Appellate Court Decisions - Week of 3/11/13

Note: Anything that has "OVERVIEW" in front of it is the Lexis summary of a case.

First Appellate District of Ohio

***State v. Partee,* Appeal No. C-120432, Trial No. B-1103226**

Criminal Rule 11

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-120432_03132013.pdf

The trial court erred, and defendant's plea was invalid, when, at defendant's plea hearing, the trial court failed to ask the defendant to orally enter a plea, there was no discussion of the defendant's waiver of constitutional rights or postrelease control, and the trial court never accepted the plea or found the defendant guilty.

Summary from the First District:

The trial court's failure to comply with its duty under Crim.R. 11(C)(2)(c) to orally advise the defendant that by entering a plea of no contest he was waiving his constitutionally guaranteed rights to a jury trial, to confront his accusers, to compulsory process, to have the state prove his guilt beyond a reasonable doubt, and against compulsory incrimination, rendered the defendant's plea invalid.

***In RE: A.W.*, Appeal No. C-120787, Trial No. F99-1472X**

Children

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-120787_03132013.pdf

Mother and guardian ad litem, who did not argue that mother's parental rights shouldn't have been terminated, lacked standing to argue on appeal to argue that custody should have been granted to the maternal grandmother, who was not a party to the appeal. In other words, it sounds like a GAL and mother can't raise a custody appeal for a third party.

Summary from the First District:

Where mother and her guardian ad litem do not dispute the termination of mother's parental rights, in an appeal from the trial court's decision granting permanent custody of mother's child to a social-services agency, they lack standing to argue that the trial court should have granted custody to the maternal grandmother, who was not a party to the appeal.

***State v. Lamke*, Appeal No. C-110725, Trial Nos. C-11TRC-33401A,B,C**

Criminal Miscellaneous: Autos/Criminal

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-110725_03152013.pdf

Defendant's motorcycle was seized and stored after his second OVI arrest/charge in six years. Defendant was acquitted of the OVI and the trial court ordered the county pay the seizure and storage fees for the motorcycle. The First District reversed, holding "that the trial court erred when it ordered Hamilton County to pay the impound fees relating to the storage of [defendant's] vehicle under the mandatory provision for the ordering of fees under R.C. 4511.195(D)(4), because the seizure and retention of [defendant's] motorcycle was authorized under R.C. 4511.195. In other words, making the county pay the seizure and storage fees is only proper when the arrest was improper.

Summary from the First District:

Where the defendant had been arrested for his second OVI offense within six years, where a Hamilton County sheriff's deputy had seized the defendant's motorcycle under R.C. 4511.195 and had had it towed and stored, and where the defendant ultimately had been acquitted of the OVI charge, the trial court misapplied R.C. 4511.195 in granting the defendant's motion to require Hamilton County to pay the fees incurred for storage of the motorcycle: R.C. 4511.195(D)(4), which mandates the imposition of the fees against the political subdivision served by the law enforcement officer who seized the vehicle where the impoundment of the vehicle was not authorized, was inapplicable because the seizure and impoundment of the motorcycle was authorized pursuant to R.C. 4511.195; the applicable provisions were R.C. 4511.195(D)(2) and (F)(1), which require the trial court to exercise its discretion in determining whether the defendant or Hamilton County should pay any or all of the expenses and fees for the seizure and storage of the motorcycle.

***State v. Morrison*, Appeal No. C-120406, Trial No. B-1104142**

Search and Seizure

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-120406_03152013.pdf

Police had probable cause to arrest after seeing defendant make hand-to-hand transactions through his car window, the drug dog indicated on the driver's side door handle and dashboard controls, and defendant acted agitated and nervous. Because police had probable cause to arrest, they had were authorized to conduct a warrantless search of his person.

Summary from the First District:

The trial court did not err in denying the defendant's motion to suppress evidence recovered from his person during a search incident to his lawful arrest because the police had probable cause to arrest the defendant where an undercover police officer had witnessed the defendant engage in activity consistent with drug trafficking and had broadcast a description of those events to other officers who followed and then stopped the defendant's car, when stopped the defendant had appeared agitated and nervous, and a narcotics detection dog had alerted on the driver's-side door and on interior-temperature and radio controls.

***State v. Crawford*, Appeal No. C-120316, Trial No. B-1001613**

Burglary: Breaking and Entering: Trespass: Sentencing

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-120316_03152013.pdf

The trial court's imposition of a 58-month prison sentence for burglary under R.C. 2911.12(A)(3), a felony of the third degree, was contrary to law where the defendant had been previously convicted in two or more separate proceedings of two or more violations of sections 2911.01, 2911.02, 2911.11, or 2911.12 of the Revised Code, because R.C. 2929.14(A)(3)(a) did not provide for a 58-month prison term. (Only 12, 18, 24, 30, 36, 42, 48, 54, or 60-month sentences are provided for.)

Summary from the First District:

The defendant's conviction for burglary, in violation of R.C. 2911.12(A)(3), was based upon sufficient evidence and was not against the manifest weight of the evidence where the defendant was seen by a neighbor coming from behind a house that had a broken window and an open rear door, two witnesses who had confronted the defendant immediately thereafter identified him at trial, his DNA profile matched that of blood specimens taken from inside and outside the house's broken window and rear door, and where the defendant fled from the courtroom upon learning the DNA testing results.

The trial court's imposition of a 58-month prison sentence for burglary under R.C. 2911.12(A)(3), a felony of the third degree, was contrary to law where the defendant had been previously convicted in two or more separate proceedings of two or more violations of sections 2911.01, 2911.02, 2911.11, or 2911.12 of the Revised Code, because R.C. 2929.14(A)(3)(a) did not provide for a 58-month prison term.

***State v. Adams,* Appeal No. C-120059, Trial No. B-1100833**

R.C. 2941.25: Sentencing

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-120059_03152013.pdf

Summary from the First District:

The trial court did not err under R.C. 2941.25 by imposing separate sentences for two counts of aggravated robbery—one for each victim—because the evidence showed that the defendant had committed each aggravated-robbery offense with a separate animus where the defendant had placed a gun in each of the victims' faces, had forced each victim to the ground, and separately had demanded property from each victim.

The trial court did not err under R.C. 2941.25 by imposing separate sentences for aggravated robbery and aggravated burglary because those offenses were not allied offenses of similar import where the state relied upon different conduct to prove each offense: evidence that the defendant, while carrying a gun, had knocked on an apartment door, had stood out of the doorway to avoid being seen through the peephole, and had forcefully pushed open the door once it had been unlocked was sufficient to prove that the defendant had committed aggravated burglary under R.C. 2911.11(A)(2), and evidence that the defendant had forced two victims to the floor at gunpoint and separately had demanded and had taken property from each victim was sufficient to prove two counts of aggravated robbery under R.C. 2911.01(A)(1).

The defendant's sentences for firearm specifications attached to his two convictions for aggravated robbery under R.C. 2911.01(A)(1) did not offend the Double Jeopardy Clause.

The defendant's sentences for multiple firearm specifications were authorized by R.C. 2929.14(B)(1)(g).

Twelfth Appellate District of Ohio

***State v. Johnson,* Case No. CA2011-09-169**

Juvenile: Bindover: Speedy Trial

Full Decision: http://www.sconet.state.oh.us/rod/docs/pdf/12/2013/2013-ohio-856.pdf

"The time for speedy trial commences to run the day after a juvenile court relinquishes jurisdiction." *State v. Bickerstaff,* 10 Ohio St.3d 62, 67 (1984), citing *State ex rel. Williams v. Court of Common Pleas*, 42 Ohio St.2d 433

(1975). *See also State v. Harvey*, 3rd Dist. No. 1-09-48, 2010-Ohio-1627, ¶23; *State v. Banks*, 8th Dist. No. 89677, 2008-Ohio-1717, ¶12.

"For purposes of R.C. 2945.71, the relinquishment of jurisdiction does not occur until an order is filed for journalization in the juvenile court determining to transfer the defendant to the 'adult' court." *State v. Steele*, 8 Ohio App.3d 137 (10th Dist. 1982), paragraph 2 of the syllabus.

Because I won't even pretend to understand speedy trial law, here's the summary of this case from the OBSA:

In juvenile's felony convictions, his statutory speedy trial right was not violated where notice of intent to bindover/relinquish jurisdiction was not tantamount to a "charging instrument" sufficient to trigger R.C. 2945.71; juvenile's actions also tolled speedy trial provisions.

Supreme Court of Ohio

Nothing new.

Sixth Circuit Court of Appeals

Nothing new.

Supreme Court of the United States

Nothing new.