IN THE SUPREME COURT OF OHIO
COLUMBUS, OHIO

COPY

STATE OF OHIO,	)	Case No. 08-0045
	)	
Plaintiff-Appellant,	)	On Appeal from the Ashtabula
-vs-	)	County Court of Appeals,
	)	Eleventh Appellate District
SONNY HATFIELD,	)	
	)	Ashtabula County Court of Appeals
Defendant-Appellee.	)	Case No. 2006-A-0033

REPLY BRIEF OF APPELLANT, STATE OF OHIO

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ARGUMENT

FIRST PROPOSITION OF LAW

EVIDENCE OF APPELLEE'S DRIVER'S LICENSE SUSPENSIONS WAS RELEVANT AND WAS NOT SUBSTANTIALLY OUTWEIGHED BY UNFAIR PREJUDICE, CONFUSION OF THE ISSUES, OR MISLEADING TO THE JURY IN HIS VEHICULAR HOMICIDE AND AGGRAVATED HOMICIDE PROSECUTION.

In his Merit Brief, appellee cites *State v. Frommer*, 4th Dist. App. No. 577, 1985 WL 17494 and *State v. Jodrey*, 1st Dist. App. No. C-840406, 1985 WL 6740 for the proposition that "an accused's record of license suspensions [is] not relevant in a prosecution for aggravated vehicular homicide and vehicular homicide." Appellee's Merit Brief at 5. However, appellee fails to recognize that in both cases the appellate courts found admission of the evidence was not prejudicial. Appellee's case presents a similar situation.

Assuming the Eleventh District Court of Appeals was correct in finding that appellee's license suspensions were not probative of recklessness, the error was harmless and not prejudicial. The Eleventh District Court of Appeals failed to engage in this harmless error analysis.

The record in the present case reveals that other evidence presented satisfied the standard for harmless error in appellee's case. The record clearly reflects that evidence was presented to show that appellee, while operating a motor vehicle, recklessly and negligently caused the death of Sharon Kingston. The State proved that on February 24, 2004, a two car crash caused the death of Sharon Kingston. (T.p. 173-175, 342.) Appellee was driving the vehicle that killed Mrs. Kingston. (T.p. 179, 350.) Appellee's written statements indicated that he ran a stop sign before hitting Mrs. Kingston's car. (T.p. 254, 306.) Appellee admitted to using both drugs and

alcohol around nine hours prior to the crash. (T.p. 307.) A blood sample obtained from appellee tested positive for cocaine. (T.p. 409-410.) Clearly, this other evidence supported the guilty verdict.

In response to the argument that the Eleventh District Court of Appeals misapplied the holding of *Old Chief v. United States* (1997), 519 U.S. 172, 117 S.Ct. 644 to appellee's case, appellee claims that the Court's holding is consistent with its previous holding in *State v. Henton*, 121 Ohio App.3d 501, 700 N.E.2d 371. Appellee's Merit Brief at 8. In making this statement appellee ignores later precedent of the Eleventh District Court of Appeals.

In *State v. Payne*, 11th Dist. App. No. 97-L-284, 1999 WL 262177 and *State v. Carr*, 11th Dist. App. No. 98-L-131, 1999 WL 1314672 the Eleventh District Court of Appeals rejected the decision in *Henton* and held that a trial court is not bound to accept a defendant's stipulation to a prior conviction. The decision in the present case is clearly at odds with this precedent.

The Eleventh District Court of Appeals erred in its application of *Old Chief* to appellee's case. *Old Chief* is distinguishable from appellee's case in that the State did not use prior convictions to prove an element of appellee's offense. The State's exhibit consisted of a list of appellee's license suspensions. (T.p. 596.) Any prior convictions were redacted from this exhibit. (T.p. 6, 13, 596.) The court erroneously found that the trial court erred in refusing to allow appellee to stipulate to his prior license suspensions. This finding clearly ignores the court's previous decisions finding that a trial court is not bound to accept a defendant's stipulation to a prior conviction. See *State v. Payne*, 11th Dist. App. No. 97-L-284, 1999 WL 262177; *State v. Carr*, 11th Dist. App. No. 98-L-131, 1999 WL 1314672.

SECOND PROPOSITION OF LAW

BLOOD EVIDENCE MAY BE USED IN A PROSECUTION FOR VEHICULAR HOMICIDE PROVIDED THAT A PROPER FOUNDATION IS LAID FOR THE TEST RESULTS.

In his Merit Brief appellee argues that this Honorable Court has 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. Appellee's Merit Brief at 16 citing *Newark v. Lucas,* 40 Ohio St.3d 100, 532 N.E.2d 130. However, appellee failed to recognize the distinction between *Newark* and the case at bar. *Newark* involved a prosecution for driving while under the influence of alcohol or drugs. In the case at bar, appellee was not charged with a violation of R.C. 4511.19.

"Since appell[ee] was not charged or convicted of Aggravated Vehicular Homicide premised upon an OVI offense, the prosecution was not required to present pharmacological or biochemical evidence 'to create a reasonable causal nexus between this evidence and appell[ee]'s state of mind during the accident.' Instead, the prosecution need only present sufficient evidence that appell[ee], 'with heedless indifference to the consequences, * * * perversely disregard[ed] a known risk that his conduct [was] likely to cause a certain result or [was] likely to be of a certain nature.'" *State v. Hatfield,* 11th Dist. No. 2006-A-0033. at ¶183 (dissent) citing R.C. 2901.22(C).

The relevant inquiry in appellee's case should be whether the State presented sufficient evidence for a jury to conclude that appellee was subjectively aware that he was likely to have been under the influence of cocaine when he was driving and that appellee was aware that driving with cocaine in his system was likely to cause death or serious harm to others, not whether there was sufficient evidence presented that appellee was driving under the influence of

cocaine. *Id.* at ¶184 (dissent).

The record shows that the State presented circumstantial evidence to prove that appellee was aware that his cocaine usage prior to driving was likely to place others at risk of death or serious injury. *Id.* at ¶186 (dissent). Cocaine and its metabolites were detected in appellee's system when his blood was tested after the crash. *Id.* Appellee refused to allow samples of his blood to be taken twice after the accident, "which created a reasonable inference that appell[ee] was aware that he was under the influence of cocaine at the time of the accident which killed Mrs. Kingston." *Id.* "From this evidence, a reasonable jury could infer that [appellee] was reckless by ingesting cocaine before driving his vehicle without the benefit of expert testimony." *Id.* Accordingly, the Eleventh District Court of Appeals was incorrect in holding that the State needed expert testimony to connect evidence of appellee's admissions to drug use and blood test results to appellee's state of mind at the time of the crash.

CONCLUSION

For the foregoing reasons, the State of Ohio respectfully requests this Honorable Court to reverse the decision of the Eleventh District Court of Appeals.

Respectfully submitted,

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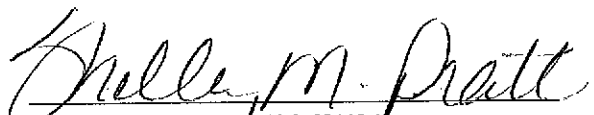
PROSECUTING ATTORNEY



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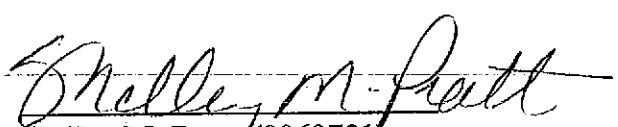
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing Merit Brief of Appellant, State of Ohio has been served via ordinary U.S. Mail, postage prepaid, this 15th day of August, 2008 upon Joseph A. Humpolick, Counsel for Appellee, at 4817 State Road, Suite 202, Ashtabula, Ohio 44004.



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