, 2007-Ohio-373, 860 N.E.2d 1006, ¶ 13, fn. 2; *State v. Smith*, 124 Ohio St.3d 163, 2009-Ohio-6426, 920 N.E.2d 949, ¶ 10, fn. 1. This Court has further ruled that courts should harmonize their interpretation of Article I, Section 14 of the Ohio Constitution with the Fourth Amendment, “unless there are persuasive reasons to find otherwise.” *Robinette*, 239.

Here, the appellate court’s decision did not simply fail to harmonize the state and federal constitutions; it expressly ruled that the Ohio Constitution provided greater protection than the Fourth Amendment. Worse, the appellate court did not articulate any

¹ The Fourth Amendment to the United States Constitution provides as follows: “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” Article I, Section 14 of the Ohio Constitution provides as follows: “The right of the people to be secure in their persons, houses, papers, and possessions, against unreasonable searches and seizures shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, particularly describing the place to be searched and the person or things to be seized.”

reasons (persuasive or otherwise) to support its conclusion that Officer Clark's actions, which did not violate the Fourth Amendment, nonetheless somehow violated Article 1, Section 14 of the Ohio Constitution. See, Appendix 1, ¶ 20.

While it is the province of Ohio's courts to interpret and apply the Ohio Constitution, the State of Ohio submits that it is not the province of an appellate court to expand the protections provided by the Ohio Constitution without providing any reasons, let alone "persuasive reasons", for doing so.

IV. A violation of R.C. § 4513.39 does not rise to the level of a constitutional violation under the Fourth Amendment to the United States Constitution or Article 1, Section 14 of the Ohio Constitution; therefore, the exclusionary rule does not apply to otherwise suppress the fruits of such a statutory violation.

In arriving at its conclusion that Officer Clark's conduct violated Article I, Section 14 of the Ohio Constitution, the appellate court below used the wrong constitutional standard, namely, the standard set forth in *State v. Weidman* (94 Ohio St.3d 501, 2002 Ohio 1484, 764 N.E.2d 997 (2002)). See, Appendix, ¶ 17. In *Weidman*, this Court ruled that an extraterritorial stop, which otherwise violated R.C. § 2935.03, did not violate the Fourth Amendment, and, therefore, the exclusionary rule did not apply. See, *Id.*, 503-506. In reaching its conclusion, the *Weidman* Court applied the two-part test that this Court had first adopted in *State v. Jones*, 88 Ohio St.3d 430, 437, 717 N.E.2d 886 (2000), which itself adopted the two-part balancing test set forth in *Wyoming v. Houghton*, 526 U.S. 295, 299, 119 S.Ct. 1297, 143 L.Ed.2d 408 (1999). That balancing test, however, has since been modified by both the United States Supreme Court and this Court; thus, the appellate court applied the wrong constitutional standard.

In *Virginia v. Moore* (553 U.S. 164, 128 S.Ct. 1598, 170 L.Ed.2d 559 (2008)), the United States Supreme Court reaffirmed a long-held constitutional maxim: “[w]hen an officer has probable cause to believe a person has committed even a minor crime in his presence, the balancing of private and public interests is not in doubt. The arrest is constitutionally permissible.” *Id.*, 171. One year later, in *State v. Jones* (121 Ohio St.3d 103, 2009-Ohio-316, 902 N.E.2d 464), this Court embraced the constitutional rationale set forth in *Virginia v. Moore*, *supra*. In *Jones*, this Court ruled that the United States Supreme Court’s ruling in *Virginia v. Moore*, *supra*, “removed any room for finding that a violation of a state statute, such as R.C. § 2935.03 [a jurisdictional statute], in and of itself, could give rise to a Fourth Amendment violation and result in suppression of the evidence.” *Jones*, ¶ 15. Furthermore, the *Jones* Court expressly rejected Mr. Jones’s invitation to adopt a balancing test in cases involving extraterritorial stops:

Likewise, we must reject appellee’s entreaties that we develop a balancing test for determining when to impose a suitable sanction for a law-enforcement officer’s violation of the territorial limits on arrest powers. Generally, establishing a remedy for a violation of a statute remains in the province of the General Assembly², not the Supreme Court.

Id., ¶ 22.

Although the State of Ohio briefed the 2009 *Jones* case to the appellate court below, the appellate court nonetheless chose to ignore it and instead relied upon an improper constitutional rationale. In doing so, the appellate court essentially created a statutory remedy where none otherwise exists, and rationalized its conduct by couching the remedy in constitutional terms under Article I, Section 14 of the Ohio Constitution.

² Despite the seven occasions on which Ohio’s General Assembly has amended R.C. § 4513.39, the General Assembly has consistently chosen not to provide a statutory remedy for a violation of that statute, such as suppression of evidence. See, generally, R.C. § 4513.39.

V. The appellate court's decision has created intra-district and inter-district conflicts.

The appellate court's decision acknowledges that while Officer Clark's conduct violated a jurisdictional statute (i.e., R.C. § 4513.39), it did not violate the Fourth Amendment to the United States Constitution. In that regard, the appellate court's decision is in harmony with other Ohio court decisions. See, e.g., *State v. Jones*, 187 Ohio App.3d 478, 2010-Ohio-1600, 932 N.E.2d 904, ¶¶ 2, 7-18 (6th Dist.) (an extraterritorial stop that otherwise violated R.C. § 4513.39 did not violate the state or federal constitutions); *State v. Caldwell*, 6th Dist. WD-08-075, 2010-Ohio-1700, ¶¶ 8-21 (an extraterritorial stop that otherwise violated R.C. § 4513.39 did not violate the state or federal constitutions); *State v. Harris*, 6th Dist. L-81-228, 1982 Ohio App. LEXIS 14388 (Feb. 12, 1982) (an extraterritorial stop that otherwise violated R.C. § 4513.39 did not warrant invocation of the exclusionary rule); *State v. Annis*, 11th Dist. 2001-P-0151, 2002-Ohio-5866, ¶¶ 9-31 (an extraterritorial stop that otherwise violated R.C. § 4513.39 did not violate the Fourth Amendment); *State v. Aleshire*, 10th Dist. 85AP-869, 1986 WL 8671 (Aug. 5, 1986) (a township officer's extraterritorial stop did not violate the Fourth Amendment); *State v. Dillehay*, 3rd Dist. 17-12-07, 2013-Ohio-327, 2013 WL 428651, ¶¶ 32-35 (an extraterritorial stop that otherwise violated R.C. § 2935.03 did not rise to the level of a constitutional violation); *State v. Wilson*, 10th Dist. 13AP-205, 2013-Ohio-4799, 2013 WL 5874741, ¶¶ 6-13 (an extraterritorial stop that otherwise violated R.C. § 2935.03 was not a constitutional violation).

But, in this case, the appellate court chose to create disharmony when it did not harmonize Article I, Section 14 of the Ohio Constitution with the Fourth Amendment; rather, it ruled that Article I, Section 14 of the Ohio Constitution provides greater

protection than the Fourth Amendment. In doing so, the appellate court ignored the rule established by this Court in *State v. Robinette*, supra, and created disharmony between the state and federal constitutions. In doing so, it also created intra-district and inter-district conflicts. Compare, Appendix 1; With, *State v. Jones*, supra (intra-district conflict); *State v. Caldwell*, supra (intra-district conflict); *State v. Harris*, supra (intra-district conflict); *State v. Annis*, supra (inter-district conflict); *State v. Aleshire*, supra (inter-district conflict); *State v. Dillehay*, supra, (inter-district conflict); *State v. Wilson*, supra (inter-district conflict).

CONCLUSION

The appellate court below defied constitutional conventions to conclude that a violation of R.C. § 4513.39, while not a violation of the Fourth Amendment, was somehow a violation of Article I, Section 14 of the Ohio Constitution. In essence, the appellate court improperly interposed its own interpretation of the Ohio Constitution.

This Court should accept jurisdiction of this discretionary appeal and conclude that an extraterritorial stop, which otherwise violates R.C. § 4513.39, does not constitute a violation of Article 1, Section 14 of the Ohio Constitution or the Fourth Amendment to the United States Constitution; therefore, the exclusionary rule is inapplicable. As a result, this Court should reverse the appellate court's decision and judgment, and affirm the trial court's refusal to suppress the evidence and later judgment of conviction and sentence.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned counsel certifies that a true and accurate copy of the foregoing (with the attached appendix) was served via first class U.S. Mail to the following: (1) counsel for Defendant-Appellee, Attorney Lawrence A. Gold, 3852 Fairwood Drive, Sylvania, Ohio 43560, and (2) the Ohio Public Defender's Office, 250 East Broad Street, Suite 1400, Columbus, Ohio 43215, on this 21st day of January, 2014.

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Appendix 1

FILED
WOOD COUNTY, OHIO

2013 DEC -6 A 8:50

SIXTH DISTRICT
COURT OF APPEALS
CINDY A. HOFNER, CLERK

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
WOOD COUNTY

State of Ohio

Court of Appeals No. WD-12-070

Appellee

Trial Court No. 11 CR 163

v.

Terrance Brown

DECISION AND JUDGMENT

Appellant

Decided: DEC 06 2013

Paul A. Dobson, Wood County Prosecuting Attorney, Gwen Howe-Gebers, Chief Assistant Prosecuting Attorney, and David E. Romaker Jr., Assistant Prosecuting Attorney, for appellee.

Lawrence A. Gold, for appellant.

SINGER, P.J.

{¶ 1} Appellant, Terrance Brown, was indicted in a single-count indictment alleging a violation of R.C. 2925.11(A)(C)(1)(c), possession of 30 mg. of oxycodone, a second-degree felony. The trial court accepted appellant's no-contest plea, and sentenced him to a mandatory term of three years of imprisonment. Appellant appealed the

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November 28, 2012 judgment of conviction and sentencing of the Wood County Court of Common Pleas and asserts the following assignments of error:

Assignment of Error I: The trial court erred in its Judgment entry by stating that Appellant had been informed that he was eligible for judicial release when, in fact, he was ordered to serve a mandatory sentence.

Assignment of Error II: The arresting officer was without statutory authority to initiate Appellant's traffic stop in violation of Appellant's right to be free from unlawful search and seizure under the Fourth Amendment of the United States Constitution and Article 1, Section 14 of the Ohio Constitution.

Assignment of Error III: The trial court erred in denying Appellant's motion to suppress in violation of Appellant's right to be free from unlawful search and seizure under the Fourth Amendment of the United States Constitution and Article I, Section 14 of the Ohio Constitution.

{¶ 2} In his first assignment of error, appellant argues the trial court erred when it stated in its judgment entry appellant had been informed that he was eligible for judicial release when, in fact, he was ordered at the sentencing hearing to serve a mandatory sentence and he was not informed that he was eligible for judicial release. The state agrees. However, the trial court issued a nunc pro tunc judgment removing the language regarding judicial release on August 12, 2013.

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Therefore, we find this issue has been rendered moot. Appellant's first assignment of error is not well-taken.

{¶ 3} In his second and third assignments of error, appellant argues the arresting officer was without statutory authority to initiate appellant's traffic stop in violation of appellant's right to be free from unlawful search and seizure under the Fourth Amendment of the United States Constitution and Article 1, Section 14 of the Ohio Constitution. Therefore, he argues the evidence obtained as a result of the illegal stop should have been excluded under the exclusionary rule. We agree.

{¶ 4} The following evidence was admitted at the motion to suppress hearing. Kelly Clark, a patrol officer and K-9 handler for the Lake Township Police Department, testified that at approximately 6:00 p.m. on March 16, 2011, she was watching the southbound traffic on I-280 in Wood County while parked in a marked patrol car in the median. She pulled out into the passing lane of the southbound traffic to observe another vehicle, but could not recall the reason for following the car. When she was approximately two car lengths behind appellant's vehicle, she observed both of his right tires cross over the white line for about one hundred feet along a curve near the 795 exit ramp, but the car did not leave the paved highway. She did not, however, include the details of her observations in her report. The officer testified she continued to follow appellant because he was not in a good area to make a stop. As she pulled up alongside appellant, she observed him staring straight ahead and he did not turn to look at her. She initiated a stop just north of the intersection with the Ohio Turnpike, approximately

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two and one-half miles from where she had been parked. The officer testified that in her 11 years as an officer, she attempts to stop every vehicle where both tires cross over the white line, but she has not always given the driver a citation.

{¶ 5} The officer testified she informed appellant that he was being cited for a marked lane violation for leaving his lane of travel. She did not, however, ultimately write him a citation for the violation because she arrested him for possession of drugs.

{¶ 6} Appellant and Deszira Gatewell, a passenger in appellant's vehicle, both testified the officer informed appellant that he should have yielded to a truck that merged onto the highway and never said appellant had left his lane. Appellant denied crossing the fog line and explained that he was driving very deliberately to avoid being stopped because of his outstanding warrant and because he had drugs on him that evening.

{¶ 7} The trial court held that the officer had probable cause to stop appellant because of the marked lane violation. Therefore, the court denied the motion to suppress the evidence obtained as a result of the stop.

{¶ 8} The review of a motion to suppress decision involves a mixed question of law and fact. *United States v. Combs*, 369 F.3d 925, 937 (6th Cir.2004). Because the trial court acts as the trier of fact, it alone weighs the evidence and determines the credibility of the witnesses. The reviewing court must accept the trial court's findings of fact if they are supported by competent, credible evidence. *State v. Williams*, 134 Ohio St.3d 482, 2012-Ohio-5699, 983 N.E.2d 1245, ¶ 26, and *State v. Roberts*, 110 Ohio St.3d 71, 2006-Ohio-3665, 850 N.E.2d 1168, ¶ 100. Accepting the supported factual findings,

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the appellate court must independently determine as a matter of law, without deference to the trial court's conclusion, whether the facts met the appropriate legal standard. *Id.*

{¶ 9} The Fourth Amendment to the United States Constitution protects persons from *unreasonable* searches and seizures. This privilege is applicable to the states through the Fourteenth Amendment. *Mapp v. Ohio*, 367 U.S. 643, 655, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961).

{¶ 10} The "reasonableness" of a stop and seizure "is measured in objective terms by examining the totality of the circumstances." *Ohio v. Robinette*, 519 U.S. 33, 39, 117 S.Ct. 417, 136 L.Ed.2d 347 (1996). Any search or seizure that occurs "outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment--subject only to a few specifically established and well-delineated exceptions." *Mincey v. Arizona*, 437 U.S. 385, 390, 98 S.Ct. 2408, 57 L.Ed.2d 290 (1978), quoting *Katz v. United States*, 389 U.S. 347, 357, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967).

{¶ 11} Furthermore, any evidence obtained as a result of an unlawful search in violation of the Fourth Amendment must be excluded from trial. *Wong Sun v. United States*, 371 U.S. 471, 484-485, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963). The exclusionary rule is not applicable to violations of state law unless there is also a constitutional infringement. *State v. Wilmoth*, 22 Ohio St.3d 251, 262-264, 490 N.E.2d 1236 (1986) and *State v. Myers*, 26 Ohio St.2d 190, 196, 271 N.E.2d 245 (1971).

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{¶ 12} Appellee concedes that the officer in this case did not have statutory authority to stop appellant for a misdemeanor violation of R.C. 4511.33, driving outside the marked lanes, because the officer was outside her jurisdiction. R.C. 4513.39(A). R.C. 4513.39(A) provides state highway patrol and county sheriffs or their deputies have the exclusive authority to make arrests on interstate highways for specific offenses. *State v. Holbert*, 38 Ohio St.2d 113, 311 N.E.2d 22 (1974), paragraph two of the syllabus. There is no statutory penalty for violation of the jurisdiction statute.

{¶ 13} The fact that the township officer violated this statute in stopping appellant does not automatically require exclusion of the evidence obtained as a result of the stop. *See Atwater v. Lago Vista*, 532 U.S. 318, 354, 121 S.Ct. 1536, 149 L.Ed.2d 549 (2001); *State v. Wilmoth*, 22 Ohio St.3d 251, 262, 490 N.E.2d 1236 (1986); and *City of Kettering v. Hollen*, 64 Ohio St.2d 232, 235, 416 N.E.2d 598 (1980). The unlawful stop would also have to rise to the level of a constitutional violation before the exclusionary rule would be applicable. *Id.*

{¶ 14} Generally, seizures based upon probable cause to arrest are reasonable under the constitution. *Atwater* and *Florida v. Royer*, 460 U.S. 491, 498, 103 S.Ct. 1319, 75 L.Ed.2d 229 (1983). A police officer may stop and arrest a person without a warrant if the officer has reasonable cause to believe the person is guilty of a felony or the officer observes with his own senses that a misdemeanor has been or is about to be committed in his presence. *Carroll v. United States*, 267 U.S. 132, 156-157, 45 S.Ct. 280, 69 L.Ed. 543 (1925). In *Atwater*, an officer made an arrest rather than the issuance of a citation for

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an observed minor misdemeanor in violation of a state statute. The United States Supreme Court held that the existence of probable cause was sufficient to make the arrest without a warrant a reasonable intrusion upon a person's right to privacy, without the need to balance the interests of the government and the individual's right to privacy.

Atwater at 354.

{¶ 15} In the case before us, based upon the officer's observations, the officer had probable cause to stop appellant for a traffic violation, i.e., driving outside the marked lane. Therefore, the stop did not violate the Fourth Amendment to the United States Constitution. However, the Ohio Constitution can afford greater protection than the United States Constitution. *California v. Greenwood*, 486 U.S. 35, 43, 108 S.Ct. 1625, 100 L.Ed.2d 30 (1988).

{¶ 16} The Ohio Supreme Court has also relied upon the existence of probable cause to find that a warrantless stop was reasonable even though the officer violated statutory jurisdiction provisions. *Hollen* at 235. In *Hollen*, the court found that because the officer had probable cause to arrest a driver for a misdemeanor traffic violation, stopping the driver outside the officer's jurisdiction, in violation of R.C. 2935.03(D), was not an unreasonable infringement of the individual's constitutional rights under the United States or Ohio Constitutions. *Id.*

{¶ 17} In *State v. Weideman*, 94 Ohio St.3d 501, 764 N.E.2d 997 (2002), the court also determined that when an "officer, acting outside the officer's statutory territorial jurisdiction, stops and detains a motorist for an offense committed and observed outside

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the officer's jurisdiction, the seizure of the motorist by the officer is not unreasonable per se under the Fourth Amendment." *Id.* at the syllabus. However, the court noted that in the *Hollen* case, it had considered the totality of the circumstances to determine if the extraterritorial stop violated the defendant's constitutional rights. The additional considerations that the *Hollen* court considered were the facts that the offense was committed within the officer's jurisdiction and the officer was in hot pursuit. *Id.* at 504. Therefore, the *Weideman* court held that to determine whether the officer's extraterritorial stop, which violated Ohio law, would be unreasonable under the standards of the United States and Ohio Constitutions, despite the existence of probable cause, the court must also consider the totality of the circumstances and balance the government's interests in making the stop against the intrusion upon the individual's privacy. *Id.* at 505. The court applied the balancing test first enunciated in *State v. Jones*, 88 Ohio St.3d 430, 727 N.E.2d 886 (2000), syllabus. The court later recognized the *Jones* holding conflicted with *Atwater*, 532 U.S. 318, 121 S.Ct. 1536, 149 L.Ed.2d 549, and limited the *Jones* balancing test to infringements of the Ohio Constitution. *State v. Brown*, 99 Ohio St.3d 323, 2003-Ohio-3931, 792 N.E.2d 175, syllabus.

{¶ 18} Since *Brown* was decided, our court has addressed several cases without distinguishing between the scope of protection provided under the United States and Ohio Constitutions. *State v. Fitzpatrick*, 152 Ohio App.3d 122, 2003-Ohio-1405, 786 N.E.2d 942, ¶ 12 (6th Dist.) (we addressed only whether an extraterritorial stop for a minor traffic violation was unreasonable under the Fourth Amendment, but applied the test for

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determining whether the Ohio Constitution was violated when we held that the stop was unreasonable because the driver did not present an imminent danger to other motorists); *State v. Black*, 6th Dist. Fulton No. F-03-010, 2004-Ohio-218 (without distinguishing whether the defendant asserted a United States or Ohio Constitutional infringement, we held that the exclusionary rule was not applicable where an officer had probable cause to stop and arrest a driver outside the officer's jurisdiction when the officer observed the driver commit a misdemeanor traffic offense within his jurisdiction and immediately followed the driver); *State v. Jones*, 187 Ohio App.3d 478, 2010-Ohio-1600, 932 N.E.2d 904, ¶ 17 (6th Dist.) (defendant asserted violations of the United States and Ohio Constitutions when a township police officer stopped the defendant, on an interstate highway outside the officer's jurisdiction after observing traffic offenses, but we found only that the stop was reasonable under the United States Constitution because the officer had probable cause to stop the driver even if he did not have statutory authority to arrest or detain appellant or to issue traffic citations); and *State v. Caldwell*, 6th Dist. Wood No. WD-8-075, 2010-Ohio-1700, ¶ 21 (defendant asserted violations of both constitutions, but we held only that the Fourth Amendment was not infringed when a township police officer violated state law by stopping a driver for crossing the fog line on an interstate highway outside the officer's municipal jurisdiction because the officer had probable cause to chase the driver after he initially pulled over in response to the officer activating his lights and then drove off at a high speed).

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{¶ 19} Today, however, we conclude that we must respond to the assignment of error raised by a defendant in an extraterritorial stop case by addressing the specific constitutional violation alleged. The violation of the United States Constitution and the violation of the Ohio Constitution are separate issues which require the application of two separate rules of law as set forth in *Atwater* and *Brown*: A stop, even if in violation of state law, is not unreasonable under the Fourth Amendment to the United States Constitution if the stop was based on probable cause. *Atwater*. However, a stop made in violation of state law is reasonable under Article I, Section 14, of the Ohio Constitution only when probable cause to make the stop exists and the government's interests in allowing unauthorized officers to make this type of stop outweighs the intrusion upon individual privacy. *Brown*.

{¶ 20} Upon a review of the evidence and the law, we find that there was no violation of the Fourth Amendment in this case because the township officer had probable cause to initiate the stop. Nonetheless, the drugs seized as a result of the stop should have been excluded from evidence because the stop was unreasonable under Article I, Section 14, of the Ohio Constitution. It is undisputed that the township officer violated R.C. 4513.39 by making the extraterritorial stop on an interstate highway for a marked lane violation, which is specified in R.C. 4513.39(A) as being within the exclusive jurisdiction of the state highway patrol, sheriffs, and sheriff deputies. Further, no extenuating circumstances were presented to justify an extraterritorial stop by

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township police officers for this type of traffic violation. Therefore, we find the extraterritorial stop was unreasonable under the Ohio Constitution.

{¶ 21} Appellant's second and third assignments of error are well-taken in part.

{¶ 22} The judgment of the Wood County Court of Common Pleas is reversed in part. The judgment is reversed only as to the finding that the exclusionary rule was not applicable. We find that the evidence seized as a result of the unreasonable, warrantless stop should have been suppressed. This case is remanded for proceedings consistent with this decision. Appellee is ordered to pay the court costs of this appeal pursuant to App.R. 24.

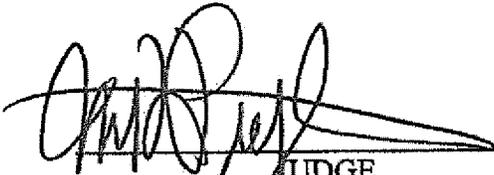
Judgment reversed in part.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See also 6th Dist.Loc.App.R. 4.

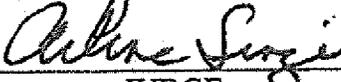
Mark L. Pietrykowski, J.

Arlene Singer, P.J.

James D. Jensen, J.
CONCUR.



JUDGE



JUDGE



JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: <http://www.sconet.state.oh.us/rod/newpdf/?source=6>.

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