

Appellate Court Decisions - Week of 9/2/13

First Appellate District of Ohio

***State v. Ratliff*, Appeal No. C-120683, Trial Nos. 11CRB-9191(A-B)**

Appellate Rule 5

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-120683_09062013.pdf

Summary from the First District:

The city's appeal of the trial court's decision declaring the Adam Walsh Act version of R.C. Chapter 2950 unconstitutional and refusing to apply it to the defendant must be dismissed: the appellate court lacks jurisdiction over the appeal because the trial court's decision was not appealable as of right pursuant to R.C. 2945.67(A), and the city did not seek leave to appeal pursuant to App.R. 5.

Second Appellate District of Ohio

***State v. Hunter*, 2013-Ohio-3759**

Sentencing: Restitution

Full Decision: <http://www.supremecourt.ohio.gov/rod/docs/pdf/2/2013/2013-ohio-3759.pdf>

The trial court erred in ordering the defendant to pay restitution to the Dayton Fire Department as part of his sentence for an aggravated arson conviction. The Dayton Fire Department was not a victim under R.C. 2929.18(A)(1), and the trial court failed to comply with the mandates of R.C. 2929.71, if that statute even authorizes the trial court to order restitution to the Dayton Fire Department (The Sixth District did not clarify if it does.).

Hunter pleaded guilty to one count of aggravated arson. The court found him guilty and sentenced him to a three-year prison term. He was also ordered to pay \$463.28 in restitution to the Dayton Fire Department in connection with its investigatory expenses. At sentencing, his counsel objected to the imposition of restitution on the basis that the Dayton Fire Department was not a victim in the case. He appealed on that issue.

Under R.C. 2929.19(A)(1), a trial court may order restitution "to the victim of the offender's crime ... in an amount based on the victim's economic loss." R.C. 2930.01(H)(1) defines a victim as "[a] person who is identified as the victim of a crime or specified delinquent act in a police report or in a complaint, indictment, or information that charges the commission of a crime."

The Dayton Fire Department was not listed as a victim in the indictment and was not the object of Hunter's offenses. Therefore, the Second District held that the Dayton Fire Department was not a victim under R.C. 2929.18(A)(1).

The State argued, however, that the restitution was proper under R.C. 2929.71, which authorizes the trial court to order a convicted arsonist to make restitution to public agencies like the Dayton Fire Department. The Second District, however, found several fatal flaws in the state's reliance on R.C. 2929.71: "First, there is no evidence contained in the record that demonstrates the trial court's entry of an order directing interested agencies to file an itemized statement of expenses as required under R.C. 2929.71(B). Second, the trial court failed to hold a hearing on the matter, at which time the Dayton Fire Department would have had the responsibility to establish that the costs set forth in its itemized statement were incurred in the investigation of the fire, and that Hunter had assets available for the reimbursement of all or a portion of those costs. R.C. 2929.81(C). Finally, the trial court failed to specifically find that Hunter had the financial ability to pay the restitution. R.C. 2929.71(D)." Therefore, the Sixth District held that the trial court erred in ordering restitution to the Dayton Fire Department.

Supreme Court of Ohio

State v. Ricks, 2013-Ohio-3712

Sixth Amendment: Right to Confront Witnesses

Full Decision: <http://www.sconet.state.oh.us/rod/docs/pdf/o/2013/2013-ohio-3712.pdf>

Admission of testimonial, out-of-court statements of alleged accomplice who did not testify at defendant's trial violated defendant's right to confront the witnesses against him under the Sixth and Fourteenth Amendments to the United States Constitution, and Article I, Section 10, of the Ohio Constitution.

Calvin Harper, a known drug dealer, was robbed and murdered in his residence in Sandusky, Ohio. Aaron Gipson was an associate of Harper's. The State alleged in this case that Thomas Ricks traveled with Gipson to Harper's home and participated in Harper's murder. The important part of the facts is that the police investigation led to Gipson and a man who went by the name "Peanut." It was Gipson who told police that Peanut was the one who killed Harper. Gipson took police to Peanut's neighborhood so he could point out Peanut's house, which he did. The officer testified at trial that he and his partner were able to identify Peanut as Ricks, and were subsequently able to obtain a photo of Ricks, which Gipson then identified as Peanut. After the officer testified about Gipson's identification of Ricks (Gipson did not testify at Ricks' trial), Ricks objected, but the trial court allowed the testimony in with a limiting instruction that the testimony was for background, not the truth of the matter asserted.

The Supreme Court of Ohio, in analyzing the admission of the testimony regarding Gipson's identification of Ricks, offered the following test for testimony offered to explain police conduct to be admissible as nonhearsay: **“the conduct to be explained should be relevant, equivocal, and contemporaneous with the statements; the probative value of the statements must not be substantially outweighed by the danger of unfair prejudice; and the statements cannot connect the accused with the crime charged.”**

In analyzing the police officer's testimony about the trip to Ricks' neighborhood with Gipson, the Supreme Court said, “the police actions taken in obtaining a picture of Ricks is relevant. Second, the conduct was equivocal; that is, the conduct required an explanation as to what had led the police to obtain a picture of Ricks. Certainly, without an explanation, it would not be evident to the jury what had led the police to get a picture of Ricks, why the police had gone to Strathmoor Street to try to find Peanut, or how they had determined that the person they encountered on Strathmoor Street was indeed Peanut. Finally, the police's identification of Peanut was contemporaneous with Gipson's statements.”

However, the Court found that the testimony was especially prejudicial, and therefore should not have been admitted. “Gipson's out-of-court statements connected Ricks to Gipson and to the crime. The state amplified the danger of unfair prejudice by eliciting further testimony from Steckel that Gipson was upset and scared upon seeing Ricks. That testimony encouraged the jury to misuse the content of the out-of-court statement for its truth. That is, the jury would interpret Gipson's statement, ‘That's Peanut,’ as a statement identifying who had been his accomplice in the murder rather than as evidence to explain why the police had obtained a photograph of Ricks to show to other witnesses.”

The police officer also testified that he sent the photograph he obtained of Ricks to police in Sandusky, who showed it to the women who had been with Gipson and his associate the night before the murder and to Harper's neighbor, who saw a man go to Harper's house just before the murder. The State, however, went on to ask the officer whether Gipson had identified the person in the photograph as Peanut, and the officer responded that he had. The Supreme Court said that testimony “went well beyond describing how the Sandusky police had obtained a photograph of Thomas Ricks.” The statement, “That's Peanut” went to the truth of the matter asserted – that Thomas Ricks is Peanut. The state used Gipson's out-of-court statement as proof that the person in the photograph was guilty. The test provided by the Supreme Court above was not necessary in this instance because the statement regarding the photograph – “That's Peanut” – was clearly offered for the truth of the matter asserted and was therefore hearsay, and a violation of Ricks' rights under the Confrontation Clause of the Sixth Amendment to the United States Constitution and Article I, Section 10 of the Ohio Constitution.

In the end, the Supreme Court reversed the case and remanded for a new trial. It held that “the admission of the alleged accomplice's statements through the testimony of an investigating officer violated the defendant's right to confront the witnesses against

him under the Sixth and Fourteenth Amendments to the United States Constitution, and Article I, Section 10, of the Ohio Constitution.”

Sixth Circuit Court of Appeals

Nothing new.

Supreme Court of the United States

Nothing new.