ORIGINAL

In the
Supreme Court of Ohio

STATE OF OHIO, Plaintiff-Appellant, v. RICHARD E. DUNN, Defendant-Appellee.	:	Case No. 2011-0213 On Appeal from the Montgomery County Court of Appeals, Second Appellate District Court of Appeals Case No. 23884

MERIT BRIEF OF *AMICUS CURIAE* OHIO ATTORNEY GENERAL MICHAEL DEWINE IN SUPPORT OF APPELLANT STATE OF OHIO

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INTRODUCTION

A police officer receives a dispatch that a man is about to kill himself. The dispatch identifies the man by name, describes his vehicle, gives the address of his intended destination, indicates that the man possesses a weapon, and warns of his imminent plan to take his own life. A few moments later, the officer sees a vehicle matching the description in the dispatch heading toward the given address. And as someone who routinely patrols the area, the officer recognizes the vehicle as one often parked outside that address. The officer follows the vehicle as it draws closer and closer to its destination and initiates a traffic stop when back-up arrives. The driver emerges from the vehicle crying, informs the officer that he has a gun in his glove compartment, and tells the officer that he had been planning on killing himself. The officer transports him to the hospital, where the man receives psychiatric treatment.

According to this Court's and the United States Supreme Court's case law, this type of emergency intervention is an essential—and wholly constitutional—police function. See *State v. Applegate* (1994), 68 Ohio St. 3d 348, 349-50; see also *Mincey v. Arizona* (1978), 437 U.S. 385, 392-93. According to the Second District, it is not.

Faced with the facts outlined above, the Second District overlooked longstanding principles of Fourth Amendment law to find the officer's emergency assistance unconstitutional. Police may act on "their reasonable belief" that their intervention is necessary "to protect or preserve life" without treading on citizens' Fourth Amendment rights. *Applegate*, 68 Ohio St. 3d at 349. And because emergencies by their nature require speedy action, police can act on a report of an impending emergency even if the report lacks the level of reliability ordinarily necessary to justify a general criminal investigation. See, e.g., *Florida v. J.L.* (2000), 529 U.S. 266, 273-74; see also *United States v. Holloway* (C.A.11 2002), 290 F.3d 1331, 1338-39 (interpreting *J.L.*). Because the Second District's holding deviates from Fourth Amendment law and, if allowed to

stand, will undermine the ability of police to respond to emergencies effectively, this Court should reverse.

STATEMENT OF *AMICUS* INTEREST

The Ohio Attorney General, as Ohio's chief law officer, has a strong interest in the correct interpretation and application of Ohio's criminal laws and procedures, including the proper interpretation of the Fourth Amendment.

STATEMENT OF THE CASE AND FACTS

Officer Robert Brazel was patrolling the city of Vandalia in his police cruiser when he received a dispatch reporting "a male subject who was suicidal and planning on killing himself." Hr'g Tr. 3. The individual, according to the dispatch, was driving a tow truck marked "Sandy's," was heading toward 114 Helke Road, and was "planning on killing himself" when he got there. *Id.* at 3-4. Officer Brazel, who routinely patrolled that general area, remembered seeing a Sandy's tow truck parked outside 114 Helke with some regularity. *Id.* at 4, 6-7.

Almost immediately after receiving the dispatch, Officer Brazel spotted a Sandy's tow truck, *id.* at 5, which, at the time, was about "two miles away from the Helke address," *id.* at 7. Officer Brazel followed the truck and called for back-up. *Id.* at 5, 7, 15. He confirmed with the dispatcher that the suicidal man was operating the tow truck and that he possessed a weapon. *Id.* at 5, 7-8. The dispatcher told him that the subject's name was Richard Dunn. *Id.* at 8. At no point while following the truck did Officer Brazel see Dunn violate any traffic laws. *Id.* at 15.

As soon as back-up arrived, Officer Brazel stopped the tow truck. *Id.* at 8, 16. Unprompted, Dunn exited his truck; he was "physically upset" and crying. *Id.* at 9, 10, 17. Officer Brazel ordered Dunn to put his hands up. *Id.* at 9-10. Dunn complied, and the officers handcuffed him. *Id.* at 11. While walking back to the cruiser with the officers, Dunn—again unprompted—said, "it's in the glove box." *Id.* at 11. Officer Brazel asked if he was "referring to

the gun," and Dunn said yes. *Id.* Another officer walked back to the car, checked the glove box, and found a loaded gun. *Id.* at 11. The officers drove him to the hospital, and Dunn confirmed that he had been planning to kill himself. *Id.* at 13.

The State indicted Dunn for improper handling of a firearm, R.C. 2923.16(B). *State v. Dunn* ("App Op.") (2d Dist.), 2010-Ohio-6340, at ¶ 4. Dunn moved to suppress all evidence derived from the stop, arguing that the police violated his Fourth Amendment rights by stopping his truck without reasonable suspicion that he was about to commit a crime. *Id.* After a suppression hearing in which Officer Brazel testified about the incident, the trial court denied the motion. *Id.* at ¶ 5. Dunn pleaded no contest to the charge, and the court sentenced him to five years' probation. *Id.* at ¶ 7.

The Second District vacated Dunn's conviction, finding that the traffic stop violated the Fourth Amendment and that the trial court should have suppressed all evidence that flowed from the stop. *Id.* at ¶ 16. Drawing from *City of Maumee v. Weisner* (1999), 87 Ohio St. 3d 295—a case that sets the reliability standard for general criminal *investigative* stops—the court held that traffic stops prompted by police dispatches are only constitutional if the State establishes that "*facts precipitating the dispatch* justified a reasonable suspicion of criminal activity . . . or the reasonableness of the existence of an emergency." App. Op. at ¶ 10 (emphasis added). When, as here, the dispatch was "based solely on an informant's tip," "[t]he appropriate analysis is whether the tip itself contains sufficient indicia of reliability to justify the investigative stop." *Id.* Because the testimony elicited at the suppression hearing did not provide information about the veracity, reliability, and basis for the informant's tip, the court found that the State failed to establish a reasonable basis to make the traffic stop. *Id.* at ¶¶ 13-15.

Judge Grady dissented. *Maumee*'s evidentiary standard, he reasoned, applies only to *investigative* stops. *Id.* at ¶¶ 17. Because Officer Brazel stopped the truck for public safety, not investigative purposes, it was not necessary for the State to establish that the tip precipitating the dispatch raised a reasonable suspicion of criminal activity. All that mattered was that the dispatch Officer Brazel received "portrayed exigent circumstances that justified the stop of [Dunn's vehicle]." *Id.* ¶ 20.

ARGUMENT

***Amicus Curiae* Ohio Attorney General's Proposition of Law:**

> *The emergency-aid exception to the Fourth Amendment allows police to stop a driver based on a dispatch that the driver is armed and planning to kill himself imminently.*

The Second District erred in requiring that a report about an emergency situation have the same level of reliability as a report about criminal activity before police may constitutionally intervene. A threat of an imminent suicide is sufficiently serious to trigger the emergency-aid exception to the Fourth Amendment. And when the emergency-aid exception applies, the State does not need to make the same showing of reliability to justify police action that would ordinarily be required for an investigative stop. But even if this Court were to find that the reliability standard for an investigative stop should apply in emergency situations, Dunn still would not prevail: The information in the dispatch was corroborated by Officer Brazel's own observations and therefore has the necessary indicia of reliability.

A. The emergency-aid doctrine permits police officers with reasonable grounds to believe that an individual is about to commit suicide to take swift but narrow action to protect life and avoid injury.

The Fourth Amendment protects "[t]he right of the people to be secure in their persons . . . against unreasonable searches and seizures." U.S. Const. amend. IV. While the warrant requirement is an important guard against government encroachment on this right, "the ultimate

touchstone of the Fourth Amendment is 'reasonableness.'" *Brigham City v. Stuart* (2006), 547 U.S. 398, 403; see also *Applegate*, 68 Ohio St. 3d at 349-50. For that reason, "the warrant requirement is subject to certain exceptions." *Brigham City*, 547 U.S. at 403.

Among these exceptions is one that permits police to act without a warrant or probable cause based on "their reasonable belief that [police action] [is] necessary to investigate an emergency threatening life and limb." *Applegate*, 68 Ohio St. 3d at 350. So long as any searches or seizures initiated under this emergency-aid exception are "strictly circumscribed by the exigencies which justify its initiation," police intervention "to protect or preserve life" does not tread on citizens' Fourth Amendment rights. *Id.* at 349-50 (quotations and citations omitted); see also *Mincey*, 437 U.S. at 392-93.

A report of an imminent suicide can trigger the emergency-aid doctrine. See, e.g., *Ziegler v. Aukerman* (C.A.6 2008), 512 F.3d 777, 785-86; *State v. Oliver* (9th Dist. 1993), 91 Ohio App. 3d 607, 610. Police officers are duty-bound to provide emergency services to those who "are in danger of physical harm" and who "cannot care for themselves." ABA Standards for Criminal Justice (2d Ed. 1980), 31-32, Section 1-2.2. And "[i]t is difficult to imagine a scenario in which immediate police action is more justified than when a human life hangs in the balance." *Holloway*, 290 F.3d at 1337.

Because "[p]eople could well die in emergencies if police tried to act with the calm deliberation of the judicial process," *Applegate*, 68 Ohio St. 3d at 350 (quotations omitted), the emergency-aid exception allows police to act on an informant's tip even if that tip would not ordinarily justify the police initiating a criminal investigation. Cf. *J.L.*, 529 U.S. at 273-74. After all, when an emergency arises, "the business of policemen is *to act*, not to speculate or

meditate on whether the report is correct." *Applegate*, 68 Ohio St. 3d at 350 (quotations omitted) (original emphasis).

The U.S. Supreme Court has given guidance as to what the State must show to justify police intervention in an emergency situation. In *Florida v. J.L.*, police received an anonymous report "that a young black male standing at a particular bus stop and wearing a plaid shirt was carrying a gun." 529 U.S. at 268. Police found the individual, stopped and frisked him, and discovered that he had a gun. *Id.* at 268. Under those circumstances, the Court held, the anonymous tip did not show sufficient reliability to warrant the officers' investigatory stop. *Id.* at 270-71.

But the Court distinguished that situation—a stop for a general criminal investigation—from stops initiated to prevent an imminent emergency. When it comes to life-threatening emergencies, the Court left open the possibility that, in some instances, "the danger alleged in an anonymous tip might be so great" that police could act on the tip without the ordinarily required showing of reliability. *Id.* at 273-74.

Both this Court and the U.S. Supreme Court have elsewhere distinguished police action for the purpose of criminal investigation from police action "totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute." *Cady v. Dombrowski* (1973), 413 U.S. 433, 441; *State v. Morris* (1975), 42 Ohio St. 2d 307, 321 (adopting the reasoning in *Cady*). Because the reasonableness of police action under the Fourth Amendment is necessarily a context-dependent inquiry, it matters whether "the intrusion . . . was . . . for the purpose of gathering evidence to be used in a criminal prosecution," or whether the intrusion "was to protect the general public." *Morris*, 42 Ohio St. 2d at 321; see also *Cady*, 413 U.S. at 441.

Here, all agree that Officer Brazel stopped Dunn's vehicle based on a police dispatch informing him of Dunn's imminent plans to take his own life. The stop therefore falls under the emergency-aid exception if Officer Brazel's reliance on the dispatch was "reasonabl[e]" and "strictly circumscribed by the exigencies which justify its initiation." *Applegate*, 68 Ohio St. 3d at 350 (quotations and citations omitted). It was.

The facts precipitating the police dispatch provide sufficient indicia of reliability. An informant[1] gave the dispatcher specific, detailed information about the emergency that unfolded before Officer Brazel: Dunn's name, address, location, vehicle, plans for suicide and possession of a weapon. Hr'g Tr. 4-8. With that amount of detail, the information contained in the tip "narrow[ed] the likely class of informants, so that the tip [did] provide the lawful basis for some police action." *J.L.*, 529 U.S. at 275 (Kennedy, J., concurring). In other words, because the tip was highly specific, the police had reasonable grounds to assume that it was called in by someone intimately familiar with Dunn and his mental state.

Other facts in the record confirm the tip's reliability. First, Officer Brazel was able to corroborate certain aspects of the tip before he initiated the traffic stop. He independently recalled, based on his own familiarity with the neighborhood, that a tow truck marked "Sandy's" was frequently parked outside 114 Helke. This recollection bolstered the dispatch's claim that a Sandy's tow truck was headed for that address. What is more, Officer Brazel spotted the tow truck near 114 Helke almost immediately after receiving the dispatch, and he followed Dunn for some time as Dunn approached that address. This independent corroboration gave Officer Brazel more than just the dispatch to go on when he decided to initiate a stop.

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[1] In the Second District, both parties agreed that Dunn's wife was the informant. See App. Op. ¶ 15. Finding nothing in the record to confirm that information, the court assumed for the purposes of appeal that the informant was anonymous. Accordingly, the Attorney General will follow the Second District's lead and assume for the purpose of the arguments in this brief that the informant was anonymous.

Analyzed in light of this Court's emergency-aid cases, the information from the tip, coupled with Officer Brazel's own independent corroboration, was enough to justify police action. The Court has, after all, allowed even greater police intrusion based on similar information. In *Applegate*, for example, there was a 911 call reporting a domestic disturbance, and this Court upheld a warrantless entry into the home when police entered the home upon hearing an angry voice and loud noises coming from inside the residence. *Applegate*, 68 Ohio St. 3d at 350. Given that "the physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed," *City of Middletown v. Flinchum* (2002), 95 Ohio St. 3d 43, 44 (quotations and citations omitted), and that "stop[ping] a person on the street . . . is considerably less intrusive than police entry into the home itself," *Illinois v. McArthur* (2001), 531 U.S. 326, 336, the fact that police may enter homes based on a dispatch reporting an emergency situation makes this comparatively minor intrusion—a traffic stop—all the more reasonable.

Not only was Officer Brazel's reliance on the dispatch reasonable, but his intrusion on Dunn's privacy was "strictly circumscribed." *Applegate*, 68 Ohio St. 3d at 350. Officer Brazel pulled Dunn over with the immediate goal of preventing an imminent suicide. And Officer Brazel did not search the car on his own initiative. Rather, Dunn emerged from the vehicle on his own accord and immediately reported that a gun was in the glove compartment. The officers restrained Dunn as a matter of protocol and for their own protection, and they immediately took him to the hospital to receive medical treatment. Based on all these facts, the stop itself was strictly circumscribed to prevent the impending emergency, and was therefore reasonable under the Fourth Amendment.

In sum, Officer Brazel's emergency traffic stop was an appropriate response to the information he received from the police dispatch, and fell firmly within the parameters of the Fourth Amendment.

B. The federal courts have found an anonymous tip about an imminent suicide sufficient to justify police intervention.

In situations very similar to what unfolded here, the federal courts of appeals have found that anonymous 911 calls providing detailed information about an ongoing emergency establish the requisite reliability to justify a police response under the emergency-aid doctrine. And building on the U.S. Supreme Court's decision in *J.L.*, the courts have imposed a lower threshold of reliability for tips that report an emergency than what would otherwise be required to investigate a non-emergency crime.

For example, the Eleventh Circuit found that police could conduct a warrantless search of a private residence "in response to an emergency situation reported by an anonymous 911 caller." *Holloway*, 290 F.3d at 1334. In *Holloway*, police entered a home after receiving a dispatch reporting gunshots and arguments. *Id.* at 1332. The warrantless entry and search were permissible, given that "when an *emergency* is reported by an anonymous caller, the need for immediate action may outweigh the need to verify the reliability of the caller." *Id.* at 1339 (citing *J.L.*, 529 U.S. at 273-74) (original emphasis). Because the information concerned an ongoing emergency that seriously threatened human life, "a lesser showing of reliability than demanded in *J.L.* was appropriate in order to justify" the warrantless search. 290 F.3d at 1339.

The Fourth Circuit came to a similar conclusion. In *United States v. Elston* (C.A.4 2007), 479 F.3d 314, the court found that an anonymous 911 call reporting an individual posing "an imminent threat to public safety" was sufficiently reliable to justify police action. The call, the court found, provided substantial detail about the individual, including his vehicle, weapon, and

state of mind; reflected the caller's personal observation of the individual's conduct; and indicated that the individual had recently left the tipster's presence. *Id.* at 319.

The Ninth Circuit agrees. In *United States v. Terry-Crespo* (C.A.9 2004), 356 F.3d 1170, the court found an anonymous tipster who gave a dubious name and false location sufficiently reliable to justify emergency police action. Despite its imperfections, the call reported an immediate threat to the caller and conveyed contemporaneous information. *Id.* at 1176-77. Central to the court's opinion was its emphasis on the importance of the police dispatch system: "Police delay while attempting to verify an identity or seek corroboration of a reported emergency may prove costly to public safety and undermine the 911 system's usefulness. We do not believe that the Constitution requires that result." *Id.* at 1176. "The Fourth Amendment," the court continued, "does not require the police to conduct further pre-response verification of a 911 caller's identity where the caller reports an emergency." *Id.* at 1176 (citing *J.L.*, 529 U.S. 266, passim).

Other federal courts have applied these precedents in contexts similar to this case. See *United States v. Brown* (C.A.10 2007), 496 F.3d 1070, 1074-79 (911 caller reliable when call involved firsthand, contemporaneous knowledge about an emergency later corroborated by police); *United States v. Ruidiaz* (C.A.1 2008), 529 F.3d 25, 31 n.2 ("[911] reports about ongoing emergencies, by virtue of their very nature, necessitate quick action"); *United States v. Richardson* (C.A.7 2000), 208 F.3d 626, 628-30 (police bound to investigate repeated bogus 911 calls reporting emergencies because "[t]he efficient and effective use of the emergency response networks requires that the police . . . be able to respond to such calls quickly and without unnecessary second-guessing"); *Anthony, et al. v. City of New York, et al.* (C.A.2 2003), 339 F.3d 129, 136-37 (anonymous 911 call sufficiently reliable "where the caller expressed an

immediate risk of harm to herself and where the address from which the call was placed was verified").

C. The Second District misread and misapplied *City of Maumee v. Weisner*.

Despite binding precedent and a bounty of persuasive case law that points in the opposite direction, the Second District found Officer Brazel's traffic stop unconstitutional. In doing so, it failed to distinguish between the reliability standard for investigative stops and the standard for emergency stops. But even if this Court were to find that the Second District's standard is appropriate when analyzing the emergency-aid exception, this Court should still reverse because the information in the dispatch satisfies the reliability standard laid out in *Maumee*.

1. *Maumee* addresses the reliability standard only for tips that lead to investigative stops, not for those that prompt emergency aid.

Maumee sets the reliability standard for information leading to an investigative stop. *City of Maumee*, 87 Ohio St. 3d at 298-99. In *Maumee*, an informant called police dispatch to report a suspected drunk driver. *Id.* at 295. The informant gave his name and phone number, specified the vehicle in question and described the driver's erratic behavior. *Id.* That information, the Court found, was sufficiently reliable to justify an investigative stop. *Id.* at 302. In reaching that conclusion, the Court laid out the following test: "[W]here an officer making an investigative stop *relies solely upon a dispatch*, the state must demonstrate at a suppression hearing that the facts precipitating the dispatch justified a reasonable suspicion of criminal activity." *Id.* at 298 (original emphasis).

There are at least two reasons why this test does not apply here. First, the test is explicitly limited to information that leads to "an investigative stop." *Id.* And as explained above, investigative stops are fundamentally different from emergency-aid stops. The State justified the stop in *Maumee* based on suspicion of criminal activity—drunk driving—so the Court had no

occasion to consider the reliability standard when the stop might be for other purposes. In contrast, the stop here was for emergency aid: Suicide is not a crime under Ohio law, *State v. Sage* (1987), 31 Ohio St. 3d 173, 177, and there is no indication that Officer Brazel initiated the stop for any reason but to prevent Dunn from taking his own life. Because this was not an investigative stop, the investigative-stop standard should not apply.

Second, the test is also limited to circumstances where the "officer making [the] . . . stop" "relies solely upon a dispatch." *Maumee*, 87 Ohio St. 3d at 298. In *Maumee*, the investigating officer initiated a traffic stop "thirty to forty seconds" after he spotted the vehicle without making any personal observations of his own. *Id.* at 295. Because the stop was based wholly on the dispatch, only the reliability of the information precipitating the dispatch mattered. Here, Officer Brazel had more to go on. The facts relayed by the dispatch were of course critical to his decision to initiate a stop. But as explained above, his own contemporaneous observation of the vehicle in close proximity to the address given in the dispatch and his prior observation of a Sandy's tow truck parked outside 114 Helke added to the overall reliability of the information.

Simply put, *Maumee* established a different test for different circumstances. The Court had no occasion to consider whether the facts provided in the dispatch were sufficiently reliable to prompt the emergency-aid exception to the Fourth Amendment, so the standard it sets does not bind the Court here.

2. Even if *Maumee*'s standard for reliability applied to emergency-aid cases, this case would satisfy it.

Ultimately, whether *Maumee* applies to emergency-aid situations is largely beside the point. That is because the facts here would satisfy even the higher standard for reliability that *Maumee* uses. Although *Maumee* requires that the State "demonstrate . . . that the facts precipitating the dispatch justified a reasonable suspicion of criminal activity," it explicitly finds

that the officer receiving the dispatch may testify "about the facts relayed from the caller to the dispatcher." 87 Ohio St. 3d at 511. That is exactly what Officer Brazel did here. Although he may not have known the informant's identity, he did know of the extensive detail provided by the informant. The level of detail provided by the informant, coupled with Officer Brazel's independent corroboration that a Sandy's tow truck was driving toward 114 Helke Road provided sufficient facts to raise a reasonable suspicion that an emergency was about to occur.

It makes no difference that the informant here was presumed to be an anonymous caller. *Maumee*, it is true, acknowledges that an identified informant is typically more reliable than an anonymous one. But *Maumee* also notes that "categorization of the informant as an identified citizen informant does not itself determine the outcome of this case," and says that "independent police corroboration" can make up for the informant's anonymity. 87 Ohio St. 3d at 300, 302. Because Officer Brazel's observations provided the necessary corroboration, the stop was reasonable even under *Maumee*'s analysis.

CONCLUSION

The Court should reverse the decision below.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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