

Appellate Court Decisions - Week of 2/25/13

Note: Anything that has "OVERVIEW" in front of it is the Lexis summary of a case.

First Appellate District of Ohio

In Re: D.M., Appeal No. C-120794, Trial No. 12-9552Z

Discovery: Procedure/Rules

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-120794_02272013.pdf

Before a juvenile probable-cause bindover hearing, the state must only produce to the juvenile upon request: (1) any *Brady* materials in its possession and (2) the evidence that it intends to use at the probable-cause hearing.

If the state asserts that evidence is privileged, it must move the trial court for an order limiting discovery under Juv. R. 24(B). If it can "articulate a factual basis to support a good faith belief that the contested item may be privileged, the trial court must conduct an evidentiary hearing and/or an in camera review of the contested item before ruling (*citations omitted*)."
"Unsupported assertions of counsel ... do not constitute an 'evidentiary hearing' and will not suffice to establish privilege (*citations omitted*)."

Summary from the First District:

Prior to a juvenile probable-cause bindover hearing, the state must produce to the juvenile upon request only (1) any *Brady* materials in its possession and (2) the evidence that it intends to use at the probable-cause hearing.

The trial court erred in dismissing the state's case prior to a juvenile probable-cause bindover hearing based on a discovery violation where the state had already provided the juvenile with (1) any *Brady* materials in its possession and (2) the evidence that it intended to use at the probable-cause hearing.

A party asserting a privilege has the burden to establish that privilege, and where that party can articulate a factual basis to support a good faith belief that an item may be privileged, the trial court must conduct an evidentiary hearing and/or an in camera review of the contested item before ruling on the issue of privilege.

***Cincinnati v. Nicholson*, Appeal No. C-120332, Trial No. 11TRC**

OVI: Intoxilyzer 8000: Dry Gas Control

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-120332_03012013.pdf

Ohio Admin.Code 3701-53-04(B) does not require a dry gas control test between “Subject Test 1” and “Subject Test 2” on the Intoxilyzer 8000 – only before “Subject Test 1” and after “Subject Test 2.” In other words, Subject Tests 1 and 2 are not in fact subject tests, but rather two samples that make up one subject test.

Summary from the First District:

The trial court erred in suppressing defendant’s Intoxilyzer 8000 breath test results: Ohio Admin.Code 3701-53-04(B) requires a dry gas control test before a subject’s first breath sample and after the subject’s second breath sample, but does not require a dry gas control test in between the breath samples.

Supreme Court of Ohio

Nothing new.

Sixth Circuit Court of Appeals

Nothing new.

Supreme Court of the United States

Nothing new.