

IN THE SUPREME COURT OF OHIO

STATE OF OHIO

Plaintiff-Appellees

V.

JEFFREY E. BROWN

Defendant-Appellant

10-1767

On Appeal from the  
Court of Appeals,  
Third Appellate District  
Appeal Case No. 9-10-012

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MEMORANDUM IN SUPPORT OF JURISDICTION

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**EXPLANATION OF WHY THIS IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST OR INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION**

This case involves inconsistency in Ohio traffic law. For motorcycles, helmet use is optional and yet, for drivers and front seat passengers in automobiles, seat belt use is mandatory. This inconsistency has been highlighted in the cases of *State v. Batsch* (1988), 44 Ohio App.3d 81, 82. On which the appellate court relied, and *State v. Betts* (M.C.1969), 21 Ohio Misc. 175, 252 N.E.2d 866, which found Ohio's helmet laws unconstitutional.

Of course seat belts are not required on motorcycles, or in city busses or Greyhound busses or even school busses. The benefits of seat belts are statistically insignificant and the use of police power to enforce their use raises considerable constitutional issues regarding Due Process, the fundamental right of bodily self-determination and the definition of liberty. To use police power to force a behavior that poses no risk to others and very little risk to one's self compared to all of the other risk factors incurred by peoples daily behaviors such as motorcycle riding, alcohol, tobacco, or sugar, renders this law wholly arbitrary. As a number of other states have passed similar legislation this is a case of possible national importance.

**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. The City of Marion did not respond to this motion. 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**

**Proposition of Law No. I: O.R.C. §4513.263 is a violation of due process.**

**Proposition of Law No. II: O.R.C. §4513.263 is wholly arbitrary as there is no statistical evidence showing the need for such a law or any detriment to the public if repealed.**

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 Section 1, Article I, 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).

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 is useful. 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 it doesn't include the motorcycle fatalities at 213, which is 18% of the total, this table shows 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 95 people, out of a state of 11.5 million, 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.

**Proposition of law No. III: O.R.C. §4513.263 deprives citizens of their fundamental right to refuse medical treatment.**

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 and the court of appeals.

Remember, the defendant is 53 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*.

**Proposition of Law No. IV: O.R.C. §4513.263 is overbroad.**

**Proposition of Law No. V: O.R.C. §4513.263 is wholly arbitrary and selectively enforced and creates inconsistency in Ohio law, as motorcycle riders are permitted to ride without helmets, even though motorcycles are inherently more dangerous.**

§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% was 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 State of Ohio has seen fit to make helmet use optional.

Section 1 of Amendment XIV, United States Constitution, reads as follows:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Section 1, Article I, Ohio Constitution, provides:

"All men are, by nature, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety."

"Liberty," as used in Section 1, Article I, Ohio Constitution, means "the right of man to be free in the enjoyment of the faculties with which he has been endowed by his Creator, subject only to such restraints as are *necessary* for the common welfare." *Palmer & Crawford v. Tingle*, 55 Ohio St. 423. The word "liberty," as used in the Constitution of the United States and the several states, means the right to such act as one may judge best for his interest, not inconsistent with the rights of others. *Ex Parte Drexol*, 147 Cal. 763,

82 P. 429. The United States Supreme Court has said, "Liberty implies the absence of arbitrary restraint \* \* \*." *Chicago, B. & Q. Rd. Co. v. McGuire*, 219 U.S. 567.

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 (M.C.1969)*, 21 *Ohio Misc. 175*, 252 *N.E.2d* 866,

In this case the appellate court relied on *State v. Batsch (1988)*, 44 *Ohio App.3d* 81, 82, and singled out one quote in particular as being "particularly persuasive" (opinion p. 8):

"The wearing of a seat belt secures the driver in his seat making it easier for him to retain control of his 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." *State v. Batsch id*

The case of *State v. Betts supra*, which found the helmet laws to be unconstitutional, the court was faced with a similar hypothetical:

"We believe that with the great increase of motorcycles on the highways, a motorcyclist who loses control of his vehicle because he is struck on his bare head by an object, constitutes a hazard to other users of the highway who may be struck by a motorcycle which has gone out of control. *State v. Craig*, 19 *Ohio App. 2d* 29, decided June 25, 1969

The court in *Betts* analyzed the use of a hypothetical as follows; "The precedential consequences of 'stretching our imagination' to find a relationship to the public health, safety and welfare, require the invalidation of this statute." *American Motorcycle Association v. Davids*, 11 *Mich. App.* 351, 158 *N. W. 2d* 72. The "real and substantial

relation to the public health and welfare," as described in the *Craig opinion* strikes us as being remote, tenuous and speculative, ...Included in man's "liberty" is the freedom to be as foolish, foolhardy or reckless as he may wish, so long as others are not endangered thereby. The state of Ohio has no legitimate concern with whether or not an individual cracks his skull while motorcycling. That is his personal risk. *State v. Betts*.

In this case, the honorable Judge Rodgers offered a dissenting opinion in which he stated; "Further, to accept the proposition that the use of safety belts might make it easier for the driver to maintain control of the vehicle during an emergency requires an incredible amount of speculation in which the courts should not engage." As the appellant in this case is not an attorney he prefers more common language; the court in *Batsch* was just making it up. There is no data to support, nor could there be, anything to show how many accidents are prevented because seat belts held a person in their seat. Certainly the appellant has never had any problems remaining in his seat while driving. As a citizen, the appellant finds it truly frightening to see how much effort and imagination is put into finding any excuse to punish the citizen.

To repeat, seat belts have absolutely nothing to do with the operation of the vehicle. They have the same impact on the operation of the vehicle as wearing a Buckeye sweatshirt or a Yankees ball cap. Clearly there is no danger to anybody but the adult citizen who chooses not to wear a safety belt, and the additional risk to him or her is statistically insignificant. Just as clearly there is no justification here to invoke the exercise of the state's police power at the expense of individual liberty. Justice Rogers in his dissent went on to note: "Surely any danger of physical injury is much more obvious

to motorcyclists than to drivers of automobiles who are surrounded by tons of metal and safety equipment, which today includes air bags.”

His observations are well grounded in the statistical evidence. As mentioned, motorcycle fatalities account for 18% of the total in Ohio. It’s more dangerous to ride a motorcycle with a helmet than to drive without a seat belt. This is the slippery slope; think of all of the human activities that carry an element of risk and therefore would be subject to the use of force to prevent them: Hang gliding, snowmobiling, skiing, jet ski, spelunking, consuming alcohol, tobacco or sugar, etc, etc, etc.

#### CONCLUSION

“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)

Based on the manifest weight of the evidence, it’s hard to think of a more frivolous use of police power against he public. The appellant doesn’t believe that the founders had intended this kind law when they framed the Constitution rather, it was exactly this kind of assumption of power that the Constitution was designed to protect.

For these reasons and all of the reasons included herein, the appellant respectfully asks this honorable court to accept jurisdiction.

Respectfully.

