

IN THE COURT OF APPEALS OF MARION OHIO

JEFFREY E. BROWN :
 :
 Appellant/defendant : Case No. TRD 0910285
 : Appeal Case No. 9-10-012
 : Regular Calendar
 -vs- :
 STATE OF OHIO (Osp) :
 :
 Appellee/Plaintiff :

APPELLANTS PRINCIPAL BRIEF

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xxxxxxxxxxxxxxxxxxxxxx
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ISSUES PRESENTED

- (1) The trial court erred and abused its discretion by denying the defendants motion to dismiss in violation of his rights of Due Process, privacy and bodily self-autonomy.
- (2) The trial court erred and abused its discretion by denying defendants motion to dismiss as opposing counsel failed to establish a proper legal framework from which such a decision could be made. That the decision reached by the trial court was unsupported and contrary to the weight of the evidence.
- (3) The trial court erred and abused its discretion as it failed to conduct a meaningful review.

JURISDICTION

This is an appeal from the Marion County Municipal Court.

STATEMENT OF CASE AND FACTS

On 11/26/2009 Appellant Jeffrey E. Brown was traveling north on U.S. 23 in the vicinity of Marion Ohio, on his way to Findlay Ohio for Thanksgiving dinner. Defendant was stopped by an Ohio State patrolman for having a cracked windshield, and was cited under O.R.C. §4513.263 for failure to wear a safety belt. On 12/07/2009 Defendant filed a pre-trial motion to dismiss. On 12/08/2009 Defendant appeared before the City of Marion Municipal Court for his arraignment and pled not guilty to the offense and a hearing was scheduled for 12/17/2009. Prior to that hearing defendant filed an amended motion to dismiss. Defendant attended this hearing but the Marion city prosecutor's office had not had time to review defendants motion and the parties agreed to reschedule the hearing which took place 01/21/2010 where Defendant offered a verbal motion for default judgment which was denied. The court then heard oral argument on the motion to dismiss, which was denied, and the Defendant was convicted under O.R.C. §4513.263. This appeal follows.

LAW AND ARGUMENT

The arguments made by defendant at the trial court are as follows: the seat belt laws in the State of Ohio are unconstitutional because;

1. Seat belt laws deprive the citizen of their right to make medical decisions for themselves
2. There is no rational basis for them
3. They are wholly arbitrary and selectively enforced
4. They are overbroad

The trial court erred and abused its discretion by denying the defendants motion to dismiss in violation of his rights of Due Process, privacy and self-determination.

The exercise of state and local police powers is subject to the restrictions of the Fifth and Fourteenth Amendments of the United States Constitution and the comparable provisions of the Ohio Constitution. *State v. Thompson*, 95 Ohio St. 3d 264, 266, 2002-Ohio-2124, 767 N.E. 2d 251 (2002); *Geib v. Dept of Liquor Control*, 153 Ohio St. 77, 90 N.E. 2d 691 (1950). The courts are vigilant in preventing the erosion of citizens' rights by legislative exercise of police power. *City of Cincinnati v. Correll*, 141 Ohio St, 535, 49 N.E. 2d 412 (1943); *Mirick v. Gims*, 79 Ohio St. 174, 86 N.E. 880 (1908).

Justice Mathews speaking for the court in *Hurtaldo v. California*, 110 U.S. 516, 528, 532, 536 (1984);

“arbitrary power, enforcing its edicts to the injury of the persons and property of its subjects is not law, whether manifested as the decree of a personal monarch or of an impersonal multitude. And the limitations imposed by our constitutional law upon the actions of governments, both state and national, are essential to the preservation of public and private rights, notwithstanding the representative character of our political institutions. The enforcement of these limitations by judicial process is the device of self-governing communities to protect the rights of individuals and minorities, as well against the power of numbers, as against the violence of public agents transcending the limits of lawful authority, even when acting in the name and wielding the force of government.”

Statutes must be reasonably related to the pursuit of legitimate state goals. What is known as a “rational basis” test has evolved from a long line of U.S. Supreme Court decisions; *Bankers Life and Cas. v. Crenshaw*, 486 U.S. 453, 465, 111 S. Ct. 1919, 114 L. Ed. 2d 524 (1991).

Ostensibly, Ohio's seat belt laws were designed to reduce death and injury on our streets and highways however; death and injury are only remote possibilities. The defendant asserts that the citizen has the right to make choices impacting his own health, that this is a fundamental right, that the state of Ohio has substituted Ohio citizens' natural and constitutional rights of choice and free will, with criminal penalties. There are no overriding state interests in depriving the people of the right of privacy and self-determination.

Defendant asserts that to weigh this question requires a sense of proportion and a review of the statistical data from the State of Ohio. At the trial court defendant referred the court to traffic data in a publication from the Ohio Department of Public Safety called *Ohio Traffic Crash Facts*.

The fear of driving and the hysteria used to promote laws like our seat belt laws revolves mainly around fatality statistics. Pursuant to fostering a sense of proportion, the defendant would call the courts attention to the general statistics included in *OTCF 2008 table 1.02*. This data was made available to the trial court. Ohio has a population of 11.5 million people; 8 million licensed drivers and had a total of 320,876 crashes. There were a total of 526,166 drivers involved in crashes *OTCF table 1.01*. Of those, there were only 1,191 fatalities. According to the Ohio Highway patrol, Ohio has 1.1 fatality per every *one hundred million-vehicle miles traveled* (VMT). Based on these numbers alone there is clearly no threat so significant that requires criminal penalties for every front seat occupant in the State of Ohio. Looking closer, *OTCF 2008 table 3.04*. The statistics for fatalities and restraint use don't match the general statistics as this shows a total of only 832 fatalities. Of those, 324 were using restraints, and 419 were not. This is basically a

60/40 split showing that wearing restraints is no guarantee that you will survive, and the difference between the two is less than 100 people, all of whom had the opportunity to wear seat belts. A much larger problem is the accident statistics. Again from *table 3.04*, out of the 320,876 crashes, there were 102,158 injuries, 87,899 of these happened to people **wearing** restraints, and only 8,540 to people not wearing them. Based on the statistical data, the laws requiring the use of restraints is not rational when you see the injury rate is ten times higher.

When the government uses police power and suspends long-standing rights to privacy and self-autonomy, it is doing so based on data that is a percent of a percent of a percent of a percent, if they are considering any data at all. The numbers from 2008 were not an anomaly as these numbers bear out year after year. All of this data was available to the trial court.

Remember, the defendant is 52 years old, mentally competent and was driving alone. The only person who could be affected by his choices was himself. Defendant admits that although seat belts do not have an impressive safety record, that their original intent was to prevent death and injury and have nothing to do with the operation of the vehicle, therefore they should be considered a medical device.

Citizens have the right to refuse medical treatment; “the patient's right to refuse treatment is absolute until the quality of the competing interests is weighed in a court proceeding. A patient may recover for battery if his refusal is ignored”. *Leach et al., v. Shapiro et al., 13 Ohio App. 3d 393; 469 N.E.2d 1047; 1984 Ohio App. LEXIS 11217; 13 Ohio B. Rep. 477*, “the constitutional right to privacy . . . an expression of the sanctity of individual free choice and self-determination.” *Superintendent of Belchertown v.*

Saikewicz, Mass., 373 Mass. 728, 370 N.E.2d 417, 426 (1977). “Also, if the doctrines of informed consent and right of privacy have as their foundations the right to bodily integrity, see *Union Pac. Ry. v. Botsford*, 141 U.S. 250, 11 S. Ct. 1000, 35 L. Ed. 734 (1891), and control of one's own fate, then those rights are superior to the institutional considerations. (*Id.* 426-427, footnotes omitted). *Satz v. Perlmutter*, 362 So. 2d 160; 1978 Fla. App. LEXIS 16354.

Although the Constitution does not explicitly mention a right of privacy, Supreme Court decisions have recognized that a right of personal privacy exists and that certain areas of privacy are guaranteed under the Constitution. *Eisenstadt v. Baird*, 405 U.S. 438, 92 S. Ct. 1029, 31 L. Ed. 2d 349 (1972); *Stanley v. Georgia*, 394 U.S. 557, 89 S. Ct. 1243, 22 L. Ed. 2d 542 (1969), *Meyer v. Nebraska*, 262 U.S. 390 (1923). The Court has interdicted judicial intrusion into many aspects of personal decision, sometimes basing this restraint upon the conception of a limitation of judicial interest and responsibility, such as with regard to contraception and its relationship to family life and decision. *Griswold v. Connecticut*, 381 U.S. 479, 85 S. Ct. 1678, 14 L. Ed. 2d 510 (1965).

The Court in *Griswold* found the unwritten constitutional right of privacy to exist in the penumbra of specific guarantees of the Bill of Rights "formed by emanations from those guarantees that help give them life and substance." 381 U.S. at 484, 85 S. Ct. at 1681, 14 L. Ed. 2d at 514. Presumably this right is broad enough to encompass a patient's decision to decline medical treatment under certain circumstances, in much the same way as it is broad enough to encompass a woman's decision to terminate pregnancy under certain conditions. *Roe v. Wade*, 410 U.S. 113, 153, 93 S. Ct. 705, 727, 35 L. Ed. 2d 147, 177 (1973). *QUINLAN*, 70 N.J. 10; 355 A.2d 647; 1976 N.J. LEXIS 181; 79 A.L.R.3d 205

The appellant asserts that if he has a right to have a respirator removed when the result will be certain death, then clearly he has the right to have his seat belt removed when death is only a remote possibility.

We glean from these cases the general proposition that the authority of the state to exert control over the individual extends only to activities of the individual which affect others or the public at large as it relates to matters of public health or safety, or to provide for the general welfare. We believe this tenet to be basic to a free society. The state cannot impose its own notions of morality, propriety, or fashion on individuals when the public has no legitimate interest in the affairs of those individuals. *Cf. Liggett Co. v. Baldridge*, 278 U.S. 105, 111-12, 49 S. Ct. 57, 59, 73 L. Ed. 204, 208 (1928).

“Where there is a significant encroachment upon personal liberty, the State may prevail only upon showing a subordinating interest which is compelling”. *Bates v. Little Rock*, 361 U.S. 516, 524, 80 S. Ct. 412, 417, 4 L. Ed. 2d 480, 486 (1960).

It is the burden of the state to demonstrate a compelling state interest.

The law must be shown "necessary, and not merely rationally related, to the accomplishment of a permissible state policy." *McLaughlin v. Florida*, 379 U.S. 184, 196, 85 S. Ct. 283, 290, 13 L. Ed. 2d 222, 231 (1964), quoted in the concurrence of Mr. Justice Goldberg in *Griswold v. Connecticut*, *Supra*.

§4513.263 applies to every driver and front seat passenger. At one time or another this would apply to every person in the State of Ohio, which has a population of 11.5 million people. Regardless of efficacy, seat belts were designed to prevent or reduce death and injury. Ohio has 8 million licensed drivers, in 2008, 93.5% of which weren't in any accident whatsoever so seat belts offered no advantage. As a percentage of the population, less than 0.9% were injured in traffic accidents and less than 0.01% were killed. To then make the other 99% of the citizens subject to this law is clearly overbroad and the appellant should be allowed to play these odds as he sees fit.

§4513.263 is wholly arbitrary and selectively enforced when compared to O.R. C. §4511.53(B). Motorcycle riders in Ohio over the age of eighteen are allowed to ride

without a helmet. Certainly these same issues are relevant to our helmet laws and the general assembly has seen fit to make helmet use optional.

“The right to be let alone - the most comprehensive of rights and the right most valued by civilized men”, Louis Brandeis, *Olmstead v. United States*, 277 U.S. 479 (1928)

The trial court erred and abused its discretion by denying defendants motion to dismiss as opposing counsel failed to establish a proper legal framework from which such a decision could be made. That the decision reached by the trial court was unsupported and contrary to the weight of the evidence.

In response to the defendant’s arguments the city of Marion offered a single theory; that laws are presumed to be constitutional. However, this assertion was unsupported and counsel offered no legal authorities in support of their position. The city of Marion did not respond to defendant’s arguments or statistical data, they offered no alternative research, and their sole proposition was unsupported by any legal authority. Therefore opposing counsel failed to provide a proper legal framework on which the court could base a decision.

In response to the presumption of constitutionality, the defendant offers this response: The defendant is not a lawyer nor does he work in the legal profession, so to the ears of a layman, the term *presumption* sounds a lot like *bias*. In this case the city of Marion was asserting that the court should be biased in favor of the General Assembly.

In the defendants statement before the court he recounted his own personal experience working with the legislative process, where he observed first hand,

when a representative of the house was asking an expert witness, a former prosecutor, about the constitutionality of a certain provision of a the bill at hand, the witness response was “that’s what the courts are for”.

It seemed that in the opinion of this witness before a committee of the House of Representatives, that it is the duty of the courts to decide if the laws are legal. Of course, as the defendant presented to the trial court this issue has already been decided in in 1803 with *Marbury v. Madison* 5 *U.S. (1 Cranch) 137 (1803)*. “*It is emphatically the province and duty of the judicial department to say what the law is.*” This quote is not only from the opinion of that case but they are inscribed on the wall of the Supreme Court building itself.

In this case the appellant is asking this honorable court to reject the city of Marion’s assertion the system is rigged against the citizen and give this issue a full and fair review. If this is done it will be clear that the arguments made by the city of Marion were unsupported and contrary to the weight of the evidence.

The trial court erred and abused its discretion as it failed to conduct a meaningful review.

Section 3.36 (concerning decisions and opinions) of the ABA Standards Relating to Appellate Courts, approved by the House of Delegates in 1977, provides as follows:

"3.36 Decision and Opinions.

“

“(b) Form. The court should give its decision and opinion in a form appropriate to the complexity and importance of the issues presented in the case. A full written opinion reciting the facts, the questions presented, and analysis of pertinent authorities and principles,

should be rendered in cases involving new or unsettled questions of general importance. Cases not involving such questions should be decided by memorandum opinion. Every decision should be supported, at minimum, by a citation of the authority or statement of grounds upon which it is based. When the lower court decision was based on a written opinion that adequately expresses the appellate court's view of the law, the reviewing court should incorporate that opinion or such portions of it as are deemed pertinent, or, if it has been published, affirm on the basis of that opinion."

Although these ABA rules were intended for appellate courts, in the case at bar, the only response from the bench was the oral invocation "motion denied" and the notation on the judgment entry. Given that the city of Marion prosecutor offered no competing evidence, no written response to the motion to dismiss and did not even refute the defendants' case, clearly this was not an adequate review.

Remember, this is a statewide law that affects 11.5 million people, concerning the deprivation of fundamental rights. These laws have been replicated by many other states throughout the country. The appellant has raised significant issues that are supported by data from the State of Ohio and proper legal authorities. Surely the city of Marion owes it to the record to state their position on this issue.

SUMMARY

For these reasons and all of the reasons included herein, the appellant respectfully asks this honorable court to reverse the decision by the city of Marion Municipal court, and dismiss this case against the appellant or remand for further proceedings.

Respectfully.

Jeffrey E. Brown, Pro Se
XXXXXXX
XXXXXXXXXXXX,
XXXXXXXXXXXX

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was delivered by U.S. mail to Marion Court of Appeals, 100 N. Main Street, Marion Ohio 43302,

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on the 5th day of March 2010.

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APPENDIX

1. Judgment Entry
2. Data from Ohio Traffic Crash Facts 2004 - 2008