Appellate Court Decisions - Week of 3/30/15

Chris Jones forwarded me a note this week from Jay Clark letting us know that, "Effective March 23, 2015, 2901.22 was amended changing the definitions of 'reckless' and 'knowingly.'"

The statute now reads, in relevant part:

"(B) A person acts knowingly, regardless of purpose, when the person is aware that the person's conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when the person is aware that such circumstances probably exist. When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person subjectively believes that there is a high probability of its existence and fails to make inquiry or acts with a conscious purpose to avoid learning the fact.

"(C) A person acts recklessly when, with heedless indifference to the consequences, the person disregards a substantial and unjustifiable risk that the person's conduct is likely to cause a certain result or is likely to be of a certain nature. A person is reckless with respect to circumstances when, with heedless indifference to the consequences, the person disregards a substantial and unjustifiable risk that such circumstances are likely to exist."

In case you are wondering, here is how it used to read:

"(B) A person acts knowingly, regardless of his purpose, when he is aware that his conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when he is aware that such circumstances probably exist.

"(C) A person acts recklessly when, with heedless indifference to the consequences, he perversely disregards a known risk that his conduct is likely to cause a certain result or is likely to be of a certain nature. A person is reckless with respect to circumstances when, with heedless indifference to the consequences, he perversely disregards a known risk that such circumstances are likely to exist."

It will be quite interesting to see, in offenses where knowledge is an element, how the state intends on proving what the defendant "subjectively believes."

First Appellate District of Ohio

State v. Jones, 2015-Ohio-1189

Sentencing

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-140299_03312015.pdf

Summary from the First District:

"The trial court's imposition of a prison term for a nonviolent fifth-degree felony was clearly and convincingly contrary to law where the record demonstrated that the sentence was 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.

"The trial court's imposition of a prison term for a nonviolent fifth-degree felony, under R.C. 2929.13(B)(1)(b)(ii), was contrary to law where the record did not support the trial court's determination that the driver of an automobile who failed to stop after an accident that caused serious injuries to a victim, caused any physical harm, beyond the injuries inflicted in the actual collision, while committing the punished offense of failure to stop or to exchange information.

"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."

In re L.S., 2015-Ohio-1321

Juvenile: Jurisdiction

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-140318_04032015.pdf

Summary from the First District:

"The appeals were not taken from final orders and must be dismissed, where the juvenile court's judgments determined that it had jurisdiction to hold a completion-of-disposition hearing under Megan's Law, and remanded the cause to the magistrate to hold the hearing: the judgments, which expressly contemplated further action to determine classification under Megan's Law, did not determine the action and prevent a judgment."

Second Appellate District of Ohio

***State v. Adams*, 2015-Ohio-1160**

Sentencing: Consecutive Sentences: Findings

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/2/2015/2015-Ohio-1160.pdf

This is one of those opinions that just needs to be read. The Appellant was convicted of three burglaries and heroin possession and sentenced to 20 years in prison. Basically, he was accused of committing several burglaries over a five-month period in order to fund his heroin addiction. Total restitution was $480. Anyway, this is a pretty activist decision with some very strong language regarding sentencing, such as: "Here, the minimally-required statutory phrases were uttered, and a 22-year-old non-psychopathic addict, with only a previous juvenile suspended DYS commitment and no adult felony record, will spend the next twenty years in prison at the expense of the taxpayers, not to mention the damage to him and to the community where he will be released."

Third Appellate District of Ohio

***State v. Radebaugh*, 2015-Ohio-1186**

Sentencing: Restitution

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/3/2015/2015-Ohio-1186.pdf

In a forgery conviction, the trial court abused its discretion in ordering restitution where no evidence was put forward of what the actual amount of the economic loss was.

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. Price*, 2015-Ohio-1199**

Waiver of Counsel

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/7/2015/2015-Ohio-1199.pdf

The trial court erred where it failed to advise Appellant, who proceeded to trial *pro se*, of his right to counsel and it failed to conduct a waiver of counsel on the record. The error was not waived because Appellant did not receive a jail sentence – his suspended sentence for probation counts a jail sentence for waiver of counsel purposes. However, the failure to comply with Crim.R. 44(B) was not fatal to the conviction because "the rule merely controls the available punishment." The sentence therefore was "reversed and remanded for resentencing at a sentencing hearing with instructions that no sentence to confinement can be imposed, including a suspended sentence." Note: I'm relatively sure other courts have held that a different result should occur – a new trial. But the error remains.

Eighth Appellate District of Ohio

Nothing new.

Ninth Appellate District of Ohio

***State v. McCall*, 2015-Ohio-1251**

OVI: Motion to Suppress

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/9/2015/2015-Ohio-1251.pdf

The trial court did not err in granting Appellee's motion to suppress the results of his blood draw where the state did not substantially comply with Ohio Admin. Code 3701-53-05(C). There was no evidence a solid anticoagulant was used in the blood draw.

Tenth Appellate District of Ohio

Nothing new.

Eleventh Appellate District of Ohio

Nothing new.

Twelfth Appellate District of Ohio

***State v. Lanter*, 2015-Ohio-1095**

Jail-Time Credit

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/12/2015/2015-Ohio-1095.pdf

The trial court erred in failing to give Appellant credit for time spent in a community-based corrections facility as the time spent there qualified as confinement pursuant to R.C. 2967.191.

Supreme Court of Ohio

Nothing.

Sixth Circuit Court of Appeals

Nothing new.

Supreme Court of the United States

***Grady v. North Carolina*, 575 U.S. _____ (2015)**

Fourth Amendment: Sex Offender: Satellite-Based Monitoring

Full Decision: http://www.supremecourt.gov/opinions/14pdf/14-593_07jq.pdf

North Carolina's satellite-based monitoring of sex offenders constitutes a search for Fourth Amendment purposes. The question is whether the search is unreasonable. The case was remanded to North Carolina to determine the constitutionality of the monitoring.