Appellate Court Decisions - Week of 5/27/14

First Appellate District of Ohio

***State v. Russell*, 2014-Ohio-2295**

Sentencing

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-130384_05302014.pdf

Summary from the First District:

"The trial court did not err in failing to notify the defendant that he may be required to perform community service in lieu of paying court costs, when the defendant was sentenced to prison after the March 22, 2013 effective date of 2012 Sub.H.B. 247, which amended R.C. 2947.23(A)(1) to require such notice only when the court imposes a community-control or other nonresidential sanction. (*State v. Bailey*, 1st Dist. Hamilton Nos. C-130245 and C-130246, 2013-Ohio-5512, followed.)"

Second Appellate District of Ohio

***State v. Holt*, 2014-Ohio-2204**

Sentencing: Intervention

Full Decision: http://www.supremecourt.ohio.gov/rod/docs/pdf/2/2014/2014-ohio-2204.pdf

The trial court erred in imposing a prison sentence instead of community control on Appellant for violating the conditions of his treatment in lieu of conviction sentence where Appellant's original offense meets all of the requirements in R.C. 2929.13(B)(1)(a) and he met none of the exceptions in R.C. 2929.13(B)(1)(b).

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

***State v. Whitacker*, 2014-Ohio-2220**

Search: OVI: Motion to Suppress

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/6/2014/2014-ohio-2220.pdf

The trial court erred in denying Appellant's motion to suppress. The encounter was not consensual and therefore an investigatory stop because three police cruisers surrounded her vehicle as it was moving. No reasonable, innocent person, according to the Sixth District, would feel free to leave in that situation. Furthermore, a call from an anonymous informant stating that there were intoxicated females in a red vehicle behind Checker's Bar in Bowling Green, Ohio, was not sufficient to establish reasonable suspicion to stop Appellant's vehicle.

Seventh Appellate District of Ohio

***State v. Raynovich*, 2014-Ohio-2246**

Sentencing: Theft: H.B. 86: Retractivity

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/7/2014/2014-ohio-2246.pdf

Appellant stole $549 from a Right Aid Pharmacy at a time when theft of property worth $500 to $5,000 was a fifth-degree felony. In the meantime, H.B. 86 was passed, raising the limit for petty theft to $1,000. The Seventh District held, in accordance with *State v.* Taylor, 128 Ohio St.3d 194, that Appellant should have been convicted off and sentenced on a misdemeanor, not a felony.

Eighth Appellate District of Ohio

***State v. Mills*, 2014-Ohio-2188**

Escape: Post-Release Control

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2014/2014-ohio-2188.pdf

Although Appellant was properly advised of postrelease control at his sentencing hearing, the corresponding journal entry did not include the consequences for violating postrelease control, rendering the sentence void. Because Appellant already served his prison term for the charges underlying the postrelease control, postrelease control could not be imposed upon him. Therefore, Appellant could not be convicted of escape for violating postrelease control, and the trial court properly granted his motions to withdraw his guilty plea to the escape charge, dismiss the indictment, and terminate postrelease control.

***State v. Schillo*, 2014-Ohio-2262**

Evidence: Hearsay

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2014/2014-ohio-2262.pdf

Appellant was prejudiced and therefore entitled to a new trial where the trial court, in a bench trial, allowed into evidence the contents of an anonymous (and hearsay) letter that alleged Appellant had been drinking and was heavily intoxicated on the evening he struck and paralyzed a bicyclist while driving.

Ninth Appellate District of Ohio

***State v. Smith*, 2014-Ohio-2232**

Expungement

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/9/2014/2014-ohio-2232.pdf

The trial court erred in denying Appellant's application for sealing his two convictions where it did not correctly apply R.C. 2953.32(C) at the hearing on the application. The trial court focused entirely on the circumstances

behind his prior convictions (11 and 17 years old), did not actually determine if Appellant had been rehabilitated to the court's satisfaction, and did not weigh the interests of Appellant versus the interests of the State.

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

***Cleveland v. McCardle*, 2014-Ohio-2140**

Constitutional Law: Curfews: Freedom of Speech

Full Decision: http://www.sconet.state.oh.us/rod/docs/pdf/0/2014/2014-ohio-2140.pdf

"An ordinance establishing a curfew in a public park is constitutional under the First and Fourteenth Amendments to the United States Constitution if it is content neutral, is narrowly tailored to advance a significant government interest, and allows alternative channels of speech." The ordinance in question "prevents any person from remaining in the Public Square area of downtown Cleveland between 10:00 p.m. and 5:00 a.m. without a permit issued by the Cleveland Department of Parks, Recreation, and Properties ...."

***State v. Straley*, 2014-Ohio-2139**

R.C. 2921.12(A)(1): Tampering With Evidence

Full Decision: http://www.sconet.state.oh.us/rod/docs/pdf/0/2014/2014-ohio-2139.pdf

"A conviction for tampering with evidence pursuant to R.C. 2921.12(A)(1) requires proof that the defendant intended to impair the value or availability of evidence that related to an existing or likely official investigation or proceeding."

Here's an example of what this means: If the police were pulling a defendant over for speeding, and that was the only reason they were pulling the defendant over, and while pulling over, the defendant tosses drugs out the window, because there was no existing drug investigation, and because there was not likely to be one (because the whole thing was about speeding), the defendant cannot be guilty of tampering for throwing the drugs out the window. Guilty of being stupid? Sure. But tampering? No.

Sixth Circuit Court of Appeals

Nothing new.

Supreme Court of the United States

***State v. Martinez*, 572 U.S. _____ (2014)**

Double Jeopardy: Directed Verdict

Full Decision: http://www.supremecourt.gov/opinions/13pdf/13-5967_7m5e.pdf

The Illinois Supreme Court manifestly erred in allowing the state to appeal a case where the jury was sworn, the state declined to present any evidence, and Appellant was granted a directed not-guilty verdict, because, the Supreme Court held, jeopardy had attached when the jury was sworn.

***Hall v. Florida*, No. 12-10882**

Death Penalty: Eighth Amendment: IQ Threshold

Full Decision: http://www.supremecourt.gov/opinions/13pdf/12-10882_36g4.pdf

It has already been held by the Supreme Court that it is unconstitutional to execute persons with intellectual disability. Florida's rigid statutory cutoff for "intellectual disability" at an IQ score of 70, which does not allow any further exploration of a defendant's intellectual ability after a test above 70 (the Appellant here scored a 71) "creates an unacceptable risk that persons with intellectual disability will be executed, and thus is unconstitutional."