

Appellate Court Decisions - Week of 12/14/15

First Appellate District of Ohio

State v. Sanders, 2015-Ohio-5232

R.C. 2941.25: Allied Offenses: Sentencing: Prosecutor

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2015/2015-Ohio-5232.pdf>

Summary from the First District:

“The trial court did not err under R.C. 2941.25, Ohio’s multiple-count statute, in imposing separate and consecutive sentences for the offenses of aggravated felony murder and aggravated robbery: the offenses were committed with a separate animus and thus were separately punishable under R.C. 2941.25(B), because the defendant’s conduct demonstrated a purpose—a specific intent—to kill while, or in the course of, committing the aggravated robbery.

“Where during direct examination the assistant prosecuting attorney improperly read some of a state’s witness’s prior statements made to police, which was more indicative of an attempt to impeach the witness than an attempt to refresh his recollection, the limited instances of improper questioning did not rise to the level of plain error.”

State v. Everett, 2015-Ohio-5273

Jury Instructions: Self-Defense: Counsel: Verdicts: Evidence: Murder: Tampering With Evidence

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2015/2015-Ohio-5273.pdf>

Summary from the First District:

“Where the defendant stabbed to death a woman and her daughter who were staying in his apartment, the trial court did not commit plain error in instructing the jury on self-defense, because the trial court’s instruction about the defendant’s duty to retreat was a correct statement of the law.

“The R.C. 2901.05(B)(1) presumption that the defendant acted in self-defense did not apply where the victims did not enter the defendant’s apartment ‘unlawfully and without privilege,’ but had been invited by the defendant to stay in his apartment.

“Counsel was not ineffective for failing to object to jury instructions that correctly stated the law on self-defense.

“The trial court did not err when it denied the defendant’s motion for a new trial due to inconsistent verdicts: the seeming inconsistency between verdicts on two different counts is not a basis for reversal.

“The defendant’s conviction for tampering with evidence was supported by sufficient evidence and was not against the manifest weight of the evidence where the record shows that the defendant had removed one of the knives he used to stab the victims and had attempted to wipe it with a cloth.

“The defendant’s convictions for two counts of murder were not against the manifest weight of the evidence where it was difficult, if not impossible, to reconcile the defendant’s claim of self-defense with the physical evidence that both victims were stabbed in the back.”

Second Appellate District of Ohio

State v. Cartwright, 2015-Ohio-5165

Sentencing: Aggravated Robbery: Merger

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/2/2015/2015-Ohio-5165.pdf>

The trial court erred in failing to merge appellant’s aggravated robbery convictions for the purpose of sentencing where there was only one victim and one robbery.

Third Appellate District of Ohio

State v. Roehrig, 2015-Ohio-5187

Sentencing: Nunc Pro Tunc: License Suspension

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/3/2015/2015-Ohio-5187.pdf>

Summary from the Third District:

“The trial court lacked authority to modify its original sentencing entry as a ‘nunc pro tunc’ to impose a more restrictive sanction after journalization of the criminal

conviction and sentence. The record reflected that there was no correction of a clerical error to be made and the original judgment entry contained an accurate recitation of the sentence announced on the record.”

State v. McBride, 2015-Ohio-5184

Sentencing: Towing Fees: Forfeiture

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/3/2015/2015-Ohio-5184.pdf>

Summary from the Third District:

“Trial court improperly ordered defendant to pay costs for storage of vehicle where State was holding vehicle to be used as evidence.” Note: The State never sought forfeiture of the vehicle.

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

State v. Hardman, 2015-Ohio-5141

Pro Se: Self-Representation

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2015/2015-Ohio-5141.pdf>

Summary from the Eighth District:

“Trial court erred by not offering the defendant the assistance of standby counsel when it allowed the defendant to proceed pro se during the middle of trial; thus denying the defendant his constitutional right to counsel. Failing to move for a Crim.R. 29 motion for judgment of acquittal during a jury trial waives all but plain error regarding the issue of sufficiency of the evidence on appeal. A reviewing court may notice plain error, but it is not required to correct them; correction of a plain error should be noticed only to prevent a manifest miscarriage of justice.”

State v. Dukes, 2015-Ohio-5153

Bail

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2015/2015-Ohio-5153.pdf>

Summary from the Eighth District:

“Trial court erred when it summarily denied the defendant pretrial bail without making any findings required under the express mandates of R.C. 2937.222. Denial of pretrial bail is a final appealable order under R.C. 2937.222(D)(1).”

Ninth Appellate District of Ohio

State v. Collins, 2015-Ohio-5175

Carrying a Concealed Weapon: Sufficiency: Weight

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/9/2015/2015-Ohio-5175.pdf>

The Ninth District reversed appellant’s conviction for carrying a concealed weapon because the State failed to present sufficient evidence demonstrating that the firearm was concealed on her person or ready at hand. The only evidence at trial was that appellant stole the firearm from the victim’s home. There was testimony the victim stored the firearm in a locked case, but there was no evidence the firearm was ready at hand because there was no evidence appellant knew the combination to the case’s lock or otherwise was able to remove the firearm from the case.

Tenth Appellate District of Ohio

State v. Marcum, 2015-Ohio-5237

Sentencing: Mootness

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/10/2015/2015-Ohio-5237.pdf>

Summary from the Tenth District:

“State's appeal of defendant's sentence is not moot, even though defendant has completed his sentence, because defendant has no legitimate expectation of finality in a sentence that remains subject to direct review. The sentence imposed was contrary to law because the trial court imposed a community control sanction without first obtaining and reviewing a presentence investigation report. Judgment reversed and cause remanded for resentencing.”

Eleventh Appellate District of Ohio

Nothing new.

Twelfth Appellate District of Ohio

Nothing new.

Supreme Court of Ohio

Nothing new.

Sixth Circuit Court of Appeals

Nothing new.

Supreme Court of the United States

Nothing new.