Appellate Court Decisions - Week of 4/25/16

First Appellate District of Ohio

***State v. Hendrix*, 2016-Ohio-2697**

***Batson*: Evidence: Ineffective Assistance: Sufficiency: Manifest Weight**

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-150194_04272016.pdf

Summary from the First District:

"Where the prosecutor used defendant's prior convictions to impeach defendant's general credibility on cross-examination, the trial court did not commit plain error in allowing the prosecutor to question defendant, consistent with Evid.R. 609, regarding the name of the crime, the place of conviction, and the punishment, even though defendant had stipulated to certain prior convictions for the purposes of proving weapons-under-disability charges."

"The trial court did not err in denying defendant's challenge under *Batson v. Kentucky*, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986), to the state's use of a peremptory challenge to strike an African-American juror where the state provided at least one race-neutral explanation for the peremptory strike: the police department that had investigated the charges against defendant had also investigated a criminal complaint against the prospective juror's husband."

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

***State v. Lear*, 2016-Ohio-2675**

Speedy Trial: R.C. 2941.401

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/5/2016/2016-Ohio-2675.pdf

The trial court erred in failing to dismiss Appellant's complaint on speedy trial grounds pursuant to R.C. 2941.401. Appellant was imprisoned and notified the warden he had pending charges for which he wanted a final disposition, but he was not brought to trial within 180 days after notifying the warden. This is limited holding, however, to the specific form this inmate used. It seems it might be a universal form available in prisons, but it is not clear.

***State v. Stinnett*, 2016-Ohio-2711**

Sentencing: Allied Offenses

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/5/2016/2016-Ohio-2711.pdf

The trial court erred in failing to merge for sentencing purposes Appellant's convictions for kidnapping and rape against one victim because they were allied offenses of similar import. It also erred in failing to merge for sentencing purposes Appellant's convictions for kidnapping and gross sexual imposition against another victim, because they too were allied offenses of similar import.

Sixth Appellate District of Ohio

***State v. Hepler*, 2016-Ohio-2662**

OVI: Search: Motion to Suppress

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/6/2016/2016-Ohio-2662.pdf

The trail court erred in denying Appellant's motion to suppress. Appellant was found standing next to his damaged vehicle after a single-vehicle accident. He admitted to the police officer that he had been drinking. His head was bleeding. There were indications that he did not want medical attention, but the officer allowed the paramedics to treat Appellant. After being treated, he was transported by EMS to a hospital. No field sobriety tests were conducted.

After completing her investigation, the police officer requested the release of records from the hospital regarding tests administered to Appellant to

determine the presence or concentration of alcohol, drugs of abuse, or both in his blood, breath, or urine at a time relevant to the criminal offense in question. Two days later, the hospital provided a lab report to the officer. The reporter had the results and a collection date for a urine test, but no time specified. It also showed a negative result for several drugs of abuse. It also showed a positive test, but not for what specifically – it said confirmation available upon request. The second box showed a blood test with a positive result for ethanol at 0.16 g/dL. No notation was provided for the reason for the blood test.

Appellant filed a motion to suppress the blood test. The trial court's denial was error because its finding that the blood-alcohol test was performed for medical purposes was based on no evidence. Rather, the evidence suggested that the blood-alcohol test was done in response to law enforcement's R.C. 2317.022 request without a warrant or a recognized exception to the warrant requirement. A request is not a substitute for a warrant for a blood draw, nor is a recognized exception to the warrant requirement.

Seventh Appellate District of Ohio

Nothing new.

Eighth Appellate District of Ohio

***State v. Early*, 2016-Ohio-2636**

Sentencing: Sex Offender

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2016/2016-Ohio-2636.pdf

In 2009 Appellant was convicted of unlawful sexual conduct with a minor or corruption of a minor in violation of R.C. 2907.04(A), a third-degree felony. As a result, he was classified as a Tier II sex offender. In this case, he was indicted on two counts, failure to verify his address in violation of R.C. 2950.06(F) and failure to provide notice of change of address in violation of R.C. 2950.05(F)(1). He pleaded guilty to the second count, failure to provide notice of change of address as a second-degree felony. On appeal, the Eighth District held that, under R.C. 2950.99(A)(1)(a), because Appellant's previous conviction was a third-degree felony, his conviction for failing to provide notice of change of address could only be a third-degree felony. It then vacated his conviction and sentence.

***State v. Stump*, 2016-Ohio-2723**

Plea

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2016/2016-Ohio-2723.pdf

Summary from the Eighth District: "It was plain error for the court to convict and sentence defendant to fifth-degree felony domestic violence when defendant pled to first-degree misdemeanor domestic violence by the deletion of the pregnant victim specification."

***State v. Prince*, 2016-Ohio-2724**

Sentencing

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2016/2016-Ohio-2724.pdf

Summary from the Eighth District: "The trial court imposed a sentence that was contrary to law. R.C. 2929.141 authorizes a court to impose a prison term or sanction for a postrelease control violation in an earlier felony case upon the conviction of or plea of guilty to a new felony. The statute has no application to a subsequent violation of community control. R.C. 2929.15(B) applies when the conditions of a community control sanction are violated and limits the court to imposing a prison term within the range of prison terms available for the underlying offense."

Ninth Appellate District of Ohio

Nothing new.

Tenth Appellate District of Ohio

***State v. Buell*, 2016-Ohio-2730**

Plea Withdrawal

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/10/2016/2016-Ohio-2734.pdf

Summary from the Tenth District: "Appeal from denial of a motion to withdraw a guilty plea to one charge of endangering children. Trial court abused its discretion in refusing to allow defendant to withdraw his plea when joint recommendation of community control was rejected and defendant argued he was not guilty of the charge but only pled guilty to avoid prison time."

Eleventh Appellate District of Ohio

***State v. Weideman*, 2016-Ohio-2690**

OVI: Sentencing: Remand from Appeal

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/11/2016/2016-Ohio-2690.pdf

Appellant's OVI sentence was remanded by the Eleventh District for resentencing because his five-year term of imprisonment on the underlying OVI offense was contrary to law. It affirmed the three-year term of imprisonment for the specification and instructed the trial court to "resentence appellant only on his underlying OVI conviction * * *." The trial court proceeded to sentence Appellant to three years on the underlying OVI, but then increased the sentence on the specification to five years, to run consecutively, for a total of eight years – or, the same sentence as the first time around. That was error because the trial court exceeded its authority on remand by increasing the sentence on the specification. It also increased his fine and license suspension, which it could not do.

Twelfth Appellate District of Ohio

Nothing new.

Supreme Court of Ohio

***State v. Sergent*, 2016-Ohio-2696**

Felony Sentencing: Consecutive Sentences: R.C. 2929.14(C)(4)

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/0/2016/2016-Ohio-2696.pdf

A sentencing judge does not need to make consecutive-sentence findings otherwise required by R.C. 2929.14(C)(4) when a consecutive sentence is part of jointly recommended sentence. Such a sentence is "authorized by law" under R.C. 2953.08(D)(1) and hence is not subject to review.

***State v. Barker*, 2016-Ohio-2708**

Constitutional Law: Fifth Amendment: 2933.81(B)

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/0/2016/2016-Ohio-2708.pdf

"The statutory presumption of voluntariness created by R.C. 2933.81(B) does not affect the analysis of whether a suspect knowingly, intelligently, and voluntarily waived his *Miranda* rights prior to making a statement to the police. As applied to juveniles, that presumption is unconstitutional."

Sixth Circuit Court of Appeals

Nothing new.

Supreme Court of the United States

Nothing new.