**CAPTION: STATE V. SIMS**

 **12-27-23**

APPEAL NO.: C-230274

TRIAL NO.: B-2200312

KEY WORDS: JURY VERDICT FORM – R.C. 2945.75 – ALLIED OFFENSES

SUMMARY:

 Defendant’s convictions for two counts of driving under the influence were misdemeanors of the first-degree as required by R.C. 2945.75(A)(2) where the jury’s verdict form did not either specify an aggravating fact necessary to elevate the level of the offense to a felony nor indicate that the convictions were for felonies. [*But see* DISSENT: The majority’s holding that defendant must be convicted of a first-degree misdemeanor OVI under R.C. 4511.19(A)(2) based on a strict application of R.C. 2945.75(A)(2) without any showing of plain error leads to an unjust result that defies every aspect of what actually occurred at the trial-court level, including the indictment against defendant, the specific stipulation by the parties, the jury’s instructions regarding that stipulation, and ultimately the jury’s verdict.]

Defendant’s convictions for two counts of driving under the influence were allied offenses where defendant was stopped for a single traffic incident with no separate animus or motivation.

JUDGMENT: REVERSED AND CAUSE REMANDED

JUDGES: OPINION by KINSLEY, J.; CROUSE, P.J., CONCURS and WINKLER, J., CONCURS IN PART AND DISSENTS IN PART.