

## **Appellate Court Decisions - Week of 10/19/15**

### **First Appellate District of Ohio**

#### **State v. Carusone, 2015-Ohio-4397**

##### **Motion for a New Trial**

##### **Full Decision:**

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2015/2015-Ohio-4397.pdf>

##### **Summary from the First District:**

“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 evidence not disclosed in discovery and the other newly discovered evidence offered in support of the new-trial motion, considered collectively and with the evidence adduced at trial, would support a finding, beyond a reasonable doubt, that defendant had caused the victim’s death as the proximate result of either knowingly causing him serious physical harm or knowingly causing or attempting to cause him physical harm by means of a deadly weapon; therefore, defendant failed to demonstrate his claim that he was actually innocent of felony murder or his claim that he had been denied a fair trial by the state’s failure to disclose in discovery evidence that was ‘material’ in the sense that it might reasonably be said to undermine confidence in the jury’s verdict finding him guilty of felony murder.”

#### **State v. McKinney, 2015-Ohio-4398**

##### **Juvenile: Bindover: Constitutionality: Due Process: Equal Protection: Eighth Amendment**

##### **Full Decision:**

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2015/2015-Ohio-4398.pdf>

##### **Summary from the First District:**

“The juvenile defendant’s guilty plea to aggravated robbery in the general division of the common pleas court did not waive his constitutional challenge to Ohio’s bindover statutes, because a counseled guilty plea waives issues of factual guilt but does not preclude a challenge to the constitutionality of a statute based upon the premise that the juvenile may not be convicted in adult court regardless of factual guilt.

“Ohio’s mandatory-bindover statutes do not violate due process: there is no procedural-due-process right to an individualized amenability determination in juvenile

court, and the General Assembly had a rational basis for enacting the mandatory-bindover statutes.

“The mandatory-bindover statutes are rationally related to a legitimate governmental purpose and do not violate equal protection.

“Mandatory bindover does not constitute punishment as contemplated by the Eighth Amendment’s ban on cruel and unusual punishment; it simply changes the forum in which punishment is determined.

“The trial court did not abuse its discretion in transferring the juvenile defendant’s robbery case to the general division of the common pleas court where the juvenile court considered the R.C. 2151.12(D) and (E) factors, including the testimony of a juvenile court psychologist, the details of the robbery charge, and the defendant’s age, history of disruptive behavior, substance-abuse problem and unsuccessful prior treatment.”

## **Second Appellate District of Ohio**

***State v. Lockard, 2015-Ohio-4294***

### **Guilty Plea**

#### **Full Decision:**

**<http://www.supremecourt.ohio.gov/rod/docs/pdf/2/2015/2015-Ohio-4294.pdf>**

**Appellant pleaded guilty to discharge of a firearm on or near prohibited premises, improper handling of a firearm in a motor vehicle, and a three-year firearm specification. The trial court erred in accepting his guilty plea, however, because of the accumulation of material errors in the plea form and the trial court’s failure to reconcile those errors at the plea hearing. Here, the plea form did not list the firearm specification, it was inaccurate with respect to the offenses and specifications to which appellant pleaded guilty, the maximum possible penalty, and that a prison sentence was mandatory. The actual sentence imposed was longer than the maximum sentence indicated on the plea form and the form incorrectly suggested appellant could be sentenced to community control.**

## **Third Appellate District of Ohio**

***State v. Pfeiffer, 2015-Ohio-4312***

### **Sentencing: Concurrent Sentences: Allied Offenses**

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/3/2015/2015-Ohio-4312.pdf>

Appellant was convicted of two counts of aggravated arson, one a first-degree felony, one a second-degree felony. The convictions were allied offenses, and the state did not elect which offense to pursue for sentencing. Instead, the trial court ran the sentences concurrently. The correct procedure would have been to merge the offenses, not run the sentences concurrently. The failure to merge the offenses was error, and the Third District reversed the conviction and remanded for the state to elect on which offense to proceed and for the offenses to merge for the purposes of sentencing.

#### 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

*Nothing new.*

#### Eighth Appellate District of Ohio

***Rocky River v. Bakos, 2015-Ohio-4355***

Protection Order: Domestic Violence

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2015/2015-Ohio-4366.pdf>

Appellant was convicted of two counts of violating a domestic violence protection order. The Eighth District reversed and vacated the conviction because the trial court that issued the order lacked subject matter jurisdiction to do so. The people being protected by the order did not reside with appellant at the time the petition was ordered. On top of that, there

was no evidence they had ever resided together. Because the original order was a nullity, the prosecution for violating the order was a nullity too.

***State v. Ivory, 2015-Ohio-4373***

Felonious Assault: Sufficiency: Manifest Weight

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2015/2015-Ohio-4373.pdf>

Appellant was convicted of felonious assault and attempted felonious assault, along with one- and three-year firearm specifications. The Eighth District reversed and vacated his convictions, however, because they were not based on sufficient evidence. “According to the victim, appellant verbally threatened him regarding a dispute over a bicycle and then appeared to reach for his waist. The victim took off running, and two or three minutes later, the victim heard what sounded like gunshots houses away. The police never recovered the purported gun, nor uncovered any physical evidence such as gunpowder, shell casings, bullets, or bullet holes from the scene. Although a lack of direct or physical evidence regarding the use of a gun does not solely determine the outcome of the state’s case, the state otherwise failed to produce sufficient evidence to prove appellant attempted to cause serious physical harm to the victim, or attempted to cause physical harm by means of a gun.”

**Ninth Appellate District of Ohio**

***State v. Cunningham, 2015-Ohio-4306***

Search: Motion to Suppress

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/9/2015/2015-Ohio-4306.pdf>

The trial court erred in denying appellant’s motion to suppress the search of his vehicle and his statements in his aggravated robbery with a firearm specification case. The Ninth District said the following: “Viewing the circumstances of this case through the eyes of Officer Gagliardi, an officer with eight years of law enforcement experience, we cannot conclude that articulable facts existed to support seizing Mr. Cunningham. Officer Gagliardi’s basis for seizing Mr. Cunningham involved the fact that a black truck abruptly turned into a driveway a short time after a reported aggravated robbery, the truck was located roughly one-quarter mile away from the scene of the crime, and the male drive was observed slouching in

the driver's seat. However, the only information concerning the robbery that Officer Gagliardi possessed at the time he approached Mr. Cunningham's truck was that the suspect was a five foot eight inch tall male who wore a camouflage jacket and a ski mask. The only similarity between this description of the robbery suspect and Mr. Cunningham at the moment of the seizure was the fact that Mr. Cunningham was a male. Stated differently, Officer Gagliardi knew *nothing* connecting the driver of the black truck to the robbery at the time that he pointed his firearm at Mr. Cunningham and ordered him from the vehicle. To adopt the State's position in this case would, in essence, permit law enforcement officers to seize any individual located within close proximity to a recent crime scene for no other reason than the fact that he is of the same gender as the suspect. We emphatically refuse to go down that path.

"We similarly find that Mr. Cunningham's conduct while in the driveway does not raise an inference of criminal activity. Ignoring the fact that a whole host of innocent explanations could account for such behavior, the State's argument is belied by Officer Gagliardi's own testimony. At the suppression hearing, Officer Gagliardi testified that when he first approached the truck on the driveway and observed a male subject slouching in the front seat, he 'was unsure if this was the suspect that just robbed the [Twilight Boutique] at gunpoint or somebody that was passed out, you know, got home drunk and was passed out.'"

### Tenth Appellate District of Ohio

*Nothing new.*

### Eleventh Appellate District of Ohio

*Nothing new.*

### Twelfth Appellate District of Ohio

**In re R.L., 2015-Ohio-4314**

**Obstructing Official Business**

**Full Decision:**

<http://www.supremecourt.ohio.gov/rod/docs/pdf/12/2015/2015-Ohio-4314.pdf>

Appellant was convicted of obstructing official business, but was originally charged with contributing to the unruliness or delinquency of a child. The trial court found that the state failed to prove beyond a reasonable doubt that appellant was guilty of the contributing to the unruliness or

delinquency of a child charge, but then found appellant of obstructing official business as a lesser-included offense. The basis for the original charge was a claim that appellant lied to police about knowing the whereabouts of a student who was skipping school. The problem with this conviction, however, was that obstructing official business is not a lesser-included offense of contributing to the unruliness or delinquency of a child. That crime can be committed without committing obstructing official business, so obstructing official business is not a lesser-included offense. The Twelfth District therefore reversed appellant's conviction and discharged her.

### **Supreme Court of Ohio**

*Nothing new.*

### **Sixth Circuit Court of Appeals**

*Nothing new.*

### **Supreme Court of the United States**

*Nothing new.*