Appellate Court Decisions - Week of 6/16/14

First Appellate District of Ohio

State v. Phillips, 2014-Ohio-2614

Evidence: Evid. R. 1005: Service

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-130460_06182014.pdf

Summary from the First District:

"In a prosecution for violating a protection order, the trial court erred in admitting into evidence an exhibit, which was a copy of a 'County Writ,' purporting to show that the defendant had been served with the protection order, because the 'County Writ' was a public record and was not properly authenticated in accordance with Evid.R. 1005 where the exhibit had not been certified by the custodian of the document as being an accurate copy of the original and there was no testimony by someone who had compared the original record with the copy.

"The trial court erred by convicting the defendant under R.C. 2919.27(A)(1), which provides that no person shall recklessly violate a protection order issued in accordance with R.C. 3113.31, where there was no evidence in the record demonstrating that the protection order had been served upon the defendant: under R.C. 2919.27(A)(1), a protection order has not been issued in accordance with R.C. 3113.31 where it has not been served upon the defendant."

State v. Tsibouris, 2014-Ohio-2612

Jury Instructions

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-120415_06182014.pdf

Summary from the First District:

"The defendant's appeals from her convictions for resisting arrest and disorderly conduct were not moot where the record did not demonstrate that she had served her entire jail term or paid her jury fees.

"The trial court's instruction to the jury, that the defendant could be arrested for minor-misdemeanor disorderly conduct, was erroneous as a matter of law, but the error was harmless where the undisputed evidence showed that the defendant had been arrested on a menacing warrant.

"The trial court erred as a matter of law in convicting and sentencing the defendant for fourth-degree-misdemeanor disorderly conduct where the jury instructions and verdict form only referenced minor-misdemeanor disorderly conduct."

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. Poulton*, 2014-Ohio-2602**

Furnishing Beer to Minor: Sufficiency

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/5/2014/2014-ohio-2602.pdf

The trial court erred in finding Appellant guilty of furnishing beer to a minor where the state failed to produce sufficient evidence that "Yuengling" is a beer under R.C. 4301.01(B)(2). It did not produce evidence of the specific alcoholic content of "Yuengling" or any alcoholic beverages alleged to have been consumed by the minor on the date in question. Notable quote from paragraph 89, though no citation: "Judicial notice cannot be taken of the elements of an offense." So, if the fact that something is an alcoholic beverage must be proven to find someone guilty of an offense, the court cannot take judicial notice of that fact.

Sixth Appellate District of Ohio

Nothing new.

Seventh Appellate District of Ohio

***State v. Mendez*, 2014-Ohio-2601**

Sentencing: Restitution

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/7/2014/2014-ohio-2601.pdf

The trial court abused its discretion in not holding a separate hearing on restitution where trial counsel questioned the amount of restitution at sentencing. R.C. 2929.18(A)(1).

Eighth Appellate District of Ohio

Nothing new.

Ninth Appellate District of Ohio

***State v. Stover*, 2014-Ohio-2572**

Evidence: Hearsay: Excited Utterance

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/9/2014/2014-ohio-2572.pdf

The trial court erred in admitting into evidence a state's witness' hearsay statement that was written down by an officer at the scene of the domestic violence incident because the witness was too intoxicated to write it herself. First, the fact that it was hearsay was not cured by the fact that the witness was present at trial to be cross-examined on her own statement. The cross-examination must come at the time the statement is made. Second, it was not an excited utterance because the officer waited for the witness to calm down before taking the statement. The trial court also erred in ordering Appellant to pay restitution to a third-party insurance company on a criminal damaging conviction.

Tenth Appellate District of Ohio

Nothing new.

Eleventh Appellate District of Ohio

Nothing new.

Twelfth Appellate District of Ohio

***State v. Shalash*, 2014-Ohio-2584**

Evidence: Expert Testimony: *Daubert*: Motion in Limine

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/12/2014/2014-ohio-2584.pdf

From Judge Rodenberg:

"The trial court abused its discretion in not granting appellant's request for a *Daubert* hearing on his motion in limine to exclude the state's expert testimony on whether substances constituted 'controlled substance analogs' for purposes of R.C. 3719.01(HH). While a trial court's decision whether or not to hold a *Daubert* hearing is a matter within its sound discretion and the court's decision is not to be overturned unless it abuses its discretion, i.e., the decision is arbitrary, unconscionable or unreasonable, and the abuse of discretion standard is a deferential one and difficult for the appealing party to establish, the trial court abused its discretion under the circumstances in this case by not holding a *Daubert* hearing, particularly since the issues involved in the case are novel issues of law in this state."

***State v. Casey*, 2014-Ohio-2586**

Search: Motion to Suppress

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/12/2014/2014-ohio-2586.pdf

From Judge Rodenberg:

"The trial court erred in denying appellant's motion to suppress marijuana and drug paraphernalia. Although the police officer was permitted to stop appellant's vehicle and conduct field sobriety tests, the officer failed to show that appellant's continued detention was based on a new articulable reasonable suspicion and the purpose of the continued detention was not related to the purpose of the original stop."

Supreme Court of Ohio

Nothing new.

Sixth Circuit Court of Appeals

Nothing new.

Supreme Court of the United States

Nothing new.