

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO
COUNTY OF SUMMIT
CITY OF TALLMADGE

CASE NO. 2013-1713

Plaintiff-Appellee

ON APPEAL FROM THE
SUMMIT COUNTY COURT
OF APPEALS, 9TH
APPELLATE DISTRICT

VS

ZACHARY L. RAGLE

COURT OF APPEALS
CASE NO. 25706

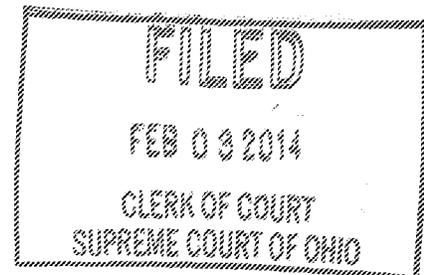
Defendant-Appellant

**APPELLANT/ZACHARY L. RAGLE'S
MOTION FOR RECONSIDERATION**

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DEFENDANT-APPELLANT, PRO-SE

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INTRODUCTION

Appellant, Zachary L. Ragle, respectfully requests that this Court reconsider its January 22, 2014 decision to decline jurisdiction of Appellant's appeal in *State of Ohio vs. Zachary L. Ragle, Ohio Case No. 2013-1713*, pursuant to S.Ct. Prac.R. 7.08(B)(4). In the following discussion, Appellant will identify the documents he has provided to this Court as attachments to this motion. He will discuss each document as to how it supports and gives a factual understanding to Appellant's appeal of the appellate court's ruling on his Request for Reopening in *State v.Ragle 9thDist.No25706, 2012-Ohio 4253*. Appellant would like the Court to consider these documents when deciding whether to grant Appellant's Motion for Reconsideration, and, in turn, allowing their jurisdiction of this appeal.

DISCUSSION

Attachment One: Transcript of Appellant's Trial Court Sentence Hearing
(This document was provided to the appellate court as an attachment in *State v.Ragle 9thDist.No25706, 2012-Ohio 4253* when Appellant filed his Request for Reopening)

This document provides to this Court positive proof of exactly what was spoken and not spoken by all parties at Appellant's sentence hearing. As an example, on page 10, lines 6-10 of this transcript, it is recorded that the trial court judge, in *Stow Mun. No. 4803-2010-TRC*, before sentencing Appellant, stated, "All right. Mr. Ragle, because this is going to appeal, I will usually ask the defendant what they want to say here, but probably wiser and better idea is not to do anything because of the fact that you're going for an appeal of this matter."

These documented statements by the trial court judge help support Appellant's previous statements that he made in his appeal to this Court in *State v. Zachary Ragle Ohio Case No. 2013-1713*, that the trial court was aware, prior to sentencing Appellant, that appellant was going to appeal to the appellate court the trial court's decisions regarding the pretrial evidence motions that Appellant's appellate council had originally filed with the trial court.

Appellant additionally stated in *State v. Zachary Ragle Ohio Case No. 2013-1713* that his sentence hearing transcript also might have given the appellate court reason to believe that the trial court judge had an additional understanding with Appellant if he prevailed in his appeal of these pretrial evidence issues. The trial court judge stating that it was best not to ask Appellant if he wanted to say anything prior to her sentencing him gives probability to the belief that the trial court judge knew if Appellant prevailed in his appellate court appeal of the pretrial evidence issues, (particularly the blood test issue), then it would not be a good idea for her to prompt Appellant to speak about his alleged offenses in open court. The trial court judge knew if Appellant prevailed in his appeal of the blood test evidence issue then Appellant might then be permitted to rescind his no-contest pleas and proceed to trial without the State being able to use his blood test as evidence. It is logical to believe that the trial court judge did not want to prompt Appellant into speaking about his alleged offenses if there was a possibility that Appellant would be going to trial in the future without the State having use of his blood test as evidence. The trial court judge making this statement about whether to ask

Appellant if he wants to speak prior to her sentencing him gives foundational proof to Appellant's statement in *State v. Zachary Ragle Ohio Case No. 2013-1713*, that the appellate court, if they had had a copy of Appellant's transcript hearing, might have believed that the trial court did in fact have an understanding with Appellant if he prevailed in his appeal of the pretrial evidence issues.

The State, on page 7, lines 5-16 of this transcript, stated, "Your honor, (inaudible) facts of this case on May 29, 2010, at approximately 12:30 a.m. Zachary Ragle was the operator of a vehicle in the city of Tallmadge, County of Summit, State of Ohio on Newton Street, did fail to maintain his vehicle by leaving the roadway and careening off the roadway into a tree causing one--one person-- one- vehicle accident. He did incur injuries to himself. He was at the time, under the influence of alcohol. He did have a blood test that came back from the hospital with a blood alcohol content of .185 and he did have alcohol present in the vehicle at the time of the incident." As Appellant described in his appeal to this Court in this case, *State v. Zachary Ragle Ohio Case No. 2013-1713*, Appellant's sentence hearing transcript supports Appellant's prior statements of description that the only evidence given by the State to support Appellant's convictions of the BAC and "driving under the influence" charges was Appellant's blood test that was found by the appellate court, in *State v. Ragle 9th Dist. No 25706, 2012-Ohio 4253*, to be inadmissible evidence and illegal for the State to use in Appellant's prosecution.

Appellant would respectfully request of this Court to give consideration to the

relevant information listed in Appellant's sentence hearing transcript and consideration as to how this information gives factual support to previous statements Appellant made in his appeal to this Court in *State v. Zachary Ragle Ohio Case No. 2013-1713*.

Appellant described this relevant information in his appeal, but, of course, could not attach this transcript that factually defines what was said and what was not said at Appellant's sentence hearing in *Stow Mun. No. 4803-2010-TRC*.

Appellant believes this sentence hearing transcript gives support to Appellant's appeal and wants the Court to consider this important sentence hearing transcript in *State v. Zachary Ragle Case No. 2013-1713*, because, this Court should not address the question of whether Appellant showed good cause for his untimely filing of his Application for Reopening unless they first establish whether or not Appellant's appellate council was negligent for not providing a copy of this transcript to the appellate court. This document provides the foundation of proof to the fact that if this document had been provided to the appellate court by Appellant's appellate council, then the appellate court could not have assumed that Appellant's conviction of "driving under the influence" was supported by credible evidence at his sentence hearing and in turn could not have affirmed Appellant's conviction of this crime.

Attachment Two: Copy of Appellant's Memorandum in Support of Jurisdiction for Appellant's Ohio Supreme Court Appeal, *State v. Ragle Ohio 2012-1856 983N,E.2d 368(Table)*. (This document was provided to the appellate court as an attachment in *State v. Ragle 9th Dist. No 25706, 2012-Ohio 4253* when Appellant filed his Request for Reopening)

During the time of allowance for such appeal to be filed, ruled on, and appealed,

this document gave factual proof that Appellant was pursuing the two principle themes of argument that he spoke of in his appeal, *State v. Zachary Ragle Ohio Case No. 2013-1713*, to this Court. This document, in its entirety, shows that Appellant was totally committed during this time to the cause of trying to prove that 1) a transcript of Appellant's sentence hearing was not needed for the appellate court to rule on his two issues of appeal concerning pretrial evidence motions that his appellate council had appealed to the appellate court and 2) the appellate court abused their discretion when they ruled without a transcript record of Appellant's sentence hearing on Appellant's convictions, which had not been appealed to them by Appellant's appellate council in *State v. Ragle 9th Dist. No 25706, 2012-Ohio 4253*. Appellant stated this in his appeal, *State v. Zachary Ragle Ohio Case No. 2013-1713* and requests the Court to consider this document as proof of such statements. This document provides proof that Appellant showed good cause for his untimely filing of his Request for Reopening, App.R. 26(B)(2)(b), in *State v. Ragle 9th Dist. No 25706, 2012-Ohio 4253*.

Attachment Three: Copy of Appellant's Motion for Reconsideration for Appellant's Ohio Supreme Court Appeal, *State v. Ragle Ohio 2012-1856 983N,E.2d 368(Table)*. (This document was provided to the appellate court as an attachment in *State v. Ragle 9th Dist. No 25706, 2012-Ohio 4253* when Appellant filed his Request for Reopening)

During the time of allowance for such motion to be filed and ruled on, this document gives factual proof that Appellant was still pursuing the cause of pursuing this Court's approval in *State v. Ragle Ohio 2012-1856 983N,E.2d 368(Table)*. Appellant requests of this Court to consider this document as a basis for further proof of his

previous statements in *State v. Zachary Ragle Ohio Case No. 2013-1713* concerning his focus on this cause that justified his untimely filing of his Request for Reopening, App.R. 26(B)(2)(b), in *State v.Ragle 9thDist.No25706, 2012-Ohio 4253*.

Attachment Four: Brief of Defendant-Appellant filed by Appellant's appellate council in State v.Ragle 9thDist.No25706, 2012-Ohio 4253. (This attachment contains the first six pages of Appellant's original appeal to the appellate court in *State v.Ragle 9thDist.No25706, 2012-Ohio 4253.*)

Appellant has provided the first six pages (including cover) of Appellant's original appeal brief filed in the appellate court by Appellant's council on 2/14/2011 in *State v.Ragle 9thDist.No2*. Appellant attaches this portion of this document to his motion for reconsideration for the sole purpose of verifying to this Court what exactly the two issues of appeal were that are referenced frequently in his previous two attachments. Appellant wants the Court to have factual proof of these being the original two issues of appeal in *State v.Ragle 9thDist.No25706, 2012-Ohio 4253*. that are referenced in these aforementioned attachments and in his appeal to this Court in *State v. Zachary Ragle Ohio Case No. 2013-1713* . Appellant attaches the first four pages and the following page to show the continuity of this information and does not attach the entire brief because of its irrelevancy for the purpose intended. The following issues of appeal are listed on the "identified " page iv. of this attachment.

ASSIGNMENT OF ERROR ONE:

APPELLANT'S MOTION TO SUPPRESS THE RESULTS OF A BLOOD/ALCOHOL TEST SHOULD HAVE BEEN SUSTAINED BECAUSE THE STATE FAILED TO PROVE THAT APPELLANT'S BLOOD WAS DRAWN AND TESTED IN ACCORDANCE WITH THE REQUIREMENTS AS SET FORTH IN THE OHIO ADM. CODE 3701-53-05(C),(E) AND (F)

ASSIGNMENT OF ERROR NUMBER TWO:

THE ARRESTING OFFICER DID NOT HAVE PROBABLE CAUSE TO ARREST THE APPELLANT FOR OVI AND ALL STATEMENTS AND PHYSICAL EVIDENCE SEIZED THEREAFTER ARE INADMISSABLE.

Attachment Five: Pages 1.2.3,13.16.17, and 18 of the appellate court's decision concerning Appellant's appeal regarding the two per-trial evidence issues, filed by Appellant's appellate council in *State v.Ragle 9thDist.No25706, 2012-Ohio 4253.*

Appellant provides this attachment to the Court because the two pretrial evidence issues that were originally appealed to the appellate court in *State v.Ragle 9thDist.No25706, 2012-Ohio 4253* and the appellate court's decision regarding the appeal of these two issues in *State v.Ragle 9thDist.No25706, 2012-Ohio 4253* are referenced in prior attachments to this motion for reconsideration and are also referenced in Appellant's appeal to this Court in *State v. Zachary Ragle Ohio Case No. 2013-1713.* Appellant wants the Court to have factual proof of existence of this information. The two issues of appeal or assignments of error are listed on page 3 and page 13 of this attachment and the appellate court's decision/judgment is listed on the last pages of this document and identified as pages 16,17, and 18 of this attachment, The cover page of this document is the first page of this attachment. Page 2 of this document is attached to show continuity. The entire document is not part of this attachment because of its irrelevance for the purpose intended.

SUMMARY AND CONCLUSION

Given the fact that Appellant's blood test was found to be inadmissible as evidence, Appellant was wrongfully convicted of "driving under the influence".The attachments of this motion for reconsideration support this fact that was described in Appellant's appeal to this Court in *State v. Zachary Ragle Ohio Case No. 2013-1713.* These attachments to this motion, as a whole, also prove that Appellant has never been

afforded his right to a trial without illegal evidence (inadmissible blood test), being available to the State for use against him. If Appellant's appellate council had submitted a transcript of Appellant's sentence hearing to the appellate court when he filed appellant's appeal in *State v. Ragle* 9th Dist. No 25706, 2012-Ohio 4253 all this could have been avoided. This is a fact that Appellant stressed in his appeal, *State v. Zachary Ragle Ohio Case No. 2013-1713*, to this Court but could not provide the documentation that he now provides with this motion.

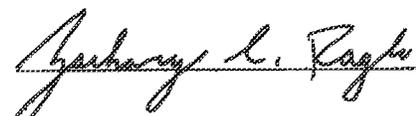
Appellant has provided documented proof of his focus on his appeal to this Court in *State v. Ragle Ohio 2012-1856 983N.E.2d 368(Table)*. By providing the memorandum for jurisdiction and his motion for reconsideration as attachments to this motion, he has provided proof of existence of these documents and factual proof of his statements pertaining to these documents that he described in *State v. Zachary Ragle Ohio Case No. 2013-1713*.

As Appellant stated in *State v. Zachary Ragle Ohio Case No. 2013-1713*, and in his memorandum for jurisdiction (attachment two), he was confused by the appellate court's ruling pertaining to his appeal to them in *State v. Ragle* 9th Dist. No 25706, 2012-Ohio 4253, when they reversed his BAC conviction and affirmed his "driving under the influence" conviction. As Appellant also stated in *State v. Zachary Ragle Ohio Case No. 2013-1713*, and attachment two of this motion, this action contradicted case law in *State v. Render (1975), 43 Ohio St. 2d 17, 330 N.E.2d 690* with respect to the reversal. Appellant was confused as to why this case law would not also apply to their

affirming his “driving under the influence” conviction especially when these convictions dealt with the same case. Appellant was additionally confused as to why the appellate court's appeal ruling in this case also did not conform to case law in *Stetson v. City Bank (1853)*, 2 *Ohio St.* 167, 176-78 which he cited in his motion for reconsideration in attachment three of this motion. After pursuing answers to his questions regarding these confusions and not being able to receive any well-defined answers in his allotted time, as is stated by Appellant in his appeal, *State v. Zachary Ragle Ohio Case No. 2013-1713*, Appellant filed his Request for Reopening to the appellate court. As stated previously in *State v. Zachary Ragle Ohio Case No. 2013-1713*, he could not have filed this Request for Reopening sooner as it did contradict the actions he had invoked with the filing of his appeal in *State v. Ragle Ohio 2012-1856 983N.E.2d 368(Table)*.

Appellant is grateful to this honorable Court for reading this motion and prays that they will grant this motion and, in turn, accept jurisdiction of Appellant's appeal of the appellate court's denial of his Request for Reopening in . *State v. Ragle 9th Dist. No 25706, 2012-Ohio 4253*

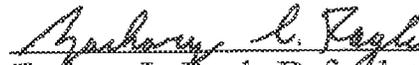
Respectfully submitted,



Zachary L. Ragle
Defendant/Appellant/pro-se

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing motion was sent to Megan Raber, City of Tallmadge Law Director and Prosecutor in this case at City of Tallmadge, 46 North Avenue, Tallmadge, Ohio 44278 via regular US Mail on February 3rd, 2014.



Zachary L. Ragle Defendant/Appellant/pro-se

COPY

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STOW MUNICIPAL COURT

SUMMIT COUNTY, OHIO

STATE OF OHIO/)

CITY OF STOW,)

Plaintiff,)

)

vs)

) CASE NO. 2010TRCC04803

) JUDGE LISA L. COATES

ZACHARY RAGLE,)

) Transcript of Proceedings

Defendant.)

MUNICIPAL COURT OF
STOW, OHIO
2012 NOV - 9 P 12:57

APPEARANCES:

Megan E. Raber, Esq., on behalf of the Plaintiff

Brian M. Pierce, Esq., on behalf of the Defendant

BE IT REMEMBERED

that this cause came on for hearing
on the 2nd day of November, 2010
before the Honorable Lisa L. Coates,
Stow Municipal Court.

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P-R-O-C-E-E-D-I-N-G-S

1
2 JUDGE COATES: Okay. All right. On behalf
3 of Mr. Ragle today.

4 MR. PIERCE: Thank you, Your Honor. May it
5 please the Court. Mr. Ragle has just signed
6 acknowledgement waiver of rights forms on both the
7 underage possession, as well as to OVI and reasonable
8 control matters. He understands that by doing so,
9 Judge, he would be waiving his right to a trial. His
10 plea is a plea of no contest and as we've discussed with
11 the Court, the purpose of that no contest plea is so
12 that the matter, the OVI and the blood test, can be
13 appealed to the Ninth District Court of Appeals.

14 I have gone over this in detail with both
15 Mr. Ragle and his father, who is present in court today.
16 He's aware of the potential penalties, as well the
17 reason for the no contest plea and I ask the Court to
18 inquire further of Mr. Ragle.

19 JUDGE COATES: All right. And this is the
20 first OVI, is that correct, with a high -- where the
21 blood draw was high?

22 MS. RABER: Yes, Your Honor.

23 JUDGE COATES: Okay. All right. Mr. Ragle,
24 first of all, are you an American citizen?

25 THE WITNESS: Yes.

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1 JUDGE COATES: Pursuant to Criminal Rule 11,
2 it is my understanding you're going to be pleading to
3 all -- no contest to all charges today. Is that you're
4 understanding?

5 THE WITNESS: Yes.

6 JUDGE COATES: Okay. All charges with the
7 exception of the driving under suspension. My
8 understanding is today that this is a first OVI and, as
9 well as a blood draw, which is a high tier, and that
10 carries with it, as a first offense, up to 180 days in
11 jail with at least six of those days being mandatory
12 time; up to a \$1,075 fine with at least \$375 being the
13 mandatory minimum fine; a mandatory license suspension
14 of six months up to three years with at least six months
15 being the mandatory minimum. Because this is a high
16 tier, the Court would impose red and yellow restricted
17 license plates and could impose the interlock device.
18 That's optional. There are no other penalties to your
19 vehicle on a first offense.

20 Do you understand all of the penalties?

21 THE WITNESS: Yes.

22 JUDGE COATES: OVIs and operating with a
23 prohibitive blood alcohol concentration are enhancable
24 offenses. That means this is going to stay on your
25 record. It cannot be sealed from your record and it can

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1 be used to enhance a future OVI charge, so if this
2 happens again, jail, license suspension, and fine will
3 all be mandatorily higher next time around. Not only
4 will there be a red and yellow plate, but there will be
5 an interlock device, by law, and there will be penalties
6 to your vehicle such as immobilization.

7 A third OVI within six years and you're
8 looking at somewhere between 30 and 60 days up to a year
9 in jail. You're looking at forfeiture of your vehicle.
10 Do you understand -- and, of course, mandatory
11 treatment. Do you understand all of the penalties?

12 THE WITNESS: Yes.

13 JUDGE COATES: Four OVIs in a six-year
14 period or six OVIs in a 20-year period and you are
15 looking at a felony and you could go to prison. Do you
16 understand that?

17 THE WITNESS: Yes.

18 JUDGE COATES: Okay. I have to tell you.
19 You also have failure to maintain reasonable control.
20 That is a minor misdemeanor carrying with it no jail
21 time, but up to a \$150 fine. You also have possessing
22 or consuming alcohol under the age of 21. It is a
23 misdemeanor of the first degree and carries with it up
24 to a 180 days in jail and up to a \$1,000 fine. There
25 are no mandatory penalties. Do you understand that?

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1 THE WITNESS: Yes.

2 JUDGE COATES: Entering a plea of no contest
3 today you are waiving or giving up certain rights.
4 Those rights include, a right to a jury trial or a trial
5 to the Court. A right to confront your accusers and to
6 cross-examine them. A right at trial to present
7 witnesses on your own and to use the court's power to
8 compel them to attend any court proceedings.

9 You have a right to testify yourself; tell
10 your side of the story or a right not to testify and to
11 remain silent and that cannot be used against you.

12 You have a right to have the prosecutor
13 prove each and every element of these offenses beyond a
14 reasonable doubt and you have a right to an appeal.
15 Entering a plea today limits that appellate right. Do
16 you understand all of your rights today?

17 THE WITNESS: Yes.

18 JUDGE COATES: Do you understand that
19 entering a plea today you're going to give up those
20 rights?

21 THE WITNESS: Yes.

22 JUDGE COATES: And are you doing this today
23 of your own free will?

24 THE WITNESS: Yes.

25 JUDGE COATES: Has anyone promised you

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1 anything or threatened you in any way into entering this
2 plea today, Mr. Ragle?

3 THE WITNESS: No.

4 JUDGE COATES: Okay. Then, noting your
5 signature on the waiver of rights form acknowledging to
6 this Court you understand your rights and your
7 voluntarily waiving those rights, how do you wish to
8 plea, then, to one count of operating a vehicle under
9 the influence of alcohol and operating under -- with a
10 prohibitive blood alcohol concentration greater than a
11 .17 misdemeanors of the first degree?

12 THE WITNESS: No contest.

13 JUDGE COATES: Failure to maintain
14 reasonable control, a minor misdemeanor?

15 THE WITNESS: I want to plea no contest.

16 JUDGE COATES: And to one count of
17 possessing or consuming alcohol under the age of 21, a
18 misdemeanor of the first degree?

19 THE WITNESS: I plead no contest.

20 JUDGE COATES: I'll accept your no contest
21 pleas as being knowingly, intelligently, and voluntarily
22 made and with the advice of counsel.

23 And do you want to place on the record the
24 facts with regard to the no contest plea?

25 MS. RABER: Yes, Your Honor.

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1 JUDGE COATES: My guess is they're not
2 stipulating to them, and there is the waiver form with
3 regard to jury since it's set on jury tomorrow as to
4 those two cases only.

5 MS. RABER: Your Honor, (inaudible) facts of
6 this case on May 29, 2010, at approximately 12:50 a.m.,
7 Zachary Ragle was the operator of a vehicle in the city
8 of Tallmadge, County of Summit, State of Ohio on Newton
9 Street, did fail to maintain his vehicle by leaving the
10 roadway and careening off the roadway into a tree
11 causing one -- one person -- one-vehicle accident. He
12 did incur injuries to himself. He was, at that time,
13 under the influence of alcohol. He did have a blood
14 test that came back from the hospital with a blood
15 alcohol content of .185 and he did have alcohol also
16 present in the vehicle at the time of the incident.

17 JUDGE COATES: Okay. And Mr. Ragle's age
18 is?

19 MS. RABER: Mr. Ragle's age is 20, yes, Your
20 Honor.

21 JUDGE COATES: Okay. All right. Based on
22 indications by the State as to the facts that would be
23 presented here today, the Court notes the no contest
24 plea and finds you guilty of all charges, and on behalf
25 of the State with regard to sentencing, first of all,

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1 today.

2 MS. RABER Your Honor, pursuant to criminal
3 plea negotiations we would be looking for the normal
4 sentence of the Court regard to first high tier
5 (inaudible). We would ask for one year license
6 suspension due to Mr. Ragle being underage and
7 (inaudible) a one-year driver's license suspension to be
8 imposed.

9 We would ask that the fine with the court to
10 (inaudible) be imposed and we would ask that community
11 service be imposed for the underage possession in
12 addition to the fines and we would (inaudible) according
13 to the sentence (inaudible).

14 JUDGE COATES: Be held in abeyance, okay.
15 All right. I think I'm going to sentence him on both
16 the OVI and BAC but merge those two together because
17 they're similar in part, so they'll be merged together
18 for purposes of going down for the appeal.

19 Mr. Pierce.

20 MR. PIERCE: Judge, this is Mr. Ragle's
21 first offense and hopefully his last. We would ask the
22 Court to impose mandatory minimum sentence on this
23 offense. I did have a discussion with Ms. Raber
24 regarding all these charges and I believe that, at one
25 point, she was comfortable with a suspended sentence on

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1 the underage possession. We had talked about, I think,
2 30 days suspended on that -- on condition that --

3 JUDGE COATES: You mean, like jail time
4 suspended? I automatically give 180 suspended, so
5 that's my general -- yeah. I have no --

6 MR. PIERCE: (Inaudible) be suspended on
7 that. Obviously, we'll defer to the court on fines. I
8 did explain to Mr. Ragle that even though this is his
9 first offense, my experience with this Court is
10 typically it's more than the -- the minimum offense or
11 minimum fine amounts for -- on the OVIs.

12 Regarding the driver's license suspension
13 since this was his first offense, Judge, and certainly
14 there was an accident involved. There was no other
15 vehicles involved. I would indicate that Zachary has
16 had no problems. Albeit a short time since the Court
17 imposed this, he didn't drive while he was under
18 suspension. There was another -- another charge.
19 Without commenting on that he didn't have any other
20 offenses since this has occurred. He did get his
21 license back, but I would ask the Court to consider a
22 minimum suspension on the license at least for
23 (inaudible) six months.

24 JUDGE COATES: Well, my general policy with
25 anyone underage is they get an automatic year and then

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1 they impress me for six months and if they impress me
2 for six months and stay out of court and petition the
3 court, then I generally modify that to a -- from a year
4 to six months and that's something I do with all young
5 kids who shouldn't be drinking at all.

6 All right. Mr. Ragle, because this is going
7 to appeal, I will usually ask the defendant what they
8 want to say here, but probably wiser and better idea is
9 to not do anything because of the fact that you're going
10 for an appeal in this matter.

11 Mr. Ragle, I don't know what's going to
12 happen with the appeal process, but what I can tell you
13 is this, you are very, very lucky that your mom and dad
14 did not bury you on May 29th. They are -- you are very
15 lucky, because three young kids just died -- I think two
16 of the three just died out on Kendall Road, high rate of
17 speed, all under the influence of alcohol. We just lost
18 three teenagers, so -- and this is a very common thing
19 among this age group, so your mom and dad are very, very
20 lucky you're standing here today and you may not feel
21 lucky that you're facing the music here with jail and
22 everything, but much better here than in a coffin, so --
23 or killed anyone else and going to prison.

24 All right. Here's where my intention stand
25 on the OVI and BAC charge. I'm going to order 180 days

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1 and suspend 174 of those days. Three of those days to
2 be done in a driving intervention program consecutive to
3 three days in the -- Macedonia, right -- Macedonia jail.

4 MS. RABER: We would ask for restitution.

5 JUDGE COATES: I will. I will order \$50 per
6 day restitution to the City of -- to Tallmadge for your
7 three-day stay as to the Macedonia jail and, of course,
8 driving intervention program will have fees, as well.
9 I'm going to order on the OVI and the BAC a thousand
10 dollar fine, suspending \$600 of that. You have a \$400
11 fine and the court cost. And your one-year license
12 suspension backdated to May 29th. Although, there is
13 going to be a stay period here, so that will be removed
14 pending any appeal. And condition on obeying all laws
15 for the next year and not repeating the offense, because
16 this was a first offense, there's no other penalties
17 except the plates, red and yellow plates (inaudible)
18 privileges.

19 All right. As the OVI and BAC are same,
20 similar, those two charges -- those sentences will be
21 merged together. As to the reasonable control, I'll
22 order \$50 in cost and those costs are the same as the
23 OVI and, then, on the possessing or consuming alcohol
24 under the age of 21, I'll order 180 days all suspended
25 under the same terms and conditions that you obey all

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1 laws for the next year and not repeat the offense. I
2 will order 16 hours of community service and a \$1,000
3 fine suspending \$750. And all -- of course, all matters
4 will be held abeyance. I'm going to hold the sentence
5 in abeyance for 30 days. If an appeal is filed, then
6 the sentence will be held throughout the appeal. If
7 appeal is not filed within 30 days, then this Court will
8 impose the sentence and you'll have to come back in
9 here. You'll report back to the court to set up for
10 your jail time and everything like that, okay. Have any
11 questions for me today, Mr. Ragle?

12 THE WITNESS: (Inaudible).

13 JUDGE COATES: If you don't, you can talk to
14 Mr. Pierce or call in to the court with regard to
15 anything else.

16 MS. RABER: Will you need to address the
17 (inaudible).

18 JUDGE COATES: I'm going to get there right
19 now. All right.

20 ***

21

22

(Proceedings concluded.)

23

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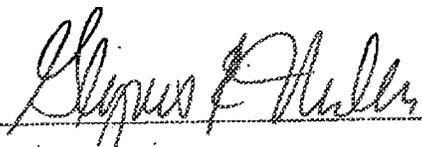
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C E R T I F I C A T E

COUNTY OF SUMMIT

STATE OF OHIO

I, Glynis E. Miller, Notary Public in and for the state of Ohio, hereby certify that the foregoing transcript of proceedings is a true and accurate transcript of the proceedings recorded in the matter of *STATE OF OHIO/CITY OF TALLMADGE vs ZACHARY RAGLE*, and the same was transcribed by me to the best of my ability and does constitute all of the proceedings recorded in the within matter, as heard on the 2nd day of November, 2010 before the Honorable Lisa L. Coates, Stow Municipal Court.



Glynis E. Miller, Court Reporter
217 S. High Street, Rm. 901
Akron Municipal Court
Notary Public
My commission expires 11/27/2012

NOTARY PUBLIC
STATE OF OHIO

COPY

IN THE SUPREME COURT OF OHIO

**STATE OF OHIO
COUNTY OF SUMMIT
CITY OF TALLMADGE**

CASE NO. 12-1856

Plaintiff-Appellee

VS

ZACHARY L. RAGLE

Defendant-Appellant

**ON APPEAL FROM THE
SUMMIT COUNTY COURT
OF APPEALS, 9TH
APPELLATE DISTRICT**

**COURT OF APPEALS
CASE NO. 2010-25706**

**ZACHARY L. RAGLE'S
MEMORANDUM IN SUPPORT OF JURISDICTION**

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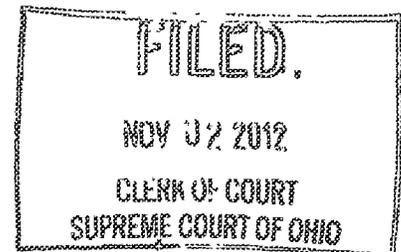


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APPENDIX
**State v. Zachary L. Ragle, Decision and Journal Entry, Summit
County Court of Appeals 9th Judicial District Case No. C.A. 25706 (2010)
Stow Municipal Ct Case No. 2010TRC04803.....A-1**

**EXPLANATION OF WHY THIS APPEAL INVOLVES
SUBSTANTIAL CONSTITUTIONAL QUESTIONS
AND IS ONE OF PUBLIC OR GREAT GENERAL INTEREST**

This appeal of the Ninth District Appellate Court's decision in this case involves substantial constitutional questions and is one of public or great general interest. The Appellate Court's rulings in this case have made possible a denial of Appellant's rights afforded him by *the Constitution of the United States*. Appellant is entitled to "equal protection of the laws" and "due process of law" by *the Fourteenth Amendment of the Constitution of the United States*.

Appellant, in appealing the tainted evidence of the BAC charge, *City of Tallmadge ord. 333.01(A)(1)(E)* and the probable cause of arrest issue in this case, has allowed the Ninth District Court Court of Appeals to rule not only on the two issues of his appeal, but also affirm his other convictions without a supportive record of Appellant's sentence hearing. The audio or transcribed audio record of Appellant's sentence hearing was not needed for the Appellate Court to rule on Appellant's two issues of appeal, 1) Probable Cause to Arrest & 2) Validity of Appellant's BAC Test . These two issues of appeal were the result of pretrial motions that had been denied by the Trial Court.

At Appellant's sentence hearing on 11/02/2010, Appellant changed his pleas of not guilty to all the charges against him and plead no contest to all the charges against him in this case. Without the entire record of this sentence hearing, the Appellate Court had no basis for their affirming Appellant's other three convictions in this case. They

were not privy to what colloquy took place between the Trial Court, the State, Appellant, and his attorney during Appellant's sentence hearing. Without this audio or transcribed audio record of Appellant's sentence hearing, the Appellate Court also was not privy as to what explanation of the circumstances for Appellant's remaining two misdemeanors was given by the State to support such convictions.

The Appellate Court, without this record, could not know whether or not the tainted BAC evidence was given or not given as; or whether or not the tainted BAC evidence was the only evidence that was given or not given as the explanation of the circumstances, as noted in (*Section 2937.07 of the O.R.C.*), by the State for Appellant's conviction of "*Operating a motor vehicle under the influence of alcohol*", ("*OVI*"), in violation of *City of Tallmadge ord. 333.01(A)(1)(A)*. They could not know what the State gave as the explanation of circumstances that supported a conviction and they could not know what the Trial Court might have read into the record concerning this conviction.

As for the other two remaining charges, the Appellate Court could not know whether the Trial Court allowed or disallowed Appellant to give his side of the story relating to these charges and what explanation of circumstances was given by the State for Appellant's *Possession of Alcohol Involving Underage Persons: State section 4301.69E1* conviction. It might have been possible that the Trial Court might have, for good reason, kept him from expounding on what might have caused him to veer from the highway in this terrible accident he was in. Appellant, if he might have spoke

or might have been kept from speaking at this hearing, might have or might not have wanted to tell the Trial Court who might or might not have bought the unopened beer that was in the truck and who the owner of this truck might or might not have been. The Trial Court might or might not have given consideration to what Appellant might or might not have said relating to these offenses. That is a lot of "mights" and there are a whole lot of other "mights" that might have or might not have taken place, but, the fact is that the Appellate Court did not have a record of what was spoken by any of the parties that were present at Appellant's sentence hearing.

What was spoken or not spoken at Appellant's sentence hearing does have bearing on Appellant's convictions of "*Operating a vehicle under the influence of alcohol*", ("OVI"), (*Tallmadge ord. 333.01(A)(1)(A)*), "*Underage possession or consumption*" (*R.C.4301.69(E)(1)*), and "*Failure to maintain reasonable control*" (*Tallmadge ord. 333.08*). It also might have bearing on whether or not these convictions, now, could or could not, and should or should not, be affirmed or dismissed.

Such an act as the Appellate Court affirming these three aforementioned convictions without a supporting record of Appellant's sentence hearing is an abuse of discretion and is a reversible error. The Appellate Court ruling on unappealed issues without a supporting record is not good for the public or great general interest and does not assure Appellant of "*equal protection of the laws*" and "*due process of law*" that is afforded all Americans by the *Fourteenth Amendment of the Constitution of the United States*.

STATEMENT OF CASE AND FACTS

On May 29th, 2010, Appellant, Zachary Ragle, was involved in a terrible crash in what appeared to be a one vehicle accident which left him unconscious inside the truck that he apparently was driving (Tr. at 44-45). A bystander heard the crash and called the Tallmadge Police (Tr. At 59). Two of at least three Tallmadge Police officers, after arriving on the scene, looked for an Eric Hillard in the general area of the accident (Tr. at 61-62). Mr. Ragle was transported to the hospital by EMS (Tr. At 49).

Appellant, Zachary Ragle, was charged with the offenses of *Possession of Alcohol Involving Underage Persons: State section 4301.69E1, OVI: City of Tallmadge section 333.01A1A, BAC: City of Tallmadge section 333.01A1E*, all first degree misdemeanors, and *Failure to Maintain Reasonable Control: City of Tallmadge section 333.08*, a minor misdemeanor, as a result of this aforementioned event. At two arraignments that followed this event, Appellant entered Pleas of Not Guilty to all of the aforementioned charges.

On July 8, 2010, Appellant filed a motion to suppress the BAC evidence and a motion questioning whether there was probable cause for his arrest, which both came before the Trial Court for a hearing on August 3, 2010. On September 29, 2010, the Trial Court issued a written order which denied both motions.

On November 2, 2010, Appellant entered Pleas of No Contest to all of the aforementioned charges. The Trial Court imposed sentences on all of these four charges, but held Appellant's sentences in abeyance pending his appeal of the Trial Court's



ruling on Appellant's motion to suppress the BAC evidence and on his motion questioning whether the arresting officer had probable cause for arrest.

On November 29, 2010 Appellant filed a timely appeal to the 9th District Court of Appeals regarding the Trial Court's order which had denied Appellant's motions.

On November 16, 2011, the Appellate Court affirmed that the police officer had probable cause to arrest Appellant for driving under the influence and said that because the BAC count was eliminated by merger, any irregularity with the blood draw was harmless error.

On 11/28/2011, Appellant filed a motion for reconsideration to the Appeals Court, and on 01/03/12 Appellant filed an appeal to the Ohio Supreme Court. On 02/03/2012, the Appellate Court vacated their decision and granted Appellant's motion for reconsideration. The Ohio Supreme Court declined jurisdiction to hear Appellant's case and dismissed his appeal to their Court on 03/21/2012.

On 09/19/2012, the Appellate Court overruled Appellant's assignment of error regarding probable cause for his arrest and sustained his assignment of error regarding his BAC charge. They vacated Appellant's conviction for *operating a vehicle with a prohibited blood alcohol concentration ("BAC")* in violation of *T.C.O. 333.01(A)(1)(E)*. The Appellate Court additionally affirmed Appellant's convictions for *operating a motor vehicle while under the influence of alcohol ("OVI")* in violation of *T.C.O. 333.01(A)(1)(A)*, *failure to maintain reasonable control* in violation of *T.C.O. 333.08*, and *underage possession or consumption* in violation of *R.C 4301.69(E)*. This appeal follows.

ARGUMENT

First Proposition of Law

RC.2937.07 Court action on pleas of guilty and no contest in misdemeanor cases.

A plea to a misdemeanor offense of "no contest" or words of similar import shall constitute an admission of the truth of the facts alleged in the complaint and that the judge or magistrate may make a finding of guilty or not guilty from the explanation of the circumstances of the offense. If the offense to which the accused is entering a plea of "no contest" is a minor misdemeanor, the judge or magistrate is not required to call for an explanation of the circumstances of the offense, and the judge or magistrate may base a finding on the facts alleged in the complaint. If a finding of guilty is made, the judge or magistrate shall impose the sentence or continue the case for sentencing accordingly. A plea of "no contest" or words of similar import shall not be construed as an admission of any fact at issue in the criminal charge in any subsequent civil or criminal action or proceeding.

When a defendant pleads no contest to a misdemeanor charge, the method by which the State must prove his guilt changes dramatically. The State, rather than having the burden of proving guilt beyond a reasonable doubt, now must only recite into the record *the explanation of circumstances*, (cited in 2937.07), that support a guilty finding for each misdemeanor charge. For a minor misdemeanor charge, with a plea of no contest, the trial court is *not required to call for an explanation of the circumstances of the offense* as noted in, 2937.07, and the judge of the trial court *may base a finding on the facts alleged in the complaint* as stated in *Section 2937.07*.

When accepting pleas of no contest from a defendant with respect to misdemeanor charges, a trial court judge "*may make a finding of guilty or not guilty from the explanation of the circumstances of the offense*" per *Section 2937.07*. The Trial Court in this case did accept Appellant's no contest pleas and did find him guilty of these misdemeanor charges as indicated by the written record of this case that was available to the Appellate Court following Appellant's appeal in this case. In order for the Trial

Court to find Appellant guilty of the misdemeanor charges , there had to be an explanation of circumstances for each misdemeanor charge to support a finding of guilty to each corresponding misdemeanor charge. No explanation of circumstances was required for the Trial Court to make a finding of guilty to Appellant's *Failure to Maintain Reasonable Control T.C.O. 333.08*, which was a minor misdemeanor and the only charge that was not a misdemeanor. This finding of guilty was also in the written record of the Trial Court and it was available to the Appellate Court following Appellant's appeal. It should be noted that whatever explanation of circumstances read into the record by the State regarding all these offenses and any colloquy between the parties present at Appellant's sentence hearing was not in the written record that was supplied to the Appellate Court following Appellant's appeal and the Appellate Court had no other record of Appellant's sentence hearing.

The Ohio Supreme Court stated in their opinion regarding *Cuyahoga Falls v. Bowers (1984), 9 Ohio St. 3d 148*, "We find the Springdale court's reasoning to be persuasive and hereby adopt its conclusion that *R.C.2937.07* confers a substantive right. Therefore, a no contest plea may not be the basis for a finding of guilty without an explanation of circumstances. " The understanding of *R.C.2937* with respect to Appellant's pleas in this case at hand emphasizes the importance of the record of appellant's sentence hearing. Whatever the State's explanations of circumstances were for Appellant's misdemeanors that he plead no contest to at his sentence hearing on 11/02/2010, those explanations would be absolutely essential for the Appellate Court to

have knowledge of in order to affirm Appellant's remaining convictions.

There are numerous cases in Ohio's Appellate Courts where convictions have been overturned and reversed because trial courts have imposed sentences without the proof of creditable explanations of circumstances that support findings of guilty following defendants' no contest pleas. In *Cuyahoga Falls v. Bowers* (1984), 9 Ohio St. 3d 148, the Ohio Supreme Court reversed the judgment of the appellate court's decision and remanded the cause to the trial court for further proceedings consistent with their opinion due to no explanation of circumstances being given following a no contest plea. In *State v. Stewart*, Montgomery App. No. '9971,2004-Ohio-3103, the 2nd District Appeals Court stated, "Under R.C. 2937.07, when a no-contest plea is accepted in a misdemeanor case, the explanation of circumstances serves as the evidence upon which the trial court is to base its finding of guilty or not guilty. Here, that evidence was insufficient to support a conviction. When a conviction is reversed for insufficiency of the evidence, jeopardy has attached, and a remand for a new determination of guilt or innocence is barred by double jeopardy. *Burks v. United States* (1978), 437 U.S. 1, 98 S.Ct. 2141, 57 L.Ed.2d 1. Thus, Stewart is entitled to the reversal of his conviction, and to be discharged."

State v. Keplinger (Nov 23, 1998), *Greene App. No.98-CA-24*, *State v. Fordenwalt* (June 21, 2010) *Wayne App.No.09-CA-0021*, *State v. Myers*, *Marion App. Nos. 9-02-65*, *9-2-66 2003-Ohio-2936*, *State v. Hoskins*, *12th Dist. No.CA98-07-143*, *1999 WL 527796 at*3*(June 14, 1999), *State v. Valentine*, *1st Dist.No. C-070388*, *2008-Ohio-1842*, at 9,

and State v. Spence, Clemont App. No. 2002-02-12, 2002-Ohio-3600, 2002 WL 1495341
all are appealed cases involving no contest pleas where the explanation of circumstances was either non existent or lacked enough evidence and the convictions were reversed as a result.

Appellant apologizes to the Court for perhaps overindulging in cases where the State erred in the explanation of circumstances as they relate to no contest pleas. What Appellant wants to emphasize to the Court in relation to his case is that the State's explanation of circumstances as they relate to the misdemeanor convictions in his case might have been greatly affected since he prevailed in preventing the State use of the tainted BAC evidence. These explanations of circumstances along with the record of colloquy between those parties in attendance at his sentence hearing, must be known by the Appellate Court in order for them to affirm Appellant's remaining convictions in this case. As demonstrated in the aforementioned cases involving no contest plea convictions, the knowledge of these explanations of circumstances is paramount in determining guilt from innocence. As the case at hand now stands, since the Appellate Court has affirmed all of Appellant's remaining convictions, this will prevent the Trial Court from reevaluating this very important information of record.

Second Proposition of Law

Appellate R 9 The record on appeal

(B)(1) It is the obligation of the appellant to ensure that the proceedings the appellant considers necessary for inclusion in the record, however those proceedings were recorded, are transcribed in a form that meets the specifications of App. R. 9(B)(6).

Appellant filed the brief of his appeal with the Appellate Court on 02/14/2011 and stated two assignments of error: 1) Motion to suppress BAC evidence and 2) Motion questioning probable cause of arrest. Appellee filed the State's corresponding brief on 03/25/2011 and also argued only these two specific issues. The transcript of the motion to suppress hearing along with most of the Trial Court records had previously been received by the Appellate Court on 01/5/2011 and 12/10/10. The Trial Court documentation of Appellant's convictions and sentences was fully supplied to the Appellate Court by 06/17/2011. No record of Appellant's sentence hearing was needed other than what was provided to the Appellate Court. The records transferred did indicate Appellant's no contest pleas and the corresponding guilty findings and sentences that the Trial Court gave for each corresponding conviction. The State did not request or indicate that a transcript of the colloquy between all parties present at Appellant's sentence hearing should accompany this file and the Appellate Court did not order such. It was not needed for these two aforementioned pretrial motions that had been denied by the Trial Court and were now being appealed to the Appellate Court.

Third Proposition of Law

An appellate court cannot affirm a misdemeanor conviction that is a result of a no contest plea without having record of whether the trial court and the prosecutor in that case complied with the requirements of R.C. 2937.07 as it applies to misdemeanor and minor misdemeanor cases.

In State v. Render (1975), 43 Ohio St. 2d 17, 330 N.E.2d 690, the Ohio Supreme Court concluded their opinion in this case by stating, "In the absence of any record of proceedings in the trial court, upon which to predicate reversal in the Court of Appeals,

the judgment of the Court of Appeals, in so doing, must be reversed." In this case at hand, the Appellate Court affirmed judgments of the Trial Court in the absence of any record supporting such judgments in addition to these issues of judgment having not been appealed to them by Appellant.

In *Cleveland Elect, Illum. Co. v. Pub. Util. Comm.* (1996), 76 Ohio St. 3d 163, 666 N.E.2d 1372, the Ohio Supreme Court states in the fifth paragraph of their opinion, "A legion of cases establish that the commission abuses its discretion if it renders an opinion on an issue without record support.", when referencing past Public Utilities Commission decisions. So, like these decisions referenced by the Ohio Supreme Court, the Appellate Court, in this case at hand, has abused their discretion by rendering an opinion concerning Appellant's non appealed convictions without record support.

Without a record of supporting evidence for a decision, a reviewing court cannot possibly affirm or disaffirm that decision. The Appellate Court in this case gave no consideration to the rules of R.C. 2937.07 when they affirmed Appellant's remaining convictions. There is no record of any colloquy between the Trial Court, the State, Appellant, or his attorney that the Appellate Court had before them that could justify them affirming Appellant's two misdemeanor and one minor misdemeanor convictions. As stated in R.C. 2937.07, *the judge or magistrate may base a finding on the facts alleged in the complaint* with respect to a minor misdemeanor. But, there was no record before the Appellate Court, in this case, that the Trial Court did this. There was no record of what the Trial Court based its decision on concerning this minor misdemeanor.

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R.C. 2937.07, in referencing a misdemeanor conviction states, *the judge or magistrate may make a finding of guilty or not guilty from the explanation of the circumstances of the offense*. The Appellate Court had no record before them of any explanation of circumstances regarding Appellant's two misdemeanor convictions. The Appellate Court had no record from which to base their affirming Appellant's remaining three convictions in this case.

CONCLUSION

The Appellate Court cannot affirm Appellant's remaining convictions in this case without having a record of what was said at Appellant's sentence hearing with respect to these convictions.

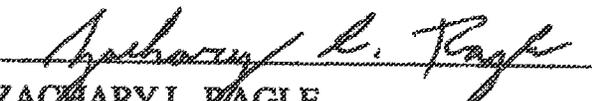
The Appellate Court, in deciding the issues of appeal in this case and further affirming the remaining unappealed convictions, has refused to consider any possibility that the tainted BAC evidence in Appellant's case might have had any effect on Appellant's other three no contest convictions. When they affirmed Appellant's remaining three convictions in this case, without a supporting record, they abused their discretion and stripped Appellant of any chance he now might have had of proving his innocence of these charges. They denied him his right of "*equal protection of laws*" and they denied him his right of "*due process of law*", each of which are afforded all Americans by the *Fourteenth Amendment of the United States Constitution*.

Appellant respectfully requests and prays that the Ohio Supreme Court accepts

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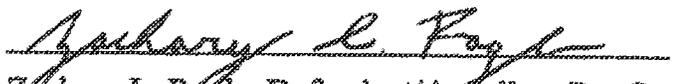
jurisdiction over this matter and agrees with Appellant that the supplemented judgment of the Appellate Court to affirm Appellant's remaining three convictions should be vacated and the cause should be remanded to the Trial Court for further proceedings consistent with "*due process of law*", *Fourteenth Amendment of the United States Constitution*. Appellant believes this would be good for the public and great general interest and would afford Appellant "*equal protection of the law*". *Fourteenth Amendment of the United States Constitution*.

Respectfully submitted,


ZACHARY L. RAGLE
DEFENDANT/APPELLANT PRO-SE

CERTIFICATE OF SERVICE

I hereby certify that a copy of this notice of appeal was sent to Megan Raber, City of Tallmadge Law Director and Prosecutor in this case at City of Tallmadge, 46 North Avenue, Tallmadge, Ohio 44278 via regular US Mail on November 1st, 2012.


Zachary L. Ragle, Defendant/Appellant Pro-Se

COPY.

IN THE SUPREME COURT OF OHIO

**STATE OF OHIO
COUNTY OF SUMMIT
CITY OF TALLMADGE**

Plaintiff-Appellee

VS

ZACHARY L. RAGLE

Defendant-Appellant

MUNICIPAL COURT 387

2013 APR 29 12 02:15

CASE NO. 12-1856

STOS, OHIO

**ON APPEAL FROM THE
SUMMIT COUNTY COURT
OF APPEALS, 9TH
APPELLATE DISTRICT**

**COURT OF APPEALS
CASE NO. 25706**

**APPELLANT/ZACHARY L. RAGLE'S
MOTION FOR RECONSIDERATION**

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COUNSEL FOR APPELLEE, STATE OF OHIO

**APPELLANT ZACHARY L. RAGLE'S MOTION FOR
RECONSIDERATION**

For reasons stated in the following memorandum in support of Appellant's motion for reconsideration, Appellant, Zachary L. Ragle, respectfully requests that this Court reconsider its February 20, 2013 decision to decline jurisdiction of Appellant's appeal pursuant to SS. Ct. R. 7.08(B)(4). Appellant will bring to the attention of this Court additional case law that supports Appellant's original contention that the Appellate Court abused their discretion by additionally ruling on Appellant's non-appealed no contest convictions in this case without knowing the effect that the "illegal" BAC evidence had on Appellant's non-appealed no contest convictions. He will also bring to the Court's attention relevant statements made by the Trial Court in their decision for purpose of comparing them to previously referenced statements made by the Appellate Court in their decision. Appellant will present additional case law that supports his previously stated reasons and expectations that Appellant and his attorney had for his appeal.

Appellant will also provide to the Court additional detail of the chronological events and an explanation of those events as they evolved in Appellant's case. (Appellant will have some repetition of events but only for the reason of showing chronological order of the additional events that he wants the Court to also consider with respect to his appeal.)

The two written issues of appeal will be transposed from the Appellate Court's decision so that the Court can make easy reference to them. Appellant prays that this additional information will help the Court have a better understanding as to why Appellant believes the Appellate Court abused their discretion by additionally affirming Appellant's non-

appealed no contest convictions without having knowledge of what effect the "illegal" BAC evidence might have had on these convictions and in turn on Appellant's US Constitutional rights.

((Please note Appellant has replaced his use of the term "unappealed" with the correctly used term of non-appealed in this motion.....Please excuse this mistake of Appellant initially using the wrong term, "unappealed", in his appeal))

MEMORANDUM IN SUPPORT OF MOTION FOR RECONSIDERATION

Appellant's attorney filed Appellant's appeal on November 29, 2010 in the 9th District Court of Appeals concerning two issues of evidence. Appellant's attorney did not file any appeals concerning Appellant's convictions since they were supported by evidence that the Trial Court had ruled legal for use by the State. Appellant's attorney presented his appeals regarding these issues of evidence to the Appellate Court in the following manner.

ASSIGNMENT OF ERROR ONE:

APPELLANT'S MOTION TO SUPPRESS THE RESULTS OF A BLOOD/ALCOHOL TEST SHOULD HAVE BEEN SUSTAINED BECAUSE THE STATE FAILED TO PROVE THAT APPELLANT'S BLOOD WAS DRAWN AND TESTED IN ACCORDANCE WITH THE REQUIREMENTS AS SET FORTH IN THE OHIO ADM. CODE 3701-53-05(C),(E) AND (F)

ASSIGNMENT OF ERROR NUMBER TWO:

THE ARRESTING OFFICER DID NOT HAVE PROBABLE CAUSE TO ARREST THE APPELLANT FOR OVI AND ALL STATEMENTS AND PHYSICAL EVIDENCE SEIZED THEREAFTER ARE INADMISSABLE.

Appellant's appeal of the two issues of evidence had originated from pretrial suppression motions that Appellant's attorney filed with the Trial Court on 7/7/2010. An evidence suppression hearing was then held on 8/3/2010 before the Trial Court. This evidence hearing was of course recorded and a typed 100 page transcript of this hearing was prepared for the Trial Court and all parties involved shortly thereafter. The Trial

Court then, on 9/29/2010, issued a written order that denied Appellant's motions to suppress and hence declared the BAC test evidence legal for the State to use in their prosecution of Appellant's alleged crimes.

Appellant through the advice of his attorney knew that he could not prevail in a trial and vindicate himself of these alleged crimes if the State had use of this "illegal" BAC test evidence for trial. This Court stated in *Defiance v. Kretz (1991)*, 60 Ohio St. 3d.572 N.E.2d 32, "A pretrial challenge to a breathalyzer test, if granted, destroys the state's case under R.C. 4511.19(A)(3), and the state is permitted to appeal pursuant to R.C. 2945.67 and Crim. R. 12(J). Similarly, the defense to a charge under R.C.4511.19(A)(3) is destroyed where the breathalyzer test result is declared valid after a pretrial challenge. If the defendant pleads no contest after such a ruling, judicial economy will be served by an appeal of the pivotal issue rather than forcing the defendant through a futile trial. The defendant must, of course, enter a plea of no contest and a judgment must be rendered or there would be no final appeal able order." The situation in Appellant's case is almost identical to *Kretz(1991)* with respect to the State's potential use of "illegal" evidence. In Appellant's case the "illegal" evidence is the BAC test evidence and in *Kretz(1991)*, the "illegal" evidence was that which was obtained improperly from a breathalyzer test.

Appellant's attorney then entered into plea negotiations with the State. Appellant's attorney told Appellant that the State would not agree to dismiss any of the alleged offenses that Appellant had been charged with. Appellant's attorney told Appellant he

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did negotiate that if Appellant agreed to plead no contest to all the charges against him then he would be permitted to appeal the two evidence issues to the Appellate Court and if he prevailed in his appeal of the "illegal" BAC evidence, then he would be able to rescind his plea to the *OVI: City of Tallmadge section 333.01A1A* and the *BAC: City of Tallmadge section 333.01A1E* charges and proceed to jury trial on the OVI charge. Appellant's attorney told him that the Trial Court was knowledgeable of this plea negotiation. Appellant agreed to this and then changed his pleas from not guilty to all the charges against him to that of no contest to all charges against him for the sole reason of bringing about a final judgment to his case so that his attorney could then appeal the suppression of evidence issues to the Appellate Court. Appellant knows first hand that his attorney made it clear to the Trial Court judge of the reason for his changing his pleas from not guilty to the charges against him to that of no contest. On 11/2/2010 the Trial Court accepted Appellant's change of pleas from not guilty to no contest and sentenced Appellant on all the charges against him and held the corresponding sentences in abeyance until the outcome of this appeal that Appellant's attorney was to file with the Appellate Court.

The Appellate Court stated in the 23rd paragraph of their 9/19/2012 decision with respect to Appellant's appeal, "As such, the trial court erred in denying Mr Ragle's motion to suppress the admissibility of the blood testing results." Conversely, the Trial Court had stated previously on 9/29/2010 in the trial court's order pertaining to Appellant's motion to suppress hearing, "The Court finds that there was substantial

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compliance with the OAC standards. Further, the Defendant did not establish any prejudice by not strictly complying with the OAC."

Appellant requests the Court to look at whether the Appellate Court overlooked or did not pay attention to how this difference of opinion might have affected the Trial Court's actions with respect to Appellant's convictions and how the Trial Court might look at their own decisions now. Given this huge contrast in opinion of the same issue and given the obvious strong influence that the "illegal" BAC evidence might have had in the Trial Court's decision to find Appellant guilty of the *OVI: City of Tallmadge section 333.01A1A* charge, and how this same evidence might have influenced a jury, Appellant would like this Court to look at whether the Appellate Court should have affirmed Appellant's conviction of this crime given these circumstances. The Appellate Court, in the relevant paragraph 33 of their decision, gave absolutely no reason or explanation as to why they did this. Appellant wants the Court to look at whether the Appellate Court did only assume that now, with the Trial Court having knowledge that this BAC test evidence is not legal for use in Appellant's prosecution, that the Trial Court still might want to convict Appellant of these crimes based on his no contest plea and these circumstances. Appellant also asks the Court to look at whether the Appellate Court did also only assume that the Trial Court would now not want to allow Appellant to rescind his no contest plea to the *OVI: City of Tallmadge section 333.01A1A* charge, not to mention the *BAC: City of Tallmadge section 333.01A1E* charge and additionally now not want to allow Appellant to proceed to trial on the *OVI: City of Tallmadge*

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section 333.01A1A charge.

Given the knowledge that the Trial Court had regarding these issues and the additional knowledge that the Trial Court now has regarding these issues, Appellant wants the Court to look at whether the Appellate Court could have possibly interfered in the Trial Court's possible desired further decisions regarding what effects this "illegal" BAC test evidence issue might now have on justice. The Trial Court is the trier of fact in Appellant's case. Whatever decision the Trial Court now might have had to make regarding Appellant's prior convictions that resulted from no contest pleas, Appellant would like the Court to look at whether the Trial Court would now have superior knowledge to have made whatever decisions were necessary for the sake of justice. Appellant begs the Court to look at whether the Trial Court alone could now have best decided if they should affirm convictions, dismiss convictions, or even allow Appellant to rescind his prior no contest pleas to these charges and proceed to trial.

This Court stated in *Stetson v. City Bank (1853)*, 2 Ohio St. 167,176-78, "But where disputed facts are to be found on evidence of no determinate value, dependent entirely upon the credit to be given to witnesses and the intrinsic force of the circumstances sworn to, and illegal evidence has been admitted, it is impossible for a reviewing court, in most cases, to say what might or should have been the result, if such illegal evidence had not been received; and in such cases the judgment will be reversed on account of the error in receiving the illegal evidence."

Appellant would like the Court to also consider whether the Appellate Court,

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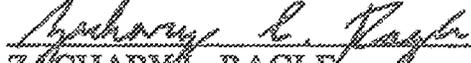
being the "reviewing court", *Stetson v. City Bank (1853)* in Appellant's case, only assumed they knew at the time of Appellant's conviction of the *OVI: City of Tallmadge section 333.01A1A* charge, what weight the Trial Court gave this "illegal" BAC test evidence in deciding if Appellant was guilty of this alleged crime. Appellant also asks the Court, with respect to this Court's above referenced case, to look at whether at the time of Appellant's convictions the Appellate Court only assumed what "might or should have been the result if such evidence had not been received", *Stetson v. City Bank (1853)*, when referring to the effect of this "illegal" BAC test evidence on Appellant's case.

Appellant requests and prays that the Court will refocus on the bigger picture while reconsidering Appellant's appeal for jurisdiction. Appellant gave up his right to trial in order to appeal the "illegal" BAC test evidence. He gave up his right to have witnesses called on his behalf and to testify himself in his defense. He succeeded in proving to the Trial Court that the State should not be able to use this "illegal" evidence against him. But, now he is stripped of his Constitutional right to proceed to trial without this "illegal" evidence being used against him. His appeal of this "illegal" evidence has now assured his conviction of the alleged crimes that he wanted to defend himself against. Appellant's case makes possible that anyone charged with crimes based on "illegal" evidence can be assuredly convicted if they must appeal the use of such "illegal" evidence to a higher court. Appellant is grateful to the Ohio Supreme Court for allowing him to submit to them this motion for reconsideration of judgment and requests

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and prays that they will reconsider their prior decision and accept Appellant's appeal for jurisdiction.

Respectfully submitted,



ZACHARY L. RAGLE
DEFENDANT/APPELLANT PRO -SE

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Motion for Reconsideration was sent to Megan Raber, City of Tallmadge Law Director and Prosecutor in this case at the City of Tallmadge, 46 North Avenue, Tallmadge, Ohio 44278 via regular US Mail on March 3rd, 2013.



Zachary L. Ragle, Defendant/Appellant Pro-Se

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**IN THE COURT OF APPEALS
NINTH APPELLATE DISTRICT
SUMMIT COUNTY**

**COURT OF APPEALS
DANIEL M. HOFFRIGAN**

2011 FEB 14 PM 3:43

**SUMMIT COUNTY
CLERK OF COURTS**

STATE OF OHIO

COURT OF APPEALS

Plaintiff-Appellee,

CASE NO. CA-25706

v.

ZACHARY L. RAGLE

**On Appeal from the Stow
Municipal Court**

Defendant-Appellant.

Case No.: 2010-TRC-4803

BRIEF OF DEFENDANT-APPELLANT

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STATEMENT OF THE ASSIGNMENTS OF ERROR

ASSIGNMENT OF ERROR NUMBER ONE:

APPELLANT'S MOTION TO SUPPRESS THE RESULTS OF A BLOOD/ALCOHOL TEST SHOULD HAVE BEEN SUSTAINED BECAUSE THE STATE FAILED TO PROVE THAT APPELLANT'S BLOOD WAS DRAWN AND TESTED IN ACCORDANCE WITH THE REQUIREMENTS AS SET FORTH IN OHIO ADM. CODE 3701-53-05(C),(E) AND (F)

ASSIGNMENT OF ERROR NUMBER TWO:

THE ARRESTING OFFICER DID NOT HAVE PROBABLE CAUSE TO ARREST THE APPELLANT FOR OVI AND ALL STATEMENTS AND PHYSICAL EVIDENCE SEIZED THEREAFTER ARE INADMISSIBLE.

ISSUES PRESENTED FOR REVIEW

Appellant presents two (2) issues for review all of which support his contention that the Motion to Suppress should have been sustained.

1. Did the City of Tallmadge fail to sustain its burden to demonstrate substantial compliance with the mandates of Ohio Adm. Code 3701-53-05(C), (E) and (F) because of multiple errors in the draw and testing of his blood for alcohol content?
2. Did the arresting officer have probable cause for the arrest of Appellant?

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STATE OF OHIO
COUNTY OF SUMMIT

COURT OF APPEALS
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IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

SUMMIT COUNTY
CLERK OF COURTS

C.A. No. 25706

Appellee

v.

ZACHARY L. RAGLE

Appellant

APPEAL FROM JUDGMENT
ENTERED IN THE
STOW MUNICIPAL COURT
COUNTY OF SUMMIT, OHIO
CASE No. 2010 TRC 4803

DECISION AND JOURNAL ENTRY

Dated: September 19, 2012

MOORE, Presiding Judge.

{¶1} Defendant-Appellant, Zachary L. Ragle, appeals from the November 2, 2010 sentencing order and the September 29, 2010 order of the Stow Municipal Court denying his motion to suppress. For the following reasons, we affirm in part, and reverse in part.

I.

{¶2} In May of 2010, Mr. Ragle was involved in a one-car accident in the City of Tallmadge. As a result of the accident, he was charged with one count of operating a motor vehicle while under the influence of alcohol ("OVI") in violation of Tallmadge Codified Ordinance ("T.C.O.") 333.01(a)(1)(A); one count of failure to maintain reasonable control in violation of T.C.O. 333.08; one count of operating a vehicle with a prohibited blood alcohol concentration ("BAC") in violation of T.C.O. 333.01(a)(1)(C); and underage possession or consumption in violation of R.C. 4301.69(E). Mr. Ragle pleaded not guilty to all charges.

{¶3} He then filed a motion to suppress and/or dismiss alleging that (1) the arresting officer lacked probable cause to arrest him for OVI, (2) the injuries he sustained in the accident rendered him unable to consent to a blood draw, and (3) the blood draw was not done in compliance with the Ohio Administrative Code ("OAC") and the applicable Ohio Department of Health Regulations. The trial court held a hearing on the motion and, in denying it, found that (1) there was probable cause to arrest Mr. Ragle for OVI, (2) he voluntarily consented to the blood draw, and there was no Fourth Amendment violation, and (3) the State substantially complied with OAC 3701-53-05, and Mr. Ragle failed to demonstrate any prejudice.

{¶4} Mr. Ragle changed his plea to "no contest" and the trial court found him guilty of all charges. The trial court sentenced him to 180 days in jail, with 174 days suspended upon the conditions that he complete a driver intervention program, serve three days in jail, and obey all laws for one year.

{¶5} On November 29, 2010, Mr. Ragle appealed raising two assignments of error for our consideration. In his first assignment of error, he argued that the trial court erred in denying his motion to suppress because the State failed to prove that his blood was drawn and tested in accordance with the requirements set forth in OAC 3701-53-05(C), (E) and (F). In his second assignment of error, Mr. Ragle argued that there was no probable cause to arrest him for OVI.

{¶6} On November 16, 2011, a majority of this Court issued a decision and journal entry overruling Mr. Ragle's second assignment of error based upon our determination that probable cause existed to arrest him for OVI, and rendering his first assignment of error moot because the BAC count was eliminated by merger with the OVI count.

{¶7} Mr. Ragle filed an application for reconsideration alleging that we erred in (1) vacating his sentence on the BAC count because the State was required to elect the count on

which to move forward, and (2) we erred in concluding that any irregularity with the blood draw is harmless. On February 3, 2012, we granted Mr. Ragle's application for reconsideration, reinstated the appeal, and vacated our November 16, 2011 decision and journal entry.

{¶8} We now address Mr. Ragle's two assignments of error on the merits.

II.

ASSIGNMENT OF ERROR I

[MR. RAGLE'S] MOTION TO SUPPRESS THE RESULTS OF A BLOOD ALCOHOL TEST SHOULD HAVE BEEN SUSTAINED BECAUSE THE [STATE] FAILED TO PROVE THAT [HIS] BLOOD WAS DRAWN AND TESTED IN ACCORDANCE WITH THE REQUIREMENTS AS SET FORTH IN [OAC] 3701-53-05(C), (E) AND (F).

{¶9} "An appellate court's review of a trial court's ruling on a motion to suppress presents a mixed question of law and fact." (Citation omitted.) *State v. Campbell*, 9th Dist. No. 05CA0032-M, 2005-Ohio-4361, ¶ 6. "The trial court acts as the trier of fact during a suppression hearing, and is therefore best equipped to evaluate the credibility of witnesses and resolve questions of fact." (Citation omitted.) *Id.* This Court will accept the factual findings of the trial court if they are supported by some competent, credible evidence. See *State v. Balog*, 9th Dist. No. 08CA0001-M, 2008-Ohio-4292, ¶ 7, citing *State v. Searls*, 118 Ohio App.3d 739, 741 (5th Dist.1997). "However, the application of the law to those facts will be reviewed de novo." *Balog* at ¶ 7.

{¶10} In his first assignment of error, Mr. Ragle argues that the State failed to prove that his blood was drawn and tested in accordance with regulations set forth in OAC 3701-53-05(C), (E) and (F), and therefore, the results of the blood test should be suppressed.

{¶11} "The General Assembly established the threshold criteria for the admissibility of alcohol-test results in prosecutions for driving under the influence and driving with a prohibited

ASSIGNMENT OF ERROR II

THE ARRESTING OFFICER DID NOT HAVE PROBABLE CAUSE TO ARREST [MR. RAGLE] FOR OVI AND ALL STATEMENTS AND EVIDENCE SEIZED THEREAFTER ARE INADMISSIBLE.

{¶25} In his second assignment of error, Mr. Ragle argues that Officer Eichler did not have probable cause to arrest him for OVI. We disagree.

{¶26} “In determining whether the police had probable cause to arrest an individual for [OVI], we consider whether, at the moment of arrest, the police had sufficient information, derived from a reasonably trustworthy source of facts and circumstances, sufficient to cause a prudent person to believe that the suspect was driving under the influence.” *City of Tallmadge v. Barker*, 9th Dist. No. 24414, 2009-Ohio-1334, ¶ 12, quoting *State v. Homan*, 89 Ohio St.3d 421, 427 (2000), superceded by R.C. 4511.19(D)(4)(b) on other grounds as recognized by *State v. Schmitt*, 101 Ohio St.3d 79, 2004-Ohio-37. Additionally, “[e]ven without positive results on field sobriety testing, the totality of the facts and circumstances may support probable cause to arrest for a violation of Section 4511.19(A) of the Ohio Revised Code.” *State v. Walters*, 9th Dist. No. 11CA0039-M, 2012-Ohio-2429, ¶ 10. “The amount of evidence necessary for probable cause to suspect a crime is being committed is less evidence than would be necessary to support a conviction of that crime at trial.” *Id.*, quoting *State v. McGinty*, 9th Dist. No. 08CA0039-M, 2009-Ohio-994, ¶ 11. “It is necessary to show merely that a probability of criminal activity exists, not proof beyond a reasonable doubt, or even proof by a preponderance of evidence that a crime is occurring.” *Walters* at ¶ 10, quoting *McGinty* at ¶ 11.

{¶27} In *Akron v. Norman*, 9th Dist. No. 22743, 2006-Ohio-769, ¶ 12, we stated that R.C. 4511.19(A)(1)(a), “does not necessitate any finding of a certain blood alcohol content to support a conviction, but rather only requires evidence that a defendant was operating a motor

III.

{¶33} In sustaining Mr. Ragle's first assignment of error, and overruling his second assignment of error, we vacate Mr. Ragle's conviction for operating a vehicle with a prohibited blood alcohol concentration ("BAC") in violation of T.C.O. 333.01(a)(1)(C), and affirm his convictions for operating a motor vehicle while under the influence of alcohol ("OVI") in violation of T.C.O. 333.01(a)(1)(A), failure to maintain reasonable control in violation of T.C.O. 333.08, and underage possession or consumption in violation of R.C. 4301.69(E). Because we vacate Mr. Ragle's BAC conviction, the issue of merger is moot. We remand to the trial court for further proceedings consistent with this decision.

Judgment affirmed in part,
reversed in part,
and cause remanded.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed equally to both parties.



CARLA MOORE
FOR THE COURT

CARR, J.
CONCURS.

DICKINSON, J.
CONCURRING IN JUDGMENT ONLY.

{¶34} I agree that Officer Dennis Eichler had probable cause to arrest Mr. Ragle for operating a vehicle under the influence of alcohol. Mr. Ragle was the sole occupant of a truck that was involved in a one-vehicle crash, his breath smelled strongly of alcoholic beverages, and there was a case of beer in the front area of the truck with him, with some of the cans missing.

{¶35} I also agree that this Court must vacate Mr. Ragle's conviction for operating a vehicle with a prohibited blood alcohol concentration because the court could not sentence him for that crime and for operating a vehicle under the influence of alcohol. As the lead opinion has noted, Officer Eichler cited Mr. Ragle for operating a vehicle "under the influence of alcohol" under Section 333.01(a)(1)(A) of the Codified Ordinances of the City of Tallmadge, Ohio, and for operating a vehicle while having "a concentration of seventeen-hundredths of one per cent or more by weight per unit volume of alcohol in [his] whole blood" under Section 333.01(a)(1)(F). Although the municipal court found him guilty of both offenses, it "merged" the blood-alcohol-content count with the operating-under-the-influence count because they were the "same offense."

{¶36} Under the doctrine of merger, a defendant who has been found guilty of allied offenses may only be sentenced on one of the offenses. *State v. Damron*, 129 Ohio St. 3d 86, 2011-Ohio-2268, ¶17. In this case, even though the trial court merged the blood-alcohol-concentration offense with the operating-under-the-influence offense, it imposed sentences for both offenses. That was error. *Id.* As the Ohio Supreme Court explained in *Damron*, “[t]he imposition of concurrent sentences is not the equivalent of merging allied offenses.” *Id.*

{¶37} For purposes of the doctrine of merger, a “conviction” includes both the determination of guilt and the sentence or penalty. *State v. Damron*, 129 Ohio St. 3d 86, 2011-Ohio-2268, ¶ 17. The trial court found Mr. Ragle guilty of operating a vehicle with a prohibited blood alcohol concentration and imposed a sentence on it. Because the court had merged the blood-alcohol-concentration offense with the operating-under-the-influence offense, however, it was not allowed to impose a sentence for the blood-alcohol-concentration offense. Accordingly, I agree that Mr. Ragle’s conviction for operating a vehicle with a prohibited blood alcohol concentration must be vacated. I would overrule his first assignment of error as moot.

APPEARANCES:

BRIAN M. PIERCE, Attorney at Law, for Appellant.

PENNY TAYLOR, Director of Law, and MEGAN E. RABER, Assistant Director of Law, for Appellee.