

IN THE
SUPREME COURT OF OHIO

STATE OF OHIO	:	NO. 2020-0290
Plaintiff-Appellant	:	On Appeal from the Hamilton County
vs.	:	Court of Appeals, First Appellate
	:	District
SHERRY TIDWELL	:	Court of Appeals
Defendant-Appellee	:	Case Numbers C-1800511,
	:	C-1800512

STATE OF OHIO'S RESPONSE TO APPELLEE'S MOTION TO DISMISS

Joseph T. Deters (0012084P)
Prosecuting Attorney

Philip R. Cummings (0041497P)
Assistant Prosecuting Attorney

230 East Ninth Street, Suite 4000
Cincinnati, Ohio 45202
(513) 946-3012
Fax No. (513) 946-3021
phil.cummings@hcpros.org

COUNSEL FOR PLAINTIFF-APPELLANT, STATE OF OHIO

Tad Brittingham (0084045)
Attorney at Law
8 West Ninth Street
Cincinnati, Ohio 45202
(513) 929-9333
Fax No. (513) 929-9337
tad@notguiltyadams.com

COUNSEL FOR DEFENDANT-APPELLEE, SHERRY TIDWELL

Appellee Tidwell seeks dismissal of this appeal because resolution of the issue accepted by this Court for review would not determine her motion to suppress. This Court accepted this appeal on this Proposition of Law:

Simple face-to-face contact between an unnamed citizen and a police officer may be enough to remove the citizen from the category of “anonymous” and consider him a “citizen informant,” whose tip merits a high degree of credibility and value, rendering the tip sufficient to withstand a Fourth Amendment challenge without independent police corroboration.

This issue goes to the constitutionality of the stop of Tidwell. Tidwell notes that she also challenged the jurisdiction of the detaining officer and compliance with regulations governing field sobriety tests and breath tests. Because the trial court granted her motion to suppress “in its entirety”, she claims the trial court’s decision granting her motion would stand regardless of this Court’s decision on the single issue presented in this appeal. As such, she urges this Court to dismiss the appeal as improvidently allowed.

The State maintains Tidwell’s Motion to Dismiss should be denied.

Tidwell premises her claim on the trial court’s entry granting her motion to suppress “in its entirety”. She assumes this meant the trial court agreed with all four of her challenges to admission of the evidence of her impaired driving. The State submits it could be understood to have meant all the evidence of her impairment was suppressed in its entirety. In any case, Tidwell should have raised this issue in a Memorandum in Response to jurisdiction.

The constitutionality of the stop is the threshold issue to be determined in addressing Tidwell’s motion to suppress. As Tidwell concedes, the constitutionality of the stop was the focus of the trial court’s decision announced in court. Indeed, the Court of Appeals crystalized the issue as follows:

“... Tidwell filed a motion to suppress evidence gathered from the stop. Following a hearing, the trial court granted Tidwell’s motion to suppress. The trial court found that there was no erratic driving, and that the anonymous tip provided

by the Speedway customer was unreliable and could not have justified Sergeant Illanz's initial contact with Tidwell, much less an investigatory stop of her vehicle. ..."¹

The constitutionality of the stop is the key issue in this case. The trial court essentially rejected Tidwell's claim regarding the detaining officer's jurisdiction in its oral announcement of its decision. And as Tidwell noted, evidence concerning compliance with breath-test regulations was not even presented at the hearing.

Should this Court reverse on the issue accepted for review, the cause is properly remanded for further proceedings to explore all aspects of Tidwell's motion.

This Court determines its own jurisdiction. Should this Court decide a case presents a significant public safety issue or a substantial constitutional question, it may accept an appeal to address said issue – regardless of how efficacious its decision may be in resolving all aspects of the case.

CONCLUSION

The appeal presents a significant public safety issue. Tidwell's Motion to Dismiss should be denied.

Respectfully,

Joseph T. Deters, 0012084P
Prosecuting Attorney

/s/Philip R. Cummings
Philip R. Cumming (0041497P)
Assistant Prosecuting Attorney
230 East Ninth Street, Suite 4000
Cincinnati, Ohio 45202
(513) 946-3012

Attorneys for Plaintiff-Appellant, State of
Ohio

¹ *State v. Tidwell*, 2019-Ohio-4493, 2019 WL 5681503 (page 2)

PROOF OF SERVICE

I hereby certify that I have sent a copy of the foregoing Response to Appellee's Motion to Dismiss, by United States mail, addressed to Tad Brittingham, 8 West Ninth Street, Cincinnati, Ohio 45202, counsel of record, this 1st day of October, 2020.

/s/Philip R. Cummings

Philip R. Cumming (0041497P)

Assistant Prosecuting Attorney