Appellate Court Decisions - Week of 5/31/16

First Appellate District of Ohio

***State v. Glynn*, 2016-Ohio-3230**

Expungement

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-150474_06012016.pdf

Summary from the First District:

"The trial court erred as a matter of law in denying the defendant's application to seal the record of his criminal conviction under R.C. 2953.32 on the basis that law-enforcement officers would not know to search for a sealed conviction, and that the past conviction could not serve to enhance a future charge, because R.C. 2953.32 specifically allows a law-enforcement officer or prosecutor to inspect a sealed record to determine whether that sealed record could enhance a charge."

***State v. Crossty*, 2016-Ohio-3265**

Appeal: Jurisdiction

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-150513_06032016.pdf

Summary from the First District:

"The appellate court has no jurisdiction to review the common pleas court's order overruling defendant's motion for shock probation pursuant to R.C. 2929.201, because R.C. 2505.02 et seq., R.C. 2953.08, and R.C. 2953.23(B) do not afford the defendant the right to appeal the order."

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. Cox*, 2016-Ohio-3250**

Menacing: Lesser-Included Offense: Disorderly Conduct

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/5/2016/2016-Ohio-3250.pdf

Appellant was charged with menacing in violation of R.C. 2903.22. At the close of evidence at trial, the court asked the prosecutor whether he wanted to submit the case solely on menacing. The prosecutor asked the court to include a lesser-included offense such as disorderly conduct. The court found Appellant not guilty of menacing, but guilty of disorderly conduct. However, subsection (A)(5) of disorderly conduct, R.C. 2917.11, is not a lesser-included offense of menacing. Therefore, the trial court erred in finding Appellant guilty of disorderly conduct. The Fifth District ordered the conviction vacated.

***State v. Laizure*, 2016-Ohio-3252**

Search: Motion to Suppress: Traffic Stop

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/5/2016/2016-Ohio-3252.pdf

The trial court did not err in granting Appellee's motion to suppress because the police officer did not have a reasonable and articulable suspicion warranting a stop of his vehicle. The officer stopped Appellee's vehicle for speeding after visually estimating Appellee's speed. Stops based on unaided visual-speed estimates are prohibited by R.C. 4511.091(C)(1).

Sixth Appellate District of Ohio

***State v. Smith*, 2016-Ohio-3203**

Fair Trial

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/6/2016/2016-Ohio-3203.pdf

"[B]ecause the trial court expressed disdain for appellant, calling him 'stupid,' and allowed appellant to proceed unrepresented without a

knowing, intelligent, and voluntary waiver of his right to counsel in a matter that could have resulted, and in fact did result, in the imposition of jail time, we hold that appellant did not receive a fair trial and thus his right to due process was violated."

Seventh Appellate District of Ohio

Nothing new.

Eighth Appellate District of Ohio

***State v. Tutt*, 2016-Ohio-3259**

Plea

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2016/2016-Ohio-3259.pdf

Appellant's plea was no entered knowingly, intelligently, or voluntarily. Appellant's entire sentence had to be mandatory. During the plea colloquy, in response to Appellant's questions, the trial court implied there might be programs available for Appellant to be released from prison early, which was impossible because of the mandatory nature of the sentence.

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

Nothing new.

Supreme Court of the United States

***Lynch v. Arizona*, 578U.S. ____ (2016)**

Capital Offenses

Full Decision: http://www.supremecourt.gov/opinions/15pdf/15-8366_e18f.pdf

"Under *Simmons v. South* Carolina, 512 U.S. 154 (1994), and its progeny, 'where a capital defendant's future dangerousness is at issue, and the only sentencing alternative to death available to the jury is life imprisonment without possibility of parole,' the Due Process Clause 'entitles the defendant 'to inform the jury of [his] parole ineligibility, either by a jury instruction in in arguments by counsel." *Shafer v. South* Carolina, 532 U.S. 36, 39 (2001) (quoting *Ramdass v. Angelone*, 530 U.S. 156, 165 (2000) (plurality opinion)).