Appellate Court Decisions - Week of 1/26/15

First Appellate District of Ohio

***State v. Cauthen*, 2015-Ohio-272**

Sentencing

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-130475_01282015.pdf

Summary from the First District:

"The trial court did not abuse its discretion under R.C. 2929.15(A) to impose conditions of release under a community-control sanction, when it imposed a requirement that defendant submit to random drug testing under R.C. 2929.15(A)(1) and 2929.17(H): the random-drug-testing condition was reasonably related to the goal of rehabilitation, when the presentence-investigation report revealed that defendant suffered from bipolar disorder, had been convicted of a drug-related offense, and had had numerous juvenile adjudications for serious offenses, including theft, and when she admitted to experimenting with drugs and receiving psychiatric counseling.

"The trial court abused its discretion under R.C. 2929.15(A) to impose conditions of release under a community-control sanction, when it imposed, pursuant to R.C. 2929.17(J), a requirement that defendant obtain full-time employment: requiring full-time employment, as opposed to part-time employment, was not reasonably related to the goal of rehabilitation, when full-time employment would jeopardize defendant's mental-health disability benefits, and when the record showed that she had been unable to work full-time in the past due to mental-health issues, had been on the mental-health docket for one year, and had failed to satisfy its financial conditions.

"Appellate review of a condition of community control is limited to what the judgment of conviction states, and not what a trial court might later modify it to say; because a community-control sanction is part of an offender's sentence, the trial court had no jurisdiction to modify the conditions of that sanction, in the absence of the unique conditions found in R.C. 2929.15(C)."

***State v. Parker*, 2015-Ohio-274**

Jurisdiction: Community Control

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-140179_01282015.pdf

Summary from the First District:

"The trial court lacked jurisdiction to order the probation department to accept and disburse the defendant's payment of court costs and probation fees, which had been imposed as a condition of his community-control sentence, where the court had previously entered an order remitting the court costs and terminating the defendant's community control. [*But see* CONCURRENCE: The cause should be remanded with instructions to the trial court to order the return to the defendant of the court costs that were improperly collected.]"

***State v. Miller*, 2015-Ohio-330**

Evidence: Sentencing

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-130774_01302015.pdf

Summary from the First District:

"No plain error was demonstrated where the trial court allowed the state to ask leading questions on direct examination, because the defendant did not show that the outcome of the trial would have been different but for the court's allegedly improper actions.

"There was no plain error in the trial court's admission of text messages sent to and from the defendant, because the cell phone records were properly admitted as business records, the content of most of the messages was not hearsay, and to the extent that some of the messages were hearsay, they were not prejudicial to the defendant.

"The trial court erred when it imposed consecutive sentences without first having made the requisite findings, and therefore, the consecutive sentences must be vacated and the cause remanded for resentencing in accordance with *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659."

***State v. Cobia*, 2015-Ohio-331**

Child Enticement: Evidence

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-140058_01302015.pdf

Summary from the First District:

"Defendant's convictions under the child-enticement statute must be reversed, because the Ohio Supreme Court declared the child-enticement statute, R.C. 2905.05(A), unconstitutional in *State v. Romage*, 138 Ohio St.3d 390, 2014-Ohio-783, 7 N.E.3d 1156.

"The trial court erred in admitting other-acts evidence where defendant's identity as the perpetrator was not at issue and the other-acts evidence did not suggest a motive or intent for the charged offenses.

"Where the state's case against defendant depended entirely on the victim's testimony, and her credibility was undermined at trial, the trial court's error in admitting other-acts evidence was prejudicial, because it is likely the other-acts evidence impacted the verdict and the other evidence of defendant's guilt was not strong."

***State v. Ysrael*, 2015-Ohio-332**

Postconviction: Jurisdiction

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-140148_01302015.pdf

Summary from the First District:

"The common pleas court lacked jurisdiction to entertain defendant's motion seeking journalization of an amendment to his bill of particulars: the motion was reviewable under R.C. 2953.21 et seq., governing the proceedings on a postconviction petition, but defendant failed to satisfy either the time restrictions of R.C. 2953.21 or the jurisdictional requirements of R.C. 2953.23; and the claimed error, if demonstrated, would not have rendered defendant's conviction void.

"The assignment of error challenging the overruling of defendant's motion to correct the postrelease-control portion of his sentence was moot: defendant failed to sustain his burden of demonstrating that that portion of the sentence was subject to correction, when the record showed that he had been released from prison and did not show that he had been placed on postrelease control. [*But see* DISSENT: The assignment of error was not moot, because the record did not show that defendant had completed the postrelease-control portion of his sentence; and that portion of the sentence was void for inaccurate postrelease-control notification, but was not subject to correction after defendant had been released from prison.]"

***State v. Borden*, 2015-Ohio-333**

Evidence: Hearsay

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-140245_01302015.pdf

Summary from the First District:

"The trial court erred in admitting the hearsay statement of the alleged victim, because the statement was not admissible as an excited utterance where

the alleged victim had had an opportunity to reflect and was no longer under the stress of excitement caused by the event when she made the statement."

***State v. Hamilton*, 2015-Ohio-334**

Sentencing

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-140290_01302015.pdf

Summary from the First District:

"The trial court's imposition of prison terms for 13 fourth- or fifth-degree nonviolent felonies was clearly and convincingly contrary to law, where the record demonstrated that the sentences were contrary to the provisions of R.C. 2929.13(B)(1)(a) and (b), which mandated the imposition of a community-control sanction of at least one year.

"A reviewing court cannot add matter to the record before it, which was not a part of the trial court's proceedings, and then decide the appeal on the basis of the new matter.

"Where the appellate court vacates a sentence under R.C. 2953.08(G)(2) as clearly and convincingly contrary to the law, the matter is remanded for a de novo sentencing hearing on the offense for which the sentence was vacated."

Second Appellate District of Ohio

***State v. Embry*, 2015-Ohio-193**

Search: Suppression

Full Decision: http://www.supremecourt.ohio.gov/rod/docs/pdf/2/2015/2015-ohio-193.pdf

The trial court erred in denying Appellant's motion to suppress the drugs found on his person where the officers lacked a reasonable, articulable suspicion that criminal activity was afoot. Appellant was at a gas pump at a gas station during business hours. His door was open and he was leaning over in his seat. The officers observed about one-third of a plastic sandwich bag in his hand, but could not see anything but the bag. The mere presence of a sandwich bag in an area known for drug activity was not sufficient to support the officers' seizure of Appellant.

Third Appellate District of Ohio

***State v. Barnett*, 2015-Ohio-224**

Evid.R. 404(B): Other-Acts Evidence

Full Decision: http://www.sconet.state.oh.us/rod/docs/pdf/3/2015/2015-ohio-224.pdf

This case hinged upon proving that Appellant was cooking methamphetamine in a trailer in a county different from the county where his apartment was located. The trial court determined that the evidence found in Appellant's apartment was circumstantial evidence that linked him to methamphetamine production in the trailer. Appellant's possession of materials to make methamphetamine was not used at his trial to show he manufactured methamphetamine in Logan County, where his apartment was located. Rather, the evidence found in his apartment, consistent with the evidence found in the trailer, was probative of finding that he was involved in methamphetamine production in the trailer in Auglaize County. The mere fact that the same evidence was used to prove a case in Logan County did not make it impermissible other-acts evidence. The evidence was relevant to showing identity, or a similar modus operandi, which is a permissible purpose under Evid.R. 404(B).

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. J.S., 2015-Ohio-177

Expungement

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2015/2015-ohio-177.pdf

"Trial court's decision granting application for sealing of the record pursuant to R.C. 2953.32(A)(1) was vacated. Defendant's prior disorderly conduct conviction, which was a fourth-degree misdemeanor under the municipal ordinance for which he was convicted but a minor misdemeanor under the analogous state statute, was not an offense substantially similar to the statutory sections specifically listed under R.C. 2953.31(A). Case was remanded for a determination of whether precluding expungement in such a case would result in a violation of the federal and state Equal Protection Clauses."

Ninth Appellate District of Ohio

Nothing new.

Tenth Appellate District of Ohio

Nothing new.

Eleventh Appellate District of Ohio

***State v. Dixon*, 2015-Ohio-208**

OVI: Suppression

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/11/2015/2015-ohio-208.pdf

The trial court erred in denying Appellant's motion to suppress in her OVI case where the officer approached a vehicle parked in a residential driveway without a reasonable suspicion that a crime had occurred or was occurring, and without indications that the operator of the vehicle was in distress.

"In this case, [the officer] based his decision to make a stop solely on the facts that some crimes had occurred in the area; that he had not seen a car parked in the driveway of the house earlier, that he had not seen a car parked at that particular point in the driveway before; and, that its lights were off. The area was not a high crime area; the officer was not responding to a call; he had no suspicion of any traffic infraction or any other criminal activity. In fact, his testimony indicates he did not even know the vehicle

was occupied, until he turned his floodlight on it. [Appellant] did not attempt to flee. A *Terry* stop was unjustified. * If this was a community caretaking stop, again, the facts do not justify the intrusion."**

Twelfth Appellate District of Ohio

Nothing new.

Supreme Court of Ohio

***State v. Beverly*, 2015-Ohio-219**

Engaging in a Pattern of Corrupt Activity: R.C. 2923.32(A)(1): Enterprise

Full Decision: http://www.sconet.state.oh.us/rod/docs/pdf/0/2015/2015-ohio-219.pdf

"The existence of an enterprise, sufficient to sustain a conviction for engaging in a pattern of corrupt activity under R.C. 2923.32(A)(1), can be established without proving that the enterprise is a structure separate and distinct from a pattern of corrupt activity."

***State v. Radcliff*, 2015-Ohio-235**

Expungement: Pardons: R.C. 2953.32 and 2953.52

Full Decision: http://www.sconet.state.oh.us/rod/docs/pdf/0/2015/2015-ohio-235.pdf

"We hold that a court lacks the authority to seal a criminal record of a pardoned offender who does not meet applicable statutory requirements for sealing the record."

***State v. Vanzandt*, 2015-Ohio-236**

Expungement: Unsealing: R.C. 2953.53(D)

Full Decision: http://www.sconet.state.oh.us/rod/docs/pdf/0/2015/2015-ohio-236.pdf

"1. When a statutory provision imposing a mandatory obligation has specifically enumerated exceptions, a court does not have discretion to create additional exceptions.

"2. Official records that have been sealed pursuant to R.C. 2953.52 cannot be made accessible for purposes other than those provided in R.C. 2953.53(D)."

Sixth Circuit Court of Appeals

Nothing new.

Supreme Court of the United States

Nothing new.