IN THE SUPREME COURT OF OHIO
COLUMBUS, OHIO

STATE OF OHIO,	)	Case No. 2008-0045
	)	
Plaintiff-Appellant,	)	On Appeal from the Ashtabula
	)	County Court of Appeals,
-vs-	)	Eleventh Appellate District
	)	
SONNY HATFIELD,	)	Ashtabula County Court of Appeals
	)	Case No. 2006-A-0033
Defendant-Appellee.	)	

APPELLANT'S MOTION FOR RECONSIDERATION PURSUANT TO S.CT.PRAC.R. XI, SECTION 2(A)(2)

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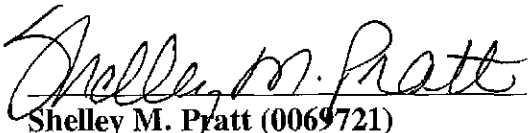
STATE OF OHIO,	)	Case No. 2008-0045
	)	
Plaintiff-Appellant,	)	Ashtabula County Court of Appeals
-vs-	)	Case No. 2006-A-0033
	)	
SONNY HATFIELD,	)	**APPELLANT'S MOTION FOR**
	)	**RECONSIDERATION PURSUANT TO**
Defendant-Appellee.	)	**S.CT.PRAC.R. XI, SECTION 2(A)(2)**

Now comes the State of Ohio, by and through its counsel, Shelley M. Pratt, Assistant Prosecutor to Thomas L. Sartini, the duly qualified, elected and acting Prosecuting Attorney for Ashtabula County, Ohio, and for reasons more fully set forth in the Memorandum attached hereto and incorporated herein by reference, respectfully requests this Honorable Court to reconsider its dismissal of the above-captioned appeal as having been improvidently allowed.

Respectfully submitted,

THOMAS L. SARTINI (0001937) (Counsel of Record)
PROSECUTING ATTORNEY



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MEMORANDUM

On February 5, 2009, this Honorable Court sua sponte dismissed the above-captioned appeal as having been improvidently allowed. See, *State v. Hatfield*, 2009-Ohio-353, at ¶1. This case is one of great public interest, and for the reasons which follow, the State of Ohio respectfully requests this Honorable Court to reconsider its dismissal of this appeal.

In its decision, the Eleventh District Court of Appeals has set a precedent which alters the weight a trier of fact may give to direct and circumstantial evidence. The court's holding requires the State to present expert testimony to connect blood test results with a criminal defendant's state of mind when impairment is not a element of the offense. The prevents the trier of fact from making reasonable inferences based upon circumstantial evidence. It requires the State to present direct evidence, namely expert testimony, which is expensive and will impose a great financial burden upon the State of Ohio.

The Eleventh District Court of Appeals also ignored its own precedent in determining that the trial court was required to accept defendant's stipulation to his two current driver's license suspensions. This constituted a clear abuse of discretion. Moreover, the court failed to conduct a harmless error analysis with respect to the admission of these two convictions. The State of Ohio believes that a decision from this Honorable Court is needed to, not only right these wrongs, but to prevent such future abuse of discretion.

With respect to the State's First Proposition of Law, the Eleventh District Court of Appeals clearly ignored its 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 131467 . This ruling constitutes an abuse of discretion because the suspensions were elements of the offenses with

which appellee was charged.

Morever, the court erred in failing to conduct a harmless error analysis as to the admission of the driver's license suspensions. "[R]ather than automatically ordering reversal, [a] court should undertake the analysis as to whether the error was harmless or prejudicial." *State v. Hatfield*, 11th Dist. App. No.2006-A-0033 at ¶189 (dissent). Crim. R. 52(A) provides that "any error , defect, irregularity, or variance which does not affect substantial rights shall be disregarded." Errors that are not of a constitutional nature are harmless if there was substantial other evidence to support the guilty verdict. *State v. Griffin* (2001), 142 Ohio App.3d 65, 79, 753 N.E.2d 967. As stated by Justice O'Connor in her dissent, there was ample circumstantial evidence upon which the jury could have based its finding that Hatfield acted recklessly." *State v. Hatfield*, 2009-Ohio-353 at ¶21. The record in this case clearly reveals that the State presented enough evidence in addition to the suspensions to satisfy the harmless error standard.

With respect to the State's Second Proposition of Law, the court of appeals 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*, 11th Dist. App. No. 2006-A-0033 at ¶185 (dissent) quoting *State v. Hill*, 11th Dist. App. No. 2005-A-0010, 2006- Ohio -1166; *State v. Harco*, 11th Dist. App. No. 2005-A-0077, 2006-Ohio-3408. Circumstantial evidence presented by the State served the same purpose as expert testimony concerning the effects of cocaine and its metabolite upon appellee at the time of the crash.

Appellee was charged with violations of R.C. 2903.06. This required the state to prove that appellee acted recklessly. R.C. 2903.06(A)(2) The State was not required to prove that appellee was intoxicated as a requirement of the offense. The results of appellee's blood tests

and his admissions to cocaine usage were not used to show impairment, rather, the focus was on appellee's cocaine usage being probative of his recklessness.

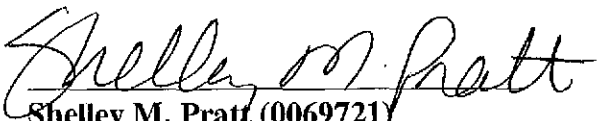
The relevant inquiry in appellee's case should be whether the State presented sufficient evidence for a jury to conclude that appellee was subjectively aware that he was likely to been under the influence of cocaine when he was driving and that appellee was aware that driving with cocaine in his system 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. *State v. Hatfield,* 11th Dist. App. No. 2006-A-0033 at ¶184 (dissent). As stated by Justice O'Connor in her dissent, "[g]iven Hatfield's chronic drug use, the jury could find that Hatfield knew that drugs affected him and that he chose to operate a vehicle with an altered sense of reality and distorted perceptions. And given that he initially declined to provide blood samples after the accident, the jury could also conclude that Hatfield knew that his blood would contain evidence that he was impaired. Given the forgoing conclusions, it required no great leap of logic to find that Hatfield acted recklessly by operating a motor vehicle while he was under the influence of cocaine. *State v. Hatfield,* 2009-Ohio-353 at ¶23-¶24.

CONCLUSION

For the foregoing reasons, and pursuant to S.Ct.Prac.R. XI, Section 2(A)(2), the State of Ohio respectfully requests this Honorable Court to reconsider its sua sponte dismissal of the appeal at bar.

Respectfully submitted,

THOMAS L. SARTINI (0001937)(Counsel of Record)
PROSECUTING ATTORNEY



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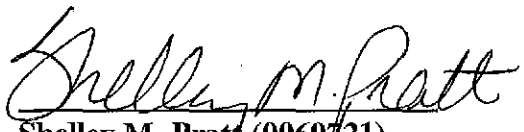
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing Appellant's Motion for Reconsideration Pursuant to S.Ct.Prac.R. XI, Section 2(A)(2) has been served via ordinary U.S. Mail, postage prepaid, this 9th day of February, 2009, upon Joseph A. Humpolick, Ashtabula County Public Defender, 4817 State Road, Suite 202, Ashtabula, Ohio 44004.



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