

Appellate Court Decisions - Week of 11/23/15

First Appellate District of Ohio

State v. Stowers, 2015-Ohio-4846

Res Judicata: Sex Offenses

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2015/2015-Ohio-4846.pdf>

Summary from the First District:

“The trial court erred in granting defendant’s motion to dismiss his indictment for failing to provide notice of an address change and in ordering that defendant’s name be removed from the sex-offender registry, on the basis that defendant had finished serving his sentence for attempted rape prior to July 1, 1997, the effective date of Megan’s Law, and therefore, the registration provisions could not be applied to him: the issue whether defendant was subject to sex-offender registration was res judicata, where defendant had raised that issue in a 2006 motion to set aside the order requiring him to register as a sex offender, that issue had been decided against him, and he had not appealed that determination.”

State v. Sullivan, 2015-Ohio-4845

Evidence: Violation of Protection Order: Sentencing

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2015/2015-Ohio-4845.pdf>

Summary from the First District:

“Markings on the judgment entry relating to treatment and sentence-reduction programs communicated defendant’s eligibility for jail programs to the sheriff and did not constitute part of his sentence; therefore, they were not required to be announced in open court in defendant’s presence.

“The sentencing entry is modified to remove the marking indicating that the sentence was consecutive; because defendant was only sentenced on one offense there was nothing to which the sentence could have been made consecutive.

“Defendant’s conviction for violation of a protective order was based on sufficient evidence and not against the manifest weight of the evidence where the record demonstrates that defendant telephoned the victim and identified himself.”

State v. Sellers, 2015-Ohio-4843

Evidence: Homicide: Other Acts: Waiver: Jail-Time Credit

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2015/2015-Ohio-4843.pdf>

Summary from the First District:

“In an aggravated-murder case, the trial court erred in admitting under Evid.R. 404(B) ‘other acts’ evidence in the form of evidence of a separate homicide where the facts of the other homicide were not sufficiently similar to those in the present case to be probative of identity; however, given the strength of the remaining evidence the error was harmless error.

“The trial court’s judgment convicting defendant of aggravated murder was not against the weight or sufficiency of the evidence where the defendant’s DNA was found on vaginal swabs taken from the victim, an assistant coroner testified that the victim had been raped and killed in the location where her body had been discovered, and the defendant’s DNA was found on a cigarette butt recovered from the scene of the crime.

“Defendant waived any error in the trial court’s overruling of his motion to suppress statements he made to police where defense counsel indicated on the record at trial that the defense was not seeking to suppress statements in which the defendant denied involvement in the crime and those statements were the ones defendant argued on appeal should have been suppressed.

“Defendant was not entitled to jail-time credit for time he served for a separate homicide, because jail-time credit applied only to the time that defendant was confined arising out of the aggravated murder for which defendant was convicted and sentenced in this case.”

State v. Finnell, 2015-Ohio-4842

Evidence: Other Acts: Kidnapping: Receiving Stolen Property: Witness Intimidation: Weapons: Procedure: R.C. 2941.25: Allied Offenses

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2015/2015-Ohio-4842.pdf>

Summary from the First District:

“The defendant failed to demonstrate plain error in the admission of a witness’s testimony generally referencing the defendant’s ‘dangerous past’ that she had learned about from others, where the testimony was offered to show why she assisted

the defendant in carrying out the crimes, and was not offered to show that the defendant had a dangerous past or conforming conduct.

“The defendant’s convictions for aggravated burglary with a firearm specification, kidnapping, having weapons under a disability, intimidation of a witness, and receiving stolen property were supported by sufficient evidence and were not against the manifest weight of the evidence: the state’s testimony from a cooperating witness was corroborated by other evidence; and the defendant’s proximity to a stolen firearm at the time of his arrest and his statements referencing that firearm were circumstantial evidence of his constructive possession of the firearm.

“The trial court erred by ruling on the defendant’s motion for a new trial where the matter had been assigned to a different judge, because the judge who had presided over the trial had disqualified himself from the case as to the motion.

“The defendant’s convictions for having weapons under a disability and receiving stolen property were separately punishable, even though they arose from the defendant’s possession of the same firearm, because they were not of a similar import.”

Second Appellate District of Ohio

State v. Hottenstein, 2015-Ohio-4787

Falsification: Sufficiency

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/2/2015/2015-Ohio-4787.pdf>

Appellant’s conviction for falsification to obtain a concealed handgun license was based on insufficient evidence where the state failed to prove appellant lied about being adjudicated a delinquent child for a drug abuse offense. Although the charge was labeled “drug abuse” at the time, no such crime existed when appellant was adjudicated. Also, the two grams of marijuana for which he was adjudicated would have been a minor misdemeanor. The minor misdemeanor adjudication should not have affected the sheriff’s determination of whether to grant appellant’s concealed carry application.

Third Appellate District of Ohio

Nothing new.

Fourth Appellate District of Ohio

City of Chillicothe v. Lunsford, 2015-Ohio-4779

OVI: Drugs: Sufficiency

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/4/2015/2015-Ohio-4779.pdf>

The trial court did not err in granting appellee's Crim.R. 29(A) motion for acquittal on his OVI charge for driving under the influence of a drug of abuse. "The trial court correctly ruled that the state must establish a nexus between the defendant's impaired condition and any type of drug of abuse as an element of proof. The state failed to identify the constituent drugs contained in Xanax and Lortab and whether they have the potential to impair a person's judgment or reflexes. As a result the state failed to establish the required nexus between [appellee's] impaired state and his ingestion of the prescription medication."

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. Blake, 2015-Ohio-4762

Restitution: Passing Bad Checks

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2015/2015-Ohio-4762.pdf>

The trial court erred in granting restitution to the victims in this case, as they suffered no economic loss. Appellant received money from a life-insurance policy after his wife's death. After his wife's death, he promised her sisters that he would give them half of the money because they cared for

prior to her death. However, he kept most of the money for himself and only gave the sisters about 1/6th of what he promised. He wrote a check for the remaining amount, but it bounced for insufficient funds. That was the basis of the passing bad checks conviction. The reason it was error to grant restitution was that there was no consideration for appellant's promise to the sisters. Because the promise was not enforceable, the restitution order was error.

City of Beachwood v. Reed, 2015-Ohio-4758

Forfeiture

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2015/2015-Ohio-4758.pdf>

The trial court erred in granting forfeiture of his funds in favor of the city because the city failed to comply with R.C. 2981.04.

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

State v. Schuster, 2015-Ohio-4818

Tampering with Evidence: Sufficiency

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/12/2015/2015-Ohio-4818.pdf>

Summary from the Twelfth District:

“Appellant’s speedy trial rights were not violated where the state brought two separate indictments against appellant, and brought appellant to trial within the statutory period

for both indictments. Appellant's waivers of time were valid, even though appellant did not sign them, where the waivers were executed by counsel and were for the benefit of trial preparation. Appellant's trial counsel was not ineffective despite not subpoenaing witness for each day of the trial. The mistake of subpoenaing the witnesses for only the first day of trial, rather than all three days, would not have resulted in a different outcome where no witness could testify that anyone other than appellant drove the car. Ohio's OVI repeat offender specification is constitutional, and not a violation of due process. While appellant's convictions for OVI and possession of drugs were supported by sufficient evidence and were not rendered against the manifest weight of the evidence, appellant's conviction for tampering with evidence was not supported by sufficient evidence where there is no indication that the police were investigating drug-related activity at the time appellant hid his drugs in the trunk of his car. Instead, officers were on the scene to investigate a bar fight so that the hidden drugs did not pertain to their investigation."

Supreme Court of Ohio

Nothing new.

Sixth Circuit Court of Appeals

Nothing new.

Supreme Court of the United States

Nothing new.