

**IN THE COURT OF APPEALS OF OHIO
THIRD APPELLATE DISTRICT**

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 MOTION, LEAVE OF COURT TO RESPOND/
APPELLANTS RESPONSE TO BRIEF OF *AMICUS CURIAE***

Jeffrey E. Brown, Pro Se
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xxxxxxx

State of Ohio Attorney General
Richard Cordray
30 E. Broad St., 17th Floor
Columbus, OH 43215

City of Marion Law Director
233 West Center Street
Marion Ohio, 43302

MOTION

On April 26 2010 the Office of the Ohio State Attorney General filed a document titled Merit Brief of *Amicus Curiae*, hereinafter referred to as *AC*. Ostensibly The Attorney General's office felt compelled to file this brief with the court because of the enormous public policy implications, as this is a statewide law that affects virtually every citizen in it. The appellant respectfully asks leave of this honorable court to offer a short rebuttal. A memorandum in support of the appellant's position follows.

Respectfully.

Jeffrey E. Brown, Pro Se

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MEMORANDUM

The office of the Attorney General first offers that driving is a privilege. This is a moot point as license suspension is not part of the specifications for R.C. §4513.263. This is about the deprivation of personal property, namely money, without due process of law. The \$30 fine as stated in this section is misleading, as it does not include court costs. In the case at bar the City of Marion is asking \$120. The appellant in this case made a little over \$10,000 last year. This is unduly burdensome.

For the sake of argument, although this case does not involve granting or revoking a driver's license, the assertion that driving is not a right, the appellant would take issue with. Other courts have in fact declared this a right:

"Even the legislature has no power to deny to a citizen the right to travel upon the highway and transport his property in the ordinary course of his business or pleasure, though this right may be regulated in accordance with the public interest and convenience. - *Chicago Motor Coach v Chicago* 169 NE 22 ("Regulated" here means traffic safety enforcement, stop lights, signs, etc. NOT a privilege that requires permission i.e.- licensing, mandatory insurance, vehicle registration, etc.)

"The right of the citizen to travel upon the public highways and to transport his property thereon, either by carriage or by automobile, is not a mere privilege which a city may prohibit or permit at will, but a common right which he has under the right to life, liberty, and the pursuit of happiness."- *Thompson v Smith* 154 SE 579.

"The right to travel is a part of the liberty of which the citizen cannot be deprived without due process of law under the 5th Amendment." - *Kent v Dulles*, 357 U.S. 116, 125.,

"Undoubtedly the right of locomotion, the right to remove from one place to another according to inclination, is an attribute of personal Liberty, and the right, ordinarily, of free transit from or through the territory of any State is a right secured by the 14th Amendment and by other provisions of the Constitution." - *Schactman v Dulles*, 96 App D.C. 287, 293.

One important aspect of being denied the right to drive is the inability to find employment. Based on appellant's own experience, about 80% of the job postings he has looked at require either a valid driver's license and/or reliable transportation. Not being allowed to drive forces you into a lower caste.

The Attorney General's brief repeatedly states the authority to enforce regulation that promotes public health and welfare and the welfare of the community.

This is a personal, private decision regarding one's own health, and is a fundamental right. This has nothing to do with the public or the community and seat belts have nothing to do with the operation of the vehicle. This is not "unfettered behavior in the operation of a motor vehicle" *AC p3*. Nor is the appellant attempting to engage in self-mutilation or suicide.

The AG's brief also includes the unfortunate logic in the opinion from *State v, Batsch (1988), 44 Ohio App*. This opinion was dealt with in appellant's reply brief but, just to restate, there is no cost incurred to the state liability or the public through higher medical expenses by people not wearing seat belts that isn't also incurred by people wearing seat belts at a rate *ten times higher!* Although the risk of injury and death on the highway is extremely small, at the same time there will always be inherent risk that affects every occupant whether they wear a seat belt or not. In the appellant's view it is improper to focus on one group such as those not wearing safety belts and assign all blame for injuries and fatalities on them without looking at the issue of highway safety comprehensively including drivers wearing seat belts, which is where 90% of the injuries are.

It is understood that the AG's office did not read the statement that the appellant entered into the record but their assertion that there was no example other than theoretical, of a restriction or burden caused by seat belt laws was wrong. In his statement he gave the example of his aunt who has had a double mastectomy and finds using the shoulder harness painful. And the appellant would offer having one's vehicle forced to the side of the road and having an armed man make a demand for money, in broad daylight, on Thanksgiving, is a restriction and burdensome.

The appellant begs the indulgence of this honorable court, as he doesn't wish to be repetitive however, the AG's brief contends that the data supplied by the appellant prove that seat belts reduce a driver or passenger's seriousness of injury, *AC p4*. Which table are they referring to? The data as supplied shows an injury rate *ten times higher* for those wearing seat belts. In fact, the case law as stated in his brief, the appellant has shown to force medical decisions on someone is a cause for battery.

Also the AG contends that appellant has shown no case law that supports the assertion that R.C. 4513.263 is unconstitutional. Of course not, or else it would have been overturned already however, opposing counsel has shown case law that found that mandatory use of a motorcycle helmets was found unconstitutional in *State v. Betts (M.C.1969)*, *21 Ohio Misc. 175, 252 N.E.2d 866*, and the same issues apply as the nature of these restrictions are identical.

A public *need* must exist for the enactment of a police measure. Without some *reasonable public necessity* for the restriction or regulation of an individual, the restriction or regulation is unwarranted and invalid and is not a proper exercise of the police power. *In order to justify a police regulation, it must appear not only that the public will be substantially benefited by the imposition of a given restriction, but that the public will suffer substantially if the restriction is not imposed.* The ancient legal

maxim "De minimus non curat lex" may well be applied when considering the necessity for a given police measure. *State v. Betts, id.*

The first test from *Betts* is, what is the need or public necessity? Of course the answer is none, as this does not affect the public. Second, what would happen if the restriction were removed? The answer would be no affect whatsoever. For decades all vehicles built or sold in the United States include seat belts. A great many people feel safer wearing them and even if the law were removed would likely continue to wear them. Those persons who do not routinely wear seat belts in all likelihood would not start wearing them just because the law was removed, the result would be no difference to public safety. *State v. Betts, supra*, also demonstrates that such restrictions violate Section 1. Article I, of the Ohio Constitution.

The AG also alleges that there is nothing distinguishing in appellants' arguments from the cases that have come before. The appellant would argue that the use of data from the State of Ohio is substantially different than any of the authorities that have been cited. As shown in *Batsch supra*, the court rationalized the use of force against the public by a hypothetical scenario of potential harm. Hopefully the use of data can serve to restrain that impulse. Just the fact that the appellant is trying to get the courts to look at the issue as a whole, including all motorists, even those wearing seat belts is substantially different.

The truly disturbing aspect to this is that no one in government has any requirement to show data, efficacy or any evidence whatsoever. All that is necessary is to rationalize a hypothetical scenario and that's considered adequate to take a person's liberty or property. This is true for those prosecuting the case, the legislature, and

according to the City of Marion and the Ohio AG's office, the courts themselves. This destroys any notion of separation of powers and judicial review and undermines confidence in government.

Historically, one of the necessary elements of a crime had to be *Mens Rea*, or guilty mind. In the case of R.C. §4513.263, Ohio is applying it as a strict liability statute, and the crime isn't something you did, but *something you didn't do?* There is nothing about this law that makes any sense.

Again any of the authorities used in the AG's brief were not before the trial court and cannot be considered. Which is a shame as the level of argument is just now starting to approach the level of inquiry suited to such a broad statewide law and would have been better suited at the trial court. But of course the appellant asserts that this law is wrong on so many levels but at every level the manifest weight of the evidence presented at trial supports the case of the appellant, especially since the City of Marion presented *no* evidence.

Respectfully.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was delivered by U.S. mail to:

The Court of Appeals of Ohio, Third Appellate District, 204 North Main Street, Lima
Ohio 45801,

State of Ohio Attorney General
Richard Cordray
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City of Marion Law Director
233 West Center Street
Marion Ohio, 43302

on the 29th day of April 2010.

Jeffrey E. Brown, Pro Se
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APPENDIX

Jeffrey E. Brown, Pro Se
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