Appellate Court Decisions - Week of 5/18/15

First Appellate District of Ohio

State v. Prince, 2015-Ohio-1913

Speedy Trial: Misdemeanor

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2015/2015-Ohio-1913.pdf

Summary from the First District:

"The trial court did not err in denying the defendant's motion to dismiss for lack of a speedy trial, because the defendant's speedy-trial rights were not violated where the trial began before the defendant's speedy-trial time expired and the continuance granted to the state was of reasonable cause and duration."

In re M.B., 2015-Ohio-1912

Burglary/B&E/Trespass: Delinquency: Possession of Criminal Tools

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2015/2015-Ohio-1912.pdf

Summary from the First District:

"Where the rear door of a closed store was damaged, its deadbolt lock pried nearly completely out of the door, leaving a small circular hole in the door, and exposing the lock's bolt, which extended through the door's edge into its strike plate in the doorframe, and the edge of the door near the lock had been pushed slightly inward, about a half inch from its original seating in the frame, and the juvenile, who was seen running from the store with a crowbar in his hand, admitted that he had been trying to break into the store to steal cigarettes, the juvenile court erred by adjudicating the juvenile delinquent for breaking and entering under R.C. 2911.13(A), because the record was devoid of evidence that any part of the juvenile's body had protruded through or beyond the door of the store; however, the evidence was sufficient for a adjudication of delinquency for attempted breaking and entering. Where the juvenile is properly adjudicated delinquent for an attempted breaking and entering for his attempt to enter a closed store to steal cigarettes by prying the store's door with a crowbar, the juvenile court properly adjudicated him for what would have constituted felony possession of criminal tools had he been an adult, because his intent was not to simply commit an attempted breaking and entering; his conduct, if successful, would have resulted in the offense of breaking and entering, a felony of the fifth degree."

***State v. McDonald*, 2015-Ohio-1911**

Sentencing

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2015/2015-Ohio-1911.pdf

Summary from the First District:

"The defendant's appeals taken from his convictions for possession of heroin in the case numbered B-1301298 (appeal numbered C-140304) and for possession of cocaine in the case numbered B-1401180 (appeal numbered C-140303) were subject to dismissal as abandoned appeals where the defendant had not assigned any error relating to the convictions.

"The trial court committed plain error by refusing to award jail-time credit in the case numbered B-080724 (appeal numbered C-140305) when it had ordered the sentence in that case be served concurrently to the sentence in the case numbered B-0609239, in which the trial court had awarded the defendant 158 days of jail-time credit. Because the defendant had been sentenced to concurrent prison terms, the same number of days of jail-time credit had to be applied toward each concurrent term. State v. Fugate, 117 Ohio St.3d 261, 2008-Ohio-856, 883 N.E.2d 440 (followed).

"Where the defendant was sentenced to a prison term following the revocation of his community control in the case numbered B-0609239 (appeal numbered C-140306), and the sentencing had occurred after the effective date of Am.Sub. H.B. 86, which had reduced the penalties for possession of cocaine from a fourth-degree felony to a fifth-degree felony, the defendant was entitled under R.C. 1.58 to be sentenced for a fifth-degree felony [But see DISSENT: Because the trial court imposed a penalty for the crack-cocaine-possession offense in 2008, when it sentenced the defendant to community control, and Am.Sub.H.B. did not contain any provision reducing the degree and penalty for those found guilty of violating the terms of community control, R.C. 1.58(B) did not apply, and the defendant was properly sentenced without the benefit of the reductions provided by Am.Sub.H.B. 86.]"

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

***Toledo v. Green*, 2015-Ohio-1864**

Evid.R. 901: 911 Call

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/6/2015/2015-Ohio-1864.pdf

In a domestic violence trial where the only witnesses to testify were police officers, the trial court erred in admitting testimony of the officers about statements made to them at the scene by the alleged victim. The circumstances existing when the statements were made did not demonstrate the existence of any ongoing emergency or the existence of any bona fide physical threat to the victim at the time the victim's statements were made.

The trial court also erred in admitting, over Appellant's objection, an unauthenticated recording of a 911 call. Although the prosecution included a certificate of authenticity with the 911 call recording, there was a lack of evidence as required under Evid.R. 901 to identify the voice of the person making the call.

Seventh Appellate District of Ohio

Nothing new.

Eighth Appellate District of Ohio

***State v. Herrington*, 2015-Ohio-1820**

Illegal Use of a Minor in Nudity-Oriented Material: Sufficiency

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2015/2015-Ohio-1820.pdf

The state failed to present sufficient evidence for Appellant's illegal use of a minor in nudity-oriented material or performance conviction where the evidence showed that the alleged victim was wearing a bra and underwear during the entirety of the incident. The state, therefore, failed to present sufficient evidence to satisfy the nudity element of R.C. 2907.323(A)(3).

***State v. Holder*, 2015-Ohio-1837**

Motion to Suppress: Search

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2015/2015-Ohio-1837.pdf

The trial court did not err in granting the motion to suppress the loaded firearm discovered in the possession of Appellee during a pat-down search. Appellee was a passenger in a car driven by a person suspected of being intoxicated. After investigation, the driver was arrested and placed in the back of the police cruiser. The officer then turned his attention to Appellee.

Appellee could not produce ID, but did supply a social security number. While another officer verified the information, the arresting officer explained to Appellee that the driver had been arrested and the vehicle was being impounded. The officer then asked Appellee if someone could pick him up, and Appellee said his girlfriend could. Appellee exited the vehicle and walked to the patrol car to sit while the officers performed an inventory search of the impounded vehicle. The officer told Appellee he was going to pat him down for weapons before placing him in the back of the patrol car. That is when the officer discovered Appellee's gun.

The officer testified that he always performs a pat-down before he places anyone in the back of a patrol car for officer safety. Prior to the pat-down, Appellee posed no danger. There were no furtive movements, signs of nervousness, or signs Appellee had a weapon. Appellee was at all times cooperative, consented to the pat-down, and was free to leave prior to the pat-down. There was no written policy to perform pat-downs prior to putting someone in the back of the patrol car. The officer never specifically told Appellee he was free to leave. Appellee could not wait at the side of the road at the scene.

In affirming the grant of the motion to suppress, the Eighth District concluded: "The trial court did not err in granting [Appellee's] suppression motion where a pat-down search was conducted prior to placing [Appellee] in the back seat of a patrol car because that was not the least intrusive means of accomplishing the state goals the officers used to justify the search. The record also contains evidence to support the trial court's factual determination that the search was not consensual."

***State v. Rodriguez*, 2015-Ohio-1835**

Sentencing: Post-Release Control

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2015/2015-Ohio-1835.pdf

The trial court erred in denying Appellant's motion to terminate his postrelease control. Because Appellant has served his sentence in this case, he cannot be resentenced. The original judgment entry was voice because it said post-release control is imposed "for the maximum period allowed * * * under R.C. 2967.28."

***State v. Webber*, 2015-Ohio-1953**

Juvenile Bindover

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2015/2015-Ohio-1953.pdf

Summary from the Eighth District:

"Trial court did not err in dismissing indictment charging defendant with offenses allegedly committed in 1993, when the defendant was 14 years old and was not eligible to be bound over to the general division of common pleas court to be tried as an adult. Application of the amended statutes would violate the Due Process and Ex Post Facto Clauses of the Ohio and United States Constitutions because the defendant had no notice that he could be tried as an adult and allowing so would subject him to a greater punishment than the juvenile law in effect at the time of the alleged conduct and impair his substantive rights."

Ninth Appellate District of Ohio

Nothing new.

Tenth Appellate District of Ohio

Nothing new.

Eleventh Appellate District of Ohio

Nothing new.

Twelfth Appellate District of Ohio

Nothing new.

Supreme Court of Ohio

Nothing new.

Sixth Circuit Court of Appeals

***United States v. Lichtenberger*, No. 14-3540**

Motion to Suppress

Full Decision: http://www.ca6.uscourts.gov/opinions.pdf/15a0095p-06.pdf

Here is a link to a summary from the Sixth Circuit Blog. It is better than anything I could have written. This is an important case: http://circuit6.blogspot.com/2015/05/limiting-private-search-doctrine-for.html

Also, here is the summary from the beginning of the opinion:

"This case deals with the suppression of evidence discovered during a private search and reviewed shortly thereafter by a police officer without a warrant. In 2011, defendant Aron Lichtenberger ("Lichtenberger") was arrested at the home he shared with his girlfriend, Karley Holmes ("Holmes"), for failing to register as a sex offender with the local authorities. After his arrest, Holmes hacked into Lichtenberger's personal laptop computer, where she discovered a number of images of child pornography. Holmes contacted the police, and when an officer arrived, Holmes showed the officer some of the images on the laptop. The officer then obtained a warrant for the laptop and its contents, which led to the present charges against Lichtenberger. Before trial, Lichtenberger filed a motion to suppress the laptop evidence, which the district court granted. The government appeals. As there are extensive privacy interests at stake in searches of a laptop, and as the officer had far less than 'virtual certainty' regarding what he was going to see when Holmes showed him the results of the search, we **AFFIRM**."

Supreme Court of the United States

Nothing new.