Appellate Court Decisions - Week of 7/8/13

First Appellate District of Ohio

Nothing new.

Eighth Appellate District of Ohio

***City of Brooklyn v. Kaczori*, No. 98816**

Obstructing Official Business: Sufficiency of the Evidence: No Overt Act: Failure to Provide Identification

Full Decision: http://www.sconet.state.oh.us/rod/docs/pdf/8/2013/2013-ohio-2901.pdf

Where a defendant has not committed any crimes, his mere refusal to provide identifying information to the police, by itself, is insufficient to convict him of obstructing official business.

At around 2:30 a.m. on March 8, 2013, Kaczor was out walking because he was having trouble sleeping. Brooklyn Police Department Officer James Roach saw him and requested his identification. Kaczor refused and continued walking. The officer asked again for Kaczor to stop and talk, but he continued walking. The third time, the officer ordered him to stop and turn around, so he complied and asked the officer why he was being stopped. The officer said he looked young and he wanted to determine his age to determine whether he was out past the 11:00 p.m. curfew for people under 18.

Kaczor believed there was no legitimate reason for the stop and refused to give his name or age. The officer arrested him and took him to the Brooklyn Police Department. During booking, Kaczor identified himself and stated that he was 24 years old. He was not booked for a curfew violation, but was charged with obstructing official business. After a bench trial, he was found guilty and sentenced to a $100 fine, which was suspended along with court costs.

The Eighth District, in analyzing the issue, went through a litany of case law and reached the following conclusions: "Kaczor did not commit an affirmative act prior to his arrest. Officer Roach admitted that he did not observe Kaczor commit any crime or act suspiciously. There were no reports of crimes or suspicious activities that evening. Officer Roach testified that he stopped Kaczor solely under suspicion that he was in violation of Brooklyn's curfew. On being asked to identify himself, Kaczor refused and Officer Roach arrested him.

"We are mindful of Brooklyn's right to enforce its curfew laws, and we do not fault the police for detaining Kaczor under the circumstances. Police may reasonably suspect and detain someone for being out past curfew. When the police discovered that Kaczor was 24 years old, they released him because they had no legitimate reason to

detain him further. Since Kaczor had not committed any crimes, his mere refusal to provide identifying information to the police, by itself, was insufficient to demonstrate a violation of B.O. 525.07 [Brooklyn's obstructing official business statute, which is nearly identical to Ohio's.] Therefore, the trial court erred in failing to grant Kaczor's Crim.R. 29 motion for acquittal." [citations omitted]

Eleventh Appellate District of Ohio

***State v. Barnes*, No. 2012-P-0133, 2013-Ohio-2836**

Ineffective Assistance of Counsel

Full Decision: http://www.sconet.state.oh.us/rod/docs/pdf/11/2013/2013-ohio-2836.pdf

Trial counsel was ineffective for failing to request a jury instruction on the defense of necessity and for failing to raise the defense of necessity on a charge of vandalism where the defendant kicked out a police cruiser window after he was locked in the back of a police cruiser at the police station on a hot day, with pepper spray on his face, for 45 minutes while yelling for help because he couldn't breathe.

Admittedly, I included this decision because the facts make for amusing reading, but it does raise the point that you need to make sure you ask for jury instructions on an affirmative defense, rather than just argue it on closing, when you have an affirmative defense to raise.

Barns was indicted on one count of vandalism (felony) and one count of resisting arrest (misdemeanor). He was convicted after a jury trial.

On the day in question, Officer Hearns of the Windham Police Department in Portage County responded to a domestic disturbance call. When he arrived, Barnes and Maria Disanza were outside the home along with two other residents. The officer approached Disanza to obtain a narrative of what prompted the disturbance call.

After the Officer began questioning Disanza, Barnes, appearing agitated and inebriated, injected himself into the investigation to give his version of events. The office advised Barnes to calm down, but his efforts were unsuccessful, so he tried to handcuff Barnes. Barnes became resistant, so the officer forced him to the ground, planting his face in dog excrement. Barnes continued to resist, so the officer pepper sprayed him in the side of the face and placed him in handcuffs. Barnes then refused to get into the cruiser until the officer "got this shit" off his face. Barnes was placed in the cruiser with excrement and pepper spray still on his face.

When the officer returned to the police station, he parked the cruiser in the garage and closed the garage door. The officer turned office cruiser and went inside to work on the arrest report. The officer left Barnes in the car with the rear windows shut,

though the officer said the windows were "slightly cracked." Barnes said his face was burning from the pepper spray combined with the heat in the car. He yelled that he couldn't breathe, but nobody came. After 45 minutes in the garage, Barnes said he felt asphyxiated and had no choice but to break the cruiser window. He kicked the window out and cut his leg in the process.

At trial, counsel elicited the testimony about not having a choice to kick out the window, but he did not assert the defense of necessity and did not request any such jury instruction. The Eleventh District held the following:

"The problem with counsel arguing the defense during the course of the trial but failing to request the instruction is obvious. It is clear Mr. Barnes knowingly and deliberately caused the damage. Without the instruction on the defense of necessity, there is nothing in the jury instructions as given that could have permitted the jury to find Mr. Barnes not guilty.

"Given the facts and circumstances outlined above, Mr. Barnes was denied effective assistance of trial counsel with regard to the charge of vandalism."

Twelfth Appellate District of Ohio

***City of Middletown v. Homel*, No. CA2012-08-154, 2013-Ohio-2857**

Speedy Trial: OVI

Full Decision: http://www.sconet.state.oh.us/rod/docs/pdf/12/2013/2013-ohio-2857.pdf

Where the defendant was arrested for driving on a street closed for repair and OVI, but the officer only issued a citation for the first offense and neglected to issue a citation for the OVI, and the state did not attempt to serve the OVI citation on the defendant until more than 90 days after the arrest, the defendant's speedy trial time had run and the charge must be dismissed because speedy trial time began to run on the date of arrest, not on the date of the charge.

A Middletown police officer saw Homel's vehicle stuck in the mud on a road that was closed for construction. The officer smelled alcohol on Homel's person and noticed his eyes were bloodshot and he was unsteady on his feet. The officer performed standard field sobriety tests on Homel and he failed, so the officer arrested him for OVI. Homel refused to take a BAC test, so he received an administrative license suspension. The officer issued a citation to Homel for driving on a street closed for repair but forgot to issue a citation to him for OVI.

Homel's arrest was on October 14, 2011. The state was required to bring him to trial on the OVI charge by January 13, 2013. No attempted to serve him with his citation for OVI was made until January 18, 2013. The state attempted to argue that the speedy

trial time should start to run on the date Homel was served with the citation, but the Twelfth District held that the time began to run on the date of arrest and there were no time waivers made, so his OVI charge must be dismissed.

Supreme Court of Ohio

Nothing new.

Sixth Circuit Court of Appeals

Nothing new.

Supreme Court of the United States

Nothing new.