

Appellate Court Decisions - Week of 12/23/13

First Appellate District of Ohio

State v. Ruff, Appeal No. C-120844, Trial No. B-1007073

Search and Seizure: Prosecutor: Joinder

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-120844_12242013.pdf

Summary from the First District:

“The trial court did not err when it denied the defendant’s motion to suppress where the court’s finding that, given the circumstances, a *Terry* pat down was reasonable was supported by competent, credible evidence.

Although the assistant prosecutor improperly vouched for the credibility of the state’s witnesses and arguably made statements not supported by the evidence, there was no plain error.

The defendant’s substantial rights were not prejudiced where the trial court immediately sustained an objection to the assistant prosecutor’s comment on the defendant’s failure to offer a defense and gave a curative instruction, because the jury is presumed to have followed the court’s instructions.

The defendant cannot assert as error the trial court’s failure to sever charges that he requested be tried together.”

Third Appellate District of Ohio

State v. Kaczmarek, 2013-Ohio-5658

Insurance Fraud: Crim.R. 29

Full Decision: <http://www.supremecourt.ohio.gov/rod/docs/pdf/3/2013/2013-ohio-5658.pdf>

In a prosecution for insurance fraud, the trial court erred in not granting the defendant’s Crim.R. 29 motion for acquittal where no witness from the insurance company testified that it is authorized to engaged in the business of insurance in the state of Ohio.

Fifth Appellate District of Ohio

State v. Caplinger, 2013-Ohio-5675

Evidence: Motion to Suppress

Full Decision: <http://www.supremecourt.ohio.gov/rod/docs/pdf/5/2013/2013-ohio-5675.pdf>

The trial court erred in overruling the defendant's motion to suppress where the officer continued to observe, and eventually searched, the defendant past the point the officer knew the defendant was not the theft suspect he was looking for.

Here are the facts from this case:

“This case arose on November 29, 2012 as Ptl. Travis Groves was on routine patrol in the city of Zanesville. Around 2:17 a.m. Groves was dispatched to a Starfire Gas Station at 727 Pershing Road for a shoplifting complaint. The clerk said a black male wearing a gray “hoodie” (hooded sweatshirt) had entered the store and shoplifted two cans of pop and a cigar. The suspect left the store and headed eastbound toward the Coopermill Manor area. Groves stated police receive many calls to the Coopermill Manor neighborhood for crimes such as domestic violence, drug activity, and firearms violations, and an officer was once shot there.

“Groves drove westbound on Pershing Road and turned into Cliffwood Avenue, hoping to intercept the suspect. As he approached the intersection of Shinnick Circle and Cliffwood Avenue, he observed a car stopped in the intersection. Groves saw a person get out wearing a black hoodie. Groves apparently connected this individual with the shoplifting report: he testified it is his experience that shoplifters will leave a store and run to cars left parked a short distance away.

“The car stopped in front of 758 Cliffwood Avenue and then pulled away. Groves watched the individual, later identified as appellant, exit the car and walk to the front door of an apartment as Groves pulled up. Appellant stood on the front porch and opened the screen door as Groves exited his cruiser. Groves noted appellant was wearing a purple and yellow hoodie. Groves testified, ‘So at that point I knew I didn’t have a theft suspect.’ He also stated appellant did not appear to be engaged in any criminal activity such as breaking into the apartment.

“Groves continued, however, to watch appellant because appellant ‘flinched’ when he noticed Groves watching him and looked ‘nervous, shocked, [and] surprised.’ Groves also observed a bulge in the front pocket of appellant’s hoodie. He believed appellant positioned his body on the front porch as though he was attempting to conceal the front of his body. Groves found it noteworthy that appellant ‘bladed’ his body away from him two or three times.

“Groves asked appellant if he would step off the porch and speak to him; appellant asked why but walked toward the officer, who could now clearly see a bulge in the front pocket of appellant’s hoodie. Once appellant stepped off the porch, Groves touched the bulge, reportedly for officer safety purchases, and recognized the outline of a firearm. Groves placed appellant in handcuffs and retrieved a firearm from the front pocket of appellant’s hoodie, later identified as a .22 caliber semi-automatic pistol.”

Seventh Appellate District of Ohio

State v. Dunlap, 2013-Ohio-5637

Search: Motion to Suppress

Full Decision: <http://www.supremecourt.ohio.gov/rod/docs/pdf/7/2013/2013-ohio-5637.pdf>

The trial court erred in overruling the defendant’s motion to suppress the wallet and scale taken from the defendant’s pockets during a *Terry* pat-down where the officer testified that neither felt like a weapon.

State v. Croom, 2013-Ohio-5682

Jury Waiver

Full Decision: <http://www.sconet.state.oh.us/rod/docs/pdf/7/2013/2013-ohio-5682.pdf>

Where the defendant successfully moved to separate some of the charges against him to a bench trial (simultaneous to the jury trial on the other charges), the trial court erred in failing to perform an effective jury waiver on the charges tried to the bench.

Eighth Appellate District of Ohio

City of Lakewood v. Calanni, 2013-Ohio-5590

Building Code Violations: Driver’s License

Full Decision: <http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2013/2013-ohio-5590.pdf>

The trial court erred in holding defendant’s driver’s license on bond until he paid his court costs. Doing so was not justified under R.C. 2937.221, 2935.27, or 1901.44 because he did not voluntarily hand over his license, he had not failed to comply with a court order when his license was taken, and he was not given notice by the court that his license would be taken.

Ninth Appellate District of Ohio

State v. Jackson, 2013-Ohio-5557

Sentencing: Allied Offenses

Full Decision: <http://www.supremecourt.ohio.gov/rod/docs/pdf/9/2013/2013-ohio-5557.pdf>

The trial court erred in failing to merge the defendant's discharging a firearm into a habitation conviction with his felonious assault and murder convictions as allied offenses of similar import. (Note: The murder and felonious assault charges did not merge because they all involved different victims).

State v. Hill, 2013-Ohio-5725

Felonious Assault: Sufficiency of the Evidence

Full Decision: <http://www.supremecourt.ohio.gov/rod/docs/pdf/9/2013/2013-ohio-5725.pdf>

There was insufficient evidence to convict the defendant of felonious assault, where, prior to the victim's murder, the two had engaged in a fistfight, but there was not enough evidence presented that the victim suffered serious physical harm as a result of that fight.

Supreme Court of Ohio

Nothing new.

Sixth Circuit Court of Appeals

Nothing new.

Supreme Court of the United States

Nothing new.