

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,
Appellee,

v.

WILLIAM SNOWDEN
Appellant.

)
) **CASE NO. 2015-1247**
)

) On Appeal from the Trumbull
) County Court of Appeals,
) Eleventh District Case No. 2014-T-0092

)
) Trumbull County Common Pleas
) Court Case No. 2013 CR 00715

MEMORANDUM IN OPPOSITION TO JURISDICTION

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**EXPLANATION OF WHY THIS CASE IS NOT ONE OF GREAT GENERAL OR
PUBLIC INTEREST AND DOES NOT CONCERN A SUBSTANTIAL
CONSTITUTIONAL ISSUE**

Defendant-Appellant, William Snowden (“Appellant”), rightly asserts that the case heavily relied on by Appellant, *State v. Klembus*, 8th Dist. No. 100068, 2014-Ohio-1830, is currently pending before this Court in Case No. 2014-1557 and oral arguments are scheduled for November 17, 2015. While the issue in Appellant’s case is similar to the issue in *Klembus*, the Plaintiff-Appellee, State of Ohio (“State”), submits that jurisdiction in this case should be denied for several reasons.

The Eleventh District denied adoption of the holding in *Klembus*. Moreover, the holding in *Klembus* is aberrant and no other appellate district has adopted the holding in that case. As the court below details in its opinion in *State v. Snowden*, 11th Dist. No. 2014-T-0092, 2015-Ohio-2611, the decision is based on the rationale outlined in *State v. Hartsook*, 12th Dist. No. 2014-01-020, 2014-Ohio-4528 which states that R.C. 2941.1413 does not violate the Equal Protection Clause. Importantly, this Court recently denied jurisdiction in *Hartsook* in Case No. 2014-2195. Therefore, this Court should deny jurisdiction in this case as well.

The Repeat OVI Specification outlined in R.C. 2941.1413 illustrates the legislature’s intent to penalize habitual drunk drivers. It serves an important purpose to protect those travelling on Ohio roadways from those habitual drunk drivers. Appellant argues that R.C. 2941.1413 violates the Equal Protection Clause of the Ohio Constitution and the United States Constitution due to prosecutorial discretion in attaching the specification. The legal system traditionally recognizes prosecutorial discretion in the legal system including grand jury discretion in every case.

Therefore, Appellant articulates neither a significant constitutional question nor a question of public or great general interest. While the State agrees there appears to be a conflict between the Eleventh and Twelfth districts decisions and the decision reached by the Eighth district in *Klembus*, the State submits that the Court must reject jurisdiction in this case for the reasons discussed above.

STATEMENT OF THE FACTS:

With the Court's permission, the Plaintiff-Appellee, the State of Ohio ("State"), will combine the Statement of Case and Statement of Facts under this single heading. The facts surrounding this case are limited due to the fact the Appellant pled no contest to the indictment and waived his right to a trial. The known facts are as follows. In the early morning hours of July 20, 2013, Defendant-Appellant William Snowden ("Appellant") was driving on U.S. Route 422 in Girard, Trumbull County when Trooper Kevin Brown of the Ohio State Patrol stopped the Appellant. *State v. Snowden*, 11th Dist. No. 2014-T-0092, 2015-Ohio-2611, ¶2. The Appellant was later charged with Count One, operating a motor vehicle while under the influence of alcohol or drug with a repeat OVI specification and a vehicle forfeiture specification pursuant to R.C. 4511.19(A)(1)(a) & (G)(1)(d)(ii), 2981.02(A)(2)(3)(a), and 2941.1417(A); and Count Two, operating a motor vehicle while under the influence of alcohol or drugs, with a repeat OVI specification and a vehicle forfeiture specification pursuant to R.C. 4511.19(A)(2)(a) & (b) & (G)(1)(d)(ii), 2981.02(A)(2)(3)(a), and 2941.1417(A). *Id.*

In regards to the repeat OVI specification, "the indictment alleged that Appellant had, within 20 years of the offense, been previously convicted or pleaded guilty to five or more violations of division (A) or (B) of R.C. 4511.19 or other equivalent offenses, to wit: 'on or about 06/04/2009, in Girard Municipal Court, Case No.2009-TRC-1396; on or about

10/01/2003, in Niles Municipal Court, Case No.2003–TRC–001418; on or about 03/23/2000, in Warren Municipal Court, Case No.1999–TRC–08034; on or about 10/21/1997, in Chardon Municipal Court, Case No.1997–TRC09062; on or about 04/11/1994, in Warren Municipal Court, Case No.1994–TRC–588.”” *Id.*

Appellant filed a motion to suppress on February 24, 2014 and a hearing was held. At the hearing, Trooper Brown testified that he witnessed Appellant’s vehicle weaving along the roadway, crossing over the center line and crossing over to the other lane. *Id.*, ¶3. Trooper Brown testified that he activated his lights and initiated a traffic stop. During the stop, Trooper Brown noticed that Appellant was visibly intoxicated and asked him preform field sobriety tests. The Appellant refused and was placed under arrest. *Id.* The State submitted dash-cam video from Trooper Brown’s police cruiser into evidence, but the video produced was of poor quality. *Id.*

On June 2, 2014, “the [trial] court held that ‘the state ha[d] good and credible evidence in the form of eyewitness testimony that [appellant] violated the Ohio Lanes of Travel Statute’ and denied appellant's motion.” *Id.*, ¶4. Appellant then filed a motion to dismiss the OVI specification and the trial court denied that motion. *Id.*, ¶5.

Appellant incorrectly states that he pled no contest to only Count One. The Appellant in this case entered a plea of no contest to *both* counts, over the State's objection. *Id.*, ¶6 (emphasis added). Since the two counts merged for purposes of sentencing, the State elected to proceed to sentencing as to Count One. The Appellant was sentenced on September 22, 2014 to two years of imprisonment: one-year as to Count One and an additional one-year as to the repeat OVI offender specification. *Id.*

Appellant timely filed his notice of appeal. On June 30, 2015, the Eleventh District Court of Appeals affirmed the trial court decision finding that the trial court properly denied the motion

to dismiss the OVI repeat offender specification and held the specification to be constitutional. *Id.*, ¶1. That decision is the subject of the instant appeal. In addition to the Appellant's Memorandum in Support of Jurisdiction, the Appellant also filed a Motion to Certify Conflict in the Eleventh District Court of Appeals. The Eleventh District Court of Appeals certified a conflict on August 5, 2015. Other pertinent facts will be brought to the Court's attention in the Argument in Opposition to Jurisdiction portion of the State's Memorandum.

ARGUMENT IN OPPOSITION TO JURISDICTION

STATE'S RESPONSE TO APPELLANT'S PROPOSITION OF LAW NO. I: OHIO'S REPEAT OVI OFFENDER SPECIFICATION STATUTE AS DESCRIBED IN R.C 2941.1413 DOES NOT VIOLATE THE EQUAL PROTECTION CLAUSE OF EITHER THE OHIO OR THE UNITED STATES CONSTITUTION AS THE GOVERNMENT HAS A LEGITIMATE STATE INTEREST IN PROTECTING CITIZENS AGAINST HABITUAL DRUNK DRIVERS.

Appellant argues that Ohio's repeat OVI offender specification as spelled out in R.C. 2941.1413 violates the Equal Protection Clause of Sec. 2, Art. I of the Ohio Constitution and the Fourteenth Amendment to the U.S. Constitution. Appellant's claim wholly lacks merit and the trial court properly denied his motion to dismiss the repeat OVI specification and the court below correctly held the specification constitutional.

Generally speaking, a reviewing court is required "to presume the constitutionality of a statute. *Klein v. Leis*, 99 Ohio St.3d 537 (2003); *Arnold v. Cleveland*, 67 Ohio St.3d 35 (1993); *Hilton v. Toledo*, 62 Ohio St.2d 394 (1980). Moreover, legislation 'will not be invalidated unless the challenger establishes that it is unconstitutional beyond a reasonable doubt'." *Arnold*, at 39. Though it does not appear that this Court has ever decided whether R.C. 2941.1413 violates the Equal Protection Clause as argued by Appellant, several appellate districts have concluded that it does not violate double jeopardy and in so finding cited another appellate district which also found the statute does not violate the Due Process Clause. *State v. Stillwell*, 11th Dist. 2006-L-010, 2007-Ohio-3190, ¶62, citing *State v. Midcap*, 9th Dist. No. 22908, 2006-Ohio-2854.

In addition, two other Ohio appellate districts have recently decided the constitutionality of R.C. 2941.1413 on equal-protection grounds. The case relied upon by Appellant is *State v. Klembus*, 8th Dist. No. 100068, 2014-Ohio-1830, which ruled the statute is unconstitutional and

offends the Equal Protection Clause. That case is presently pending before this Court in Case No. 2014-1557. The other case, decided by the Twelfth District Court of Appeals, *State v. Hartsook*, 12th Dist. No. 2014-01-020, 2014-Ohio-4528, states that R.C. 2941.1413 does not violate the Equal Protection Clause. That case was also appealed to this Court in Case No. 2014-2195 and jurisdiction was denied in that case. The State submits that the Twelfth District correctly decided this issue in *Hartsook* and therefore the matter was correctly decided by the Eleventh District Court of Appeals in this case.

It is well settled law that “[w]hen legislation infringes upon a fundamental constitutional right or the rights of a suspect class, strict scrutiny applies. If neither a fundamental right nor a suspect class is involved, a rational-basis test is used. * * * This test requires that a statute be upheld if it is rationally related to a legitimate government purpose. [Citations omitted].” *Arbino v. Johnson and Johnson*, 116 Ohio St.3d 468, 481, 880 N.E.2d 420, 2007–Ohio–6948 (2007). Appellant does not have fundamental right to drive drunk one time, let alone six times and the Appellant is not a member of a suspect class. Therefore, this Court must apply a rational basis test in deciding whether R.C. 2941.1413 violates the Equal Protection Clause.

This Court has noted that when the rational basis test applies, a two-step analysis is employed. *Pickaway Cty. Skilled Gaming, L.L.C. v. Cordray*, 127 Ohio St.3d 104, 109, 936 N.E.2d 944, 951, 2010-Ohio-4908 (2010). The first step in the analysis is to identify a valid state interest. The second step is to determine if the method or means chosen by the state to advance that interest is rational. *Id.* citing *McCrone v. Bank One Corp.*, 107 Ohio St.3d 272, 2005-Ohio-6505, 839 N.E.2d 1, ¶ 9. Furthermore, when the rational-basis standard applies, “a state has no obligation to produce evidence to sustain the rationality of a statutory classification.” *Id.* citing *Columbia Gas Transm. Corp. v. Levin*, 117 Ohio St.3d 122, 2008-Ohio-511, 882 N.E.2d 400, ¶

91. Moreover, when a party is challenging that constitutionality of a statute, the challenging party has the burden to refute every conceivable basis that may support the legislation. *Pickaway Cty. Skilled Gaming, L.L.C. v. Cordray*, 127 Ohio St.3d 104, 110 citing *Columbia Gas Transm. Corp.* at ¶ 91; *Lyons v. Limbach*, 40 Ohio St.3d 92, 94, 532 N.E.2d 106.

The State submits that it has a valid state interest in protecting its citizens from drunken drivers. The method that it chose to further this state interest is to enhance the penalties for those who, like Appellant, have a slew of drunk driving convictions on their criminal record. While apparently the prospect of felony convictions and time in a state prison has had little deterrent effect on Appellant, other Ohio drivers might think twice about mixing alcohol and gasoline. These second thoughts undoubtedly save lives, a legitimate state interest and a reasonable method to further those interests.

Appellant does not even attempt to argue the rational basis test as it applies to his case. He merely argues an equal-protection violation because the prosecutor has sole discretion in determining who is tagged with the OVI specification and who is not. The *Hartsook* opinion addresses this argument head on:

“We disagree with Hartsook's contention that R.C. 2941.1413 denies equal protection of the laws to repeat OVI offenders simply because the law leaves it to the prosecutor's discretion to insert—or not insert—the specification into the indictment. It is axiomatic that the decision about what charge to file or bring before the grand jury generally rests within the discretion of the prosecutor. *State v. Lawson*, 12th Dist. Clermont No. CA88–05–044, 1990 WL 73845, *7 (June 4, 1990), citing *Bordenkircher v. Hayes*, 434 U.S. 357, 364, 98 S.Ct. 663, 54 L.Ed.2d 604 (1978). See also *State v. Freeman*, 20 Ohio St.3d 55, 58, 485 N.E.2d 1043 (1985), citing *Snowden v. Hughes*, 321 U.S. 1, 8–9, 64 S.Ct. 397, 88 L.Ed. 497 (1944). It will not be presumed

that a prosecutor's decision to prosecute has been invidious or in bad faith, and Hartsook has offered no argument that would call into question the rationale for the discretion that our legal system traditionally affords the prosecutor. See *State ex rel. Nagle v. Olin*, 64 Ohio St.2d 341, 347, 415 N.E.2d 279 (1980), citing *State v. Flynt*, 63 Ohio St.2d 132, 407 N.E.2d 15 (1980).” *Hartsook, supra*, at ¶ 47. In the instant case, there is no evidence cited by the Appellant that the State prosecuted him in bad faith. Appellant also offers no evidence that other Trumbull County drunk drivers with five OVI priors did not face a similar indictment or that Appellant was singled out for particularly harsh treatment.

Further, the *Hartsook* court found that the *Klembus* court misapplied this Court’s holding in *State v. Wilson*, 58 Ohio St. 2d 52, 388 N.E. 2d 745 (1979), which overturned a lower court ruling that held convictions on both burglary and aggravated burglary for the same offense violated equal protection:

“We find the *Wilson* analysis, and therefore the *Klembus* conclusion, inapposite to this case. Whereas *Wilson* was dealing with two separate offenses, simple burglary and aggravated burglary, we are here dealing with a single offense, OVI. See *Klembus* at ¶ 33–45 (McCormack, J., dissenting), citing, inter alia, *Zampini*, 2008-Ohio-531, 2008 WL 351668. The inquiry, therefore, is not whether R.C. 4511.19 and R.C. 2941.1413 define two offenses that prohibit identical activity and require identical proof, but impose different penalties. As discussed above, we believe the language of the respective statutes clearly indicates that the General Assembly intended R.C. 4511.19 and R.C. 2941.1413 to authorize cumulative punishments for a single OVI offense by a repeat offender. Because Hartsook has failed to show that there is no rational basis which justifies the challenged statutes, an equal protection challenge cannot be upheld. Williams, 88 Ohio St.3d at 531, 728 N.E.2d 342.” *Id.* at ¶¶ 52-53. This rationale as outlined in

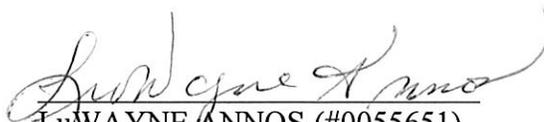
Hartsook was adopted by the Eleventh District Court of Appeals in *State v. Snowden*, 11th Dist. No. 2014-T-0092, 2015-Ohio-2611, ¶12-13; *State v. Wright*, 11th Dist. No. 2013-L-089, 2015-Ohio-2601, ¶13; *State v. Reddick*, 11th Dist. No. 2014-L-082, 2015-Ohio-1215, ¶11.

Appellant suffered no equal protection violation in this case. *Hartsook* was decided just three weeks after the trial court declined to apply *Klembus* to Appellant's case, but the rationale and analysis therein are sound and should be affirmed by this Court. Appellant has failed to establish the unconstitutionality of this statute beyond a reasonable doubt. Therefore, the courts below properly denied his motion to dismiss and found the OVI repeat offender specification to be constitutional. As such the Appellant's lone proposition of law is without merit.

CONCLUSION

For the above reasons, Appellant has failed to demonstrate a substantial constitutional question, or a case of public or great general interest. As such, this Court must decline jurisdiction in this matter.

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PROOF OF SERVICE

I do hereby certify that a copy of the foregoing Memorandum was sent by ordinary U.S. Mail to Attys. Ronald D. Yarwood (0068775) and Edward A. Czopur (0083314), Counsel for Defendant-Appellant William Snowden, 42 North Phelps St., Youngstown, Ohio 44503 on this 24th day of August, 2015.


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