

MEMORANDUM IN SUPPORT

The US Supreme Court set the standard for determining the propriety of a vehicle stop under the Fourth Amendment. See, Delaware v. Prouse, 440 U.S. 648; 59 L.Ed 2d 660, 99 S.Ct. 1391 (1979). The State must show that there was an articulable and reasonable suspicion for stopping the vehicle. In other words, the police officer must observe or know that the motorist was unlicensed, that the vehicle was not registered, or that the vehicle or driver was subject to being stopped for a violation of the law. Otherwise, the stopping of a vehicle and detaining the driver is unreasonable under the Fourth Amendment. See also, State v. Batchili, 2005 Ohio 6001, 2005 Lexis 5422 (6th Dist., 11/10/2005) and State v. Bacher, 2007 Ohio 727, 2007 Lexis 673 (1st Dist., 2/23/2007).

The US Supreme Court also set the standard for determining the propriety of stopping a person under the Fourth Amendment. See, Terry v. Ohio, 392 U.S. 1; 20 L.Ed 2d 889, 88 S.Ct. 1868 (1968). The State must show that there was an articulable and reasonable suspicion for stopping the person. See also, State v. Pierce, 1984 Ohio App. Lexis 11209 (6th Dist., 11/2/1984).

In the instant case, the only information relating to PUBLIUS received by the police was a tip to the police from an

identified informant about a "man with a gun," implying that an armed robbery or some other crime was about to happen at the BP gas station. By the time the police pulled PUBLIUS over, at a point chronologically and geographically removed from the BP gas station, it was clear that no crime had been committed at the BP gas station, and no other violations of law were observed by or reported to the police. These developments clearly contradict and negate the scant information originally given the police officer, leaving the police with no reasonable, articulable suspicion of criminal activity to support the seizure of PUBLIUS and his vehicle.

Any testimony or evidence obtained as a result of an illegal stop by the police without probable cause is in violation of the defendant's Fourth Amendment rights under the United States Constitution. As a result, the admission of any testimony or evidence regarding such a stop would violate Defendant's Fourth Amendment rights. Because such testimony and evidence would be obtained as a direct result of the illegal stop, such evidence must be excluded from trial as fruit of the poisonous tree. See, State v. Freeman, 64 O.St.2d 291, 414 N.E.2d 1044 (1980); and State v. Bobo, 37 O.St.3d 177, 524 N.E.2d 180 (1988). As a result, the stop in this case was not justified and therefore illegal.

Based upon the foregoing, the evidence and testimony obtained there from and all the tainted fruit thereof, must be suppressed. As a result, the case must be dismissed.

Respectfully submitted,

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CERTIFICATION

This is to certify that a copy of the foregoing was sent on July 25, 2007 to the Erie County Prosecutor at 247 Columbus Ave. in Sandusky, Ohio 44870.

TIMOTHY H. DEMPSEY
Attorney for Defendant