Appellate Court Decisions - Week of 11/11/13

First Appellate District of Ohio

State v. Stadelmann, 2013-Ohio-5035

Search: OVI: Stop: R.C. 4511.36

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-130138_11152013.pdf

Summary from the First District:

"When determining whether a traffic stop is proper for purposes of the Fourth Amendment, the test is whether an objectively reasonable officer could have concluded that a motorist's conduct might have violated a traffic law.

In a prosecution for driving under the influence of alcohol in violation of R.C. 4511.19(A)(1)(d), the trial court did not err in overruling the defendant's motion to suppress evidence on the ground that his vehicle was illegally stopped: the state trooper who made the stop reasonably believed that the defendant had violated R.C. 4511.36 where the trooper had observed the defendant make a "wide" left-hand turn from the lane immediately left of center into the far right lane of traffic, because R.C. 4511.36 is ambiguous and a reasonable officer could have concluded that the statute requires a motorist who makes a left-hand turn to turn into the lane nearest the center line. [*But see* DISSENT: R.C. 4511.36, which clearly prohibits "cutting the corner of the intersection" and does not regulate in which lane the driver must complete the turn, is not ambiguous; and therefore, the stop was improper because the turn was legal under the plain language of the statute.]"

State v. Carusone, 2013-Ohio-5034

New Trial: Crim.R. 33(B)

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-130003_11152013.pdf

Summary from the First District:

"The common pleas court abused its discretion in overruling defendant's Crim.R. 33(B) motion for leave to file a motion for a new trial on the ground of newly discovered evidence, without first conducting an evidentiary hearing on the motion: the evidence offered in support of the motion was demonstrably material to defendant's actual-innocence and fair-trial claims, had not been disclosed in discovery, undermined the credibility of the testimony of key state witnesses and the opinion of the deputy coroner concerning the cause of death, and demonstrated that, within 120 days of the return of the verdict, defendant did not know that the proposed grounds for a new trial existed,

and that he could not, in the exercise of reasonable diligence, have learned of their existence."

Third Appellate District of Ohio

***State v. Bustamante*, 2013-Ohio-4975**

Sentencing: Restitution

Full Decision: http://www.supremecourt.ohio.gov/rod/docs/pdf/3/2013/2013-ohio-4975.pdf

The trial court erred in ordering the defendant to forfeit his state ID card, and in ordering him to pay restitution of $423 to police for the money used to purchase heroin from him.

Bustamante was convicted in a bench trial of Trafficking in Heroin and two counts of Possession of Drugs. He was sentenced to 22 months in prison and ordered to forfeit a digital scale, packages of heroin, a digital camera, a vial of steroids, numerous cell phones, a video camera, gift cards, a debit card, his Ohio ID card, 2 laptop computers, a flat-screen TV, numerous GPS units, rims with tires, and $1,450. He was also ordered to pay $423 in restitution to the Seneca County Drug Task Force METRICH Enforcement Unit for the money used to purchase heroin from him.

The Third District held that it was error to order Bustamante to forfeit his ID card because it was not an instrumentality used in the offense and was not an item necessarily purchased with drug proceeds. It also held that the order of restitution of $423 was error because the drug task force, which voluntarily advanced its own funds to pursue a drug buy, was not a crime victim.

Fifth Appellate District of Ohio

***State v. Bales*, 2013-Ohio-4957**

Attempted Corrupting Another With Drugs: R.C. 2925.02(A)(3): Motion to Dismiss

Full Decision: http://www.sconet.state.oh.us/rod/docs/pdf/5/2013/2013-ohio-4957.pdf

The trial court erred in failing to dismiss the defendant's indictment for attempted corrupting another with drugs, where she gave birth to a son who tested positive for narcotics and opiates and suffered complications as a result, because a woman cannot "be convicted pursuant to R.C. 2925.02(A)(3) for actions taken during pregnancy which affected her unborn child."

***State v. Riggleman*, 2013-Ohio-5006**

Sentencing

Full Decision: http://www.sconet.state.oh.us/rod/docs/pdf/5/2013/2013-ohio-5006.pdf

The trial court erred in sentencing the defendant to a prison term on fourth-degree felonies where the reasons it gave for doing so did not comport with R.C. 2929.13(B)(1).

Riggleman was convicted of two counts of aggravated trafficking in drugs in violation of R.C. 2925.03, both felonies of the fourth degree. He was sentenced to 12 months in prison on each count, to be served consecutively. During the sentencing hearing, the trial court gave the following reasons for imposing a prison sentence instead of community control:

> "I'm going to impose a prison term of 12 months on each count. I'm going to order that those counts be served consecutively.
>
> "Here's why: You, while on bond, apparently have engaged in new felony conduct. And I'm not being judgmental about that, but, according to the PSI, there are statements there that incriminate you in those offenses.
>
> "And you have shown to me that the presumption in favor of concurrent sentences should be and is overcome in this case by your conduct on pretrial, by the fact that you blew off your interview with the probation officer to prepare the – the – the PSI. A condition of your bond after the guilty verdicts were (sic) that you cooperate with the preparation of the PSI. So you've not only disregarded my order, you've violated a condition of your bond while awaiting sentencing.
>
> "And I find that it is necessary to protect the public and to punish the offender, that consecutive sentences are not disproportionate; and I'd find, as I've just indicated, that the – these offenses for which you are being sentenced were committed while you were on a term of community control through the Probation Department, is that right, or Municipal Court?
>
> ***
> "Let me correct that then. I find that – that the – a single term in this case would not adequately reflect the seriousness of the conduct here in light of his subsequent conduct while on pretrial in this case and on pretrial supervision and post-trial bond. So, you know, in referring to the new charges that have been returned and his complete disregard to cooperate with the preparation of the Presentence Investigation Report after I told

> him in court that he had to do that. So that's why I'm imposing a consecutive sentence here with regard to Counts 1 and 2. It's a total stated prison term of two years."

The Fifth District said:

> "None of the trial court's reasons comport with R.C. 2929.13(B)(1). The record does not indicate that appellant was ever convicted of or pleaded guilty to a felony offense. R.C. 2929.13(B)(1)(a)(i). The recent felony charge in the in the third degree against appellant had yet to be resolved and therefore could not be used under the statute. The most serious charge against appellant at the time of sentencing was a felony in the fourth degree. R.C. 2929.13(B)(1)(a)(ii). The fact that appellant was sentenced to probation for probation for pleading guilty to three misdemeanors in municipal court was not sufficient to disqualify R.C. 2929.13(B). The misdemeanors were not offenses of violence (possessing criminal tools, attempted theft, and criminal damaging). R.C. 2929.13(B)(1)(a)(iv)."

Therefore, the Fifth District held that it was error to sentence Riggleman to a prison term.

Eighth Appellate District of Ohio

***State v. Caldwell*, 2013-Ohio-5017**

Plea: Rejection of Negotiated Plea Bargain

Full Decision: http://www.sconet.state.oh.us/rod/docs/pdf/8/2013/2013-ohio-5017.pdf

The trial court erred in rejecting the negotiated plea agreement where it used an "all-or-nothing" rejection policy that amounted to a blanket policy of rejecting all plea agreements after the commencement of trial.

Caldwell was charged with 12 counts of kidnapping, with sexual motivation and sexually violent predator specifications, and six counts of rape, with sexually violent predator specifications. Among those charges was one that alleged the victim was younger than 13 and that Caldwell purposely compelled her to submit by force or threat of force. He was also charged with 2 counts of attempted rape, nine counts of gross sexual imposition, and one count of disseminating material harmful to juveniles. He pled not guilty and proceeded to trial – the state dismissed two counts of rape and one count of attempted rape.

On the morning of the trial's second day, the attorneys and the court discussed the possibility of a plea to "one or more child endangering charges." The trial court rejected the proposed plea and said:

"He is accused of some terrible crimes here. And he either did them or did not do them.

"If he did not do them, he should be exonerated by an appropriate verdict; fi he did do them, he should be appropriately sanctioned upon a guilty verdict.

"I find it hard to believe that there is some middle ground here, where he would deny committing rapes and gross sexual impositions and kidnapping, yet he would admit to having endangered [the victim].

"I haven't heard evidence or a summary of evidence that would support his having endangered her, other than by, if he did it, having raped or otherwise sexually abused her.

"If you want further expansion of my thoughts *** you might want to look at [*State v. Frazier*, Cuyahoga C.P. No. CR-549274 (Apr. 19, 2012)].

"So I'm not inclined then, to accept a plea bargain, because I don't think that plea bargain would be in the interest of justice, as I understand it."

In the afternoon that same day, after a portion of the victim's testimony was heard, the attorneys again informed the court that they had reached a plea agreement. Caldwell would plead guilty to two counts of importuning and two counts of abduction. The court repeated statements similar to its previous statements, basically reiterating its all-or-nothing viewpoint for rejecting the plea. The prosecutor tried to convince the court to take the plea, but it was not persuaded.

After all the evidence was presented, the jury returned guilty verdicts on two counts – kidnapping with sexual motivation and sexual predator specifications and rape of a victim under 13 years old with force and a sexually violent predator specification. The jury acquitted him of all the remaining charges. After merger of the offenses, the court sentenced Caldwell to 25 years to life in prison. He filed a motion for a new trial and a motion to enforce the plea agreement offered by the state, but the court denied both motions.

The Eighth District said, in reversing the trial court:

"The trial court's reasoning would preclude virtually every plea bargain as being against the 'interest of justice' because every plea bargain involves the defendant pleading to something less than he is charged with, but more than his not guilty plea admits. In the trial court's mind, the 'interest of justice' required Caldwell to go through trial and live with the verdict. He would either be convicted of the charges, if found guilty, or acquitted, if found not guilty. In the court's mind, there was 'no middle ground.' "

> "Although there is no evidence the trial court had a blanket policy rejecting all pleas after the commencement of trial, the court's rationale became a de facto policy of rejecting any plea offered in this cause because it provided no principled reason justifying its all-or-nothing approach. Had the court articulated some objective reason by which we could review its exercise of discretion, we might have found no abuse of discretion."

The Eighth District did not remand for a new trial, because it believed it was a fair trial. Rather, it reversed to allow Caldwell to accept the second plea agreement. It said:

> "Upon remand, vacating the conviction is contingent upon Caldwell agreeing to enter a plea according to the terms of the second plea agreement. We instruct the trial court to hold a hearing which Caldwell shall be offered the opportunity to knowingly, intelligently, and voluntarily agree to the second plea agreement. Upon agreement, the trial court shall vacate the conviction and, following compliance with Crim.R. 11, Caldwell may enter his plea. If Caldwell enters guilty plea, the court shall proceed directly to sentencing. Should Caldwell fail to enter a plea of guilty pursuant to the plea agreement, the trial court shall reinstate Caldwell's original conviction and sentence."

Tenth Appellate District of Ohio

***State v. Goodloe*, 2013-Ohio-4934**

Search: Motion to Suppress

Full Decision: http://www.supremecourt.ohio.gov/rod/docs/pdf/10/2013/2013-ohio-4934.pdf

The trial court did not err in granting the defendant's motion to suppress where the two police officers seized the defendant by blocking his path, and they did not have a reasonable suspicion to do so where the only basis was that they saw the defendant hesitate to cross the street upon seeing them, and that they noticed bulges in the defendant's pants.

Two Columbus Police officers were patrolling in a marked cruiser when they saw Goodloe at the corner of an intersection. Goodloe appeared to want to cross, but hesitated when he saw the police car. One officer noticed bulges on the right and left sides of Goodloe's pants. They drove past Goodloe, then saw him cross the street and walk through a parking lot. They turned around and pulled up near him as he was walking on the sidewalk. The officer could see that one bulge was a cell phone, but could not identify the other bulge. The officers parked, then got out and approached Goodloe – one standing in front of him, one to the side. The officers did not draw their weapons, but did ask Goodloe questions. One question was whether he had any firearms, to which he did not respond, but sighed, dropped his shoulders, and put his head down. The

officer took that as an admission that he had a firearm on him and reached for the bulge on the right side. The bulge proved to be a gun.

Goodloe was charged with one count of carrying a concealed weapon in violation of R.C. 2923.12. He pled not guilty and moved to suppress the gun, claiming the "officers violated his Fourth Amendment right to be free from unreasonable searches and seizures." The trial court granted the motion to suppress, "concluding that the initial encounter when the officers got out of their car and approached Goodloe on the sidewalk was 'a sufficiently strong showing of police authority to convert a consensual encounter into a seizure without the reasonable suspicion necessary for a *Terry* stop. At that point, they didn't have enough."

The Tenth District held that the trial court did not err in granting the motion to suppress. It said that the act of blocking Goodloe's path indicated that a seizure had occurred. It said, "[h]ere, not only did one officer stand directly in front of Goodloe, but another officer came up on his side and stood within one or two feet of him. This occurred after the officers pulled up their cruiser right next to Goodloe on the sidewalk and approached him. The presence of two uniformed officers positioned as found by the trial court would communicate to a reasonable person that he was not at liberty to ignore the police and walk away." It went on to say that because the officers conducted the seizure without a reasonable suspicion of criminal activity, it was not error to grant the motion to suppress.

Eleventh Appellate District of Ohio

***State v. Mattocks*, 2013-Ohio-4965**

Search: Motion to Suppress

Full Decision: http://www.supremecourt.ohio.gov/rod/docs/pdf/11/2013/2013-ohio-4965.pdf

The trial court erred in granting the defendant's motion to suppress where the officers responded to a domestic violence call and found the defendant holding a gun, which provided exigent circumstances for the warrantless entry into the home.

The Eleventh District reversed the trial court's suppression of firearm evidence holding that exigent circumstances existed for the warrantless entry into the defendant's home. Police officers responded to a domestic violence situation at the home and found the defendant standing inside of a glass door, facing the officers and holding a gun. The defendant argued there were no exigent circumstances because his wife was outside the home without injury, he had disabled the gun, placed it on the table and walked away when the police entered his home. The Eleventh District found the officers faced a direct threat to their safety, "given that they were in a dangerous situation involving a potentially violent individual with a firearm who refused to cooperate with police instructions." The Eleventh District also found the firearms were obtained pursuant to

the search incident to arrest exception. Although the officer testified at the suppression hearing that he did not intend on arresting the defendant, the Eleventh District found there was a valid basis to arrest him for domestic violence due to his wife's statement that she had been shoved to the ground, prevented from calling the police and locked out of the house coupled with the threatening behavior of the defendant.

Twelfth Appellate District of Ohio

***State v. Hendrix*, 2013-Ohio-4978**

Plea Colloquy: Knowing, Intelligent, and Voluntary

Full Decision: http://www.supremecourt.ohio.gov/rod/docs/pdf/12/2013/2013-ohio-4978.pdf

The trial court failed to comply with Crim.R. 11(C)(2)(a), and therefore the defendant did not enter his guilty plea knowingly, intelligently, and voluntarily where, during the Crim.R. 11 colloquy, the trial court told him he might be eligible for earned credit and implied that he could be eligible for judicial release, but in fact his five-year prison sentence was mandatory.

***State v. Brown*, 2013-Ohio-4981**

Impaired Driving: Administrative License Suspension

Full Decision: http://www.supremecourt.ohio.gov/rod/docs/pdf/12/2013/2013-ohio-4981.pdf

The trial court erred in refusing to vacate the defendant's administrative license suspension where the evidence produced at the hearing showed that he submitted to a breath test and blew a 0.000, and that he drank several glasses of water and attempted to provide a urine sample, but could not.

"On January 11, 2013, appellant was arrested for operating a vehicle while under the influence of alcohol or a drug of abuse. Appellant was transferred to a police station where he submitted to a breath test. The result of the test indicated that appellant had a blood alcohol level of 0.000. Appellant then agreed to submit to a urine test. Appellant drank several glasses of water, attempted to provide a urine specimen four or five times, but did not produce a sample. Appellant's license was then seized and administratively suspended for refusal to submit to a chemical test."

Brown appealed the administrative suspension to the municipal court. At a hearing on the appeal, the police officer testified that Brown did not refuse the tests, but rather could not provide a sample. The trial court denied his appeal. It reasoned that he did not meet his burden of proof to show he did not refuse.

The Twelfth District held that the trial court's decision that Brown refused to submit to the urine test was against the manifest weight of the evidence. It said "[t]he evidence showed that appellant did not refuse the test but instead was physically incapable of completing the test." It went on to vacate Brown's administrative license suspension.

Supreme Court of Ohio

***State v. Washington*, Slip Opinion No. 2013-Ohio-4982**

Sentencing: R.C. 2941.25: Multiple Counts: Merger

Full Decision: http://www.sconet.state.oh.us/rod/docs/pdf/0/2013/2013-ohio-4982.pdf

Syllabus of the Court: "When deciding whether to merge multiple offenses at sentencing pursuant to R.C. 2941.25, a court must review the entire record, including arguments and information presented at the sentencing hearing, to determine whether the offenses were committed separately or with a separate animus."

"We hold that when deciding whether to merge multiple offenses at sentencing pursuant to R.C. 2941.25, a court must review the entire record, including arguments and information presented at the sentencing hearing, to determine whether the offenses were committed separately or with a separate animus. The court of appeals erred by looking solely to what it perceived as the state's theory of the case at trial and by refusing to consider the information presented at the sentencing hearing. Accordingly, we reverse the judgment of the court of appeals and remand to the court of appeals for further proceedings consistent with this opinion.

Sixth Circuit Court of Appeals

Nothing new.

Supreme Court of the United States

Nothing new.