

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-080474
	:	TRIAL NO. Co7TRC-67084A
Plaintiff-Appellant,	:	
	:	<i>DECISION.</i>
vs.	:	
TIMOTHY ROBERTS,	:	
	:	
Defendant-Appellee.	:	

Criminal Appeal From: Hamilton County Municipal Court

Judgment Appealed From Is: Reversed and Cause Remanded

Date of Judgment Entry on Appeal: April 17, 2009

*Joseph T. Deters*, Hamilton County Prosecuting Attorney, and *Judith Anton Lapp*,  
Assistant Prosecuting Attorney, for Plaintiff-Appellant,

*Thomas G. Eagle* and *Thomas G. Eagle Co., L.P.A.*, for Defendant-Appellee.

**MARK P. PAINTER, Judge.**

{¶1} The state of Ohio appeals the suppression of a urine sample collected from defendant-appellee Timothy Roberts. In November 2007, Roberts was arrested for operating a motor vehicle while intoxicated, speeding, and violating a traffic-light signal. After arriving at the police station, Roberts refused a breath test but agreed to give a urine sample.

{¶2} Roberts moved to suppress the urine sample, and the trial court suppressed the evidence after ruling that the officer collecting the urine sample had violated Ohio Adm.Code 3701-53-05(E) when he failed to print his initials on the seal of the bottle. We reverse.

***I. Collecting the Urine Sample***

{¶3} Roberts gave a urine sample. The collecting officer, Officer Tim Lukes, saw Roberts give the sample, and then Lukes sealed the bottle and placed it in a temporary evidence container that was to be transported to the coroner's laboratory for testing. Lukes wrote the name of the suspect and the date and time of collection on a sticker on the outside of the bottle. Lukes then sealed the bottle with evidence tape, placed the sample in an evidence bag, and printed his name on the bag. He then put the bag in a secure laboratory refrigerator that was kept locked.

{¶4} The grounds for granting Roberts's suppression motion stemmed from Officer Lukes's failure to print his initials on the tape used to seal the sample bottle. When Greenhills Police Chief Thomas Doyle delivered the sample to the Hamilton County Coroner's Laboratory for testing, he noticed that the initials were missing, and then he inspected the condition of the sample and initialed the tape himself, indicating that the sample had not been tampered with.

***II. The Ohio Administrative Code and Substantial Compliance***

{¶5} Under Ohio Adm.Code 3701-53-05-(E), urine-sample containers must be sealed to prevent tampering and contain an identification label that states the following: (1) the name of the suspect; (2) the date and time of collection; (3) the name or initials of the person collecting the sample; and (4) the name or initials of the person sealing the sample.

{¶6} The state must show that it substantially complied with Ohio Department of Health regulations in collecting the sample. “Substantial compliance has occurred when the procedure that actually was followed satisfies the purposes of the procedure described. The purpose of the sealing requirement described in Ohio Adm.Code 3701-53-05(E) is to insure that the blood [or urine] specimen is the same specimen that was placed in its container by the person who collected it from the defendant, and [that] it is in the same condition as when it was put there.”<sup>1</sup> But substantial compliance allows for minor procedural deviations—for example, errors that are excusable under the substantial-compliance standard.<sup>2</sup>

{¶7} We are convinced that Officer’s Lukes’s collection of the urine sample substantially complied with the Ohio Administrative Code. As we have noted, Lukes failed to initial the seal on the bottle, but at the suppression hearing, the trial court and Police Chief Doyle engaged in the following colloquy:

{¶8} “The court: Is Officer Lukes’s name anywhere on the plastic bottle inside that bag?

{¶9} “Police Chief Doyle: Yes, it is your honor.

{¶10} “The court: Where is that?

{¶11} “Police Chief Doyle: It is on this—on the evidence label inside the bag.

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<sup>1</sup> *State v. Butt* (Aug. 29, 1997), 2<sup>nd</sup> Dist. No. 16215.

<sup>2</sup> *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, 797 N.E.2d 71.

{¶12} “The court: Okay.

{¶13} “Police Chief Doyle: I have to spin the bottle around inside there.

{¶14} “The court: I see it, okay. On the bottle itself, correct?

{¶15} “Police Chief Doyle: Yes sir, it’s on the bottle itself.”

{¶16} This testimony showed that Lukes had initialed the bottle itself rather than the label, as was required under the Ohio Administrative Code. We are convinced that Lukes’s initials on the bottle itself, along with his testimony that he had both collected and sealed the sample and initialed the evidence bag, served the same purpose as initialing the label or seal. Further, no testimony or evidence suggested that the specimen had been tampered with or disturbed. Rather, the record reveals that the specimen was refrigerated under lock and key, that the specimen was then transported to the testing laboratory, and that on arrival the collection sample appeared untainted—the only exception to compliance was that Lukes’s initials were not on the label.

{¶17} Under these circumstances, we hold that the state substantially complied with Department of Health regulations. We therefore reverse the ruling suppressing the evidence against Roberts and remand the case for further proceedings.

Judgment reversed and cause remanded.

**HILDEBRANDT, P.J., and DINKELACKER, J., concur.**

*Please Note:*

The court has recorded its own entry this date.