

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	*	Sup. Ct. No. 14-0104
Plaintiff-Appellant,	*	Ct. App. No. WD-12-070
-vs-	*	On Appeal from the Wood County Court of Appeals, Sixth Appellate District
TERRENCE BROWN,	*	
Defendant-Appellee.	*	

**DEFENDANT-APPELLEE, TERRENCE BROWN'S, MEMORANDUM IN
OPPOSITION TO JURISDICTION**

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RECEIVED
FEB 18 2014
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SUPREME COURT OF OHIO

FILED
FEB 18 2014
CLERK OF COURT
SUPREME COURT OF OHIO

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STATEMENT OF CASE

Appellee stipulates to Appellant's recitation of the Statement of the Case presented in Appellant's Memorandum in Support of Jurisdiction.

STATEMENT OF FACTS

On March 16, 2011 Appellee was the driver of a vehicle traveling south on Interstate 280 in Wood County, Ohio when he was stopped by Officer Kelly Clark of the Lake Township Police Department.

The officer was sitting stationary in the median in a marked car watching traffic when she pulled out to pursue another vehicle headed southbound. While driving in the passing lane, the officer testified at suppression hearing that she observed both tires on the passenger side of Appellee's vehicle go outside the white line. According to Officer Clark, this occurred on the curve in the road as Appellee's vehicle approached the 795 exit ramp off of the interstate.

Based on the alleged marked lanes traffic violation, Appellee's vehicle was pulled over by Officer Clark. Appellee was driving with a suspended Michigan license and the Officer observed "criminal indicators" that led her to deploy her K-9, Bruno, who conducted a sniff search of Appellee's vehicle. Subsequent investigation pursuant to the marked lanes traffic stop determined that drugs were located in the vehicle and Appellee was charged with one count of Possession of Drugs, in violation of R.C. 2925.11(A)(C)(1)(d), a felony of the second degree.

As was conceded by the State of Ohio in their Appellate Brief, Officer Clark was without statutory authority to make an interstate traffic stop under R.C. 4513.39: Power to

make arrests on highways. This statute confers, with several limited exceptions, the statutory authority to make arrests exclusively on the Ohio State Highway Patrol; not Township Officers.

STATEMENT OF APPELLEE'S POSITION

THERE ARE NO CONSTITUTIONAL QUESTIONS OR QUESTIONS OF PUBLIC OR GREAT GENERAL INTEREST IN THIS MATTER THEREFORE THE SUPREME COURT OF OHIO SHOULD DENY JURISDICTION.

Appellee maintains that a substantial constitutional question is not involved in this case nor is the case of public or great general interest. It is Appellee's position that the Sixth District Court of Appeals correctly decided to overturn the Wood County Court of Common Pleas decision denying Appellee's suppression motion.

The Court of Appeals decision in this matter implicated both the United States and Ohio Constitutions with regard to the privacy right of an individual to be free from a warrantless search and seizure and the interest of the State of Ohio in having a police officer, without statutory authority, make a traffic stop for a minor misdemeanor traffic violation.

The Fourth Amendment of the United States Constitution states:

Amendment IV. Search and Seizure

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.

The Ohio constitutional counterpart to the Fourth Amendment is found in Article 1, Section 14 which states:

§ 14. Search warrants and general warrants

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 and things to be seized.

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

It is Appellee's position that under the tenets of Federalism, the protections offered by the United States Constitution are a threshold which a State may exceed but may not undercut. In this regard the State of Ohio may impose more stringent constraints on police conduct than the United States Constitution. *U.S. v. Eastland*, 989 F.2d 760 (5th Cir. 1993). Accordingly, the Sixth District Court of Appeals decision in this case reasoned that while the traffic stop of an extra territorial police officer can pass muster under the Fourth Amendment protection of the United States Constitution, the State of Ohio can offer greater protection under Article 1, Section 14. *California v. Greenwood*, 486 U.S. 35, 43, 108 S.Ct. 1625, 100 L.Ed.2d 30 (1988).

In making this ruling, the Sixth District Court of Appeals balanced the privacy right of an individual to be free from a warrantless search and seizure against the government's interest in having a police officer make an extraterritorial traffic stop for a minor misdemeanor offense. *State v. Weideman*, 94 Ohio St.3d 501.

The scope of the protections offered by the State of Ohio Constitution versus the United States Constitution was addressed directly by Sixth District Court of Appeals in deciding Appellee's Second and Third Assignments of Error. Those Assignments raised the allegation of constitutional infringement, both on the State and Federal levels. In its decision, the Court of Appeals conducted a separate analyses based on infringement of

the Ohio Constitution as distinguished from infringement of the United States Constitution.

The Court of Appeals reasoned that a traffic stop made in violation of Ohio law is not unreasonable *per se* under the Fourth Amendment to the United States Constitution if, in fact, the stop was preconditioned on probable cause. Atwater and Florida v. Royer, 460 U.S. 491, 498, 103 S.Ct. 1319, 75 L.Ed.2d 229 (1983).

In applying the Ohio Constitution, however, the Sixth District Court of Appeals went further in ruling that a stop made in violation of Ohio law is reasonable under Article 1, Section 14 of the Ohio Constitution only when probable cause to make the stop exists and the government's interest in allowing the extraterritorial, unauthorized officer to make the stop outweighs the individual's right to privacy. State v. Brown, 99 Ohio St.3d 323, 2003-Ohio-3931. Under this analysis, the Court of Appeals ruled that a stop for a minor misdemeanor traffic infraction, a marked lanes offense in violation of R.C. 4511.33, did not pass muster under the Ohio Constitution.

While the Court of Appeals found no Fourth Amendment violation of the United States Constitution, based on the extraterritorial police officer having probable cause to make the traffic stop, the Court of Appeals, nonetheless, overturned the denial of Appellee's suppression motion in ruling that the stop was unreasonable under Article 1, Section 14, of the Ohio Constitution.

The state conceded in its appellate brief that Lake Township Officer Kelly Clark violated R.C. 4513.39 by making the extraterritorial stop on the interstate highway for a marked lane violation.

R.C. 4513.39, Power to make arrests on highways, states in part:

(A) The state highway patrol and sheriffs or their deputies shall exercise, to the exclusion of all other peace officers except within municipal corporations and except as specified...the power to make arrests for violations on all state highways, of sections 4503.11, 4503.21, 4511.14 to 4511.16, inclusive, 4511.20 to 4511.23, 4511.26 to 4511.40, 4511.42 to 4511.48, 4511.58, 4511.59, 4511.62 to 4511.71, 4513.03 to 4513.13, 4513.15 to 4513.22, 4513.24 to 4513.34, 4549.01, 4549.08 to 4549.12, and 4549.62 of the Revised Code.

As specified in R.C. 4513.39(A), the interstate is within the exclusive jurisdiction of the state highway patrol, sheriffs, and sheriff deputies; not township police officers. The Court of Appeals also found that there were no extenuating or exigent circumstances that would justify an extraterritorial stop by Officer Clark. Therefore the stop by Officer Clark was unreasonable under the Ohio Constitution.

On the basis of the foregoing, the Supreme Court of Ohio should decline jurisdiction in this matter.

ARGUMENT ON THE STATE OF OHIO'S SOLE PROPOSITION OF LAW

I. The State of Ohio argues in their sole proposition of law that a violation of R.C. 4513.39 should 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 State argues, the exclusionary rule should not be invoked to suppress the fruits of this statutory violation.

Appellee responds that the level of individual protection offered under the Ohio and United States Constitutions must be distinguished. Further, a statutory violation rises to the level of a constitutional violation under the Ohio Constitution, thereby invoking the exclusionary rule, under the facts presented in this case. Under the balancing analysis conducted by the Court of Appeals, when a search, seizure and subsequent arrest is made by a police officer outside of her jurisdictional area and the stop itself is based a violation of a minor misdemeanor traffic violation, absent exigent circumstances, the exclusionary rule is the proper remedy.

The Sixth District Court of Appeals, in reaching its decision in this matter, balanced the interest of an individual's right to be free from a warrantless search and seizure against the interest of the State in conducting a traffic stop for a minor misdemeanor violation by a police officer without statutory authority to make said stop. The Court of Appeals correctly balanced these issues in ruling that the trial court erred in failing to suppress the evidence obtained as a result of the warrantless stop.

II. The State of Ohio further argues that a statutory violation does not traditionally rise to the level of a constitutional violation and therefore it was improper for the Court of

Appeals to utilize the exclusionary rule to suppress evidence derived from a statutory violation.

Appellee responds by arguing that the State's position does not take into account the specific facts of this case. State of Ohio protections provided under Article 1, Section 14 of the Ohio Constitution are coextensive with the protections provided by the Fourth Amendment to the United States Constitution but are not exclusively limited by the Fourth Amendment. As such, the Federal Constitution is a spring board and Ohio can afford greater, but not lesser, individual protections. This is especially true when balancing the privacy interests of the individual against the interests of the State in having a police officer make an extraterritorial stop for a minor misdemeanor traffic violation.

Without the occurrence of exigent circumstances, which were nonexistent in this case, the State's interest pales in comparison to the individual's interest in being free from a warrantless search and seizure. Under this analysis, a violation of R.C.4513.39 does rise to the level of a constitutional violation under the Ohio Constitution.

III. The State also asserts that the protections provided by Article 1, Section 14 of the Ohio Constitution are coextensive with those provided by the Fourth Amendment to the United States Constitution and that the Ohio Constitution should not be construed to provide greater protection.

The State's argument is incorrect. States can afford a greater degree of protection under their constitutions than that offered by the United States Constitution. *U.S. v. Eastland*, 989 F.2d 760 (5th Cir. 1993); *California v. Greenwood*, 486 U.S. 35, 43, 108 S.Ct. 1625, 100 L.Ed.2d 30 (1988). The Court of Appeals decision in this case takes this into account in addressing the scope of the protections offered by the State of Ohio in

contrast to the minimum baseline of protections offered by the United States Constitution.

IV. The State also argues that 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 and therefore, the exclusionary rule does not apply to suppress the fruits of such a statutory violation.

Appellee argues that the State's position ignores the proposition that the State of Ohio can afford a greater degree of constitutional protection than that offered by the United States Constitution. Appellee maintains that the exclusionary rule is proper in light of the balancing analysis conducted by the Sixth District Court of Appeals in the immediate case.

V. The State lastly argues that the Appellate Court's decision has created intra-district and inter-district conflicts.

The State objects to and appeals the Court of Appeals decision because it is not in lock-step with other courts. This argument implies that the law is static and must, apparently, remain so absent what the State deems "persuasive reasons" for doing so. *State v. Robinette*, 80 Ohio St.3d 234.

Appellee states that the fact pattern of the immediate case gave rise to Assignments of Error (Second and Third) that prompted the Appellate Court to conduct a fresh analysis to determine and distinguish the scope of the constitutional protection afforded by the United States Constitution and the Ohio Constitution.

Having never previously delineated the scope of the protections offered by Article 1, Section 14 of the Ohio Constitution versus the Fourth Amendment of the United States Constitution, the resulting decision of the Court of Appeals correctly balanced the

interests of individual against the interests of the State and Federal government in arriving at its decision.

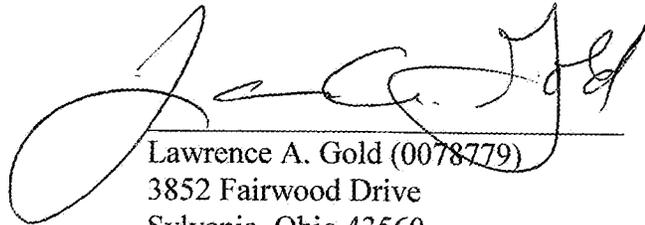
CONCLUSION

The Sixth District Court of Appeals concluded that a violation of R.C. 4513.39, while not a violation of the Fourth Amendment of the United States Constitution, did in fact, violate Article 1, Section 14 of the Ohio Constitution.

The Appellate Court grounded its decision on an analysis that balanced the interests of an individual to be free from a warrantless search and seizure against the interests of the State of Ohio to effectuate a traffic stop conducted by an extraterritorial police officer for a minor misdemeanor infraction. In overturning the trial court's denial of Appellee's motion to suppress, the Appellate Court correctly ruled that the exclusionary rule was applicable in this case based on the facts and circumstances.

On the basis of the foregoing, the Supreme Court of Ohio should deny jurisdiction in this matter thereby reaffirming the Sixth District Court of Appeals in deciding that under the facts and circumstances of this case the exclusionary rule is applicable.

Respectfully submitted,

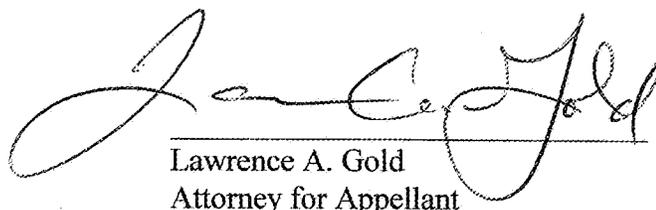


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Certification

This is to certify that a copy of the foregoing was served on the offices of Paul Dobson and Thomas Matuszak, Wood County Prosecutor and Assistant Prosecutor respectively, at the Office of the Wood County Prosecutor, Wood County Courthouse, Bowling Green, Ohio on this 18th day of February, 2014 via first class U.S. Mail.



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