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 REPLY BRIEF

Jeffrey E. Brown, Pro Se
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xxxxxxx

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TABLE OF CONTENTS

Statement……………………………………………………………………………..…1

Memorandum…………………………………………………………………………...3

Summary…………………………………………………………..………7

Certificate of Service…………………………………………………………8

TABLE OF AUTHORITIES

Cases **Page No.**

State v. Batsch,
44 Ohio App. 3d 81 (Ohio App Dist. 1988)………………………………………..…..4

State v. Betts
(M.C.1969), 21 Ohio Misc. 175, 252 N.E.2d 866………………………………………...4

State v. Ishmail (1978) 54 Ohio St. 2d, 402,………………………………………………4

STATEMENT

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 City of Marion offers these defenses:

1. They offer a single authority to support the notion that the state has a compelling interest in your personal decisions.
2. They offer authorities declaring the standards used on appeal.
3. They claim that since there is no transcript, that the assignments of error as presented by appellant are not provable.

The appellant asserts all three defenses fail. A memorandum in support of this position follows.

MEMORANDUM

The brief presented to this court by the City of Marion contains a total of six legal authorities to support its case. The appellant traveled to the Marion Municipal Court three times; once for the arraignment and two hearings, argument was presented at both hearings. This is the first time in these proceedings where opposing counsel has offered *any* legal authorities. They admitted they did not respond *at all* to appellant's pre-trial motion to dismiss and offered no authorities in oral argument. The only evidence presented on the motion to dismiss was from the defendant/appellant, and yet the court ruled in favor of appellee.

It is axiomatic that, in a direct appeal, this court's review is limited to evidence presented at trial and cannot consider matters outside the record. *State v. Ishmail (1978) 54 Ohio St. 2d, 402,* paragraph one of the syllabus. Thus because the authorities presented in appellee's brief were not before the trial court for consideration, this court cannot consider them.

The appellee argues that lack of a transcript renders appellants assignments of error unprovable. Local rule 5(E). In appeals of proceedings not attended by a court reporter the parties shall proceed under App.R. 9(A) when the proceedings were recorded by means of videotape and the parties shall proceed under App.R. 9(C) when the proceedings were recorded by means of audiotape. In this case there was no reporter present and no transcripts were available however, the City of Marion did provide the appellant with an audio CD of the hearing. This is about 25 minutes long and was included in the record as it was filed with appellants' notice of appeal and he offers this as proof of the events of the hearing.

For the sake of argument appellant would like to discuss appellees single authority regarding the constitutionality of seat belt laws and look at this deeply flawed opinion point by point. The case referred to is *State v. Batsch, 44 Ohio App. 3d 81 (Ohio App Dist. 1988).*

First of all, as explained in appellee's brief Mr. Batsch argued the fact that helmet laws were ruled unconstitutional because it was a decision that would affect the rider alone and would not benefit the public good *State v. Betts (M.C.1969), 21 Ohio Misc. 175, 252 N.E.2d 866*. In the case at bar the appellant has also raised this issue of similarity with helmet laws therefore rendering enforcement arbitrary. The fact that these

decisions endanger no one else is a very important distinction. In Batsch *id*, the court ignored these arguments completely by stating, "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".

If it is the position of the State of Ohio that it has given itself the right to use force (police power) to compel behaviors that reduce risk to health and safety, then from a citizen's point of view this is terrifying! Consider that there are over 23 million type 2 diabetics in this country; can the police stop you from eating a Krispy Kreme? There are well known health risks associated with tobacco and alcohol and yet these are still legal. Allegedly we have just survived a deadly flu pandemic, should police be stationed in every restroom to make sure you wash your hands when finished? Surely a deadly pandemic would be even more justifiable than seat belts if health and safety were the standard that is applied. If you spend a little time thinking about it, there are numerous behaviors or activities that could be considered to create risk, not the least of which is driving, whether you wear a seat belt or not!

The court in Batsch *supra*, continues, "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".

Its obvious that the court did not consider any statistical data or any evidence whatsoever. The appellant in the case at bar provided the trial court with data from Ohio's own Department of Public Safety that shows that traffic injuries occur to less than 1% of the population every year and fatalities happen to less than .01%. Just based on

that overview its clear that there is no problem so widespread and compelling that the state has to suspend your fundamental right to make your own health decisions. The fatality numbers show that out of 11.5 million people, the difference between those who did or did not use restraints was 95 people. The only people who would be eligible for the state to pay the final expenses would be those completely indigent. Out of 95 people it's likely that very few or any of those would qualify and the court presents no evidence that there were any, and of course the state would also be responsible for the 324 deaths where a seat belt was used. The larger problem and more likely to incur long-term incapacitating injuries are the injury numbers, and as presented to the trial court those numbers are *ten times higher for people wearing seat belts*! The states theoretical burden to provide long-term care for indigent motorist also include those wearing seat belts and that burden would be *ten times higher!* But again, the court offers no evidence as to what the states' actual expenses are, in all probability the court was just making this up. This statement is also premised on the foundational mythology that there is a significant benefit in reduction of death and injury by using seat belts and this is provably false.

The court in Batsch *supra*, goes on to make an astonishing statement; "In addition, the wearing of a seat belt secures the 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". This is pure fiction. There is no way to show that this is true. There is no way to demonstrate what level of risk, if any, this adds to roadways, nor does the court attempt to show this. Certainly the Appellant in this case, has never had any trouble remaining in his seat while driving.

What's so disturbing about this is that the court in Batsch has seen fit to justify the use of force against the citizen based on a hypothetical scenario of potential harm?

Whether or not this case would have been instructive is of course a moot point, as it was not before the trial court and this court cannot review it.

SUMMARY

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 reverse the decision by the city of Marion Municipal court, and dismiss this case against the appellant or reverse and remand for further proceedings.

Respectfully.

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Jeffrey E. Brown, Pro Se
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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,

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on the 23rd day of April 2010.

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