

Appellate Court Decisions - Week of 6/29/15

First Appellate District of Ohio

Nothing new.

Second Appellate District of Ohio

Nothing new.

Third Appellate District of Ohio

Nothing new.

Fourth Appellate District of Ohio

State v. Crocker, 2015-Ohio-2528

Tampering with Evidence: Sufficiency

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/4/2015/2015-Ohio-2528.pdf>

Appellant's conviction for tampering with evidence was based on insufficient evidence where, "[a]t the time his passenger concealed drugs in her vagina, there was no proceeding or investigation that they either knew was in progress or was likely to occur." The passenger concealed the drugs in her vagina to avoid detection while it was transported.

Fifth Appellate District of Ohio

Nothing new.

Sixth Appellate District of Ohio

Nothing new.

Seventh Appellate District of Ohio

State v. Kuhn, 2015-Ohio-2589

Court Costs: Sex Offender Classification

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/7/2015/2015-Ohio-2589.pdf>

Because Appellant was the prevailing party in asking the trial court to invalidate his classification under the Adam Walsh Act instead of Megan's Law, the trial court erred in taxing court costs against him. Appellant's failure on an additional, alternative argument asking for more relief did not change his status as the prevailing party. No additional hearings were held or costs incurred regarding the additional, alternative argument.

Eighth Appellate District of Ohio

Nothing new.

Ninth Appellate District of Ohio

State v. Thrasher, 2015-Ohio-2504

Sentencing: Abuse of Discretion: R.C. 2929.12

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/9/2015/2015-Ohio-2504.pdf>

The trial court abused its discretion in sentencing Appellant to a five-year prison sentence when the State only requested a two-year sentence as part of the plea agreement. The Ninth District wrote the following:

“Based on this Court’s review of the record, we conclude that the trial court was unreasonable in its weighing of the seriousness and recidivism factors in R.C. 2929.12. Although Thrasher had been sporadically involved with the juvenile justice system from the age of 13 despite some rehabilitative measures, there is nothing in the record to indicate any attempts to mitigate the effects of his abusive childhood. Under the circumstances, it is a stretch to characterize a juvenile record comprised of multiple misdemeanor theft offenses as ‘horrible’ or ‘horrific.’ Moreover, evidence of the trauma associated with his childhood indicated ‘substantial grounds to mitigate [Thrasher’s] conduct, although the grounds are not enough to constitute a defense.’ R.C. 2929.12(C)(4). The evidence was as follows. He was physically and sexually abused for years by adults in his life. He was ultimately rejected by his mother who chose to parent only his brother. His father was deceased. He was permitted to drop out of school, thereby precluding any opportunity to receive guidance and mentorship in his teenage years. As Thrasher admitted, he sought escape in drugs and alcohol, and support and mentorship from the streets and a man with gang

affiliations. Thrasher displayed remorse and insight into the circumstances that led him to commit the offense. The State requested a two-year prison term. Instead of according weight to the significance of the substantial grounds to mitigate Thrasher's conduct, e.g., theft premised on the compelling need for drugs which had become the only coping mechanism Thrasher developed after formative years of abuse, neglect, and abandonment, the trial court imposed a sentence two-and-a-half times longer than that requested by the State. Although the legislature did not mandate the weight to be accorded to any specific mitigating circumstances, the trial court must still be reasonable in its consideration. Under the facts and circumstances of this case, this Court cannot find the trial court's five-year sentence reasonable, as it is strikingly inconsistent with the sentencing factors. Accordingly, the trial court abused its discretion in imposing the five-year prison sentence." (citations omitted).

Tenth Appellate District of Ohio

Nothing new.

Eleventh Appellate District of Ohio

State v. Hancovsky, 2015-Ohio-2602

Motion to Suppress: Improper Handling Firearms in a Motor Vehicle

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/11/2015/2015-Ohio-2602.pdf>

The trial court erred in denying Appellant's motion to suppress where the public safety exception was not applicable to the warrantless search of his vehicle. Appellant informed the police officers he had a pistol in his car's center console. Police could have secured the pistol or the vehicle to prevent others from accessing it without conducting a warrantless search.

Appellant's conviction for improperly handling firearms was also based on insufficient evidence/was against the manifest weight of the evidence on the issue of whether he had the gun in his possession while he was intoxicated. No officer ever saw Appellant inside the car. The pistol was inside the center console. This was not a case of constructive possession.

Twelfth Appellate District of Ohio

State v. Verga, 2015-Ohio-2582

Violating Protection Order: Service

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/12/2015/2015-Ohio-2582.pdf>

Appellant's conviction for violating a protection order under R.C. 2903.213 was based on insufficient evidence where the State presented no evidence Appellant was served with the criminal protection order.

Supreme Court of Ohio

Nothing new.

Sixth Circuit Court of Appeals

Nothing new.

Supreme Court of the United States

Nothing new.