

MICHAEL DEWINE (0009181)
Attorney General of Ohio
ERIC E. MURPHY (0083284)
State Solicitor
Counsel of Record
Office of the Ohio Attorney General
30 East Broad Street, 17th Floor
Columbus, Ohio 43215
Tel: (614) 466-8980
Fax: (614) 466-5087
Email: eric.murphy@ohioattorneygeneral.gov
Counsel for Amicus Curiae
Ohio Attorney General Michael DeWine

MATHIAS H. HECK, JR. (0014171)
Montgomery County Prosecuting Attorney
ANDREW T. FRENCH (0069384)
Counsel of Record
Montgomery County Prosecutor's Office
301 West Third Street, 5th Floor
Dayton, Ohio 45422
Tel: (937) 225-5757
Counsel for Amicus Curiae
Montgomery County Prosecutor's Office

ROBERT L. BERRY (0007896)
Counsel of Record
Law Office of Robert L. Berry LLC
7582 South Goodrich Square
New Albany, Ohio 43054
Tel: (614) 855-3054
Email: rberrylaw@ameritech.net
Counsel for Amicus Curiae
Buckeye State Sheriff's Association

RON O'BRIEN (0017245)
Franklin County Prosecuting Attorney
SETH L. GILBERT (0072929)
Assistant Prosecuting Attorney
Counsel of Record
Franklin County Prosecutor's Office
373 South High Street, 13th Floor
Columbus, Ohio 43215
Tel: (614) 525-3555
Email: sgilbert@franklincountyohio.gov
Counsel for Amicus Curiae
Ohio Prosecuting Attorney's Association

JULIA R. BATES (0013426)
Lucas County Prosecuting Attorney
EVY M. JARRETT (0062485)
Counsel of Record
Lucas County Prosecutor's Office
700 Adams Street
Toledo, Ohio 43604
Tel: (419) 213-4700
Fax: (419) 213-4595
Counsel for Amicus Curiae
Lucas County Prosecutor's Office

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES.....	iii
STATEMENT OF THE CASE.....	1
STATEMENT OF FACTS.....	2
Brown’s Motion(s) to Suppress.....	2
Brown’s Appeal.....	3
ARGUMENT.....	5
PROPOSITION OF LAW.....	5
Introduction.....	5
<i>State v. Brown</i> , 6 th Dist. Wood No. WD-12-070, 2013-Ohio-5351, 4 N.E.3d 452.....	6
Lower courts must follow this Court’s holding in <i>State v. Robinette III</i> , and harmonize Article I, Section 14 of the Ohio Constitution with the Fourth Amendment to the United States Constitution.....	7
It is improper for a court to raise a mere statutory violation to a constitutional violation.....	10
Violations of jurisdictional statutes for law enforcement do not rise to constitutional violations, whether it be the federal or state constitutions.....	11
State Highway Patrol.....	12
Sheriff’s Department, Marshall’s Municipal Police, Township Police, and Others.....	12
State Highway Patrol and Sheriff’s Departments May Arrest on Highways.....	13
Park Rangers.....	14
Campus Police Officers.....	15

Metropolitan Housing Authority Police Officers.....	15
Liquor Control Enforcement Agents.....	15
Parole Officers.....	16
Officers Involved in Transportation of Arrested Persons.....	16
When a statute does not provide a remedy, it is the province of the Ohio General Assembly, not the courts, to craft one.....	17
CONCLUSION.....	20
CERTIFICATION.....	21
APPENDIX.....	22

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
<i>Atwater v. City of Lago Vista</i> , 532 U.S. 318, 121 S.Ct. 1536, 149 L.Ed.2d 549 (2001).....	6, 11
<i>Bodager v. Campbell</i> , 4 th Dist. Pike No. 12CA828, 2013-Ohio-4650.....	8
<i>Cleveland v. Persaud</i> , Cleveland Mun. Ct. No. 2013 TRC 042481, 2014 Ohio Misc. LEXIS 10, 6 N.E.3d 701, 706-707.....	7, 11
<i>Fletcher v. Peck</i> , 10 U.S. 87, 3 L.Ed. 162, 6 Cranch 87 (1810).....	18
<i>Heath v. Johnson</i> , 5 th Dist. Licking No. 04-CA-29, 2005-Ohio-485.....	13
<i>Hillard v. Elfrink</i> , 77 Ohio St.3d 155, 1996-Ohio-333, 672 N.E.2d 166.....	18
<i>Kettering v. Hollen</i> , 64 Ohio St. 2d 232, 41 N.E.2d 598, 18 O.O.3d 435 (1980).....	10, 13
<i>Marbury v. Madison</i> , 5 U.S. 137, 2 L.Ed. 60, 1 Cranch 137 (1803).....	11
<i>Newark v. Anderson</i> , 5 th Dist. Licking No. CA-3443, 1989 Ohio App. LEXIS 3332 (Aug. 23, 1989).....	13
<i>Ohio v. Robinette</i> , 519 U.S. 33, 117 S.Ct. 417, 136 L.Ed.2d 347 (1996).....	8
<i>State v. Aleshire</i> , 10 th Dist. Franklin No. 85AP-869, 1986 Ohio App. LEXIS 7786 (Aug. 5, 1986).....	14
<i>State v. Anderson</i> , 7 th Dist. Columbiana No. 82-C-27, 1983 Ohio App. LEXIS 12194 (June 23, 1983).....	14
<i>State v. Annis</i> , 11 th Dist. Portage No. 2001-P-0151, 2002-Ohio-5866.....	14
<i>State v. Brockschmidt</i> , 3 rd Dist. Hancock No. 5-78-19, 1979 Ohio App. LEXIS 10805 (June 7, 1979).....	13
<i>State v. Brown</i> , 99 Ohio St.3d 323, 2003-Ohio-3931, 792 N.E.2d 175.....	6, 8
<i>State v. Brown</i> , 6 th Dist. Wood No. WD-12-070, 2013-Ohio-5351, 4 N.E.3d 452.....	<i>passim</i>
<i>State v. Buzzard</i> , 112 Ohio St.3d 451, 2007-Ohio-373, 860 N.E.2d 1006.....	8

<i>State v. Caldwell</i> , 6 th Dist. Wood No. WD-08-075, 2010-Ohio-1700.....	14
<i>State v. Cannell</i> , 12 th Dist. Butler No. CA2004-11-274, 2005-Ohio-5769.....	13
<i>State v. Coppock</i> , 103 Ohio App.3d 405, 659 N.E.2d 837 (2 nd Dist. 1995).....	13
<i>State v. Craig</i> , 110 Ohio St.3d 306, 2006-Ohio-4571, 853 N.E.2d 621.....	10
<i>State v. Darga</i> , 30 Ohio App.3d 54, 506 N.E.2d 266, 30 O.B.R. 109 (10 th Dist. 1985).....	14
<i>State v. Davis</i> , 56 Ohio St.2d 51, 381 N.E.2d 641, 10 O.O.3d 87 (1978).....	10, 16
<i>State v. Davis</i> , 12 th Dist. Butler App. CA80-05-0046, 1981 Ohio App. LEXIS 14252 (Jun 24, 1981).....	14
<i>State v. Davis</i> , 5 th Dist. Stark No. 2004-CA-00202, 2005-Ohio-494.....	14
<i>State v. Dillehay</i> , 3 rd Dist. Shelby No. 17-12-07, 2013-Ohio-327.....	13
<i>State v. Downs</i> , 51 Ohio St.2d 47, 364 N.E.2d 1140, 5 O.O.3d 30 (1977).....	10
<i>State v. Droste</i> , 83 Ohio St.3d 36, 1998-Ohio-182, 697 N.E.2d 620.....	15
<i>State v. Emerson</i> , 134 Ohio St.3d 191, 2012-Ohio-5047, 981 N.E.2d 787.....	12, 17, 18
<i>State v. Fannin</i> , 8 th Dist. Cuyahoga No. 79991, 2002-Ohio-6312.....	15
<i>State v. Filler</i> , 106 Ohio App.3d 731, 667 N.E.2d 54 (9 th Dist. 1995).....	13
<i>State v. Harris</i> , 6 th Dist. Lucas No. L-81-228, 1982 Ohio App. LEXIS 14388 (Feb. 12, 1982).....	14
<i>State v. Holbert</i> , 38 Ohio St.2d 113, 311 N.E.2d 22, 67 O.O.2d 111 (1974).....	6, 14
<i>State v. Jones</i> , 88 Ohio St.3d 430, 2000-Ohio-374, 727 N.E.2d 886.....	8
<i>State v. Jones</i> , 121 Ohio St.3d 103, 2009-Ohio-316, 902 N.E.2d 464.....	9, 12, 13, 18
<i>State v. Jones</i> , 187 Ohio App.3d 478, 2010-Ohio-1600, 932 N.E.2d 904.....	14
<i>State v. Jordan</i> , 104 Ohio St.3d 21, 2004-Ohio-6085, 817 N.E.2d 864.....	8
<i>State v. King</i> , 2 nd Dist. Clark No. 98-CA-97, 1999 Ohio App. LEXIS 2716 (June 18, 1999).....	14

<i>State v. Kinney</i> , 83 Ohio St.3d 85, 1998-Ohio-425, 698 N.E.2d 49.....	8
<i>State v. Klemm</i> , 41 Ohio App.3d 382, 536 N.E.2d 14 (1 st Dist. 1987).....	16
<i>State v. Littlejohn</i> , 7 th Dist. Mahoning No. 11 MA 106, 2012-Ohio-4554.....	15
<i>State v. Marsh</i> , 7 th Dist. Belmont No. 04 BE 18, 2005-Ohio-4690.....	13
<i>State v. Martinez</i> , 4 th Dist. Washington No. 91 CA 1, 1992 Ohio App. LEXIS 4892 (Sept. 28, 1992).....	14
<i>State v. Murchison</i> , 72 Ohio App.3d 840, 596 N.E.2d 547 (10 th Dist. 1991).....	12
<i>State v. Murrell</i> , 94 Ohio St. 3d 489, 2002-Ohio-1483, 764 N.E.2d 986.....	8
<i>State v. Myers</i> , 26 Ohio St.2d 190, 271 N.E.2d 245, 55 O.O.2d 447 (1971).....	10, 17
<i>State v. Orr</i> , 91 Ohio St.3d 389, 2001-Ohio-50, 745 N.E.2d 1036.....	8
<i>State v. Paul</i> , 8 th Dist. Cuyahoga No. 79596, 2002 Ohio App. LEXIS 551 (Feb. 14, 2002).....	13
<i>State v. Phillips</i> , 4 th Dist. Athens No. 94CA1623, 1995 Ohio App. LEXIS 290 (Jan. 20, 1995).....	14
<i>State v. Pierce</i> , 2 nd Dist. Montgomery No. 19926, 2003-Ohio-7244.....	13
<i>State v. Popovich</i> , 9 th Dist. Lorain No. 05CA008836, 2006-Ohio-5065.....	13
<i>State v. Robinette</i> , 80 Ohio St.3d 234, 1997-Ohio-343, 685 N.E.2d 762.....	7-9
<i>State v. Robinson</i> , 5 th Dist. Stark No. 2003CA00235, 2004-Ohio-1571.....	16
<i>State v. Ruff</i> , 7 th Dist. Belmont No. 01 BA 31, 2002-Ohio-2999.....	12
<i>State v. Smith</i> , 124 Ohio St.3d 163, 2009-Ohio-6426, 920 N.E.2d 949.....	8
<i>State v. Starkey</i> , 11 th District Portage No. 2012-P-0038, 2012-Ohio-6219.....	16
<i>State v. Taylor</i> , 159 Ohio App.3d 629, 2005-Ohio-804, 824 N.E.2d 1057 (2 nd Dist.).....	15
<i>State v. Tennison</i> , 6 th Dist. Wood No. WD-88-41, 1989 Ohio App. LEXIS 1336 (Apr. 14, 1989).....	13
<i>State v. Terrell</i> , 8 th Dist. Cuyahoga No. 80676, 2002-Ohio-4913.....	15

<i>State v. Thompson</i> , 33 Ohio St.3d 1, 514 N.E.2d 407 (1987).....	16
<i>State v. Torres</i> , 9 th Dist. Medina No. 1014, 1981 Ohio App. LEXIS 11160 (Mar. 11, 1981).....	14
<i>State v. Unger</i> , 67 Ohio St.2d 65, 423 N.E.2d 1078, 21 O.O.3d 41 (1981).....	16
<i>State v. Vicarel</i> , 7 th Dist. Mahoning No. 06 MA 129, 2007-Ohio-4746.....	13
<i>State v. Weideman</i> , 94 Ohio St.3d 501, 2002-Ohio-1484, 764 N.E.2d 997.....	13, 18
<i>State v. Wilmoth</i> , 22 Ohio St.3d 251, 490 N.E.2d 1236, 22 O.B.R. 427 (1986)...	10
<i>State v. Wilson</i> , 10 th District Franklin No. 13AP-205, 2013-Ohio-4799.....	13
<i>Stow v. Riegenbach</i> , 97 Ohio App.3d 661, 647 N.E.2d 246 (9 th Dist. 1994).....	13
<i>Village of Arlington Heights v. Metro. Hous. Dev. Corp.</i> , 429 U.S. 252, 97 S.Ct. 555, 50 L.Ed. 450 (1977).....	18
<i>Virginia v. Moore</i> , 553 U.S. 164, 128 S.Ct. 1598, 170 L.Ed.2d 559 (2008).....	9, 11, 12, 18

Constitutions

Fourth Amendment of the Constitution of the United States.....	<i>passim</i>
Article I, Section 14 of the Constitution of the State of Ohio.....	<i>passim</i>

Statutes

R.C. 109.573.....	12
R.C. 1545.13.....	14
R.C. 2901.07.....	12
R.C. 2925.11.....	1
R.C. 2935.03.....	12
R.C. 2935.14.....	16
R.C. 2967.15.....	16
R.C. 3345.04.....	15

R.C. 3735.31(D).....	15
R.C. 4511.19(B).....	17
R.C. 4513.39.....	<i>passim</i>
R.C. 5502.14.....	15
R.C. 5502.61.....	15
R.C. 5503.02.....	12

Rules

Misc.

Bickel, <i>The Least Dangerous Branch: The Supreme Court at the Bar of Politics</i> (2d Ed. 1986).....	18
Bickel, <i>The Passive Virtues</i> , 75 Harv. L. Rev. 40 (1961).....	18
Ely, <i>Democracy and Distrust: A Theory of Judicial Review</i> (1981).....	19
Wechsler, <i>Toward Neutral Principles of Constitutional Law</i> , 73 Harv. L. Rev. 1 (1959).....	19

STATEMENT OF THE CASE

On May 19, 2011, the Wood County Grand Jury returned a true-bill indictment against Defendant-Appellee, Terrence Brown (“Brown”), 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. Record of Trial Proceedings (“RTP”) #2.

On February 21 and 22, 2012, Brown filed two motions to suppress, which were identical in all respects save one: the first motion had not been signed by counsel, but the second motion had been signed by counsel. *See* RTP #40 (without signature), #41 (with signature).

On June 14, 2012, the trial court held an evidentiary hearing on those motions. RTP #50; *See* RTP #48.

On June 20, 2012, the trial court journalized its decision, denying the motion(s) to suppress. RTP #52.

Subsequently, on September 14, 2012, Brown 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. RTP #59. And, on November 26, 2012, the trial court sentenced Brown to a mandatory three-year prison term. RTP #62, #85.

Brown timely appealed to the Sixth District Court of Appeals, challenging the trial court’s denial of his motion(s) to suppress. RTP #71-73. On December 6, 2013, the appellate court journalized its decision and judgment in favor of Brown. *State v. Brown*, 6th Dist. Wood No. WD-12-070, 2013-Ohio-5351, 4 N.E.2d 452; Record of Appellate Proceedings (“RAP”) #25.

Plaintiff-Appellant, the State of Ohio, timely appealed that decision to this Court. And, on April 23, 2014, this Court accepted the State’s appeal.

STATEMENT OF FACTS

I. Brown's Motion(s) to Suppress.

Brown's motions to suppress (RTP #40, #41) challenged the constitutional propriety of the stop and arrest in the case as follows:

The Defendant contends that Traffic Patrol Officer Kelly Clark did not have the constitutionally requisite reasonable suspicion to justify the initial stop of the Defendant as no traffic violation occurred. Furthermore, officers of the Lake Township Police Department lacked probable cause to justify Defendant's subsequent arrest. RTP #40, p. 3; RTP #41, p. 3.

Neither motion argued that the traffic stop was made in violation of R.C. 4513.39. *See generally* RTP #40, #41. And while both motions invoked the Fourth Amendment to the United States Constitution and Article 1, Section 14 of the Ohio Constitution (*See* RTP #40, p. 1; RTP #41, p.1), neither motion argued that Article 1, Section 14 of the Ohio Constitution provided greater protection than the Fourth Amendment to the United States Constitution. *See generally* RTP #40, #41.

On June 14, 2012, the trial court held a suppression hearing. At the outset of that hearing, Brown's counsel limited his challenge to a single issue, namely: whether Officer Clark had had reasonable-and-articulable suspicion otherwise necessary to initiate a traffic stop. Transcript of Proceedings ("TP"), pp. 4, 5. The State, therefore, restricted its proof to that issue (*See* TP, p. 6), and the following proof was adduced at that hearing.

Officer Clark worked for the Lake Township Police Department. TP, p. 6. On March 16, 2011, Officer Clark was sitting stationary on I-280 watching traffic. TP, pp. 7-8. Officer Clark exited the crossover and entered traffic to watch another vehicle. TP, pp. 8, 25. She then saw Brown's vehicle commit a "marked lanes" violation. TP, pp. 9, 12; *See* TP, p. 44. Specifically, Officer Clark testified that she saw Brown's passenger-side tires cross the white edge line while

he was negotiating a curve in the road. *Id.*; *See* TP, pp. 47, 51-52. His tires were over the edge line for approximately 100 feet of travel. *Id.* As a result, Officer Clark initiated a traffic stop on I-280 and identified Brown as the driver. TP, pp. 9-10.

On June 20, 2012, the trial court journalized its decision, in which it denied Brown's motion(s) to suppress. RTP #52. Therein, the trial court did not consider or determine if Officer Clark had made an extraterritorial stop in violation of R.C. 4513.39. *See generally* RTP #52. Likewise, the trial court did not consider or determine if Article 1, Section 14 of the Ohio Constitution afforded any greater protection than the Fourth Amendment to the United States Constitution. *See generally Id.*

II. Brown's Appeal.

On appeal, Brown asserted for the first time that Officer Clark had made an extraterritorial stop in violation of R.C. 4513.39. *See* RAP #19, pp. 9-12 (Second Assignment of Error). But Brown never asserted that Article I, Section 14 of the Ohio Constitution provided greater protection than the Fourth Amendment to the United States Constitution. *See generally* RAP #19, pp. 13-21 (Third Assignment of Error).

In its merit brief (RAP #22), therefore, the State never refuted the notion 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 precepts of well-established law that the constitutional protections were coextensive. *See generally* RAP #22, pp. 5-9 (Response to Second and Third Assignments of Error).

In its decision and judgment, the Sixth District Court of Appeals took a different approach, *sua sponte*. *See State v. Brown*, 6th Dist. Wood No. WD-12-070, 2013-Ohio-5351, 4 N.E.2d 452, ¶ 15-20 (RAP #25). 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. *Id.*, ¶ 15. 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 (*see Id.*, ¶ 15, 20), and (2) that Officer Clark's extraterritorial stop, which violated R.C. 4513.39, also violated Article I, Section 14 of the Ohio Constitution (*Id.*, ¶ 20). The appellate court, therefore, concluded that the trial court should have invoked the exclusionary rule and suppressed the fruits of the traffic stop. *Id.*, ¶22.

ARGUMENT

PROPOSITION OF LAW: A violation of R.C. 4513.39 does not rise to the level of a constitutional violation under Article I, 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

Foundational shifts in the judicial approach to a well-settled Constitutional issue happen rarely and with great caution. Indeed, policy changes, as they relate to the interpretation of the Ohio Constitution, affect every corner of this State. And these policy changes have long-lasting repercussions—not only for the specific issue raised but also for many allied issues, whether foreseen at that time or not. Traditionally, such a drastic policy change is within the strict province of this Court, as the ultimate arbiter of the Ohio Constitution. Yet the Sixth District Court of Appeals cloaked itself with the mantle of an umpire of the fundamental law in Ohio and bestowed a state constitutional protection heretofore never ascribed by any court—at any level—in Ohio.

The issue that the Sixth District seized upon is of great constitutional significance, to wit: a violation of the jurisdictional statute for township police officers triggers a violation of the Ohio Constitution. That decision encroaches on legislative powers, in that the Ohio General Assembly chose to not provide a statutory remedy for a violation of that statute; the Sixth District, however, crafted its own remedy and clothed it in constitutional garb. In doing so, the appellate court trumped a strong line of precedent from this Court and other appellate courts. And that rationale has already gained momentum beyond the Sixth District.

A. ***State v. Brown*, 6th Dist. Wood No. WD-12-070, 2013-Ohio-5351, 4 N.E.3d 452.**

There are a number of reasons why *State v. Brown* is unique and of great constitutional importance to the law of Ohio. As stated in the facts, this case stems from a traffic stop by a Lake Township police officer of Brown on I-280 for a “marked lanes” violation. That traffic stop lead to the discovery and seizure of drugs in Brown’s car. After police discovered those drugs, they arrested Brown for a felony drug-abuse offense. *State v. Brown*, 6th Dist. Wood No. WD-12-070, 2013-Ohio-5351, 4 N.E.2d 452, ¶ 1, 4-5.

After reviewing the applicable case law, the Sixth District held that Officer Clark’s traffic stop violated R.C. 4513.39(A), as set forth in *State v. Holbert*, 38 Ohio St.2d 113, 311 N.E.2d 22, 67 O.O.2d 111 (1974). The Sixth District noted that “[t]here is no statutory penalty for violation of the jurisdictional statute.” *State v. Brown*, 6th Dist. Wood No. WD-12-070, 2013-Ohio-5351, 4 N.E.2d 452, ¶ 12. The Sixth District then held that that statutory violation did not violate the Fourth Amendment to the United States Constitution. *Id.*, at ¶ 13-17. It was after that, however, that the Sixth District fashioned a remedy found nowhere in Ohio’s rich constitutional history.

The Sixth District stated the following:

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*.

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

Id., ¶ 19-20.

That is a wholesale departure from Ohio's constitutional jurisprudence. More troubling is that the Sixth District's bifurcated constitutional approach is now receiving traction outside the Sixth District, making it an issue that has statewide implications. *See e.g. Cleveland v. Persaud*, Cleveland Mun. Ct. No. 2013 TRC 042481, 2014 Ohio Misc. LEXIS 10, 6 N.E.3d 701, 706-707. This trend needs to come to an abrupt end.

II. Lower courts must follow this Court's holding in *State v. Robinette III*, and harmonize Article I, Section 14 of the Ohio Constitution with the Fourth Amendment to the United States Constitution.

The Fourth Amendment to the United States Constitution and Article I, Section 14 of the Ohio Constitution are nearly identical. Indeed, this Court said as much in *State v. Robinette*, 80 Ohio St.3d 234, fn. 2, 1997-Ohio-343, 685 N.E.2d 762. 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." Likewise, Article I, Section 14 of the Ohio Constitution states the following: "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.”

In *Robinette III*, this Court concluded that “case law indicates that, consistent with *Robinette II*, we should harmonize our interpretation of Section 14, Article I of the Ohio Constitution with the Fourth Amendment, unless there are persuasive reasons to find otherwise.” *State v. Robinette*, 80 Ohio St.3d 234, 239, 1997-Ohio-343, 685 N.E.2d 762.

Indeed, after this Court’s pronouncement in *Robinette III*, this Court reinforced the soundness and applicability of that holding on several occasions. See e.g. *State v. Kinney*, 83 Ohio St.3d 85, 87, 1998-Ohio-425, 698 N.E.2d 49; *State v. Orr*, 91 Ohio St.3d 389, 391, 2001-Ohio-50, 745 N.E.2d 1036; *State v. Murrell*, 94 Ohio St. 3d 489, 493-494, 2002-Ohio-1483, 764 N.E.2d 986; *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. And even when this Court departed somewhat from that standard in *State v. Brown*, 99 Ohio St.3d 323, 325, 327, 2003-Ohio-3931, 792 N.E.2d 175, as it related to misdemeanor arrests¹, this Court quickly limited that case to just that scenario in *State v. Jordan*, 104 Ohio St.3d 21, 35, 2004-Ohio-6085, 817 N.E.2d 864. *Accord Bodager v. Campbell*, 4th Dist. Pike No. 12CA828, 2013-Ohio-4650, ¶ 36-37.

The Sixth District, however, departed drastically from the holding in *Robinette III* (and its progeny) when it imposed differing constitutional standards for the United States Constitution and the Ohio Constitution. *State v. Brown*, 6th Dist. Wood No. WD-12-070, 2013-Ohio-5351, 4 N.E.2d 452, ¶ 19-20. In doing so, the Sixth District never acknowledged *Robinette III* or its

¹ In doing so, this Court overruled its previous decision in *State v. Jones*, 88 Ohio St.3d 430, 435-437, 2000-Ohio-374, 727 N.E.2d 886.

seminal principle of harmonizing Article I, Section 14 of the Ohio Constitution with the Fourth Amendment to the United States Constitution.

Contrary to *Robinette III* and its progeny, the Sixth District provided no compelling reasons for having concluded that Article I, Section 14 of the Ohio Constitution provides greater protection than the Fourth Amendment to the United States Constitution in this matter. In fact, the Sixth District's decision in this case did not simply fail to harmonize the two Constitutions—it created an outright conflict.

The Sixth District should have followed *Virginia v. Moore*, 553 U.S. 164, 128 S.Ct. 1598, 170 L.Ed.2d 559 (2008), where the Supreme Court of the United States 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*. In *Jones*, this Court ruled that the United States Supreme Court's ruling in *Virginia v. Moore*, “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. And 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 Assembly, not the Supreme Court.

Id., ¶ 22.

By refusing to follow *Virginia v. Moore* and *State v. Jones*, the Sixth District did not simply fail to harmonize Article I, Section 14 of the Ohio Constitution with the Fourth Amendment to the United States Constitution. Instead, it imposed its own new constitutional regime, *sua sponte*, and created a constitutional conflict where none had otherwise existed.

III. It is improper for a court to raise a mere statutory violation to a constitutional violation.

Almost thirty years ago, this Court settled the question of whether statutory violations could still result in the invocation of the exclusionary rule. In *State v. Wilmoth*, 22 Ohio St.3d 251, 262, 490 N.E.2d 1236, 22 O.B.R. 427 (1986), citing *Kettering v. Hollen*, 64 Ohio St. 2d 232, 234-235, 41 N.E.2d 598, 18 O.O.3d 435 (1980), this Court said the following:

“The exclusionary rule has been applied by this court to violations of a constitutional nature only. In *State v. Myers* (1971), 26 Ohio St. 2d 190, 196 [55 O.O.2d 447], this court enunciated the policy that the exclusionary rule would not be applied to statutory violations falling short of constitutional violations, absent a legislative mandate requiring the application of the exclusionary rule. In *State v. Downs* (1977), 51 Ohio St. 2d 47, 63-64 [5 O.O.3d 30], the violation of Crim. R. 41 with respect to the return of a search warrant was described as non-constitutional in magnitude and the exclusionary rule was not applied. Also, in *State v. Davis* (1978), 56 Ohio St. 2d 51 [10 O.O.3d 87], it was held that fingerprint evidence obtained in violation of a statute does not have to be excluded.

“It is clear from these cases that the exclusionary rule will not ordinarily be applied to evidence which is the product of police conduct violative of state law but not violative of constitutional rights.”

That law and logic is still almost universally accepted today. In fact, in light of this precedent, this Court has held that “technical violations do not rise to the level of constitutional error.” *State v. Craig*, 110 Ohio St.3d 306, 312, 2006-Ohio-4571, 853 N.E.2d 621.

Yet, in this case, the Sixth District departed wholesale from the premise that statutory violations of jurisdictional statutes do not *per se* create a violation of the Ohio Constitution. *State v. Brown*, 6th Dist. Wood No. WD-12-070, 2013-Ohio-5351, 4 N.E.2d 452, ¶ 19-20. The

Sixth District's deviation has already been recognized and applied outside the confines of Northwest Ohio. *See e.g. Cleveland v. Persaud*, Cleveland Mun. Ct. No. 2013 TRC 042481, 2014 Ohio Misc. LEXIS 10, 6 N.E.3d 701, 706-707. A statewide problem is brewing.

While it is appropriate for courts to engage in judicial review, which finds its origins with John Marshall during the formative era of American jurisprudence (*See Marbury v. Madison*, 5 U.S. 137, 175-178, 2 L.Ed. 60, 1 Cranch 137 (1803)), it is as important for courts to follow precedent and maintain statewide stability. Here, the Sixth District opted instead to impose its own view of the law of the State of Ohio and effectively trump this Court's precedent. Constitutionally speaking, that was inappropriate.

A. Violations of jurisdictional statutes for law enforcement do not rise to constitutional violations, whether it be the federal or state constitutions.

There is a mountain of case law in Ohio that has continually restated the rule that a violation of state law does not rise to the level of a constitutional violation. In fact, the Supreme Court of the United States endorses that rule as well. In *Virginia v. Moore*, 553 U.S. 164, 167, 169, 128 S.Ct. 1598, 170 L.Ed.2d 559 (2008), the Supreme Court dealt with this issue the following way: "Virginia law does not, as a general matter, require suppression of evidence in violation of state law. * * * None of the early Fourth Amendment cases that scholars have identified sought to base a constitutional claim on a violation of state or federal statute concerning arrest." The result being that Moore's conviction for possessing crack cocaine was still allowed to stand, even though his arrest for driving without a license was improper. *Id.*, 167; *Accord Atwater v. City of Lago Vista*, 532 U.S. 318, 347, 121 S.Ct. 1536, 149 L.Ed.2d 549 (2001) (Warrantless arrest for a seat belt violation was proper.)

This Court held likewise in *State v. Emerson*, 134 Ohio St.3d 191, 198, 2012-Ohio-5047, 981 N.E.2d 787:

Even if Ohio’s statutory scheme required the removal of appellant’s DNA profile upon his acquittal, suppression of that evidence is not appropriate. “[A] violation of a state statute, * * * in and of itself, [does not] give rise to a Fourth Amendment violation and result in the suppression of evidence.” *State v. Jones*, 121 Ohio St.3d 103, 2009-Ohio-316, 902 N.E.2d 464, ¶ 15, citing *Virginia v. Moore*, 553 U.S. 164, 128 S.Ct. 1598, 170 L.Ed.2d 559 (2008). “[B]ecause of the need for consistency and bright-line standards when applying the Fourth Amendment, * * * ‘it is not the province of the Fourth Amendment to enforce state law.’” *Id.* at ¶ 18, quoting *Moore* at 178. Since the General Assembly opted not to provide a remedy to a party wronged by a violation of either R.C. 109.573 or 2901.07, “we are not in the position to rectify this possible legislative oversight by elevating a violation of [these statutes] to a Fourth Amendment violation and imposing the exclusionary rule.” *Id.* at ¶ 21, citing *Moore* at 178.

And that was only the most recent example from this Court. Indeed, courts—at all levels—for many, many years across the State of Ohio have consistently found that arrests performed outside of the statutory territorial jurisdiction of the officer in question did not cause the exclusionary rule to be triggered under the Fourth Amendment and result in the suppression of evidence or the dismissal of the charge.

1. State Highway Patrol

Revised Code section 5503.02 governs the duties and jurisdiction of the State Highway Patrol. This statute does not provide for a remedy upon its violation. And the Seventh and Tenth Districts have held that an extra-territorial stop concerning that agency does not result in the necessity of the exclusionary rule being applied or charges being dismissed. *State v. Ruff*, 7th Dist. Belmont No. 01 BA 31, 2002-Ohio-2999, ¶¶17-25; *State v. Murchison*, 72 Ohio App.3d 840, 843-844, 596 N.E.2d 547 (10th Dist. 1991).

2. Sheriff’s Department, Marshalls, Municipal Police, Township Police, and Others

Revised Code section 2935.03 governs the duties and jurisdiction of a whole host of law enforcement agencies to make arrests without a warrant and outside of their jurisdiction. This statute does not provide for a remedy upon its violation. And this Court along with the Second,

Third, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, and Twelfth Districts have held that an extra-territorial stop concerning the agency at issue does not result in the necessity of the exclusionary rule being applied or charges being dismissed. *See e.g. Kettering v. Hollen*, 64 Ohio St.2d 232, 233-36 and the syllabus, 416 N.E.2d 598, 18 O.O.3d 435 (1980); *State v. Weideman*, 94 Ohio St.3d 501, 504-506 and syllabus, 2002-Ohio-1484, 764 N.E.2d 997; *State v. Jones*, 121 Ohio St.3d 103, 105-108 and syllabus, 2009-Ohio-316, 902 N.E.2d 464; *State v. Coppock*, 103 Ohio App.3d 405, 410-413, 659 N.E.2d 837 (2nd Dist. 1995); *State v. Pierce*, 2nd Dist. Montgomery No. 19926, 2003-Ohio-7244, ¶ 9-10; *State v. Brockschmidt*, 3rd Dist. Hancock No. 5-78-19, 1979 Ohio App. LEXIS 10805 (June 7, 1979); *State v. Dillehay*, 3rd Dist. Shelby No. 17-12-07, 2013-Ohio-327, ¶ 31-35; *Newark v. Anderson*, 5th Dist. Licking No. CA-3443, 1989 Ohio App. LEXIS 3332 (Aug. 23, 1989); *Heath v. Johnson*, 5th Dist. Licking No. 04-CA-29, 2005-Ohio-485, ¶ 19-21; *State v. Tennison*, 6th Dist. Wood No. WD-88-41, 1989 Ohio App. LEXIS 1336 (Apr. 14, 1989); *State v. Marsh*, 7th Dist. Belmont No. 04 BE 18, 2005-Ohio-4690, ¶ 8-20, 25; *State v. Vicarel*, 7th Dist. Mahoning No. 06 MA 129, 2007-Ohio-4746, ¶ 10-16; *State v. Paul*, 8th Dist. Cuyahoga No. 79596, 2002 Ohio App. LEXIS 551 (Feb. 14, 2002); *Stow v. Riggerbach*, 97 Ohio App.3d 661, 662-663, 647 N.E.2d 246 (9th Dist. 1994); *State v. Filler*, 106 Ohio App.3d 731, 733-734, 667 N.E.2d 54 (9th Dist. 1995); *State v. Popovich*, 9th Dist. Lorain No. 05CA008836, 2006-Ohio-5065, ¶ 4-6; *State v. Wilson*, 10th District Franklin No. 13AP-205, 2013-Ohio-4799, ¶ 4-11; *State v. Cannell*, 12th Dist. Butler No. CA2004-11-274, 2005-Ohio-5769, ¶ 5-12.

3. State Highway Patrol and Sheriff's Departments May Arrest on Highways

Revised Code section 4513.39 governs the duties and jurisdiction of the State Highway Patrol and various sheriffs' departments to make arrests on highways, yet it prohibits township officers from "affecting the powers of arrest" on interstate highways. This statute does not

provide for a remedy upon its violation. And this Court along with the Fourth, Fifth, Sixth, Seventh, Ninth, Tenth, Eleventh, and Twelfth Districts have held that an extra-territorial stop concerning the agency at issue—principally township officers—does not result in the necessity of the exclusionary rule being applied or charges being dismissed. *State v. Holbert*, 38 Ohio St.2d 113, 116-117 and both paragraphs of the syllabus, 311 N.E.2d 22, 67 O.O.2d 111 (1974); *State v. Martinez*, 4th Dist. Washington No. 91 CA 1, 1992 Ohio App. LEXIS 4892 (Sept. 28, 1992); *State v. Phillips*, 4th Dist. Athens No. 94CA1623, 1995 Ohio App. LEXIS 290 (Jan. 20, 1995); *State v. Davis*, 5th Dist. Stark No. 2004-CA-00202, 2005-Ohio-494, ¶ 51; *State v. Harris*, 6th Dist. Lucas No. L-81-228, 1982 Ohio App. LEXIS 14388 (Feb. 12, 1982); *State v. Jones*, 187 Ohio App.3d 478, 484-486, 2010-Ohio-1600, 932 N.E.2d 904; *State v. Caldwell*, 6th Dist. Wood No. WD-08-075, 2010-Ohio-1700, ¶ 11, 18-21; *State v. Anderson*, 7th Dist. Columbiana No. 82-C-27, 1983 Ohio App. LEXIS 12194 (June 23, 1983); *State v. Torres*, 9th Dist. Medina No. 1014, 1981 Ohio App. LEXIS 11160 (Mar. 11, 1981); *State v. Darga*, 30 Ohio App.3d 54, 56, 506 N.E.2d 266, 30 O.B.R. 109 (10th Dist. 1985); *State v. Aleshire*, 10th Dist. Franklin No. 85AP-869, 1986 Ohio App. LEXIS 7786 (Aug. 5, 1986); *State v. Annis*, 11th Dist. Portage No. 2001-P-0151, 2002-Ohio-5866, ¶ 19-23; *State v. Davis*, 12th Dist. Butler App. CA80-05-0046, 1981 Ohio App. LEXIS 14252 (June 24, 1981).

4. Park Rangers

Revised Code section 1545.13 governs the duties and jurisdiction of law enforcement officers employed by a park commissioner to make arrests. This statute does not provide for a remedy upon its violation. And the Second District has held that an extra-territorial stop concerning the agency at issue does not result in the necessity of the exclusionary rule being applied or charges being dismissed. *Stat v. King*, 2nd Dist. Clark No. 98-CA-97, 1999 Ohio App.

LEXIS 2716 (June 18, 1999); *State v. Taylor*, 159 Ohio App.3d 629, 633-634, 2005-Ohio-804, 824 N.E.2d 1057 (2nd Dist.).

5. Campus Police Officers

Revised Code section 3345.04 governs the duties and jurisdiction of State university law enforcement officers. This statute does not provide for a remedy upon its violation. And the Seventh District has held that an extra-territorial stop concerning the agency at issue does not result in the necessity of charges being dismissed. *State v. Littlejohn*, 7th Dist. Mahoning No. 11 MA 106, 2012-Ohio-4554, ¶ 10, 13, 18.

6. Metropolitan Housing Authority Police Officers

Revised Code section 3735.31(D) governs the duties and jurisdiction of metropolitan housing authority police officers. This statute does not provide for a remedy upon its violation. And the Eighth District has held that an extra-territorial stop concerning the agency at issue does not result in the necessity of the exclusionary rule being applied or charges being dismissed; although the specific statutory section was not expressly cited in either case. *State v. Terrell*, 8th Dist. Cuyahoga No. 80676, 2002-Ohio-4913, ¶ 20; *State v. Fannin*, 8th Dist. Cuyahoga No. 79991, 2002-Ohio-6312, ¶ 7-10.

7. Liquor Control Enforcement Agents

Revised Code section 5502.14 (formerly R.C. 5502.61) governs the duties and jurisdiction of liquor control enforcement agents. This statute does not provide for a remedy upon its violation. And this Court and the Fifth District have held that an extra-territorial stop concerning the agency at issue does not result in the necessity of the exclusionary rule being applied or charges being dismissed. *State v. Droste*, 83 Ohio St.3d 36, 39-40, 1998-Ohio-182,

697 N.E.2d 620; *See also State v. Robinson*, 5th Dist. Stark No. 2003CA00235, 2004-Ohio-1571, ¶ 12-26.

8. Parole Officers

Revised Code section 2967.15 governs the duties and jurisdiction of parole officers to make arrests. This statute does not provide for a remedy upon its violation. And this Court has held that an arrest made outside of the jurisdiction does not result in the necessity of the exclusionary rule being applied or charges being dismissed. *State v. Thompson*, 33 Ohio St.3d 1, 8, 514 N.E.2d 407 (1987).

9. Officers Involved in the Transportation of Arrested Persons

Revised Code section 2935.14 governs the duties and jurisdiction of transporting an arrested person. This statute *does* provide for a remedy upon its violation, which is a fine of “not less than one hundred nor more than five hundred dollars or imprison[ment of] not more than thirty days or both.” Nonetheless, this Court has held that a violation of that statute does not result in the necessity of the exclusionary rule being applied or charges being dismissed. *State v. Unger*, 67 Ohio St.2d 65, 69-70, 423 N.E.2d 1078, 21 O.O.3d 41 (1981).

Cases from this Court, and others, have applied the same logic to non-jurisdictional statutes, such as improper fingerprint procedure in a juvenile case (*State v. Davis*, 56 Ohio St.2d 51, 56-57, 381 N.E.2d 641, 10 O.O.3d 87 (1978)), a search warrant executed outside the jurisdiction of the court issuing the warrant (*State v. Klemm*, 41 Ohio App.3d 382, 383, 536 N.E.2d 14 (1st Dist. 1987)), an improper urine test procedure (*State v. Starkey*, 11th District Portage No. 2012-P-0038, 2012-Ohio-6219, ¶ 25-29), and others not listed here.

Given the great weight of the foregoing authority, this Court should conclude that the Sixth District’s decision in this case is constitutionally infirm. This Court should conclude that

the statutory violation at issue here does not rise to the level of a violation of Article I, Section 14 of the Ohio Constitution. Instead, this Court should adhere to the foregoing well-settled practice. Left unchecked, the Sixth District's decision will undermine the established precedent in Ohio and create unnecessary confusion.

IV. When a statute does not provide a remedy, it is the province of the Ohio General Assembly, not the courts, to craft one.

In this case, the Sixth District effectively created a statutory remedy where none otherwise existed by attiring it in constitutional raiment. In doing so, the court failed to exercise the type of judicial restraint that this Court has consistently counseled.

This Court has traditionally commended and pursued a policy of judicial restraint. That practice dates back over forty years to *State v. Myers*, 26 Ohio St.2d 190, 197, 271 N.E.2d 245, 55 O.O.2d 447 (1971). And it has been followed faithfully since then—the most recent example being *State v. Emerson*, 134 Ohio St.3d 191, 198, 2012-Ohio-5047, 981 N.E.2d 787. The Sixth District deviated from that well-settled principle when it created a suppression remedy under the Ohio Constitution for a violation of R.C. 4513.39. *State v. Brown*, 6th Dist. Wood No. WD-12-070, 2013-Ohio-5351, 4 N.E.2d 452, ¶ 19-22. And at least one other court has looked to that decision for guidance. *Cleveland v. Persaud*, Cleveland Mun. Ct. No. 2013 TRC 042481, 2014 Ohio Misc. LEXIS 10, 6 N.E.3d 701, 706-707. Constitutionally, that needs to be stopped.

When this Court was faced with a violation of R.C. 4511.19(B), after officers did not inform a defendant in a drunk driving case that he had the right to an independent chemical test, this Court said that suppression of the chemical test was not an option: “In reaching this result, we are aware that there is no effective leverage available to a defendant which may be employed to compel police officials to advise a suspect as required by R. C. 4511.19(B). *This was, and is, a matter for the General Assembly. In our view, there is no judicial machinery available to*

produce the missing sanction.” *State v. Myers*, 26 Ohio St.2d 190, 197, 271 N.E.2d 245, 55 O.O.2d 447 (1971) (emphasis added). And that logic was expressly followed by this Court in *Hillard v. Elfrink*, 77 Ohio St.3d 155, 159, 1996-Ohio-333, 672 N.E.2d 166, and in *State v. Weideman*, 94 Ohio St.3d 501, 504, 2002-Ohio-1484, 764 N.E.2d 997.

This principle was further bolstered when the Supreme Court of the United States in *Virginia v. Moore*, 553 U.S. 164, 174, 128 S.Ct. 1598, 170 L.Ed. 559 (2008), held that “Virginia chooses to protect individual privacy and dignity more than the Fourth Amendment requires, but it also chooses not to attach to violations of its arrest rules the potent remedies that federal courts have applied to Fourth Amendment violations. Virginia does not, for example, ordinarily exclude from criminal trials evidence obtained in violation of its statutes.” This Court was quick to adopt that logic for Ohio. *State v. Jones*, 121 Ohio St.3d 103, 107, 2009-Ohio-316, 902 N.E.2d 464; *State v. Emerson*, 134 Ohio St.3d 191, 198, 2012-Ohio-5047, 981 N.E.2d 787.

In fact, as seen above, this Court follows the concept of using “passive virtues” when dealing with the question of whether the Court should, in so many words—“legislate a solution from the bench” (as the Sixth District did) as opposed to identifying an absence in the statute and letting the General Assembly address the issue, if it is of concern to it. *See generally* Bickel, *The Passive Virtues*, 75 Harv. L. Rev. 40 (1961); Bickel, *The Least Dangerous Branch: The Supreme Court at the Bar of Politics* (2d Ed. 1986). By doing such, moreover, this Court stands in concert with the approach of the Supreme Court of the United States in retreating away from attempting to divine the rationale of the legislature in choosing to include or not include a certain provision in a statute. *See Fletcher v. Peck*, 10 U.S. 87, 130, 3 L.Ed. 162, 6 Cranch 87 (1810); *Village of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, fn. 18, 97 S.Ct. 555, 50 L.Ed. 450 (1977). There is no need to depart from that sound approach now.

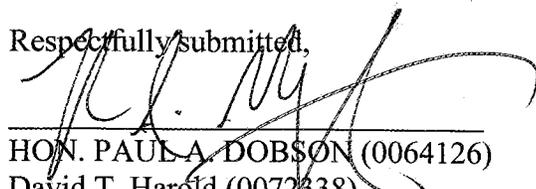
This Court should take this opportunity to resolve definitively that the courts should interpret the laws; it is not a court's province to rewrite a statute to provide for a remedy that it believes should be included therein. That decision would reaffirm the appropriate boundaries of judicial review that have resounded in case law and scholarship for years. *See generally* Wechsler, *Toward Neutral Principles of Constitutional Law*, 73 Harv. L. Rev. 1 (1959); Ely, *Democracy and Distrust: A Theory of Judicial Review* (1981). Succinctly put, this Court should rule that it was constitutionally inappropriate for the Sixth District create a remedy that does not otherwise exist in R.C. 4513.39.

CONCLUSION

The Sixth District overstepped its bounds in this case when it crafted a suppression remedy for a violation of R.C. 4513.39. What makes that result so troubling and dangerous is that the Sixth District side-stepped three well-ingrained jurisprudential principles to arrive at the result that it did: it failed to follow *Robinette III* as well as its progeny and harmonize Article I, Section 14 of the Ohio Constitution with the Fourth Amendment to the United States Constitution; it elevated a statutory violation to a constitutional one in contravention of well-established Ohio law; and it crafted a remedy otherwise best left to the Ohio General Assembly.

There simply was not a constitutional violation in this case, state or federal. Granted, there was a statutory violation, but it was a violation for which R.C. 4513.39 provides no remedy. And while the exclusionary rule was attractive to the Sixth District, it just wasn't available. The State, therefore, respectfully requests that this Court accept the State's proposition of law: "A violation of R.C. 4513.39 does not rise to the level of a constitutional violation under Article I, Section 14 of the Ohio Constitution or the Fourth Amendment of the United States Constitution; therefore, the exclusionary rule cannot be invoked to suppress the fruits of any such statutory violation." As a result, this Court should reverse the decision of the Sixth District Court of Appeals and reinstate Brown's conviction and sentence.

Respectfully submitted,



HON. PAUL A. DOBSON (0064126)

David T. Harold (0072338)

Thomas A. Matuszak (0067770)

Counsel of Record

Wood County Prosecutor's Office

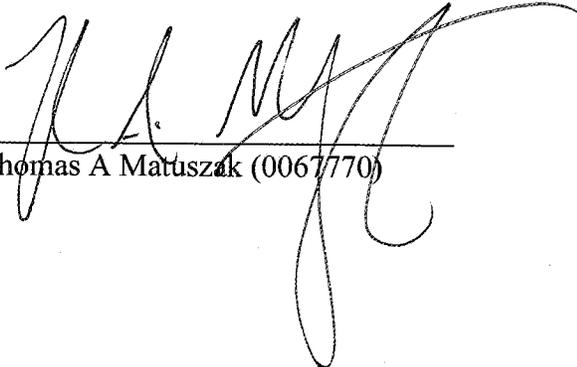
One Courthouse Square, Annex

Bowling Green, Ohio 43402

Counsel for Plaintiff-Appellee

CERTIFICATION

The undersigned counsel certifies that a true and accurate copy of the foregoing was served via regular U.S. Mail to counsel for Defendant-Appellee, Terrence Brown, Attorney Lawrence A. Gold, 3852 Fairwood Drive, Sylvania, Ohio 43560, as well to the following individuals and organizations: Ohio Public Defender's Office, 250 East Broad Street, Suite 1400, Columbus, Ohio 43215; Eric E. Murphy, State Solicitor, counsel for *amicus curiae* Ohio Attorney General Michael DeWine, Office of the Ohio Attorney General, 30 East Broad Street, 17th Floor, Columbus, Ohio 43215; Seth L. Gilbert, counsel for *amicus curiae* Ohio' Prosecuting Attorney's Association, Franklin County Prosecutor's Office, 373 South High Street, 13th Floor, Columbus, Ohio 43215; Andrew T. French, counsel for *amicus curiae*, Montgomery County Prosecutor's Office, 301 West Third Street, 5th Floor, Dayton, Ohio 45422; Evy M. Jarrett, counsel for *amicus curiae*, Lucas County Prosecutor's Office, 700 Adams Street, Toledo, Ohio 43604; Robert L. Berry, counsel for *amicus curiae* Buckeye State Sheriff's Association, Law Office of Robert L. Berry LLC, 7582 South Goodrich Square, New Albany, Ohio 43054, on this 30th day of June, 2014.



Thomas A Matuszak (0067770)

APPENDIX

Notice of Appeal.....	1
<i>State v. Brown</i> , 6 th Dist. Wood No. WD-12-070, 2013-Ohio-5351, 4 N.E.3d 452.....	4
Judgment Entry, <i>State v. Brown</i> , Wood C.P. No. 11-CR-163 (Nov. 28, 2012).....	15

CONSTITUTIONS

PAGE

Fourth Amendment of the Constitution of the United States.....	21
Article I, Section 14 of the Constitution of the State of Ohio.....	22

STATUTES

R.C. 4513.39.....	23
-------------------	----

IN THE SUPREME COURT OF OHIO

14-0104

STATE OF OHIO,
Plaintiff-Appellant,
-vs-
TERRENCE BROWN,
Defendant-Appellee.

)
) Sup. Ct. No. _____
)
) Ct. App. No. WD-12-070
)
) On Appeal from the Wood County
) Court of Appeals, Sixth Appellate
) District
)
)
)
)

PLAINTIFF-APPELLANT, STATE OF OHIO'S,
NOTICE OF APPEAL

Paul A. Dobson (0064126)
Thomas A. Matuszak (0067770)
Counsel of Record
David T. Harold (0072338)
Wood County Prosecutor's Office
One Courthouse Square, Annex
Bowling Green, Ohio 43402
Tel: (419) 354-9250
Fax: (419) 353-2904
Email: pdobson@co.wood.oh.us
tmatuszak@co.wood.oh.us
dharold@co.wood.oh.us

Lawrence A. Gold (0078779)
3852 Fairwood Drive
Sylvania, Ohio 43560
Tel: (419) 843-5719
Fax: (419) 843-5719
Email: lgoldlawoffice@aol.com

COUNSEL FOR DEFENDANT-
APPELLEE

COUNSEL FOR PLAINTIFF-
APPELLANT

FILED
JAN 21 2014
CLERK OF COURT
SUPREME COURT OF OHIO

Now comes Plaintiff-Appellant, the State of Ohio (the "State of Ohio"), by and through the undersigned counsel, and appeals from the Decision and Judgment Entry journalized by the Sixth District Court of Appeals on December 6, 2013 in *State of Ohio v. Terrence Brown* (6th Dist. WD-12-070, 2013-Ohio-5351), a copy of which is attached hereto. This case involves a felony, raises a substantial constitutional question, and is one of public or great general interest. The State of Ohio has filed a separate memorandum in support of jurisdiction with the records of this Honorable Court.

Respectfully submitted,

PAUL A. DOBSON, PROSECUTOR
WOOD COUNTY, OHIO

Thomas A. Matuszak by SLG 0072929

Thomas A. Matuszak (0067770)

Counsel of Record

Wood County Prosecutor's Office

One Courthouse Square, Annex

Bowling Green, Ohio 43402

Tel: (419) 354-9250

Fax: (419) 353-2904

Email: tmatuszak@co.wood.oh.us

David T. Harold by SLG 0072929

David T. Harold (0072338)

Wood County Prosecutor's Office

One Courthouse Square, Annex

Bowling Green, Ohio 43402

Tel: (419) 354-9250

Fax: (419) 353-2904

Email: dharold@co.wood.oh.us

CERTIFICATE OF SERVICE

The undersigned counsel certifies that a true and accurate copy of the foregoing 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.

Thomas A. Matuszak by SLG 2072929
Thomas A. Matuszak (0067770)
Counsel of Record
Wood County Prosecutor's Office
One Courthouse Square, Annex
Bowling Green, Ohio 43402
Tel: (419) 354-9250
Fax: (419) 353-2904
Email: tmatuszak@co.wood.oh.us

FILED
WOOD COUNTY, OHIO

2013 DEC -6 A 8 50

SIXTH DISTRICT
COURT OF APPEALS
CINDY A. HOPNER, 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

**JOURNALIZED
COURT OF APPEALS**

DEC 06 2013

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.

**JOURNALIZED
COURT OF APPEALS**

DEC 06 2013

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

**JOURNALIZED
COURT OF APPEALS**

DEC 06 2013

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,

**JOURNALIZED
COURT OF APPEALS**

DEC 06 2013

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).

**JOURNALIZED
COURT OF APPEALS**

DEC 06 2013

{¶ 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

**JOURNALIZED
COURT OF APPEALS**

DEC 06 2013

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

**JOURNALIZED
COURT OF APPEALS**

DEC 06 2013

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

**JOURNALIZED
COURT OF APPEALS**

DEC 06 2013

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).

**JOURNALIZED
COURT OF APPEALS
DEC 08 2013**

{¶ 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

**JOURNALIZED
COURT OF APPEALS**

DEC 06 2013

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.

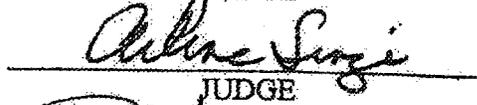
A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See also 6th Dist.Loc.App.R. 4.

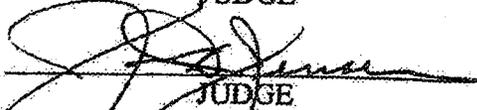
Mark L. Pietrykowski, J.

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>.

**JOURNALIZED
COURT OF APPEALS**

DEC 06 2013

RECEIVED

NOV 28 2012

PROSECUTING ATTORNEY
WOOD COUNTY

FILED
WOOD COUNTY CLERK
COMMON PLEAS COURT

2012 NOV 28 AM 8:56

CINDY A. HOFNER

IN THE COURT OF COMMON PLEAS OF WOOD COUNTY, OHIO

State of Ohio,

Plaintiff,

v.

Terrance Brown,

Defendant.

Case No. 11 CR 163

**JUDGMENT OF CONVICTION
SENTENCING F-2**

PRISON

JUDGE REEVE KELSEY

November 26, 2012

This cause was before the Court on this 26th day of November, 2012, for sentencing. Present were Gwen Howe-Gebbers, Assistant Prosecuting Attorney, on behalf of the State of Ohio and the defendant with his counsel, Lawrence Gold, Esq.

At a prior hearing pursuant to Civ.R. 11(C), the offender entered a plea of no contest to the offense of Aggravated Possession of Drugs, a violation of 2925.11(A)(C)(1)(c), a felony of the second degree. The court accepted the offender's plea of no contest, and the defendant was convicted of the offense of Aggravated Possession of Drugs, a violation of 2925.11(A)(C)(1)(c), a felony of the second degree.

Counsel for the defendant spoke to the Court on behalf of his client. The state recommended a prison term. Upon inquiry, the offender made a statement prior to the imposition of sentence.

In determining the sentence, the record, all oral statements, the presentence report, the pertinent financial information contained in the presentence report that reflect upon the offender's present and future ability to pay any financial sanctions imposed, the purposes and principles of sentencing as well as the seriousness and recidivism factors were carefully reviewed.

The court noted that the overriding purposes of felony sentencing are to protect the public from future crime by the offender and others and to punish the offender using the minimum sanctions that the court determines accomplish those purposes without imposing an unnecessary burden on state or local government resources. The court further noted that in achieving those purposes, the sentencing court shall consider the need for incapacitating the offender, deterring the offender and others from future crime, rehabilitating the offender, and making restitution to the victim of the offense, the public, or both.

The court further noted that a sentence must be commensurate with and not demeaning to the seriousness of the offender's conduct and its impact upon the victim, and consistent with sentences imposed for similar crimes committed by similar offenders.

The Court finds that pursuant to R.C. 2929.11, this is an offense which is presumed that a prison term is necessary in order to comply with the purposes and principles of sentencing.

The court reviewed the seriousness and recidivism factors and considered that the offense was committed as part of an organized criminal activity and the offender has a history of criminal convictions.

After a review of the foregoing factors, the court finds that the presumption in favor of a prison sentence has not been overcome and that a community control sanction or a combination of community control sanctions would demean the seriousness of the offense.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that for the offense of Aggravated Possession of Drugs, a violation of 2925.11(A)(C)(1)(c), a felony of the second degree the offender is sentenced to a mandatory term of three (3) years in the Ohio Department of Rehabilitation and Corrections.

IT IS ORDERED that the offender shall submit to DNA testing pursuant to R.C. 2901.07.

IT IS ORDERED that the offender shall pay a mandatory fine of \$7500.00 to the Wood County Clerk of Courts who shall disburse said monies to the Lake Twp. Police Department Drug Fund.

IT IS ORDERED that the offender's operator's license shall be suspended for a period of three (3) years.

POST RELEASE CONTROL

The offender will be subject to three (3) years of Post Release Control as well as the consequences for violating the conditions of post release control imposed by the Parole Board pursuant to R.C. 2967.28. If the offender violates a

post release control sanction, the Adult Parole authority, or the Parole Board may impose a more restrictive sanction, may increase the duration of the post release control or may impose a prison term, which may not exceed nine (9) months. The maximum cumulative prison term imposed for violations during post release control may not exceed one-half of the stated prison term. Further, if the violation of the sanction is a felony, the offender may be prosecuted for the felony and, in addition, the Court may impose a prison term for the violation. The offender is ordered to serve as a part of this sentence any term of post release control imposed by the Parole Board and any prison term for violation of the post release control conditions.

The Court informed the offender that he is eligible to apply for judicial release from prison, but if eligible, the Court may not grant such release.

The court reminded the offender that under federal law, the offender can never lawfully possess a firearm and that if the offender is ever found with a firearm, even one that belongs to someone else; the offender may be prosecuted by federal authorities and may be subject to imprisonment for several years.

CREDITS AND COSTS

The offender is given credit for jail time served pursuant to R.C. 2967.191. The Court has been informed that the offender has been incarcerated for one (1) day in the Wood County Justice Center as of the date of sentencing.

RIGHT TO APPEAL

The court reviewed with the offender his right to appeal a sentence that is contrary to law.

Offender is ordered to pay the costs of this prosecution. Judgment is awarded for costs and execution awarded. The offender is notified that if the offender fails to pay this judgment or fails to make timely payments towards that judgment under a payment schedule approved by the court, the court may order the offender to perform additional community service in an amount of not more than forty hours per month until the judgment is paid or until the court is satisfied that the offender is in compliance with the approved payment schedule. The offender is also notified that if the court orders the offender to perform the community service, the offender will receive credit upon the judgment at the specified hourly credit rate per hour of community service performed, and each hour of community service performed will reduce the judgment by that amount. The specified hourly credit rate per hour will be that minimum wage established as contemplated by R.C. 4111.02 as then in effect.

Bond released.

The offender requested a stay of execution on the sentence. The state remained silent on the request. That request was denied by the court.

Offender is remanded to the custody of the Wood County Sheriff to await transportation to the Correction and Reception Center, Orient, Ohio.

The offender requested to be released on bond pending appeal to which the state objected. The court denied that request.

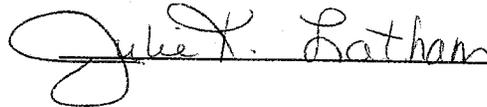


Judge Reeve Kelsey

CERTIFICATE

The undersigned mailed or delivered a copy of this judgment entry to Gwen Howe-Gebers, Assistant Prosecuting Attorney, Lawrence Gold, Esq., Marvin Barnett, Esq., the offender c/o WCJC, Adult Probation Department, Adult Parole Board, and the Wood County Sheriff.

11-28-12_____



Lexis Advance®

Fourth Amendment of the United States Constitution**USCS Const. Amend. 4** (Copy citation)

Current through PL 113-120, approved 6/10/14

United States Code Service - Constitution of the United States >CONSTITUTION OF THE UNITED STATES OF AMERICA >AMENDMENTS >AMENDMENT 4**Notice**

 *Part 1 of 9.* You are viewing a very large document that has been divided into parts.

Unreasonable searches and seizures.

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.

Annotations **Hide****Case Notes**

- ⚡ I. IN GENERAL
- ⚡ 1. Generally
- ⚡ 2. Construction
- ⚡ 3. Purpose
- ⚡ 4. Applicability
- ⚡ 5. --Civil forfeiture or seizure
- ⚡ 6. Reasonableness
- ⚡ 7. --Use of force
- ⚡ 8. Persons and entities bound
- ⚡ 9. Validity of search as unaffected by evidence found
- ⚡ 10. Questions for court and jury
- ⚡ 11. Miscellaneous
- ⚡ II. RELATION TO, AND VALIDITY OF, OTHER LAWS
- ⚡ 12. Relationship of state, local and federal law
- ⚡ 13. --Particular state or local laws
- ⚡ 14. Other federal constitutional provisions
- ⚡ 15. Federal statutes
- ⚡ 16. Federal Rules of Criminal Procedure
- ⚡ 17. Miscellaneous
- ⚡ III. PERSONS AND INTERESTS PROTECTED
- ⚡ 18. Generally
- ⚡ 19. Right of privacy
- ⚡ 20. --Particular circumstances
- ⚡ 21. Expectations of privacy
- ⚡ 22. --Expectation affected by governmental involvement
- ⚡ 23. --Guests and invitees
- ⚡ 24. --Outdoors and in public places
- ⚡ 25. --Other particular circumstances
- ⚡ IV. WHAT CONSTITUTES "SEARCH OR SEIZURE"

Lexis Advance®

Oh. Const. Art. I, § 14 (Copy citation)

Current through Legislation passed by the 130th General Assembly and filed with the Secretary of State through File 95 Annotations current through May 19, 2014

Ohio Constitution > CONSTITUTION OF THE STATE OF OHIO > ARTICLE I. BILL OF RIGHTS**§ 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.

Annotations**Hide****Case Notes**

- ⚡ GENERALLY.
- ⚡ ABANDONED PROPERTY.
- ⚡ ABUSE OF PROCESS.
- ⚡ ADMINISTRATIVE SEARCH.
- ⚡ ADMISSION TO POSSESSING DRUGS.
- ⚡ AERIAL SURVEILLANCE.
- ⚡ AFFIDAVIT.
- ⚡ ALCOHOL, DRUG TESTING GENERALLY.
- ⚡ ANIMAL CONTROL.
- ⚡ ANONYMOUS TIP.
- ⚡ ANTICIPATORY WARRANT.
- ⚡ APPLICABILITY.
- ⚡ APPOINTMENT OF NEW JUDGE.
- ⚡ ARREST.
- ⚡ --ACTIVE WARRANT.
- ⚡ AUTHORITY OF REFEREE.
- ⚡ BICYCLES.
- ⚡ BLOOD SAMPLES.
- ⚡ CANINE SNIFF.
- ⚡ CELL PHONE DATA.
- ⚡ CHECKPOINTS.
- ⚡ COLLEGE DORM ROOM.
- ⚡ COMMERCIAL BUILDINGS.
- ⚡ COMMERCIAL VEHICLES.
- ⚡ COMMON LAW.
- ⚡ COMMUNITY CARETAKING.
- ⚡ COMMUNITY CONTROL.
- ⚡ CONDUCT UNBECOMING OFFICER.
- ⚡ CONSENSUAL ENCOUNTER.
- ⚡ CONSENT.
- ⚡ --EXTENT OF SEARCH.
- ⚡ --HOME SEARCH.
- ⚡ --INVOLUNTARY.
- ⚡ --PERSON IN CUSTODY.
- ⚡ --THIRD PARTY.

Lexis Advance®

orc 4513.39

ORC Ann. 4513.39 (Copy citation)

Current through Legislation passed by the 130th General Assembly and filed with the Secretary of State through File 95 Annotations current through May 19, 2014

Page's Ohio Revised Code Annotated >TITLE 45. MOTOR VEHICLES -- AERONAUTICS -- WATERCRAFT >CHAPTER 4513. TRAFFIC LAWS -- EQUIPMENT; LOADS >MISCELLANEOUS PROVISIONS

§ 4513.39. Power to make arrests on highways

(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 in division (B) of this section and division (E) of section 2935.03 of the Revised Code, the power to make arrests for violations on all state highways, of sections 4503.11, 4503.21, 4511.14 to 4511.16, 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.

(B) A member of the police force of a township police district created under section 505.48 of the Revised Code or of a joint police district created under section 505.482 of the Revised Code, and a township constable appointed pursuant to 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, shall exercise the power to make arrests for violations of those sections listed in division (A) of this section, other than sections 4513.33 and 4513.34 of the Revised Code, as follows:

(1) If the population of the township that created the township or joint police district served by the member's police force or the township that is served by the township constable is fifty thousand or less, the member or constable shall exercise that power on those portions of all state highways, except those highways included as part of the interstate system, as defined in section 5516.01 of the Revised Code, that are located within the township or joint police district, in the case of a member of a township or joint police district police force, or within the unincorporated territory of the township, in the case of a township constable;

(2) If the population of the township that created the township or joint police district served by the member's police force or the township that is served by the township constable is greater than fifty thousand, the member or constable shall exercise that power on those portions of all state highways and highways included as part of the interstate highway system, as defined in section 5516.01 of the Revised Code, that are located within the township or joint police district, in the case of a member of a township or joint police district police force, or within the unincorporated territory of the township, in the case of a township constable.

History

GC § 6297; 119 v 810; Bureau of Code Revision, 10-1-53; 138 v H 207 (Eff 3-13-81); 139 v H 738 (Eff 6-25-82); 140 v H 632 (Eff 3-28-85); 143 v H 171 (Eff 5-31-90); 143 v H 669 (Eff 1-10-91); 145 v H 687. Eff 10-12-94; 150 v H 163, § 1, eff. 9-23-04; 2011 HB 153, § 101.01, eff. Sept. 29, 2011.

Annotations

Hide

Notes

Section Notes