

Appellate Court Decisions - Week of 4/28/14

First Appellate District of Ohio

State v. Murry, 2014-Ohio-1812

Assault: Evidence: Sentencing

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-130289_04302014.pdf

Summary from the First District:

“The trial court did not commit plain error in admitting evidence that the defendant had threatened and assaulted the alleged victim in the years preceding the felonious assault for which he was charged: the prior acts were admissible under Evid.R. 404 to demonstrate motive and to demonstrate that the defendant had acted knowingly in causing the victim serious physical harm.

“The trial court did not commit plain error in admitting the prior consistent statement of the alleged victim: on cross-examination, defendant’s counsel repeatedly implied that the victim had fabricated his story about the assault, and the prior statement was therefore admissible under Evid.R. 801 to rebut the charge of fabrication.

“The defendant was not deprived of the effective assistance of trial counsel, where counsel had failed to object to other-acts evidence and to the admission of the victim’s prior consistent statement: the evidence was admissible and there was accordingly no basis for counsel to object.

“The defendant’s conviction for felonious assault was based on sufficient evidence and was not against the manifest weight of the evidence, where the state demonstrated that the defendant had bitten off portions of the victim’s ear, causing profuse bleeding and permanent disfigurement.

“The trial court’s sentence of six years’ imprisonment was not clearly and convincingly contrary to law: although the defendant did not have a serious criminal record, the trial court properly concluded that the defendant’s actions and the injuries inflicted in the instant case warranted a substantial prison term.

“The trial court erred in failing to merge a second count of felonious assault with the count alleging that the defendant had caused the victim serious physical harm: while the trial court announced at the sentencing hearing that the second count would be merged, the sentencing entry failed to reflect merger.”

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. Linzy, 2014-Ohio-1738

Ineffective Assistance: Sentencing: Allied Offenses

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/5/2014/2014-ohio-1738.pdf>

Both trial and appellate counsel were ineffective for failing to raise the issue that Appellant's two murder convictions were allied offenses of similar import where they were based on killing one person.

Sixth Appellate District of Ohio

Nothing new.

Seventh Appellate District of Ohio

Nothing new.

Eighth Appellate District of Ohio

State v. V.M.D., 2014-Ohio-1844

Expungement: Attempted Robbery

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2014/2014-ohio-1844.pdf>

The Eighth District held that the trial court erred in denying Appellant's application to expunge his attempted robbery conviction. Although it recognized that robbery falls within the definition of "offense of violence," and "offense of violence" includes attempts of those offenses, here, because Appellant was convicted of "either committing or attempting to commit a theft while either using or threaten [sic] to use force, which the state admitted involved possibly a fake gun not in his possession," it held that where the "underlying offense itself contemplates attempt, and the defendant was charged with an attempt of that offense, the element of violence is simply too removed for the defendant to be automatically precluded from expungement." It went on to find that Appellant was the sort of person for which expungement was created, and reversed the trial court's judgment.

Ninth Appellate District of Ohio

State v. Hollaender, 2014-Ohio-1782

Speedy Trial

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/9/2014/2014-ohio-1782.pdf>

The trial court violated Appellant's speedy trial rights where more than 200 days passed between his misdemeanor OVI arrest and when he entered his no contest plea. The Ninth District found that Appellant's appeal of the denial of driving privileges and his request for driving privileges were part of his civil Administrative License Suspension proceeding and therefore the trial court should have ruled on his motion to suppress. The Ninth District then used the Ohio Rules of Superintendence standard of 120 days to rule on a motion to determine how much time should have been tolled, and after tolling 120 days, more than 90 days had still passed. It therefore ordered Appellant discharged.

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.