

[Cite as *Cleveland v. Dames*, 2003-Ohio-6054.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 82980

CITY OF CLEVELAND	:	ACCELERATED DOCKET
	:	
Plaintiff-appellee	:	
	:	
vs.	:	
	:	JOURNAL ENTRY
DANIEL DAMES	:	
	:	and
Defendant-appellant	:	OPINION
	:	
DATE OF ANNOUNCEMENT OF DECISION	:	NOVEMBER 13, 2003.
CHARACTER OF PROCEEDING	:	Criminal appeal from Cleveland Municipal Court Case No. 2002 TRC 093213
JUDGMENT	:	AFFIRMED.
DATE OF JOURNALIZATION	:	
APPEARANCES:		
For plaintiff-appellee	:	SUBODH CHANDRA Director of Law & Prosecuting Attorney ANGELA RODRIGUEZ PABLO CASTRO BRENT C. KIRVEL Assistant City Prosecutors 1200 Ontario Street Cleveland, Ohio 44113
For defendant-appellant	:	LINDA V. GONZALEZ Attorney at Law

The Legal Aid Society of
Cleveland
1223 West Sixth Street
Cleveland, Ohio 44113

SWEENEY, JAMES D., J.

{¶1} This case came to be heard upon the accelerated calendar pursuant to App.R. 11.1 and Loc.R. 11.1, the record from the lower court, the briefs and the oral arguments of counsel. The purpose of an accelerated calendar is to allow the appellate court to render a brief and conclusory opinion. *Crawford v. Eastland Shopping Mall Assn.* (1983), 11 Ohio App.3d 158.

{¶2} After entering pleas of no contest to three citations issued to him by police officers of plaintiff-appellant the City of Cleveland following a one-car accident in which he was injured severely enough to be hospitalized, defendant-appellant Daniel Dames was convicted of driving under the influence of alcohol (“DUI”), failure to control his vehicle, and driving without a safety belt. Dames now appeals from the order of the trial court that denied his motion to suppress evidence of his blood alcohol content level (“BAC”).

{¶3} In his assignment of error, Dames does not challenge the facts surrounding his convictions; rather, he argues only that R.C. 2317.02, the statute pursuant to which the city obtained the medical records that contained information revealing his BAC, is unconstitutional. He claims the statute violates his constitutional right to privacy. This court disagrees.

{¶4} In Ohio, legislative enactments enjoy a strong presumption of constitutionality; therefore, doubts regarding the validity of an enactment generally

should be resolved in favor of the statute. *State v. Gill* (1992), 63 Ohio St.3d 53. The physician-patient privilege is a creature of statute, rather than a constitutional right. *State v. Desper*, 151 Ohio App.3d 208, 2002-Ohio-7176, citing *State v. Webb*, 70 Ohio St.3d 325, 344; 1994-Ohio-425, appeal denied *State v. Desper*, 98 Ohio St.3d 1540, 2003-Ohio-1946.

{¶5} R.C. 2317.02 deems the physician-patient privilege is waived in certain specified circumstances. *Cleveland v. Rollins*, Cuyahoga App. No. 79614, 2002-Ohio-1087. In thus limiting the waiver, the statute complies with constitutional privacy interests. *Whalen v. Roe* (1977), 429 U.S. 589.

{¶6} Pursuant to the terms of R.C. 2317.02, a defendant in a DUI case effectively has consented to a waiver of his right of privacy to the results of diagnostic tests that were given at a time relevant to that criminal offense. *Cleveland v. Rollins*, supra; *State v. Grohowski* (Sept. 30, 1996), Lucas App. No. L-95-292. This presumption, viz., that a patient who has committed a criminal offense has consented to waive the privilege, distinguishes the statute from the unconstitutional program reviewed in *Ferguson v. Charleston* (2001), 532 U.S. 67. *Middletown v. Newton* (1998), 125 Ohio App.3d 540.

{¶7} For the foregoing reasons, Dames' argument that R.C. 2317.02 is an unconstitutional violation of his right to privacy is rejected. His assignment of error, accordingly, is overruled.

Judgment affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Cleveland Municipal Court to carry this judgment into execution. The defendant's conviction having been affirmed, any

bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

JAMES D. SWEENEY*
JUDGE

ANNE L. KILBANE, P.J. and SEAN C. GALLAGHER, J. concur.

*SITTING BY ASSIGNMENT, JUDGE JAMES D. SWEENEY, RETIRED, OF THE EIGHTH DISTRICT COURT OF APPEALS.

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc. App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also, S.Ct.Prac.R. II, Section 2(A)(1).