

IN THE SUPREME COURT OF OHIO
COLUMBUS, OHIO

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

APPEAL FROM THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
ASHTABULA COUNTY, OHIO

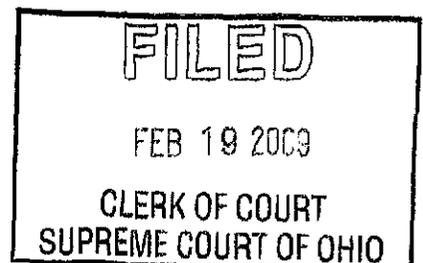
MEMORANDUM IN OPPOSITION TO PLAINTIFF-APPELLANT'S MOTION FOR
RECONSIDERATION

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IN THE SUPREME COURT OF OHIO
COLUMBUS, OHIO

STATE OF OHIO : SUPREME COURT CASE NO. 2008-0045
: :
PLAINTIFF-APPELLANT : ELEVENTH DISTRICT COURT OF
: APPEALS NO. 2006-A-0033
-vs- : :
: : MEMORANDUM IN OPPOSITION TO
SONNY HATFIELD : APPELLANT'S MOTION FOR
: RECONSIDERATION
DEFENDANT-APPELLEE :

Sonny Hatfield, Defendant-Appellee herein, now comes before this court through his undersigned counsel of record and hereby opposes the motion for reconsideration that was filed by Plaintiff-Appellant State of Ohio for the reasons found in a memorandum that is attached hereto and incorporated herein by reference.

Respectfully Submitted



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MEMORANDUM

In its memorandum for reconsideration, Plaintiff-Appellant again argues that the Eleventh District Court of Appeals ignored two of its previous decisions when it held in Defendant-Appellee's favor on the First Proposition of Law. However, Judge Grendell didn't make that argument in her dissent below.

In fact, as counsel asserted in his brief and in his oral argument, the Court's holding is consistent with its previous decision in State v. Henton, 121 OA 3d 501 (11th District, 1997). In Henton the accused was indicted on two counts of aggravated trafficking in drugs under a statute then in effect 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 v. United States, (519 US 172) (1997).

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 District, 1997) at 505-06. 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

than 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.

Counsel submits that subsequent cases from the Eleventh District have distinguished Henton but have never overruled it. In State v. Payne, (1991 WL 262177), the Defendant was willing to stipulate that he had three prior convictions of driving under the influence of alcohol that were required by the State as part of its proof in a subsequent felony OVI trial. However, he was unwilling to let the jury hear of them.

The Court held that this distinguished that case from Henton wherein the Defense was willing to let a jury hear evidence of a prior conviction of an offense that was part of the State's proof. Accordingly the Court held that Old Chief and Henton did not apply and that the State was entitled to present proof of the required prior convictions. The Court also did the same thing and reached the same conclusions in State v. Carr, (1197 WL 1314672).

In this case, Defendant-Appellee was willing to let the jury know that he was under suspension on the date of the offense as required by the State's proof and was further willing to let the jury see evidence of a letter from the Ohio Bureau of Motor Vehicles that put him on notice that he was under suspension. See TP at 9, 419. Accordingly this made his case more like Henton than like Payne had Carr. Therefore, the Eleventh District's opinion is consistent with its previous decisions.

Nonetheless Plaintiff-Appellant argues that the Appellate Court didn't conduct a harmless error analysis. Yet Plaintiff-Appellant didn't argue harmless error in its brief in the Appellate Court below. Accordingly that may be why the issue wasn't addressed directly in the Court's opinion.

Yet counsel submits that in a way the Appellate Court addressed the issue in not so many

words in paragraphs 146 and 147 when it said:

...admitting the record for the purpose articulated by the trial court allowed the jury to generalize Appellant's earlier bad acts into evidence of Appellant's bad character which raised the likelihood that the jury will convict Appellant for crimes other than those charged or, perhaps even worse, convict because Appellant is a "bad person" deserving punishment. Id. (quoting *Old Chief v. US*, 519 at) page 181.

"The State may not show Defendant's prior trouble with the law, specific criminal acts, or ill name among his neighbors, even though such facts might logically be persuasive that he is by propensity a probable perpetrator of the crime." Id.(quoting *Old Chief v. US*, 519 at) page 181. quoting, *Michelson v. United States* (1948), 335 469, 475-476. Such a maneuver is procedurally illegitimate because such evidence tends to "weigh too much with the jury and to so overpersuade them as to prejudice one with a bad general record and deny him a fair opportunity to defend against a particular charge." Id. Under the circumstances, the admission of Appellant's entire record of suspensions created an environment in which the jury's verdict could very likely have been premised upon improper considerations. *State v. Hatfield*, 200-A-0033 (11th District) at paragraphs 146-147..

Counsel again submits that the actions and arguments of Ashtabula County Prosecutor Thomas Sartini tainted this case so bad that it cannot be honestly concluded that Defendant-Appellee would have been convicted anyway of Revised Code 2903.06 (A)(2) had the State played by the rules and tried a fair case without relying on extraneous and improper evidence.

With regard to the Second Proposition of Law Plaintiff-Appellant seems to argue based largely upon Justice O'Connor's dissent in this case that there was sufficient circumstantial evidence presented from which a jury could conclude that Defendant-Appellee should have known he was a hazard to the safety of others given his cocaine use from the night before his accident with Ms. Kingston. However, the argument overlooks that Appellant last used cocaine at least eleven hours prior to the accident and that he had at least seven and a half hours of sleep subsequent to his last use.

So what should he have known about the likely effects of this stuff upon his driving skills

given the time frames of his use and the time that transpired thereafter? What was the known risk that he ignored when he got behind the wheel of a car?

Ashtabula County Prosecutor didn't know the answer to these questions when he addressed the jury as follows:

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.

Counsel submits that the Appellate Court got it right when it observed:

"The average juror does not possess the pharmacological and/or biochemical knowledge to formulate a reliable opinion regarding the lasting effects of cocaine on a user's body"

State v. Hatfield, 11th District App., 2006-A-0033 at paragraph 156. That was why an expert witness was needed. An expert witness could have answered the questions that were raised by this evidence. Without one, you had blood evidence to nowhere and dots that were not connected between it and Appellant's actions.

Accordingly for all of the above reasons, counsel submits that the Eleventh District Court of Appeals made the right decision to begin with and this Court properly held that Plaintiff-Appellant's Appeal was improvidently accepted.

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, on this the 26th day of February, 2009.

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

by _____
Joseph A. Humpolick, Attorney