IN THE SUPREME COURT OF OHIO

State of Ohio,	:	Case No. 2017-1505
	:	
Plaintiff-Appellant,	:	On Appeal from the
	:	Franklin County Court of
vs.	:	Appeals, Tenth Appellate
	:	District
Jaonte D. Hairston,	:	
	:	Court of Appeals
Defendant-Appellee.	:	Case No. 16AP-294

DEFENDANT-APPELLEE'S MEMORANDUM OPPOSING JURISDICTION

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THIS CASE DOES NOT INVOLVE A CONSTITUTIONAL QUESTION AND IS NOT A MATTER OF PUBLIC OR GREAT GENERAL INTEREST. LEAVE TO APPEAL SHOULD NOT BE GRANTED AS THE CASE WAS CORRECTLY DECIDED BY THE COURT OF APPEALS.

As Fourth Amendment cases go, this case is fairly simple. There are no questions of fact or issues of credibility. This is purely a question of law and the law applied by the Court of Appeals is well established and is not subject to question. Police officers heard shots that sounded as if they were coming from the west. They headed in that direction, driving through a populated residential neighborhood. About four-tenths of a mile later, they saw the defendant crossing at a cross-walk. He was just walking normally through the residential area where there were "a lot of houses." He was talking on his cell phone at around 9:00 p.m. and was not engaged in any suspicious or furtive behavior. The officers had no description of any suspect and no basis to believe that the defendant was the suspect except that he was in the very broad, general proximity of where they speculated the shots might have come from. At this point they were merely investigating a possible misdemeanor offense because they had no reason to believe that anyone had been shot or shot at and, in fact, there was never any evidence presented to show otherwise. The police officer testified that they decided to detain the defendant on a "hunch" that he could possibly be the one who had discharged the firearm. There was no express or articulated basis for this hunch other than the fact of the defendant's proximity to the large neighborhood area of where the officers had guessed the shots might have been fired. The neighborhood area in question could have been as large as a square mile or 640 acres bases upon the testimony of the officer. Contrary to the memorandum of the state and the memorandum of the amicus, the defendant was not the only person in the area. There would have been hundreds of people in the neighborhood, if not more. The defendant was just the first person that the police saw walking in the neighborhood.

The officers stopped, exited the cruiser with their guns drawn, and ordered the defendant to stop. The defendant complied with this order. Thus the defendant was clearly detained for Fourth Amendment purposes as soon as he complied with the commands of the officers. In response to questioning, the defendant told the officers that he had heard the gunshots and when asked if he had a weapon, he answered in the affirmative. The gun was not warm and there was no evidence that it had recently been fired and the defendant was not charged with discharging a firearm within the city limits but was charged with carrying a concealed weapon.

Thus the facts are fairly simple and present the following constitutional question. Can police officers, responding to the sound of gunshots in the distance, enter a neighborhood, where a large number of people live, and stop the first person they see at gunpoint without any articulable or reasonable suspicion that he was involved in the shooting? The answer is simple as set forth herein. The police officers have no constitutional authority to detain a person at gunpoint unless there is some articulable suspicion that the person committed a crime.

This Court in *State v. Carter*, 69 Ohio St.3d 57, 630 N.E.2d 355, (1994), noted that the critics of the exclusionary rule forget that neither the rule nor the Fourth Amendment exists to protect the criminal but to protect society and all those citizens who do not break the law. Narrowly viewed, the rule is unattractive, but the guilty defendant is freed to protect the rest of us from unlawful police invasions of our security and to maintain the integrity of our institutions. It was noted that "to suggest that the exclusionary rule fails to aid the innocent or that society rather than the policeman suffers for the policeman's transgression is nonsense. The innocent and society are the principal beneficiaries of the exclusionary rule." *Id.* 69 Ohio St. 3d at 69.

To have a rule a rule that would allow the police to enter a neighborhood any time the sounds of gunshots are heard and stop the first person they see at gunpoint, would have an impact

on many innocent people. Approaching an individual and commanding him to stop with guns in hand is a substantial intrusion onto one's personal security and freedom. Unless one is privileged to do so, such an action constitutes the felony criminal offense of kidnapping with a firearm specification and the lesser felony offense of abduction, and the misdemeanor offense of unlawful restraint. Supposedly, a person would be less frightened or apprehensive when the strangers accosting him at gunpoint are uniformed police officers, but it is still an unsettling experience whenever a person finds himself just a trigger pull away from possible death no matter whose finger is on the trigger.

It is also a humiliating experience to be held at gunpoint by the police in your community and be forced to undergo the obligatory frisk. Pursuant to *Terry*, *supra,* 392 U. S., at 17, 88 S. Ct. 1868, 20 L. Ed. 2d 889, as people watch, an officer may "'feel with sensitive fingers every portion of [your] body. A thorough search [may] be made of [your] arms and armpits, waistline and back, the groin and area about the testicles, and entire surface of the legs down to the feet. If done without privilege, this would constitute the tort of battery and possibly the crime of sexual imposition.

Violating the rights and the dignity of citizens by stopping them at gunpoint and frisking them without any articulable or reasonable suspicion that they were involved in criminal activity is also counterproductive to combating crime. Some people, and certain rogue police officers, would be tempted to look at the instant case as an example of good police work based upon the fact that it led to a felony arrest. However, if this is considered a battle won, it is at the expense of the loss of our personal liberties. A police presence that treats citizens engaging in innocent activity as if they were criminals is self-defeating. The innocent citizens develop the attitude that police encounters should be avoided and acquire the mentality that the police are the enemy. Indeed, the police presence in some neighborhoods is regarded almost as if they were enemy

occupational forces. When the police arrive at a particular scene, the citizens scurry into their homes or otherwise leave the area. The police often consider this as evidence that "these people" are all scofflaws and unwilling to assist in restoring order to their neighborhoods when the simple fact is that they have learned from unpleasant experiences to avoid police encounters that always end up as treating them as criminal suspects.

Effective law enforcement requires community support and as long as police treat people engaged in innocent activity as if they were criminals, this support will be lacking and our personal liberties will be violated. The leadership of the Columbus Police Department realize this and so do all of the conscientious police officers. A recent article quoted the safety director, and head of the Columbus Police Department, as noting that the lack of trust of community members makes it more difficult to obtain their help in solving cases. The same article also quoted the mayor as saying that, "The faith and confidence of our residents in police is critical to our ability to keep our neighborhoods safe. But the stark reality is many in our community say their faith is shaken, leading to strained relationships between the community and police." The Columbus Dispatch, November 2, 2017, Metro and State at 1 col. 1. The same article noted that a pilot project in the Linden area aimed at improving community-police relations helped curb violent crime and gather intelligence and that the number of assaults and aggravated assaults in the neighborhood dipped 55% from the year before. Community support and the ideals that inspired our state and federal constitutions are not served by a policy that would allow agents of the state to stop, at gunpoint, citizens engaged in innocent activity without any articulable or reasonable suspicion that they were involved in criminal activity. Police cannot, in response to the sound of distant gunshots, drive into a heavily populated neighborhood and stop, at gunpoint, the first person they see innocently walking down the street.

ARGUMENT

Proposition of Law No. 1: Police have no right to detain a person, at gunpoint, to investigate an offense of discharging a firearm within the city limits, a third-degree misdemeanor, when they have no description of the suspect, the direction he was heading, or any other particularized information linking the person to the misdemeanor offense other than he was one of hundreds of individuals in a densely populated area of about a square mile in size.

As Fourth Amendment cases go, this case is fairly simple. There are no questions of fact or issues of credibility. This is purely a question of law. Officer Moore testified that he heard gunshots that sounded as if they were coming from the west. They headed in the general direction of where they thought the shots might have come from. They drove through a residential neighborhood heading south on Falcon Bridge Drive and passed approximately twelve houses before turning onto Paladim Road. They drove on Paladim, and continued past the intersection of Argonne Court, then continued west past the Gentry Lane intersection and continued driving the length of Paladim Road until it changed into Reynard Road. At that point they jogged onto Paladim Place and headed west to Whitlow Road where they observed the defendant crossing the intersection at a crosswalk. He was just walking normally through a residential area where there were "a lot of houses" and talking on his cell phone at the time. This observation of the defendant occurred about four-tenths of a mile from where the officers were when they heard the shots.

Officer Moore testified that they focused upon the defendant because he was the only one they saw. They had no description of any suspect and the defendant was doing nothing out of the ordinary. He was just walking and talking on his cell phone at about 9 or 9:20 in the evening. The officers decided to detain him on a "hunch" that he could be a suspect in the discharge of a firearm. The offense of discharging a firearm within the city limits is a violation of C.C.C. 2323.30 and is a third-degree misdemeanor. Both officers exited the cruiser, with their guns drawn, and ordered the defendant to stop. Moore's partner then covered him while Moore approached the defendant.

Moore asked the defendant if he had heard any gunshots and the defendant replied that he had. Moore then instructed the defendant to put his hands behind his back so that Moore could pat him down. Moore then asked the defendant if he had any weapons and the defendant indicated he had one in his left pocket. Moore retrieved the gun and arrested the defendant for carrying a concealed weapon. The gun was not hot and the state had no evidence that it had been recently fired.

There were "a lot of houses" in this residential area and the officers had no description of any suspect or any basis to believe that the defendant was the suspect except that he was in the very broad, general proximity of where they speculated the shots might have come from. At this point they were merely investigating a possible misdemeanor offense because they had no reason to believe that anyone had been shot or shot at and, in fact, there was never any evidence presented to show otherwise. Officer Moore testified that they decided to detain the defendant on a "hunch" that he could possibly be the one who had discharged the firearm. (Tr. 19) There was no express or articulated basis for this hunch other than the fact of the defendant's proximity in the large neighborhood area of where the officers had guessed the shots might have been fired.

The defendant was clearly detained for Fourth Amendment purposes. When police officers exit their cruiser with drawn guns and tell a person to stop, most reasonable people will feel that they are not free to walk away from such an encounter. Thus the issue is simply framed. Did the state prove that the detention of the defendant was constitutionally justified?

Obviously, there was no probable cause to believe that the defendant had fired any shots. The defendant was not even charged with the offense of discharging a firearm within the city limits, a violation of C.C.C. 2323.30, a third-degree misdemeanor, even after the gun was discovered. The state is not trying to justify the stop on the grounds of probable cause. The state is claiming that it was a proper detention under the authority the officers have to conduct a more

limited and less intrusive investigative detention, typically called a Terry-stop, named after the United States Supreme Court case, *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868 (1968). The state cannot justify the detention under *Terry* for two simple reasons. The most obvious reason is that "the detaining officers must have a particularized and objective basis for suspecting the particular person stopped of criminal activity." *United States v. Cortez*, 449 U.S. 411, 417-418, 101 S.Ct. 690, 66 L.Ed.2d 621, (1981).

The second reason is that the intrusive nature of the stop was not reasonable given the lack of any particularized suspicion that the defendant had committed any offense. The overarching principle in any warrantless seizure or search under the Fourth Amendment is that it must be reasonable under the circumstances. Under the case law, intrusions upon liberty interests allowable for investigative detentions must be reasonable. Greater suspicion allows for a greater intrusion. Likewise, lesser suspicion will not support great intrusions upon a person's liberty. When officers stop a suspect with their guns drawn, this is a greater intrusion than most encounters and must be supported by stronger suspicion. Negligible suspension of a low-level misdemeanor offense will almost never justify such an intrusion upon an individual's liberty interests. Thus under the totality of the circumstances test, the detention can be more intrusive when the crime is more serious or the suspicion is stronger. But in this case, in order to justify stopping someone with drawn weapons, more is needed than just the fact that the person was in the broad, general area where a suspected low-level misdemeanor was committed. Otherwise, the officers could have stopped and searched the defendant and then continued on searching anyone they found in a square-mile area until they found the smoking gun or ran out of suspects to search.

The officer testified that he had not had experience with people discharging firearms on the fields around the schools but he stated that the discharging of firearms was common on an open

field south of there. Unfortunately, in some parts of the city, the discharging of firearms is not that uncommon. Fortunately, however, most such discharges are not acts of violence against people but are often just a way that people will test or try out their guns. Poorer people are less likely to have access to shooting ranges or the ability or desire to drive long distances to find a suitable rural location for shooting. They just want to know that the weapons they keep for self-defense are in working order. Thus, as the officer said, such discharging of weapons is not that uncommon in certain places. The officers in this case had absolutely no information that anyone had been shot or shot at. The only information they had would support only a suspicion that a third-degree misdemeanor offense of discharging a firearm had occurred.

There Was No Particularized Suspicion to Warrant a Detention of the Defendant.

When a crime has been committed, the ability of the police to respond to the area and lawfully detain someone in connection therewith depends upon several factors. First and foremost is the description given of the suspect. In this case, there was no description of any suspect. Other considerations are based upon the size of the area and the number of persons therein. In this case the size of the area was very large and, being a residential area, contained a large number of people. The known or probable direction of the offender's flight can be helpful but this was not known either. Under the facts presented, the suspect could have been anywhere within a square mile of a heavily populated residential neighborhood, assuming he had not left in a vehicle. Suspicious activity of the person stopped can be a useful factor but the defendant was not engaged in any suspicious behavior in this case.

Police officers have to have a particularized suspicion that the person detained during a Terry-stop is or was involved in criminal activity. Police officers, responding to a crime, cannot stop and detain anyone in the general area of the offense without some articulable suspicion that

the person committed the crime. Most of the cases dealing with this particular issue involve officers responding to a crime and stopping someone based upon a general or very specific description and the issues are whether or not the officers were justified in stopping the individual based upon such a general description or upon a specific description that did not fit the individual. There is not much to discuss on this matter in this case because the officers had no description whatsoever of any suspect. They just stopped the defendant in on nothing more than an unarticulated hunch.

In *United States v. Hudson,* 405 F.3d 425 (6th Cir. 2005), the federal court that has *habeas* jurisdiction over this case held that the police did not have a reasonable suspicion to justify a Terry stop. Hudson became a suspect in an armed robbery after he was identified by a witness from a photo array. The police, acting on an anonymous tip that he would be riding with his girlfriend to her place of employment, waited at that place and approached the girlfriend's car with their firearms drawn and ordered the occupants, the girlfriend and two males, to get out of the car. They frisked each occupant, handcuffed them, and then were able to verify their identities. The court held that the officers did not have reasonable suspicion to approach the vehicle with their weapons drawn and order the occupants to get out based only upon the anonymous tip. Since the unlawful detention preceded the identification, the detention was unlawful and the drugs found on Hudson had to be suppressed.

The court noted that the issue of whether there was reasonable suspicion to briefly detain a suspect was a question of law that was to be reviewed de novo, citing to *Ornelas v. United States*, 517 U.S. 690, 134 L. Ed. 2d 911, 116 S. Ct. 1657 (1996); *United States v. Arvizu*, 534 U.S. 266, 275, 151 L. Ed. 2d 740, 122 S. Ct. 744 (2002). The court then noted that:

> At all events, a temporary stop of the sort authorized under *Terry, Hensley* and their progeny is permissible only when the police officer's suspicion of the person stopped is reasonable and articulable, *see, e.g., Hensley*, 469 U.S. at 227-29, and has "a particularized and objective basis." *United States v.*

> *Cortez*, 449 U.S. 411, 417-18, 66 L. Ed. 2d 621, 101 S. Ct. 690 (1981).[Id. 405 F.3d at 432]

The court further noted:

> In all cases, whether officers initiate a seizure pursuant to a tip or pursuant to other leads, "the detaining officers must have a *particularized* and *objective* basis for suspecting the particular person stopped . . . ." *Cortez*, 449 U.S. at 417-18 (emphases added). The record in this case demonstrates that the officers **had no more than a hunch** that Hudson would be accompanying Potts to work on the day in question and no more than a hunch that one of the passengers in Potts's car was Hudson. Under the Fourth Amendment, it is clear that this is not enough; instead, for an officer's suspicion to merit description as "reasonable" it must be "grounded in specific and articulable facts, that a person [the officer] encounters was involved in or is wanted in connection with a completed felony." *Henlsey*, 469 U.S. at 229. [Id. 405 F.3d at 434]

An unarticulated "hunch," the reason given by the officer for stopping the defendant herein, is clearly not enough to detain a person with drawn weapons. The Sixth Circuit in *Hudson, supra,* cited to two cases concerning the level of articulable suspicion needed to justify a detention. In *United States v. Rias,* 524, F.2d 118, 121 (5th Cir. 1975), the court held that the officers did not have a reasonable suspicion to detain the suspects when he pulled over a car with two black males to investigate them based upon a report that a robbery had been committed by black males in a black or blue car. The suspects were doing nothing suspicious and made no attempt to flee. They were just in the general area of the robbery in a black Chevrolet long after the robbery. In the instant case, we do not even have this level of detail. There was no description whatsoever, no indication of a direction the suspect was fleeing, and no information of whether or not the suspect was on foot, in a vehicle, was with others, or anything. The court also cited to *Goodson v. City of Corpus Christi*, 202 F.3d 730, 737-38 (5th Cir. 2000) (observing that a description of a suspect that only addresses the suspect's size and race would be "too vague, and fit too many people, to

constitute particular, articulable facts on which to base reasonable suspicion"). [Id. 405 F.3d at 437]

The body of case law makes it abundantly clear that a person cannot be detained just because he is in the vicinity of a recently committed crime unless the description of the offender or other relevant circumstances make it reasonable to believe that he is the offender. In this case there was no description whatsoever of the suspect.

In *United States v. Massenburg,* 654 F.3d 480 (4th Cir. 2011) the court held that a report of shots fired was not sufficient to justify stopping a person four blocks away even though it was a high crime area. In *In re D.W.,* 184 Ohio App.3d 627, 2009-Ohio-5406, 921 N.E.2d 1114, (2nd Dist.) the court dealt with a situation where the police officer was dispatched on a report of shots fired at a particular intersection and individual males arguing in the street. The officer was only three or four blocks away at the time and arrived at the intersection in 10 to 15 seconds where he observed four black males walking on the side of the street. As he approached the males, one of them fled and the officer detained the other three, placing them in handcuffs. The officers said the sound of gunshots was common in the vicinity and that it was a high-crime area. The court held that the crack cocaine found during the search of D.W. had to be suppressed because the officer did not have a particularized suspicion to warrant the detention of him. The court held that where there was no description of the alleged shooter, the mere presence in the general vicinity was not enough to warrant a detention. The court noted that the juveniles were observed doing nothing illegal and the officer did not observe any furtive actions. They "were just walking together down the street, certainly not a remarkable occurrence" and the "fact that they were in a high crime area standing alone does not create reasonable suspicion of criminal activity" to warrant stopping them without any description of the suspect. [Id. 184 Ohio App. 3d at 635]

Thus when officers obtain information that a crime was committed, they must also get some description of the suspect before they can go about the neighborhood detaining people. The officers must have sufficient information to warrant a particularized belief that the person detained committed a crime. In this case there was no description whatsoever. When there is no description of any suspect, there will generally be no particularized belief that a person found in the general area of a crime is a suspect subject to the deprivation of his freedom and liberty interests by the state. The limited exceptions to the need for a proper description of the suspect are fairly rare and exist only when a crime has occurred and the size of the area where the crime was committed is so small and the time between the stop and the crime is so short that one could conclude that anyone found within that timeframe and spatial proximity to the crime could reasonably be considered a suspect. The smaller the area and the fewer the people in the area make it more reasonable to conclude that anyone observed in such an area might have committed the crime. The area involved herein and the dense population thereof make it unreasonable to assume that anyone found in such a large residential area is a suspect.

Apart from the crime occurring in a defined area where there could be only one or just several legitimate suspects, the only other factors that would allow a particularized suspicion to detain a suspect without a description would be if the suspect had engaged in suspicious or furtive behavior. However, there is no evidence of any suspicious or furtive behavior in this case so these factors need not be addressed. The state did try to bootstrap its case by the usual assertion that the defendant was in a high-crime area and appeared to be nervous when stopped.

In *State v. Carter*, 69 Ohio St.3d 57, 630 N.E.2d 355 (1994), this Court stated:

> Although the investigative stop took place in a high crime area, that factor alone is not sufficient to justify an investigative stop. *Brown v. Texas* (1979), 443 U.S. 47, 52, 99 S.Ct. 2637,2641, 61 L.Ed.2d 357, 362-363 (being "in a neighborhood frequented by drug

> users, standing alone, is not a basis for concluding that appellant himself was engaged in criminal conduct"). To hold otherwise would result in the wholesale loss of the personal liberty of those with the misfortune of living in high crime areas. [*Id.* 69 Ohio St. 3d at 65]

The state also tried to use the fact that the defendant appeared nervous after he was stopped by the officers with their guns drawn. But even the officer, on cross-examination, admitted that he did not blame the defendant for being nervous after being confronted with two officers with drawn guns. Thus there were no others reasons to stop the defendant in this case because he was walking unsuspiciously in a routine manner through a residential neighborhood at a time when it is not unusual to see people out and about. There were no furtive actions or suspicious movements suggesting that he had just committed a crime. The only reason for stopping him was his presence in a neighborhood where gunshots had been heard. The question then becomes whether or not the size of the area is so small and the number of persons in the area is so limited that it was reasonable to conclude that the defendant was the culprit. The case law supports the defendant's position in this case.

In *State v. Parrish,* 10th Dist. No. 01AP-832, 2002-Ohio-3275, this court held that the trial court erroneously overruled the motion to suppress when a stop was based upon a report of shots fired in the area of East Fifth and Brentnell Avenues. Officer Myers arrived at the location within one minute of receiving the dispatch. At that time, he noticed a vehicle pulling out of a parking space in front of 2008 East Fifth Avenue. There was no other traffic in the area. Although he did not observe any violation of any traffic laws, Officer Myers "initiated a traffic stop," blocking Parrish's vehicle with his cruiser to prevent him from driving away. When other officers arrived, Parrish was ordered from the vehicle and patted down. Nothing was found on his person but a handgun was found in the vehicle.

This court framed the issue as follows:

> {¶ 18} In overruling defendant's motion to suppress, the trial court determined that Officer Myers had reasonable suspicion to stop defendant's vehicle. Specifically, the trial court cited the "shots fired" radio dispatch; the time (3:44 a.m.); Officer Myers' familiarity with the area, including the fact that he had been on numerous runs involving shots fired in the vicinity of the apartment building; and the fact that defendant's vehicle was the only one in the area at the time Officer Myers arrived on the scene. On appeal, the question is whether the trial court's judgment in this regard was correct as a matter of law.
>
> {¶ 19} Upon review of the totality of the circumstances in the instant matter, we disagree with the trial court's conclusion that Officer Myers was justified in making the investigative stop of defendant

This court further noted that the officer only had details of shots being fired in the area of East Fifth and Brentnell Avenues and that the "state did not establish that the dispatch included any specific details, such as * * * whether the shots had been fired from a vehicle and, if so, whether defendant's vehicle had been observed in the area, whether defendant had been specifically identified as a possible perpetrator of the crime, or whether the shots had been fired from the apartment building where defendant was parked when Officer Myers stopped him." Id. at ¶ 20. This court then held:

> {¶ 22} Thus, the totality of the circumstances in the instant case, including the very limited details provided in the radio dispatch and defendant's **mere presence in the general vicinity where the shots allegedly had been fired, do not provide a reasonable, articulable suspicion that defendant had engaged in criminal activity to justify an investigative stop**. [Bold emphasis added]

In the instant case, the officers heard gunshots they thought came from west of their location, they drove about four-tenths of a mile before they saw and detained the defendant. It is difficult to precisely gauge the physical location of gunshots in an urban setting if the shots are not fairly close. Any attempt to guess the distance is based upon the loudness of the sound. However, the decibel level of a gunshot at a particular location is not just a function of distance, it is also a

function of the powder charge of the discharged projectile. The sound of the discharge of a .357 or .44 magnum projectile can dwarf the sound of the little plink of a .22 handgun with a light powder load. Thus it is hard to guess the distance of shots if the powder charge of the projectile is not known. Moreover, buildings, structures, trees, and other objects can absorb, reflect, and distort sound, making it more difficult to determine the origin of the sound. Thus the area in question in this case is fairly substantial and is a far more expansive area than the one in *Parrish.*

The ability of a citizen to walk freely down the street without being unlawfully detained by the police is a fundamental right. The police should not be able to accost and detain a citizen at gunpoint without some articulable suspicion of wrongdoing. The Constitution "is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances." *Ex parte Milligan*, 71 U.S. (4 Wall.) 2 (1886). It covers the defendant no matter the nature of the neighborhood he was walking in. The defendant was unlawfully detained at gunpoint and the evidence was properly suppressed.

CONCLUSION

There is no constitutional question and no great or general interest in this case since the legal standards are well established and were properly applied by the appellate court. This Court should decline to accept jurisdiction in this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing memorandum contra was sent by e-mail to Sheryl L. Prichard on, Assistant Franklin County Prosecutor, 373 South High Street, 13th Floor, Columbus, Ohio 43215, on this Monday, November 27, 2017.

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