

IN THE SUPREME COURT OF OHIO

STATE OF OHIO	)	SUPREME COURT CASE
	)	NO. 08-0045
Appellant,	)	
	)	
vs.	)	ON APPEAL FROM THE
	)	COURT OF APPEALS,
SONNY HATFIELD	)	ELEVENTH APPELLATE
	)	DISTRICT 2006-A-0033
Appellee.	)	
	)	ASHTABULA COUNTY
	)	COMMON PLEAS COURT
	)	CASE NO. 2004 CR 277

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MERIT BRIEF OF *AMICUS CURIAE*, OHIO PROSECUTING ATTORNEYS ASSOCIATION

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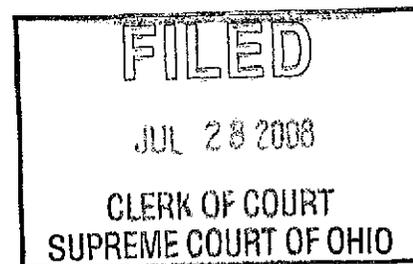
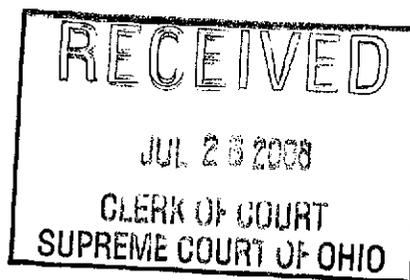
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## STATEMENT OF INTEREST OF *AMICUS CURIAE*

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 reversal of the Eleventh District Court of Appeals decision. This decision is contrary to the 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 reverse the decision of the appellate court in this matter.

## STATEMENT OF THE CASE AND FACTS

*Amicus Curiae*, the OPAA would substantially agree with the Statement of the Case and Facts as presented by the Eleventh District Court of Appeals in State v. Hatfield, 11<sup>th</sup> Dist. No. 2006-A-0033, 2007 Ohio 7130.

On February 24, 2004, at approximately 5:40 p.m., an automobile collision occurred between a Ford Explorer, driven by Appellee, and a Honda Civic, driven by Sharon Kingston, at the intersection of Harold Avenue and Beck, Plymouth, and Plymouth-Brown Roads in Plymouth Township, Ashtabula County, Ohio. (Tr. 237-280).

The intersection of the four (4) roads can best be described as an offset four-way intersection. (Tr. 237-280). Plymouth-Brown Road merges into Beck Road heading in a northern (northwestern) direction and is designed to allow traffic to travel unimpeded between Plymouth-Brown and Beck Roads in either direction. (Tr. 237-280). Plymouth Road splits off in a westerly direction (leftward) from where Plymouth-Brown Road merges with Beck. Traffic also flows uninterrupted from Plymouth-Brown Road to its westerly fork (Plymouth Road), but eastbound traffic from the Plymouth Road's Y-shaped intersection with Beck and Plymouth-Brown, is required to stop. (Tr. 237-280). A "stop sign ahead" warning sign is posted two-tenths of a mile prior to the point where Plymouth Road intersects with Plymouth Brown and Beck Roads.

Harold Avenue heads in an east-west direction (to the right) just northwest of Plymouth Road intersection with Plymouth-Brown and Beck Roads. (Tr. 237-280). Westbound traffic on Harold Road is regulated by a stop sign where it intersects with Plymouth-Brown and Beck Roads. Traffic is able to cross the intersection from Plymouth Road to Harold Avenue diagonally across Beck Road. (Tr. 237-280).

Sharon Kingston was traveling in a northwesterly direction from Plymouth-Brown toward Beck Road when the two (2) vehicles collided, with the front and front-left portions of Appellee's vehicle striking the driver's side of Kingston's Honda. (Tr. 237-280). Following the collision, Appellee's SUV came to rest across Beck Road, facing eastward toward Harold Avenue. (Tr. 237-280). The force of the impact caused Kingston's vehicle to come to rest in a grass field just north of Harold Road, near the Harold Road stop sign, facing westward toward Plymouth Road.

Lorraine Pratt, a licensed practical nurse, who was driving westbound on Harold Avenue with her daughters saw Sharon Kingston's vehicle sitting in the field on the right hand side of Harold Avenue with the side "smashed in" and "another car parked on \*\*\* Beck Road \*\*\* facing \*\*\* Northwest." (Tr. 210-221). She noticed that the woman in the Honda was "not doing very well" and went to assist her. (Tr. 210-221). As she approached to examine Kingston, she found her "dazed," unresponsive to verbal cues, and "unable to control her head movements." Pratt also stated that Kingston's "pupils were fixed and dilated." (Tr. 210-221). Pratt instructed her oldest daughter to call 9-1-1. When asked if she noticed appellant at the scene, Pratt testified that she first noticed him standing near his vehicle and talking on his cell phone. (Tr. 210-221). Pratt described Appellee's demeanor following the accident as "very shaken," and that he was pacing back and forth and "moving his hands quite a bit." (Tr. 210-221).

An EMS crew from the Plymouth Township Volunteer Fire Department was first to arrive on the scene. (Tr. 172-203). Bill Allds, Captain of the Plymouth Township Fire & Rescue Team, testified that he saw appellant's car sitting across the middle of Beck Road facing eastward toward Harold Avenue, and saw the vehicle containing the injured female sitting in the field facing westward toward Plymouth Road. (Tr. 172-189).

Ascertaining that the driver of the car was the more seriously injured, Allds proceeded to the car to evaluate her condition. (Tr. 172-189). He noticed that the crash had caused Kingston to become "entrapped in the vehicle" due to "intrusion into the passenger compartment." Allds observed that Kingston was cyanotic. He checked her vital signs and determined that Kingston had died. (Tr. 172-189). Based upon Allds' observations, a representative of the Ashtabula County Coroner's Office was subsequently summoned to the scene.<sup>1</sup>

While Allds was attending to Kingston, other members of his squad had placed Appellee in a backboard and cervical collar and were beginning to evaluate his injuries. (Tr. 172-189). After covering Kingston's vehicle with a blue tarp "to protect the scene as well as the confidentiality of the victim," he proceeded to ascertain Appellee's condition and coordinate his treatment. (Tr. 172-189).

Appellee was transported into the squad vehicle where the EMS squad performed trauma surveys. Allds described appellant's condition as "alert and oriented \*\*\* breathing [and] \*\*\* able to speak to us in full sentences." (Tr. 172-189). Although Allds testified that Appellee

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<sup>1</sup> Richard Morrell, Chief Investigator of the Ashtabula County Coroner's Office, testified that he was summoned to the scene of the accident to perform the investigation into Kingston's death, which included taking photographs and measurements of the scene and transportation of the body to the morgue located at the Ashtabula County Medical Center ("ACMC"). (Tr. 340-356). Morrell testified that, as part of his standard procedure, he takes a sample of blood from the victim to be analyzed for alcohol and that Kingston's result from this tox screen were negative. Morrell further testified that after gathering all pertinent information, he is responsible for preparation of the Coroner's verdict, which is then reviewed and approved as is or modified as necessary by the Ashtabula County Coroner. (Tr. 340-356). In the instant matter, the Coroner's Verdict determined the cause of Kingston's death was as a "homicide" due to "trauma to the head, trunk and extremities," without the necessity of an autopsy. (Tr. 340-356).

complained of "blurred vision, headache and being shaky," his exam results were otherwise "unremarkable," i.e., a slight rise pulse rate and blood pressure, which were findings one would "normally expect for somebody \*\*\* involved in a motor vehicle crash." Appellee was subsequently placed upon a cardiac monitor and given two IV's, which Allds described as "standard practice," and then transported to ACMC for further evaluation and treatment. (Tr. 172-189).

While the Plymouth Township EMS was attending to the collision victims, representatives from the Ohio State Highway Patrol arrived to investigate the scene of the accident. Trooper Tye Tyson was the first patrolman to arrive on the scene. (Tr. 237-280). He was joined shortly thereafter by Trooper Jayson Hayes and Sergeant John Altman. (Tr. 288-298; Tr. 298-340). Trooper Tyson proceeded to perform a field sketch of the accident scene and to investigate the scene. (Tr. 237-280). Trooper Tyson described the condition of the roadway that evening as "dry" and the weather conditions as "partly cloudy, 35 degrees with no adverse conditions." (Tr. 237-280). When asked how he found the vehicles, Trooper Tyson testified that Appellee's vehicle was in the middle of the roadway at the intersection facing northwest, whereas the vehicle in the field was "facing in a \*\*\* southwesterly direction." Trooper Tyson observed that there were no tire markings in the roadway, save for "markings \*\*\* north of Harold Road where the Honda Civic had slid off the road," and that there were "no brake marks or anything." (Tr. 237-280). Trooper Tyson also testified as to his examination and measurement of a fluid trail left by appellant's vehicle, and plotting of the debris field left by both vehicles involved in the accident, explaining that the debris field shows "which direction the debris were flying after the accident," and provides information as to which direction the force of

the accident occurred. (Tr. 237-280). Further investigation of the accident revealed that Appellee was driving under a suspended license.

After completing his investigation of the accident scene, the findings of which were included in the Highway Patrol's official report, Trooper Tyson proceeded to the ACMC to interview appellee regarding the accident. (Tr. 237-280). When Trooper Tyson arrived to speak with Appellee, he was in Emergency Care at ACMC. Trooper Tyson testified that when he first arrived to meet with Appellee, Appellee's mother was present. (Tr. 237-280).

Prior to taking Appellee's written statement, Trooper Tyson read Appellee his Miranda rights. (Tr. 237-280). Tyson then handed appellee a form and requested that he write his own interpretation of the crash. (Tr. 237-280). Tyson testified that Appellee was able to comply with Tyson's request without difficulty.

In his handwritten statement, which was admitted into evidence at trial, and to which Tyson testified, Appellee reported that he "was turning left off of Plymouth Road and a small white car was coming straight over the hill and we had a head on collision." (Tr. 237-280). Next, Tyson asked Appellee a series of questions, which he recorded on the report, along with Appellee's responses as follows:

"Q: You were on Plymouth Road and turning left off of Plymouth Road?

"A: Yes, sir.

"Q: Did you stop at the stop sign on Plymouth Road?

"A: I don't remember. I looked right and went to turn and hit the white car. Was there a stop sign there? There's not one there, is there?

"Q: [\*\*9] Did you notice the white car before you hit it?

"A: I didn't see the car. There is a dip and you can't see that way.

"Q: About how fast were you going?

"A: I was going 45, but I slowed down for the turn, so probably about 20 to 25.

"Q: So, you didn't hit your brakes or steer away?

"A: No, I was turning left and then the collision.

"Q: Do you remember using a turn signal?

"A: Yes.

"Q: Are you familiar with the area?

"A: Yes, not very though, enough to get around.

"Q: Do you know the owner of the vehicle that you were driving?

"A: Yes, it's my vehicle but I haven't got the title switched over yet.

"Q: When did you buy the vehicle?

"A: One and a half to two months ago.

"Q: Were you on the phone at the time of the accident?

"A: No.

"Q: You knew that your license was suspended?

"A: Yes.

"Q: Did Keith (Haynes, the vehicle's prior owner) know that your license was suspended?

"A: No.

"Q: Is the vehicle insured under anyone's name?

"A: I don't think so.

"Q: Was your seat belt on?

"A: No.

"Q: What are your injuries?

"A: Dizzy spells, lower back, bad headache.

"Q: Were you drinking any alcoholic beverages this evening?

"A: No, sir.

"Q: Did you take any narcotics, marijuana, medication?

"A: No, sir.

Trooper Tyson then asked if Appellee would be willing to submit to a blood test. (Tr. 237-280). At first, he agreed, but after disclosing to Trooper Tyson that he uses "drugs and alcohol" and that "[i]t may be in [his] system from yesterday," he retracted his consent.

Tyson then contacted Sergeant Altman and informed him that Appellee refused to consent to a blood test. (Tr. 237-280). Altman showed up at the hospital shortly thereafter to speak with Appellee and obtained a second written statement, in the form of a question and answer session, from him. (Tr. Tr. 298-340). After giving his statement, Appellee reviewed and signed it without any changes. Sergeant Altman characterized Appellee's demeanor during questioning as "coherent" and stated that Appellee understood what he was being asked, did not seem to have slurred speech, and did not seem to be injured or in pain. (Tr. 298-340).

Sergeant Altman's questions and appellant's answers regarding how the accident occurred were substantially similar to those in Trooper Tyson's interview. (Tr. 298-340). However, Appellee responded to additional questioning regarding his drug and alcohol use as follows:

"Q: Have you had any alcohol or drugs today?

"A: Yes, I was at a party last night.

"Q: What time did [\*\*11] you go to the party?

"A: Around 12:00 a.m. or 1:00 a.m. on February 24, 2004.

"Q: What time did you leave the party?

"A: Before 6:00 a.m.

"Q: Where was it?

"A: Ashtabula.

"Q: How much alcohol and drugs did you consume?

"A: Half an ounce of marijuana, seven to eight lines of cocaine, eight to nine mixed drinks.

"Q: Over what time frame?

"A: From 12:00 a.m. or 1:00 a.m. until I left before 6:00 a.m.

"Q: How much sleep did you have today?

"A: From about 6:30 a.m. till about 2:00 p.m.

"Q: Did you have any drugs or alcohol from the time you left the party until now?

"A: No.

"Q: Did you consume any alcohol or drugs from the time of the crash until Trooper Tyson talked to you?

"A: No.

\*\*\*\*

"Q: Do you feel you were impaired at the time of the crash?

"A: No.

"Q: How regularly do you smoke marijuana?

"A: Every day.

"Q: How regularly do you do cocaine?

"A: A few times a week.

"Q: How regularly do you consume alcohol?

"A: Four or five times a week.

"Q: Do you usually drive after drinking or doing drugs?

"A: No.

Subsequent to this second interview, Sergeant Altman asked Appellee for permission to take a blood sample, and Appellee agreed. (Tr. 298-340). With Appellee's consent, two (2) blood samples were taken by Crystal Severino, R.N., at 9:29 p.m., and again at 10:06 p.m., using the Ohio State Highway Patrol's standard-issue Biological Specimen kit. (Tr. 280-298). The samples were sent to the Ohio State Highway Patrol Crime Lab, where they tested negative for the presence of alcohol and positive for the presence of cocaine. Appellee was released from the hospital after 11:00 p.m. that evening, after he elected not to stay for further observation.

On July 23, 2004, Appellee was charged, by way of indictment, with one (1) count of Vehicular Homicide, a felony of the fourth degree, in violation of R.C. 2903.06(A)(3)(a) and one (1) count of Aggravated Vehicular Homicide, in violation of R.C. 2903.06(A)(2)(a). On August 19, 2004, Appellee appeared for his arraignment and entered a plea of not guilty to the charges.

On November 22, 2004, Appellee filed a motion to suppress "all oral and written statements" given to law enforcement personnel and a motion in limine to prohibit the State from using the results of his blood tests at trial. On February 24, 2005, Appellee filed another motion in limine to prohibit the State from using "any testimony concerning any admissions" by Appellee regarding "cocaine, marijuana, alcohol or drug use" prior to the accident. On March 4, 2005, the trial court overruled Appellee's motions following a hearing.

On July 8, 2005, Appellee filed another motion in limine to prohibit the State from introducing evidence of his prior driving record and any photos of Sharon Kingston taken at the scene of the accident. On October 14, 2005, Appellee filed yet another motion, this time to "prohibit use of evidence" taken from the crime scene, all testimony with regard to his demeanor

on or about February 24, 2004, all statements made by the defendant and "all other evidence that [the state] intends to use."

On March 30, 2006, the trial court ruled on the aforementioned motions. With regard to Appellee's motion in limine to exclude evidence of his prior driving record, the trial court sustained the motion in part to exclude general proof of prior traffic convictions, but to allow evidence of "the status of Defendant's driving privileges on the date of [the] incident, and [any] felony traffic convictions within the past ten years," but overruling the motion with regard to the admission of photographs of the victim. The trial court overruled Appellee's "motion to prohibit use of evidence."

On May 3, 2006, Appellee again moved the court to exclude evidence of the blood analysis, based upon State v. Mayl, 106 Ohio St.3d 207, 2005 Ohio 4629. The trial court overruled this motion on May 11, 2006.

The case went to a three (3) day trial before a jury on June 16, 2006. After polling the jury, Appellee was found guilty of both counts of the indictment. On June 19, 2006, Appellee was sentenced to eight (8) years in prison for aggravated vehicular homicide and eighteen (18) months on the vehicular homicide charge, with the sentences to run concurrently, and concurrent with a sentence previously imposed for a conviction for trafficking in marijuana in Ashtabula County Court of Common Pleas Case Number 2005 CR 167. In addition, the trial court imposed a lifetime suspension of Appellee's driver's license.

On December 31, 2007, the Eleventh District Court of Appeals reversed Appellee's convictions and remanded the matter to the trial court for a new trial. See State v. Hatfield, 11<sup>th</sup> Dist. No. 2006-A-0033, 2007 Ohio 7130. The State of Ohio sought leave to file a discretionary appeal of the decision of the appellate court. This Honorable Court granted the State leave to file

appeal on May 21, 2008. On July 15, 2008, Appellant filed its merit brief. *Amicus Curiae*, OPPA now supplies its merit brief for this Honorable Court's consideration.

## 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), 9th 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 of Appeals erroneously 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 reverse the decision of the appellate court.

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 reverse the decision of the appellate court as it relates to 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 reverse the decision of the appellate court in relation to 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 should reverse the decision of the appellate court as it relates to Appellant's third proposition of law to rectify the error.

**CONCLUSION**

For the foregoing reasons, respectfully requests that this Honorable Court reverse the decision of the appellate court.

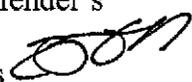
Respectfully Submitted,

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**PROOF OF SERVICE**

A copy of the foregoing Brief of Amicus Curiae was sent by regular U.S. Mail to Shelley Pratt, Esq., Ashtabula County Prosecutor's Office, 25 W. Jefferson Street, Jefferson, Ohio 44047, Counsel for Appellant; and to Joseph Humpolick, Ashtabula County Public Defender's Office, 4817 State Road, Suite 202, Ashtabula, Ohio 44004, Counsel for Appellee, this  day of July, 2008.



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