Appellate Court Decisions - Week of 3/27/17

Note: This is not a comprehensive list of every case released this week.

First Appellate District of Ohio

***State v. Johnson*, 2017-Ohio-1148**

Sentencing

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2017/2017-Ohio-1148.pdf

Summary from the First District:

"While there is no constitutional right to appellate review of a criminal sentence, R.C. 2953.08 confers statutory rights upon a defendant to appeal from some felony sentences including those that are contrary to law under R.C. 2953.08(A); but R.C. 2953.08(D)(3) bars such an appeal when the sentence to be reviewed was imposed for the crime of aggravated murder.

"Since R.C. 2953.08 specifically and comprehensively defines the parameters of felony-sentencing appellate review, a sentence imposed for aggravated murder is not subject to review by an appellate court pursuant to R.C. 2953.08(D)(3).

"While an appellate court may not review the actual sentence imposed for aggravated murder, nothing in R.C. 2953.08(D) precludes review of whether the trial court complied with the requirements of R.C. 2929.14(C)(4) when ordering that sentence to be served consecutively.

"The determination of whether a trial court properly imposed nonmandatory consecutive sentences is governed by the same statute, R.C. 2929.14(C)(4), both for general felonies and for aggravated murder; if a trial court exercises its discretion to impose consecutive sentences, it must make the consecutive-sentences findings set out in R.C. 2929.14(C)(4), and those findings must be made at the sentencing hearing and incorporated into the sentencing entry."

***State v. Carter*, 2017-Ohio-????**

Prosecutorial Misconduct: Ineffective Assistance: Inconsistent Jury Verdicts

Full Decision:
http://www.hamiltoncountyohio.gov/UserFiles/Servers/Server_3788196/File/releases/C-150625_03312017.pdf

Summary from the First District:

"Because the prosecutor's comments during closing argument were a fair commentary on the evidence presented, did not denigrate defense counsel, and were not improper, the defendant failed to establish that the prosecutor committed misconduct during closing argument.

"Because defense counsel's comments during closing argument were accurate statements based on the evidence presented, constituted an acceptable trial strategy, and did not result in prejudice to the defendant, defense counsel did not render ineffective assistance.

"The jury did not return inconsistent verdicts by finding the defendant guilty of one charge and being unable to reach a verdict on the remaining charges."

Second Appellate District of Ohio

Nothing to report.

Third Appellate District of Ohio

Nothing to report.

Fourth Appellate District of Ohio

Nothing to report.

Fifth Appellate District of Ohio

Nothing to report.

Sixth Appellate District of Ohio

Nothing to report.

Seventh Appellate District of Ohio

Nothing to report.

Eighth Appellate District of Ohio

***Cleveland v. Tarver*, 2017-Ohio-1165**

Competency

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2017/2017-Ohio-1165.pdf

Summary from the Eighth District:

"The trial court erred by ordering that the appellant be medicated in order to render her competent to stand trial. Pursuant to *Sell v. United States*, 539 U.S. 166, the government's strong interest in prosecuting defendants for serious crimes supports the involuntary medication of a defendant. Appellant, however, was charged with petty theft for stealing a pack of cigarettes. Because appellant was not charged with a serious crime, the government's interest in prosecuting the appellant did not outweigh appellant's right to be free from being forcibly medicated."

Ninth Appellate District of Ohio

Nothing to report.

Tenth Appellate District of Ohio

Nothing to report.

Eleventh Appellate District of Ohio

Nothing to report.

Twelfth Appellate District of Ohio

Nothing to report.

Supreme Court of Ohio

Nothing to report.

Sixth Circuit Court of Appeals

***United States v. Luck*, No. 15-5746**

Old Chief

Full Decision: http://www.opn.ca6.uscourts.gov/opinions.pdf/17a0074p-06.pdf

Summary from the Sixth Circuit:

"Charged with possession and distribution of child pornography, defendant Lindell Luck sought, unsuccessfully, to force the government to stipulate to the child pornographic nature of the material recovered from his laptops. On appeal, he contends that the district court's refusal to force the stipulation violated the Supreme Court's decision in *Old Chief v. United States*, 519 U.S. 172 (1997), which enforced a similar stipulation for felon status in felon-in-possession cases. We disagree. Overlooked in defendant's presentation is an important caveat from *Old Chief*. "[O]ur holding," Old Chief said, "is limited to cases involving proof of felon status," id. at 183 n.7—an explicit limitation that this court has relied on in rejecting previous attempts to expand *Old Chief*. We do so again, and hold that, in light of the explicit limitation on *Old Chief*'s holding, as well as the material distinctions between felon status and the nature of the images in child pornography cases, the district court did not err in refusing to force the government to stipulate. Finding no reversible error in defendant's remaining claims on appeal, we affirm.

Supreme Court of the United States

***Moore v. Texas*, 581 U.S. _____ (2017)**

Capital Punishment: Intellectual Disability

Full Decision: https://www.supremecourt.gov/opinions/16pdf/15-797_n7io.pdf

Syllabus of the Court:

Petitioner Moore was convicted of capital murder and sentenced to death for fatally shooting a store clerk during a botched robbery that occurred when Moore was 20 years old. A state habeas court subsequently determined that, under *Atkins v. Virginia*, 536 U. S. 304, and *Hall v. Florida*, 572 U. S. ___, Moore qualified as intellectually disabled and that his death sentence therefore violated the Eighth Amendment's proscription of "cruel and unusual punishments." The court consulted current medical diagnostic standards—the 11th edition of the American Association on Intellectual and Developmental Disabilities clinical manual (AAIDD–11) and the 5th edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association. The habeas court followed the generally accepted intellectual-disability definition, which identifies three core elements: (1) intellectual-functioning deficits, (2) adaptive deficits, and (3) the onset of these deficits while still a minor. Moore's IQ scores, the court determined, established subaverage intellectual functioning. The court credited six scores, the average of which (70.66) indicated mild intellectual disability. And relying on testimony from mental-health professionals, the court found significant adaptive deficits in all three skill sets (conceptual, social, and practical). Based on its findings, the habeas court recommended to the Texas Court of Criminal Appeals (CCA) that Moore be granted relief. The CCA declined to adopt the judgment recommended by the habeas court. The CCA held instead that the habeas court erred by not following the CCA's 2004 decision in *Ex parte Briseno*, 135 S. W. 3d

1, which adopted the definition of, and standards for assessing, intellectual disability contained in the 1992 (ninth) edition of the American Association on Mental Retardation manual (AAMR–9), predecessor to the current AAIDD–11 manual. *Briseno* also incorporated the AAMR–9's requirement that adaptive deficits must be "related" to intellectual-functioning deficits, and it recited, without citation to any medical or judicial authority, seven evidentiary factors relevant to the intellectual-disability inquiry. Based on only two of Moore's IQ scores (of 74 and 78), the CCA concluded that Moore had not shown significantly subaverage intellectual functioning. And even if he had, the CCA continued, his adaptive strengths undercut any adaptive weaknesses. The habeas court also failed, the CCA determined, to inquire into relatedness. Among alternative causes for Moore's adaptive deficits, the CCA suggested, were an abuse-filled childhood, undiagnosed learning disorders, multiple elementary-school transfers, racially motivated harassment and violence at school, and a history of academic failure, drug abuse, and absenteeism. *Briseno*'s seven evidentiary factors, the CCA further determined, weighed against finding that Moore had satisfied the relatedness requirement.

Held: By rejecting the habeas court's application of medical guidance and by following the *Briseno* standard, including the nonclinical *Briseno* factors, the CCA's decision does not comport with the Eighth Amendment and this Court's precedents. Pp. 9–18.

(a) The Eighth Amendment, which " 'reaffirms the duty of the government to respect the dignity of all persons,' " *Hall*, 572 U. S., at ___, prohibits the execution of any intellectually disabled individual, *Atkins*, 536 U. S., at 321. While *Atkins* and *Hall* left to the States "the task of developing appropriate ways to enforce" the restriction on executing the intellectually disabled, *Hall*, 572 U. S., at ___ (internal quotation marks omitted), States' discretion is not "unfettered," id., at ___, and must be "informed by the medical community's diagnostic framework," id., at ___–___. Relying on the most recent (and still current) versions of the leading diagnostic manuals, the Court concluded in *Hall* that Florida had "disregard[ed] established medical practice," id., at ___, and had parted ways with practices and trends in other States, id., at ___–___. *Hall* indicated that being informed by the medical community does not demand adherence to everything stated in the latest medical guide. But neither does precedent license disregard of current medical standards. Pp. 9–10.

(b) The CCA's conclusion that Moore's IQ scores established that he is not intellectually disabled is irreconcilable with *Hall*, which instructs that, where an IQ score is close to, but above, 70, courts must account for the test's "standard error of measurement." See 572 U. S., at ___–___, ___–___. Because the lower range of Moore's adjusted IQ score of 74 falls at or below 70, the CCA had to move on to consider Moore's adaptive functioning. Pp. 10–12.

(c) The CCA's consideration of Moore's adaptive functioning also deviated from prevailing clinical standards and from the older clinical standards the CCA deemed applicable. Pp. 12–16.

(1) The CCA overemphasized Moore's perceived adaptive strengths—living on the streets, mowing lawns, and playing pool for money—when the medical community focuses the adaptive functioning inquiry on adaptive deficits. The CCA also stressed Moore's improved behavior in prison, but clinicians caution against reliance on adaptive strengths developed in controlled settings. Pp. 12–13.

(2) The CCA further concluded that Moore's record of academic failure, along with a history of childhood abuse and suffering, detracted from a determination that his intellectual and adaptive deficits were related. The medical community, however, counts traumatic experiences as risk factors for intellectual disability. The CCA also departed from clinical practice by requiring Moore to show that his adaptive deficits were not related to "a personality disorder." Mental-health professionals recognize that intellectually disabled people may have other co-existing mental or physical impairments, including, e.g., attention-deficit/hyperactivity disorder, depressive and bipolar disorders, and autism. Pp. 13–14.

(3) The CCA's attachment to the seven *Briseno* evidentiary factors further impeded its assessment of Moore's adaptive functioning. By design and in operation, the lay perceptions advanced by *Briseno* "creat[e] an unacceptable risk that persons with intellectual disability will be executed." *Hall*, 572 U. S., at ___. The medical profession has endeavored to counter lay stereotypes, and the *Briseno* factors are an outlier, in comparison both to other States' handling of intellectual-disability pleas and to Texas' own practices in contexts other than the death penalty. Pp. 14–16.

(d) States have some flexibility, but not "unfettered discretion," in enforcing *Atkins*' holding, *Hall*, 572 U. S., at ___, and the medical community's current standards, reflecting improved understanding over time, constrain States' leeway in this area. Here, the habeas court applied current medical standards in reaching its conclusion, but the CCA adhered to the standard it laid out in *Briseno*, including the nonclinical *Briseno* factors. The CCA therefore failed adequately to inform itself of the "medical community's diagnostic framework," *Hall*, 572 U. S., at ___–___. Because *Briseno* pervasively infected the CCA's analysis, the decision of that court cannot stand. Pp. 17–18.

470 S. W. 3d 481, vacated and remanded.

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