Appellate Court Decisions - Week of 8/17/15

First Appellate District of Ohio

***State v. Ruff*, 2015-Ohio-3367**

Aggravated Burglary: Rape: Allied Offenses: R.C. 2941.24

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-120533_08212015.pdf

Summary from the First District:

"Because the harm that resulted from each aggravated burglary was not separate and identifiable from the harm caused by each rape, the offenses as to each victim were of similar import.

"The trial court violated R.C. 2941.25 by failing to merge each of defendant's convictions for aggravated burglary under R.C. 2911.11(A)(1) with the corresponding rape offenses under R.C. 2907.02(A)(2) where the state relied solely on the rape offenses to establish the physical-harm element of the aggravated burglaries, because the harm that resulted from the rape of each victim was the same harm that escalated each burglary to aggravated burglary. [*But see* DISSENT: The harms caused by the rapes were separate and identifiable from the harms caused by the 'aggravating element' of the aggravated burglaries, and therefore, the crimes were not of similar import.]"

Note: If this doesn't go back up to the Supreme Court and change, you can be sure this is the last case where you see someone in Hamilton County charged with aggravated burglary and rape when the two crimes are connected. It will be a simple burglary and rape from now on, because the First District has strongly indicated it won't merge those, but it will merge aggravated burglary and rape where the rape is the aggravating factor for the burglary. In fact, It will be interesting to see what crimes, if any, won't merge with aggravated burglary now.

Second Appellate District of Ohio

Nothing new.

Third Appellate District of Ohio

Nothing new.

Fourth Appellate District of Ohio

Nothing new.

Fifth Appellate District of Ohio

***State v. Bagnoli*, 2015-Ohio-3314**

OVI: Motion to Suppress

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/5/2015/2015-Ohio-3314.pdf

The trial court erred in denying appellant's motion to suppress where the trooper lacked reasonable and articulable suspicion to stop appellant's vehicle. Appellant and his wife were apparently arguing when appellant decided to pack his things and load his car. His wife sat in the passenger seat and begged him not to leave because he had been drinking. At the same time, their daughter called 1-800-GRAB-DUI to report appellant's intention to driver. A trooper came, waited for appellant to leave, followed him a short distance, then pulled him over without observing any traffic violations. Appellant had an odor of alcohol, admitted to drinking, had bloodshot and glassy eyes, failed the HGN, and had difficulty performing the walk and turn and one-leg stand tests. However, although the tip was reliable, it lacked sufficient information to provide reasonable suspicion appellant was operating a motor vehicle while under the influence of alcohol. All the information the trooper had was that the caller was appellant's wife and that appellant had consumed several alcoholic beverages. No time period for consumption was specified, nor was the type of alcohol.

Sixth Appellate District of Ohio

***State v. Sherman*, 2015-Ohio-3299**

Animal Cruelty: Sufficiency

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/6/2015/2015-Ohio-3299.pdf

Appellant's conviction for cruelty to a companion animal under R.C. 959.131(B) was based on insufficient evidence. Because "the legislature did not define when one owes a duty to act and did not specify that R.C. 959.131(B) prohibits omissions of care – as it recently did in (C)(2) –

[appellant] was improperly charged and convicted under (B) for failing to seek immediate care for" an injured cat she found and took in.

Seventh Appellate District of Ohio

Nothing new.

Eighth Appellate District of Ohio

***In re D.R.B.*, 2015-Ohio-3346**

Guardian Ad Litem: R.C. 2151.181(A)(1): Juv.R. 4(B): R.C. 2152.02(C)(2), Sup.R. 48

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2015/2015-Ohio-3346.pdf

Summary from the Eighth District:

"The trial court abused its discretion in failing to make the mandatory appointment of a guardian ad litem under R.C. 2151.181(A)(1), R.C. 2152.02(C)(2), Juv.R. 4(B), Sup. R. 48 where a juvenile is statutorily defined as a child. A juvenile is deemed to be a child for purposes of delinquency adjudication where the juvenile violated a federal or state law or municipal ordinance prior to attaining the age of 18. R.C. 2152.02(C)(2)."

Ninth Appellate District of Ohio

***State v. Chike*, 2015-Ohio-3278**

Judicial Release

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/9/2015/2015-Ohio-3278.pdf

The trial court erred in granting appellee's motion for judicial release because it did not have the authority to grant the motion. Appellant was sentenced to consecutive four-year prison terms. He moved for judicial release after four years and two months, but under R.C. 2929.20(C)(4), he could not file his motion until five years after he was delivered to prison (because his aggregate term was between five and ten years).

Tenth Appellate District of Ohio

***State v. Mullins*, 2015-Ohio-3250**

Arson Offender Registration

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/10/2015/2015-Ohio-3250.pdf

The trial court did not err in declining to require appellee to register as an arson offender. Although appellee was sentenced after the effective date of the arson-offender-registry law, he was convicted prior to its effectiveness. For the purposes of R.C. 2909.13(B)(1), "convicted" means the determination of guilty and not the imposition of the sentence, because it contains the phrase "convicted of or pleads guilty to."

Eleventh Appellate District of Ohio

Nothing new.

Twelfth Appellate District of Ohio

Nothing new.

Supreme Court of Ohio

***In re Z.R.*, 2015-Ohio-3306**

Juvenile Courts: Procedure: Dependency: Venue

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/0/2015/2015-Ohio-3306.pdf

"The venue directives contained in R.C. 2151.27(A)(1) are not jurisdictional requirements."

"Improper venue does not deprive juvenile court of jurisdiction."

"Juvenile court did not err when it denied motion to dismiss for improper venue and instead determined that transfer was the appropriate measure."

AND: "In this appeal, we address whether the failure to establish proper venue in a child dependency complaint requires a juvenile court to dismiss

the complaint due to lack of jurisdiction. We hold that the statute and rule governing venue do not control the jurisdiction of a juvenile court and that a dismissal for improper venue therefore cannot be entered on jurisdictional grounds."

AND: "In this case, L.R. moved to dismiss SCCS's dependency complaint regarding Z.R. solely on the grounds that the complaint failed to invoke the jurisdiction of the Summit County Juvenile Court. The motion to dismiss, which was combined with a motion to transfer the cases of Z.R.'s siblings to the Cuyahoga County Juvenile Court, in no way asserted that the transfer of Z.R.'s case to Cuyahoga County would constitute an abuse of discretion. Irrespective of the allegedly improper venue, the Summit County Juvenile Court did not err when it denied L.R.'s motion to dismiss SCCS's dependency complaint for lack of jurisdiction and instead determined that the appropriate measure would be to transfer Z.R's case to a proper venue."

Sixth Circuit Court of Appeals

Nothing new.

Supreme Court of the United States

Nothing new.