

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, : Case No. 2022-0687
Plaintiff-Appellant, : On Appeal from the Hamilton County Court
vs. : of Appeals, First Appellate District
DEARRIUS HAMPTON, : Appeal No. C210423
Defendant-Appellee. :

APPELLEE’S MEMORANDUM IN OPPOSITION TO APPELLANT’S MEMORANDUM
IN SUPPORT OF JURISDICTION

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EXPLANATION OF WHY THIS CASE IS NOT A CASE OF PUBLIC OR GREAT
GENERAL INTEREST AND DOES NOT INVOLVE A SUBSTANTIAL
CONSTITUTIONAL QUESTION

The issues raised by Appellant have long been resolved by this Court, the United States Supreme Court and courts throughout the state of Ohio and elsewhere. Appellant asks this Court to exercise jurisdiction over this case to explain the difference between the standard required for a traffic stop and the standard required for a conviction in a criminal case. This is not a question of great public interest or a substantial constitutional question for this Court because this issue has been decided and is a matter of hornbook law in first year law school curriculum. Appellant is simply unsatisfied with the decision of the trial court and the unanimous affirmation of that decision by the court of appeals. This does not create a jurisdictional issue for this Court.

This case involves a narcotics officer on a highway looking to make a drug interdiction stop. He sees a car with out of state license plates and decides to follow the car. He candidly testified that he was hoping to find drugs in the vehicle. In his police report made contemporaneous with the stop he indicated that the justification for the stop was that the driver was tailgating the driver in front of him. At the hearing on the motion to suppress the defendant produced the Ohio Department of Transportation highway camera video of the driving observed by the narcotics officer. The video was shown to the officer before he testified at the hearing. At the hearing the officer abandoned his theory of tailgating and testified that the defendant was following too closely in violation of R.C. 4511.34. The officer testified that he uses a mechanical formulation to decide whether someone is following too closely: one car length per 10 m.p.h.. The court reviewed the video evidence. The trial court held that evaluations regarding probable cause for a traffic stop require the courts to determine whether an objectively reasonable officer would have believed that a traffic violation occurred based on the totality of

the circumstances. The alleged traffic violation in this case is governed by Ohio Revised Code 4511.34 which requires officers to consider the distance vehicles are following each other, the weather, and the highway conditions in making a determination. The court found that the narcotic's officer's rejection of the statutory requirements and his replacement with the use of an automatic formula to make determinations about probable cause was not reasonable.

Similarly, the court of appeals, found that the trial court's decision was supported by competent credible evidence. No reasonable officer would look at the video and believe that the traffic violation had occurred. The narcotic's officer's formula can be a factor in determining probable cause to stop under R.C. 4511.34, but reasonableness requires consideration of the factors outlined in the statute before a person's Fourth Amendment liberty interests can be infringed. This precise fact pattern and conclusion was also recently reached by the Sixth District in *State v. Bui*, 6th Dist. Lucas No. L-19-1028, 2021-Ohio-362. This Court also declined to accept the state's request for jurisdiction in that case. *State v. Bui*, 2021-0340; 2021-Ohio-1721. The same reasoning should apply in this case and jurisdiction declined.

STATEMENT OF THE CASE AND RELEVANT FACTS

On March 24, 2021, a member of the Hamilton County Regional Narcotics Unit (RENU), was stationed on I75 north of I275, watching southbound traffic, looking for evidence of narcotics offenses. (T.p. 29, lines 9-11; p. 27, lines 22-25; p. 63, lines 2-4.). The RENU officer's car was outfitted for drug interdiction and he was in possession a K-9 dog. (T.p. 36, lines 1-10.) At around 1:10 in the afternoon, the officer saw a newer Dodge Charger with window tint traveling at a slower speed than other traffic. (T.p. 29, lines 17-25; p. 30, line 1.) The officer also did not really know how fast or slow any of the cars were traveling because he had "no idea what the traffic was going at that time." (T.p. 49, lines 12-19.) He conceded that it was near this

junction on the highway that the speed limit changes from 70 mph to 55 mph. (T.p. 50, lines 2-9.) As the car passed the officer noted that the car had an out of state license plate. (T.p. 29, lines 17-25; p. 30, line 1.) He felt this was suspicious and admittedly operating on a “hunch” decided to pursue the car. (T.p. 45, lines 13-20.) The RENU officer ran the license plates of the Charger through the law enforcement data base and discovered that the Charger was a rental car. (T. d. 11, Exhibit A, Investigative Report, p. 1.) The officer testified at the hearing that he was “hoping” the driver of the car was a drug dealer. (T.p. 63, lines 2-4.) At that point, the RENU officer decided to stop the Charger. (*Id.*)

In order to justify the stop, the RENU officer reported that Charger was tailgating the car in front of him. (T.d. 11, Exhibit A, Investigative Report, p. 1.) The RENU officer testified that there was no dashboard camera in his car and that he did not use a body worn camera. (T.p. 92, lines 5-9.) Unbeknownst to officer, until moments prior to the motion to suppress hearing, Mr. Hampton had acquired video of the described driving from the Ohio Department of Transportation highway cameras. (T.p. 87, lines 5-9.) The RENU officer was able to view the video before his testimony. (T.p. 87, lines 5-13.) Although there was no mention in his investigative report about the Charger creating unsafe conditions, at the hearing on the motion to suppress, he testified that the Charger “. . . appeared to be . . . tailgating a car at a distance that’s unsafe for the conditions.” (T.p. 31, lines 5-8.) He provided no information on how the driving was unsafe. He further offered that the Charger was following by one to one and a half car lengths and that he could tell this by “the way the roofs line up.” (T.p. 34, lines 17-19.) The officer admitted that it took some time for him to catch up to the Charger, then testified that as he got closer the Charger changed lanes and was “also tailgating that car at a distance unsafe for the conditions.” (T.p. 31, lines 9-14.) This time he admitted he was looking from an angle and his

observations were impeded. (T.p. 35, lines 11-18.) After stopping the Charger, the officer, operating on a “hunch” deployed his K-9 and then searched the car. (T.p. 86, lines 8-12.) The officer discovered a small bag of white power in the center console. Mr. Hampton was not charged for following too closely.

The trial court, after reviewing the video evidence, found that at the time of the traffic stop the roads were dry. (*Id.* at p. 4.) It was midday. (*Id.*) It was sunny and there was good visibility. (*Id.*) There was moderate traffic on the roadway. (*Id.*) The court also found that the Charger was following the car in front of it with at least two car lengths distance. (*Id.* at p. 7.) All the other cars on the road were traveling with similar spacing and all cars were following the flow of traffic. (*Id.* at p. 4.) The Charger was not driving in a dangerous manner. (*Id.* at p. 7.) The trial court found that there was no probable cause or reasonable articulable suspicion for the stop of Charger and suppressed the evidence obtained as a result of the unlawful stop. (T.d. 16.) The court of appeals found that the trial court’s determination was supported by competent credible evidence. *State v. Hampton*, 1st Dist. Hamilton, Case No. C210423, April 27, 2022.

The court found that probable cause for a stop under R.C. 4511.34 there must be a determination that a driver was following more closely than was reasonable and prudent in light of the speed of the vehicles, the flow of traffic and the condition of the highway. Review of the video evidence showed that no reasonable officer would have believed that a violation of R.C. 4511.34 had occurred.

ARGUMENT IN SUPPORT OF PROPOSITION OF LAW

Proposition of Law No. 1: When making a determination regarding whether an officer had probable cause for a traffic stop pursuant to the Fourth Amendment, the court must examine the historical facts - the events leading up to a stop, viewed from the standpoint of an objectively reasonable police officer.

The state's proposition of law asks this Court to declare a new standard for reviewing courts making determinations regarding Fourth Amendment, warrantless intrusions into the liberty of motorists in the State of Ohio. The state seeks to remove judicial examination of officers' determinations of probable cause, require courts to ignore the physical evidence and elevate word of police officer's to beyond judicial review. Such a standard for warrantless Fourth Amendment intrusions is inconsistent with this Court's precedent and the constitutional analysis of the U.S. Supreme Court and federal and state courts throughout this state and country.

In *Whren v. United States*, the United States Supreme Court recognized that the Fourth Amendment's reasonable requirement is fulfilled, and a law enforcement officer may constitutionally stop a vehicle's driver when the officer possesses probable cause to believe that the driver of the vehicle has committed a traffic violation. 517 U.S. 806, 809 (1996). Probable cause is determined by examining the historical facts, i.e., the events leading up to a stop or search, "viewed from the standpoint of an objectively reasonable police officer." *Bowling Green v. Godwin*, 110 Ohio St.3d 58, 62, 2006-Ohio-3563, 850 N.E.2d 698, citing *Ornelas v. United States*, 517 U.S. 690, 696 (1996). Probable cause is based on objectively on reasonable grounds for belief of guilt. *State v. Davis*, 2nd Dist. Montgomery 2017-Ohio-5613, 94 N.E.3d 194, citing *Locke v. U.S.*, 11 U.S. 339 (1813). Probable cause has been defined as a reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man in the belief in the belief that person accused is guilty of the offense. *Ash v. Marlow*, 20 Ohio

119 (1851). The long-prevailing standard of probable cause protects “citizens from rash and unreasonable interferences with privacy and from unfounded charges of crime . . .” *Brinegar v. United States*, 338 U.S. 160, 176, (1949). The probable-cause standard is a “practical, nontechnical conception” that deals with “the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.” *Illinois v. Gates*, 462 U.S. 213, 231 (1983) see, e.g., *Ornelas v. United States*, 517 U.S. 690, 695, (1996); *United States v. Sokolow*, 490 U.S. 1, 7–8 (1989).

In this case, rather than considering the requirements of the statute at issue, R.C. 4511.34, the officer testified that he uses a technical formula to decide if people are following too closely. The officer opted to reject the conduct that is actually proscribed by the Ohio legislature and instead substitute his own parameters for legal conduct on the road. As required to do, the reviewing courts in this case used the objectively reasonable police officer standard to determine whether probable cause existed. In this case, there was video evidence of the traffic originally described by the police officer as “tailgating.” After review of the video evidence, the courts determined that no reasonable officer would have believed a traffic violation occurred.

In the case of *Ohio v. Bui*, the Ohio Sixth Appellate District examined a fact pattern on point to the facts of the case before this Court. 6th Dist. Lucas No. L-19-1028, 2021-Ohio-362. In *Bui*, the officer stopped a car for following too closely because the car was following the car in front closer than one car length for every 10 mph of speed. (*Id.* at p.9.) The court rejected this bright line rule and instead viewed the totality of the circumstances. (*Id.* at 17.) The court reviewed the video evidence found that the roadway was dry, it was midday and there was nothing unsafe about the driving even though the driver was following closer than a car length per 10mph of speed. (*Id.*) The court concluded that the evidence failed to establish a reasonable

belief that the driver was following more closely than was reasonable and prudent having due regard for the speed of the vehicle, the traffic and the condition of the roadway. (*Id.*) The court of appeals held that the motion to suppress should be granted. These are the same facts presented for the Court's review in this case. Like the *Bui* court, the trial court in this case declined to ignore to the statutory mandate of R.C. 4511.34, examined the totality of the circumstances and determined based on the video evidence that it was not reasonable to believe that the statute had been violated.

The standard of review for a probable cause determination required by this Court and the U.S. Supreme Court is whether an "objectively reasonable officer" would believe that a traffic violation occurred based on the totality of the circumstances. *Bowling Green*, 110 Ohio St.3d at 62; *Maryland v. Pringle*, 540 U.S. 366, 371 (2003). Other courts have discussed the importance of the objective standard in reviewing Fourth Amendment intrusions on a person's liberty:

The scheme of the Fourth Amendment becomes meaningful only when it is assured that at some point the conduct of those charged with enforcing the laws can be subjected to the more detached, neutral scrutiny of a judge who must evaluate the reasonableness of a particular search or seizure in light of the particular circumstances. And, in making that assessment, it is imperative that the facts be judged against an objective standard: would the facts available to the officer at the moment of the seizure or the search "warrant a man of reasonable caution in the belief" that the action taken was appropriate?" *Cf. Carroll v. United States*, 267 U. S. 132 (1925); *Beck v. Ohio*, 379 U. S. 89, 96-97 (1964). Anything less would invite intrusions upon constitutionally guaranteed rights based on nothing more substantial than inarticulate hunches, a result this Court has consistently refused to sanction. *See, e.g., Beck v. Ohio, supra; Rios v. United States*, 364 U. S. 253 (1960); *Henry v. United States*, 361 U. S. 98 (1959).

Terry v. Ohio, 392 U.S. 1, 21 (1968).

In this case there was video evidence of the alleged traffic violation. The reviewing court is not permitted to ignore the evidence admitted at the hearing and must consider it in addition the testimony of the officer. The relevant inquiry in this case is not whether the narcotic's officer thought there was a traffic violation. The question is whether an objectively reasonable and

prudent officer would believe a traffic violation occurred based on the totality of the circumstances. *State v. Brown*, 2020-Ohio-896. As the court of appeals in this case noted, the facts found by the trial court are uncontroverted and supported by credible competent evidence, including the traffic video produced by Mr. Hampton. The roads were dry. (T.d. 16 at p. 4.) It was midday. (*Id.*) It was sunny. (*Id.*). There was good visibility. (*Id.*) There was moderate traffic on the roadway. (*Id.*) The Charger was following the car in front of it with at least two car lengths distance. (*Id.*) All the other cars on the road were traveling with similar spacing and all cars were following the flow of traffic. (*Id.*) The Charger was not following the car in front of him in an unreasonable or dangerous manner. (*Id.*) In light of these particular conditions, no reasonable officer would have believed that the car in question was violating R.C. 4511.34. (*See* T.p. 63, lines 2-4.)

This is the inquiry that is required by Ohio and federal law. The reviewing courts in this case followed the constitutional requirements for review of the police officer's probable cause determination. Appellant's proposition of law should be overruled.

CONCLUSION

There is no issue of great or public interest nor a substantial constitutional question in this case. The Appellant's inquiries regarding probable cause determinations are nothing more than an attempt to have yet another bite at the apple in a case that this Court rejected just last year in *State v. Bui*. These issues have been decided. The lower courts followed the law. The Appellant's request for jurisdiction in this case should be denied.

Respectfully submitted,

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PROOF OF SERVICE

I hereby certify that a copy of the foregoing Memorandum in Opposition to Appellant's Memorandum in Support of Jurisdiction was served upon the office of Mary Stier, Esq., Hamilton County Prosecutor's Office, 230 East Ninth Street, Suite 4000, Cincinnati, Ohio 45202, via electronic service, on this 20th day of June 2022.

Wendy R. Calaway