

Appellate Court Decisions - Week of 3/2/15

First Appellate District of Ohio

State v. Robinson, 2015-Ohio-773

Batson: Evidence

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-140043_03062015.pdf

Summary from the First District:

“The trial court did not err in determining that the prosecutor had offered a race-neutral explanation to justify the removal of an African-American prospective juror or in allowing the prosecutor to use a peremptory challenge to remove that prospective juror where the prospective juror had stated that police officers ‘abuse their powers.’

“The trial court did not err in admitting statements attributable to the defendant that had not been disclosed prior to trial where the state’s failure to disclose was not willful, the defendant did not show how foreknowledge of the statements would have assisted in preparation of a defense, and the defendant was not prejudiced by the admission of the statements.

“Comments by the prosecutor during closing argument that the defendant had committed additional robberies were improper where no evidence about other robberies had been presented at trial; but the defendant did not object to the comments, and, in light of the overwhelming evidence of guilt presented at trial, they did not constitute plain error.”

State v. Young, 2015-Ohio-774

Postconviction

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-140236_03062015.pdf

Summary from the First District:

“The appeal, filed nearly two years after the denial of appellant’s postconviction petition, was not subject to dismissal as untimely: the 30-day period for appealing that judgment had yet to begin to run, because the common pleas court did not direct service of notice of the judgment, as required by Civ.R. 58(B), and thus the clerk of courts did not ‘actually complete[] service’ of notice of the judgment, as required by App.R. 4(A)(3).

“The common pleas court properly denied as unsupported petitioner’s postconviction claim that his guilty pleas had been the unknowing and unintelligent product of his trial counsel’s ineffectiveness: the record negates petitioner’s claim that there was an agreed sentence, and that defense counsel was ineffective in misleading him concerning his plea agreement and in failing to bring the matter to the trial court’s attention; and the self-serving statements contained in petitioner’s affidavit were insufficient as a matter of law to rebut evidence of record to the contrary.”

State v. Davis, 2015-Ohio-775

Sentencing

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-140351_03062015.pdf

Summary from the First District:

“Where the defendant and the state entered into a plea agreement, and jointly recommended a sentence to the trial court, which the trial court then imposed, after making the required findings for the imposition of consecutive sentences at the sentencing hearing, R.C. 2953.08(D)(1) bars appellate review of the imposition of consecutive sentences, except to the extent that the trial court should have included its consecutive-sentencing findings in its sentencing entry in accordance with *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, syllabus.

“Although R.C. 2953.08(D)(1) does not bar the defendant’s appeal on the issue of allied offenses, the offenses of which the defendant was convicted were not allied offenses of similar import subject to merger because the offenses occurred separately.”

Second Appellate District of Ohio

State v. Richardson, 2015-Ohio-757

OVI: Sufficiency

Full Decision:
<http://www.supremecourt.ohio.gov/rod/docs/pdf/2/2015/2015-Ohio-757.pdf>

Appellant’s OVI conviction under R.C. 4511.19(A)(2) was based on insufficient evidence that his impairment was caused by the ingestion of hydrocodone/acetaminophen. “There was substantial evidence that [Appellant] was driving while impaired and there was conflicting evidence as to whether [Appellant’s] poor performance on the field sobriety tests could be explained by opiate withdrawal. But there was no testimony that

[Appellant's] medication caused him to have any side effects (he denied that they did), and there was no evidence as to what those side effects might typically be. [Appellant] testified that he was opiate tolerant and denied having any side effects from his medication; he stated that hydrocodone simply provided pain relief. There was no expert testimony that hydrocodone could impair a person's judgment or reflexes. [Appellant] asserted that his impairment could have been caused by opiate withdrawal. This evidence, whether believed or not, was not sufficient to establish a nexus between [Appellant's] impairment and any painkiller he was or was not taking."

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

State v. Sargent, 2015-Ohio-704

Evidence: 404(B)

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/6/2015/2015-Ohio-704.pdf>

The trial court erred in Appellant's felony domestic violence trial by admitting other-act evidence under Evid.R. 404(B) of a victim's statement from a 2006 incident of domestic violence. The error was highly prejudicial and not harmless.

Seventh Appellate District of Ohio

State v. Cooper, 2015-Ohio-744

Speedy Trial: R.C. 2945.72(A)

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/7/2015/2015-Ohio-744.pdf>

The trial court did not err in discharging Appellee on speedy trial grounds. Appellee's period of house arrest in West Virginia did not constitute "confinement in another state" so as to toll his speedy trial time.

Eighth Appellate District of Ohio

State v. Turner, 2015-Ohio-685

Sentencing: Merger

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2015/2015-Ohio-685.pdf>

The trial court erred in failing to merge Appellee's third-degree felony child endangering conviction under R.C. 2919.22(A) with his domestic violence conviction under R.C. 2919.25(B) where the serious physical harm component of the domestic violence charge necessarily referred to burns suffered by Appellee's child, and therefore both offenses were committed by one act with a single animus.

Ninth Appellate District of Ohio

State v. Osorio, 2015-Ohio-716

Indictment

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/9/2015/2015-Ohio-716.pdf>

The trial court committed plain error in convicting Appellant of operating a motor vehicle without a valid license, a fourth-degree misdemeanor, because it was no longer an indicted offense where the state previously amended the charge to failure to reinstate a license, a minor misdemeanor.

Tenth Appellate District of Ohio

State v. Woodruff, 2015-Ohio-738

Restitution: R.C. 2929.18(A)(1)

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/10/2015/2015-Ohio-738.pdf>

“Pursuant to R.C. 2929.18(A)(1), the trial court erred by failing to hold a hearing on restitution in response to appellant’s objection.”

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

State v. Carter, No. 14-5276

Evidence: 404(B)

Full Decision: <http://www.ca6.uscourts.gov/opinions.pdf/15a0038p-06.pdf>

The trial court erred in admitting improper Rule 404(b) “other act” evidence where there is “no authority to support the proposition that the intent to distribute suboxone strips, an entirely different drug from methamphetamine, in an unrelated venture is probative of a specific intent to join a conspiracy to manufacture homemade methamphetamine. Even accepting that both acts occurred, these two acts do not involve a similar *modus operandi* and are not otherwise sufficiently similar to satisfy Rule 404(b) as we have applied it in our precedent.”

Supreme Court of the United States

Nothing new.