

FILED: July 17, 2013

IN THE COURT OF APPEALS OF THE STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,

v.

GUADALUPE OCHOA,
Defendant-Appellant.

Washington County Circuit Court
D110331M

A149975

Thomas W. Kohl, Judge.

Submitted on June 18, 2013.

Peter Gartlan, Chief Defender, and Andrew D. Robinson, Deputy Public Defender, Office of Public Defense Services, filed the brief for appellant.

Ellen F. Rosenblum, Attorney General, Anna M. Joyce, Solicitor General, and Rebecca M. Johansen, Assistant Attorney General, filed the brief for respondent.

Before Ortega, Presiding Judge, and Sercombe, Judge, and Hadlock, Judge.

PER CURIAM

Reversed and remanded.

1 PER CURIAM

2 Defendant appeals his conviction for driving under the influence of
3 intoxicants, ORS 813.010, raising two assignments of error. We reject defendant's first
4 assignment of error without discussion and write only to address his second assignment
5 of error, in which he asserts that the trial court erred in admitting "medical records
6 including a lab report of defendant's [blood alcohol content]" over his hearsay objection.
7 In particular, he asserts that, although medical records may, in appropriate circumstances,
8 be admitted under an exception to the hearsay rule, here, "the state did not establish a
9 foundation for the admission of the records under a hearsay exception." *See* OEC 802
10 (hearsay is not admissible unless an exception applies). The state concedes that "the
11 medical records constituted hearsay and that the state failed to demonstrate that the
12 records fell within a hearsay exception" and that the case must be reversed and remanded
13 for a new trial. We agree and accept the state's concession.

14 Reversed and remanded.