

Appellate Court Decisions - Week of 4/13/15

First Appellate District of Ohio

State v. Ingels, 2015-Ohio-1621

Sentencing: Postrelease Control

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2015/2015-Ohio-1621.pdf>

Summary from the First District:

“A reviewing court’s decision in a case remains the law of that case on the legal questions involved for all subsequent proceedings in that case; thus when a reviewing court has fully reviewed and rejected a defendant’s sentencing-enhancement argument, under the doctrine of law-of-the-case, the trial court does not err when it refuses to vary from the reviewing court’s determination that the claimed sentencing errors had not rendered the sentences void.

“The common pleas court erred in failing to correct defendant’s sentences to properly impose postrelease control: the sentences were void to the extent that he had not been properly notified concerning postrelease control, and the sentences were subject to review and correction.”

State v. Carpenter, 2015-Ohio-1615

Indictment: Due Process: Evidence: Sentencing: Costs

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2015/2015-Ohio-1615.pdf>

Summary from the First District:

“Where the defendant’s indictment alleged the same conduct in three counts, but distinguished the charges by narrowing the time frame of each count, the defendant suffered no due process violation and was not deprived of the ability to prepare a meaningful defense.

“The trial court did not abuse its discretion in declaring a witness for the state to be a hostile witness when that witness showed a strong affinity for the defendant, provided evasive answers to the state’s questions, and attempted to qualify statements previously given.

“The trial court did not abuse its discretion in admitting testimony from a child victim of sexual abuse concerning all episodes of abuse that the victim had suffered, because the testimony was direct evidence offered in support of the offenses with which the defendant had been charged, and it was to the defendant’s advantage that the indictment charged only one sexual offense during each time period specified, even though the victim’s testimony would have supported the charging of additional offenses.

“The trial court erred in imposing court costs in the sentencing entry without informing the defendant in court that costs would be imposed, because the defendant was deprived of the opportunity to claim indigency and seek a waiver of costs.”

In re K.C., 2015-Ohio-1613

Delinquency: Constitutional: R.C. 2903.05(A)(4): *Miranda*

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2015/2015-Ohio-1613.pdf>

Summary from the First District:

“R.C. 2903.05(A)(4) was not unconstitutionally applied to a 12-year-old juvenile who engaged in sexual contact with a six-year-old, because the mens rea of purpose applies to the sexual-contact element of gross sexual imposition, providing a way to distinguish between the victim and the offender. (*In re D.B.*, 129 Ohio St.3d 104, 2011-Ohio-2671, 950 N.E.2d 528, distinguished.)

“The juvenile was in custody for purposes of determining whether she waived her *Miranda* rights, because a reasonable 12-year-old in the juvenile’s position would not have felt at liberty to terminate the police interrogation and leave, where she had no previous experience with the criminal justice system, her mother had brought her to the interview at the request of police detectives, and her mother had been asked to leave after the juvenile had signed a written waiver of her rights.

“The trial court erred in overruling the juvenile’s motion to suppress her statements to the police, because the state failed to show that the waiver of her rights was made knowingly, intelligently, and voluntarily.”

Second Appellate District of Ohio

State v. Fankle, 2015-Ohio-1581

Sentencing: Community Control Revocation

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/2/2015/2015-Ohio-1581.pdf>

The trial court erred in ordering Appellant to serve his two misdemeanor sentences consecutively after revoking his community control because they were not originally imposed consecutively.

Third Appellate District of Ohio

Nothing new.

Fourth Appellate District of Ohio

Nothing new.

Fifth Appellate District of Ohio

State v. Bard, 2015-Ohio-1609

Obstructing Justice: Jury: Special Finding: R.C. 2945.75

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/5/2015/2015-Ohio-1609.pdf>

Appellant was convicted after a jury trial of falsification, a misdemeanor of the first degree, and obstructing justice, a felony of the fifth degree. The jury's verdict form did not include, and therefore the jury did not make, the special finding that Appellant aided in the commission of a felony escape. The judgment was reversed and remanded for resentencing. The opinion does not make it clear, but I would assume the resentencing would have to reduce the obstructing justice to a misdemeanor because there would be no finding that Appellant aided in the commission of a felony escape. The issue was not waived because it was not raised at the trial level.

State v. Carnes, 2015-Ohio-1633

Evidence: Judicial Notice: Radar

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/5/2015/2015-Ohio-1633.pdf>

The trial court erred in taking judicial notice of the Python II radar device where it failed to cite the previous case in which it had taken judicial notice

of the device. The Fifth District could not find any appellate cases from that district concerning the scientific reliability of the device. The ticketing Trooper's visual observation of Appellant's speed was insufficient under R.C. 4511.091(C).

Sixth Appellate District of Ohio

Nothing new.

Seventh Appellate District of Ohio

Nothing new.

Eighth Appellate District of Ohio

Nothing new.

Ninth Appellate District of Ohio

Nothing new.

Tenth Appellate District of Ohio

State v. Toyloy, 2015-Ohio-1618

Plea Withdrawal: R.C. 2943.031(B)(1)

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/10/2015/2015-Ohio-1618.pdf>

The trial court erred in denying Appellant's motion to withdraw his guilty plea where it considered matters outside the record (called his previous attorney) to determine whether Appellant had checked the box on the plea form that he was a United States citizen. He was trying to withdraw his guilty plea on the basis that he was not informed of the immigration consequences of a conviction.

Eleventh Appellate District of Ohio

Nothing new.

Twelfth Appellate District of Ohio

Nothing new.

Supreme Court of Ohio

State v. Castagnola, 2015-Ohio-1565

Search Warrant

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/o/2015/2015-Ohio-1565.pdf>

The situation in this case is that the Appellant was accused of damaging and throwing eggs on the family vehicles of the law director and prosecutor for the city of Twinsburg, in Summit County, after he charged Appellant with selling alcohol to minors. A police source showed a series of text messages from Appellant bragging about damaging the vehicles. Police then had the source wear a concealed recording device and record a conversation with Appellant. On the recording, Appellant admitted to the damage again and admitted that he had to “look up” the prosecutor’s address on court records.

Police then sought an arrest warrant for Appellant and a warrant to search Appellant’s residence. The requested search warrant was to be issued to search the premises, persons, and vehicles on the property for records and documents stored on various electronic devices or printed out copies of those documents. The search warrant was granted. On Appellant’s computer, a large amount of potential child pornography was located.

The issue that arose during the motion to suppress is that the affidavit included a police officer’s summary of the conversation the source recorded with Appellant. The summary said the research to locate the prosecutor’s address was done online. The police officer made the inference that online meant it was done on a computer. That is why Appellant’s computers were part of the search warrant.

In reversing the denial of the Motion to Suppress, the Supreme Court held “that when no oral testimony is presented to the neutral and detached magistrate in conjunction with an affidavit for a search warrant, the probable-cause determination is based on the four corners of the document.”

It continued:

“We further hold that when a defendant’s motion to suppress evidence challenges the validity of a search warrant, claiming that an undisclosed inference stated as an empirical fact usurped the magistrate’s inference-

drawing authority, a reviewing court should consider (1) whether the inference was so significant that it crossed the line between permissible interpretation and usurpation of the magistrate's role in finding probable cause, considering both the relevance and the complexity of the inference and (2) whether the affiant intended the inference to deprive the magistrate of his or her authority to determine whether probable cause existed. We further hold that the particularity requirement of the Fourth Amendment applies to the search of a computer and requires a search warrant to particularly describe the items believed to be contained on the computer with as much specificity as the affiant's knowledge and the circumstances of the case allow and that the search conducted in a manner that restricts the search for the items identified.

"Finally, we conclude that in this case, the affiant negligently usurped the magistrate's inference drawing authority in determining whether there was probable cause to issue the search warrant. Although one act of negligence does not justify the exclusion of evidence seized in good faith, we suppress the evidence at issue here because the search-warrant affidavit was so lacking in indicia of probable cause and the search warrant failed to state with particularity the items to be searched for on [Appellant's] computer that the detective could not have relied upon it in good faith."

Sixth Circuit Court of Appeals

Nothing new.

Supreme Court of the United States

Nothing new.