Appellate Court Decisions - Week of 1/19/15

First Appellate District of Ohio

In re: A.C., 2015-Ohio-153

Custody

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-140273_01212015.pdf

Summary from the First District:

"Where the evidence presented during the custody hearing demonstrated that the child was extremely bonded with his nonrelative caregiver, that the child often preferred to spend time with his caregiver rather than visit with his biological mother, that the child was in need of a legally secure placement, and that the nonrelative caregiver provided a safe and secure home, the trial court did not abuse its discretion in determining that a grant of legal custody to the nonrelative caregiver was in the child's best interest.

"After a child has been adjudicated abused, neglected or dependent, a trial court need not first find that a noncustodial parent is unsuitable or unfit before awarding legal custody of the child to a nonparent."

State v. Thomas, 2015-Ohio-187

Escape: Sufficiency

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-140265_01232015.pdf

Summary from the First District:

"The trial court erred in finding the defendant guilty of escape in violation of R.C. 2921.34(A)(1), because the state failed to establish that the defendant was under detention as defined in R.C. 2921.01(E), a necessary element of the offense, where the evidence demonstrated only that the defendant had been placed in the facility as a juvenile by the Hamilton County Department of Job and Family Services to address his mental-health issues, and not that he had been confined as an alleged or adjudicated delinquent or unruly child, or that he been ordered to the facility by the court in a criminal action for issues related to a claim of incompetency to stand trial or a plea of insanity."

Second Appellate District of Ohio

***State v. Nelson*, 2015-Ohio-113**

Gross Sexual Imposition: Sufficiency

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/2/2015/2015-ohio-113.pdf

Appellant's conviction for gross sexual imposition was based on insufficient evidence where there was no evidence the victim's ability to resist or consent was substantially impaired because of her mental condition – bipolar affective disorder with psychotic features and panic disorder.

Third Appellate District of Ohio

Nothing new.

Fourth Appellate District of Ohio

Nothing new.

Fifth Appellate District of Ohio

Nothing new.

Sixth Appellate District of Ohio

Nothing new.

Seventh Appellate District of Ohio

***East Liverpool v. Lawson*, 2014-Ohio-5858**

Speeding

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/7/2014/2014-ohio-5858.pdf

Appellant's conviction for speeding was based on insufficient evidence where the prosecution failed to introduce evidence that the LTI 20/20 True Speed Laser Gun was scientifically reliable, and the trial court did not take judicial notice of its reliability.

Eighth Appellate District of Ohio

***State v. Bennett*, 2014-Ohio-173**

Sentencing: Plea: Concurrent Sentences: Allied Offenses

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2015/2015-ohio-173.pdf

The trial court erred where Appellant agreed to plead guilty to breaking and entering and theft with the understanding that the two offenses were allied and would merge, and the trial court recognized that the merger was part of the plea, but rather than merge the offenses the trial court sentenced Appellant on both and ordered the sentences to be served concurrently.

***State v. Westfall*, 2015-Ohio-175**

Sentencing: Allied Offenses: Attempted Murder: Domestic Violence

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2015/2015-ohio-175.pdf

The trial court erred in failing to merge Appellant's convictions for attempted murder and domestic violence as allied offenses of similar import. Appellant engaged in a single course of conduct with a single animus where he pushed his way into his girlfriend's home, threw her to the floor, put his hands around her neck, told her he was going to kill her, threw her back down when she tried to get up, punched her, grabbed her by the hair and whisked her around the room, and placed her into another choke hold until she passed out.

***State v. Strong*, 2015-Ohio-169**

Jury: *Batson*

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2015/2015-ohio-169.pdf

The trial court erred in overruling Appellant's objection to the prosecution's peremptory challenge to a juror who was one of only two African Americans on the panel. The reason given by the prosecution for the challenge was that the juror looked like he had a "thousand-yard stare" and that the prosecutor had concerns the juror would be able to pay attention. The trial court noted it did not observe conduct by the juror

consistent with the prosecution's description but did not conduct any further inquiry.

Ninth Appellate District of Ohio

Nothing new.

Tenth Appellate District of Ohio

***In re: S.F.M.*, 2014-Ohio-5860**

Expungement

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/10/2014/2014-ohio-5860.pdf

The trial court did not err in granting Appellee's motion to seal her two misdemeanor convictions despite the fact that Appellee had previously sealed another misdemeanor conviction.

The 10th District's Reasoning:

"Here, the General Assembly has written a discretionary statute. R.C. 2953.32 allows, but does not requires, the court to consider a prior sealed record in determining whether to seal a record under R.C. 2953.32. In the present case, the trial court decided, in its discretion, that it was not going to consider appellee's prior sealed record in determining appellee's eligibility under R.C. 2953.32. Once the trial court determined that it was not going to consider the prior sealed record, the issue of whether appellee fit the definition of 'eligible offender' became a question of law. There can be no dispute that appellee fits the definition of 'eligible offender' if the prior sealed record is not considered."

Eleventh Appellate District of Ohio

Nothing new.

Twelfth Appellate District of Ohio

***State v. Frymire*, 2015-Ohio-155**

Jury Instructions: Jury Question

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/12/2015/2015-ohio-155.pdf

Foreknowledge of a deadly weapon is required for a defendant to be found guilty of aggravated burglary or aggravated robbery charge under a complicity theory. The trial court here erred in instructing the jury that such foreknowledge was not required in response to a question it raised during deliberations. The prosecutor kept saying in closing that foreknowledge was not required, but the jury instructions correctly stated that foreknowledge was required. The trial court sealed the misstatement by incorrectly responding to the jury's question.

Supreme Court of Ohio

***State v. Harris*, 2015-Ohio-166**

Evidence: R.C. 2945.371(J): Mental-Capacity Defenses: Court-Ordered Mental Evaluations: Allegations of Malingering

Full Decision: http://www.sconet.state.oh.us/rod/docs/pdf/0/2015/2015-ohio-166.pdf

"[W]hen a defendant asserts a mental-capacity defense or defenses, causing the court to order a psychiatric evaluation, but then wholly abandons that defense or defenses, a psychologist's testimony regarding the defendant's feigning of mental illness during the evaluation is inadmissible in the state's case-in-chief pursuant to R.C. 2945.371(J). We further hold that the admission of a psychologist's testimony opining on the defendant's feigning of mental illness under these circumstances violates the defendant's right against self-incrimination guaranteed by Article I, Section 10 of the Ohio Constitution and the Fifth Amendment to the United States Constitution and that the violation was not harmless error."

Sixth Circuit Court of Appeals

Nothing new.

Supreme Court of the United States

Nothing new.