Appellate Court Decisions - Week of 1/11/16

First Appellate District of Ohio

***State v. Hunter*, 2016-Ohio-123**

Evidence: Having an Unlawful Interest in a Public Contract: Procedure/Rules: Juries: New Trial: Prosecutor

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2016/2016-Ohio-123.pdf

Summary from the First District:

"The trial court properly denied the defendant's motion for a judgment of acquittal for the charge of having an unlawful interest in a public contract, in violation of R.C. 2921.42(A)(1), where the defendant public official used her authority or the influence of her office to try to maintain the continued employment of her brother.

"The trial court did not commit plain error in ordering the jury to be polled after accepting the verdict for only one count of a multiple-count indictment, allowing the jury to continue to deliberate on the other counts without publishing the verdict, and then publishing the verdict without polling the jury a second time after the jury had deadlocked on the other counts, because neither R.C. 2945.77 nor Crim.R. 31(D) requires that the jury verdict be read in open court prior to polling the jury.

"The defendant was not entitled to a new trial based on claims that the state's closing argument was improper where, taken in the context of a lengthy and contentious trial, the comments complained of were not so egregious that they deprived the defendant of a fair trial."

Second Appellate District of Ohio

***State v. Smith*, 2016-Ohio-45**

Sentencing

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/2/2016/2016-Ohio-45.pdf

The trial court erred in ordering appellant to serve his prison sentence at a specific correctional institution because that order encroached on the jurisdiction and authority of the Department of Rehabilitation and Correction – and therefore violated the separation of powers doctrine.

Third Appellate District of Ohio

Nothing new.

Fourth Appellate District of Ohio

***State v. Neal*, 2016-Ohio-64**

Indictment

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/4/2016/2016-Ohio-64.pdf

One of appellant's counts of unlawful sexual conduct with a minor was not supported by the evidence where the state presented insufficient evidence that the offense occurred within the time frame alleged, "on or about the 10th day of June, 2013." The evidence from the victim was that it was snowing in the beginning of the day of the incident. The state did not seek to amend to amend the charge to conform to the evidence at trial. Therefore, the evidence was insufficient to prove that the offense occurred within the alleged period of time.

Fifth Appellate District of Ohio

Nothing new.

Sixth Appellate District of Ohio

Nothing new.

Seventh Appellate District of Ohio

Nothing new.

Eighth Appellate District of Ohio

***State v. Hyde*, 2016-Ohio-113**

Administrative License Suspension

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2016/2016-Ohio-113.pdf

Summary from the Eighth District: "The trial court erred by denying appellant's motion to terminate his life suspension of his driver's license or in the alternative occupational driving privileges. The trial court relied upon case law that predated the enactment of R.C. 4510.54 and R.C. 4510.021."

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

Nothing new.

Sixth Circuit Court of Appeals

Nothing new.

Supreme Court of the United States

***Hurst v. Florida*, No. 14-7505**

(Not really applicable to Ohio, but interesting nonetheless)

Florida's Death Penalty Scheme

Full Decision: http://www.supremecourt.gov/opinions/15pdf/14-7505_5ie6.pdf

Syllabus of the Court:

Under Florida law, the maximum sentence a capital felon may receive on the basis of a conviction alone is life imprisonment. He may be sentenced to death, but only if an additional sentencing proceeding "results in findings by the court that such person shall be punished by death." Fla. Stat. §775.082(1). In that proceeding, the sentencing judge first conducts an evidentiary hearing before a jury. §921.141(1). Next, the jury, by majority vote, renders an "advisory sentence." §921.141(2). Notwithstanding that recommendation, the court must independently find and weigh the aggravating and mitigating circumstances before entering a sentence of life or death. §921.141(3).

A Florida jury convicted petitioner Timothy Hurst of first-degree murder for killing a co-worker and recommended the death penalty. The court sentenced Hurst to death, but he was granted a new sentencing hearing on appeal. At resentencing, the jury again recommended death, and the judge again found the facts necessary to sentence Hurst to death. The Florida Supreme Court affirmed, rejecting Hurst's argument that his sentence violated the Sixth Amendment in light of *Ring* v. *Arizona*, 536 U. S. 584, in which this Court found unconstitutional an Arizona capital sentencing scheme that permitted a judge rather than the jury to find the facts necessary to sentence a defendant to death.

Held: Florida's capital sentencing scheme violates the Sixth Amendment in light of *Ring*. Pp. 4–10.

(a) Any fact that "expose[s] the defendant to a greater punishment than that authorized by the jury's guilty verdict" is an "element" that must be submitted to a jury. *Apprendi* v. *New Jersey*, 530 U. S. 466, 494. Applying *Apprendi* to the capital punishment context, the *Ring* Court had little difficulty concluding that an Arizona judge's independent factfinding exposed Ring to a punishment greater than the jury's guilty verdict authorized. 536 U. S., at 604. *Ring*'s analysis applies equally here. Florida requires not the jury but a judge to make the critical findings necessary to impose the death penalty. That Florida provides an advisory jury is immaterial. See *Walton* v. *Arizona*, 497 U. S. 639, 648. As with Ring, Hurst had the maximum authorized punishment he could receive increased by a judge's own factfinding. Pp. 4–6.

(b) Florida's counterarguments are rejected. Pp. 6–10.

(1) In arguing that the jury's recommendation necessarily included an aggravating circumstance finding, Florida fails to appreciate the judge's central and singular role under Florida law, which makes the court's findings necessary to impose death and makes the jury's function advisory only. The State cannot now treat the jury's advisory recommendation as the necessary factual finding required by *Ring*. Pp. 6–7.

(2) Florida's reliance on *Blakely* v. *Washington*, 542 U. S. 296, is misplaced. There, this Court stated that under *Apprendi*, a judge may impose any sentence authorized "on the basis of the facts . . . admitted by the defendant," 542 U. S., at 303. Florida alleges that Hurst's counsel admitted the existence of a robbery, but *Blakely* applied *Apprendi* to facts admitted in a guilty plea, in which

the defendant necessarily waived his right to a jury trial, while Florida has not explained how Hurst's alleged admissions accomplished a similar waiver. In any event, Hurst never admitted to either aggravating circumstance alleged by the State. Pp. 7–8.

(3) That this Court upheld Florida's capital sentencing scheme in *Hildwin* v. *Florida*, 490 U. S. 638, and *Spaziano* v. *Florida*, 468 U. S. 447, does not mean that *stare decisis* compels the Court to do so here, see *Alleyne* v. *United States*, 570 U. S. ___, ___ (SOTOMAYOR, J., concurring). Time and subsequent cases have washed away the logic of *Spaziano* and *Hildwin*. Those decisions are thus overruled to the extent they allow a sentencing judge to find an aggravating circumstance, independent of a jury's factfinding, that is necessary for imposition of the death penalty. Pp. 8–9.

(4) The State's assertion that any error was harmless is not addressed here, where there is no reason to depart from the Court's normal pattern of leaving such considerations to state courts. P. 10.

147 So. 3d 435, reversed and remanded.

SOTOMAYOR, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA, KENNEDY, THOMAS, GINSBURG, and KAGAN, JJ., joined. BREYER, J., filed an opinion concurring in the judgment. ALITO, J., filed a dissenting opinion.