

Appellate Court Decisions - Week of 3/10/14

First Appellate District of Ohio

State v. Valines, 2014-Ohio-890

Homicide: Robbery: Evidence: Prosecutor: Counsel: Sentencing

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-130105_03122014.pdf

Summary from the First District:

“In a prosecution for aggravated murder with a firearm specification and possessing a weapon under disability, the trial court did not commit plain error in admitting into evidence the details of the defendant’s prior robbery conviction; the evidence was admissible under Evid.R. 404(B) to show modus operandi, as the previous robbery and the case at bar both involved allegations that the defendant had lured his victims to an arranged location by offering to enter into a drug transaction and had then robbed them at gunpoint.

“The trial court did not commit plain error in permitting the prosecutor to comment about the defendant’s lack of evidence to support his theory of self-defense and to refer to the defendant as a ‘thief’ and a ‘predator’: in asserting self-defense, the defendant assumed the burden of proving the defense by a preponderance of the evidence, and the prosecutor’s statements about the defendant were fair comments on the evidence.

“The defendant was not deprived of the effective assistance of trial counsel, where he asserted that counsel had been deficient in failing to object to the admission of evidence and to instances of alleged prosecutorial misconduct: the contested evidence relating to prior acts was admissible, and there was no showing that the state had engaged in misconduct.

“The defendant’s convictions for aggravated murder with a firearm specification and having a weapon under disability were based on sufficient evidence and were not against the manifest weight of the evidence: the state presented evidence that the defendant had fatally shot the victim while robbing him of a pound of marijuana, and the jury did not lose its way in rejecting the defendant’s assertion that he had been the victim of an attempted robbery.

“The trial court’s imposition of a life sentence without the possibility of parole for aggravated murder was not contrary to law, but the court erred in imposing a consecutive 36-month prison term for having a weapon under disability without making the requisite findings under R.C. 2929.14(C)(4).”

State v. Kirk, 2014-Ohio-891

Motion to Dismiss

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-130223_03122014.pdf

Summary from the First District:

“The trial court did not err when it refused to dismiss the charge against the defendant based on the post-plea presentence-investigation report in which the victim changed her story where the defendant did not move to withdraw his plea, which would have given the court an opportunity to determine the credibility of the victim.”

State v. Hoffman, 2014-Ohio-893

R.C. 2941.25: Merger

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-130410_03122014.pdf

Summary from the First District:

“The trial court erred under R.C. 2941.25 by failing to merge the defendant’s convictions for two counts of attempted child endangering, in violation of R.C. 2923.02(A), 2919.22(B)(1) and 2919.22(A), where the state relied on the same conduct, a single act of child abuse, to support the two offenses and the record showed that the offenses were committed neither separately nor with a separate animus.”

In Re: M.R. and M.M., 2014-Ohio-945

Juvenile: Procedure/Rules: Custody

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-130736_03142014.pdf

Summary from the First District:

“The trial court abused its discretion in violation of Juv.R. 40 by adopting the magistrate’s decision terminating mother’s parental rights where the trial court stated that it had found error in the magistrate’s decision, but that it did not have enough time to determine whether the error was prejudicial to mother.”

Second Appellate District of Ohio

Nothing new.

Third Appellate District of Ohio

Nothing new.

Fourth Appellate District of Ohio

Nothing new.

Fifth Appellate District of Ohio

State v. Boswell, 2014-Ohio-886

Search: Motion to Suppress: Drug Paraphernalia

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/5/2014/2014-ohio-886.pdf>

Where the police officer approached Appellant and another man while they were walking down the street at 10:30 a.m., there was no testimony regarding any suspicious activity or it being a high-crime or drug area, and Appellant refused a search, but the officer searched him anyway because his “cop radar” told him something was wrong, the trial court erred in failing to suppress the drug paraphernalia that was found on Appellant in the search.

Sixth Appellate District of Ohio

Nothing new.

Seventh Appellate District of Ohio

State v. Harding, 2014-Ohio-884

Administrative License Suspension: Appeal

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/7/2014/2014-ohio-884.pdf>

The trial court erred in denying Appellant’s administrative license suspension (ALS) appeal where the only evidence presented by the state was BMV Form 2255, and that form only listed some indicia of consumption of alcohol (odor on breath, bloodshot/glassy eyes, admission of drinking), but no indicia of impairment.

State v. Winkle, 2014-Ohio-895

Pre-Indictment Delay

Full Decision: <http://www.sconet.state.oh.us/rod/docs/pdf/7/2014/2014-ohio-895.pdf>

An investigation was opened against Appellee in 2002 for allegedly sexually abusing his daughter between 1994 and 1996. The case was closed in 2003 for lack of evidence. The case was reopened in 2012 when the daughter claimed she could remember Appellee talking about the assault to family members. Appellee was charged with multiple counts of rape and gross sexual imposition. The trial court granted Appellee's Motion to Dismiss for preindictment delay. The state appealed. The Seventh District affirmed that decision because Appellee proved he was actually and substantially prejudiced by the delay because of the destruction and loss of many evidentiary records, and the state failed to present a justifiable reason for the delay.

Eighth Appellate District of Ohio

Nothing new.

Ninth Appellate District of Ohio

Nothing new.

Tenth Appellate District of Ohio

Nothing new.

Eleventh Appellate District of Ohio

Nothing new.

Twelfth Appellate District of Ohio

State v. Ackley, 2014-Ohio-876

Plea: Crim.R. 11(c)

Full Decision: <http://www.sconet.state.oh.us/rod/docs/pdf/12/2014/2014-ohio-876.pdf>

The trial court erred – and Appellant’s plea was not entered knowingly, intelligently, and voluntarily – where it told him a community control sanction was theoretically possible, but, in fact, there was a mandatory prison sentence for his aggravated vehicular homicide convictions.

Supreme Court of Ohio

In Re: H.V., 2014-Ohio-812

Juvenile: R.C. 5139.52(F)

Full Decision: <http://www.sconet.state.oh.us/rod/docs/pdf/o/2014/2014-ohio-812.pdf>

A juvenile court has authority under R.C. 5139.52(F) to commit a juvenile to the custody of the Ohio Department of Youth Services for a period exceeding 30 days.

A juvenile court may order a commitment term for a supervised-release violation to be served consecutively to a commitment term for a new crime.

State v. Long, 2012-Ohio-3052

Sentencing: Juvenile: Mitigation: Youth: R.C. 2929.03(A): Eighth Amendment

Full Decision: <http://www.sconet.state.oh.us/rod/docs/pdf/o/2014/2014-ohio-849.pdf>

Syllabus of the Court:

1. A court, in exercising its discretion under R.C. 2929.03(A), must separately consider the youth of a juvenile offender as a mitigating factor before imposing a sentence of life without parole. (*Miller v. Alabama*, __ U.S. __, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012), followed.)
2. The record must reflect that the court specifically considered the juvenile offender’s youth as a mitigating factor at sentencing when a prison term of life without parole is imposed.

State ex rel. Gooden v. Kagel, 2014-Ohio-869

Writ of Mandamus: R.C. 2969.25

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/o/2014/2014-ohio-869.pdf>

“This is an appeal from the denial of a petition for a writ of mandamus that sought public records. Because appellant, Martine Gooden, failed to file the required supporting documents with his petition and because he failed to prove that the documents he sought were within the possession or control of appellee, Julie Kagel, Marion County Clerk of Courts, we affirm.”

Sixth Circuit Court of Appeals

Nothing new.

Supreme Court of the United States

Nothing new.