Appellate Court Decisions - Week of 5/4/15

First Appellate District of Ohio

***State v. Bell*, 2015-Ohio-1711**

Evidence: Homicide: Jurisdiction/Venue: *Miranda*: New Trial: Allied Offenses: R.C. 2941.25: Sentencing

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2015/2015-Ohio-1711.pdf

Summary from the First District:

"The trial court did not err in overruling the defendant's motion to sever counts in the indictment related to two sets of offenses that occurred on separate dates and at separate places, where evidence from a robbery in the first set of offenses would have been admissible as other-acts evidence in the trial of the second set of offenses, and where the evidence as to both sets of offenses was simple and direct.

"Under R.C. 2901.12(H), venue was proper in Hamilton County on two counts of the indictment that involved a robbery that occurred in Butler County, because all of the charged offenses involved a course of conduct in both counties using the same modus operandi.

"When the defendant was handcuffed in the back of a police cruiser at the scene of a suspected shooting after he had been seen running down the street, a reasonable person in the defendant's situation would not have felt free to leave, and therefore, the defendant was in custody for purposes of determining whether the police officers should have read him his *Miranda* rights.

"Even though the defendant was in custody, the admission into evidence of statements he made as the result of police questioning before he was read his *Miranda* rights was harmless, because he made the same statements to the homicide detectives after being read his rights, and the evidence against the defendant was otherwise overwhelming.

"Under R.C. 2933.81(B), because the defendant was suspected of committing a homicide and his interview with police detectives was both audibly and visually recorded, the defendant's statements were presumed to be voluntary, and the burden shifted to him to prove that his statements were not voluntary.

"The trial court did not err in overruling the defendant's motion to suppress his statements to homicide detectives after being read his *Miranda* rights, because the defendant failed to overcome the presumption that the waiver of his rights was

voluntary, where there was no evidence that the defendant suffered any deprivation or that he was subjected to coercive interrogation techniques, and nothing in the record showed that his will was overborne by coercive police misconduct.

"The trial court did not err in overruling the defendant's motion for a mistrial even though his girlfriend/coconspirator testified on two occasions that the defendant had been to prison, where the record does not show that the state deliberately elicited the testimony, and the trial court instructed the jury to disregard the statements and ordered them stricken.

"The trial court did not err in admitting into evidence letters the defendant had written to his girlfriend while in jail awaiting trial, even though they contained evidence of other bad acts, where the letters were admitted to show the defendant's identity as the shooter, as well as his motive, intent and plan.

"The trial court did not err in overruling the defendant's motion to exclude from evidence letters and text messages between him and his girlfriend that directly tied the defendant to the criminal acts, because while their admission into evidence prejudiced the defendant, they did not unfairly prejudice him.

"The trial court did not err in failing to merge three counts of the indictment, even though the defendant argued they were allied offenses of similar import, because they involved a continuing course of conduct, and because two of the offenses involved separate victims and the third involved a harm separate from the other two.

"The defendant was not subject to cruel and unusual punishment when he received a total sentence of life plus 45 years, because the individual sentences fell within the appropriate statutory ranges, the trial court made the appropriate findings justifying consecutive sentences, and none of the individual sentences was grossly disproportionate to its respective offense, even though a large aggregate prison term resulted from the imposition of those sentences."

Second Appellate District of Ohio

***State v. D.L.*, 2015-Ohio-1664**

Sealing Record

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/2/2015/2015-Ohio-1664.pdf

The trial court erred in denying Appellant's motion to seal his record of conviction where it did not hold a hearing and relied on a pretrial services report regarding additional convictions Appellant had on his record.

Third Appellate District of Ohio

***State v. Jackson*, 2015-Ohio-1694**

Right to Counsel: Venue

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/3/2015/2015-Ohio-1694.pdf

The trial court erred by proceeding to trial without inquiring whether Appellant, who proceeded *pro se*, wanted to waive counsel. Appellant's conviction was also based on insufficient evidence where the only evidence of venue was that the offense occurred at "346 Elm."

Fourth Appellate District of Ohio

Nothing new.

Fifth Appellate District of Ohio

Nothing new.

Sixth Appellate District of Ohio

***State v. Ruffer*, 2014-Ohio-1684**

Motion to Suppress

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/6/2015/2015-Ohio-1684.pdf

In Appellant's possession of heroin case, the trial court erred in denying his motion to suppress the evidence collected after the search of his vehicle where the officer lacked the requisite reasonable articulable suspicion for the stop. The officer had been observing a residence based on information that drugs were being sold out of it. Appellant and a passenger parked in the vicinity of the residence. The officer was unsure about nearly all of the details of the incident, but did know that the passenger got out of the car, went to the property the residence was on, but never actually entered the residence. The passenger then returned to Appellant's car. After that, Appellant's car was stopped and searched. No drugs were found on the passenger or in the car, but a hypodermic needle with heroin residue in it was found in Appellant's sock.

Seventh Appellate District of Ohio

Nothing new.

Eighth Appellate District of Ohio

***Cleveland Hts. v. Cohen*, 2015-Ohio-1636**

Domestic Violence: Child Endangering: Sufficiency

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2015/2015-Ohio-1636.pdf

Summary from the Eighth District:

"Defendant's convictions for child endangering in violation of R.C. 2919.22(A) and disorderly conduct in violation of Cleveland Heights Codified Ordinances 509.03(a)(1) were not supported by sufficient evidence. That defendant's children were present in the home at the time of domestic dispute, may have witnessed part of the conflict and may have been upset by their parents' words and actions did not support a finding beyond a reasonable doubt that the defendant recklessly created a substantial risk to his children's health or safety by violating a duty of care, protection or support under R.C. 2919.22(A). Defendant's actions in pushing his wife off his back after she jumped on him did not support conviction for disorderly conduct under Cleveland Heights Codified Ordinances 509.03(a)(1) where city failed to present sufficient evidence that defendant was recklessly 'engaging in fighting' or 'violent or tumultuous behavior' or that there was a causal link between defendant's conduct and any inconvenience, annoyance or alarm experienced by wife."

***State v. Yapp*, 2015-Ohio-1654**

Immigration: Deportation: Motion to Withdraw Guilty Plea

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2015/2015-Ohio-1654.pdf

Summary from the Eighth District:

"Trial court did not abuse its discretion in granting defendant's motion to withdraw plea where defendant's trial counsel admitted to giving defendant legally deficient advice regarding a clear deportation consequence associated with his guilty pleas. The trial court's R.C. 2943.031(A)

advisement that defendant may face deportation as a result of his plea did not, by itself, preclude a finding of prejudice pursuant to *Padilla v. Kentucky*, 559 U.S. 356, 130 S.Ct. 1473, 176 L.Ed.2d 284 (2010) and *State v. Bains*, 8th Dist. Cuyahoga No. 94330, 2010-Ohio-5143."

***State v. Smith*, 2015-Ohio-1736**

Perjury: Testimony: Judge: Unfair Prejudice: Material: Ineffective Assistance

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2015/2015-Ohio-1736.pdf

Summary from the Eighth District:

"Court erred by allowing, and defense counsel was ineffective for failing to object to, testimony in a perjury trial by the judge who presided over a rape trial in which the defendant allegedly gave perjured testimony, causing the judge to dismiss the rape prosecution. The judge's testimony improperly explained why the judge dismissed the rape prosecution when his reasons for doing so were included in the judgment entry of dismissal in the rape prosecution. The judge's actions in calling for the defendant to be investigated contained the judge's opinion that the defendant had committed perjury, a conclusion that was unfairly bolstered by the prestige of the judge's office. In addition, the court erred and counsel failed to object to testimony by the judge who presided over the rape prosecution to testify to his opinion that he found the defendant's actions materially affected the rape prosecution because that was a question for the trier of fact to determine in the perjury trial."

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

Nothing new.

Supreme Court of Ohio

Nothing new.

Sixth Circuit Court of Appeals

Nothing new.

Supreme Court of the United States

Nothing new.