

Appellate Court Decisions - Week of 2/11/13

Note: Anything that has "OVERVIEW" in front of it is the Lexis summary of a case.

First Appellate District of Ohio

State v. Jones, Appeal No. C-120468, Trial No. B-1105449

Sentencing: Consecutive Sentences: R.C. 2929.14(C)(4): Findings

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-120468_02152013.pdf

The trial court must make the requisite findings under R.C. 2929.14(C)(4) before imposing consecutive terms of incarceration.

Jones pleaded guilty to four counts of gross sexual imposition (R.C. 2907.05(A)(4)) and two counts of rape (R.C. 2907.02(A)(2)). The trial court imposed a two-year sentence on each GSI, and 10 years on each rape to be served consecutively. The GSI and rape sentences were to be served concurrently, making the total sentence 20 years' incarceration.

Jones argued on appeal that the sentence was improper because the trial court failed to make the requisite findings under R.C. 2929.14(C)(4) before it imposed consecutive prison terms. The First District held that the record indicated that the trial court did not comply with R.C. 2929.14(C)(4). It vacated the trial court's imposition of consecutive sentences and remanded to the trial court for it to consider whether consecutive sentences are appropriate under R.C. 2929.14(C)(4) and to make such findings on the record.

State v. Green, Appeal No. C-110841, Trial No. B-1103020

Search and Seizure: Motion to Suppress

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-110841_02152013.pdf

Defendant matching confidential informant's description of a man selling a gun in a convenience store parking lot and leaving the scene when a police officer made eye contact with him was enough to justify a *Terry* stop followed by a search. The search was also justified as a search incident to a lawful arrest.

Green pleaded no contest and was convicted of one count of carrying a concealed weapon in violation of R.C. 2923.12(A)(2). On appeal, Green argued that the trial court erred by denying his motion to suppress.

In Green's case, Cincinnati police received a call from a confidential informant that someone was carrying a backpack in the area of the A to Z Market on Reading Road trying to sell a gun. Two police officers responded to the information and saw a man who matched the description given to the police in the parking lot. One of the officers made contact with the man, Green, and Green immediately tried to leave the area.

Green was stopped a block away and patted down by the officers. The officers also retrieved Green's backpack and one officer felt what he immediately recognized to be a handgun. A to Z market had filed a letter with the district allowing officers to stop people from trespassing on the property.

The trial court denied Green's motion to suppress the handgun because it believed the officers had enough information to briefly stop Green to determine whether he possessed a handgun. In addition, the trial court concluded that Green was properly arrested for trespassing, and the search of his person was proper as incident to a lawful arrest.

The First District affirmed the trial court's decision for the same reasons given by the trial court for denying the motion to suppress.

In re: M.P., Appeal No. C-110795, Trial No. F98-1261

Dependency: Guardianship

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-110795_02152013.pdf

Where a father failed to follow a magistrate's order to refrain from using physical discipline on his son, where the son said he wished to live with his mother, and where a children's services psychologist said the mother was functioning at a high level and had overcome her substance abuse problems, the juvenile court's decision to change custody to the mother will not be disturbed.

M.P.'s father appealed the juvenile court's adoption of a magistrate's decisions designating M.P.'s mother as M.P.'s legal custodian. The father had custody since 1999, but in 2009 the mother petitioned the juvenile court for custody of M.P.

After an extensive pretrial period and a nine-day trial, the magistrate concluded that M.P. should be placed in the legal custody of the mother. The magistrate also ordered that the father have substantial time with M.P. and included a visitation plan. The father filed objections to the magistrate's decision. The juvenile court reviewed the record, overruled the objections, and adopted the magistrate's decision.

The father appealed, arguing that the trial court abused its discretion in removing M.P. from his custody and placing M.P. in the care of this mother. Under R.C. 2151.23 and 3109.04, the juvenile court is to decide to whom the care, custody, and control of a

minor child shall be awarded, giving paramount consideration to the interests of the child.

The record in this case showed that despite an order of the magistrate to stop using physical discipline until further notice, the father allowed his girlfriend to discipline M.P. by allowing her to strike M.P. with a studded belt, which left marks and sores on his legs. M.P. also told the magistrate that he wanted to live with his mother. The mother was examined by a children's services psychologist who concluded that she was functioning at a high level and had overcome her past substance-abuse issues.

Therefore, the First District held, the juvenile court's decision that a change of custody to the mother was in the best interests of M.P. and should not be disturbed.

Supreme Court of Ohio

Nothing new.

Sixth Circuit Court of Appeals

Nothing new.

Supreme Court of the United States

Nothing new.