

Appellate Court Decisions - Week of 4/13/15

First Appellate District of Ohio

In re: M.P., 2015-Ohio-1533

Search

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2015/2015-Ohio-1533.pdf>

Summary from the First District:

“In a delinquency proceeding for carrying a concealed weapon, the trial court properly overruled the juvenile’s motion to suppress a handgun recovered from the waistband of his pants, because the detention of the juvenile, in a parking lot next to an apartment where the police were executing a search warrant, comported with the immediate-vicinity rule of *United States v. Bailey*, ___ U.S. ___, 133 S.Ct. 1031, 185 L.Ed.2d 19 (2013).”

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. Swank, 2015-Ohio-1500

Restitution

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/5/2015/2015-Ohio-1500.pdf>

In sentencing on a theft from office conviction, the trial court committed plain error by ordering Appellant to pay restitution for a time period

stretching from October 2012 through November 2013 when Appellant was convicted only for thefts in the months of November and December of 2012. R.C. 2941.41(C)(2)(a) does not allow the trial court to order restitution for all thefts regardless of the time period specified in the indictment.

Sixth Appellate District of Ohio

Nothing new.

Seventh Appellate District of Ohio

Nothing new.

Eighth Appellate District of Ohio

State v. Love, 2015-Ohio-1461

Sentencing

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2015/2015-Ohio-1461.pdf>

The trial court did not err in vacating Appellee's attempted escape conviction and sanctions for violating his post-release control where his original sentencing entry merely referenced the post-release control statute, and therefore did not properly notify him of his post-release control obligations.

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

Nothing new.

Supreme Court of Ohio

State v. Willan, 2015-Ohio-1475

Criminal Procedure: Right to Jury Trial: Sentencing: RICO: R.C. 2923.32(A)(1): Predicate Offenses: Sufficiency: Harmless Error

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/o/2015/2015-Ohio-1475.pdf>

This is another summary I won't pretend to understand. If you have a RICO case, this is an opinion you should read, just to understand the analysis. Here is the Supreme Court's conclusion in this case: "Imposition of R.C. 2929.14(D)(3)(a)'s mandatory sentence does not offend Willan's constitutional rights under *Alleyne*. In this case, imposition of the mandatory sentence occurred without any judicial fact-finding. To the contrary, all of the pertinent findings involved matters of law. * * * R.C. 2929.14(D)(3)(a) unambiguously applies to Willan and subjects him to a mandatory RICO sentence of ten years."

State v. Bode, 2015-Ohio-1519

OVI: Sentencing: Juvenile: R.C. 4511.19(G)(1)(D)

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/o/2015/2015-Ohio-1519.pdf>

Syllabus of the Court: "An adjudication of delinquency may not be used under R.C. 4511.19(G)(1)(d) to enhance the penalty for a later offense when the adjudication carried the possibility of confinement, the adjudication was uncounseled, and there was no effective waiver of the right to counsel."

Sixth Circuit Court of Appeals

Nothing new.

Supreme Court of the United States

Rodriguez v. United States, No. 13-9972

Fourth Amendment: Traffic Stop: K9 Sniff

Full Decision: http://www.supremecourt.gov/opinions/14pdf/13-9972_p8ko.pdf

Syllabus:

“Officer Struble, a K-9 officer, stopped petitioner Rodriguez for driving on a highway shoulder, a violation of Nebraska law. After Struble attended to everything relating to the stop, including, *inter alia*, checking the driver’s licenses of Rodriguez and his passenger and issuing a warning for the traffic offense, he asked Rodriguez for permission to walk his dog around the vehicle. When Rodriguez refused, Struble detained him until a second officer arrived. Struble then retrieved his dog, who alerted to the presence of drugs in the vehicle. The ensuing search revealed methamphetamine. Seven or eight minutes elapsed from the time Struble issued the written warning until the dog alerted.

“Rodriguez was indicted on federal drug charges. He moved to suppress the evidence seized from the vehicle on the ground, among others, that Struble had prolonged the traffic stop without reasonable suspicion in order to conduct the dog sniff. The Magistrate Judge recommended denial of the motion. He found no reasonable suspicion supporting detention once Struble issued the written warning. Under Eighth Circuit precedent, however, he concluded that prolonging the stop by “seven to eight minutes” for the dog sniff was only a *de minimus* intrusion on Rodriguez’s Fourth Amendment rights and was for that reason permissible. The District Court then denied the motion to suppress. Rodriguez entered a conditional guilty plea and was sentenced to five years in prison. The Eighth Circuit affirmed. Noting that the seven or eight minute delay was an acceptable ‘*de minimus* intrusion on Rodriguez’s personal liberty,’ the court declined to reach the question whether Struble had reasonable suspicion to continue Rodriguez’s detention after issuing the written warning.

Held:

“1. Absent reasonable suspicion, police extension of a traffic stop in order to conduct a dog sniff violates the Constitution’s shield against unreasonable seizures.

“A routine traffic stop is more like a brief stop under *Terry v. Ohio*, 392 U.S. 1, than an arrest, see, e.g., *Arizona v. Johnson*, 555 U.S. 323, 330. Its tolerable duration is determined by the seizure’s ‘mission,’ which is to address the traffic violation that warranted the stop, *Illinois v. Caballes*, 543 U.S. 405, 407 and attend to related safety concerns. Authority for the seizure ends when tasks tied to the traffic infraction are – or reasonably should have been – completed. The Fourth Amendment may tolerate certain unrelated investigations that do not lengthen the roadside detention, *Johnson*, 555 U.S., at 327-328 (questioning); *Caballes*, 543 U.S., at 406, 408 (dog sniff), but a traffic stop ‘become[s] unlawful if it is prolonged beyond the time reasonably required to complete th[e] mission’ of issuing a warning ticket, *id.*, at 407.

“Beyond determining whether to issue a traffic ticket, an officer’s mission during a traffic stop typically includes checking the driver’s license, determining whether there are outstanding warrants against the driver, and inspecting the automobile’s registration and proof of insurance. These checks serve the same objective as enforcement of the traffic code: ensuring that vehicles on the road are operated safely

and responsibly. See *Delaware v. Prouse*, 440 U.S. 648, 658-659. Lacking the same close connection to roadway safety as the ordinary inquiries, a dog sniff is not fairly characterized as part of the officer's traffic mission.

“In concluding that the *de minimis* intrusion here could be offset by the Government's interest in stopping the flow of illegal drugs, the Eighth Circuit relied on *Pennsylvania v. Mimms*, 434 U.S. 106. The Court reasoned in *Mimms* that the government's ‘legitimate and weighty’ interest in officer safety outweighed the ‘*de minimis*’ additional intrusion of requiring a driver, lawfully stopped, to exit a vehicle, *id.*, at 110-111. The officer-safety interest recognized in *Mimms*, however, stemmed from the danger to the officer associated with the traffic stop itself. On-scene investigation into other crimes, in contrast, detours from the officer's traffic-control mission and therefore gains no support from *Mimms*.

“The Government's argument that an officer who completes all traffic-related tasks expeditiously should earn extra time to pursue an unrelated criminal investigation is unpersuasive, for a traffic stop ‘prolonged beyond’ the time in fact needed for the officer to complete his traffic-based inquiries is ‘unlawful,’ *Caballes*, 543 U.S., at 407. The critical question is not whether the dog sniff occurs before or after the officer issues a ticket, but whether conducting the sniff adds time to the stop.

“2. The determination adopted by the District Court that detention for the dog sniff was not independently supported by individualized suspicion was not reviewed by the Eighth Circuit. That question therefore remains open for consideration on remand.”