

Appellate Court Decisions - Week of 9/9/13

First Appellate District of Ohio

Nothing new.

Sixth Appellate District of Ohio

In re K.A., 2013-Ohio-3847

Juvenile Delinquency: Jail Time Credit

Full Decision: <http://www.supremecourt.ohio.gov/rod/docs/pdf/6/2013/2013-ohio-3847.pdf>

In a delinquency adjudication, the juvenile court erred in by declining to credit the time the juvenile was confined at a youth treatment center when the stay of his commitment was revoked – the wrong version of R.C. 2152.18(B) was applied (the version prior to Am.Sub.S.B. No. 337). R.C. 2152.18(B) is not triggered until the youth was found to have violated the rules of probation and the stay was rescinded.

On May 18, 2012, K.A. was found delinquent of aggravated robbery. On May 24, 2012, he was placed on probation and committed to DYS for one year, maximum of his 21st birthday, stayed on the condition that he “cooperate, participate, and obey all program terms and conditions” at the youth treatment center (YTC). On October 25, 2012, K.A. was adjudicated delinquent of a probation violation for violating YTC rules. The court rescinded his probation and imposed the stayed commitment to DYS. The court credited him with 86 days of detention under R.C. 2152.18(B), but didn’t credit him for the total number of days he was confined at YTC.

Before September 28, 2012, under R.C. 2152.18(B), a youth committed to DYS was entitled to a credit for days he or she was “held in detention.” However, on September 28, 2012, “held in detention” was replaced with “confined” by Am.Sub.S.B. No. 337. The effect of that amendment was to broaden the circumstances under which a youth will receive credit against his or her term of institutionalization.

When K.A.’s probation was rescinded and the commitment was imposed on October 25, 2012, he did not receive credit for the 121 days that he spent at YTC. The state argued that K.A.’s commitment was imposed on May 24, 2012, before S.B. 337 was passed, so the former version of the statute was applicable. The Sixth District, held, however, that K.A. was not committed until he was found to have violated the rules of probation and the stay was rescinded. Therefore, it held that K.A. was entitled to a credit of an additional 121 days for the time he was confined at YTC.

Ninth Appellate District of Ohio

State v. Taylor, 2013-Ohio-3906

Fourth Amendment: Search and Seizure: Motion to Suppress

Full Decision: <http://www.supremecourt.ohio.gov/rod/docs/pdf/9/2013/2013-ohio-3906.pdf>

The trial court erred in denying the defendant's motion to suppress where the only reasons police officer had for stopping the defendant were: the defendant's vehicle registration listing an address in an adjacent county, an off-duty officer working security at a grocery store's unfamiliarity with the defendant and the car's driver, and the purchase of a single item that is not itself illegal to possess (but could be used in making methamphetamine). Those factors amounted to nothing more than a "hunch" that criminal behavior was afoot.

The defendant was charged with one count of illegal assembly or possession of chemicals for the manufacture of drugs in violation of R.C. 2925.041(A). He moved to suppress the evidence on the basis that it resulted from an illegal stop of the car he was a passenger in. The motion to suppress was denied. The defendant changed his plea to no contest and was found guilty.

At the hearing on the motion to suppress the officer who pulled the vehicle over testified that on the day in question, another officer, who was working off-duty as a security officer at a grocery store, called him to let him know he saw two people purchase lye, which is one ingredient that may be used in the manufacture of methamphetamine. The off-duty officer also reported that the people who purchased the lye were "suspicious" in that they were unfamiliar to him. The first officer responded by following the car. When he ran the license plates, the officer learned it belonged to a woman and was registered to her at an address in a neighboring county. Based on this information, without having observed any criminal behavior or traffic infraction, the officer initiated a stop of the car.

The Ninth District held that, after reviewing the totality of those circumstances, the State failed to meet its burden of demonstrating that the officer possessed a reasonable articulable suspicion of criminal activity to justify the stop. It said the factors considered by the officer did not provide more than a "hunch" that criminal behavior was afoot. It said the fact that the driver and her passenger, the defendant, were unfamiliar to the private duty officer did not provide reasonable suspicion for any illegal activity.

Twelfth Appellate District of Ohio

Summary From Judge Rodenberg:

STATE OF OHIO v. LLOYD A. WILSON
BUTLER CA2012-12-254
OPINION
AFFIRMED

FACTS:

– Defendant appeals his sentence and conviction in Butler County Area III Court for failure to yield right of way when turning left. Defendant argued his conviction should be reversed because the trial court allowed a witness to testify whose name was not disclosed prior to trial.

CRIM.R. 16(I); DISCOVERY SANCTION; WITNESS LIST

– Although the state failed provide defendant with a witness list, the trial court imposed an appropriate sanction for the discovery violation, offering to continue the trial until later that day to allow defense counsel to question the witness or otherwise prepare prior to the witness testifying. In reaching this decision, the trial court considered the circumstances surrounding the state's failure to provide the witness list, including that the omission did not appear to be willful or in bad faith. Accordingly, the state did abuse its discretion in permitting the witness to testify.

Full Text at:

<http://www.sconet.state.oh.us/rod/docs/pdf/12/2013/2013-ohio-3877.pdf>

Supreme Court of Ohio

Nothing new.

Sixth Circuit Court of Appeals

United States v. Freeman, No. 11-1798

Evidence Rule 701: Opinion Testimony by Lay Witnesses

Full Decision: <http://www.ca6.uscourts.gov/opinions.pdf/13a0276p-06.pdf>

The trial court erred by improperly permitting an FBI agent to give lay testimony under Federal Evidence Rule 701. The agent was allowed to interpret the meaning of statements in recorded phone conversations between the co-defendants without backing those opinions up with testimony about personal experiences. In essence, he gave no foundation for his opinion testimony. Allowing the agent to do so was prejudicial to the defendant, as the jury was likely to give the benefit of the doubt to the agent's interpretations (which fit the prosecution's narrative perfectly and which could have been based on hearsay and other inadmissible evidence).

First, it is important to note that Ohio's Evidence Rule 701 and the Federal Evidence Rule 701 are different, but they are similar enough to make this decision important.

Ohio:

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (1) rationally based on the perception of the witness and (2) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue.

Federal:

If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is:

(a) rationally based on the witness's perception;

(b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and

(c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

This case is from a murder trial in Michigan. The details of what happened with the murder aren't important, but the link is above if you want to read them. What is important is that one of the co-defendants' phone was tapped by the FBI, and 23,000 phone conversations were recorded between the several co-defendants. Seventy-seven of those calls were admitted as exhibits at this trial, and portions of them were played for the jury. An FBI agent was called to testify regarding his personal impressions of the recorded conversations. He interpreted the conversations as they were played. His testimony ranged from voice and nickname identifications to substantive interpretations of the meaning of the various statements.

The Sixth Circuit goes through several examples of what was said on the recorded conversations and the agent's interpretations of those statements. The basic problem that occurred here is that the prosecution failed to establish a proper foundation for the agent's testimony under Federal Evidence Rule 701. Throughout the trial, the agent substantiated his responses and inferences with generic information and references to the investigation as a whole. He didn't use personal experiences that led him to obtain his information. In essence, the agent was allowed to testify about the meaning of numerous phone calls without regard to whether his testimony was mere speculation or relied on hearsay evidence. With the jury ignorant of the source of the agent's

information, it likely gave him the benefit of the doubt. The Sixth Circuit reversed the conviction, holding that the district court improperly permitted the agent to give lay testimony under Federal Rule of Evidence 701.

Supreme Court of the United States

Nothing new.