

**IN THE SUPREME COURT OF OHIO
2015**

STATE OF OHIO,

Plaintiff-Appellant,

Case No. 2014-1278,
2014-1454

-vs-

On Appeal from the
Cuyahoga County Court
of Appeals, Eighth Appellate District,

Court of Appeals
Case No. 100482

ANTONIA EARLEY,

Defendant-Appellee.

**BRIEF OF AMICUS CURIAE FRANKLIN COUNTY PROSECUTOR RON O'BRIEN
IN SUPPORT OF PLAINTIFF-APPELLEE STATE OF OHIO**

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STATEMENT OF *AMICUS* INTEREST

Franklin County Prosecutor Ron O'Brien offers this amicus brief in support of plaintiff-appellee State of Ohio. Each year, the Franklin County Prosecutor's Office prosecutes thousands of criminal cases including cases involving both OVI and aggravated vehicular assault. Franklin County Prosecutor Ron O'Brien therefore has a strong interest in the correct resolution of the issues related to sentencing offenders found guilty of both offenses. Therefore, in the interest of aiding this Court's review of this appeal from Cuyahoga County, Prosecutor Ron O'Brien offers this brief in support of the State of Ohio.

STATEMENT OF THE CASE AND FACTS

Amicus accepts the statement of the case and facts set forth in the brief of plaintiff-appellee State of Ohio.

ARGUMENT

RESPONSE TO PROPOSITION OF LAW

WHERE AN OVI IS THE PREDICATE FOR AGGRAVATED VEHICULAR ASSAULT, THE OFFENSES DO NOT MERGE FOR SENTENCING PURPOSES AS R.C. 2929.41(B)(3) AUTHORIZES SEPARATE PUNISHMENT FOR EACH OFFENSE

In this matter, appellant Antonia Earley pleaded guilty to aggravated vehicular assault (“AVA”), in violation of R.C. 2903.08(A)(1)(a); endangering children, in violation of R.C. 2919.22; and OVI, in violation of R.C. 4511.19(A)(1)(a). During her sentencing hearing, appellant failed to raise any argument regarding merger of AVA and OVI. Instead, appellant raised the issue for the first time on appeal to the Eighth District. In analyzing the issue, the Eighth District correctly held that AVA and OVI do not merge pursuant to R.C. 2941.25. *State v. Earley*, 8th Dist. No. 100482, 2014-Ohio-2643.

This Court recognized the conflict certified by the Eighth District and accepted appellant’s discretionary appeal. Once again, the related issues of allied offense analysis and the judicial doctrine of merger have made their way before this Court. This case highlights the continuing need for this Court to establish a clear standard that also recognizes the clear intent of the General Assembly regarding allied offense analysis.

A. R.C. 2929.41(B)(3) allows punishment for both OVI and AVA

In *State v. Volpe*, the Tenth District held that aggravated vehicular homicide and OVI are not allied offenses of similar import. *See State v. Volpe*, 10th Dist. No. 06AP-1153, 2008-Ohio-1678, ¶72. The court further noted the similarity of aggravated vehicular homicide and AVA. *Id.*

While the *Volpe* court applied the portion of *State v. Rance*, 85 Ohio St.3d 632, 710 N.E.2d 699 (1999) that was later overruled in reaching its conclusion, (*see Volpe* at ¶66), the Tenth District subsequently reached the same result regarding AVA and OVI even in the absence of *Rance*. *See State v. Bayer*, 10th Dist. No. 11AP-733, 2012-Ohio-5469, ¶22.

In *Bayer*, the defendant was charged and convicted for both OVI and AVA. The court assumed, without deciding, that OVI and AVA are allied offenses and proceeded to the question only of whether the offenses should merge. *Id.* at ¶18.

Generally, the General Assembly's intent as to merger of allied offenses is reflected in R.C. 2941.25.[] That intent is that the state may file charges of two or more allied offenses of similar import but may obtain conviction of only one, absent the circumstances described in R.C. 2941.25(B). *But, where other more specific legislative statements of legislative intent exist, a court may consider those statements in determining whether the General Assembly intended to allow imposition of cumulative punishments for allied offenses.*

Bayer at ¶19 (emphasis added) citing *State v. Thomas*, 10th Dist. No. 10AP-557, 2011-Ohio-1191, ¶19, citing *Johnson*, and *State v. Cooper*, 104 Ohio St.3d 293, 2004-Ohio-6553, 819 N.E.2d 657, ¶11. This Court held similarly in *State v. Miranda*, 138 Ohio St.3d 184, 2014-Ohio-451, 5 N.E.3d 603, ¶10 (R.C. 2941.25 inapplicable because General Assembly intended punishment for RICO offense and predicate offenses). The relevant inquiry therefore, is whether the General Assembly has intended to allow punishment for an offense and a predicate offense.

Even if OVI and AVA could be considered allied offenses under the facts of this case, a specific legislative intent to allow imposition of cumulative punishments for these offenses is contained in R.C. 2929.41(B)(3) which provides, in relevant part:

A jail term or sentence of imprisonment imposed for a misdemeanor violation of section * * * 4511.19 of the Revised Code shall be served consecutively to a prison term that is imposed for a felony violation of section * * * 2903.08 * * * of the Revised

Code * * * when the trial court specifies that it is to be served consecutively.

Based upon this plain and unambiguous language, the *Bayer* court held that the General Assembly did not intend that OVI and AVA merge, as it would be impossible for a court to impose consecutive sentences “unless the court had first imposed more than just one sentence.” *Bayer*, ¶21. As a result, appellant’s argument that R.C. 2929.41(B)(3) can only apply after a sentencing court has applied R.C. 2941.25 is a non-starter and should be rejected. *See also State v. Brown*, 119 Ohio St.3d 447, 2008-Ohio-4569, 895 N.E.2d 149, ¶37 (resort to R.C. 2941.25 unnecessary where legislative intent to allow multiple punishments is clear); *State v. Childs*, 88 Ohio St.3d 558, 561, 728 N.E.2d 379 (2000) (“R.C. 2941.25 * * * must be read in concert with other legislative statements on the issue.”). While appellant vaguely asserts that “in some circumstances” R.C. 2929.41(B)(3) will allow separate punishment for OVI and AVA, she does not offer any insight as to why her case does not fit within the “circumstances” allowing separate punishment.

Appellant cites multiple appellate decisions indicating that OVI and AVA should merge. Brief, p. 7-8 citing *State v. West*, 2nd Dist. No. 23547, 2010-Ohio-1786; *State v. Mendoza*, 6th Dist. No. WD-10-008, 2012-Ohio-5988; *State v. Phelps*, 12th Dist. No. CA2009-09-243, 2010-Ohio-3257. Problematically for appellant, none of these decisions even mentions R.C. 2929.41(B)(3). Therefore, none of these decisions should be considered persuasive, as they each omit a key part of the analysis defined by this Court for determining legislative intent to impose separate punishment for related offenses.

The Tenth District’s analysis and conclusion in *Bayer* has been adopted as persuasive by multiple appellate districts, including the Eighth District in the instant matter. *See State v. Demirci*, 11th Dist. No. 2011-L-142, 2013-Ohio-2399, ¶¶46-48; *State v. Dunham*, 5th Dist. No.

13CA26, 2014-Ohio-1042, ¶¶76-77; *Earley, supra*, ¶20. However, even if R.C. 2929.41(B)(3) is not applied in the instant matter, OVI and AVA still would not merge under R.C. 2941.25.

B. The “can result” test in the lead opinion of *Johnson* has no precedential value

In *State v. Johnson*, 128 Ohio St.3d 153, 2010-Ohio-6314, 924 N.E.2d 1061, this Court partially overruled its prior decision in *Rance*, which had held that courts must compare the elements of the offenses in the abstract in determining whether offenses are allied offenses of similar import. Although each of the divided opinions in *Johnson* lacked the votes necessary to create binding authority, *see Kraly v. Vannewirk*, 69 Ohio St.3d 627, 633, 635 N.E.2d 323 (1994) (opinion that does not garner majority support does not constitute controlling law), the unanimously approved syllabus contained the following controlling law: “When determining whether two offenses are allied offenses of similar import subject to merger under R.C. 2941.25, the conduct of the accused must be considered.” *Johnson*, at syllabus.

While the syllabus is controlling precedent regarding *Rance*’s first prong, its narrow holding must be considered. The syllabus only stated that “the conduct of the accused must be considered” under the first step. The Court’s syllabus did not preclude the consideration of whether the offenses were of “similar import.” Indeed, the syllabus references the need for the offenses to have “similar import.” Beyond the narrow syllabus, nothing else precedential emerged from *Johnson*.

1. *Johnson*’s lead opinion is not a majority opinion

Although this Court unanimously recognized the narrow holding of *Johnson* in *State v. Washington*, 137 Ohio St.3d 427, 2013-Ohio-4982, 999 N.E.2d 661, ¶15, many Ohio appellate courts continue to overlook this fact and mistakenly characterize the test and analysis contained in *Johnson*’s lead opinion as what this Court held, as if the lead opinion had been endorsed by a

majority. Obviously, majority support for any opinion, including the lead, was lacking. Yet, appellate courts continue to mistakenly assign precedential status to *Johnson*'s lead opinion. See *State v. Hayes*, 2nd Dist. No. 2014-CA-27, 2014-Ohio-5362, ¶¶22-23 (noting the limited syllabus of *Johnson*, but applying this Court's "framework for evaluating merger issues") citing *Johnson*, ¶48; *State v. Allen*, 3rd Dist. No. 2-13-27, 2014-Ohio-5483, ¶4 ("The Ohio Supreme Court reviewed the situation and set forth a new test for determining whether offenses were allied offenses of similar import.") citing *Johnson*, ¶¶47-51; *State v. Leonhart*, 4th Dist. No. 13CA38, 2014-Ohio-5601, ¶54 (noting the "applicable test for merger") citing *Johnson*, ¶48; *State v. Belcher*, 6th Dist. Nos. L-13-1250/1252, 2014-Ohio-5596, ¶44 ("The Ohio Supreme Court * * * established a two-step test to determine whether offenses are allied offenses of similar import[.]") citing *Johnson*, ¶48; *State v. Tate*, 8th Dist. No. 97804, 2014-Ohio-5269, ¶38 ("The determinative inquiry [established by *Johnson*] is two-fold[.]") citing *Johnson*, ¶¶48-49; *State v. Ervin-Williams*, 11th Dist. No. 2014-T-0009, 2014-Ohio-5473, ¶54 ("The Ohio Supreme Court described the application of R.C. 2941.25 as follows * * *.") citing *Johnson*, ¶¶48-51; *State v. Painter*, 12th Dist. No. CA2014-03-022, 2014-Ohio-5011, ¶18 (referring to "the *Johnson* test") citing *Johnson*, ¶48.

Appellant has committed precisely the same error in her merit brief. See Brief, p. 4 (referring to what she characterizes as this Court's announcement of "a two-tier framework for analysis") citing *Johnson*, ¶¶48-49. This error is significant, as it assumes the lead opinion is precedential in some manner. Through repetition at the intermediate appellate level, this error has become firmly ingrained in a majority of the districts. Correction of this error will require a clear and decisive statement from this Court.

2. Johnson’s lead opinion is not a “plurality,” either

Although the Tenth District initially committed the same error as its sister districts as noted above, the most recent opinion by the Tenth District recognized that there was no majority support for anything other than *Johnson*’s syllabus. Compare *State v. Sidibeh*, 10th Dist. No. 10AP-331, 2011-Ohio-712, ¶57 with *State v. S.S.*, 10th Dist. No. 13AP-1060, 2014-Ohio-5352, ¶30. However, even though the S.S. court recognized the lack of a majority opinion, the decision referred to the lead opinion as “[t]he *Johnson* plurality opinion[.]” S.S. at ¶31. The Tenth District is not alone in this characterization. The lead opinion is recognized as a “plurality” by the Seventh and Ninth Districts, as well. See *State v. Johnson*, 7th Dist. No. 12 MA 137, 2014-Ohio-4253, ¶108; *State v. Santamaria*, 9th Dist. No. 26963, 2014-Ohio-4787, ¶22. But, referring to the lead opinion as a “plurality” is equally incorrect. The term “plurality” can only describe an opinion that, while lacking majority support, has received more support than any other opinion. But, this obviously did not happen in *Johnson*, as the lead opinion and a competing opinion each received equal support from the members of this Court.

The Fifth District correctly recognized the limited nature of this Court’s opinion in *Johnson*. *State v. Huhn*, 5th Dist. No. 14 CA 00011, 2014-Ohio-5559, ¶11. However, the *Huhn* court also mistakenly referred to *Johnson* as containing “two plurality opinions[.]” *Id.* at fn. 1. But, the very definition of “plurality” precludes the possibility that more than one plurality opinion could exist within a case on a single question.

3. The First District stands alone

The only district that appears to treat *Johnson* in the correct manner is the First District. Although initially committing the same error as its sister districts, the First District subsequently corrected its course. Compare *State v. Lanier*, 1st Dist. No. C-080162, 2011-Ohio-898, ¶¶13-14

with *State v. Ruff*, 1st Dist. Nos. C-120533, C-120534, 2013-Ohio-3234, ¶31 *appeal accepted*, 2013-Ohio-5678.¹

As demonstrated by the cases cited above, 11 out of the 12 appellate districts mistakenly assign some type of precedential status to *Johnson*'s lead opinion. The issue of allied offense analysis is begging to be resolved clearly and decisively. This case presents the Court with another opportunity to do so. *Johnson*'s partial overruling of *Rance*'s first prong left lower courts rudderless in assessing the first prong of the merger test. The time has come to resolve this issue in a manner that reflects the intent of the General Assembly, as expressed in the plain and unambiguous language of R.C. 2941.25.

C. R.C. 2941.25 requires courts to consider whether offenses are of similar import

The General Assembly clearly intended that the “similar import” of the offenses must be considered, not just the “conduct of the accused.” Revised Code 2941.25 itself specifically provides that the “similar import” and “dissimilar import” questions must be considered:

(A) Where the same conduct by defendant can be construed to constitute two or more allied offenses of *similar import*, the indictment or information may contain counts for all such offenses, but the defendant may be convicted of only one.

(B) Where the defendant's conduct constitutes two or more offenses of *dissimilar import*, or where his conduct results in two or more offenses of the same or similar kind committed separately or with a separate animus as to each, the indictment or information may contain counts for all such offenses, and the defendant may be convicted of all of them.

R.C. 2941.25(A) and (B) (emphasis added).

Division (A) thus imposes two requirements for merger: the offenses must (1) arise from the “same conduct” *and* (2) share a “similar import.” Offenses of “similar import” arising from

¹ As of the date of this brief, *Ruff* remains pending before this Court, as it was submitted after argument on 8-19-14.

the “same conduct” shall be merged, but crimes of “dissimilar import” shall not be merged, *even when they arise from the same conduct*. R.C. 2941.25(A) & (B). Division (B) restates division (A) in negative terms and adds a third bar to merger (in addition to the “dissimilar import” and “committed separately” restrictions) when the crimes are committed “with a separate animus.” R.C. 2941.25(B).

The “same conduct” and “similar import” assessments cannot be condensed into one fact-based inquiry. As this Court has recognized, “[T]he General Assembly is not presumed to do a vain or useless thing[.] * * * [W]hen language is inserted in a statute it is inserted to accomplish some definite purpose.” *State v. Wilson*, 77 Ohio St.3d 334, 336, 673 N.E.2d 1347 (1997) (quotation omitted). Because it is presumed that “every word in a statute is designed to have *some* effect,” every part of the statute “shall be regarded.” *Ford Motor Co. v. Ohio Bureau of Employment Services*, 59 Ohio St.3d 188, 190, 571 N.E.2d 727 (1991) (emphasis sic).

“A basic rule of statutory construction requires that ‘words in statutes should not be construed to be redundant, nor should any words be ignored.’” *D.A.B.E., Inc. v. Toledo-Lucas Cty. Bd. of Health*, 96 Ohio St.3d 250, 2002-Ohio-4172, 773 N.E.2d 536, ¶ 26 (quoting another case). The statute “must be construed as a whole and given such interpretation as will give effect to every word and clause in it. No part should be treated as superfluous unless that is manifestly required, and the court should avoid that construction which renders a provision meaningless or inoperative.” *State ex rel. Myers v. Spencer Twp. Rural School Dist. Bd. of Edn.*, 95 Ohio St. 367, 372-73, 116 N.E. 516 (1917).

Based upon the plain statutory language, a “same conduct” finding is only one of *three* findings required for merger – 1) same conduct, 2) allied offenses of similar import, and 3) no separate animus – and the directive from the *Johnson* syllabus to consider “the conduct of the

accused” should not and cannot be read to exclude consideration of the “similar import” criterion. Completely disregarding the “similar import” requirement would amount to judicial legislation by effectively striking the “similar import” requirement from R.C. 2941.25. It is fundamental that, “[i]n determining legislative intent 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.” *Columbus-Suburban Coach Lines v. Pub. Util. Comm.*, 20 Ohio St.2d 125, 127, 254 N.E.2d 8 (1969).

D. A majority of this Court has previously rejected the “can result” test

The “can result” test set forth in *Johnson*’s lead opinion, without the support of four justices, is simply not precedential, and it could not overrule *State v. Williams*, which, just eleven months earlier, had rejected a “can result” test. *See State v. Williams*, 124 Ohio St.3d 381, 2010-Ohio-147, 922 N.E.2d 937, ¶19. As between the two, *Williams* controls in the rejection of a pure “can result” test, and the precedent-free lead opinion in *Johnson* could not overrule *Williams* on this point.

This perhaps leaves *Johnson*’s lead opinion to be considered as persuasive authority. But there is no reason to find it persuasive. Four justices chose *not* to approve the opinion, which shows that a majority of this Court did not find it persuasive. Even one of the three justices who approved of the lead opinion also approved the concurring opinion of J. O’Connor, which rejected a pure “can result” test.

Finally, and most importantly, the lead opinion in *Johnson* cannot be considered persuasive because it would contradict the express language of the statute itself, which mandates consideration of the “similar import” and “dissimilar import” of the offenses. A pure “can result” test amounts to an act of judicial legislation by rewriting the statute to exclude this

necessary “similar import” criterion. The Court recognized this in paragraph 19 of the *Williams* decision just eleven months before *Johnson*:

Williams urges us to reconsider our allied-offense analysis, suggesting that if the statutory elements of multiple offenses can be satisfied by the same conduct, we should hold that those offenses are allied offenses of similar import. Such an analysis would create an irrebuttable presumption that the legislature intended an offender to receive a single punishment when a prohibited act constitutes more than one offense. We do not presume that intent, and we reject this position.

There was an unintended irony when *Johnson*’s lead opinion claimed that its “can result” test represented a “return” to “the plain language and purposes of the merger statute.” *Johnson*, ¶41. Disregarding the “similar import” requirement of the statute represents an escape from the statute, not a return to it.

E. A “will necessarily result” test is most consistent with the judicial doctrine of merger

For many years, this Court had determined whether multiple offenses shared a “similar import” by comparing the elements to determine whether the commission of one offense “will necessarily result” in the commission of the other offense. *See, e.g., State v. Donald*, 57 Ohio St.2d 73, 386 N.E.2d 1341 (1979) (using the word “necessarily” in discussing how rape would necessarily result in kidnapping); *State v. Logan*, 60 Ohio St.2d 126, 130, 397 N.E.2d 1345 (1979) (“implicit within every forcible rape * * * is a kidnapping”); *State v. Mitchell*, 6 Ohio St.3d 416, 453 N.E.2d 593 (1983); *State v. Preston*, 23 Ohio St.3d 64, 65, 491 N.E.2d 685 (1986) (“will automatically result”); *State v. Talley*, 18 Ohio St.3d 152, 155, 156, 480 N.E.2d 439 (1985) (no merger because offenses “not necessary” or “not essential” to each other); *State v. Bickerstaff*, 10 Ohio St.3d 62, 66, 461 N.E.2d 892 (1984) (“the crimes and their elements must correspond to such a degree that commission of one offense constitutes commission of the other

offense”); *State v. Rice*, 69 Ohio St.2d 422, 425, 433 N.E.2d 175 (1982) (offenses “are not the same, one to the other”); *State v. Moss*, 69 Ohio St.2d 515, 433 N.E.2d 181 (1982); *State v. Blankenship*, 38 Ohio St.3d 116, 118, 526 N.E.2d 816 (1988) (“[W]e do not find that the elements correspond to such a degree that the commission of kidnapping necessarily results in the commission of felonious assault.”). *Johnson* did not state that it was overruling any of these cases. It did not even overrule the *Williams* case from eleven months before, which had expressly rejected a pure “can result” test.

A “will necessarily result” standard is most consistent with the judicial doctrine of merger. Under this doctrine, “a major crime often includes as inherent therein the component elements of other crimes and * * * these component elements, in legal effect, are merged in the major crime.” *Id.*, quoting *State v. Botta*, 27 Ohio St.2d 196, 201, 271 N.E.2d 776 (1971) (emphasis added).

In this case, OVI and AVA do not share a “similar import,” as the commission of one offense does not “necessarily result” in the commission of the other. *See Blankenship*, 38 Ohio St.3d at 117. OVI does not automatically result in AVA, because AVA requires the offender to cause serious physical harm, while OVI does not. Rather OVI only requires that the offender operate a motor vehicle while under the influence of alcohol or drugs or with a prohibited concentration of alcohol or drugs.

F. OVI and AVA are committed with separate conduct

Furthermore, even if OVI and AVA could be considered allied offenses, the appellant’s separate conduct supports the trial court’s imposition of separate sentences in this case. In this regard, the Court’s opinion in *State v. Cooper*, 104 Ohio St.3d 293, 2004-Ohio-6553, 819 N.E.2d

657, is instructive. There, this Court held that “a court need only engage in the allied-offense analysis when the same conduct, or single act, results in multiple convictions.” *Id.* at ¶17.

In other words, the “similar import” inquiry is separate from the “same conduct” inquiry. *Id.*, quoting *Logan*, 60 Ohio St.2d at 128. A defendant must demonstrate the State’s reliance on the same conduct to prove multiple charges before gaining the protection of R.C. 2941.25. *Cooper*, ¶20, citing *Logan*, 60 Ohio St.2d 126. In *Cooper*, this Court reversed the Court of Appeals’ holding that involuntary manslaughter (based on a child-endangering predicate) merged with child endangering, because the evidence showed that the defendant committed two separate acts of child endangering – i.e. slamming the victim’s head against a hard surface, and shaking the victim. *Cooper*, ¶¶20-29. Because the defendant’s two convictions were based on separate conduct, *Rance* was not implicated by the case. *Id.* at ¶29.

Likewise, in the present case, the OVI offense occurred from the moment appellant began operating her vehicle and continued until her crash, which ended the appellant’s illegal conduct. Indeed, the investigation revealed that appellant was going 73 miles per hour a short time before she crashed into a pole, (T.18), demonstrating that the OVI offense was on-going before the AVA offense occurred.

Despite each offense occurring closely in time with the other, the separate nature of appellant’s conduct is most clearly defined when one considers what the OVI and AVA statutes are intended to punish, in a general sense. The OVI statute punishes an offender for creating a **risk** of harm to members of the general public and their property. This risk is created through the offender’s operation of a motor vehicle while intoxicated. On the other hand, the AVA statute punishes an offender whose conduct results in **actual** serious physical harm to a specific individual.

To accept the appellant's argument that her "single act" of driving while intoxicated (Brief, p. 9) resulted in both offenses would require this Court to restrict the examination of appellant's conduct to only the instant she crashed her vehicle. This flashbulb-style analysis is fundamentally flawed and inherently inconsistent with the intent of the General Assembly as expressed in the plain language of R.C. 2941.25. More to the point, appellant's proposed analysis conflicts with *Johnson's* syllabus. Indeed, such an analysis actually prevents any analysis of an offender's specific conduct and instead focuses entirely on the result of that conduct in a single moment in time. Given the General Assembly's intent as expressed by R.C. 2941.25, even if appellant had raised the argument with the trial court, it would have been improper for the common pleas court to ignore what was clearly separate conduct in this matter.

To be sure, there is no question that the OVI and AVA share a connection in this matter. But, a mere connection between two offenses does not, in any manner, require merger pursuant to R.C. 2941.25. The plain statutory language requires three conditions to be met – 1) same conduct, 2) allied offenses of similar import, and 3) no separate animus – before offenses will merge. When applying this standard to the instant matter, it is clear that OVI and AVA do not merge, as separate conduct is required for each.

CONCLUSION

For the foregoing reasons, amicus curiae Franklin County Prosecutor Ron O'Brien supports plaintiff-appellee State of Ohio and urges this Court to affirm the judgment of the Eighth District Court of Appeals.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing was sent by regular U.S. Mail, this day, January 15, 2015, to Nikki Trautman Baszynski, 250 E. Broad Street, Columbus, Ohio 43215; Counsel for Defendant-Appellant, and to T. Allan Regas, Assistant Prosecuting Attorney, at The Justice Center, 1200 Ontario St., Cleveland, Ohio 44113, counsel for Plaintiff-Appellee.

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