2015 IN REVIEW

PRESENTED FOR THE

CENTRAL OHIO ASSOCIATION OF

CRIMINAL DEFENSE LAWYERS

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UNITED STATES SUPREME COURT CASES

GRADY V. NORTH CAROLINA (2015), 575 U.S. _

North Carolina's system of nonconsensual, mandatory satellite-based monitoring of certain sex offenders may not be a reasonable search under the Fourth Amendment. Case remanded to the North Carolina Supreme Court for further proceedings.

RODRIGUEZ V. UNITED STATES (2015), 575 U.S. __

Absent reasonable suspicion, police extension of a traffic stop, beyond the time needed to handle the matter for which the stop was made, in order to conduct a dog sniff violates the Constitution's shield against unreasonable seizures.

ELONIS V. UNITED STATES (2015), 575 U.S. __

Defendant was convicted in federal court of violation 18 U.S.C. 875(c), which prohibits the transmission in interstate commerce of "any communication containing any threat…to injure the person of another". Elonis had made disturbing and threatening Facebook posts directed at his estranged wife; co-workers; law enforcement and others. Section 875(c) has no mental state. The trial court, over Elonis's objection, instructed the jury that the civil law standard of a "reasonable person" applied to Elonis' intentions in making the threats. Supreme Court overturns Elonis's convictions and remands the matter to the trial court.

OHIO VS. CLARK (2015), 576 U.S. __

A 3-year-old child made statements to his teachers identifying the perpetrator of physical abuse. The Ohio Supreme Court (2013-Ohio-4731) held that such statements violated the Confrontation Clause, because of Ohio's "mandatory reporting" statute. United States Supreme Court holds that such statements were not made with the primary purpose of creating evidence for prosecuting Clark. The Court considered the informal setting of the interrogation and that an "ongoing emergency" existed. Ohio's mandatory reporter law does not automatically make those reporters state actors under the Confrontation Clause. Courts should examine the totality of the circumstances surrounding the making of the statements.

MCFADDEN VS. UNITED STATES (2015), 576 U.S. _

McFadden was charged under 21 U.S.C. 841(a)(1), as related to 21 U.S.C. 802(32(A) [the Controlled Substances Analogue Enforcement Act) for selling "bath salts" to the owner of a video store. McFadden argued that since the packaging stated that the contents were "not for human consumption" and that he was unaware that the

contents were controlled substances under the CSA and Analogue Act. Trial court rejected McFadden's proposed jury instructions on the issue of his knowledge of the composition of the substances in question. Supreme Court reverses McFadden's convictions and holds that when a controlled substance is an analogue, section 841(a)(1) requires the Government to establish that the defendant knew he was dealing with a substance regulated under the Controlled Substances Act or the Analogue Act.

JOHNSON VS. UNITED STATES (2015), 576 U.S. __

The residual clause of the Armed Career Criminal Act (ACCA), 18 U.S.C. 924(e)(2)(B)(ii), is unconstitutionally vague. Johnsons' 15-year sentence pursuant to ACCA vacated.

MARYLAND VS. KULBICKI (2015), 577 U.S. __

Failure by trial counsel to uncover a government report discounting forensic theory used to convict defendant does not constitute ineffective assistance of counsel.

OHIO SUPREME COURT CASES

STATE V. HARRIS, 2015-Ohio-166

When a defendant asserts a mental health defense and then abandons it, the psychologist's testimony regarding defendant's malingering is inadmissible.

STATE V. BEVERLY 2015-Ohio-219

RICO prosecution. The existence of an enterprise, sufficient to sustain a conviction for engaging in a pattern of corrupt activity under R.C. 2923.32(A)(1), can be established without proving that the enterprise is a structure separate and distinct from a pattern of corrupt activity.

STATE V. VANZANDT 2015-Ohio-236.

Official records that have been sealed pursuant to R.C. 2953.52 cannot be made accessible for purposes other than those provided in R.C. 2953.53(D).

STATE V. BROWN 2015-Ohio-486

A probate court judge, unless assigned by the chief justice pursuant to Article IV, Section 5(A)(3) of the Ohio Constitution to temporarily sit or hold court in another division of a court of common pleas, does not have the authority to hear evidence and issue search warrants in criminal matters.

STATE V. BEVLY 2015-Ohio-475

The provision of R.C. 2907.05(C)(2)(a) requiring a mandatory prison term for GSI where the state has produced corroborating evidence of the offense is unconstitutional.

STATE V. JONES 2015-Ohio-483.

"Totality of the circumstances" is the proper standard of review to determine whether probable cause exists to issue a search warrant if the supporting affidavit relies on part on evidence seized from a "trash pull".

STATE V. BLACK 2015-Ohio-513.

The term "penal or correctional institution of a party state" as used in R.C. 2963.30, includes a county jail as well as a state prison or correctional facility.

STATE V. RUFF 2015-Ohio-995.

In conducting an allied offense analysis under R.C. 2941.25, courts must evaluate the conduct, the animus and the import. Offenses are dissimilar when the defendant's conduct constitutes offenses involving separate victims or if the harm that results from each offense is separate and identifiable. A defendant may be convicted of multiple offenses if any of the following are true: the conduct constitutes offenses of dissimilar import; the offenses were committed separately; or the offenses were committed with a separate animus.

STATE V. BODE 2015-Ohio-1519.

A prior juvenile adjudication for an OVI cannot be used to enhance the penalty in a subsequent adult OVI conviction if the juvenile conviction was uncounseled and carried the possibility of confinement.

STATE V. CASTAGNOLA 2015-Ohio-1565.

The particularity requirement of the Fourth Amendment applies to the search of a computer and requires a search warrant to particularly describe the items believed to be contained on the computer with as much specificity as the affiant's knowledge and the circumstances of the case allow and that the search be conducted in a manner that restricts the search for the items identified.

STATE V. ANDERSON 2015-Ohio-2089.

A community control sanction may not be combined with a prison term for the same offense. An order that the defendant have no contact with the victim is a community control sanction.

STATE V. BROWN 2015-Ohio-2438.

A traffic stop for a minor misdemeanor outside an officer's statutory jurisdiction or authority violates Article I, Section 14 of the Ohio Constitution. Evidence flowing from such a stop is subject to suppression.

STATE V. ROGERS 2015-Ohio-2459.

Failure of defendant to raise the issue of allied offenses of similar import in the trial court forfeits all but plain error.

IN RE J.T. 2015-Ohio-3654.

An inoperable pistol that is not used as a bludgeon or otherwise used, possessed or carried as a weapon is not a "deadly weapon" for purposes of R.C. 2923.13.

STATE V. SOUTH 2015-Ohio-3930.

A defendant convicted of a third degree OVI offense and a repeat offender specification pursuant to R.C 2941.1413 must be sentenced to a mandatory prison term of 1,2,3,4,or five years for the specification and an additional prison term of 9, 12, 18, 24, 30, or 36 months for the OVI.

STATE V. EARLEY 2015-Ohio-4615.

A trial court may impose consecutive sentences for both aggravated vehicular assault [R.C. 2903.08(A)(1)(a)] and OVI [R.C. 4511.10(A)(1)(a)] when the offense of OVI is the predicate conduct of the aggravated vehicular assault.

STATE V. BLANKENSHIP 2015-Ohio-4624.

Registration and address verification requirements for Tier II sex offenders not cruel and unusual punishment under United States and Ohio Constitutions.

STATE V. BARRY 2015-Ohio-5449.

Ohio does not recognize the "unmistakable crime" doctrine in connection with the offense of tampering with evidence because that doctrine erroneously imputes to the perpetrator constructive knowledge of a pending or likely investigation into a crime; merely establishing that the crime committed is an unmistakable crime is insufficient to prove that the accused knew at the time the evidence was altered, destroyed, concealed or removed that an official proceeding or investigation into that crime was ongoing or likely to be instituted.

RULES OF APPELLATE PROCEDURE

RULES 3; 9; 11.2

A docketing statement is now required when filing an expedited appeal.

NEW LEGISLATION

HB 53 (Effective 7/1/15)

New definitions of "motorcycle" and "cab-enclosed motorcycle"; Changes to CDL laws as to definitions and licensing requirements; Parking prohibited in "access aisles" in private parking lots.

Sub. HB 47 (Effective 4/30/15)

Open containers now permitted in "outdoor refreshment areas".

Sub. SB 7 (Effective 9/29/15)

"Pure caffeine products" now banned per R.C. 2925.34; MM or M3 level offense.

HB 64 (Effective 9/29/15)

Changes to Judicial Release, R.C. 2929.20. Prisoners who are in danger of imminent death; are medically incapacitated; or have a terminal illness can be released by sentencing judge without reference to sections C or J. NOTE: sentencing court can revoke JR if the above conditions no longer exist.

Sub. HB 6 (Effective 7/16/15)

Rape and Sexual Battery statute of limitations is now 25 years. If DNA evidence was collected at the time of the offense, the statute of limitations is five years from a DNA match if the match is more than 25 years from the offense. Statute is prospective unless the former (current) SOL could be applied.

Sub. HB 56 (Effective 3/23/16)

So-called "ban the box" statute.

SB 161 (Effective 3/23/16)

Probate judges can now sign search warrants.