

**IN THE COURT OF APPEALS FOR THE THIRD JUDICIAL DISTRICT
MARION COUNTY, OHIO**

THE STATE OF OHIO, : CASE NO.: 09-10-012
Plaintiff-Appellee :
-VS- : **BRIEF OF APPELLEE**
JEFFREY E. BROWN, :
Defendant-Appellant : (Regular Calendar)

ON APPEAL FROM THE JUDGMENT OF THE MARION MUNICIPAL COURT

Jeffrey E. Brown, Pro Se



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STATEMENT OF THE CASE AND FACTS

On or about November 26, 2010, Appellant, Jeffrey Brown, was charged with violating Ohio Revised Code section 4513.263, which requires that no person shall operate an automobile on any street or highway unless that person is wearing all of the available elements of a properly adjusted occupant restraining device (APPENDIX 1).

Appellant filed a "*MOTION TO DISMISS*" on or about December 7, 2009 and later filed a "*FIRST AMENDED MOTION TO DISMISS*" on or about December 14, 2009. The matter first came on for hearing in the Marion Municipal Court on December 17, 2010. The State advised the court that they had not been served with Appellant's "*FIRST AMENDED MOTION TO DISMISS*", which had been filed with the court but not served on the prosecutor, so the trial court ordered that the matter be continued in order to give The State an opportunity to review the motion and offer a response. Appellant waived his right to speedy trial and agreed to return on a date to be determined for hearing on the motion and/or trial.

The matter next came on for hearing in the Marion County Municipal Court on January 21, 2010. Prior to trial, the court heard arguments from both Appellant and from The State regarding the issues raised by Appellant's motion. Appellant argued that the Ohio law requiring that operators of motor vehicles wear safety belts is unconstitutional. The State argued that the statute is constitutional as it promotes the State's interest in protecting the health, safety, and welfare of its citizens and is, therefore, a proper exercise of the State's police power. The trial court over-ruled Appellant's motion to dismiss and ordered that the matter proceed to trial.

The State presented the testimony of one witness, Sgt. Brent Hunter of the Ohio State Highway Patrol. Sgt. Hunter testified that on or about November 26, 2009, he stopped

Appellant's vehicle on US 23 in Marion County, Ohio, for having a windshield that was "shattered" and for having a brake light that was not functioning properly, and that Appellant was not wearing a safety belt. Sgt. Hunter further testified that Appellant acknowledged that he was not wearing his seat belt and stated that he "never" wears it. Sgt. Hunter testified that he issued warnings to Appellant for the windshield and brake light violations, and that he cited Appellant for not wearing the seat belt. Throughout the course of the trial, Appellant repeatedly advised that he would stipulate that he was not wearing his seat belt at the time of the charged offense, and that he was only contesting the case because of his arguments regarding the constitutionality of the statute. At the conclusion of the trial, the trial court returned a verdict finding the Defendant "Guilty" as charged and ordered that he pay a fine of \$30.00.

Defendant timely filed his Notice of Appeal, upon which the matter is now before this Court.

ARGUMENT

In his Brief filed with this court, Appellant essentially challenges the constitutionality of the seat belt law, specifically by arguing that his rights to "Due Process, privacy, and bodily self-autonomy" were denied when the court refused to grant his motion to dismiss.

Other courts have already ruled that Ohio safety belt statute is in fact constitutional. In *State v. Batsch*, 44 Ohio App.3d 81 (Ohio App. 11 Dist. 1988), for instance, the court noted that the appellant therein argued that the trial court erred in not holding R.C. 4513.263 to be unconstitutional. Batch argued that the statute is an unreasonable extension of the police power and violates the Due Process Clause of the United States Constitution. He cited a case declaring that R.C. 4511.53, the motorcycle helmet law, unconstitutional because it was an unreasonable

extension of police power, compelling behavior by an individual that will benefit the individual alone and not the public good. Batch argued that the same reasoning should apply to R.C.

4513.263. The court ruled as follows:

Legislation promoting the state's interest in protecting the health, safety and welfare of its citizens is a proper exercise of the state's police power. A law compelling motorists to use a seat belt promotes such a state interest. It not only saves lives, but it promotes the welfare of its citizens since the results of death or severe injuries often lead to the state's providing long-term care at taxpayers' expense to those injured. In addition, the wearing of a seat belt secures a driver in his seat making it easier for him to retain control of his motor vehicle and thus reducing the chances that sudden emergencies on the road may cause him to lose control of his vehicle and collide with other vehicles. We conclude R.C. 4513.263 is not an unreasonable extension of the state's police power.

(APPENDIX 2)

Appellant also contends that “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,” and that the trial court erred and abused its discretion “as it failed to conduct a meaningful review.”

When reviewing the sufficiency of the evidence to support a conviction, “the relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt.” *State v. Jenks* (1991), 61 Ohio St. 3d 259; *Jackson v. Virginia* (1979), 443 U.S. 307. In considering whether a verdict was against the manifest weight of the evidence, a court must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of the witnesses, and determine whether in resolving conflicts in the evidence, the trier of fact clearly lost its way. The discretionary power to grant a new trial should be exercised only in the exceptional case in which the evidence weighs heavily against conviction. *State v. Tompkins* (1997), 78 Ohio St.3d 380, 387; *State v. Martin* (1983), 20 Ohio App.3d 172, 175; *State v. Otten* (1986), 33 Ohio App.3d 339, 340.

Appellant has failed to provide a transcript of the proceedings in the trial court, so Appellee respectfully submits that this court's review of this matter should be limited and that this court need not consider whether the trial court's verdict was supported by sufficient evidence. For this court's information, Appellee notes that The State presented the testimony of Sgt. Brent Hunter of the Ohio State Highway Patrol, who testified that on or about November 26, 2009, he stopped Appellant's vehicle on US 23 in Marion County, Ohio, for having a windshield that was "shattered" and for having a brake light that was not functioning properly, and that he could plainly see while making the stop that Appellant was not wearing a safety belt. Sgt. Hunter further testified that Appellant acknowledged that he was not wearing his seat belt and stated that he "never" wears it. Sgt. Hunter testified that he issued warnings to Appellant for the windshield and brake light violations, and that he cited Appellant for not wearing the seat belt. Throughout the course of the trial, Appellant repeatedly advised that he would stipulate that he was not wearing his seat belt at the time of the charged offense, and that he was only contesting the case because of his arguments regarding the constitutionality of the statute.

Given the testimony and evidence offered at trial, Appellee submits that the trial court did in fact conduct a meaningful review of the matter and that there was in fact sufficient evidence to support the verdict of the court.

CONCLUSION

For the foregoing reasons and in the interest of justice, the entry of conviction should be affirmed.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was delivered to Appellant, Jeffrey Brown by regular US Mail, this 8TH day of APRIL, 2010.



Jason D. Warner, #0066451
Attorney for Plaintiff-Appellee

APPENDIX 1

4513.263 Occupant restraining devices.

(A) As used in this section and in section 4513.99 of the Revised Code:

(1) "Automobile" means any commercial tractor, passenger car, commercial car, or truck that is required to be factory-equipped with an occupant restraining device for the operator or any passenger by regulations adopted by the United States secretary of transportation pursuant to the "National Traffic and Motor Vehicle Safety Act of 1966," 80 Stat. 719, 15 U.S.C.A. 1392.

(2) "Occupant restraining device" means a seat safety belt, shoulder belt, harness, or other safety device for restraining a person who is an operator of or passenger in an automobile and that satisfies the minimum federal vehicle safety standards established by the United States department of transportation.

(3) "Passenger" means any person in an automobile, other than its operator, who is occupying a seating position for which an occupant restraining device is provided.

(4) "Commercial tractor," "passenger car," and "commercial car" have the same meanings as in section 4501.01 of the Revised Code.

(5) "Vehicle" and "motor vehicle," as used in the definitions of the terms set forth in division (A)(4) of this section, have the same meanings as in section 4511.01 of the Revised Code.

(6) "Tort action" means a civil action for damages for injury, death, or loss to person or property. "Tort action" includes a product liability claim, as defined in section 2307.71 of the Revised Code, and an asbestos claim, as defined in section 2307.91 of the Revised Code, but does not include a civil action for damages for breach of contract or another agreement between persons.

(B) No person shall do any of the following:

(1) Operate an automobile on any street or highway unless that person is wearing all of the available elements of a properly adjusted occupant restraining device, or operate a school bus that has an occupant restraining device installed for use in its operator's seat unless that person is wearing all of the available elements of the device, as properly adjusted;

(2) Operate an automobile on any street or highway unless each passenger in the automobile who is subject to the requirement set forth in division (B)(3) of this section is wearing all of the available elements of a properly adjusted occupant restraining device;

(3) Occupy, as a passenger, a seating position on the front seat of an automobile being operated on any street or highway unless that person is wearing all of the available elements of a properly adjusted occupant restraining device;

(4) Operate a taxicab on any street or highway unless all factory-equipped occupant restraining devices in the taxicab are maintained in usable form.

(C) Division (B)(3) of this section does not apply to a person who is required by section 4511.81 of the Revised Code to be secured in a child restraint device or booster seat. Division (B)(1) of this section does not apply to a person who is an employee of the United States postal service or of a newspaper home delivery service, during any period in which the person is engaged in the operation of an automobile to deliver mail or newspapers to addressees. Divisions (B)(1) and (3) of this section do not

apply to a person who has an affidavit signed by a physician licensed to practice in this state under Chapter 4731. of the Revised Code or a chiropractor licensed to practice in this state under Chapter 4734. of the Revised Code that states that the person has a physical impairment that makes use of an occupant restraining device impossible or impractical.

(D) Notwithstanding any provision of law to the contrary, no law enforcement officer shall cause an operator of an automobile being operated on any street or highway to stop the automobile for the sole purpose of determining whether a violation of division (B) of this section has been or is being committed or for the sole purpose of issuing a ticket, citation, or summons for a violation of that nature or causing the arrest of or commencing a prosecution of a person for a violation of that nature, and no law enforcement officer shall view the interior or visually inspect any automobile being operated on any street or highway for the sole purpose of determining whether a violation of that nature has been or is being committed.

(E) All fines collected for violations of division (B) of this section, or for violations of any ordinance or resolution of a political subdivision that is substantively comparable to that division, shall be forwarded to the treasurer of state for deposit as follows:

(1) Eight per cent shall be deposited into the seat belt education fund, which is hereby created in the state treasury, and shall be used by the department of public safety to establish a seat belt education program.

(2) Eight per cent shall be deposited into the elementary school program fund, which is hereby created in the state treasury, and shall be used by the department of public safety to establish and administer elementary school programs that encourage seat safety belt use.

(3) Two per cent shall be deposited into the occupational licensing and regulatory fund created by section 4743.05 of the Revised Code.

(4) Twenty-eight per cent, plus sixty cents of each fee collected under sections 4501.34, 4503.26, 4506.08, and 4509.05, plus on and after October 1, 2009, sixty cents of each fee collected under sections 4505.14 and 4519.63 of the Revised Code as specified in those sections, shall be deposited into the trauma and emergency medical services fund, which is hereby created in the state treasury, and shall be used by the department of public safety for the administration of the division of emergency medical services and the state board of emergency medical services, except that the director of budget and management may transfer excess money from the trauma and emergency medical services fund to the state highway safety fund if the director of public safety determines that the amount of money in the trauma and emergency medical services fund exceeds the amount required to cover such costs incurred by the emergency medical services agency and requests the director of budget and management to make the transfer.

(5) Fifty-four per cent shall be deposited into the trauma and emergency medical services grants fund, which is hereby created in the state treasury, and shall be used by the state board of emergency medical services to make grants, in accordance with section 4765.07 of the Revised Code and rules the board adopts under section 4765.11 of the Revised Code.

(F)(1) Subject to division (F)(2) of this section, the failure of a person to wear all of the available elements of a properly adjusted occupant restraining device in violation of division (B)(1) or (3) of this section or the failure of a person to ensure that each minor who is a passenger of an automobile being operated by that person is wearing all of the available elements of a properly adjusted occupant

restraining device in violation of division (B)(2) of this section shall not be considered or used by the trier of fact in a tort action as evidence of negligence or contributory negligence. But, the trier of fact may determine based on evidence admitted consistent with the Ohio Rules of Evidence that the failure contributed to the harm alleged in the tort action and may diminish a recovery of compensatory damages that represents noneconomic loss, as defined in section 2307.011 of the Revised Code, in a tort action that could have been recovered but for the plaintiff's failure to wear all of the available elements of a properly adjusted occupant restraining device. Evidence of that failure shall not be used as a basis for a criminal prosecution of the person other than a prosecution for a violation of this section; and shall not be admissible as evidence in a criminal action involving the person other than a prosecution for a violation of this section.

2) If, at the time of an accident involving a passenger car equipped with occupant restraining devices, any occupant of the passenger car who sustained injury or death was not wearing an available occupant restraining device, was not wearing all of the available elements of such a device, or was not wearing such a device as properly adjusted, then, consistent with the Rules of Evidence, the fact that the occupant was not wearing the available occupant restraining device, was not wearing all of the available elements of such a device, or was not wearing such a device as properly adjusted is admissible in evidence in relation to any claim for relief in a tort action to the extent that the claim for relief satisfies all of the following:

- a) It seeks to recover damages for injury or death to the occupant.
- b) The defendant in question is the manufacturer, designer, distributor, or seller of the passenger car.
- c) The claim for relief against the defendant in question is that the injury or death sustained by the occupant was enhanced or aggravated by some design defect in the passenger car or that the passenger car was not crashworthy.

3)(1) Whoever violates division (B)(1) of this section shall be fined thirty dollars.

2) Whoever violates division (B)(3) of this section shall be fined twenty dollars.

3) Except as otherwise provided in this division, whoever violates division (B)(4) of this section is guilty of a minor misdemeanor. If the offender previously has been convicted of or pleaded guilty to a violation of division (B)(4) of this section, whoever violates division (B)(4) of this section is guilty of a misdemeanor of the third degree.

Amended by 128th General Assembly ch. 1, HB 2, § 101.01, eff. 7/1/2009.

Effective Date: 03-09-2004; 04-07-2005; 2007 HB119 06-30-2007; 2008 HB320 10-07-2009

APPENDIX 2

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44 Ohio App.3d 81 (Ohio App. 11 Dist. 1988)

541 N.E.2d 475

The STATE of Ohio, Appellee,

v.

BATSCH, Appellant.

No. 1790.

Court of Appeals of Ohio, Eleventh District, Portage County.

March 7, 1988

Syllabus by the Court

R.C. 4513.263, the statute requiring drivers to wear seat belts, is constitutional.

John J. Plough, Pros. Atty., and Kevin T. Poland, Ravenna, for appellee.

R.J. Kane, Ravenna, for appellant.

COOK, Judge.

On July 5, 1986, Kelly L. Batsch, appellant, was clocked by aircraft eastbound on Interstate 76 at seventy-seven miles per hour in a posted fifty-five-miles-per-hour speed zone. He was flagged over by Trooper Thomas P. Eesenwein. He slowed down but continued driving. A second trooper, Phillip T. Shaeffer, pursued appellant and stopped him. Trooper Shaeffer observed that appellant did not have his seat belt buckled.

Appellant was charged with exceeding the speed limit, failure to comply with a lawful order and failure to wear a seat belt. At trial, appellant filed a motion to dismiss the seat belt charge, contending R.C. 4513.263, the seat belt law, is unconstitutional. The court found R.C. 4513.263 constitutional and overruled the motion to dismiss. On July 30, 1986, appellant was found guilty of failing to comply with a [541 N.E.2d 476] lawful order and failure to wear a seat belt, but was found not guilty of exceeding the speed limit.

Appellant has appealed the judgment of the trial court and has filed the following two assignments of error:

"1. The trial court erred in not finding section 4513.263 O.R.C. unconstitutional in that the same is an unreasonable extension of police power and a denial of due process of law in that same is discriminatory in nature and violative of both federal and state constitutions. [44 OhioApp.3d 82]

"2. * * * " [1]

Appellant first contends that the court erred in not holding R.C. 4513.263 to be unconstitutional. He argues that the statute is an unreasonable extension of the police power and violates the Due Process Clause of the United States Constitution. He cites *State v. Betts* (M.C.1969), 21 Ohio Misc. 175, 252 N.E.2d 866, a case declaring R.C. 4511.53, the motorcycle helmet law, unconstitutional because it was an unreasonable extension of police power, compelling behavior by an individual that will benefit the individual alone and not the public good. Appellant argues the same reasoning

should apply to R.C. 4513.263.

Legislation promoting the state's interest in protecting the health, safety and welfare of its citizens is a proper exercise of the state's police power. A law compelling motorists to use a seat belt promotes such a state interest. It not only saves lives, but it promotes the welfare of its citizens since the results of death or severe injuries often lead to the state's providing long-term care at taxpayers' expense to those injured. In addition, the wearing of a seat belt secures a driver in his seat making it easier for him to retain control of his motor vehicle and thus reducing the chances that sudden emergencies on the road may cause him to lose control of his vehicle and collide with other vehicles.

We conclude R.C. 4513.263 is not an unreasonable extension of the state's police power.

Judgment affirmed.

CHRISTLEY, J., concurs.

FORD, P.J., concurs in judgment only.

Notes:

[¹] The text of the opinion as it appears herein was abridged by the court.
