

Appellate Court Decisions - Week of 5/2/16

First Appellate District of Ohio

State v. Batista, 2016-Ohio-2848

Constitutional Law: R.C. 2903.11(B)(1): Felonious Assault: HIV: Sentencing

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-150341_05062016.pdf

Summary from the First District:

“R.C. 2903.11(B)(1), which prohibits an HIV-positive person from knowingly engaging in sexual conduct without informing the other person of his or her HIV-positive status, does not violate the Equal Protection Clauses of the Ohio and United States Constitutions: requiring an HIV-positive individual to disclose his or her HIV status to a potential sexual partner before engaging in sexual conduct is rationally related to the legitimate governmental interest of stopping the spread of HIV.

“R.C. 2903.11(B)(1) is a content-based law because it regulates speech based upon its communicative content, and therefore, it is subject to strict scrutiny.

“R.C. 2903.11(B)(1) does not violate the First and Fourteenth Amendments to the United States Constitution, because it is narrowly tailored in that disclosure of a person’s HIV-positive status is limited to potential sexual partners, and this serves the compelling governmental interest in stopping the spread of a deadly disease.

“The maximum sentence imposed by the trial court is not clearly and convincingly contrary to law.”

State v. Lynn, 2016-Ohio-2849

Restitution

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-150569_05062016.pdf

Summary from the First District:

“The trial court did not abuse its discretion in ordering defendant to pay restitution following her conviction for the unauthorized use of the victim’s truck where the victim testified that the truck was not damaged when it was taken by defendant, and totaled when it was returned: it was reasonable for the trial court to conclude that the damage occurred while defendant was using the truck, and that, but for defendant’s unauthorized use, the truck would not have been damaged.”

Second Appellate District of Ohio

State v. Fricke, 2016-Ohio-2747

Sentencing: Allied Offenses: Rape: Contaminating a Substance for Human Consumption

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/2/2016/2016-Ohio-2747.pdf>

This case was heard again after a motion to reconsider by the State was granted because *Ruff* came out during the pendency of the appeal. The trial court erred in merging Appellant/Appellee's convictions for rape and contaminating a substance for human consumption. He was convicted for drugging the victim's drink and then later raping her. The Second District concluded that the harms from the two crimes was separate, so they were not allied offenses of similar import.

State v. Patterson, 2016-Ohio-2750

Ineffective Assistance

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/2/2016/2016-Ohio-2750.pdf>

Appellant was convicted of assault, abduction, and violating a protection order. Trial counsel was ineffective for failing to request a self-defense jury instruction. Appellant testified that he acted as he did because the alleged victim hit him and pulled a gun out on him. Based on his testimony, the jury could have reasonably concluded that he purposely used force to protect himself from the alleged victim. The jury even sent out a jury question from deliberations asking if it could consider self-defense, to which the trial court answered it could not. Therefore, there was a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.

State v. Trigg, 2016-Ohio-2752

Sentencing: Allied Offenses

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/2/2016/2016-Ohio-2752.pdf>

The trial court erred in failing to merge Appellant's convictions for felonious assault and domestic violence as allied offenses of similar import.

Third Appellate District of Ohio

Nothing new.

Fourth Appellate District of Ohio

State v. Hammond, 2016-Ohio-2753

OVI: Sufficiency

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/4/2016/2016-Ohio-2753.pdf>

Appellant's OMVI conviction was based on insufficient evidence where the State failed to establish the required nexus between Appellant's impaired condition and the prescription medications he took. The State did not present an expert who was familiar with the potential side effects of the medication or a layperson, like a friend or family member, who had previously witnessed the effect of the particular drug on Appellant. Instead, the State presented only a state trooper who was not an expert on the potential side effects of the medication.

Fifth Appellate District of Ohio

Nothing new.

Sixth Appellate District of Ohio

State v. Fox, 2016-Ohio-2745

Statute of Limitations: Failure to Disclose Gifts

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/6/2016/2016-Ohio-2745.pdf>

Appellee was a school superintendent. He was indicted on March 11, 2015, for failing to disclose gifts valued at \$1,007.32. The trial court granted his motion to dismiss because the statute of limitations had passed. The State appealed. The issue boiled down to the date upon which Appellee ceased being a public servant and the two-year statute of limitations under R.C.

2901.13(C)(1)(a) began. The Sixth District affirmed the dismissal of the charges. Basically, on September 6, 2012, Appellee ceased performing any services as school superintendent. He was banned from school grounds and was required to return his office keys and all school property. It was the last day he was paid or received any benefits. However, the school board did not memorialize the cessation of his employment until April 2, 2013. The Sixth District decided the clock started on September 6, 2012, not April 2, 2013, so the statute of limitations lapsed prior to the March 11, 2015 indictment.

Seventh Appellate District of Ohio

Nothing new.

Eighth Appellate District of Ohio

Nothing new.

Ninth Appellate District of Ohio

Nothing new.

Tenth Appellate District of Ohio

In re D.S., 2016-Ohio-2810

Juvenile: Gross Sexual Imposition: Constitutional Law

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/10/2016/2016-Ohio-2810.pdf>

The juvenile court found R.C. 2907.05(A)(4), gross sexual imposition, unconstitutional as applied to Appellee, D.S., a 12-year-old, and dismissed the case under Juv.R. 9. The allegation was that Appellee had engaged in sexual acts with a 9-year-old boy. The juvenile court found the statute unconstitutional as applied to Appellee because “[t]hese children are quite close in age, it is arbitrary to decide who should be charged and who should not, given there is no threat of force or violence.” The Tenth District reversed the juvenile court’s decision, holding “the trial court erred in finding R.C. 2907.05(A)(4) unconstitutional as applied in this case, and, on this record, [Appellee] did not fulfill his burden to present clear and convincing evidence of facts which would otherwise make the act unconstitutional when applied to him.” The Tenth District also held that the juvenile court erred in dismissing the complaint against Appellee.

Eleventh Appellate District of Ohio

Nothing new.

Twelfth Appellate District of Ohio

State v. Dees, 2016-Ohio-2772

Jurisdiction: Municipal Court: Complaint

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/12/2016/2016-Ohio-2772.pdf>

The municipal court lacked jurisdiction to convict Appellant because the complaint was neither signed nor made under oath, and was therefore invalid under Crim.R. 3.

Supreme Court of Ohio

State v. Thompson, 2016-Ohio-2769

Sentencing: Motion for Jail Time Credit: Appeals

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/o/2016/2016-Ohio-2769.pdf>

“A trial court’s determination of a motion for jail-time credit pursuant to R.C. 2929.19(B)(2)(g)(iii) constitutes a special proceeding and affects a substantial right. Accordingly, we hold that a denial of a motion for jail-time credit pursuant to R.C. 2929.19(B)(2)(g)(iii) is a final, appealable order.”

State v. J.M., 2016-Ohio-2803

R.C. 2953.31: Sealing of Records: R.C. 4503.11(A): Conviction

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/o/2016/2016-Ohio-2803.pdf>

A fourth-degree-misdemeanor conviction under R.C. 4503.11(A) for failing to register motor vehicle counts as a conviction when determining eligible-offender status for the purpose of sealing records. This currently applies to convictions prior to July 1, 2015. Convictions after that are minor misdemeanors and do not count as convictions for record-sealing purposes.

State v. Heinz, 2016-Ohio-2814

R.C. 309.08: Prosecutor: Community-Control-Violation Proceedings

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/o/2016/2016-Ohio-2814.pdf>

A judge in Cuyahoga County had a standing order that the Cuyahoga County Prosecuting Attorney could not represent the state in a community control sanction violation and revocation hearing on the basis that the probation department represents the state in revocation proceedings. The Eighth District held that the state's traditional role is adequately represented by the probation department. The Supreme Court reversed the Eighth District, holding that the state is a party to all community-control-violation proceedings, and the county prosecuting attorney, as the state's legal representative, is entitled to notice and an opportunity to be heard as such proceedings.

Sixth Circuit Court of Appeals

Nothing new.

Supreme Court of the United States

Nothing new.