

## **Appellate Court Decisions - Week of 7/29/13**

### **First Appellate District of Ohio**

#### **State v. Carmen, Appeal No. C-120692, Trial No. B-1200408**

##### **Self-Defense**

**Full Decision:** [http://www.hamilton-co.org/appealscourt/docs/decisions/C-120692\\_07312013.pdf](http://www.hamilton-co.org/appealscourt/docs/decisions/C-120692_07312013.pdf)

##### **Summary from the First District:**

The evidence was sufficient to support defendant's attempted- murder conviction, and the conviction was not contrary to the manifest weight of the evidence: multiple witnesses, including the victim, testified that defendant had shot the unarmed victim multiple times at close range, following a verbal altercation during which defendant had told the victim that he was "going to die today"; and the record supports the conclusion of the trial court, sitting as the trier of fact, that defendant had failed to sustain his burden of proving, in support of his claim of self-defense, that he had acted upon a bona fide belief that he was in imminent danger of death or great bodily harm.

Defendant's 14-year sentence was not contrary to law, when the trial court considered the purposes and principles of sentencing, along with the R.C. 2929.12 seriousness and recidivism factors, and journalized the findings required by R.C. 2929.14(C)(4) to impose consecutive prison terms, and when the record supports those findings.

#### **State v. Braggs, Appeal No. C-130073, Trial No. B-8903470**

##### **Declaratory Judgment: Postconviction: Sentencing**

**Full Decision:** [http://www.hamilton-co.org/appealscourt/docs/decisions/C-130073\\_08022013.pdf](http://www.hamilton-co.org/appealscourt/docs/decisions/C-130073_08022013.pdf)

##### **Summary from the First District:**

Defendant's postconviction motion, seeking a declaration that his community-service sentence was void because it exceeded the statutory range, was subject to dismissal for lack of jurisdiction: defendant could neither initiate a declaratory judgment action by filing a motion in his criminal case, nor use a declaratory judgment action as a substitute for an appeal of, or a means for mounting a collateral challenge to, his criminal conviction; defendant's motion, while reviewable under the statutes governing postconviction proceedings, was late and did not satisfy the jurisdictional requirements for a late petition; and the imposition of a term of community service exceeding the statutory range did not render his sentence void. [*But see* DISSENT: Defendant's sentence was void to the extent that the term of community service

exceeded the statutory range; therefore, the court had jurisdiction to entertain the challenge advanced in the motion, to vacate that portion of the sentence, and to note on the record that, because defendant had completed his sentence, he could not be resentenced to community service.]

## **Fifth Appellate District of Ohio**

### **State v. Puttick, 2013-Ohio-3295**

#### **Sentencing: Consecutive Sentences: Nunc Pro Tunc**

**Full Decision:** <http://www.sconet.state.oh.us/rod/docs/pdf/5/2013/2013-ohio-3295.pdf>

**The trial court told Defendant in open court that it would impose a 39-month sentence if he violated his community control sanctions. It then filed the sentencing entries, which ran the sentences concurrently instead of consecutively, effectively reducing the suspended sentence to 17 months. When the Defendant violated his community control sanctions, the trial court could not impose a 39-month sentence where it had already put Defendant on notice he would receive a 17-month sentence and revoked his community control sanctions.**

Puttick pleaded guilty to and was sentenced by the trial court in three separate criminal cases. In the first, he pleaded to drug possession (F5) and OVI under the influence of cocaine (M1). He was sentenced to 11 months in prison for the drug possession and a concurrent term of 180 days for the OVI. In the second case, he pleaded guilty to CCW and unauthorized use of a motor vehicle. He was sentenced to 17 months in prison on the CCW and a concurrent 6-month prison term for the unauthorized use. In the third case, he pleaded guilty to drug possession and was sentenced to 11 months in prison.

The trial court said the sentences for the three cases would be served consecutively for a total prison term of 39 months. It then suspended the sentences and placed Puttick on five years of community control sanctions. The trial court filed the sentencing entries, but in them stated the prison terms for the three cases would be served concurrently, which would reduce the sentence to 17 months.

A few months later, the State filed a motion to revoke Puttick's community control sanctions. A merit hearing was held and the trial court found that Puttick violated his community control sanctions. A dispositional hearing was set for a later date. Before the dispositional hearing, however, the trial court issued nunc pro tunc sentencing entries modifying the original sentencing entries to specify the prison terms were to run consecutively instead of concurrently. Then, the court issued its dispositional judgment entries, revoking Puttick's community control and imposing the previously suspended prison terms to be served consecutively.

Following *State v. Sheffield*, 8<sup>th</sup> Dist. No. 94534, 2011-Ohio-2395, the Fifth District held that the trial court could not avoid the clear and unambiguous 17-month sentence in the sentencing entries by filing a nunc pro tunc entry where it had already revoked Puttick's community control sanctions.

### **State v. Mechling, 2013-Ohio-3327**

#### **Search and Seizure: Motion to Suppress**

**Full Decision:** <http://www.sconet.state.oh.us/rod/docs/pdf/5/2013/2013-ohio-3327.pdf>

#### **ASDF**

An Ashland, Ohio police officer responded to a loud noise complaint. He determined the noise was coming from a detached garage with a driveway leading up to it from the street. As the officer was walking up to the garage, he heard a loud female voice say, "Hey, why don't you get that fat joint out of your pocket, and let's smoke it." A male voice responded that he didn't have a joint, but the woman said, "I seen you put that fat joint in your pocket. Why don't you get it out so we can smoke it?" The officer then walked around the corner and said, "Yeah, why don't you get it out."

The officer asked Mechling what he had in his pockets and Mechling said "nothing." The officer then asked Mechling to show him, so Mechling pulled his pockets halfway out, revealing the marijuana. The officer then asked if Mechling had anything else and he produced rolling papers. Mechling was cited with possession of marijuana and drug paraphernalia. Mechling filed a motion to suppress, but it was denied. He then entered a plea of no contest and was convicted and sentenced.

The Fifth District reversed the trial court's denial of the motion to suppress. It found that the officer's statement, "Yeah, why don't you get it out" was tantamount to an order or command; therefore, it constituted a Fourth Amendment search. It found that it was not a consensual search under the totality of the circumstances. It further found there was insufficient probable cause to justify a search.

#### **Supreme Court of Ohio**

*Nothing new.*

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

*Nothing new.*

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

*Nothing new.*