

Appellate Court Decisions - Week of 12/8/14

First Appellate District of Ohio

In re D.P., 2014-Ohio-5414

Delinquency: Sentencing

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-140158_12102014.pdf

Summary from the First District:

“The definition of ‘confinement’ set forth by the Ohio Supreme Court in *State v. Napier*, 93 Ohio St.3d 646, 648, 758 N.E.2d 1127 (2001), is to be used to determine whether a juvenile has been “confined” for purposes of calculating the days to be credited against his commitment to the Department of Youth Services under R.C. 2152.18(B).

“The *Napier* test requires the court to consider the nature of the facility and the restrictions placed on the juvenile at that facility to determine whether the juvenile was ‘confined’ for purposes of days of credit under R.C. 2152.18(B).

“Where the record does not support the trial court’s judgment, which failed to credit days the juvenile spent at Hillcrest School against his commitment to the Department of Youth Services, because it does not contain evidence as to the nature of Hillcrest School or the staff’s control over the juvenile’s personal liberties, the judgment must be reversed and the cause remanded for the development of the record as to those issues so that a proper determination may be made as to whether the juvenile was ‘confined’ at Hillcrest for purposes of days of credit under R.C. 2152.18(B).”

State v. Murawski, 2014-Ohio-5438

Expungement

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-140298_12122014.pdf

Summary from the First District:

“The trial court is required to comply with the mandates of R.C. 2953.32(C)(1)(a)-(e) in determining whether to grant an expungement.

“R.C. 2953.32(C)(1) is not a fact-finding statute, and the trial court is not required to make express findings or to state its compliance with the mandates of the statute on the record.

“The appellate court must presume that the trial court considered the relevant factors and criteria set forth in R.C. 2953.32(C)(1) unless the appellant affirmatively demonstrates otherwise.

“The trial court did not abuse its discretion in denying the appellant’s application for an expungement where the appellant has not demonstrated that the court failed to consider the R.C. 2953.32(C)(1) statutory factors.”

Second Appellate District of Ohio

Nothing new.

Third Appellate District of Ohio

Nothing new.

Fourth Appellate District of Ohio

State v. Johnson, 2014-Ohio-5400

Search: Motion to Suppress

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/4/2014/2014-ohio-5400.pdf>

The trial court erred in denying Appellant’s motion to suppress. Appellant was allowing a third party to stay in a camper in his driveway. Police were looking for that person because he was in violation of his probation. He had access to only some areas of the house, mainly the kitchen and bathroom. He did not have access to the padlocked bedroom. Appellant gave police permission to search his home for the third party, with the exception of the padlocked bedroom. Police eventually broke into the padlocked bedroom because they heard sounds coming from inside and they had not found the third party. Inside, they found guns and stolen car stereos (and a raccoon – the source of the noises). The Fourth District held that the search of the bedroom should have been suppressed because the state failed to provide evidence that the third party had common authority over the padlocked bedroom.

Fifth Appellate District of Ohio

Nothing new.

Sixth Appellate District of Ohio

Nothing new.

Seventh Appellate District of Ohio

State v. Barnette, 2014-Ohio-5405

Verdict Form

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/7/2014/2014-ohio-5405.pdf>

“[T]he jury verdict form did not comply with R.C. 2945.75 because neither the degree of the offense or [sic] the aggravating element that the victim was a peace officer was identified on the verdict form.” Importantly, the Seventh District held that there MUST be strict compliance with R.C. 2945.75.

Eighth Appellate District of Ohio

Nothing new.

Ninth Appellate District of Ohio

State v. Fields, 2014-Ohio-5386

Aggravated Robbery

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/9/2014/2014-ohio-5386.pdf>

Appellant’s conviction for aggravated robbery was against the manifest weight of the evidence where, although the victims originally believed Appellant had a gun, it became clear he did not have a gun because he placed a call to someone, asking that person to bring him a gun and ammunition. Further, there was no testimony from any of the victims that Appellant explicitly told them he had a gun at the time.

State v. Robertson, 2014-Ohio-5389

OVI: Passenger

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/9/2014/2014-ohio-5389.pdf>

The trial court erred in finding Appellant guilty of OVI under R.C. 4511.19(A)(1)(a). Appellant was intoxicated, but he was the passenger of the car. He flicked the driver's cigarette out of her hand and on to her pants, causing her to lose control of the vehicle and crash. The Ninth District said his actions did not constitute operating a vehicle as defined by R.C. 4511.01(HHH). It found this case distinguishable from the First District's decision in *State v. Wallace*, 166 Ohio App.3d 845, because in that case the Appellant actually grabbed the steering wheel and cause the car to crash.

Tenth Appellate District of Ohio

Nothing new.

Eleventh Appellate District of Ohio

Nothing new.

Twelfth Appellate District of Ohio

Nothing new.

Supreme Court of Ohio

Nothing new.

Sixth Circuit Court of Appeals

Nothing new.

Supreme Court of the United States

Nothing new.