

Appellate Court Decisions - Week of 12/7/15

First Appellate District of Ohio

State v. Hamberg, 2015-Ohio-5074

Appeal: Jurisdiction: Postconviction

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2015/2015-Ohio-5074.pdf>

Summary from the First District:

“Appellant’s direct appeal from his judgment of conviction was subject to dismissal for lack of jurisdiction: the notice of appeal was not filed within 30 days after the judgment of conviction was journalized; and his Crim.R. 33(A)(6) motion for a new trial did not extend the time for filing the direct appeal, because his new-trial motion was not an appropriate vehicle for challenging his conviction upon a guilty plea. App.R. 4(A) and (B)(3).

“Defendant’s Crim.R. 33 motion for a new trial on the ground of newly discovered evidence was reviewable under R.C. 2953.21 et seq., governing postconviction petitions, because Crim.R. 33 did not provide a means for challenging his conviction upon a guilty plea, and because the motion was filed after his conviction, was supported by evidence outside the record of the proceedings leading to his conviction, and sought an order vacating his sentence based on alleged violations of constitutional rights. [*But see* DISSENT: Defendant’s motion was not reviewable under the postconviction statutes.]

“The common pleas court erred in denying the relief sought in defendant’s postconviction motion, without first conducting a hearing: defendant sustained his burden of demonstrating substantive grounds for relief, when he submitted with his motion evidentiary material setting forth sufficient operative facts to demonstrate that the trial court, in determining his sentence, had been biased against him and had abused its discretion in failing to give due consideration to the statutory sentencing purposes and factors. R.C. 2953.21(E).”

State v. Matthews, 2015-Ohio-5075

Sentencing: Allocution

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2015/2015-Ohio-5075.pdf>

Summary from the First District:

“The trial court erred in sentencing the defendant where the court failed to address the defendant personally and ask whether she wished to exercise her right of allocution, as required by Crim.R. 32(A)(1).”

State v. Murph, 2015-Ohio-5076

R.C. 2941.25: Allied Offenses: Sentencing

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2015/2015-Ohio-5076.pdf>

Summary from the First District:

“Because the defendant’s convictions for trafficking in and possession of cocaine are allied offenses of similar import that should have been merged for the purposes of sentencing, the sentences imposed on those counts must be vacated and the cause must be remanded for the trial court to hold a new sentencing hearing for the offense that remains after the state elects which allied offense to pursue, and the defendant’s argument that the trial court erred in imposing 18-month prison terms on the cocaine-related offenses after orally informing the defendant that it would impose 12-month prison terms is moot.”

Second Appellate District of Ohio

State v. Springs, 2015-Ohio-5016

Sentencing: Court Appointed Legal Fees and Expenses

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/2/2015/2015-Ohio-5016.pdf>

Summary from the Second District:

“The trial court did not err in making a finding regarding the appellant’s ability to pay his court-appointed counsel fees upon his release from prison. The trial court also did not err in finding the appellant obligated to pay those fees. The trial court did err, however, by ordering the appellant to make monthly payments toward his court-appointed counsel fees. Compelling reimbursement for such fees cannot be within the appellant’s criminal case except as a special condition of community control. If the government desires to obtain the reimbursement to which the trial court’s findings entitle it, it must pursue collection by separate civil execution proceedings. The trial court’s judgment is modified by vacating its reference to ‘and court appointed legal fees’ in the ‘financial obligation payment schedule.’ Judgment affirmed as modified.”

State v. Armstead, 2015-Ohio-5010

Motion to Suppress: *Miranda*

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/2/2015/2015-Ohio-5010.pdf>

Summary from the Second District:

“The trial court did not err when it sustained appellee's motion to suppress. The evidence adduced at the suppression hearing established that appellee was illegally detained by police subject to the equivalent of an arrest without probable cause. Appellee' purported acquiescence to a detective's request to travel downtown to speak with another detective regarding an unrelated matter for which he had not been charged amounted to nothing more than a 'mere submission to a claim of lawful authority.' The arresting officers lacked probable cause to detain appellee. Judgment affirmed.”

Third Appellate District of Ohio

Nothing new.

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. Hicks, 2015-Ohio-4978

Aggravated Murder: Sufficiency: Manifest Weight

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2015/2015-Ohio-4978.pdf>

Summary from the Eighth District:

“Defendant’s conviction for aggravated murder under R.C. 2903.01(A) was not supported by sufficient evidence. Where many of the circumstances surrounding the defendant's murder of his wife were unknown, including exactly where the murder occurred, the state failed to prove beyond a reasonable doubt that defendant acted with prior calculation and design. Conviction on aggravated murder count reversed; sentence on aggravated murder count vacated; matter remanded for resentencing.”

Ninth Appellate District of Ohio

Nothing new.

Tenth Appellate District of Ohio

City of Columbus v. Phillips, 2015-Ohio-5088

Motion in Limine: Evid.R. 403(A)

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/10/2015/2015-Ohio-5088.pdf>

In appellant’s trial for obstructing official business, the trial court erred in denying his pretrial motion in limine to exclude testimony concerning prostitution under Evid.R. 401, 402, 403, and 802, and otherwise allowing inadmissible testimony regarding prostitution. Appellant was stopped in his vehicle because an officer believed he and his passenger matched the description of people believed to have committed a burglary. This proved to be untrue, which is why this is not a burglary case. Long story short, at least four officers ended up coming to the scene because appellant would not exit his truck. Eventually he complied, but was maced and dragged to the ground in the process. The motion in limine came into play because one of the officers recognized a female passenger as a prostitute. That officer testified to that fact at trial.

“Here, the prostitution evidence was relevant because having a possible motive or reason to obstruct the officers does tend to make more probable appellant’s specific intention to engage in acts which would hamper or impede the officers and tends to make less probable appellant’s contention that he did not act with a purpose to prevent, delay, or obstruct the officers.”

“However, the record is silent on several key issues under Evid.R. 403(A) raised on the record in this case. Namely, the prosecution emphasized the prostitution evidence for its theory of the case and, as indicated in the trial court’s reasoning above, the case at times correspondingly shifted focus to examine why appellant had the passenger in the car. Moreover, the effect of the prejudice on the jury was unmitigated in this case. No limiting instruction was requested by either party, and the jury instructions are silent on the proper use of the prostitution evidence. See Evid.R. 105. Finally, although appellant raised the issue several times, the record does not reflect consideration of whether the evidence of prostitution would confuse the issues for the jury, one of the reasons to prompt mandatory exclusion of evidence under Evid.R. 403(A).

“On the other side of the scale, the trial court found the alleged comment of the passenger combined with [the officer’s] personal knowledge to be ‘highly relevant’ with respect to ‘why did [appellant] behave the way he did.’ * * * However, it did not consider whether, under the definition of purpose stated in Columbus General Offenses Code 2301.22(A), the motive or reason behind appellant’s conduct – no matter whether related to the possibility of a prostitution charge or the possibility of police brutality – may possess minimal probative value in relation to a charge for obstructing official business under Columbus General Offenses Code 2321.31(A).

“Therefore, considering all the above circumstances presented in this case, we find that the trial court abused its discretion in admitting the evidence of prostitution.” It then went on to determine the error was not harmless.

Eleventh Appellate District of Ohio

State v. Adams, 2015-Ohio-5072

Search: Motion to Suppress

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/11/2015/2015-Ohio-5072.pdf>

The trial court did not err in granting appellee’s motion to suppress. Honestly, this is one you just have to read. It’s a short read. It’s so fact-specific I don’t know if will be of any use to anyone.

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.