

Appellate Court Decisions - Week of 9/8/14

First Appellate District of Ohio

State v. Woods, 2014-Ohio-3892

Homicide

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-130414_09102014.pdf

Summary from the First District:

“The victim’s identification of the defendant as his assailant in a prosecution for murder did not violate the defendant’s rights under the Confrontation Clause and did not constitute inadmissible hearsay: the state presented evidence that the victim had identified the defendant by blinking in response to questioning and by identifying the defendant in a photograph when the victim had lost all hope of recovering from his gunshot wounds, and the identification was therefore admissible as a dying declaration under Evid.R. 804(B)(2).

“The trial court did not err in overruling the defendant’s motion to suppress the victim’s identification of the defendant as the person who had shot him: the state presented evidence that the victim had purchased drugs from the defendant on numerous occasions, so that the use of a single photographic identification procedure by the police did not give rise to a likelihood of misidentification.

“The trial court did not err in overruling the defendant’s motion to suppress the identification on the basis that the police had allegedly violated the photographic lineup procedures prescribed in R.C. 2933.83, as the remedy for such a violation is cross-examination of the police at trial and not the suppression of evidence.

“The trial court did not commit reversible error in denying the defendant’s challenge under *Batson v. Kentucky*, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986): although the court initially erred in holding that the defendant had failed to demonstrate a pattern of discrimination after the state’s first peremptory challenge of a prospective African-American juror, the court rectified the error by subsequently requiring the state to provide race-neutral explanations for both of its contested peremptory challenges.

“The trial court did not abuse its discretion in certifying two prosecution witnesses for nondisclosure under Crim.R. 16, where the prosecuting attorney certified that the safety of the witnesses and the witnesses’ families and friends would be compromised by disclosure and where the defendant could not demonstrate prejudice to have resulted from the nondisclosure.

“The trial court did not abuse its discretion in limiting the testimony of the defendant’s expert witness on the issue of the reliability of the victim’s identification of the defendant as his assailant: the psychologist conceded that her statistical data could not be directly applied to the identification in a particular case, and the defense was permitted to adduce evidence about the reliability of the victim’s identification through other expert witnesses.

“The trial court did not abuse its discretion in excluding the proffered expert testimony of a law professor about the inherent deficiencies in the testimony of jailhouse informants: the defense was permitted to cross-examine the informant in this case about his bias and his expectation that he would benefit from his testimony, and there was no indication that expert testimony would have aided the jury in assessing his credibility.

“The trial court did not err in permitting a jailhouse informant to testify about the defendant’s alleged confession: there was no evidence that the informant had been acting as an agent of the state so as to trigger the right to counsel under the Sixth Amendment, and the trial court was not required to hold a separate hearing concerning the informant’s credibility.

“The trial court did not abuse its discretion in excluding the victim’s medical and psychiatric records from his treatment in 2004, where the defense could not demonstrate a connection between those records and the victim’s capacity to identify his assailant in 2010.

“The defendant was not deprived of the effective assistance of trial counsel, where counsel was alleged to have been deficient in failing to present the testimony of an eyewitness, in failing to properly present expert psychological evidence, in failing to properly contest the admission of the victim’s identification, and in failing to object to alleged instances of prosecutorial misconduct: the defendant failed to demonstrate any lack of diligence or skill on the part of counsel and failed to demonstrate any prejudice to have resulted from the alleged derelictions of duty.

“The trial court did not err in instructing the jury: the court’s instruction on flight was warranted by the defendant’s having left the Cincinnati area soon after the alleged offenses, and the court correctly instructed the jury that the investigating officers’ use of a single photograph in the identification procedure was inherently suggestive.

“The defendant was not deprived of a fair trial by alleged prosecutorial misconduct: the assistant prosecutor’s remarks about a portion of a witness’s prior statement that had been excluded by the trial court were prompted by defense counsel’s allusion to the same prior statement, and there was no showing of prejudice resulting from the prosecutor’s remarks about the photographic identification procedure used by the police.

“The defendant’s convictions for murder with a firearm specification, felonious assault, and having a weapon while under a disability were based on sufficient evidence and were not against the manifest weight of the evidence, where the state presented evidence that the defendant had fired numerous shots into a car occupied by three men and had caused the fatal injuries sustained by one of the men while still under a disability for a previous conviction.

“The trial court did not err in imposing consecutive sentences: the court made all of the requisite findings under R.C. 2929.14, and those findings were supported by the record.

“Although the trial court did not err in imposing consecutive sentences, it did commit a clerical error in failing to incorporate those findings into its sentencing entry under *State v. Bonnell*, ___ Ohio St. 3d ___, 2014-Ohio-3177, ___ N.E.3d ___.”

In re Q.O., 2014-Ohio-3893

Juvenile Delinquency

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-130548_09102014.pdf

Summary from the First District:

“In a delinquency proceeding for carrying a concealed weapon, the trial court erred in granting the juvenile’s motion to suppress evidence that had been obtained after an officer had stopped a car based on reports that the occupants had been involved in a shooting: under the public-safety exception to the Fourth Amendment, the officers had cause to search the vehicle’s passenger compartment for weapons and to further question the juvenile, who had been seated in close proximity to where the firearm was found.

“The granting of the motion to suppress and simultaneous dismissal of the delinquency charge did not prevent further proceedings against the juvenile on double-jeopardy grounds: where a defendant seeks termination of the proceedings on a basis other than factual guilt or innocence, double-jeopardy considerations do not preclude further prosecution, and the immediate dismissal of the charge deprived the state of its right to appeal the granting of the motion to suppress under R.C. 2945.67 and Juv.R. 22(F).”

State v. Chamblin, 2014-Ohio-3895

Right to Counsel: New Trial

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-130828_09102014.pdf

Summary from the First District:

“Neither the United States Constitution nor the Ohio Constitution conferred on defendant a right to counsel on his Crim.R. 33 motion for a new trial; therefore, defendant’s retained counsel cannot be said to have been constitutionally ineffective in advancing defendant’s new-trial motion.

“The common pleas court did not abuse its discretion in overruling defendant’s Crim.R. 33(A)(6) motion for a new trial on the ground of newly discovered evidence: the rule did not require the court to enter findings of fact and conclusions of law; the court effectively granted defendant leave to move for a new trial out of time, when it decided his new-trial motion on the merits; the evidentiary hearing conducted on the motion was not demonstrably deficient; and the record contained competent and credible evidence to support the court’s conclusion that defendant had failed to sustain his burden of proving a strong probability of a different result if a new trial were granted.”

Second Appellate District of Ohio

Nothing new.

Third Appellate District of Ohio

Nothing new.

Fourth Appellate District of Ohio

State v. Bethel, 2014-Ohio-3861

Jury Instructions: Felonious Assault

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/4/2014/2014-ohio-3861.pdf>

In Appellant’s felonious assault trial, the trial court committed plain error and created a manifest miscarriage of justice where it omitted from the jury instructions the disputed essential element of “by use of a deadly weapon.”

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. Williamson, 2014-Ohio-3909

Post-Release Control: Nunc Pro Tunc

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2014/2014-ohio-3909.pdf>

The trial court erred in using a nunc pro tunc entry to notify Appellant of his postrelease control obligations. A nunc pro tunc journal entry “cannot serve to correct the failure to notify a defendant of postrelease control at a sentencing hearing. Instead, a new sentencing hearing must be held for the narrow purpose of proper imposition of postrelease control.”

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

Nothing new.