

Appellate Court Decisions - Week of 7/14/14

First Appellate District of Ohio

State v. Payne, 2014-Ohio-3113

Postconviction: Allied Offenses

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-130790_07162014.pdf

Summary from the First District:

“The common pleas court erred in granting defendant’s motion to modify his sentences for serious-harm felonious assault, R.C. 2903.11(A)(1), and deadly-weapon felonious assault, R.C. 2903.11(A)(2), to afford him the protection of R.C. 2941.25, because the court lacked jurisdiction to entertain the motion: the motion was reviewable under the postconviction statutes, R.C. 2953.21 et seq., but those statutes did not confer jurisdiction to entertain the motion; nor could the court exercise the jurisdiction to correct a void judgment, because the trial court’s failure to afford the protection of R.C. 2941.25 did not render defendant’s sentences void. [*But see* DISSENT: The court had jurisdiction to review and correct defendant’s felonious-assault sentences, because a sentence imposed in violation of R.C. 2941.25 is void, and R.C. 2941.25 did not authorize a sentence for each offense, when the offenses were based upon the same conduct—wounding a single victim with a single gunshot—and the record did not permit a conclusion that they had been committed either separately or with a separate animus as to each.]”

State v. Sullivan, 2014-Ohio-3112

Venue

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-130629_07162014.pdf

Summary from the First District:

“The evidence was insufficient to support the defendant’s convictions for failure to stop after an accident under R.C. 4549.02 and improper backing under Cincinnati Municipal Code 506-28 where the state failed to prove venue beyond a reasonable doubt: the state presented no evidence as to the city, county, or state where the offenses occurred, and references by a witness to certain street names were not sufficiently unique to permit the conclusion that the offenses had occurred in Hamilton County, Ohio.”

State v. Houston, 2014-Ohio-3111

Aggravated Robbery: Aggravated Burglary: Sentencing

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-130429_07162014.pdf

Summary from the First District:

“The trial court properly sentenced defendant to consecutive sentences where the court found that consecutive sentences were necessary to protect the public or to punish defendant and were not disproportionate to defendant’s conduct and to the danger defendant posed to the public, and that the offenses were committed as part of one or more courses of conduct, and the harm caused by the offenses was so great or unusual that no single prison term would adequately reflect the seriousness of defendant’s conduct.

“The trial court did not err in sentencing defendant to maximum terms of imprisonment where defendant was unable to point to anything in the record demonstrating that the trial court had failed to properly consider the guidelines set forth in R.C. 2929.11 and 2929.12.

“Defendant failed to demonstrate that he had not been sentenced ‘consistent with sentences imposed for similar crimes committed by similar offenders,’ because consistency in sentencing is achieved by the trial court weighing the same statutory sentencing factors for each defendant, and the trial court did so in this case.

“Defendant was not convicted of allied offenses of similar import where: (1) the victims were held for extended durations and taken from place to place so that the kidnappings did not merge with other counts; (2) the aggravated-robbery and aggravated-burglary counts did not merge because the conduct constituting the aggravating factor for each charge was different; (3) defendant committed the theft of a motor vehicle after all the other crimes had been completed, constituting a separate act; and (4) defendant possessed a weapon while under disability both before and after the crime spree, making that conduct separate from the other crimes.

“Defendant did not demonstrate ineffective assistance of counsel where: (1) he made no showing that a motion to suppress would have succeeded below; (2) he was not prejudiced by the jury seeing pictures of items that had not been stolen from the victims; (3) hearsay statements regarding the criminal activities of his accomplice, along with a reference in his statement to his own prior criminal conduct, were part of a sound trial strategy to depict defendant as an unwilling participant in the crimes; and (4) he was not prejudiced by trial counsel’s failure to argue that certain of his crimes were allied offenses of similar import because the allied-offense arguments were fully addressed on appeal.

“The cause must be remanded to the trial court for correction of the judgment entry to reflect that the prison terms imposed on all counts are to be served consecutively where the entry failed to reflect that the term imposed for count 7 is to be served consecutively to all other terms and the trial court’s intention that count 7 is to run consecutively to the consecutive terms imposed on all other counts is manifest in the record.”

State v. Jones, 2014-Ohio-3110

Search: Drug Possession

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-130359_07162014.pdf

Summary from the First District:

“A warrantless search of a vehicle by police officers did not violate the defendant’s Fourth Amendment rights, and the trial court properly denied the defendant’s motion to suppress the evidence found in the vehicle where police officers saw the defendant driving the vehicle; the defendant denied driving the vehicle after brief questioning by the officers; the officers arrested the defendant on an unrelated outstanding warrant; the officers conducted a drug-dog sniff of the vehicle, which indicated the presence of drugs; the officers used the car keys recovered from the defendant to open the vehicle; and the officers found heroin in the console of the vehicle.

“In a heroin-possession trial, a police officer’s testimony that the investigation of the defendant began when an informant told the officer that the defendant and the informant had dealt ‘dope’ together, and that the informant would be meeting the defendant, who would have ‘dope’ either on his person or in his vehicle, was inadmissible hearsay under *State v. Ricks*, 136 Ohio St.3d 356, 2013-Ohio-3712, 995 N.E.2d 1181; however, the admission of the officer’s testimony did not amount to plain error.

“The defendant’s conviction for heroin possession was supported by sufficient evidence where the evidence showed that police officers had received a tip that the defendant would be driving to a community center in a light-colored or silver SUV and would be carrying drugs, the officers witnessed the defendant drive a vehicle matching the description given in the tip and park it in the community center lot, officers arrested the defendant on an unrelated outstanding warrant, and a subsequent search of the vehicle uncovered heroin.”

Second Appellate District of Ohio

State v. Loudon, 2014-Ohio-3059

Attorney Fees: Appointed Counsel

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/2/2014/2014-ohio-3059.pdf>

The trial court erred in ordering the indigent Appellant to pay for his legal representation as part of his costs because such compensation must be pursued in a separate civil action.

State v. Maxwell, 2014-Ohio-3062

OVI: Motion to Suppress

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/2/2014/2014-ohio-3062.pdf>

The trial court erred in overruling Appellant's motion to suppress in his OVI case because the police officer did not have probable cause to initiate a traffic stop where Appellant, while making a left-to-right lane change, straddled the center line for 50-100 feet while traveling 45 mph, and did not turn off his turn signal for another 300 yards after making the lane change. Appellant also took an exit ramp that led to a closed entrance to Wright Patterson Air Force Base.

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

Nothing new.

Ninth Appellate District of Ohio

State v. Drushal, 2014-Ohio-3088

OVI: Motion to Suppress

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/9/2014/2014-ohio-3088.pdf>

The trial court did not err in granting Appellant's motion to suppress because there was no probable to initiate the traffic stop where he did not stop before the white line at a traffic sign, but the Wooster ordinance he was cited as violating only requires a driver to stop "at" a white line. The stop, therefore, was based on the officer's mistake of law.

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. Limoli

Sentencing

Full Decision: <http://www.sconet.state.oh.us/rod/docs/pdf/o/2014/2014-ohio-3072.pdf>

Appellants who were convicted of the possession of crack cocaine prior to September 30, 2011, but were not sentenced until after that date must be sentenced under the provisions of 2011 Am.Sub.H.B. No. 86.

Sixth Circuit Court of Appeals

Nothing new.

Supreme Court of the United States

Nothing new.