Appellate Court Decisions - Week of 3/24/14

First Appellate District of Ohio

In Re: R.M., 2014-Ohio-1200

Juvenile: Sex Offenses

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-120166_03262014.pdf

Summary from the First District:

"The Due Course Clause of Article I, Section 16, of the Ohio Constitution and the Due Process Clause of the Fourteenth Amendment to the United States Constitution do not prohibit the legislature from punishing children for delinquency beyond their 21st birthdays by classifying them as juvenile offender registrants under R.C. 2152.83(B) because no fundamental right is implicated and the punishment is rationally related to the government's legitimate interest in enforcing its criminal laws against juveniles.

"The Due Course Clause of Article I, Section 16, of the Ohio Constitution and the Due Process Clause of the Fourteenth Amendment to the United States Constitution do not prohibit the legislature from punishing children for delinquency beyond their 21st birthdays by requiring community notification for juvenile offender registrants under R.C. 2152.83(B) and 2950.11 because no fundamental right is implicated and the imposition of community notification is rationally related to the government's legitimate interest in protecting public safety, a principal purpose of juvenile dispositions.

" R.C. 2950.11(F)(2) requires a juvenile court to consider the listed statutory factors before imposing community notification, the statute does not require the juvenile court to make specific findings, and a presumption of regularity attaches to all judicial proceedings, including sexual-offender proceedings: where a juvenile offender registrant has not requested a hearing under R.C. 2950.11(F)(2) and the record does not demonstrate that the juvenile court failed to consider R.C. 2950.11(F)(2) in reaching the decision to impose community notification, the juvenile court does not abuse its discretion in imposing community notification."

State v. Jones, 2014-Ohio-1201

Search and Seizure

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-130069_03262014.pdf

Summary from the First District:

"In ruling on the defendant's motion to suppress evidence resulting from the warrantless search of an automobile, the trial court erred in analyzing the search as a 'search incident to arrest' when no arrest had been made at the time of the search: the police had conducted a traffic stop for a license-plate violation, and although they were authorized to detain the passengers based on their reasonable suspicion that the automobile contained firearms, they did not contemplate the formal charging of a crime at that time.

"The warrantless search of an automobile was not based on probable cause where the only information available to the police was a tip from a known confidential informant that the automobile contained firearms: the tip possessed sufficient indicia of reliability to provide a basis for reasonable suspicion, but the addition of the driver's furtive movements after the automobile had been stopped did not elevate that suspicion to probable cause.

"A limited protective search of the passenger compartment of the automobile was warranted for reasons of officer safety where the police were authorized to conduct a traffic stop and where they possessed a reasonable belief, based on a tip from a known confidential informant that the automobile contained firearms, that the passengers were dangerous and may gain immediate control of a weapon."

***State v. Parrott*, 2014-Ohio-1203**

Appellate Review: *Anders*: Transcripts

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-130476_03262014.pdf

Summary from the First District:

"The appellate court is unable to conduct an independent review where counsel has filed a no-error brief indicating that he had found no meritorious issues to support defendant's appeal, but only two of three volumes of the transcript have been filed; therefore, counsel's motion to withdraw must be granted and new appellate counsel must be appointed for defendant."

***State v. Hayes*, 2014-Ohio-1263**

Postconviction: Allied Offenses

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-130450_03282014.pdf

Summary from the First District:

"The common pleas court properly dismissed for lack of jurisdiction defendant's postconviction motions: the motions were reviewable under the postconviction statutes, R.C. 2953.21 et seq., because they did not specify a statute or rule under which relief might be afforded, and because the postconviction statutes provide the exclusive means for collaterally challenging a criminal conviction; but the postconviction statutes did not confer jurisdiction to entertain the motions, because the motions did not satisfy the statutes' time restrictions or jurisdictional requirements; and defendant's ineffective-counsel and allied-offenses claims, even if demonstrated, would not have rendered his sentences void. [*But see* DISSENT: The court had jurisdiction to entertain the allied-offenses claims because a sentence imposed in violation of R.C. 2941.25 is void.]"

Second Appellate District of Ohio

Nothing new.

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

***State v. Stout*, 2014-Ohio-1094**

Sentencing: R.C. 2929.13(B)(1)(b)

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/7/2014/2014-ohio-1094.pdf

Appellant entered an *Alford* Plea to two counts of pandering sexually oriented matter involving a minor (R.C. 2907.322(A)(5)(C), fourth-degree felonies) and two counts of illegal use of a minor in nudity oriented material or performance (R.C. 2907.323(A)(3)(B), fifth-degree felonies). At sentencing the State argued for a five-year prison sentence, contending that the physical harm exception in R.C. 2929.13(B)(1)(b)(ii) applied because "there is physical harm when child pornography is viewed." The trial court agreed and imposed a 30-month aggregate sentence.

Appellant, notably, committed the offense before H.B. 86, but was sentenced after it went into effect. The Seventh District said, because he was sentenced after the changes to R.C. 2929.14(C)(4) and R.C. 2929.13(B)(1)(a) in H.B. 86 went into effect, the changed versions applied to him.

The Seventh District also held: "Solely *possessing and viewing* child pornography does not per se cause physical harm to the victim, although it unquestionably causes the victim emotional, mental and psychological harm." It went on to say in dicta, "if the facts were different and Stout was charged with *taking the pictures and directing the children*, physical harm could be found."

Eighth Appellate District of Ohio

Nothing new.

Ninth Appellate District of Ohio

***State v. Coker*, 2014-Ohio-1210**

Jury Instruction: Lesser-Included: Robbery: Theft

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/9/2014/2014-ohio-1210.pdf

The trial court erred in refusing to give a jury instruction on theft as a lesser-included offense to robbery where the facts presented at trial could have lead a reasonable jury to conclude that the evidence presented supported a conviction of theft.

Tenth Appellate District of Ohio

Nothing new.

Eleventh Appellate District of Ohio

Nothing new.

Twelfth Appellate District of Ohio

***State v. Sparks*, 2014-Ohio-1130**

Venue

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/12/2014/2014-ohio-1130.pdf

This is the third in the trio of cases from the marijuana cultivation/trafficking "ring" in Butler County. Just like the other two, the Twelfth District also held in this case that the prosecution failed to demonstrate that Appellant engaged in the cultivation or trafficking of marijuana in Warren County, where the trial was held. Therefore, the prosecution failed to prove venue.

Supreme Court of Ohio

Nothing new.

Sixth Circuit Court of Appeals

Nothing new.

Supreme Court of the United States

***United States v. Castleman*, 572 U.S. _____ (2014)**

18 U.S.C. §922(g)(9): Misdemeanor Crime of Domestic Violence: Firearms

Full Decision: http://www.supremecourt.gov/opinions/13pdf/12-1371_6b35.pdf

From the ABA: "The Court reversed and remanded the decision of the United States Court of Appeals for the Sixth Circuit. The Court held that a conviction for the misdemeanor offense of having 'intentionally or knowingly cause[d] bodily injury to' the mother of his child qualifies as a conviction under 18 U.S.C. § 922(g)(9) which forbids the possession of firearms by anyone convicted of a 'misdemeanor crime of domestic violence.'"

What does that mean for us? It could mean that R.C. 2919.25(C), the fourth-degree misdemeanor domestic violence offense in Ohio, which only requires a threat of force but no actual force or physical harm, does not create a federal weapons disability. The rest of the statute definitely would. That is because a "misdemeanor crime of domestic violence" under 18 U.S.C. §922(g)(9) requires "the use or attempted use of physical force," and does not include a "threat of force." I suppose, however, it could be possible for a disability to arise where the "threat of force" came from the "attempted use of physical force," so approach this issue with caution until an appellate court weighs in. Or, read the opinion and decide for yourself what advice you're comfortable giving.