

Appellate Court Decisions - Week of 1/13/14

First Appellate District of Ohio

State v. Inman, 2014-Ohio-97

OVI: Intoxilyzer 8000

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-120829_01152014.pdf

Summary from the First District:

“The trial court erred in granting the defendant’s motion to suppress the result of his breathalyzer test on the basis that the Ohio Department of Health had failed to promulgate the necessary requirements for obtaining a permit required for operation of the Intoxilyzer 8000 because this court has held that the department of health’s interpretation that the access card referenced in Ohio Adm.Code 3701-53-09 is the type of permit issued to an operator of an Intoxilyzer 8000 machine under Ohio Adm.Code 3701-53-07 is a reasonable interpretation of the administrative regulations. (*State v. McMahan*, 1st Dist. Hamilton No. C-120728, 2013-Ohio-2557, followed.)

“The trial court erred in granting the defendant’s motion to suppress the result of his breathalyzer test on the basis that the state had failed to substantially comply with the three-year record-keeping requirement in Ohio Adm.Code 3701-53-01 because the state had failed to produce one week of records relating to an Intoxilyzer 8000 machine, where the administrative regulation only required the state to retain the “results” of the breathalyzer tests, and the state had produced a logbook from the police department where the machine had been located, which contained the test results for the missing week.”

State v. Nash, Appeal No. C-120864, Trial No. 12TRC-25999B

OVI: Intoxilyzer 8000: Appellate Review: Search and Seizure

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-120864_01172014.pdf

Summary from the First District:

“The trial court erred in granting the defendant’s motion to suppress the result of her breathalyzer test on the basis that the Ohio Department of Health had failed to promulgate the necessary requirements for obtaining a permit required for operation of the Intoxilyzer 8000 because this court has held that the department of health’s interpretation that the access card referenced in Ohio Adm.Code 3701-53-09 is the type of permit issued to an operator of an Intoxilyzer 8000 machine under Ohio Adm.Code

3701-53-07 is a reasonable interpretation of the administrative regulations. (*State v. McMahon*, 1st Dist. Hamilton No. C-120728, 2013-Ohio-2557, followed.)

“Under App.R. 3(C)(2), a cross-appeal is not required where the appellee seeks to defend the trial court’s judgment on a ground other than that relied upon by the trial court, but does not seek to change the court’s judgment or order.

“The trial court did not err in overruling the defendant’s motion to suppress the results of her breathalyzer test on Fourth Amendment grounds where she was stopped on the suspicion that the car she was driving had been stolen, even though a check of the license plates did not show that the car was stolen, because the police officer was still investigating the possibility that the car had been stolen and the reason for the stop had not yet dissipated when the officer spoke to the defendant and noticed a ‘heavy’ odor of alcohol on her breath and an open container of alcohol in her car.”

Second Appellate District of Ohio

Nothing new.

Third Appellate District of Ohio

Nothing new.

Fourth Appellate District of Ohio

Nothing new.

Fifth Appellate District of Ohio

Nothing new.

Sixth Appellate District of Ohio

State v. Betz, 2014-Ohio-55

Jury Intimidation: Mistrial: Voir Dire

Full Decision: <http://www.sconet.state.oh.us/rod/docs/pdf/6/2014/2014-ohio-55.pdf>

The trial court “failed to fulfill [its] fundamental duty to ensure the trial was fair and impartial” where, after two jurors informed the bailiff that the defendant’s family members had followed them and wrote down their license plate numbers at lunch, it did not voir dire the jury about whether it continue to be fair and impartial.

Seventh Appellate District of Ohio

Nothing new.

Eighth Appellate District of Ohio

Nothing new.

Ninth Appellate District of Ohio

Nothing new.

Tenth Appellate District of Ohio

State v. Michael, 2014-Ohio-125

Sentencing: Judgment Entry: Announcement

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/10/2014/2014-ohio-125.pdf>

The trial court erred and the defendant must be resentenced where the sentence announced in open court was not consistent with the sentenced that was journalized.

Eleventh Appellate District of Ohio

Nothing new.

Twelfth Appellate District of Ohio

Nothing new.

Supreme Court of Ohio

State v. Tate, Slip Opinion No. 2014-Ohio-44

Domestic Violence: Prior Convictions: Stipulations

Full Decision: <http://www.sconet.state.oh.us/rod/docs/pdf/o/2014/2014-ohio-44.pdf>

Where defense counsel stipulated to the defendant's two prior misdemeanor domestic violence convictions – which raised the domestic

violence charge to a felony – the state did not need to prove that the person in the stipulated-to convictions was in fact the defendant.

***State v. McGlothan*, Slip Opinion No. 2014-Ohio-85**

Domestic Violence: Cohabitation: R.C. 2919.25: *State v. Williams*

Full Decision: <http://www.sconet.state.oh.us/rod/docs/pdf/o/2014/2014-ohio-85.pdf>

The Eighth District erred in reversing McGlothan’s domestic violence conviction because, although there was testimony at trial that he had been sleeping over at his girlfriend’s apartment for about a year, there was no testimony that they shared any living expenses which would demonstrate shared familial or financial responsibilities. The Supreme Court clarified that in *State v. Williams*, the additional financial and familial factors only need to be proved where the victim and defendant *do not* share the same residence. Therefore, the Eighth District erred in ruling that those factors needed to be proved when a shared residence had already been proven.

Sixth Circuit Court of Appeals

Nothing new.

Supreme Court of the United States

Nothing new.