

Appellate Court Decisions - Week of 11/9/15

First Appellate District of Ohio

State v. Dunlap, 2015-Ohio-4644

Death Penalty: Constitutional Law: Postconviction

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2015/2015-Ohio-4644.pdf>

Summary from the First District:

“The common pleas court properly declined to declare unconstitutional R.C. 2953.23(A)(1)(b)’s ‘clear and convincing evidence’ standard for jurisdiction to review a late or successive postconviction petition, because requiring this showing did not violate rights guaranteed by the Supremacy Clause of the United States Constitution.

“The common pleas court properly declined to grant postconviction relief on the ground that the postconviction procedures provided in R.C. 2953.21 et seq. and Crim.R. 35 are unconstitutional because they do not provide ‘an adequate corrective process’ or permit ‘meaningful [postconviction] review,’ discovery is not afforded in the initial stages of a postconviction proceeding, argument on each ground for relief is limited to three pages, and the doctrine of res judicata applies to preclude granting relief upon any ground that could fairly have been determined in the direct appeal or in an earlier postconviction proceeding: the alleged constitutional deprivations did not occur during the proceedings resulting in the petitioner’s convictions, and a determination that the postconviction statutes were constitutionally infirm would not have rendered his convictions void or voidable.

“R.C. 2953.23 did not confer jurisdiction to entertain a capital petitioner’s late and successive postconviction claims challenging his aggravated-murder and aggravated-robbery convictions and his death sentence: with respect to his claims that he had been denied the effective assistance of counsel, petitioner did not argue, nor did the record demonstrate, either that he had been unavoidably prevented from discovering the facts underlying the claims, or that the claims were predicated upon a new and retrospectively applicable right recognized by the United States Supreme Court since his time for filing a postconviction petition had expired; and the doctrine of ‘cumulative error’ did not provide a ground for relief from his convictions without proof of multiple constitutional violations.”

State v. Shoemaker, 2015-Ohio-4645

Evidence: Obstructing

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2015/2015-Ohio-4645.pdf>

Summary from the First District:

“Defendant’s conviction for obstructing official business was supported by sufficient evidence and was not contrary to the weight of the evidence where the police officer testified that defendant had repeatedly lied during his investigation of a hit-skip collision, and the lies had hampered his investigation by five minutes.”

State v. Wynn, 2015-Ohio-4646

Appellate Review: Criminal Jurisdiction: Venue: Pleas: Procedure: Rules

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2015/2015-Ohio-4646.pdf>

Summary from the First District:

“Defendant’s appeal must be dismissed, because it was not taken from a final order where defendant pleaded no contest to operating a vehicle without reasonable control, and the trial court accepted her plea, found her guilty and assessed court costs, but did not impose a fine or sentence for the offense: court costs are not fines and are not considered criminal punishment; therefore, there was no conviction for operating a vehicle without reasonable control.

“The trial court did not err in failing to sua sponte set aside the defendant’s no-contest plea or in failing to inquire into defendant’s reasons for entering her plea where defendant pleaded no contest to failing to stop after an accident, and the trial court accepted her plea in accordance with Crim.R. 11 and found her guilty, but before sentence was imposed defendant asserted her innocence by telling the trial court that she had not been the driver: defendant’s remedy was a Crim.R. 32.1 motion to withdraw her plea.”

State v. Neal, 2015-Ohio-4705

ID/Photos: Evidence: Murder: Assault: Prosecutor Sentencing

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2015/2015-Ohio-4705.pdf>

Summary from the First District:

“The trial court did not err in denying defendant’s motion to suppress the victim’s in-court identification where the totality of the circumstances demonstrated that the victim’s in-court identification was reliable: the victim testified that his in-court identification was based on his own observations and memory of the shooting, the identification was made under oath and subject to cross-examination, and the victim testified that he had seen defendant two times the day of the shooting, had been within inches of his face, his opportunity to observe the defendant had not been fleeting, and he was confident that defendant was the shooter.

“The trial court did not err in overruling defendant’s motion to suppress an eyewitness’s identification of defendant as the person who had shot at two of her friends, seriously wounding one and killing the other, because the use of a single-photograph identification procedure by police did not give rise to a likelihood of misidentification where the state presented evidence that the eyewitness had known the defendant for several months prior to the offenses, they had exchanged text messages and phone calls and they had had an intimate relationship.

“The trial court did not err in overruling defendant’s motion to suppress an eyewitness’s identification of defendant from a photo lineup where there was no evidence that the police had violated the photo-lineup procedures in R.C. 2933.83, and therefore, the court did not need to reach the reliability of the eyewitness’s identification.

“Where the assistant prosecuting attorney improperly read some of a state’s eyewitness’s statements to her during direct examination, which was more indicative of an attempt to impeach the witness than an attempt to refresh her recollection, the limited instances of improper questioning did not rise to the level of plain error where the case was tried to the court and where the witness’s statements were merely cumulative to testimony that had been provided by other state’s witnesses.

“Defendant’s convictions for murder, felonious assault, having a weapon under a disability and the accompanying firearm specifications, were supported by sufficient evidence and were not against the manifest weight of the evidence where the victim and an eyewitness testified that defendant had made a threatening statement to one of the victims and had then followed him to a car, pulled out a pistol and fired multiple gun shots at the two unarmed victims, striking one victim in the head and killing him, and seriously injuring the other victim; witnesses identified defendant as the person they had seen fleeing with the gun immediately after the shooting; video footage of the murder corroborated witness accounts of the events; and defendant’s DNA was found on the weapon that had been used in the shootings.

“Defendant’s sentence of 29 years to life in prison was not contrary to law: the trial court expressly considered the purposes and principles of sentencing under R.C. 2929.11 and the seriousness and recidivism factors under R.C. 2929.12, and it made the necessary findings under R.C. 2929.14(C)(4) to impose consecutive prison terms both orally and on the sentencing entry and the record supported those findings.”

Second Appellate District of Ohio

Nothing new.

Third Appellate District of Ohio

Nothing new.

Fourth Appellate District of Ohio

Nothing new.

Fifth Appellate District of Ohio

In re: J.C., 2015-Ohio-4664

Juvenile: Admission: Guardian Ad Litem

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/5/2015/2015-Ohio-4664.pdf>

The trial court erred in failing to appoint a guardian ad litem to represent appellant's interests because a possible conflict existed between appellant's interests and his mother's interests. Appellant's mother was the person to report his probation violation.

Sixth Appellate District of Ohio

Nothing new.

Seventh Appellate District of Ohio

Nothing new.

Eighth Appellate District of Ohio

State v. Famer, 2015-Ohio-4676

Assault: Peace Officer

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2015/2015-Ohio-4676.pdf>

Appellant's convictions for aggravated robbery, disrupting public services and resisting arrest were based on sufficient evidence. However, the peace officer specification to his assault conviction was vacated because a railroad police officer does not meet the definition of "peace officer" in R.C. 109.71(A)(2). Also, the trial court erred in imposing an additional, consecutive two-year sentence for violating postrelease control in another cause because postrelease control was improperly imposed in that case and appellant was therefore not subject to postrelease control for that case.

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. Montgomery, 2015-Ohio-4652

Assault: Weight of the Evidence: Self-Defense Presumption

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/12/2015/2015-Ohio-4652.pdf>

Appellant's assault conviction was against the manifest weight of the evidence. Appellant was presumed to have acted in self-defense because the alleged victim entered his home unlawfully and without privilege. The state failed to rebut the presumption of self-defense afforded to appellant "because the testimony of the state's witnesses * * * was so impractical and illogical that it rendered their testimony not credible."

Supreme Court of Ohio

State v. Earley, 2015-Ohio-4615

Sentencing: Cumulative Sentences

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/o/2015/2015-Ohio-4615.pdf>

Syllabus of the Court: “A trial court may impose cumulative sentences for both aggravated vehicular assault in violation of R.C. 2903.08(A)(1)(a) and operating a motor vehicle under the influence of alcohol or drugs in violation of R.C. 4511.19(A)(1)(a) when the offense of operating a vehicle while under the offense of operating a vehicle while under the influence is the predicate conduct for aggravated vehicular assault. (*State v. Ruff*, 143 Ohio St.3d 114, 2015-Ohio-995, 34 N.E.3d 892, applied.)

***State v. Blankenship*, 2015-Ohio-4625**

Sex offenders: R.C. Chapter 2950: Registration

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/o/2015/2015-Ohio-4624.pdf>

“We hold that the registration and address-verification requirements for Tier II offenders under R.C. Chapter 2950 do not constitute cruel and unusual punishment in violation of either the Eighth Amendment of the United States Constitution or Article I, Section 9 of the Ohio Constitution. The Tier II registration requirements do not meet the high burden of being so extreme as to be grossly disproportionate to the crime or shocking to a reasonable person.”

Sixth Circuit Court of Appeals

Nothing new.

Supreme Court of the United States

Nothing new.