

Appellate Court Decisions - Week of 5/19/14

First Appellate District of Ohio

State v. Benton, 2014-Ohio-2163

OVI: Speedy Trial: Evidence

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-130558_05212014.pdf

Summary from the First District:

“In a prosecution for operating a vehicle under the influence of alcohol, improper change of course, and failure to reinstate a driver’s license, the trial court did not err in overruling the defendant’s motion to dismiss the charges for lack of a speedy trial: a defense motion to suppress evidence operated to toll speedy-trial time under R.C. 2945.72(E), and a continuance requested jointly by the parties tolled time under R.C. 2945.72(H).

“Testimony that a photograph fairly and accurately represents the item depicted is sufficient to satisfy the authentication requirement under Evid.R. 901(B)(1): the trial court erred by failing to admit into evidence a photograph showing damage to the defendant’s car from a car accident, but the error was harmless because the photograph did not negate the fact that the defendant could not have made the turn with reasonable safety.

“The trial court erred in excluding the testimony of a defense witness about the severity of the defendant’s injuries after a car accident on relevance grounds: the defense elicited the testimony in an attempt to show that the defendant’s post-accident confusion and argumentativeness was the result of her injuries and not intoxication, but the error was harmless because the state presented other evidence of intoxication.

“The defendant’s conviction for operating a vehicle under the influence of alcohol was based on sufficient evidence and was not against the manifest weight of the evidence: the officer testified that the defendant made a U-turn directly into the path of oncoming traffic, smelled strongly of alcohol, had bloodshot eyes, and admitted to consuming alcohol.

“The defendant’s failure-to-reinstate conviction was supported by sufficient evidence where the officer testified that a search of the defendant’s license returned information that it had not been reinstated after a prior suspension: although the evidence was hearsay, a reviewing court must consider both properly- and improperly-admitted evidence when conducting a sufficiency review.

“The defendant’s improper-change-of-course conviction was not against the manifest weight of the evidence: the trier-of-fact did not clearly lose its way in finding

the testimony of the other driver to be credible, and the officer's testimony about the position of the defendant's car after the accident supported the other driver's version of the facts.

"The defendant's court-appointed counsel was not ineffective for failing to object to hearsay testimony that the defendant's license had not been reinstated where counsel was active in representing defendant in both the pretrial and trial settings, and counsel's decision not to object could reasonably have been trial strategy."

Second Appellate District of Ohio

State v. Hall, 2014-Ohio-2094

Evidence: Rape: Rape Shield

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/2/2014/2014-ohio-2094.pdf>

The trial court erred in not allowing alleged rape victim to answer defense counsel's question regarding whether she had made any prior false accusations of rape. If she would have answered "yes," the trial court then should have conducted an *in camera* hearing in accordance with *State v. Boggs*, 63 Ohio St.3d 418, 588 N.E.2d 813 (1992) to determine if the accusations involved sexual activity or were totally unfounded.

Third Appellate District of Ohio

Nothing new.

Fourth Appellate District of Ohio

Nothing new.

Fifth Appellate District of Ohio

Nothing new.

Sixth Appellate District of Ohio

Nothing new.

Seventh Appellate District of Ohio

Nothing new.

Eighth Appellate District of Ohio

State v. Cornick, 2014-Ohio-2049

Attorney Disqualification

Full Decision: <http://www.sconet.state.oh.us/rod/docs/pdf/8/2014/2014-ohio-2049.pdf>

Summary from the Eighth District:

“Court erred by disqualifying prosecuting attorney on grounds that he publically suggested in testimony before a senate committee considering a bill to ban internet cafes that defendants who he was prosecuting in a gambling case were guilty. The court incorrectly applied an appearance of impropriety standard instead of an actual prejudice standard. In addition, the court did not rely on a transcript of what the prosecuting attorney said to the senate committee, but on the testimony of a state agent whose testimony did not show that the prosecuting attorney suggested that the defendants were guilty.”

State v. Pawlak, 2014-Ohio-2175

Ineffective Assistance

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2014/2014-ohio-2175.pdf>

Trial counsel was ineffective for failing to object to inadmissible, prejudicial other-acts evidence. Appellant faced several charges stemming from allegations that he had sexually molested his ex-girlfriend’s young daughters. At trial, testimony was elicited from their mother/Appellant’s ex-girlfriend that she broke up with him because he cheated on her with several other women, including one who was 15 years old. Trial counsel did not object to any questions in that line of questioning, and was ineffective for failing to do so.

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

Nothing new.

Sixth Circuit Court of Appeals

Nothing new.

Supreme Court of the United States

Nothing new.