

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO : Case No.: 2015-1679

Plaintiff/Appellee : Appeal from Third District
Court of Appeals, 2-15-03

vs. :

SHAWN W. SPRAGUE :

Defendant/Appellant :

MEMORANDUM IN OPPOSITION TO MEMORANDUM IN SUPPORT OF JURISDICTION

R. ANDREW AUGSBURGER
Assistant Prosecuting Attorney
Atty. Reg. #0065532

Auglaize County Courthouse
P. O. Box 1992
Wapakoneta, OH 45895

Tx: 419-739-6785
Fx: 419-739-6786

Attorney for Plaintiff/Appellee

TERRENCE K. SCOTT
Assistant State Public Defender
Atty. Reg. #0082019

250 E. Broad St., Ste. 1400
Columbus, OH 43215

Tx: 614-466-5394
Fx: 614-752-5167

Attorney for Defendant/Appellant

RECEIVED
NOV 06 2015
CLERK OF COURT
SUPREME COURT OF OHIO

FILED
NOV 06 2015
CLERK OF COURT
SUPREME COURT OF OHIO

TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	ii
EXPLANATION OF WHY THIS IS NOT A CASE OF PUBLIC OR GREAT GENERAL INTEREST AND DOES NOT INVOLVED A SUBSTANTIAL CONSTITUTIONAL QUESTION	1
STATEMENT OF THE CASE AND FACTS	2
ARGUMENT	3
 <u>PROPOSITION OF LAW:</u>	
THE REPEAT-OVI-OFFENDER SPECIFICATION IN R.C. 2941.1413(A) FACIALLY VIOLATES A DEFENDANT'S RIGHT TO EQUAL PROTECTION, AS GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 2 OF THE OHIO CONSTITUTION, BECAUSE THE SPECIFICATION IS BASED SOLELY UPON THE SAME INFORMATION REQUIRED TO ESTABLISH A FOURTH- DEGREE FELONY UNDER R.C. 4511.19(G)(1)(d).	
CONCLUSION	5
PROOF OF SERVICE	6

TABLE OF AUTHORITIES

	<u>PAGE</u>
<u>State v. Burketad</u> , 2015-Ohio-1085	3
<u>State v. Burkhart</u> , 2015-Ohio-3409	3
<u>State v. Klembus</u> , 2014-1557	1, 3, 4
<u>State v. Hartsock</u> , 2014-Ohio-4528	3
<u>State v. Kaufman</u> , 2015-Ohio-2990	3
<u>State v. Reddick</u> , 2015-Ohio-1215	3
<u>State v. Snowden</u> , 2015-Ohio-2611	3
<u>State v. Wright</u> , 2015-Ohio-2601	3
Ohio Revised Code §2941.1413(A)	3, 4, 5
Ohio Revised Code §4511.19	4

**EXPLANATION OF WHY THIS IS NOT A CASE OF PUBLIC
OR GREAT GENERAL INTEREST AND DOES NOT
INVOLVED A SUBSTANTIAL CONSTITUTIONAL QUESTION**

In this case, the State of Ohio acknowledges that the question brought by Shawn Sprague, Defendant/Appellant, in this matter is currently before this Court in State v. Klembus, 2014-1557.

STATEMENT OF THE CASE AND FACTS

The State of Ohio, Plaintiff/Appellee, agrees with the Statement of the Case and Facts as set forth by Defendant/Appellant.

ARGUMENT

PROPOSITION OF LAW

THE REPEAT-OVI-OFFENDER SPECIFICATION IN R.C. 2941.1413(A) FACIALLY VIOLATES A DEFENDANT'S RIGHT TO EQUAL PROTECTION, AS GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 2 OF THE OHIO CONSTITUTION, BECAUSE THE SPECIFICATION IS BASED SOLELY UPON THE SAME INFORMATION REQUIRED TO ESTABLISH A FOURTH-DEGREE FELONY UNDER R.C. 4511.19(G)(1)(d).

In this case, the State of Ohio acknowledges that the question brought by Shawn Sprague, Defendant/Appellant, in this matter is currently before this Court in State v. Klembus, 2014-1557. State v. Klembus is set for oral argument on November 17, 2015. The State of Ohio respectfully requests this Court follow the decisions of the Eleventh and Twelfth Appellate Districts in State v. Hartsock, 2014-Ohio-4528, State v. Burkhart, 2015-Ohio-3409, State v. Kaufman, 2015-Ohio-2990, State v. Burketad, 2015-Ohio-1085, State v. Reddick, 2015-Ohio-1215, State v. Snowden, 2015-Ohio-2611, and State v. Wright, 2015-Ohio-2601.

The State of Ohio herein asserts that the repeat OVI specification codified in Ohio Revised Code §2941.1413(A) is constitutional in the Equal Protection Clause in both the United States Constitution and the Ohio Constitution. Further, when the Defendant/Appellant violates multiple criminal statutes, the government may prosecute under either offense or both offenses, even when the two statutes prohibit the same

conduct but provide for different penalties, so long as the government does not discriminate against any class of defendants based upon an unjustifiable standard.

In the case herein, Shawn Sprague does not belong to any specified class. Further, being a recidivist OVI offender is not a protected class nor should be being a recidivist ever be a protected class evoking equal protection standards.

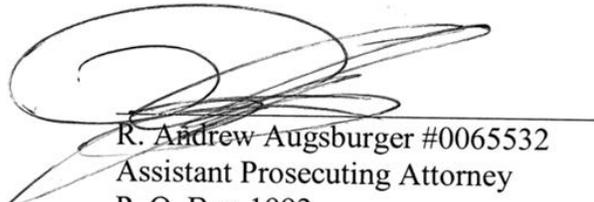
Through the hearings in the Defendat/Appellant's case, he has failed to show where the government discriminated against him by using any unjust means.

The codification of the felony OVI statutes in Ohio Revised Code 4511.19 and the specification contained in Ohio Revised Code §2941.1413(A) simply demonstrates the Legislatures intent to adequately punish recidivist OVI offenders to help protect the public from recidivists and the damage they may cause.

Wherefore, the State of Ohio respectfully requests this Court follow the decisions in Hartsock, et al. and overturn the Eighth District's ruling in State v. Klembus.

CONCLUSION

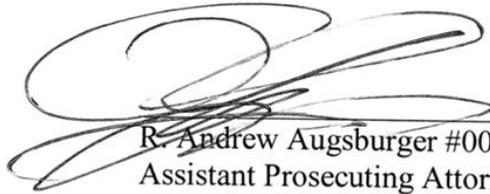
The repeat OVI specification contained in Ohio Revised Code §2941.1413 is constitutional and does not violate the due process rights of recidivist OVI offenders.



R. Andrew Augsburger #0065532
Assistant Prosecuting Attorney
P. O. Box 1992
Wapakoneta, OH 45895

PROOF OF SERVICE

I hereby certify that a copy of the foregoing was sent by regular U. S. Mail this 5th day of November, 20 15 to attorney for Defendant/Appellant, Terrence K. Scott, Assistant State Public Defender, 250 E. Broad St., Ste. 1400, Columbus, OH 43215.



R. Andrew Augsburger #0065532
Assistant Prosecuting Attorney
P. O. Box 1992
Wapakoneta, OH 45895