

Appellate Court Decisions - Week of 11/25/13

First Appellate District of Ohio

State v. Harper, 2013-Ohio-5217

Evidence: Prosecutor

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-130134_11272013.pdf

Summary from the First District:

“The defendant’s conviction for resisting arrest was not supported by sufficient evidence where, due to the conduct of the city prosecutor’s office, the appellate record did not contain a crucial exhibit, a police cruiser camera DVD, that the trial court had relied on in making its guilty finding: it was not the obligation of the defendant’s appellate counsel to supplement the record with the DVD, which had been in the possession of the city prosecutor since the conclusion of the trial.”

State v. Clemente, 2013-Ohio-5213

OVI: Intoxilyzer 8000

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-120828_11272013.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 state had failed to substantially comply with the three-year record keeping requirement in Ohio Adm.Code 3701-53-01(A)(1) because the state had failed to produce one week of records relating to an Intoxilyzer 8000 machine from the Ohio Department of Health website, 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.

“The trial court erred in granting the defendant’s motion to suppress the result of his breathalyzer test on the basis that the Department of Health had failed to promulgate the necessary requirements for obtaining an access card required for operation of the Intoxilyzer 8000: although R.C. 3701.143 and Ohio Adm.Code 3701-53-07, which references the qualifications of personnel, only mention ‘permits’ and do not mention ‘access cards,’ this court has held that the Department of Health’s interpretation that the access card referenced in Ohio Adm.Code 3701-53-09(D) is the type of permit issued to an operator of an Intoxilyzer 8000 machine under Ohio Adm.Code 3701-53-07(E) is a reasonable interpretation of the administrative

regulations; therefore, Ohio Adm.Code 3701-53-07(E) provides the qualifications that operators of the Intoxilyzer 8000 machine must satisfy in order to obtain an operator access card. (*State v. McMahon*, 1st Dist. Hamilton No. C-120728, 2013-Ohio-2557, followed.)”

State v. Harrington, 2013-Ohio-5214

OVI: Intoxilyzer 8000

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-120850_11272013.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 state had failed to substantially comply with the provision in Ohio Adm.Code 3701-53-04(G) requiring that results of ‘controls’ be maintained for three years because the state had failed to produce dry gas control results from fewer than ten tests over an eight-month period, where no prejudice was shown by the defendant.

“The trial court erred in granting the defendant’s motion to suppress the result of her 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(A)(1) because the state had failed to produce one week of records relating to an Intoxilyzer 8000 machine from the Ohio Department of Health website, 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.

“The trial court erred in granting the defendant’s motion to suppress the results of her breathalyzer test on the basis that the Department of Health had failed to promulgate the necessary requirements for obtaining an access card required for operation of the Intoxilyzer 8000. (*State v. McMahon*, 1st Dist. Hamilton No. C-120728, 2013-Ohio-2557, followed.)”

State v. Wirth, 2013-Ohio-5215

OVI: Intoxilyzer 8000

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-130070_11272013.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 state had failed to substantially comply with

the three-year record-keeping requirement in Ohio Adm.Code 3701-53-01(A)(1) because the state had failed to produce one week of records relating to an Intoxilyzer 8000 machine from the Ohio Department of Health website, 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.

“The trial court erred in granting the defendant’s motion to suppress the results of her breathalyzer test on the basis that the state failed to administer a dry gas control between each breath sample on the Intoxilyzer 8000: Ohio Adm.Code 3701-53-04(B) requires that a dry gas control be performed ‘before and after every subject test,’ and this court has held that a ‘subject test’ consists of two breath samples; therefore, a dry gas control is not required between the two breath samples. (*State v. Nicholson*, 1st Dist. Hamilton No. C-120332, 2013-Ohio-3589, followed.)

“The trial court erred in granting the defendant’s motion to suppress the result of her breathalyzer test on the basis that the Department of Health had failed to promulgate the necessary requirements for obtaining an access card required for operation of the Intoxilyzer 8000: although R.C. 3701.143 and Ohio Adm.Code 3701-53-07, which references the qualifications of personnel, only mention ‘permits’ and do not mention ‘access cards,’ this court has held that the Department of Health’s interpretation that the access card referenced in Ohio Adm.Code 3701-53-09(D) is the type of permit issued to an operator of an Intoxilyzer 8000 machine under Ohio Adm.Code 3701-53-07(E) is a reasonable interpretation of the administrative regulations; therefore, Ohio Adm.Code 3701-53-07(E) provides the qualifications that operators of the Intoxilyzer 8000 machine must satisfy in order to obtain an operator access card. (*State v. McMahon*, 1st Dist. Hamilton No. C-120728, 2013-Ohio-2557, followed.)”

State v. Shirley, 2013-Ohio-5216

Sex Offenses: Registration: Crim.R. 32.1

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-130121_11272013.pdf

Summary from the First District:

“The trial court abused its discretion in overruling, without a hearing, defendant’s postsentence Crim.R. 32.1 motion to withdraw his guilty plea to failing to register as a sex offender: defendant was wrongly convicted of failing to register under the Adam Walsh Act, because he was subject to the registration requirements of Megan’s Law, when his rape offense had occurred in 1983, and he had been found to be a sexually oriented offender under Megan’s Law; and he was entitled to a hearing on his Crim.R. 32.1 motion, when the evidence supporting the motion suggested that he had not violated Megan’s Law.”

Second Appellate District of Ohio

State v. Wilborn, 2013-Ohio-5168

Plea: Advisements: Crim.R. 11(C)(2)(a)

Full Decision: <http://www.sconet.state.oh.us/rod/docs/pdf/2/2013/2013-ohio-5168.pdf>

“Defendant-appellant James H. Wilborn appeals from his conviction and sentence following a mid-trial negotiated guilty plea, for several felony offenses. He contends that the trial court erred by misadvising him, during the plea colloquy, that once he had completed the ten-year sentence stipulated as part of the plea agreement, he would not face possible incarceration in this case as a result of a violation of his post-release control conditions. We agree. Accordingly, the judgment of the trial court is Reversed, and this cause is Remanded for further proceedings.”

Fifth Appellate District of Ohio

State v. Bradley, 2013-Ohio-5146

Competency

Full Decision: <http://www.sconet.state.oh.us/rod/docs/pdf/5/2013/2013-ohio-5146.pdf>

The trial court erred in taking the defendant’s guilty plea to domestic violence without inquiring into his competency, his ability to obtain counsel, or his whether he waived the right to appointed counsel where there were sufficient indicia of incompetency (references to schizophrenia, treatment, etc.) and where the court must follow Crim.R. 11(E) for a misdemeanor of the first degree.

Sixth Appellate District of Ohio

State v. Taylor, 2013-Ohio-5182

Murder: Sentencing: Post-Release Control

Full Decision: <http://www.sconet.state.oh.us/rod/docs/pdf/6/2013/2013-ohio-5182.pdf>

The trial court erred by sentencing Taylor to five years postrelease control on his murder conviction because “murder is an unclassified felony to which postrelease control does not apply.” R.C. 2967.28

Supreme Court of Ohio

State v. Keck, Slip Opinion No. 2013-Ohio-5160

Evidence: Stipulation: Expert Testimony: Report: Reliance

Full Decision: <http://www.sconet.state.oh.us/rod/docs/pdf/o/2013/2013-ohio-5160.pdf>

“When a defendant has stipulated to the admissibility and content of a nontestifying analyst’s scientific report, the testimony of a witness who relied on that report does not violate the defendant’s right to confrontation.”

“In this case, we are asked to decide whether a defendant’s right to confrontation precludes the state from introducing data within a report of nontestifying a forensic analyst through the in-court testimony of a second analyst who did not perform or observe the laboratory tests that resulted in the data. We hold in this case that because the defendant stipulated to the admissibility and content of the nontestifying analyst’s report, the testimony of the second analyst, which relied on that report, did not violate the defendant’s right to confrontation.”

Sixth Circuit Court of Appeals

Nothing new.

Supreme Court of the United States

Nothing new.