

IN THE SUPREME COURT OF OHIO

STATE OF OHIO : SUPREME COURT CASE NO. 2008-0045
: :
PLAINTIFF-APPELLANT : :
: :
-vs- : :
: :
SONNY HATFIELD : :
: :
DEFENDANT-APPELLEE :

MERIT BRIEF OF DEFENDANT-APPELLEE

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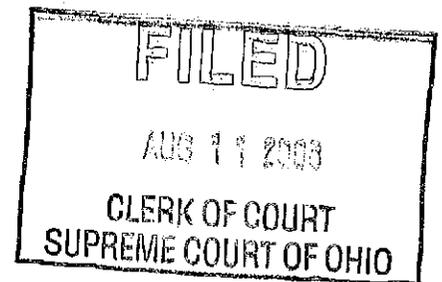


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STATEMENT OF THE CASE

In addition to the facts found in Plaintiff-Appellant's brief, counsel for Defendant-Appellee adds the following.

In the Court of Appeals below, Appellee raised thirteen assignments of error. In its decision of December 31, 2007, the court ruled in Appellee's favor on four of them, ruled against him on five and found four others to be moot. See *State v. Hatfield* at page 35-36, paragraph 178. One of these was Assignment of Error Number Six in which the trial court refused to admit the investigative report and curriculum vitae of defense expert Douglas Heard. Counsel argued that doing so violated Appellee's Constitutional right under the Fifth Amendment to due process of law and his Sixth Amendment right to compulsory process. In support of his argument, counsel cited *Holmes v. South Carolina*, 547 US 319 (2006) which held that a court may not use an arbitrary rule or law that limits a criminal defendant's right to present a meaningful defense. *Holmes v. South Carolina*, 547 US 319 (2006).

Another Assignment of Error that was declared moot was Assignment of Error Ten which involved a challenge to the following remarks made by Ashtabula County Prosecutor Thomas Sartini during rebuttal arguments, to wit:

If we didn't think we could prove this case beyond a reasonable doubt, ladies and gentlemen, I wouldn't be here.

TP at 553.

Defense counsel argued that these remarks violated Appellee's rights because they went beyond the discretion that is given a prosecutor to comment upon the evidence and amounted to the assertion of personal knowledge backed by professional reputation. See *State v. Smith*, 14 OS 3d 13 (1984).

In Assignment of Error Twelve, Counsel argued that the cumulative effect of a number of errors deprived Appellee of his Constitutional right to a fair trial. See *State v. Demarco*, 31 OS 3d 191 (1985). Counsel argued that this was the case even if some of the errors were harmless. See *State v. Madrigal*, 87 OS 3d 378 (2000).

STATEMENT OF FACTS

Counsel for Defendant-Appellee brings the following facts to the attention of this court in addition to those found in Plaintiff-Appellant's brief:

Defendant-Appellee presented a different theory of the accident of February 24, 2004. Accident reconstructionist Douglas Heard testified that it was caused when Appellee was driving in a south easterly direction on Beck Road and that he collided with Ms. Kingston as he attempted to make a left hand turn on to Harold Road which goes into Beck from a westerly direction. See TP at 488-490. Apparently Appellee confused Beck and Plymouth Ridge Roads when he spoke to the authorities. Mr. Heard testified that the damage to Appellee's vehicle was on the front driver's side, which was where they should be when making a left hand turn as he was told. If he had gone through a stop sign on Plymouth Ridge Road, the damages would have been on the front passenger side instead. TP at 487, 492-494.

Accordingly, defense counsel argued that the accident was an act of negligence because Appellee made the left hand turn onto Harold Road without being careful enough to perceive Ms. Kingston coming in the opposite direction down Beck Road prior to the collision. TP at 548. Thus in both his opening statement and closing argument, he asked the jury to acquit Appellee of count two which alleged a violation of Revised Code (R.C. hereinafter) 2903.06 (A)(2)(a) and to return a guilty verdict to count one which alleged a violation of R.C. 2903.06 (A)(3)(a). TP at 170-171, 548-549.

It is Appellee's conviction of R.C. 2903.06 (A)(2)(a) that counsel sought to get reversed in the Appellate Court below and get remanded for a new trial. It is also the Appellate Court's ruling in Appellee's favor on the issues he raised before it that he is asking this court to affirm.

FIRST PROPOSITION OF LAW

EVIDENCE OF DRIVING SUSPENSIONS THAT HAD EXPIRED PRIOR TO THE DATE THAT DEFENDANT-APPELLEE HAD AN ACCIDENT WITH SHARON KINGSTON WAS NOT RELEVANT TO ANY OF THE ISSUES THAT WERE INVOLVED IN THE CASE THAT HE WAS ON TRIAL FOR AND ITS PROBATIVE VALUE WAS SUBSTANTIALLY OUTWEIGHED BY THE DANGERS OF UNFAIR PREJUDICE, OF CONFUSION OF THE ISSUES AND OF MISLEADING THE JURY THAT HEARD THIS CASE.

Under the Ohio Rules of Evidence (hereinafter ORE), relevant evidence is generally admissible at trial unless otherwise provided by law. ORE 402. Relevant evidence is defined as evidence having any tendency to make the existence of any fact that is consequence to the determination of the action more probable or less probable than it would be without the evidence. ORE 401.

In the trial court below, the State of Ohio had to prove that Defendant-Appellee's driving privileges were suspended on February 24, 2004 to get a conviction of either offense that he was indicted on. See R.C. 2903.06 (B)(3), 2903.06 (C). Counsel had indicated that he was willing to stipulate that he was. TP at 9. In fact, defense counsel was willing to stipulate to the admission of a letter from the Ohio Bureau of Motor Vehicles of December 17, 2003 that informed him that he was under a noncompliance suspension. TP at 419. However, over defense counsel's objection, Ashtabula County Prosecutor Thomas Sartini was permitted to prove more than that. He was allowed to introduce Defendant-Appellee's record of driving suspensions. TP at 11-12, 423-29. The suspensions were many in number and almost all of them had expired long before he had an accident with Sharon Kingston on February 24, 2004. For example, there was a school drop out suspension from May 22, 1996 to January 31, 1998 when Appellee was a minor. There was a random suspension from July 20, 2001 to October 18, 2001, a noncompliance suspension

from August 3, 2001 to August 13, 2001 and a drug suspension from August 3, 2001 to January 30, 2003.¹ See TP at 9, 418-21, State's Exhibit J.

The State was permitted to use the evidence because it argued and the trial court held that it went to the issue of recklessness. TP at 11-12. However, the State did not introduce proof that Defendant-Appellee drove a vehicle while under suspension except on the day of the accident in this case or that he had an automobile accident while under suspension. In fact, there was no evidence produced to show that Defendant-Appellee ever lost his license for being an unsafe driver.²

In *State v. Frommer*, the Fourth District Court of Appeals held that an accused's record of license suspensions was not relevant in a prosecution for aggravated vehicular homicide and vehicular homicide. *State v. Frommer*, 1985 WL 17494 (4th Dist., 1985). In that case as in this one, the State argued that the record reflected a reckless state of mind. However, the Appellate Court held that the accused's license suspension in and itself had nothing to do with the quality of his driving at the time of the accident that took the decedent's life and was not the proximate cause of it. *State v. Frommer*, 1985 WL 17494 at 1. See also *State v. Jodrey*, 1985 WL 6740 (1st Dist.).

Counsel submits that Defendant-Appellee's license suspensions had nothing to do with the proximate cause of the accident that he had with Sharon Kingston. The suspensions had nothing to do with his ability to operate a motor vehicle safely. He wasn't prohibited from

¹ The State of Ohio redacted mention that Defendant-Appellee had a drug suspension when this case went to the jury.

² This isn't to say that this kind of evidence would have been relevant and admissible under ORE 401 and 402 and not subject to exclusion under ORE 403 had it existed.

driving because of a physical or mental disability that would make him a threat to others on the road. Accordingly, his record was not relevant to the issue of reckless as argued by Plaintiff-Appellee.

Counsel submits that the evidence had nothing to do with reckless and had more to do with the character of his client. Under ORE, the State may not use character evidence against the accused unless the accused introduces it himself. ORE 404 (A)(1). Yet that didn't stop Ashtabula County Prosecutor Thomas Sartini from referring to Appellee's driving record and saying:

This isn't a failure to pay a parking ticket. This is a person who drives without a license and doesn't care.

TP at 531-532.

So in spite of how the evidence was proffered, Mr. Sartini used it to portray Appellee as a man of minimal integrity who gets behind the wheel of a car without a license because he has little respect for the law and even less for the good citizens who are on the road. It was evidence that proved Appellee was an unfit human being and not an unfit driver.

Even if this evidence was relevant, it was still not admissible because its probative value was substantially outweighed by the danger of unfair prejudice, of confusion of the issues, or of misleading the jury. ORE 403 (A). Counsel submits that because the evidence had more to do with character than it did with recklessness, its probative value was substantially outweighed by all three of these considerations. In other words, this was overkill.

Accordingly, counsel submits that what the evidence did was take a case where the State had to prove that Defendant-Appellee did something with a specific mental state of mind, (in this case negligence or recklessness) and turned it into one of strict liability. The State in effect

was able to argue that a person who drives a car, with a record like this, is per se reckless. That is not the law. Therefore, this evidence should not have been admitted.

The Appellate Court below agreed with all of these arguments and held that this evidence was inadmissible. In an opinion that was based on the United States Supreme Court case of *Old Chief v. U.S.*, 519 US 172 (1997), it held that the trial court should have accepted Defendant-Appellee's proffered stipulation. *State v. Hatfield*, at 27-28. In *Old Chief*, the U.S. Supreme Court reversed a defendant's conviction of a federal weapons violation which required proof of a prior felony conviction. The accused offered to stipulate that he had a prior conviction but the assistant district attorney who tried the case refused to accept it. Instead, the government was allowed to introduce Defendant's judgment and commitment to prison in addition to his prior felony conviction. *Old Chief v. U.S.*, 519 US at 176-177.

The United State Supreme Court acknowledged that as a general rule the prosecution is entitled to prove its own case by evidence of its own choosing without being limited by stipulations or admissions by the defense. *Old Chief v. U.S.*, 519 US at 186-187. However, it further held that this rule is not without limits. One such limit is where the point at issue is a defendant's legal status. *Old Chief v. U.S.*, 519 US at 190.

Accordingly, the court held that where a prior conviction is an element of an offense that the accused is on trial for, the State must accept his stipulation to it in lieu of further proof. *Old Chief v. U.S.*, 519 US at 174. The court came to this conclusion because it did not want to see concededly relevant evidence being used to lure the jury into declaring guilt on a ground different than the proof required of the offense before it. It did not want to see evidence of an accused's bad past acts being turned into evidence of bad character which would lead to a conviction upon an improper basis, namely that the accused is a bad person. See *Old Chief v. U.S.*, 519 US at

180-181. Therefore, it reversed the conviction and remanded the case for further proceedings because under Federal Rule of Evidence 403 the probative value of Mr. Old Chief's criminal past beyond what he was willing to stipulate to was outweighed by the danger of unfair prejudice.

Old Chief v. U.S., 519 US at 190-191.

Accordingly, the Appellate court found that *Old Chief*'s holding was controlling and that Appellee's rights were violated when the trial court allowed the State of Ohio to use his record of driving suspensions against him. *State v. Hatfield* at 26-27, paragraphs 145-146, 148.¹

Appellant's brief does not cite a case that deals with this issue better or even stands for the proposition that a prosecutor can use an accused's record of driving suspensions against him in this manner in a trial for a violation of R.C. 2903.06 (A)(2)(a). Contrary to what was argued in Plaintiff-Appellant's brief, the court's holding in this case is consistent with a previous holding out of the same Appellate district. See *State v. Henton*, 121 OA 3d 501 (11th Dist., 1997).

Nonetheless, counsel for Plaintiff-Appellant argues that the admission of the evidence was harmless error, even though it didn't argue that in the brief that if filed in the Appellate court below. However, Judge Grendell in her dissent to the majority Appellate opinion argued that the admission of the evidence was subject to harmless error analysis even though she agreed that it should have been excluded under *Old Chief*. See *State v. Hatfield* at 39-40.

Yet assuming for the sake of argument that harmless error analysis applies to this case, counsel would assert that the error was anything but. Counsel submits to begin with that the admission of the evidence deprived Defendant-Appellee of his Constitutional Right to a fair trial

¹ Even the dissent agreed that the *Old Chief* holding applied to this case and that Appellee's rights were violated. However, it felt that the violation was subject to harmless error analysis. See *State v. Hatfield* at 39-40.

because of the improper way that it was used. It has been held that non-constitutional error may rise to the level of constitutional error where the objected to error amounts to a violation of the accused's rights to a fair trial as that term is understood under the due process clause of the Fourteenth Amendment and Ohio due course of law clause (Article I, Section 16). State v. Davis, 44 OA 3d 335 (8th Dist., 1975). See also State v. Wegmann, 2008 WL 434981. So counsel argues that Appellee's driving record was used in such a way to be judged in this manner as far as harmless error analysis is concerned.

Counsel also raised this argument in the Appellate Court below as part of his cumulative error argument that the court held to be moot. See State v. Hatfield at 35-36. This Court has held that the cumulative effect of a number of errors at trial may deprive an accused of his Constitutional Right to a fair trial. State v. DeMarco, 31 OS 3d 191 at 196-197 (1987).

In any case, this Court has held that to hold an error as harmless, the error must be harmless beyond a reasonable doubt. State v. DeMarco, 31 OS 3d 191, 195 (1987). An error in the admission of evidence is harmless if there is no reasonable possibility that the evidence may have contributed to the accused's conviction, and that there must be overwhelming evidence of the accused's guilt or some other indicia that the error did not contribute to the conviction. State v. DeMarco, 31 OS 3d 191, 195 (1987).

Counsel directs this Court's attention to State v. Henton that was decided by the Eleventh Appellate District in 1997. In Henton the accused was indicted on two counts of aggravated trafficking in drugs under then a statute then in affect which elevated the crime to a higher felony if there was a prior conviction of a felony drug offense. Prior to trial, defense counsel was willing to stipulate that his client had previously been convicted of such an offense under Old Chief.

However, the prosecution was unwilling to accept that and instead was allowed to introduce evidence of a second drug abuse conviction. See *State v. Henton*, 121 OA 3d 501 (11th Dist., 1997) at 505-506. Ultimately the accused was convicted and took his case to the Eleventh District Court of Appeals which reversed and remanded the matter for further proceedings as it did here.

In its holding, the Court found that *Old Chief* did apply to the stipulation offered by defense counsel. *State v. Henton*, 121 OA 3d at 506. The court also found that the error was not harmless even though the evidence against the defendant was strong. Among other reasons, it felt that the defendant may have been convicted because he had two prior convictions of the same offense that he was on trial for. *State v. Henton*, 121 OA 3d at 508. The Court also felt that an improper remark that was made by the prosecution during closing argument highlighted the prejudice that the defendant received. See *State v. Henton*, 121 OA 3d at 509.

If you look at the record as a whole, the jury that heard this case was allowed to know that Defendant-Appellee was a man with several suspensions on his record who drives a vehicle without a license and doesn't care because the court refused to accept the stipulation that was offered by defense counsel. This error was highlighted when the State was also allowed to prove that he snorted seven to eight lines of cocaine roughly eleven hours before his accident with Sharon Kingston and that there was still evidence of cocaine in his blood roughly four hours thereafter even though the State didn't produce an expert witness to tie that evidence to Appellee's driving skills or state of mind. See TP at 260, 285, 306-307, 410-411.

So whether he went through a stop sign under the State's theory of the case or he made a left hand turn onto another road without being careful under the defense's theory prior to the accident is immaterial. There is substantial evidence to support the conclusion that he was

convicted of everything he was on trial for because he was portrayed as a coke snorting man of minimal integrity with a long history of license suspensions who likes to party and get behind the wheel of a car 'and doesn't care'. In other words, it appears he was convicted because of who he was instead of for what was proven. His conviction was also tainted when Ashtabula County Prosecutor Thomas Sartini put his character up against Defendant-Appellee and defense counsel when he told the jury that he wouldn't be trying this case if he didn't think he could prove his case beyond a reasonable doubt. TP at 553. Counsel submits even though the trial court sustained defense counsel's objection to the remark and instructed the jury to disregard it, damage was done that could not be repaired. Those remarks and the evidence that should have been excluded poisoned the quality of what the jury had to consider.

Counsel submits that given all of this it cannot be said that Defendant-Appellee would have been convicted of R.C. 2903.06 (A)(2)(a) anyway if not for the error. The jury below could have found that Defendant-Appellee was guilty of R.C. 2903.06 (A)(3)(a) as alleged in the first count of his indictment and as argued by defense counsel or whether or not it believed the State's theory that he went through a stop sign or the defense's that he made a left hand turn onto another road without looking out properly for the traffic ahead of him. See TP at 548-549.

There was after all evidence that the point of impact was on the front driver's side of Defendant-Appellee's vehicle which is consistent with the defense theory that he was making a left turn at the moment of impact. See TP at 487, 492-94.

However, Mr. Sartini told the jury that defense counsel doesn't get to choose which count to convict on in his closing argument. See TP at 530. Then he used Appellee's driving record to attack his character. See TP at 531. Eventually he would vouch that he wouldn't be in the courtroom that day if he couldn't prove his case beyond a reasonable doubt. TP at 553.

So counsel argues that the admission of Defendant-Appellee's driving record and the arguments that were made from it contributed to his conviction of the second count of his indictment. So did the other errors that counsel has brought to this Court's attention. Counsel submits that even with or without this error, Appellee may have been convicted because of the others.

In any case, counsel argues that there is not overwhelming (or even substantial) evidence of Appellee's guilt of the second count of his indictment given the evidence that the accident may have had another cause and given the arguments of defense counsel at trial no matter what standard for judging harmless error this court uses. Counsel submits that this jury found Appellee guilty based upon improper considerations.

Accordingly counsel submits that the Appellate Court decided this issue properly.

SECOND PROPOSITION OF LAW

BLOOD EVIDENCE OF COCAINE AND/OR ITS METABOLITES THAT WAS REMOVED FROM AN ACCUSED IS INADMISSIBLE IN A PROSECUTION FOR VEHICULAR HOMICIDE UNDER REVISED CODE 2903.06 (A)(2)(a) FOR THE PURPOSE OF PROVING THE MENS REA OF RECKLESSNESS WITHOUT THE TESTIMONY OF AN EXPERT WITNESS TO CONNECT IT TO HIS STATE OF MIND WHEN THE ALLEGED CRIME OCCURRED.

On February 24, 2004, Appellee consumed seven to eight lines of cocaine between 12:00 a.m. and 6:00 a.m.. TP at 306-07. He then went home and slept roughly seven and a half hours. He then got behind the wheel of his Ford Explorer some time after 5:00 p.m.. See TP at 305-07. See also State Exhibit W. It was alleged that he went through a stop sign on Plymouth Rd. and collided with a Honda driven by Sharon Kingston in the vicinity of Beck and Harold Rd. in Plymouth Township, Ohio and took her life. TP at 314, 369-70.

At 9:29 p.m. and 10:06 p.m. that day, at least four hours after the accident, two samples of blood were removed from Appellee at Ashtabula County Medical Center after he admitted to his cocaine use. TP at 260, 285. Those samples were analyzed and cocaine and/or cocaine metabolites were found in both. TP at 409-11. However, the State of Ohio didn't produce one expert witness to show that Appellee's cocaine use had anything or could have had anything to do with his perceptions and actions as a driver at the time of his accident. In fact, the State didn't know what, if any, impact this stuff had to do with the accident and admitted as much when Prosecutor Thomas Sartini told the jury:

You can draw, ladies and gentlemen, the inferences that you want to draw about what was in Sonny Hatfield's bloodstream four and a half hours earlier than the crash occurred...and whether that contributes to your determination of whether Sonny Hatfield was acting recklessly by operating a motor vehicle that day, in that condition.

TP at 531.

Appellee was indicted and convicted of a violation of R.C. 2903.06 (A)(2)(a) which required the State to prove that he recklessly caused the death of Sharon Kingston. At trial the State had to prove beyond a reasonable doubt that 'with heedless indifference to the consequences, Appellee perversely disregarded a known risk that his conduct was likely to cause a certain result or likely to be of a certain nature'. See R.C. 2901.22 (C).

So what was the known risk that Appellee should have been aware of when he got on the road roughly seven and a half hours after using cocaine for the last time? How, if any way, did the cocaine and its metabolites in his blood that was taken roughly four hours after his accident impair his judgement? What if any impact did this stuff have on his driving skills? What should Appellee have known about the potential risks that are associated with what he used given how much he consumed, when he consumed and how much time had elapsed between his last use and the time he got on the road on February 24, 2004?

In the trial court below, the State presented evidence that demonstrated that Appellee had ingested seven to eight lines of cocaine eleven to seventeen hours before his accident with Sharon Kingston on February 24, 2004 and that cocaine and/or its metabolites were found in blood samples that were removed from him roughly four hours later. And even though it was not alleged that Appellee was under the influence of this stuff, the Appellate Court noted that the State put on all of this evidence to allow the jury to infer that he was. See *State v. Hatfield* at 30.

However the State failed to present evidence to connect this evidence to Appellee's state of mind at the time of the accident. That's why it ruled in Appellee's favor on this issue. *State v. Hatfield*, at page 30.

The Ohio Rules of Evidence provides:

A witness may testify as an expert if all of the following apply:

(A) The witness' testimony either relates to matters beyond the knowledge or experience possessed by lay persons or dispels a misconception common among lay persons;

(B) The witness is qualified as an expert by specialized knowledge, skill, experience, training, or education regarding the subject matter of the testimony;

(C) The witness' testimony is based on reliable scientific, technical, or other specialized information. To the extent that the testimony reports the result of a procedure, test, or experiment, the testimony is reliable only if all of the following apply:

(1) The theory upon which the procedure, test, or experiment is based is objectively verifiable or is validly derived from widely accepted knowledge, facts, or principles;

(2) The design of the procedure, test, or experiment reliably implements the theory;

(3) The particular procedure, test, or experiment was conducted in a way that will yield an accurate result.

Counsel submits that only an expert witness could have connected Appellee's blood sample results to this state of mind at the time of the accident. The court observed that "the average juror does not possess the pharmacological and/or biochemical knowledge to formulate a reliable opinion regarding the lasting effects of cocaine on the user's body". *State v. Hatfield*, at 30.

Counsel submits that only an expert witness could testify about the known risks if any, that Appellee should have been aware of roughly seven and a half hours after his last consumption of cocaine given how much he consumed six hours before. Counsel submits that only an expert could have testified about the effects that this stuff could have Appellee's body and his driving skills immediately prior to his accident with Ms. Kingston. Only an expert witness could have answered the questions that counsel raised earlier in this part of his brief.

The State didn't attempt to address any of these issues. Instead it just put the evidence out for juror consumption and directed it to make what inferences it wished. TP at 531. Counsel

adds that without expert opinion on these issues the jurors that heard this case were left on their own to convict Appellee for reasons that had less to do with the relevant evidence and more to do with his character. As counsel argued previously when this case went to the jury it saw Appellee portrayed as an irresponsible man with a long history of license suspensions and a lack of respect for the law and other people who snorts cocaine and 'gets behind the wheel of a car without a license and doesn't care.'

This very court once held that an expert witness may be necessary where the State of Ohio has to prove that an accused was impaired by the results of a blood test. Newark v. Lucas, 40 OS 3d 100 (1988). Newark involved the admission of the results of a blood test in an OMVI prosecution to show proof of impairment.

Appellant was not alleged to have been under the influence of drugs and he was not indicted under R.C. 2903.06 (A)(1)(a) which would have required the State to prove he was beyond a reasonable doubt when he had an accident with Sharon Kingston on February 24, 2004. However, the court in Newark required an expert witness to tie the blood results to the Defendant's driving because his ability to perceive, make judgments, coordinate movements, and safely operate a vehicle were at issue to the prosecution. Newark v. Lucas at 104. Counsel submits that Appellee's abilities to perceive, make judgments, coordinate movements and safely operate a vehicle were also at issue here and required an expert witness to testify about them given what he consumed and how proximate to the accident.

None of the cases cited in the brief of Plaintiff-Appellant and the amicus filed by the Ohio Prosecutor's Association deal directly with the issue of whether an expert witness is needed to tie blood evidence in a prosecution under R.C. 2903.06 (A)(2)(a) to the accused's mens rea. State v. Treesh, (90 OS 3d 460) that is found in the amicus brief did not involve this kind of a

case and did not involve blood evidence. *State v. Harrison* (1997 WL 799574) that is found in Plaintiff-Appellant's brief did not involve blood evidence of cocaine. However it did involve blood evidence of alcohol in an involuntary manslaughter case that was taken more than two hours after an auto accident. Counsel agrees that under this court's decision in *State v. Hassler* (115 OS 3d 322) that evidence would be admissible to prove that the administrative requirements of Ohio Revised Code 4511.19 (D) are substantially complied with and if expert testimony is used. *State v. Hassler* ,115 OS 3d 322, 326 (2007).

Accordingly counsel for Defendant-Appellee submits that the Appellate Court below did not abuse its discretion on this issue and that it decided it properly.

THIRD PROPOSITION OF LAW

THE PROPER REMEDY FOR THE ERRORS THAT THE APPELLATE COURT RULED ON IN APPELLEE'S FAVOR WAS TO HAVE HIS CASE REVERSED AND REMANDED FOR A NEW TRIAL.

The Appellate court below reversed Appellee's conviction for essentially three reasons. However, the proper remedy for two of them was to have the case remanded for a new trial. Counsel submits that that's why the court didn't direct the trial court below to just pick one of the two things that Appellee was convicted of and enter a guilty finding to it as Appellant's counsel directs. It appears that the court intended to direct the trial court to provide Appellee a new trial and to enter a judgement of sentence as to one charge if he is again convicted of both.

Apparently Plaintiff-Appellant concedes that Appellee was convicted of two offenses that are allied offenses of similar import. However, it wishes to have the case remanded for a resentence to one offense.

Counsel for Defendant-Appellee does bring to this Court's attention that one of the issues that was held to be moot by the Appellate Court was whether Appellee could be convicted of the second count of his indictment in as much as it is not the lesser included of the first. See State v. Hatfield at 34-35. In any case, counsel asks that this court affirm the Appellate Court's decision.

CONCLUSION

State v. Hatfield was trial by character assassination. Ashtabula County Prosecutor Thomas Sartini tried Sonny Hatfield instead of the case against him. He tried this case as if it were personal to him.

Counsel submits that that's why he wouldn't accept defense counsel's stipulation that Appellee was under an active suspension on February 24, 2004 and instead introduced Appellee's entire driving record into evidence. That's why he portrayed him as being an irresponsible person in closing argument. That's also why he brought in blood evidence of cocaine that was removed from Appellee even though he confessed to the jury that it was up to them to make something of it. He even went so far as to put his own character at issue when he told the jury that he wouldn't be in that courtroom if he didn't think he could prove this case beyond a reasonable doubt.

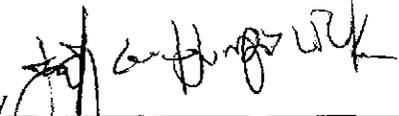
Counsel for Defendant-Appellee argued thirteen assignments of error in the Appellate Court below. Three of them are before this Court today. Four were not resolved. One of those was a cumulative assignment argument which is relevant because Plaintiff-Appellant has argued that at least one of the reasons that the Appellate court reversed was harmless error.

Counsel submits that if this court looks at the entire record, it is very clear that Appellee was convicted of Ohio Revised Code 2903.06 (A)(2)(a) because of evidence and arguments that appeared to the worst feelings of the jurors who sat in judgement of him instead of to their best reasoning abilities. If this case is reversed, other prosecutors may look to it as a blueprint of what they can get away with and try other Defendant's upon what amounts to character evidence.

Accordingly for all of the reasons argued herein, counsel prays that this court affirm the

decision of the Eleventh District Court of Appeals in this case and that it order this matter remanded for a new trial.

Ashtabula County Public Defender, Inc.
Attorney for Defendant-Appellant

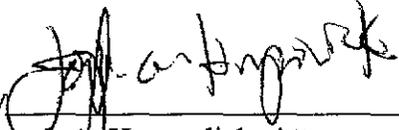
by 

Joseph A. Humpolick, Attorney

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing personally delivered to the office of Thomas L. Sartini, Ashtabula County Prosecutor, 25 W. Jefferson St., Courthouse, Jefferson, Ohio, and Billy Joe Belcher, Lorain County Prosecutor's Office, 225 Court St., 3rd Floor, Elyria, Ohio 44035, Amicus Curiae for Ohio Prosecuting Attorney's Association on this the 11th day of August, 2008.

Ashtabula County Public Defender, Inc.
Attorney for Defendant-Appellant

by 

Joseph A. Humpolick, Attorney

APPENDIX

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RULE 401

Ohio Court Rules

RULES OF EVIDENCE

Article IV. RELEVANCY AND ITS LIMITS

RULE 401 Definition of Relevant Evidence

RULE 401. Definition of "Relevant Evidence"

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

[Effective: July 1, 1980.]

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RULE 402

Ohio Court Rules

RULES OF EVIDENCE

Article IV. RELEVANCY AND ITS LIMITS

RULE 402 Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible

RULE 402. Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible

All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, by the Constitution of the State of Ohio, by statute enacted by the General Assembly not in conflict with a rule of the Supreme Court of Ohio, by these rules, or by other rules prescribed by the Supreme Court of Ohio. Evidence which is not relevant is not admissible.

[Effective: July 1, 1980.]

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RULE 403

Ohio Court Rules

RULES OF EVIDENCE

Article IV. RELEVANCY AND ITS LIMITS

RULE 403 Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Undue Delay

RULE 403. Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Undue Delay

(A) Exclusion mandatory.

Although relevant, evidence is not admissible if its probative value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues, or of misleading the jury.

(B) Exclusion discretionary.

Although relevant, evidence may be excluded if its probative value is substantially outweighed by considerations of undue delay, or needless presentation of cumulative evidence.

[Effective: July 1, 1980; amended effective July 1, 1996.]

Staff Note -July 1, 1996 amendment

Rule 403. Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Undue Delay. The amendment modifies the title of the rule to reflect its content. As originally adopted, Evid. R. 403 varied from its federal counterpart by excluding "waste of time" as a separate or independent ground for excluding otherwise relevant and admissible evidence. The title of the Ohio rule, however, was not modified to reflect this difference between the Ohio and federal texts. The amendment substitutes "undue delay" in place of the original title's reference to "waste of time" as a ground of exclusion, so that the title will more accurately reflect the content of the Ohio text. The amendment is intended only as a technical correction; no substantive change is intended.

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RULE 404

Ohio Court Rules

RULES OF EVIDENCE

Article IV. RELEVANCY AND ITS LIMITS

RULE 404 Character Evidence not Admissible to Prove Conduct; Exceptions; Other Crimes

RULE 404. Character Evidence not Admissible to Prove Conduct; Exceptions; Other Crimes

(A) Character evidence generally.

Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, subject to the following exceptions:

(1) Character of accused.

Evidence of a pertinent trait of character offered by an accused, or by the prosecution to rebut the same is admissible; however, in prosecutions for rape, gross sexual imposition, and prostitution, the exceptions provided by statute enacted by the General Assembly are applicable.

(2) Character of victim.

Evidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor is admissible; however, in prosecutions for rape, gross sexual imposition, and prostitution, the exceptions provided by statute enacted by the General Assembly are applicable.

(3) Character of witness.

Evidence of the character of a witness on the issue of credibility is admissible as provided in Rules 607, 608, and 609.

(B) Other crimes, wrongs or acts.

Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

[Effective: July 1, 1980; amended effectively July 1, 2007.]

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§ 16

CONSTITUTION OF THE STATE OF OHIO

Article I - Bill of Rights

§ 16 Redress in courts

§ 16 Redress in courts

All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay.

Suits may be brought against the state, in such courts and in such manner, as may be provided by law.

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Amendment XIV.

CONSTITUTION OF UNITED STATES

AMENDMENTS

Amendment XIV. Rights Guaranteed: Privileges and Immunities of Citizenship, Due Process, and Equal Protection

Amendment XIV. Rights Guaranteed: Privileges and Immunities of Citizenship, Due Process, and Equal Protection

SECTION. 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

SECTION. 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

SECTION. 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

SECTION. 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

SECTION. 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

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