

ORIGINAL

IN THE SUPREME COURT OF OHIO

State of Ohio,)	Case No. 2014-0104
)	
Plaintiff-Appellant,)	On Appeal from the Wood
)	County Court of Appeals,
)	Sixth Appellate District
)	
v.)	
)	
Terrance Brown,)	Court of Appeals
)	Case No. WD-12-070
)	
Defendant-Appellee)	

**BRIEF OF AMICUS CURIAE,
 BUCKEYE STATE SHERIFFS ASSOCIATION,
 IN SUPPORT OF APPELLANT**

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**STATEMENT OF FACTS
AND
STATEMENT OF INTEREST OF
AMICUS CURIAE, BUCKEYE STATE SHERIFFS ASSOCIATION**

Amicus Curiae Buckeye State Sheriffs Association (the Association) is a non-profit organization representing all sheriffs of the State of Ohio. One of the functions of the Association is promoting quality, professional law enforcement. An integral part of this function is striving to ensure that Ohio's law enforcement officers have the ability to perform their duties in accordance with the highest legal standards without facing potential liability due to fluctuating interpretations of existing law. As will be set forth herein, and more thoroughly in Appellant's brief, it is the position of the Association that the decision of the court below is contrary to existing law and imposes an undue burden on law enforcement. For the reasons set forth herein, and to promote professional law enforcement in the State of Ohio, the Association urges this Court to reverse the appellate court's decision and judgment.

Amicus Curiae concurs in the Statement of Facts as presented by Appellant.

ARGUMENT

PROPOSITION OF LAW: The decision of the appellate court holding that a statutory violation of R.C. 4513.39 constitutes a violation of the Ohio Constitution is contrary to existing law and should be reversed.

As set forth in detail by Appellant, the decision of the court below significantly alters existing case law that has held that Article I, Section 14 of the Ohio Constitution should be interpreted to harmonize with the Fourth Amendment to the U.S. Constitution. See, e.g., *State v Robinette*, 80 Ohio St.3d 234, 238-239, 685 N.E.2d 762 (1997). Further, the decision of the court below abrogates the long standing principle that a statutory violation does not traditionally rise to the level of a constitutional violation. See, e.g., *State v Wilmoth*, 22 Ohio St.3d 251, 262, 490 N.E.2d 1236 (1986), and *Atwater v Lago Vista*, 532 U.S. 318, 354, 121 S.Ct. 1536, 149 L.Ed.2d 549 (2001). The Association will not dwell on these propositions of law in this *amicus* brief as they have been more than adequately set forth by Appellant and such is not the focus of this brief. Rather, the concern of the Association is the uncertainty and potential liability imposed upon political subdivisions and their employees by this unjustified alteration and extension of existing law.

If the decision of the court below is affirmed and a violation of a statute, in this case R.C. 4513.39, is held to constitute a constitutional violation, then *any* statutory violation by a law enforcement officer could ultimately be held to constitute a constitutional violation and would, at a minimum, subject the political subdivision employing the officer to lengthy and expensive litigation to determine this issue on a statute by statute basis.

For example, R.C. 2744.09(E) provides that the immunities to civil liability provided by R.C. 2744.03 do not apply to violations of the constitution or statutes of the United States and the decision below brings into question, and therefore potential litigation, long standing distinctions between state and federal constitutional violations.

Further, if a violation of R.C. 4513.39 now constitutes a violation of the Ohio Constitution, does any statutory violation concerning the powers of a law enforcement officer now arise to the level of a constitution violation?

In addition, the fact that an employee of a political subdivision acts in good faith generally constitutes a defense to liability. If the employee, a law enforcement officer in this instance, is suddenly on notice that any violation of a statute may constitute a constitutional violation, does that not eliminate the defense of good faith, and does the violation of a statute then become “reckless” in a constitutional sense?

The decision of the court below is rife with presumably unintended consequences and should not be permitted to stand. *Amicus Curiae* Buckeye State Sheriffs Association urges this Court to reverse the appellate court’s decision and judgment.

CONCLUSION

Amicus Curia Buckeye State Sheriffs Association submits that the decision of the appellate court below is manifestly contrary to existing law and should be reversed.

Respectfully submitted,

LAW OFFICE OF ROBERT L. BERRY

A handwritten signature in black ink, appearing to read 'R. Berry', is written over a horizontal line.

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CERTIFICATE OF SERVICE

This is to certify that a true and accurate copy of the foregoing Brief of *Amicus Curiae*,
Buckeye State Sheriffs Association, was served pursuant to Rule 3.11 upon to all counsel of
record herein at the addresses indicated in the Court's record this 17 day of June, 2014.



Robert L. Berry
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Sheriffs Association*