

**IN THE SUPREME COURT OF OHIO**

**CITY OF PARMA HEIGHTS /  
STATE OF OHIO**

**Appellee,**

vs.

**CHRISTOPHER F. BROOKS**

**Appellant**

**Supreme Court Case No.  
18-\_\_\_\_\_**

**On Appeal from the Cuyahoga  
County Court of Appeals, Eighth  
Appellate District**

**Court of Appeals Case No.:  
CA-18-107163**

**MEMORANDUM IN SUPPORT OF JURISDICTION OF APPELLANT**  
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I. EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC OR  
GREAT GENERAL INTEREST

This case presents issues of public or great general interest. Thousands, if not millions, of Ohioans travel the roads of the state each day. A great number of those individuals approach, stop at, and proceed through stop signs at intersections in the course of their everyday lives. It is only fair and right that the laws relating to such ordinary and routine activity be clear and understandable. However, all too often, ambiguous statutes, and confusing and conflicting court decisions interpreting their meaning, create a trap for otherwise law-abiding citizens. Such is the case in this instance.

Until June 6, 2019, the Eighth Appellate District of Ohio held that the test for compliance under R.C. 4511.43(A) was substantial compliance rather than strict or literal compliance. See *Grossman et. al. v. Andros*, (1995) 135 Ohio App.3d 712 (8<sup>th</sup> App Dist. 1999). However, with the decision in the instant case, the Eighth Appellate District Court adopted a strict, or literal, interpretation of R.C. 4511.43(A). In so doing, the appeals court created a conflict not only within the Eighth Appellate District, but also with the Fourth Appellate District on cases with similar fact patterns.

Citizens have a right to know what the traffic laws governing the operation of motor vehicles under Chapter 4511 of the Revised Code mean. And courts have an obligation to accurately and properly interpret the meaning of the statutes governing those traffic laws. The facts and circumstances of the instant case presents this Court with the opportunity to (i) clarify the correct interpretation of R.C. 4511.43(A) and the extent to which compliance with it should be strictly or substantially construed, (ii) resolve the conflict now existing within the Eighth

Appellate District with respect to the correct standard of interpretation under R.C. 4511.43(A), and (iii) resolve the conflict between different appellate court districts in Ohio with respect to the cases involving R.C. 4511.43(A). This Court can do so by accepting the following proposition of law:

Proposition of Law No. 1: R.C. 4511.43(A) was written so as to require substantial rather than strict or literal compliance; its purpose is to allow a driver to stop and observe the intersection in order to yield to any vehicle having the right of way prior to entering the intersection.

## II. EXPLANATION OF WHY THIS CASE INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION

This case also presents a substantial constitutional issue. The facts of this case demonstrate that the citation issued to Appellant on November 30, 2017 was predicated on the illegal trespass of Patrolman Molnar onto the private parking lot of the Citizens Bank at the corner of Pearl Road and Parma Park Boulevard in Parma Heights, Ohio. Patrolman Molnar, by his own account, chose that vantage point so as to observe the intersection in question. There was no exigent circumstance or emergency existing at the time in question. Nor was this an isolated instance. Indeed, Patrolman Molnar testified that he has parked in this same location on other occasions for the same purpose.

Further still, and based upon his own testimony, it is clear that Patrolman Molnar's actions ran contrary to R.C. 4511.681 and that he was not in compliance with any exception contained in R.C. 4511.041. Violation of R.C. 4511.681 constitutes a minor misdemeanor.

There is much controversy throughout the state of Ohio currently on the role and use of traffic cameras. Indeed, the Ohio Legislature and this Court have taken up and reviewed the issue and use of traffic cameras. But equal scrutiny should also be given to other low-tech forms of traffic control used by police forces and municipalities throughout Ohio. This case presents such an opportunity to review such abuses and the extent to which same present a risk to the rights protected and guaranteed under the Ohio Constitution.

Simply put, police misconduct should not be accepted much less rewarded. Allowing police officers to intentionally and illegally park on private property for the sole purpose of watching for potential traffic violations erodes the basic constitutional constraints against unreasonable searches and seizures protected by Article I, Section 14 of the Ohio Constitution. This Court can prevent or end any such erosion by accepting the following proposition of law:

Proposition of Law No. 2: A police officer's intentional trespass onto private property, in violation of R.C. 4511.681 and without any exception under R.C. 4511.041, done for the specific purpose of observing an intersection, makes a subsequent traffic stop an unreasonable search and seizure under Article I, Section 14 of the Ohio Constitution and subject to the exclusionary rule for suppression of the fruits of such statutory violation.

### III. STATEMENT OF THE CASE AND FACTS

This case involves and rests upon the interpretation of ORC 4511.43 and the extent to which same is to be construed strictly or merely substantially. This case also presents significant issues of constitutionality and the extent to which Ohio law can be contorted to allow the police to violate the law in the course of attempting to hold the general public accountable for alleged traffic violations.

This matter began on Thursday, November 30, 2017, when Appellant was issued a traffic citation for the alleged violation of R.C. 4511.43. On that last day of November 2017, Patrolman

Michael Molnar of the Parma Heights Police Department was parked on private property, in the parking lot of the Citizens Bank at the corner of Parma Park Blvd and Pearl Road in Parma Heights, Ohio, specifically to watch the stop sign at Parma Park and Pearl Road. The record in this matter clearly establishes that the Citizens Bank parking lot was conspicuously posted with signs prohibiting parking for non-banking customers. The record further established that Patrolman Molnar was not transacting banking business at the time in question. Patrolman Molnar's actions in this regard were in violation of R.C. 4511.681 and no exception under R.C. 4511.041 existed. In so doing, Patrolman Molnar committed a minor misdemeanor. The citation issued to Appellant on November 30, 2017 was the tainted fruit of Patrolman Molnar's illegal act.

The citation summoned Appellant to appear in Parma Heights Mayor's Court on December 14, 2017. Appellant plead not guilty in Parma Heights Mayor's Court and removed this matter to Parma Municipal Court. Arraignment was set for January 8, 2018 in Parma Municipal Court at which time Appellant plead not guilty. This matter was set for trial on February 26, 2018 in Parma Municipal Court. In advance of trial, Appellant filed discovery requests on January 8, 2018. Having received no relevant or responsive discovery material after numerous requests, and unable to adequately prepare his defense for trial on February 26, 2018, Appellant filed his Motion to Compel Discovery on February 16, 2018.

The trial court set a hearing on Appellant's Motion to Compel Discovery for February 26, 2018 (the original date set for trial). At said hearing, the trial court denied all of Appellant's requests, except for Appellant's request for the notes written by the Patrolman Molnar and Appellant's request for postponement of trial. Despite previously denying that there were notes written by Patrolman Molnar, Prosecutor Thomas Kelly admitted at the hearing held on February

26, 2018 that such notes did exist and at the conclusion of said hearing, produced the requested notes.

Trial for the subject matter was ultimately held on April 2, 2018. At trial, Appellant testified that contrary to the allegations against him, he did, in fact, stop in compliance with R.C. 4511.43. The State called only one witness at trial, Patrolman Michael Molnar, who also testified that Appellant did, in fact, stop in the vicinity of the corner of Pearl Road and Parma Park Boulevard. Indeed, the trial court judge himself concluded that Appellant did, in fact, stop at the corner of Pearl Road and Parma Park Boulevard.

The trial court denied Appellant the ability to call witnesses over the objection of Appellant. The trial court denied Appellant the ability to cross-examine Patrolman Molnar about his trespassing onto private property in violation of R.C. 4511.681 and 4511.041, and about his discussions with the Prosecutor about the existence of the notes that were withheld from Appellant until the day of the originally scheduled trial. The trial court denied Appellant's motion for acquittal at the conclusion of the State's case-in-chief.

At the conclusion of the trial, the trial court found Appellant guilty on the basis that his third stop at the corner of Parma Park and Pearl Road was into the cross walk. Thereafter, on May 1, 2018, Appellant filed his Notice of Appeal in the Cuyahoga County Court of Appeal, Eighth Appellant District.

Appellant raised several issues on appeal. First and foremost, Appellant argued that the trial court incorrectly interpreted R.C. 4511.43 in finding guilt. In addition, Appellant argued that the state failed to meet its burden of proof beyond a reasonable doubt. Further, Appellant argued that the trial court prohibited Appellant from pursuing the cross examination of Patrolman Molnar concerning his trespass onto private property, which action constituted a

minor misdemeanor, and which tainted the stop of Appellant thereby making said stop unreasonable and in violation of the Ohio Constitution.

The Appellate Court denied each argument on appeal. Appellant files this appeal on the basis and contention that the Appellate Court erred when it failed to address and rule on the argument that the trial court misinterpreted ORC 4511.43. Further, Appellant contends that the Appellate Court erred when it overruled Appellant's argument that Patrolman Molnar's trespass in violation of R.C. 4511.681 and 4511.041, itself a minor misdemeanor, tainted the ensuing traffic stop thereby making the stop unreasonable and subject to the exclusionary rule.

#### IV. ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

**Proposition of Law No. 1: R.C. 4511.43(A) was written so as to require substantial rather than strict or literal compliance; its purpose is to allow a driver to stop and observe the intersection in order to yield to any vehicle having the right of way prior to entering the intersection.**

The above proposition of law is taken almost verbatim from an Eighth Appellate District Court case, *Grossman et. al. v. Andros*, (1995) 135 Ohio App.3d 712 (8th App Dist. 1999). Yet despite the clear and bright line established by *Grossman*, the Appellate Court in this case ignored the substantial compliance standard.

Until June 6, 2019, the Eighth Appellate District of Ohio held that the test for compliance under R.C. 4511.43(A) was substantial compliance rather than strict or literal compliance. In *Grossman*, the court rationalized as follows:

If the courts were to require strict compliance with R.C. 4511.43(A), it would lead to the absurd result of finding every motorist who came to a stop however slightly before or after a stop line negligent per se, regardless of whether his failure to stop



exactly at the stop line impeded his ability to safely enter the intersection.  
*Grossman*, at 716

In settling on the substantial rather than strict or literal compliance standard the Grossman court held that it was simply a matter of “common sense”:

The statute does not state the exact distance from the stop line at which a vehicle must come to a stop to be considered stopped at the stop line. It is a matter of common sense that automobiles that come to a stop sign do not always stop exactly at the stop line. Inevitably some cars are going to come to a stop slightly before or past the stop line. *Id* at 716.

Yet despite the *Grossman* interpretation of R.C. 4511.43(A), the Appellate Court in this case employed a strict, or literal, compliance standard. By affirming the trial court ruling that Appellant’s third stop was evidence of guilt, the Appellate Court ignored its own precedent and thereby created a conflict on this issue within the jurisprudence of the Eight Appellate District.

The conflict caused by the Appellate Court decision in this case is not limited to that within the Eighth Appellate District, however. When the Appellate Court declined to address Appellant’s First Assignment of Error (that the trial erred by misinterpreting and/or misapplying R.C. 4511.43) independently and instead conflated it with Appellant’s Second and Fifth Assignments of Error (involving the sufficiency and manifest weight of the evidence respectively), it failed to apply the proper de novo standard of review for cases involving statutory interpretation. See Appellate Court Decision at ¶8. For generally, when the issue on appeal is one of statutory interpretation, “an appellate court will conduct a de novo review of the trial court’s judgment interpreting a statute and will afford no deference whatsoever to a trial court’s interpretation.” See *Oliver v. Johnson*, 4th Dist. Jackson No. 06CA16, 2007-Ohio-5880 ¶ 5; see also *State v. Link*, 2018-Ohio-1730, ¶7, 101 N.E. 3d 513 (4th App Dist. 2018). In the instant case, the appellate court completely ignored this aspect of Appellant’s First Assignment of Error. It never addressed the trial court’s interpretation of R.C. 4511.43. In so doing, its

decision conflicts procedurally with cases from the Fourth Appellate District. But more importantly, the decision by the Eighth Appellate District in this case conflicts substantively with the Fourth Appellate District's interpretation of R.C. 4511.43(A).

In *State v. Abele*, 2005-Ohio-2378, 2005 WL 1140429, (4<sup>th</sup> App. Dist, 2005), the Fourth District Court of Appeals interpreted R.C. 4511.43(A) in a case with very similar facts as the instant case. In *Abele* as in the instant case, the concept of "piggybacking", as defined in the Appellate Court Decision at ¶5, was addressed. In *Abele*, the court held as follows:

...appellant testified that he came to a complete stop at the stop line immediately behind another vehicle that had crossed the stop line. Again, the state presented no evidence to rebut appellant's testimony. In fact, Officer Anderson's testimony essentially corroborates appellant's version of events. Appellant was under no obligation to stop twice. *Abele*, at ¶12.

As noted in the Appellate Court Decision at ¶6, Patrolman Molnar did not rebut Appellant's testimony that he stopped twice behind other vehicles. Yet, the Appellate Court saw reason to affirm guilt on this aspect. As such, the Appellate Court Decision conflicts with that of the *Abele* court on a case with a very similar fact pattern.

It should be noted that the trial court's decision in this case was not premised on the "piggyback" argument. Instead, the trial court based its decision on Appellant's third stop being slightly into the crosswalk. As such, the Appellate Court's reliance on the "piggyback" argument in resolving Appellant's First Assignment of Error is difficult to understand. But accepting the Appellate Court's decision as is, it conflicts with the *Abele* court in its interpretation of R.C. 4511.43(A) despite the similarity of the facts of the respective cases.

The decision in *Abele*, also conflicts with the Appellate Court Decision on the issue of sufficiency of evidence. In the instant case, the state never offered evidence of the existence or location of a stop line. In fact, Patrolman Molnar admitted he could not see the stop line from

his vantage point in the parking lot of Citizens Bank. See Appellate Court Decision at ¶3. But as the court in *Abele*, held, “without such evidence, the state simply fail[s] to prove a violation of R.C. 4511.43”. *Abele*, at ¶11. This issue was also raised in Appellant’s appeal; but the Eighth District Court declined to address the issue directly.

It is clear that the Fourth District Court of Appeals does not adopt a strict interpretation of R.C. 4511.43(A). Indeed, until the Appellate Court Decision in the instant case, neither did the Eighth District. All of these issues were raised by Appellant on appeal. Yet, the Eighth District Court of Appeals declined to address them. The appeals court did not perform a de novo review of the trial court’s interpretation of R.C. 4511.43(A). Instead, and surprisingly, the appeals court addressed and decided the issue of the interpretation of the meaning of R.C. 4511.43(A) under a sufficiency of the evidence and a manifest weight of the evidence analysis. In so doing, it has highlighted the conflicting decisions both within the Eighth District and between districts. This contributes to the confusion and ambiguity surrounding a very real and everyday issue that thousands, if not millions, of Ohio face on a routine basis. Such confusion and potential legal jeopardy should not be allowed to continue. By accepting jurisdiction in this case, on this proposition of law, this Court has the opportunity to resolve this confusion and level the playing field for ordinary everyday citizens who do nothing wrong but stop at a stop sign, albeit not where any particular police officer “thinks” they should.

Under the *Grossman* interpretation of R.C. 4511.43(A), Appellant clearly did not violate R.C. 4511.43(A). Yet, because the Appellate Court ignored its own precedent, and that of the Fourth Appellate District, the trial court’s decision was upheld. The citizens of Ohio should not be subject to such an arbitrary determination for such a common activity. The law must be certain and clear so that individuals can guide their actions accordingly.

**Proposition of Law No. 2: A police officer's intentional trespass onto private property, in violation of R.C. 4511.681 and without any exception under R.C. 4511.041, done for the specific purpose of observing an intersection, makes a subsequent traffic stop an unreasonable search and seizure under Article I, Section 14 of the Ohio Constitution and subject to the exclusionary rule for suppression of the fruits of such statutory violation.**

This case also presents significant issues of constitutionality and the extent to which the police are permitted to violate the law in the course of enforcing traffic laws. In *State v. Brown*, 143 Ohio St. 444, 2015-Ohio-2438, this Court established the rule that a traffic stop for a minor misdemeanor made outside of a police officer's statutory authority violates the guarantee against unreasonable searches and seizures established by Article I, Section 14 of the Ohio Constitution. *Brown* at ¶26. While the facts of *Brown* do differ from the facts of the instance case, the underlying concept remains the same; namely that police misconduct should not be accepted nor rewarded. Rather, conduct in contravention to Ohio law by the police should trigger the exclusionary rule to suppress any fruits of the illegal conduct.

In the instance case, it is undisputed that Patrolman Molnar was parked on private property, in contravention to R.C. 4511.681, at the time in which he claims to have observed Appellant violate R.C. 4511.43(A). Patrolman Molnar was not attending to an emergency at that time and was not otherwise within the bounds of any exception under R.C. 4511.041. Further still, it is clear that Patrolman Molnar was in the parking lot of Citizens Bank intentionally and not by happenstance or exigent circumstances. To make matters worse, Patrolman Molnar testified that he had patrolled in this fashion on other occasions.

Patrolman Molnar's conduct of intentionally trespassing onto private property constitutes a minor misdemeanor. Therefore, it is not hyperbole to argue that his conduct was illegal. Stated bluntly, Patrolman Molnar intentionally decided to break the law in order to gain a vantage point to surreptitiously watch for traffic violations. After taking such intentional and deliberate actions, it cannot be argued that Patrolman Molnar was within his "statutory authority"

to make a traffic stop. Such conduct violates Article I, Section 14 of the Ohio Constitution as an unreasonable search and seizure under this Court's reasoning in *Brown*. Appellant therefore requests that this Court accept jurisdiction on this proposition of law so that continued conduct of this nature will not be permitted under Ohio law.

## VI. CONCLUSION

For the reasons set forth herein, this case presents matters of public and great general interest. In addition, it also involves a substantial constitutional question involving the Ohio Constitution. Appellant respectfully requests that this Court accept jurisdiction in this case so that the important issues presented may be reviewed upon the merits.

Respectfully Submitted,

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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Memorandum in Support of Jurisdiction was sent by ordinary U.S. mail on July 22, 2019 to counsel for Appellee at the following addresses:

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