Appellate Court Decisions - Week of 4/1/13

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

First Appellate District of Ohio

***State v. Colyer*, Appeal Nos. C-120347, C-120348, C-120349; Trial Nos. 10TRC-65473 A, B, C**

Automobiles: OVI

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-120349_04032013.pdf

There was no evidence that being tased multiple times prevented the defendant from understanding the officer's reading of the ALS form or to render his refusal of the breath test involuntary.

Summary from the First District:

Defendant's convictions for operating a motor vehicle while under the influence of alcohol with a chemical-test refusal, and failing to maintain reasonable control were based upon sufficient evidence where the evidence showed that the vehicle had been operable when defendant had wrecked it.

Defendant's refusal to take a breath test was voluntary where there was no evidence in the record to support defendant's contention that the police officer's use of a taser had rendered defendant incapable of understanding the consequences of failing to submit to a chemical test.

***State v. Moore*, Appeal No. C-120360, Trial No. 11CRB-23440**

Obstructing Official Business: Sufficient Evidence

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-120360_04032013.pdf

Opening and closing the front door of the home at least five times in 30 minutes while the police officers were there to investigate a domestic violence report was an affirmative act and sufficient evidence to convict because seeing a distressed female inside constituted exigent circumstances, which would have given the officers the right to search the home.

Police came to Moore's residence to investigate a domestic violence report. They knocked on the door and a female opened it, but said nothing. Moore then came to the door, told the police to leave, and shut the door. Over a period of about 30 minutes,

Moore opened and closed the door at least five times. The officers could not investigate the domestic violence report and eventually tased Moore through the door.

Moore argued on appeal that the state failed to present sufficient evidence that he performed an affirmative act that hampered or impeded public officials in the performance of their duties. The First District held that opening and closing the door at least five times in 30 minutes was such an affirmative act.

Moore also argued that he was within his rights to deny the officers entry because they didn't have a search warrant. The First District held, however, that there were exigent circumstances because when Moore was opening and closing the door, they saw a woman inside that appeared to be in distress. "An exception to the prohibition on warrantless searches of a residence is when exigent circumstances exist. *State v. Applegate*, 68 Ohio St.3d 348, 626 N.E.2d 942 (1994). Exigent circumstances exist if officers have a reasonable belief that it is necessary to investigate an emergency threatening life and limb."

Supreme Court of Ohio

Nothing new.

Sixth Circuit Court of Appeals

United States v. Woods **, No. 11-2429 (Decided April 3, 2013)**

Fifth Amendment: *Miranda*: Statement

Police officer did not need to give *Miranda* warnings before asking "What is in your pocket" after feeling something in defendant's pocket during a lawful patdown.

Full Decision: http://www.ca6.uscourts.gov/opinions.pdf/13a0092p-06.pdf

"Woods contends on appeal that his initial incriminating statement, as well as the discovery of a gun and drugs in his car, were the products of a custodial interrogation conducted in violation of his Fifth Amendment rights as articulated in *Miranda v. Arizona*, 384 U.S. 436 (1966). His conditional guilty plea preserved the right to appeal the district court's denial of his motion to suppress the statement and the physical evidence. We conclude that the arresting officer was not required to give Woods the *Miranda* warnings before asking "What is in your pocket?" upon encountering a hard lump in Wood's clothing during the course of a lawful patdown incident to the arrest. We therefore affirm the judgment of the district court."

Supreme Court of the United States

Nothing new.