

## Appellate Court Decisions - Week of 6/10/13

### First Appellate District of Ohio

***In Re: Raheem L., Appeal No. C-100608, Trial No. 09-8835X***

**Constitutional Law: Delinquency: Sex Offenses**

**Full Decision:** [http://www.hamilton-co.org/appealscourt/docs/decisions/C-100608\\_06122013.pdf](http://www.hamilton-co.org/appealscourt/docs/decisions/C-100608_06122013.pdf)

**Imposing punishment on juveniles for delinquency (in this case, sex offender registration) that extends beyond their 21<sup>st</sup> birthdays does not violate the juveniles' due process rights under the Ohio and federal constitutions.**

The Due Course Clause of Article I, Section 16, of the Ohio Constitution and the Due Process Clause of the Fourteenth Amendment to the United States Constitution do not prohibit the legislature from punishing children for delinquency beyond their 21<sup>st</sup> birthdays by classifying them as juvenile offender registrants under R.C. 2152.83(A) because no fundamental right is implicated and the punishment is rationally related to the government's legitimate interest in enforcing its criminal laws against juveniles. [*But see* DISSENT: When an adult penalty is imposed immediately upon disposition, and the juvenile is not given the opportunity to avoid the adult portion of his or her punishment by successfully completing his or her juvenile rehabilitation, the sentence imposed is fundamentally unfair and the juvenile offender is denied due process under the federal and state constitutions.]

***State v. Ringer, Appeal No. C-120606, Trial no. B-0010086***

**Postconviction: Allied Offenses: Postrelease Control**

**Full Decision:** [http://www.hamilton-co.org/appealscourt/docs/decisions/C-120606\\_06142013.pdf](http://www.hamilton-co.org/appealscourt/docs/decisions/C-120606_06142013.pdf)

**Defendant did not satisfy the time restrictions of R.C. 2953.21(A)(2) or the jurisdictional requirements of R.C. 2953.23, so the common pleas court did not have jurisdiction to entertain his postconviction motion. The court does have jurisdiction to correct a void judgment, but the imposition of a sentence in violation of R.C. 2941.25 does not render a judgment of conviction void. The trial court did err, however, by failing to adequately notify the defendant at sentencing concerning postrelease control.**

**Summary from the First District:**

Defendant's postconviction allied-offenses claim was subject to dismissal for lack of jurisdiction: his postconviction motion was reviewable as a postconviction petition

under R.C. 2953.21 et seq., because it did not specify the statute or rule under which relief was sought, and because the postconviction statutes provide the exclusive means for collaterally challenging a criminal conviction; but the postconviction statutes did not confer jurisdiction to review the motion, because it did not satisfy R.C. 2953.21(A)(2)'s time restrictions or R.C. 2953.23's jurisdictional requirements; and defendant's allied-offenses claim, even if demonstrated, would not have rendered his sentences void.

The common pleas court erred in failing to correct defendant's sentences to properly impose postrelease control: the sentences were void to the extent that he had not been adequately notified concerning postrelease control; and the sentences were subject to review and correction, when defendant's postconviction motion brought the matter to the court's attention.

### ***State v. Martin, Appeal No. C-110204, Trial No. B-0803273***

#### **Sentencing: Restitution**

**Full Decision:** [http://www.hamilton-co.org/appealscourt/docs/decisions/C-110204\\_06142013.pdf](http://www.hamilton-co.org/appealscourt/docs/decisions/C-110204_06142013.pdf)

#### **Summary From the First District:**

**Where the defendant had not been convicted of arson "with purpose to defraud," the trial court erred in ordering the defendant, who had been convicted of arson for burning down his own home, to pay restitution to his insurance company under R.C. 2929.18(A)(1) because the insurance company was not a "victim" of the defendant's arson crime as contemplated by the statute.**

### **Eighth Appellate District of Ohio**

#### ***Harris v. City of Mayfield Heights, et al., No. 98993***

#### **Forfeiture**

**Full Decision:** <http://www.sconet.state.oh.us/rod/docs/pdf/8/2013/2013-ohio-2464.pdf>

**Ohio law permits police departments that have seized suspected contraband to seek forfeiture under federal law, even if the defendant was never charged with a drug crime (in this case, only a misdemeanor driving under suspension).**

Mayfield Heights police found \$15,084.47 on Harris and in his front seat when they stopped his vehicle. A drug-sniffing dog alerted to the presence of drugs on the money. The police turned the money over to the DEA under the assumption that it was the product of drug trafficking. The DEA successfully instituted forfeiture proceedings

against the money despite the fact that drug charges were never filed against Harris – he was only cited for a misdemeanor driving under suspension.

Harris filed a replevin action against the city to get his money back. The trial court denied his motion for summary judgment and conducted a trial in his absence. A jury found that Harris didn't own the money and that it was the "fruit of illegal activity." The court entered a judgment for the city and denied a motion for judgment notwithstanding the verdict. Harris appealed the refusal to grant him a judgment as a matter of law on the replevin action.

The Eighth District affirmed the judgment of the trial court, holding that Ohio law permits police departments that have seized suspected contraband to seek forfeiture under federal law, and that competent, credible evidence was offered by the city at trial to show that the money came from the drug trade, thus making it not subject to replevin.

### **State v. Hammond, No. 99074**

#### **Sufficiency of the Evidence: Aggravated Robbery: Toy Gun**

**Full Decision:** <http://www.sconet.state.oh.us/rod/docs/pdf/8/2013/2013-ohio-2466.pdf>

**There was insufficient evidence to prove an aggravated robbery where weapon used – a toy gun made of light plastic, weighing 1.5 ounces, measuring 5 inches long and 3.5 inches tall – was not a “deadly weapon.”**

Hammond was charged with aggravated robbery under R.C. 2911.01(A)(1) and disrupting public services in violation of R.C. 2929.04(A)(1), after he allegedly held up an acquaintance with a toy gun and ripped a telephone jack from the wall. The appellate court's own examination of the toy gun shows it is made of light plastic, weighs 1.5 ounces, and measures 5 inches in length and 3.5 inches in height. He was found guilty of both offenses after a bench trial and sentenced to three years imprisonment for the aggravated robbery and six months for disrupting public services, to run consecutively.

Hammond appealed, the Eighth District held that there was no evidence regarding the use of a real gun by Hammond during the robbery and there was insufficient evidence to establish the use of a "deadly weapon." The Eighth District reversed the trial court and remanded for sentencing, modifying the trial court's judgment to reduce the conviction from an aggravated robbery to a robbery under R.C. 2911.02(A)(2)

**In re: C.T., No. 97278**

**Evidence: Other Acts**

**Full Decision:** <http://www.sconet.state.oh.us/rod/docs/pdf/8/2013/2013-ohio-2458.pdf>

**Defendant was found delinquent for raping an acquaintance from school. The facts involved Defendant having the alleged victim perform oral sex on him and Defendant digitally penetrating her vagina. Defendant, on cross-examination, testified that he had previously pleaded delinquent to a charge of gross sexual imposition after a girl accused him of forcefully making her perform oral sex on him and also digitally penetrating her. The Eighth District held, after conducting an analysis pursuant to *State v. Williams*, 134 Ohio St.3d 521, 2012-ohio-5695, 983 N.E.2d 1278, that the prior adjudication of delinquency was inadmissible other acts evidence and should have been excluded by the trial court.**

The defendant was found delinquent for raping an acquaintance from his school. The facts involved the defendant and the alleged victim getting together after a high school football game and the victim eventually driving the two of them to a dark cul-de-sac.

The alleged victim climbed into passenger side of the car with the defendant and they began kissing. The alleged victim removed her top and the defendant pulled out his penis. The defendant asked the alleged victim to perform oral sex and she obliged. The defendant penetrated the alleged victim vaginally with his fingers.

The alleged victim testified that she told the defendant to stop, he testified that she said no such thing and that his acts were consensual. She said she complied because she was scared of the defendant, but that he did not threaten her verbally or physically.

The alleged victim returned to the driver's seat later to check her phone. The defendant requested that she continue with the oral sex, and she again obliged. She said she did so simply to get it over with and get out of the situation. However, the next day she texted the defendant to get together, but he said he couldn't because he was in trouble. Later that day, the alleged victim told her parents she had been raped by the defendant and he was charged afterward.

The other acts issue in this case came from the defendant's testimony that he had previously pleaded delinquent to a charge of gross sexual imposition after a girl accused him of forcefully making her perform oral sex on him and also digitally penetrating her. The state said that evidence was admissible because it established his modus operandi and it showed his lack of mistake concerning consent. The trial court found him delinquent and sentenced him to 12 months to a maximum stay in the Ohio Department of Youth Services until he turned 21.

The Eighth District analyzed the other acts evidence's admission pursuant to *State v. Williams*, 134 Ohio St.3d 521, 2012-ohio-5695, 983 N.E.2d 1278, which is a three-part analysis. The first part is relevancy, to which the Eighth District said the evidence was not relevant because it did not demonstrate a unique behavioral footprint. The second part of the test is the purpose of the evidence, which in this case was to determine whether there was consent. The Eighth District said that is "exactly what the rule prohibits – to prove that [the defendant] had a propensity to engage in sexual conduct with a female without consent." The third part of the test is prejudice, to which the Eighth District said the other acts evidence in this case was highly prejudicial.

Based on that analysis, the Eighth District reversed the defendant's adjudication and remanded for a new hearing.

## **Twelfth Appellate District of Ohio**

### **State v. Baker, Case No. CA2012-12-17**

**Venue: Double Jeopardy**

**Full Decision:** <http://www.sconet.state.oh.us/rod/docs/pdf/12/2013/2013-ohio-2398.pdf>

#### **Summary from Judge Rodenberg:**

**Facts: Appellant appeals his convictions for drug-related crimes and engaging in a pattern of corrupt activity. Appellant was charged with several crimes in Warren County after a police investigation revealed that a teenager was selling marijuana to other teens and police apprehended that teen's supplier, and several other suppliers leading eventually to appellant.**

**Venue: Venue in Warren County was improper where the state failed to demonstrate that any element of engaging in a pattern of corrupt activity occurred in Warren County. The state did not present sufficient evidence that appellant has an association-in-fact with the teenager that sold drugs, or that Baker's enterprise had a significant nexus to Warren County.**

Note, an important/interesting quote from the court on pp. 15-16: "While our decision today results in a distasteful outcome, the state made the choice to bring these charges in Warren County despite having at least two clearly established venues (Hamilton and Butler Counties), and instead chose a venue with no "significant nexus" to Baker's crimes. We are aware that by sustaining Baker's first assignment of error, Baker's convictions are reversed and vacated and that double jeopardy attaches to bar the State of Ohio from prosecuting these charges. While the record demonstrates that Baker blatantly broke the law by growing, possessing, and trafficking marijuana, his crimes did not have a significant nexus with Warren County, thus venue was not proper there ..."

## **Supreme Court of Ohio**

### ***State v. Willan, 2013-Ohio-2405***

**Sentencing: Mandatory 10-Year Prison Term for Certain Crimes of Corrupt Activity: R.C. 2929.14(D)(3)(a) and 2923.32**

**Full Decision:** <http://www.sconet.state.oh.us/rod/docs/pdf/o/2013/2013-ohio-2405.pdf>

**The language of R.C. 2929.14(D)(3)(a) is unambiguous and to restrict the meaning of “corrupt activity” to refer only to activity associated with the offenses listed in R.C. 2929.14(D)(3)(a) is error.**

Willan was found guilty by a jury of 68 counts, including a first-degree-felony of engaging in a pattern of corrupt activity in violation of R.C. 2923.32, Ohio’s RICO statute. The corrupt-activity count was predicated on, among other counts, five first-degree-felony counts of making false representations for the purpose of registering securities in violation of R.C. 1707.44(B)(1). At sentencing, Willan was given an aggregate term of 16 years, with the trial court determining that 10 years of that were mandatory under R.C. 2929.14(D)(3)(a) for the corrupt-activity count.

The court of appeals affirmed the guilty verdicts for the corrupt-activity count and three of the predicate violations of R.C. 1707.44(B)(1), but it reversed most of the other guilty verdicts for insufficiency of the evidence. It also vacated the mandatory 10-year prison sentence for the corrupt-activity count, because, it said R.C. 2929.14(D)(3)(a) is ambiguous as to whether the mandatory 10-year term applied to Willan. It said the statute “did not identify the offense of engaging in a pattern of corrupt activity by its Revised Code section number, R.C. 2923.32,” but did use section numbers to identify several offenses in surrounding language, so the court determined that it was “reasonable to infer that the mandatory ten-year prison term ... was only intended to apply to corrupt activity associated with” those other offenses.

The Ohio Supreme Court accepted the state’s appeal and held that the language in R.C. 2929.14(D)(3)(a) requiring a mandatory 10-year prison term for an offender “guilty of corrupt activity with the most serious offense in the pattern of corrupt activity being a felony of the first degree” is unambiguous, so the “court of appeals erred by restricting the meaning of ‘corrupt activity’ to refer only to activity associated with the offenses listed in R.C. 2929.14(D)(3)(a).”

## **State v. Forrest, 2013-Ohio-2409**

### **Intradistrict Conflicts**

**Full Decision:** <http://www.sconet.state.oh.us/rod/docs/pdf/o/2013/2013-ohio-2409.pdf>

**Because App.R. 26(A)(2) is silent on the issue of who must make the initial determination whether an intradistrict conflict exists, either an en banc court or a panel of the court may make the determination.**

Here's how the Ohio Supreme Court put the issue: "This case presents the question whether a three-judge panel of appellate judges – instead of the full court – may review a party's application for en banc consideration in order to determine whether an intradistrict conflict exists. We hold that it may."

### **Sixth Circuit Court of Appeals**

*Nothing new.*

### **Supreme Court of the United States**

*Nothing new.*