

Appellate Court Decisions - Week of 11/26/18

Note: This is not a comprehensive list of every case released this week.

First Appellate District of Ohio

State v. Jones, 2018-Ohio-4754

Juries: Peremptory Challenges

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2018/2018-Ohio-4754.pdf>

Summary from the First District:

“In a criminal proceeding, the use of peremptory challenges allows both the prosecution and the defense to secure a more fair and impartial jury by enabling them to remove jurors whom they perceive as biased, even if the jurors are not subject to a challenge for cause; peremptory challenges provide both the defendant and the state an opportunity to dismiss potential jurors for any reason, except an impermissible reason such as race or gender, without inquiry and without the trial court’s approval.

“The number of peremptory challenges available to each party is controlled by Crim.R. 24(D) and (G), and the order in which they may be used is controlled by Crim.R. 24(E): under Crim.R. 24(E), the state begins the peremptory-challenge process, and then the parties alternate exercising their remaining challenges; a party’s failure to exercise a challenge in turn waives that party’s right to that challenge, in effect forcing a party to exercise each challenge in turn or lose it.

“Crim.R. 52(A) generally governs the criminal appeal of a nonforfeited error, and provides that any error which does not affect substantial rights shall be disregarded; but there is a very limited class of errors, now described as ‘structural errors,’ which are not reviewable for harmless error under Crim.R. 52(A) and mandate a finding of per se prejudice, and automatic reversal.

“A structural error is a constitutional defect that affects the framework within which the trial proceeds, rather than simply being an error in the trial process itself; an error is designated as ‘structural’ not because of the difficulty in demonstrating prejudice, but rather when the error permeates a trial and necessarily renders the trial fundamentally unfair or an unreliable vehicle for determining guilt or innocence.

“In determining whether an alleged error is structural, the threshold inquiry is whether the error involves the deprivation of a constitutional right.

“There is no federal or state constitutional requirement that peremptory challenges be provided within a trial; in noncapital criminal cases, the right to peremptory challenges exists by virtue of Crim.R. 24, not by virtue of the federal or Ohio constitution.

“Given that a trial court’s error in controlling the use of peremptory challenges available to a party is not a constitutional error, it cannot be structural error; thus a defendant challenging the trial court’s error in permitting the state to exercise its final peremptory challenge after the state had waived that challenge, after the selection of the alternate jurors was already under way, and after the court had expressly asked the parties if they were satisfied with the jury, can prevail only if that error was prejudicial and affected the outcome of the trial court proceedings: where the defendant had ample opportunity to examine the prospective juror on voir dire, found no showing of any bias or lack of impartiality on his part challengeable for cause, and elected not to use his peremptory challenge to remove the prospective juror, he has not demonstrated prejudice flowing from the trial court’s error.”

State v. Warren, 2018-Ohio-4757

Sentencing: Consecutive Sentences

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2018/2018-Ohio-4757.pdf>

Summary from the First District: “The trial court erred in ordering defendant’s prison term for failing to comply with an order or signal of a police officer, a third-degree felony, to be served consecutively to a prison term previously imposed by a Kentucky court for another felony offense where the record shows that the court imposed the consecutive term under the erroneous understanding that a consecutive sentence was required under R.C. 2929.14(C): the relevant sentencing statutes, when read together, unambiguously permitted the trial court to order a consecutive sentence, but did not require that result.”

Second Appellate District of Ohio

State v. Thompson, 2018-Ohio-4689

Post-Conviction Relief: Hearing

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2018/2018-Ohio-4689.pdf>

From the opinion: “Defendant-appellant, Craig Thompson, appeals pro se from the trial court’s judgment entry of January 31, 2018, in which the court granted summary judgment in favor of the State on his petition for postconviction relief. * * * Second, Thompson argues that the trial court abused its discretion by refusing to hold a hearing on the petition. * * *

“We find that the trial court abused its discretion, under the circumstances, by entering judgment on Thompson’s petition for postconviction relief without holding a hearing. Although Thompson submitted six affidavits in support of the petition, the State did not respond with affidavits or other summary judgment evidence in support of its opposition, yet the trial court granted judgment in the State’s favor without indicating why it disregarded Thompson’s evidence. Therefore, we reverse the judgment of January 31, 2018, and remand this case to the trial court. On remand, the trial court should allow the parties to renew their arguments and, if warranted by the parties’ submissions, hold a hearing on the petition. If the court determines that a hearing is not warranted by the parties’ submissions, then it should explain the basis of that determination in its judgment entry. Further, if the court deems an affidavit submitted by either party to lack credibility, then its judgment entry must include an evaluation of the affidavit consistent with the Ohio Supreme Court’s opinion in *State v. Calhoun*, 86 Ohio St.3d 279, 714 N.E.2d 905 (1999).”

Third Appellate District of Ohio

Nothing to report.

Fourth Appellate District of Ohio

Nothing to report.

Fifth Appellate District of Ohio

Nothing to report.

Sixth Appellate District of Ohio

Nothing to report.

Seventh Appellate District of Ohio

Nothing to report.

Eighth Appellate District of Ohio

State v. Luton, 2018-Ohio-4708

Misuse of Credit Cards: Sufficiency: Manifest Weight

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2018/2018-Ohio-4708.pdf>

Summary from the Eighth District: “As the state concedes, the evidence in the record does not support a conviction for fourth-degree felony misuse of credit cards. Accordingly, appellant’s conviction is modified to a first-degree misdemeanor misuse of credit cards. The trial court’s sentence on the fourth-degree felony conviction is vacated and the matter is remanded for resentencing on this count only. Appellant’s convictions for grand theft and first-degree misuse of credit cards are supported by sufficient evidence and are not against the manifest weight of the evidence. The record contains sufficient evidence establishing that venue in Cuyahoga County was proper.”

State v. Jarmon, 2018-Ohio-4710

Sentencing: Firearm Specifications

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2018/2018-Ohio-4710.pdf>

Summary from the Eighth District: “Trial court complied with R.C. 2929.14(C)(4) in imposing consecutive sentences within one case, and consecutive to second case; under R.C. 2929.14(B)(1)(g), trial court had discretion to impose multiple firearm specifications because defendant pled guilty to three counts of attempted murder; under R.C. 2929.14(B)(1)(c)(iii), trial court could impose only one five-year firearm specification for crimes committed as part of the same transaction.”

State v. M.E., 2018-Ohio-4715

Sealing Records

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2018/2018-Ohio-4715.pdf>

Summary from the Eight District: “Trial court abused its discretion in finding applicant an eligible offender under R.C. 2953.31 because pursuant to the plain language of the statute, applicant had too many convictions. At issue was applicant’s prior open container conviction, which was a fourth-degree misdemeanor under the municipal ordinance for which he was convicted but a minor misdemeanor under the analogous state statute. The trial court did not address the constitutional issue of whether precluding expungement in such a case would result in a violation of the federal and state Equal Protection Clauses. The case was remanded for consideration of the constitutional issue raised, if it was still relevant due to the recent passage of S.B. 66 and the expansion of the definition of ‘eligible offender.’”

Ninth Appellate District of Ohio

State v. Conte, 2018-Ohio-4688

Sentencing: Community Control

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/9/2018/2018-Ohio-4688.pdf>

The trial court erred in violating Appellant’s community control for failing to pay full restitution where the trial court did not determine whether Appellant’s failure to pay was willful. Remanded for a new hearing to determine willfulness.

Tenth Appellate District of Ohio

State v. McVay, 2018-Ohio-4683

Competency

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/10/2018/2018-Ohio-4683.pdf>

Summary from the Tenth District: “Trial court did not err when it found the defendant was incompetent to stand trial and not restorable to competency.”

Eleventh Appellate District of Ohio

Nothing to report.

Twelfth Appellate District of Ohio

Nothing to report.

Supreme Court of Ohio

State v. Apanovitch, 2018-Ohio-4744

Postconviction

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2018/2018-Ohio-4744.pdf>

Summary from the Court: “Trial court lacked subject-matter jurisdiction to entertain untimely and successive petition for postconviction relief when requirements of R.C. 2953.23(A) were not satisfied.”

Sixth Circuit Court of Appeals

Nothing to report.

Supreme Court of the United States

Nothing to report.