

Appellate Court Decisions - Week of 11/10/14

First Appellate District of Ohio

State v. Shalash, 2014-Ohio-5006

Sufficiency: Manifest Weight: Prosecutorial Misconduct: Jury Instructions

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-130748_11122014.pdf

Summary from the First District:

“Defendant’s convictions for two counts of robbery and two counts of aggravated robbery in conjunction with thefts at four banking institutions were neither based on legally insufficient evidence nor contrary to the manifest weight of the evidence, where the state presented testimony from two codefendants that the defendant had aided and abetted them in the commission of the offenses by providing a gun and disguises and acting as the getaway driver, and their testimony was corroborated by testimony of the bank employees and surveillance video from the banks and surrounding businesses.

“The prosecuting attorney did not commit misconduct during closing argument when he commented on the extensive evidence of the robberies, focused on the scary nature of the crimes, argued that the crimes had been committed during a ‘heroin-induced frenzy,’ and commented on the credibility of a state’s witness, because the comments were based upon the evidence presented at trial, and while the prosecuting attorney’s comments about the defendant’s religion were arguably inappropriate, they were not so prejudicial or outcome determinative as to constitute plain error and deny the defendant a fair trial.

“The trial court’s failure to specifically instruct the jury that the state had to prove the firearm specifications beyond a reasonable doubt was not a structural error requiring immediate reversal, but a trial error subject to a plain-error standard of review where the defendant had failed to object to the lack of such an instruction and where the trial court had properly instructed the jury on the reasonable-doubt standard and specifically instructed the jury with respect to the aggravated-robbery offenses that the defendant must have had a deadly weapon on or about his person or under his control while committing the offenses.”

State v. Jackson, 2014-Ohio-5008

Evidence: Sentencing

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-140178_11122014.pdf

Summary from the First District:

“The trial court did not violate the corpus-delecti rule in admitting the defendant’s recorded confessions against her as to her tampering-with-evidence charge where the state presented evidence that the defendant knew that her daughter had been shot with a gun inside her home; the defendant represented to police that her daughter had been shot in a drive-by shooting; the police found gun residue on the defendant’s bed in her bedroom; and the police found a gun partially hidden from view in a box inside the defendant’s bedroom closet.

“The defendant’s conviction for tampering with evidence with an accompanying firearm specification was supported by sufficient evidence where the defendant instituted a cover-up after her seven-year-old daughter had been shot by her six-year-old son in the defendant’s bedroom with the defendant’s boyfriend’s gun: instead of calling for assistance and preserving the area for law enforcement, the defendant told her boyfriend to ‘do something’ with the gun; and the police eventually found the gun by executing a search warrant and using a flashlight to uncover the partially-hidden gun from a filled box in the defendant’s bedroom closet.

“Where the trial court imposed a sentence in its judgment entry different from that announced in the defendant’s presence at the sentencing hearing, the trial court’s sentence is contrary to law under Crim.R. 43, and the cause must be remanded for a nunc pro tunc entry reflecting the sentence announced at the sentencing hearing.”

In re: J.T., 2014-Ohio-5062

Juvenile: Delinquency: Evidence: Weapons Under Disability

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-140144_11142014.pdf

Summary from the First District:

“The state presented sufficient evidence to support the juvenile’s adjudication of delinquency for tampering with evidence under R.C. 2921.12(A), where the state presented evidence from which the trier of fact could have concluded that a handgun discarded by the juvenile was related to an existing or likely to be instituted investigation of a robbery and that the juvenile had seen uniformed police officers detain other young men and, therefore, knew when he dropped the handgun into some bushes that an investigation was ongoing or likely to be instituted. Because the

weapons-under-a-disability statute required proof that the juvenile knowingly possessed a firearm, the state did not have to prove a mens rea for the additional element under former R.C. 2923.13(A)(1) that he was a fugitive from justice. The evidence was insufficient to support the juvenile's adjudication for having weapons while a disability under former R.C. 2923.13(A)(1), because the stated failed to prove that the juvenile was a fugitive from justice where the state did not show that he had been charged with a prior offense for which he was trying to avoid capture."

Second Appellate District of Ohio

State v. Wilcox, 2014-Ohio-4954

Tampering with Evidence

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/2/2014/2014-ohio-4954.pdf>

Appellant's conviction for tampering with evidence was based on insufficient evidence where, although Appellant hid a handgun under the driver's seat upon being pulled over, there was no evidence he knew there would be an investigation or that he knew an investigation was likely.

In re B.R., 2014-Ohio-4955

Juvenile: Delinquency: Vandalism: Sufficiency

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/2/2014/2014-ohio-4955.pdf>

Appellant's vandalism (R.C. 2909.05(B)(1)(b)) adjudication for wrecking his parents' car into several items for sale outside of a Tractor Supply Company store was based on insufficient evidence where there was no evidence the damaged property was necessary for the property owner to engage in its business, profession or trade. There was also no evidence to establish that the damage to the store's property stopped or interrupted the retail store owner from continuing to do business.

Third Appellate District of Ohio

State v. Miller, 2014-Ohio-4998

Tampering With Evidence: Sufficiency

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/3/2014/2014-ohio-4998.pdf>

Appellant was convicted of multiple counts related to an aggravated robbery, robbery, and several thefts. His conviction for tampering with evidence, based on the fact that police were unable to locate a gun and blond wig he used in a robbery, was based on insufficient evidence where the mere inability of the police to locate evidence is not evidence Appellant altered, destroyed, concealed, or removed the evidence.

Appellant's right to self-representation was violated where the trial court appointed standby counsel, then asked standby counsel behind Appellant's back to cross off any unnecessary witnesses from Appellant's witness subpoena list and standby counsel obliged. Appellant was never present or consulted for any of this.

The trial court erred in permitting several State witnesses to testify about improper prior bad acts – a robbery in a Kroger parking lot. The alleged victim couldn't even identify Appellant as her robber in court. "The only way the trial court could have found substantial proof that [Appellant] committed the Kroger robbery was to find that he was guilty of the two robberies for which he was on trial – a responsibility reserved for the jury, not the judge.

These significant errors constituted warranted reversal of all of Appellant's convictions under the cumulative error doctrine. The Third District reversed for a new trial.

State v. Pittman, 2014-Ohio-5001

Failure to Pay Child Support: Dismissal

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/3/2014/2014-ohio-5001.pdf>

The trial court did not err in dismissing Appellee's charges for nonsupport of dependents under R.C. 2919.21(B) because those charges could not be based on an "arrearage only" order.

Fourth Appellate District of Ohio

State v. Husted, 2014-Ohio-4978

Physical Control: Sufficiency

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/4/2014/2014-ohio-4978.pdf>

The trial court erred in denying Appellant's Crim.R. 29 motion for judgment of acquittal in her R.C. 4511.194(B)(1) physical control violation trial where there was no evidence about what specific drug she had consumed.

“In sum, the precedent requires that in a prosecution for operating a vehicle or being in physical control of a vehicle while under the influence of drugs of abuse, the court must grant a Crim.R. 29 motion for judgment of acquittal if the state fails to present evidence that the defendant, even though impaired in some manner, was in fact under the influence of a drug of abuse.”

Fifth Appellate District of Ohio

State v. Hale, 2014-Ohio-4981

Ineffective Assistance: Affidavit of Indigency: Aggravated Trafficking

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/5/2014/2014-ohio-4981.pdf>

Appellant was denied the effective assistance of counsel where, before he was sentenced, counsel failed to file an affidavit of indigency alleging that Appellant was unable to pay the mandatory fine in R.C. 2929.18 applicable to his felony drug offense, and a reasonable probability exists that the trial court would have found him indigent and unable to pay the mandatory fine.

Sixth Appellate District of Ohio

Nothing new.

Seventh Appellate District of Ohio

Nothing new.

Eighth Appellate District of Ohio

Nothing new.

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

State v. Johnson, 2014-Ohio-5021

Fourth Amendment: Search: GPS: Good-Faith Exception

Full Decision: <http://www.sconet.state.oh.us/rod/docs/pdf/o/2014/2014-ohio-5021.pdf>

“Good-faith, objectively reasonable belief that placing GPS tracking device on a vehicle, based on binding appellate precedent, would not have an appreciable effect on deterring violations of the Fourth Amendment.”

Or, more simply, police officers can no longer (since *United States v. Jones*, 132 S.Ct. 945 (2012) came out of the U.S. Supreme Court) claim they in good faith placed a GPS tracking device without a warrant.

Sixth Circuit Court of Appeals

Nothing new.

Supreme Court of the United States

Nothing new.