Supreme Court of Ohio Clerk of Court - Filed December 28, 2015 - Case No. 2015-1048

IN THE SUPREME COURT OF OHIO

STATE OF OHIO

Plaintiff-Appellant

vs.

CLINTON RICHARDSON

Defendant-Appellee

CASE NO. 2015-0629
2015-1048

ON APPEAL FROM THE MONTGOMERY COUNTY COURT OF APPEALS, SECOND APPELLATE DISTRICT COURT OF APPEALS

CASE NO: 26191

REPLY BRIEF OF THE STATE OF OHIO, APPELLANT

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Argument in Reply

The question before the Court of Appeals was whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found that Appellee Clinton Richardson was under the influence of a drug of abuse on the afternoon of October 31, 2012. The evidence that he was driving the truck, that his child was with him, and that he was impaired was undisputed, and there was no suggestion that he had used alcohol that day. Proof that he was under the influence of a drug of abuse consisted of his abysmal performance on the field sobriety tests, his admission to the officer that he was on pain medication, the officer's opinions, based on his training and experience, that Richardson was: a) acting like a person who was under the influence of a painkiller; and b) that his behavior suggested narcotics rather than alcohol. What's more, Richardson himself admitted on the witness stand that he had taken hydrocodone, a prescription pain medication, for several years, although he denied taking it that day, claiming instead that the impairment that Ms. Leopold and the officer observed was the result of withdrawal from the drug.

The State agrees that impairment alone is insufficient to prove that a person is driving under the influence of a drug of abuse. *Cleveland v. Turner,* 8th Dist. Cuyahoga No. 99183, 2013–Ohio–3145, ¶ 13. Were it not so, a driver who was suddenly taken ill could be convicted on proof of nothing more than the impairment the illness caused. But in this case, the evidence linked Richardson's impairment to a drug of abuse and established not just that he was impaired, but that he was under the influence of that drug of abuse. His obvious impairment was evidence that he was under the influence of a drug of abuse, but it was far from the only evidence on that element before the fact-finder.

In its decision below, the Court of Appeals concluded that in order to establish a violation of R.C. 4511.19(A)(1)(a) based on a drug of abuse, the State must not only prove that the defendant ingested a drug of abuse and showed signs of impairment, but must also present evidence of how the particular drug actually affects the defendant, and/or that the particular medication has the potential to impair a person's judgment or reflexes. In a case where the evidence supports a finding that the driver was substantially impaired after having taken painkillers, specifically, hydrocodone, it is unnecessary to require the State to introduce evidence on the pharmaceutical properties of the particular drug or the driver's reaction to it. To be sure, such evidence may be relevant, but proof of the effects of the drug in general or on the driver in particular is not necessary to prove that a driver was under the influence of a drug of abuse on a particular occasion. The Court of Appeals has now held that a conviction of a violation of R.C. 4511.19(A)(1)(a) involving a drug of abuse that is based on circumstantial evidence violates due process if that evidence, irrespective of its quality or quantity, does not include the additional components it has identified. This holding is unnecessary and ignores the probative value of the other circumstantial evidence introduced in a particular case.

Conclusion

The State of Ohio asks this Court to reverse the decision of the Court of Appeals and hold that a trier of fact may draw a reasonable inference that the driver was under the influence of a drug of abuse pursuant to R.C. 4511.19(A)(1)(a) when the fact-finder has before it evidence of impairment and evidence that the driver recently ingested a specific "drug of abuse" and/or prescription medication.

Respectfully submitted,

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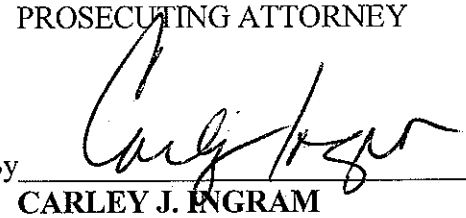
By 
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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Brief was sent by regular U.S. mail this 28th day of December, 2015, to: Adam Arnold, 1502 Liberty Tower, 120 West Second Street, Dayton, OH 45402.

CARLEY J. INGRAM