

IN THE SUPREME COURT OF OHIO

STATE OF OHIO

Appellant,

vs.

SONNY HATFIELD

Appellee.

SUPREME COURT CASE  
NO. 08-0045

ON APPEAL FROM THE  
COURT OF APPEALS,  
ELEVENTH APPELLATE  
DISTRICT 2006-A-0033

ASHTABULA COUNTY  
COMMON PLEAS COURT  
CASE NO. 2004 CR 277

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MEMORANDUM OF *AMICUS CURIAE*, OHIO PROSECUTING ATTORNEYS  
ASSOCIATION, IN  
SUPPORT OF JURISDICTION

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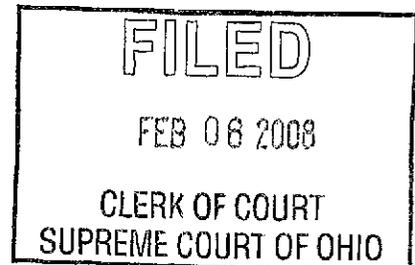
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**STATEMENT OF INTEREST OF AMICUS CURIAE**

The Ohio Prosecuting Attorneys Association, OPAA, is a private, non-profit membership organization which was founded in 1937, for the benefit of the eighty eight (88) elected county prosecutors. The founding attorneys developed the original mission statement, which is still adhered to, and reads:

To increase the efficiency of its members in the pursuit of their profession; to broaden their interest in government; to provide cooperation and concerted action on policies which affect the office of Prosecuting Attorney, and to aid in the furtherance of justice.

Further, the association promotes the study of law, the diffusion of knowledge, and the continuing education of its members.

In this matter, the OPAA supports Appellant's, the State of Ohio's Memorandum in Support of Jurisdiction and urges this Honorable Court to grant jurisdiction. This case is of public and great general interest in that the Eleventh District Court of Appeals has altered the weight a trier of fact may give to direct and circumstantial evidence, insofar as the appellate court has determined that the State of Ohio is required to present direct evidence, presumably in the form of expert testimony, to explain blood test results and their connection to a criminal defendant's state of mind.

This new requirement usurps the function of the trier of fact as the requirement strips the trier of fact from making reasonable inferences as to circumstantial evidence; specifically the Eleventh District Court of Appeals reversed Appellee's conviction because Appellant did not present expert testimony connecting Appellee's positive blood test results for cocaine ingested prior to the fatal collision to his state of mind at the time of the fatal collision hours later.

Appellant was not required to present this type of direct evidence as the trier of fact was free to reasonably infer, and did infer, that Appellee was aware that the cocaine he ingested prior to the

fatal collision could have caused death or serious physical harm to another when he operated his motor vehicle.

The decision of the Eleventh District Court of Appeals in essence dictates to the State of Ohio as to how it must prove its case during trial. The decision also imposes a considerable financial burden on the State of Ohio as it now requires the use of expensive, expert testimony where no such testimony is needed to explain a criminal defendant's state of mind. It is well settled that the trier of fact may make reasonable inferences regarding a criminal defendant's state of mind from circumstantial evidence. The decision also fails to reconcile how trial courts in the district might implement the decision, i.e. the Eleventh District Court of Appeals now requires the use of expert testimony to explain a criminal defendant's state of mind when a trial court may refuse to admit the testimony of the requisite expert.

Moreover, the Eleventh District Court of Appeals ignored its precedent in the determination of this matter. For example, the Eleventh District Court ignored its decision in State v. Carr (December 10, 1999), 11<sup>th</sup> Dist. No. 98-L-131, when it determined that Appellant and the trial court were required to accept Appellee's offer to stipulate to his two (2) current driver's license suspensions. This action by the appellate court constituted an abuse of discretion. The Eleventh District Court of Appeals also applied an improper remedy to Appellee's conviction and sentence regarding allied offenses. Reversal and remand for a new trial is inconsistent with the error committed. A remand to enter judgment of conviction as to a single offense and to sentence accordingly is appropriate. Therefore, the OPAA strongly urges this Honorable Court to accept jurisdiction in this matter.

## **STATEMENT OF THE CASE AND FACTS**

*Amicus Curiae*, the OPAA would agree with the Statement of the Case and Facts as presented by Appellant, the State of Ohio in this matter.

### **LAW & ARGUMENT**

#### **ARGUMENT IN FURTHER SUPPORT OF APPELLANT'S FIRST PROPOSITION OF LAW**

##### **I. THE ELEVENTH DISTRICT COURT OF APPEALS ERRED IN ITS APPLICATION OF *OLD CHIEF* AND IN ITS FAILURE TO CONDUCT A HARMLESS ERROR ANALYSIS .**

*Amicus Curiae*, the OPAA, contend that the Eleventh District Court of Appeals erred in its application of Old Chief v. United States (1997), 519 U.S. 172 to the case at bar as well as committing reversible error when the appellate court failed to conduct a harmless error analysis regarding the admission of Appellee's previous, expired license suspensions as evidence during trial.

An abuse of discretion is more than an error of judgment, but instead demonstrates "perversity of will, passion, prejudice, partiality, or moral delinquency." State v. Smith, Jr. (November 8, 2000), 9th Dist. No. 99CA007399, quoting, Pons v. Ohio State Medical Board (1993), 66 Ohio St. 3d 619. See also State v. Girard, 9th Dist. No 02CA0057-M, 2003 Ohio 7178, citing, Blakemore v. Blakemore (1983), 5 Ohio St. 3d 217. When applying the abuse of discretion standard, an appellate court may not substitute its judgment for that of the trial court. State v. Smith, Jr. (November 8, 2000), 9th Dist. No. 99CA007399, quoting, Pons v. Ohio State Medical Board (1993), 66 Ohio St. 3d 619. See also State v. Girard, 9th Dist. No 02CA0057-M, 2003 Ohio 7178, citing, Berk v. Matthews (1990), 53 Ohio St. 3d 161.

Pursuant to Ohio law, "[n]either the state nor the trial court is required to accept a defendant's stipulation as to the existence of the conviction." State v. Hilliard, 9<sup>th</sup> Dist. No. 22808, 2006 Ohio 3918, quoting State v. Smith (1990), 68 Ohio App.3d 692, 695. This proposition of law has previously been presented to this Honorable Court before yet this Court opted not to modify this holding of the Ninth District Court of Appeals. See State v. Kole (June 28, 2000), 9<sup>th</sup> District No. 98CA007116, overruled on other grounds by State v. Kole, 92 Ohio St.3d 303, 2001 Ohio 191. Moreover, the Eleventh District Court of Appeals has specifically adopted this proposition of law in State v. Carr (December 10, 1999), 11<sup>th</sup> Dist. No. 98-L-131.

In the case at bar, the Eleventh District Court abused its discretion when it reversed Appellee's conviction due to the trial court's refusal to accept Appellee's offer to stipulate as to the existence of his two (2) current driver's license suspensions. It is unclear why the Eleventh District Court of Appeals opted to ignore precedent from their own district in the case at bar. The Eleventh District Court of Appeals, based upon precedent, erroneously determined that Appellant in this matter was required to accept Appellee's stipulation as to his two (2) current driver's license suspensions at the time of the offense. This ruling by the Eleventh District Court of Appeals constitutes an abuse of discretion because the two (2) current driver's license suspensions were elements of an offense with which Appellee was charged, specifically a violation of R.C. 2903.06. It was clear from case law of the Eleventh District Court of Appeal as well as from case law from the Ninth District Court of Appeals, and indirectly this Honorable Court, that Appellant was not required to accept any such stipulation.

Accordingly, the Eleventh District Court of Appeals erred in its reversal of Appellee's conviction. As such, this Honorable Court should accept jurisdiction of Appellant's first proposition of law to remedy such error in the interests of justice

The Eleventh District Court of Appeals also erred when it failed to conduct a harmless error analysis as to the admission of Appellee's prior, expired driver's license suspensions.

While the OPAA would concede that the admission of the prior, expired driver's license suspensions was error, the error was clearly harmless error. As noted in the dissent in the instant matter and this Honorable Court, "there can be no such thing as an error-free, perfect trial, and \*\*\* the Constitution does not guarantee such a trial." State v. Hatfield, 11<sup>th</sup> Dist. No. 2006-A-033, 2007 Ohio 7130, quoting State v. Lott (1990), 51 Ohio St. 3d 160. Rather than automatically ordering reversal, an appellate court should undertake the analysis to determine whether any error is, in fact, harmless. State v. Hatfield, 11<sup>th</sup> Dist. No. 2006-A-033, 2007 Ohio 7130 (dissent). See also Harrington v. California (1969), 395 U.S. 250.

Preliminarily, error in the admission of evidence is not grounds for reversal, if such error does not affect the substantial rights of the parties. Benyak v. Tommer (August 10, 1990), 6th Dist. No. OT-89-11, citing, Civ. R. 61; State, ex rel. Avellone v. City Commrs. of Lake City (1989), 45 Ohio St. 3d 58, 62. Pursuant to Crim.R. 52(A), "any error, defect, irregularity, or variance which does not affect substantial rights shall be disregarded." State v. Smith Jr. (November 8, 2000), 9th Dist. No. 99CA007399. Accordingly, "where constitutional error in the admission of evidence is extant; such error is harmless beyond a reasonable doubt if the remaining evidence, standing alone, constitutes overwhelming proof of defendant's guilt." State v. Smith Jr. (November 8, 2000), 9th Dist. No. 99CA007399, quoting, State v. Williams (1983), 6 Ohio St. 3d 281.

For nonconstitutional errors, the test is whether "there is substantial evidence to support the guilty verdict even after the tainted evidence is cast aside." State v. Hatfield, 11<sup>th</sup> Dist. No. 2006-A-033, 2007 Ohio 7130, quoting State v. Cowans (1967), 10 Ohio St.2d 96, 104. "The Ohio test \*\*\* for determining whether the admission of inflammatory and otherwise erroneous evidence is harmless non-constitutional error requires the reviewing court to look at the whole record, leaving out the disputed evidence, and then to decide whether there is other substantial evidence to support the guilty verdict. If there is substantial evidence, the conviction should be affirmed, but if there is not other substantial evidence, then the error is not harmless and a reversal is mandated." State v. Hatfield, 11<sup>th</sup> Dist. No. 2006-A-033, 2007 Ohio 7130, quoting State v. Davis (1975), 44 Ohio App.2d 335, 347.

In this case, the error committed by the trial constituted the admission of Appellee's prior, expired driver's license suspensions. A review of the other evidence presented at trial reveals that the evidence satisfied either standard for harmless error.

During the trial, evidence was presented that Appellee was operating his motor vehicle under two (2) current driver's license suspensions when he drove his motor vehicle into Kingston's vehicle, killing her. Evidence was also presented that Appellee had ingested a significant quantity of cocaine prior to operating his motor vehicle and that Appellee's blood revealed the presence of cocaine subsequent to his collision with Kingston's vehicle. Appellee also refused on two (2) separate occasions to submit to a blood test. It was reasonable to infer that Appellee refused to submit to a blood test as he was aware that he may have been under the influence of cocaine when he struck Kingston's vehicle, killing her. Moreover, physical evidence revealed that Appellee never even tried to stop for the stop sign controlling the intersection where the collision occurred and that Appellee's vehicle struck Kingston's vehicle

with such force that Kingston's vehicle was completely removed from the roadway. Further, Appellee, in a written statement to law enforcement, admitted to being familiar with the area where the fatal collision occurred.

Notwithstanding the admission of Appellee's prior, expired driver's license suspensions, sufficient evidence existed for presentation of the matter to the trier of fact. The evidence in the record, excluding the prior, expired driver's license suspensions, was sufficient to establish the elements of the offenses with which Appellee was charged. This evidence also supports the trier of fact's decision to convict Appellee of the offenses with which he was charged as the record demonstrated more than ample evidence in support of these offenses. Appellee's conviction was supported by both legally sufficient evidence and the manifest weight of the evidence. As the dissent in the case at bar noted, "viewed in its totality, the admission of Appellee's suspensions was harmless beyond a reasonable doubt. If evidence is susceptible to more than one (1) interpretation, a reviewing court must interpret it in a manner consistent with the verdict". State v. Hatfield, 11<sup>th</sup> Dist. No. 2006-A-033, 2007 Ohio 7130, quoting Warren v. Simpson (March 17, 2000), 11<sup>th</sup> Dist. No. 98-T-0183.

In sum, the Eleventh District Court abused its discretion when it reversed Appellee's conviction due to a misapplication of Ohio law interpreting Old Chief v. United States (1997), 519 U.S. 172. The Eleventh District Court of Appeals also abused its discretion when it failed to conduct a harmless error analysis regarding the admission of evidence, as disputed by Appellee. While the admission of the prior, expired driver's license suspensions was error, the error was harmless as additional evidence more than supported the jury's decision to convict Appellee. As such, this Honorable Court should accept jurisdiction over Appellant's first proposition of law.

**ARGUMENT IN FURTHER SUPPORT OF APPELLANT'S SECOND PROPOSITION  
OF LAW**

**II. EXPERT TESTIMONY IS NOT REQUIRED TO LINK BLOOD TEST RESULTS TO A CRIMINAL DEFENDANT'S STATE OF MIND PRIOR TO ADMISSION.**

*Amicus Curiae*, the OPAA, contend that the Eleventh District Court of Appeals erred in its determination that Appellant was required to provide additional evidence in order to link Appellee's positive blood test results to his state of mind at the time of the fatal collision in order to be admissible.

The Eleventh District Court of Appeals reasoned that because Appellant did not demonstrate that Appellee was under the influence of cocaine at the time of the fatal collision, Appellant failed to create a reasonable causal nexus between the evidence and Appellee's state of mind at the time of the fatal collision. This is not accurate.

The evidence presented at trial revealed that Appellee refused to allow samples of his blood to be taken subsequent to the fatal collision on two (2) separate occasions. When a sample of blood was finally recovered from Appellee, the presence of cocaine and its metabolites were detected. Moreover, Appellee admitted to the use of a significant quantity of cocaine prior to the fatal collision. This evidence demonstrated that Appellee acted recklessly, i.e. with heedless indifference to the consequences and/or perversely disregarding a known risk that his conduct was likely to cause a certain result or was likely to be of a certain nature, when he operated a motor vehicle at the time of the fatal collision ending the life of Sharon Kingston. The blood test results, which the Eleventh District Court of Appeals determined were otherwise properly admitted into evidence, demonstrated that Appellee was aware that he was likely to have been under the influence of cocaine when he was operating a motor vehicle and was aware that by operating a motor vehicle with cocaine in his system was likely to cause death or serious harm to

others, especially when Appellee refused to provide law enforcement with a blood sample on multiple occasions. State v. Hatfield, 11<sup>th</sup> Dist. No. 2006-A-033, 2007 Ohio 7130. This was further evidenced by Appellee's own admission that he slept between the consumption of cocaine and alcohol prior to leaving the party. The obvious inference is that Appellee tried to "sleep off" the dangerous, impairment rendering effects of cocaine and alcohol, but was unsuccessful. This is particularly troubling when the fatal collision occurred a number of hours subsequent to the cocaine and alcohol consumption.

The Eleventh District Court of Appeals again ignored their precedent by reversing Appellee's conviction. The court, as noted by the dissent, ignored prior holdings that "[i]n virtually all cases in which an accused's mental state must be proven, the prosecution relies upon circumstantial evidence as a matter of necessity." State v. Hatfield, 11<sup>th</sup> Dist. No. 2006-A-033, 2007 Ohio 7130, quoting State v. Hill, 11<sup>th</sup> Dist. No. 2005-A-0010, 2006 Ohio 1166; State v. Harco, 11<sup>th</sup> Dist. No. 2005-A-0077, 2006 Ohio 3408. This Honorable Court has noted that circumstantial and direct evidence, i.e. the expert testimony required by the appellate court; inherently possess the same probative value. State v. Treesh, 90 Ohio St. 3d 460, 2001 Ohio 4, citing State v. Jenks (1991), 61 Ohio St. 3d 259. It is unclear why the appellate court would have required expert testimony as to the effect of the cocaine and metabolites upon Appellee at the time of the fatal collision when the evidence presented by Appellant served the same purpose.

Since the Eleventh District Court of Appeals abused its discretion when it reversed Appellee's conviction, as no expert testimony was required to establish that Appellant was reckless for using cocaine prior to the fatal collision, this Honorable Court should accept jurisdiction of Appellant's second proposition of law.

**ARGUMENT IN FURTHER SUPPORT OF APPELLANT'S THIRD PROPOSITION OF  
LAW**

**III. THE ELEVENTH DISTRICT COURT OF APPEALS ERRED WHEN IT  
REVERSED AND REMANDED THE MATTER FOR A NEW TRIAL DUE  
TO A SENTENCING ERROR.**

*Amicus Curiae*, the OPAA, contend that the Eleventh District Court of Appeals erred when it reversed Appellee's conviction and sentence and remanded the matter for a new trial solely because the trial court convicted and sentenced Appellee regarding allied offenses.

The Eleventh District Court of Appeals determined that Appellee had been convicted and sentenced regarding allied offenses of similar import. Based on this determination, the appellate court reversed Appellee's conviction and remanded the matter for a new trial. The remedy employed by the appellate court was improper.

The proper remedy in such case is to vacate the multiple sentences imposed and order the trial court to enter judgment of conviction for one (1) offense and sentence accordingly. State v. Hatfield, 11<sup>th</sup> Dist. No. 2006-A-033, 2007 Ohio 7130, citing State v. Matthews, 1<sup>st</sup> Dist. Nos. C-060669 and C-060092, 2007 Ohio 4881. See also State v. Patrick (August 27, 2001), 8<sup>th</sup> Dist. No. 77644 (a defendant suffers no prejudice when he is sentenced to concurrent sentences for allied offenses. State v. Hendrix, (June 13, 1991), 8<sup>th</sup> Dist. Nos. Cuyahoga App. Nos. 58519, 58520, unreported; State v. Styles, 1997 Ohio App. LEXIS 4547 (Oct. 9, 1997), Cuyahoga App. No. 71052, unreported.

Since the Eleventh District Court of Appeals erred when it reversed Appellee's conviction and sentence due to the trial court imposing sentence on allied offenses, this Honorable Court must accept jurisdiction of Appellant's third proposition of law to rectify the error.

**CONCLUSION**

For the foregoing reasons, respectfully requests that this Honorable Court accept jurisdiction over the instant matter.

Respectfully Submitted,

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