

Appellate Court Decisions - Week of 8/26/13

First Appellate District of Ohio

State v. Pate, Appeal Nos. C-130109, C-130110, C-130112; Trial Nos. 12CRB-37258A/B, 12CRB-39325

Evidence: R.C. 2941.25: Sentencing

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-130109_08302013.pdf

Summary from the First District:

The defendant's convictions for threat of domestic violence, aggravated menacing, and violation of a protective order were supported by sufficient evidence and were not against the manifest weight of the evidence where the defendant had threatened to shoot his ex-wife during a domestic dispute and then had ignored a protective order that he not contact her.

The trial court did not abuse its discretion in imposing an aggregate term of 360 days' incarceration where the court had evidence of the defendant's prior domestic-violence conviction, his violation of a protective order and his possession of a firearm.

The trial court erred when it convicted the defendant of both threat of domestic violence and aggravated menacing because they were allied offenses of similar import where the state relied upon the same conduct, the defendant's threatening his ex-wife with a gun, to support the two offenses.

Supreme Court of Ohio

Nothing new.

Sixth Circuit Court of Appeals

United States v. Booker, No. 11-6311

Fourth Amendment: Illegal Search and Seizure

Full Decision: <http://www.ca6.uscourts.gov/opinions.pdf/13a0251p-06.pdf>

Appellant was taken to a doctor based on the suspicion that he had drugs hidden in his rectum. The doctor's actions of injecting the appellant with muscle relaxants, drugs to render the appellant both unconscious and paralyzed, intubating the appellant, and digitally entering his rectum to remove a five-gram crack rock were imputed to the police officers because

they stood idly by and watched it happen – all without the appellant’s consent. The Sixth Circuit held the crack rock must be suppressed as these actions were a gross violation of the Fourth Amendment. (Note: For a full understanding, it’s worth reading at least the facts of this case.)

Summary from the Sixth Circuit:

Felix Booker was convicted of possession of a five-[gram] rock of crack cocaine, which he had hidden in his rectum. Police officers, reasonably suspecting that Booker had contraband hidden in his rectum, took Booker to an emergency-room doctor. The doctor, using a procedure that Booker did not consent to, intubated Booker for about an hour, rendered him unconscious for twenty to thirty minutes, and paralyzed him for seven to eight minutes. Using a finger, the doctor found and removed the crack cocaine, and turned it over to the police. Even though the doctor may have acted for entirely medical reasons, the uncontested procedure while Booker was under the control of the police officers must, in the circumstances of this case, be attributed to the state for Fourth Amendment purposes. The uncontested procedure, moreover, shocks the conscience at least as much as the stomach pumping that the Supreme Court long ago held to violate due process. The evidence resulting from the procedure should accordingly have been excluded, and Booker’s conviction must be reversed.

Supreme Court of the United States

Nothing new.