

## "Ohio Supreme Court Revises Lawsuit Over Dashcam Video Recordings in DUI/Drunk Driving Case"

**CASE:** State Ex. Rel. Miller v Ohio State Highway Patrol, (Supreme Court of Ohio, Slip Opinion No. 2013-Ohio-3720, September 3, 2013)

### **FACTS:**

Appellant Mark Miller filed an action in the Ohio District Court of Appeals claiming that he had sent a public records (FOIA) request to the Ohio State Highway Patrol on September 9, 2011. Miller attached an undated to his legal complaint. The letter authored by Miller requested a number of records from the Highway Patrol, some of which were related to a trooper Joseph Westhoven during the summer of 2011. Miller asserted that none of the records sought in the letter are exempt from disclosure under the Ohio public records act. Miller went on to allege that while the patrol had provided some of the requested documents, it had specifically refused to produce several requested records which it claimed were not subject to disclosure. The only records not produced, and at issue in this action, are video and audio recordings from Trooper Westhoven's police car and impaired driver reports dealing with the traffic stop, detention, arrest, and transportation of Ashley Ruberg in mid July of 2011.

The Ohio State Patrol confirmed that it had refused to provide the records requested regarding Ruberg's arrest and explained that the refusal was based on its belief that the documents were "investigative work product for an ongoing criminal investigation"; and accordingly, were not subject to disclosure under the Ohio public records act. Under the exception the Ohio State Highway Patrol has refused to release the dashcam audio and video recordings of Roberts detention and arrest.

### **PROCEDURAL HISTORY:**

The 12<sup>th</sup> District Court of Appeals dismissed the lawsuit in favor of the Ohio State Highway Patrol. First, the Court ruled that Miller had failed in multiple respects to comply with the local court rules regarding the form of his complaint and attachments. Second, the court went on to find that Miller had not established a clear legal right to the relief sought.

Miller then appealed to the Ohio Supreme Court.

### **ISSUE:**

Did the Court of Appeals properly apply the "investigatory work product" exception to the information requested by Miller?

### **HOLDING:**

No. The Court of Appeals did not conduct a proper evidentiary hearing to determine if that exception properly applies in the case at bar; accordingly, the case is remanded to the 12<sup>th</sup> District to review the

withheld records and determine whether they fall under the "confidential law enforcement investigatory record" exception to the Public Records Act.

"The Ohio Public Records Act is construed liberally in favor of broad access and resolves any doubt in favor of the disclosure of public records." The person making the request for the records must establish entitlement to same by "clear and convincing evidence." Here, the lower court abused this discretion by deciding that Miller had presented no evidence that his records request had previously been denied. The record before us clearly establishes that the Ohio State Highway Patrol refused to disclose the records surrounding Robert's arrest and detention (dashcam audio and video).

The denial letter from the patrol to Miller is clear and convincing evidence that Miller has stated a claim for relief in that he has requested public records that have not been produced.

Having refused to provide requested records, the patrol must show that the withheld records fall squarely within a statutory exception. "Specific investigatory work product" generally consists of information, notes, working papers, memoranda, or other similar materials assembled by law enforcement officials in connection with a probable or pending criminal proceeding. It does not include ongoing routine offense and incident reports. Upon remand of the case, the 12<sup>th</sup> District Court of Appeals will need to review the withheld records to determine if they fall under the "confidential law enforcement investigatory record" exception to the Ohio Public Records Act, and specifically whether or not their release would create a "high probability of disclosure" of said work product as it's been asserted by the Ohio State Highway Patrol.

**CASE REMANDED FOR FURTHER HEARING**