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2019 Annual J. Dean Carro Criminal Law Update

The Ohio Supreme Court

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The Ohio Supreme Court, Year in Review October 1, 2018 through November 8, 2019

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4th Amendment

State v. Hairston, 156 Ohio St.3d 363, 126 N.E.3d 1132, 2019-Ohio-1622. Police hear gunshot in early morning, go to scene three minutes away, stop African American man and pat him down, finding gun. Court holds totality of circumstances justifies stop.

State v. Hawkins, Slip Opinion No. 2019 Ohio 4210. Change in color of vehicle from that indicated in registration provides reasonable suspicion for a traffic stop; see Donnelly's dissent. (Note: Defendant gave two fake SSN numbers)

5th Amendment

State v. Soto, Slip Opinion No. 2019 Ohio 4430. Double jeopardy does not foreclose murder prosecution of defendant whose prior involuntary manslaughter conviction was dismissed under plea agreement.

6th Amendment

State v. Romero, 156 Ohio St.3d 468, 129 N.E.3d 404, 2019-Ohio-1839. Trial court's advisement of possible immigration consequences does not replace counsel's duty to advise defendant of consequences of plea. Established four criteria for determining prejudice: (1) consequences of going to trial (note *Lee v. US.*) (2) importance that defendant placed on avoiding deportation; (3) defendant's connection to the US; (4) judicial advisement if court went beyond mere mention.

State v. Tench, 156 Ohio St.3d. 85, 123 N.E.3d 955, 2018 -Ohio- 5205. Death penalty case; invocation of right to counsel

Substantive Criminal Law

State v. Ireland, 155 Ohio St.3d 287, 121 N.E.3d 285, 2018 -Ohio- 4494. Is "Blackout" an affirmative defense which must be proven by the defendant by a preponderance of the evidence or does it negate the voluntariness of the actus reus element which the State needs to have proven beyond a reasonable doubt? Divided decision does not answer the question definitively.

Sentencing

***State v. Hitchcock*, Slip Opinion No. 2019-Ohio 3246.** Court cannot impose prison sentence on one case and consecutive community control sanctions on another.

***State v. Braden*, Slip Opinion No. 2019 Ohio 4204.** Defendant can seek waiver of costs even if case were closed prior to the amendment of RC 2947.23(C). **Please note this is a reconsideration and reversal of the earlier Ohio Supreme Court decision in *Braden*.**

***State v. Cupp*, 156 Ohio St.3d 207, 124 N.E.3d 811, 2018 -Ohio- 5211.** Defendant not entitled to jail-time credit if defendant is serving a sentence in an unrelated case.

***State v. Bishop*, 156 Ohio St.3d 156, 124 N.E.3d 766, 2018-Ohio-5132.** Trial court must advise defendant at sentencing that if defendant commits another crime, court can run PRC violation – 1 year or remaining time on PRC, whichever is greater – consecutive to sentence on new offense.

Death Penalty

***State v. Ford*, Slip Opinion No. 2019 Ohio 4539.** Death penalty case, death sentence vacated and case remanded for judge to reconsider question of mental disability. Court must consider three core elements: (1) intellectual-functioning deficits (indicated by an IQ score approximately two standard deviations below the mean—i.e., a score of roughly 70 or lower when adjusted for the standard error of measurement), (2) significant adaptive deficits in any of the three adaptive-skill sets (conceptual, social, and practical), and (3) the onset of these deficits while the defendant was a minor.

Post-conviction

***State v. Parker*, Slip Opinion No. 2019 Ohio 3848.** Post-conviction relief statute allows untimely petition where new state or federal right is recognized by the Supreme Court of the United States; does not apply to state right (*State v. Hand*) recognized by Ohio Supreme Court; (4-3, with one judge concurring only in judgment; O'Connor, Donnelly, and Stewart dissent)

SELECTED PENDING CASES

***State v. Jeffries*, No. 2018-0338.** Does rape shield law apply to alleged victim's having been sexually assaulted previously?

***State v. Gwynne*, No. 2017-1506.** What is court of appeals standard of review in sentencing appeals? Is defendant's waiver of appeal valid?

***State v. Hartman*, No. 2019-0184.** Introduction of 404(B) evidence in sex case.

***State v. Faggs*, Nos. 1501 and 1592.** Is parental discipline in a domestic violence case an affirmative defense, or does State bear burden of proving that it was unreasonable?

***State v. Jones*, No. 2019-0395.** Is failure of standby counsel to be present for voir dire cause for reversal?