

IN THE
SUPREME COURT OF OHIO

OLIVER LUCIEN GARR

Petitioner

vs.

WARDEN, MADISON CORRECTIONAL
INSTITUTION

Respondent

CASE NO. 2009-1323

On Review of Certified Question from the
United States District Court, Southern
District of Ohio

U.S. District Court Case
No. 1:08cv293

MERIT BRIEF OF *AMICUS CURIAE*
OHIO PROSECUTING ATTORNEY'S ASSOCIATION
IN SUPPORT OF APPELLEE/CROSS-APPELLANT WARDEN, MADISON
CORRECTIONAL INSTITUTION

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TABLE OF AUTHORITIES

	<u>Page</u>
<u>CASES:</u>	
<i>Barth v. Barth</i> , 113 Ohio St.3d 27, 2007-Ohio-973	4
<i>Clark v. Scarpelli</i> , 91 Ohio St.3d 271, 744 N.E.2d 719, 2001-Ohio-39.....	10
<i>Greenville Law Library Assn. v. Ansonia</i> (1973), 33 Ohio St.2d 3, 292 N.E.2d 880.....	10
<i>Iddings v. Jefferson Cty. School Dist. Bd. of Edn.</i> (1951), 155 Ohio St. 287.....	3
<i>Malone v. Indus. Comm.</i> (1942), 140 Ohio St. 292, 43 N.E.2d 266	10
<i>Painter v. Graley</i> (1994), 70 Ohio St.3d 377, 385, 639 N.E.2d 51.....	4
<i>Portage Cty. Bd. of Commrs. v. Akron</i> , 109 Ohio St.3d 106.....	3
<i>State v. Chandler</i> , 109 Ohio St.3d 223, 846 N.E.2d 1234.....	1
<i>State v. Cutlip</i> , Lorain App. No. 08CA009353, 2008-Ohio-4999	4
<i>State v. Daniels</i> , August 14, 2009, Franklin Co., No. 08CR2816, <i>unreported</i>	8
<i>State v. Davenport</i> , 12 th Dist. App. No. CA208-01-011, 2009-Ohio-557	9
<i>State v. Ferguson</i> , 120 Ohio St.3d 7, 2008-Ohio-4824, 896 N.E.2d 110	10
<i>State v. Freeman</i> , 3 rd Dist. No. 9-04-65, 2005-Ohio-5892	7
<i>State v. Jenks</i> , (1991), 61 Ohio St.3d 259, 574 N.E.2d 492	8
<i>State ex rel. Mager v. State Teachers Retirement System of Ohio</i> , 123 Ohio St.3d 195, 915 N.E.2d 320.....	10
<i>State v. Mughni</i> , 33 Ohio St.3d at 68, 514 N.E.2d 870.....	12
<i>State ex rel. Musial v. N. Olmsted</i> , 106 Ohio St.3d 459	3
<i>State v. Patterson</i> (1982), 69 Ohio St.2d 445, 447, 432 N.E.2d 802	5
<i>State ex rel. Russo v. McDonnell</i> , 110 Ohio St.3d 144	3
<i>State v. Scott</i> (1982), 69 Ohio St.2d at 440, 432 N.E.2d 798	12

State v. Short, 3rd Dist., No. 83804, 2005-Ohio-4578.....7

State v. Smorgala, 50 Ohio St.3d 222, 553 N.E.2d 6724

STATEMENT OF INTEREST OF AMICUS

The decision in *State v. Chandler*, 109 Ohio St.3d 223, 846 N.E.2d 1234, has effectively tied the hands of prosecutors and law enforcement in the State of Ohio and thwarted the furtherance of justice. As one of the primary reasons for the existence of the Ohio Prosecuting Attorneys Association is to aid in the furtherance of justice, all prosecutors – and by extension – all law enforcement personnel that work the front lines against the commerce of drugs are hindered. In the most basic interpretation of the case, drug dealers making a bona fide “offer to sell” a controlled substance who then do not deliver, will at most be punished with the lowest level felony possible. The degree of the felony is enhanced per R.C. 2925.03(C)(4)(g), based on the amount of “drug involved.” However, the *Chandler* court misinterpreted the statute to hold that it was the amount of drugs involved in the delivery, as opposed to the offer, and further stated the “proscribed activity in this case [was] trafficking in counterfeit controlled substances.” *Chandler* at ¶20. If the *Chandler* decision is applied in cases, such as *Garr*, where there are no drugs recovered, but circumstantial evidence is presented as to identity, and the amount of “drugs involved” in the offer as determined by the factfinder concludes that the State has met its burden on those elements, then it will open Pandora’s Box in the fight against drugs. By allowing cases where no drugs are recovered to be punished at only the lowest level felony, surely the result of this will not be the deterrent effect the General Assembly hoped for. The effect of that application would be contrary to the legislative intent of R.C. 2925.03, which begins as follows:

(A) No person shall knowingly do any of the following:

(1) *Sell or offer to sell* a controlled substance,

and where the General Assembly intended for punishment of either offense to be treated equally.

Because the Ohio legislature intended to utilize R.C. 2925.03 to criminalize and punish the practice of selling and offering to sell controlled substances, this Court should overrule

Chandler, and follow the First District Court of Appeals interpretation in *State v. Garr*. This allows of for the reading of 2925.03(C)(4), which states, "...the drug involved in the violation..." to be proven through circumstantial evidence and concluding that the rule of law in Ohio, to invoke the MDO Penalty under R.C. 2925.03(C)(4)(g), is the amount of the "drug involved" in the *offer to sell*, not the actual drugs delivered.

Further, the General Assembly has shown its intent to distinguish this Court's holding in *Chandler* by amending R.C. 2925.03, adding section (I), which states: "[a]s used in this section, "drug" includes any substance that is represented to be a drug," seemingly in direct response to *Chandler*. This Court, must respond to the certified question of law of the federal court, which asks if this Court's holding in *Chandler* applies to cases such as *Garr*, where no drugs were recovered. It is the position of the O.P.A.A. that the answer should be "NO."

ARGUMENT IN SUPPORT

OLIVER GARR, Petitioner, argues that this Court's holding in *Chandler*, which concluded that a substance offered for sale must contain some detectable amount of the relevant controlled substance before a person can be sentenced as a major drug offender un R.C. 2925.03(C)(4)(g), applies to cases where the substance offered for sale was never observed, tested, or recovered to determine whether the substance offered for sale contained a detectable amount of the controlled substance.

WARDEN, Respondent, contends that any admissible evidence, including circumstantial evidence, may be used to establish the underlying offense of *offering to sell* a controlled substance under R.C. 2925.03(A)(1) and to establish the amount and identity of the drug "involved" to permit the application of R.C. 2925.03(C)(4)(g), thus allowing the MDO Penalty to be applied when a factfinder determines the amount of the drug involved to exceed statutory limits.

The United States District Court for the Southern District of Ohio, has asked this court to decide if *Chandler* extends to cases such as *Garr*, where no drugs were recovered and only un rebutted circumstantial evidence was presented, is enough to support the enhancement of an MDO Penalty under R.C. 2925.03(C)(4)(g).

SUMMARY OF THE FACTS

The Amicus Curiae, the Ohio Prosecuting Attorney's Association, fully adopts the Statement of Facts as put forth in the brief of the Attorney General's Office.

Amicus Curiae O.P.A.A. Proposition of Law:

A . The Legislative Intent of R.C. 2925.03 has been well established in the State of Ohio. To allow *Chandler* to remain undistinguished would allow the addition of amended section (I) to go unnoticed. Further, absent clarification, it will continue to allow Ohio's illusive large volume drug dealers to make an *offer to sell* a controlled substance without fear of receiving the MDO Penalty because they will be free to negotiate, arrange and stage a deal, yet not be punished for the amount involved.

This Court has long held and reiterated the importance of legislative intent in rendering its opinions. In *State ex rel. Russo v. McDonnell*, 110 Ohio St.3d 144, 150, ¶37, this Court stated, “ ‘In construing a statute, our paramount concern is legislative intent.’ ” Id., quoting *State ex rel. Musial v. N. Olmsted*, 106 Ohio St.3d 459, ¶23. Furthermore, in *State v. Lowe*, 112 Ohio St.3d 507, this Court affirmed that “a court may not add words to an unambiguous statute, but must apply the statute as written.” Id., citing *Portage Cty. Bd. of Commrs. v. Akron*, 109 Ohio St.3d 106, see, also, *Columbus-Suburban Coach Lines, Inc. v. Pub. Util. Comm.* (1969), 20 Ohio St.2d 125, 127, (“it is the duty of this court to give effect to the words used, not to delete words used or to insert words not used”). And as this court stated in *Iddings v. Jefferson Cty. School Dist. Bd. of Edn.* (1951), 155 Ohio St. 287, 290, “[t]o construe or interpret what is already plain is not

interpretation but legislation, which is not the function of the courts.” See, also, *Barth v. Barth*, 113 Ohio St.3d 27.

In 2008, the General Assembly fixed the very problem that *Chandler* tried to address, when it added section 2925.03(I), which states: “[a]s used in this section, “drug” includes any substance that is represented to be a drug.” To decide the rule of law based on a faulty interpretation, albeit in hindsight, and apply *Chandler’s* holding to cases such as *Garr*, would miss an opportunity to be carefully guided by the additional “plain” language of the statute.

The 12th Dist. Court of Appeals, in *State v. Cutlip*, Lorain App. No. 08CA009353, 2008-Ohio-4999, had the opportunity to comment on public policy, wherein it stated, “[w]here the General Assembly has spoken, and in so speaking violated no constitutional provision, [courts] must not contravene the legislature's expression of public policy.” *Painter v. Graley* (1994), 70 Ohio St.3d 377, 385, 639 N.E.2d 51. “Judicial policy preferences may not be used to override valid legislative enactments, for the General Assembly should be the final arbiter of public policy.” *Id.* (quoting *State v. Smorgala*, 50 Ohio St.3d 222, 223, 553 N.E.2d 672 (1990)). The General Assembly through its detailed construction of the drug trafficking statute, carved out specific penalties to be applied based on the quantity of the “drug involved.” It did so with the intent of punishing those persons who “*knowingly offer to sell a controlled substance*” equally with those who are caught with the drugs on their person. The court in *Chandler* reiterated this notion when it stated, “[t]he General Assembly has authorized a hierarchy of criminal penalties for drug trafficking based upon the identity and amount of the controlled substance involved.” There is no section that purports to distinguish a sale and an “*offer to sell*” for penalty provisions.

B. Issues created by extending *Chandler* to no drug cases would include practical problems, including safety. Further, with the major drug threat in

Ohio as identified by NDIC, lessening the State's ability to prosecute the offenders would be counter intuitive.

This Court, nearly 30 years ago spoke to the concern of drug commerce in Ohio when it stated, “[t]his is strong legislation, not an insipid gesture. R.C. 2925.03(A) criminalizes participation at all levels of commerce in drugs.” *State v. Patterson* (1982), 69 Ohio St.2d 445, 447, 23 O.O.3d 394, 432 N.E.2d 802.

The National Drug Intelligence Center, *Ohio High Intensity Drug Trafficking Area Drug Market Analysis 2009*, issued this review of Ohio's cocaine threat in April 2009. It stated:

The distribution and abuse of *cocaine, particularly crack cocaine, pose the greatest drug threat to the Ohio HIDTA region* because of the drug's highly addictive nature and its association with violent crime and property crime. According to the National Drug Intelligence Center (NDIC) National Drug Threat Survey (NDTS) 2009, 57 of the 103 state and local law enforcement respondents in the Ohio HIDTA region identify either crack or powder cocaine as the drug that poses the greatest threat to their jurisdictions. Law enforcement reporting indicates that cocaine is being distributed in smaller quantities than in previous years because of decreased availability of the drug throughout the HIDTA region. For example, during the second quarter of 2008, some cocaine dealers in Cleveland reportedly were unable to obtain kilogram quantities of cocaine and were buying and selling ounce quantities. In some areas, decreased availability was accompanied by an increase in wholesale prices. For example, investigators in Cincinnati reported that wholesale cocaine prices increased from a high of \$25,000 per kilogram in the first quarter of 2008 to a high of \$28,000 per kilogram in the second quarter. Despite the decrease in cocaine availability, the drug remains widely available in the HIDTA region, particularly at the retail level.¹

The everyday battle against the drug trade requires an unrelenting commitment to detail and requires the teamwork of the many levels of law enforcement agencies to effectuate the

¹ National Drug Threat Survey (NDTS) data for 2009 cited in this report are as of February 12, 2009. NDTS data cited are raw, unweighted responses from federal, state, and local law enforcement agencies solicited through either the National Drug Intelligence Center (NDIC) or the Office of National Drug Control Policy (ONDCP) High Intensity Drug Trafficking Area (HIDTA) program.

overall goal. Numerous law enforcement agencies have indicated that were the law to change in a way that required the recovery of the actual product to ensure a conviction, the risks of the men and women in the field would be heightened. Waiting to recover the actual “drug involved” to test it for its chemical make-up, before being able to statutorily access an enhancement based on quantity, hinders police work and inhibits the State’s ability to reduce the spread of drug sales. Moreover, the safety risk to undercover agents increases when a seller may suspect that the deal is a setup. For example, if the police get too aggressive knowing they need to recover the actual drugs, they face the choice of arresting on the offer instead of a greater charge. If the only possible charge waiting in the wings is a fifth degree felony, the desire to convict may override safety concerns, all to a terrible end. Surely the General Assembly never intended for this to be the main thought on the front line fight against drugs.

C. Prosecutorial limiting will remain, even where sufficient circumstantial evidence exists to prove both the drug involved, and its amount, particularly in “offer” cases such as *Garr* where no drugs are recovered. There will be no distinction between actual sale cases and “offer” cases if *Chandler* is applied. The effect will be to categorically limit the ability to punish offenders, in conflict with the statute’s design.

Ohio courts of appeals’ have upheld the use of such circumstantial evidence in the form of undercover or witness testimony to identify drug traffickers. In *State v. Freeman*, 3rd Dist. No. 9-04-65, 2005-Ohio-5892, the court upheld a conviction for trafficking in drugs where the only evidence of drugs was the testimony of two witnesses, there were no drugs ever recovered. Further, the same testimony was considered by the jury to be evidence of the amount of cocaine involved to enhance the charge to a felony of the first degree. However, the trial court before sentencing, explained that there was not adequate proof of trafficking in a specific amount of crack cocaine that would meet the burden of proof for a first degree felony. *Id.* at ¶14. The insufficient description of the crack cocaine in *Freeman* was that it was a “large rock”, in *Garr*

however, the jury had the taped conversations which described the amount of cocaine, a price that related to a reasonable street value at the time, and the assurance that it was of high quality and not counterfeit. The *Freeman* court did not conclude that the lack of any actual drugs was at issue in the determination of the amount of “*drug involved*”, only the lack of a description with greater sufficiency than “large ball” or “large rock.”

In *State v. Short*, 3rd Dist., No. 83804, 2005-Ohio-4578, the court held, “evidence was presented that appellant used a coded paging system to distribute crack cocaine. He was recorded saying that getting five ounces would not be a problem. Appellant was also recorded talking about how much he would charge per ounce. Although many of these conversations and rituals involved coded language and drug terminology, we find that, based on the evidence presented, a rational trier of fact could have found the essential elements to find Eddie Short guilty of first-degree drug trafficking with the major drug offender specification.” *Id.* at ¶21. Further, the court held it was proper “[a]llowing the police officer to help define drug terminology was relevant to determine whether appellant was guilty of drug trafficking, and its probative value was not outweighed by the danger of unfair prejudice. *Id.* at ¶30.

The 8th Dist. in *State v. Burkhart*, Cuyahoga App. No. 83990, 2005-Ohio-502, upheld a drug trafficking conviction using only the testimony of an undercover officer, where no drugs were recovered. The facts of the transaction showed that “...the Medina County Drug Task Force arranged a drug buy with Burkhart. The informant and an undercover agent met Burkhart at a bar on Brookpark Road in Cleveland and discussed a transaction for one ounce of cocaine. The trio then drove to the home of Burkhart's grandmother. When they arrived at the house, the undercover agent confirmed the price of the drugs, asking “if it was still \$1,150 for the ounce.” When the state asked, “[a]nd an ounce of what?” the undercover agent replied, “Cocaine, sir.”

The undercover agent also testified that the purchase price set by Burkhart corresponded to the general street price for one ounce of cocaine. Saying that he wished to go into the house alone Burkhart then took the cash and disappeared with the money.”

In a case with facts similar to *Garr*, the Franklin County Court of Common Pleas, in the case of *State v. Daniels*, August 14, 2009, No. 08CR2816, *unreported*, a jury found the defendant guilty of three counts of drug trafficking, in violation of R.C. 2925.03, each with the major drug offender specification. However, he was only in possession of 980.7 grams of cocaine at the buy. Daniels had offered for sale two kilograms to an undercover agent, then was later arrested with the actual drugs. The court held the first offer of the two kilos to be valid in light of the actual delivery of the drugs. Daniels conviction for the offer to sell the first two kilos, concluded without any further recovery of drugs. The third charge still contained the MDO specification in light of court viewing the totality of the circumstances.

This Court has made a clear and convincing stand on circumstantial evidence and its application to guilt or innocence. This Court in *State v. Jenks*, (1991), 61 Ohio St.3d 259, 272, 574 N.E.2d 492, 502, captures the essence of O.P.A.A.’s position on *Garr*’s conviction when it held,

“In every criminal case, the jury is asked to weigh all of the admissible evidence, both circumstantial and direct, to determine if the defendant is guilty beyond a reasonable doubt. Hence, there is but one standard of proof in a criminal case, and that is proof of guilt beyond a reasonable doubt.”² This tenet of the criminal law

² Some courts have indicated that the circumstantial evidence rule arguably imposes a higher standard of proof on the government. See *Fisher v. State*, *supra*, and *State v. Gosby*, *supra*. Yet another formulation is that the circumstantial evidence rule “ * * * is simply a method for evaluating whether the reasonable doubt standard has been met.” *Derouchie*, *supra*, 140 Vt. at 444, 440 A.2d at 149. If one accepts the theory that the circumstantial evidence rule imposes a higher burden on the prosecution, then that added burden is erroneous. The standard of proof in a criminal trial is guilt beyond a reasonable doubt, and no more. If one accepts the postulation that the circumstantial evidence rule is an alternative means for assessing whether the reasonable

remains true, whether the evidence against a defendant is circumstantial or direct. We therefore hold that where the state relies on circumstantial evidence to prove an element of the offense, and where the jury is properly instructed on the standards for reasonable doubt, an additional instruction on circumstantial evidence is not required. Once the jury is properly instructed as to the heavy burden the state bears under the “guilt beyond a reasonable doubt” standard, the jury is then free to choose between competing constructions of the evidence. See *Obregon, supra*; *Rodriguez, supra*; and *Bell, supra*.³ We hold that when the state relies on circumstantial evidence to prove an element of the offense charged, there is no requirement that the evidence must be irreconcilable with any reasonable theory of innocence in order to support a conviction.”

In *Garr*, the tape recorded conversations were properly before the jury to decide whether the “drug involved” was in fact cocaine, which it answered in the affirmative. Then, the jury had to decide how much of that drug was involved in the offer, to which it held that it was in excess of 1000 grams, justifying the MDO Penalty. The jury decided that Garr’s own words and descriptions were proof of the elements beyond a reasonable doubt, as instructed, thus the State met its burden for proving the elements proper for the conviction and enhancement.

In a series of cases, the presumed effect of the General Assembly amending a section of the Revised Code has been discussed. In *Painter v. Graley, supra*, this Court stated, “[w]here the General Assembly has spoken, and in so speaking violated no constitutional provision, [courts] must not contravene the legislature’s expression of public policy.” Further, “[j]udicial policy preferences may not be used to override valid legislative enactments, for the General Assembly should be the final arbiter of public policy.” *Id.* (quoting *State v. Smorgala, supra*).

In *State v. Davenport*, 12th Dist. App. No. CA208-01-011, 2009-Ohio-557, made note of an amendment in the DUI statute when it stated, “[a]s the Ohio Supreme Court noted in *Mayl*, “when the legislature amends an existing statute, the presumption is that it is aware of [the

doubt standard has been met, then the additional jury instruction is redundant, and can only serve to confuse the jury.

³ *State v. Obregon*, (C.A. 11, 1990), 893 F.2d 1307, *United States v. Rodriguez*, (C.A.1, 1986), 808 F.2d 886, *United States v. Bell*, (C.A.5, 1982), 678 F.2d 547.

Court's] decisions interpreting it.” *Id.* at ¶ 16, 833 N.E.2d 1216, citing *Clark v. Scarpelli*, 91 Ohio St.3d 271, 744 N.E.2d 719, 2001-Ohio-39. In turn, the General Assembly, by passing Am.Sub.H.B. No. 461 which enacted R.C. 4511.19(D)(1)(a), chose to create a distinction between prosecutions for “per se” and “under the influence” violations in regard to the use of blood-alcohol test results. Therefore, we find that the General Assembly's passage of Am.Sub. H.B. No. 461 was made in direct response to *Mayl* and created a distinction between “per se” violations and the general “under the influence” violation not found in the former R.C. 4511.19(D)(1).” *Davenport* at ¶15.

Finally, this Court in *State ex rel. Mager v. State Teachers Retirement System of Ohio*, 123 Ohio St.3d 195, 199, 915 N.E.2d 320, was challenged with the impact of an amendment to R.C. 2121.04, to which this Court stated, “[i]n assessing the impact of the current amendment to R.C. 2121.04, which became effective two years after our decision in *Hammond*, “[w]e must presume that the General Assembly knew of our decision” when it repealed the former version that we interpreted in that case. *State v. Ferguson*, 120 Ohio St.3d 7, 2008-Ohio-4824, 896 N.E.2d 110, ¶ 22. “ ‘When an existing statute is repealed and a new statute upon the same subject is enacted to include an amendment, as in this case, it is presumed that the Legislature intended to change the effect and operation of the law to the extent of the change in the language thereof.’ ” *Greenville Law Library Assn. v. Ansonia* (1973), 33 Ohio St.2d 3, 6, 62 O.O.2d 169, 292 N.E.2d 880, quoting *Malone v. Indus. Comm.* (1942), 140 Ohio St. 292, 299, 23 O.O. 496, 43 N.E.2d 266.

The General Assembly through its amendment of 2925.03 to include section (I), presumably in response to *Chandler*, chose to signify its intent to broaden the interpretation of the statute. If the General Assembly clarified what the law meant all along, so that it applies to

future no-drug cases, then Garr should not get a pass. If, alternatively, the General Assembly effected a true change in the law, but only for fake-drug cases, that shows its belief that *Chandler* affected only such cases, indicating that only a narrower fix was needed. Overall the actions by the General Assembly would show an understanding—and thus an intent—that the enhancements continued to apply for no-drug cases. But under no combination is it plausible to view this amendment as reflecting a legislative understanding or intent to reverse *Chandler* for fake-drug cases and to implicitly endorse an evisceration of MDO Penalties for all no-drug cases.

O.P.A.A. propositions this Court to view the amendment of 2925.03(I) as a natural progression towards an overall broader interpretation, in effect giving the State the power to effectuate the ultimate intent of the statute, and to stop the large volume drug traffickers by convicting those that “*offer to sell*” controlled substances, and attach the enhancements as far as the evidence will allow.

THE REMEDY TO BE EMPLOYED

This Court in its decision in *Chandler* differentiated between offers to sell and actual sales of controlled substances, contrary to the legislative intent of R.C. 2925.03(A). Thus effectively eliminating the availability of penalty enhancements, except when the substance could be tested for a positive result of the “drug involved.”

The General Assembly in its oversight, while intending for situations such as *Chandler* to be criminalized equally along with the act of “offering to sell,” have rectified the unforeseeable alignment of facts in *Chandler*, through amending the R.C. to incorporate section (I) into 2925.03, clarifying, that a “drug” includes any substance that is represented to be a drug. This overt action by the General Assembly should be interpreted as a directive to remain focused on the “drug involved” wording of the statute under 2925.03(C)(4), then further determining the

amount involved per R.C. 2925.03(C)(4)(g) for the volume enhancements. In the absence of actual recovered drugs, this fact finding procedure should then be left to the legal designation, such as a jury, to decide through either direct or circumstantial evidence the substantive facts of the offer to sell, and punish accordingly.

The majority in the 4-3 decision in *Chandler*, affirmed the appellate court and held that the General Assembly had described the activity in the case as trafficking in counterfeit controlled substances, defined in R.C. 2925.37(B), and where a conviction does not depend upon proof of the quantity of the fraudulent substance. Further, it was held “that a substance offered for sale must contain some detectable amount of the relevant controlled substance before a person can be sentenced as a major drug offender under R.C. 2925.03(C)(4)(g).” *Chandler* at ¶ 21.

The dissent pointed out that the Court must ascertain the intent of the legislature. Further, the dissent stated, this Court previously characterized R.C. Chapter 2925 as “strong legislation” through which the General Assembly “has attempted to extirpate the malevolent traffic in drugs within Ohio.” *Patterson*, at 447. We have previously held that the offense is complete under R.C. 2925.03(A)(1) when a person knowingly offers to sell a controlled substance. *State v. Mughni*, 33 Ohio St.3d at 68, 514 N.E.2d 870. The conduct proscribed by the statute is *offering to sell* a controlled substance, not offering the controlled substance. *State v. Scott* (1982), 69 Ohio St.2d at 440, 23 O.O.3d 390, 432 N.E.2d 798. Reading R.C. 2925.03 as a whole, it is clear that in the context of a conviction for *offering to sell* a controlled substance in violation of R.C. 2925.03(A)(1), the “drug involved in the violation” language of R.C. 2925.03(C)(4)(g) refers to the terms of the offer, i.e., the identity and the amount of the drug *offered*. Because the Court should not read into R.C. 2925.03(A)(1) and 2925.03(C)(4)(g) any

requirement that a detectable amount of controlled substance should be offered, the dissent would have reversed the appellate court.

In a concurring dissent, it was pointed out that R.C. 2925.03 criminalizes equally the act of selling a controlled substance and offering to sell a controlled substance. Further, the dissent stated that the “penalty provisions make no separate distinction.” *Chandler* at ¶45. Section 2925.03(C)(4)(g) of the Ohio Revised Code is the operative section that needs the plain language interpretation kept in place; it states succinctly, “[i]f the amount of the drug involved...,” which while there was no argument to disagree that the “drug involved” in *Garr* was cocaine, the *Chandler* interpretation if applied, would be “actual” drugs involved, thus in the absence of any drugs, Garr would be free of his MDO Penalty. The dissent correctly points out the position of O.P.A.A., applying *Chandler* to *Garr*, will benefit only criminals, and tie the hands of those tasked to remove drugs from this State’s commerce.

Here, Garr’s entire “offer to sell” was tape recorded, and through his own words he alone indicated the “drug involved,” and the amount involved in the offer. It was properly before the legal factfinder, the jury, to determine if in fact the particular intricacies of the deal fit the MDO Penalty Section of 2925.03(C)(4). The First District Court of Appeals properly distinguished *Garr* from *Chandler*, and this Court should do the same, making it possible for the State to punish the offenders of the drug trafficking statute under its written intent.

CONCLUSION

The O.P.A.A. asks this Court to limit its holding in *Chandler* to those cases involved the sale of a “fake” controlled substance, and to allow the burden of proof to be satisfied by circumstantial evidence for penalty enhancements, as applied in *Garr*.

Respectfully submitted,

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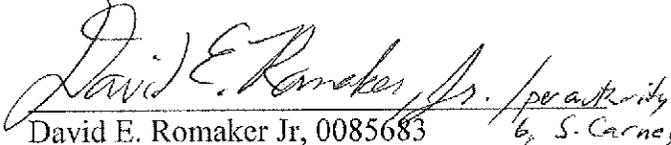
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I hereby certify that on this 19th day of January, 2010, I have sent a copy of the foregoing Merit Brief of Amicus Ohio Prosecuting Attorney's Association, by regular United States mail, addressed to the following:

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