Appellate Court Decisions - Week of 9/2/14

First Appellate District of Ohio

State v. Thomas, 2014-Ohio-3833

Sentencing

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-140070_09052014.pdf

Summary from the First District:

"The imposition of consecutive sentences was proper where the trial court made the mandatory findings and those findings were supported by the record, but remand was necessary for the trial court to incorporate its findings in the sentencing entry by nunc pro tunc order. (*State v. Bonnell*, Slip Opinion No. 2014-Ohio-3177, followed.)"

State v. Leonard, 2014-Ohio-3828

Pleas: Sentencing

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-130474_09052014.pdf

Summary from the First District:

"The defendant failed to demonstrate that his guilty plea was not knowingly, voluntarily, and intelligently entered on the ground that the trial court failed to inform him of the potential maximum penalty that he was subject to as a result of his guilty plea: the trial court's failure to orally advise the defendant of any potential sanctions for failing to provide a DNA sample and any potential immigration consequences did not render his plea defective where the defendant had provided the DNA sample and was not subject to any potential sanctions, and where he had indicted that he was a United States citizen on the plea form.

"The trial court did not abuse its discretion in denying the defendant's presentence motion to withdraw his guilty plea, filed on the day before sentencing, even though the record did not demonstrate that the state would be prejudiced, where the defendant, who was represented by competent counsel, had been provided a complete Crim.R. 11 hearing, and the trial court afforded the defendant a full and impartial hearing on the motion to withdraw and fully considered his arguments, including his purported but ambiguous claim of innocence.

"R.C. 2947.23(A)(1), as amended, provides that the trial court's authority to order the defendant to perform community service if he fails to pay court cost is not limited, even though the trial court that sentenced the defendant to community control and

imposed court costs failed to notify the defendant at the sentencing hearing that he could be ordered to perform community service if he failed to pay the costs."

***State v. Henderson*, 2014-Ohio-3829**

Assault: Evidence

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-130541_09052014.pdf

Summary from the First District:

"Where the defendant and one victim fired shots at each other and defendant hit an innocent bystander, the trial court's apparent inconsistency in finding the defendant guilty of felonious assault of the bystander under R.C. 2903.11(A)(1), but acquitting him of the separately charged offenses of attempted murder and felonious assault against the bystander and the separately charged offenses of attempted murder and felonious assault against the other victim, did not give rise to reversible error, because the felonious assault conviction was supported by sufficient evidence and was not against the manifest weight of the evidence."

***State v. Derkson*, 2014-Ohio-3831**

Postconviction

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-130844_09052014.pdf

Summary from the First District:

"The common pleas court properly denied as unsupported petitioner's postconviction claim that his guilty pleas had been the unknowing and unintelligent product of prosecutorial misconduct in failing to disclose in discovery evidence showing his actual innocence of felonious assault upon a peace officer and an accompanying peace-officer specification: the felonious-assault charge required proof that petitioner had acted 'knowingly,' and the peace-officer sentencing enhancement and peace-officer specification required proof only that the victim was a 'peace officer'; therefore, the undisclosed evidence could not be said to have been 'material' to petitioner's innocence of the charges, when it showed that petitioner had shot at a third person while the victim, a 'peace officer,' was in the line of fire.

"The common pleas court properly denied as unsupported petitioner's postconviction claim that his guilty pleas had been the unknowing and unintelligent product of his trial counsel's ineffectiveness: counsel did not violate a substantial duty to petitioner in failing to request or to seek to compel further discovery, when the undisclosed evidence could not be said to demonstrate petitioner's actual innocence; and the record belies petitioner's claim that counsel, at the hearing on his presentence

motion to withdraw his pleas, failed to argue, and obstructed petitioner in arguing, actual innocence."

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

***Ulrichsville v. McPeck*, 2014-Ohio-3798**

Disorderly Conduct: Insufficient Evidence

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/5/2014/2014-ohio-3798.pdf

Sometimes you read an opinion that is better off not summarized. If you have a twisted sense of humor, you're going to love this one. If not, you can save your time.

Sixth Appellate District of Ohio

Nothing new.

Seventh Appellate District of Ohio

***State v. Kozic*, 2014-Ohio-3807**

Search: Suppression: Burglary

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/7/2014/2014-ohio-3807.pdf

The trial court erred in Appellant's multi-count burglary case in denying his motion to suppress the screwdriver found in his vehicle. The search was not justified as incident to arrest because appellant was arrested at least 10

yards from his parked vehicle. It was also not justified under the inventory search exception because his car was not legally impounded, and there was no evidence presented the search was done in accordance with standard procedure, especially when the only thing taken from the vehicle was the screwdriver. The only count for which the error was not harmless, however, was Appellant's possessing criminal tools conviction, because the screwdriver was the main evidence against Appellant on that count. There was overwhelming evidence on all the other counts.

Eighth Appellate District of Ohio

***Berea v. Collins*, 2014-Ohio-3822**

OVI: Suppression

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2014/2014-ohio-3822.pdf

The trial court erred in denying Appellant's motion to suppress in his OVI case where the police officer was not in hot pursuit and therefore could not make a warrantless entry into Appellant's home. The officer observed Appellant speeding, but Appellant pulled into his driveway before the officer could even begin pursuing Appellant. Appellant got out of his car and had several items in his hands when the officer asked to speak with him about speeding. Appellant told the officer he would set the items he was holding down on his porch first because there was snow on the ground. Appellant then ran inside and barricaded himself behind the door. The officer, when speaking to Appellant outside, noticed Appellant had slurred speech. When Appellant would not open the door, the officer burst inside to arrest him. The Eighth District reversed the denial of the motion to suppress because the officer was never in hot pursuit of Appellant, and he also lacked probable cause to arrest.

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

***State v. Tolliver*, 2014-Ohio-3744**

Robbery: Mens Rea

Full Decision: http://www.sconet.state.oh.us/rod/docs/pdf/0/2014/2014-ohio-3744.pdf

"R.C. 2901.21(B), the statute for determining whether an offense imposes strict liability or requires proof of recklessness, applies only if 'the section defining an offense does not specify any degree of culpability.' If the section already requires proof of a culpable mental state for any element of the offense in any division or subdivision, R.C. 2901.21(B) does not apply, and the state need not prove culpability only as specified in the section. [*State v. Johnson*, 128 Ohio St.3d 107, 2010-Ohio-6301, 942 N.E.2d 347, followed]"

"Because R.C. 2911.02 defines every robbery to include the culpable mental states of the predicate theft offense, R.C. 2901.21(B), which applies only to statutes not specifying any degree of culpability, does not apply, and the state is not required to prove a culpable mental state with respect to the force element in R.C. 2911.02(A)(3)."

The Supreme Court also included this better summary of the issue:

"The General Assembly has defined the offense of robbery to require proof of a culpable mental state (or mens rea) for some elements of the offense but not for others. In this appeal, we consider whether the state must prove a culpable mental state with respect to the element contained in R.C. 2911.02(A)(3), that the offender did '[u]se or threaten the immediate use of force against another.' We hold that it need not and that the strict-liability and read-in recklessness rules of R.C. 2901.21(B) do not apply."

Sixth Circuit Court of Appeals

Nothing new.

Supreme Court of the United States

Nothing new.