

Appellate Court Decisions - Week of 6/4/18

Note: This is not a comprehensive list of every case released this week.

First Appellate District of Ohio

In re D.L., 2018-Ohio-2161

Juvenile: Gun Specifications: R.C. 2152.17: Counsel: Double Jeopardy: Equal Protection

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2018/2018-Ohio-2161.pdf>

Summary from the First District: “The juvenile court did not err in imposing, and counsel was not ineffective in failing to challenge the constitutionality of, multiple, cumulative commitments for firearm specifications to underlying felonies committed as part of the same transaction: the commitments were permitted under R.C. 2152.17; and the statute did not violate rights secured by the United States Constitution under the Double Jeopardy Clause of the Fifth Amendment, because firearm specifications are sentencing enhancements, not offenses, or under the Equal Protection Clause of the Fourteenth Amendment, because the statute is rationally related to a legitimate governmental purpose.”

State v. Jeffries, 2018-Ohio-2160

Sex Offenses: Rape: Gross Sexual Imposition: Evidence: Rape Shield: Joinder: Counsel: Sentencing

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2018/2018-Ohio-2160.pdf>

Summary from the First District:

“Ohio’s rape-shield statute, R.C. 2907.02, prohibits evidence of the victim’s nonconsensual sexual activity, unless that evidence falls under a specific exception for admission, such as to show the origin of a disease, and the evidence is both material to a fact at issue and its probative value is not outweighed by its inflammatory or prejudicial nature. In a trial that included charges involving the defendant’s sexual abuse of his daughter, the trial court did not err by excluding evidence of the daughter’s prior nonconsensual sexual activity with another perpetrator that led to her contraction of a genital medical condition, because how the victim

contracted the condition was not material to a fact at issue with respect to the offenses charged, and because the exclusion of the irrelevant evidence did not infringe on the defendant’s constitutional rights to confront witnesses and present a defense.

“Under Crim.R. 8(A), it was proper to charge in the same indictment the offense of aggravated drug trafficking, which included the element that it had occurred in the vicinity of a juvenile, and sex offenses against the defendant’s juvenile daughter, because the facts showed the offenses charged were ‘part of a course of criminal conduct’: the drug offense occurred around the same time and at the same location—the defendant’s home—as one of the sex offenses, the evidence was interrelated because the daughter provided testimony establishing the juvenile-vicinity element of the drug offense, and the offenses were investigated at the same time, resulting in additional overlapping witnesses.

“The trial court did not abuse its discretion by refusing to sever a drug offense from sex offenses where the evidence for each count was sufficiently separate and distinct such that the jury, as instructed, could separate and analyze the proof of each offense independently, as evinced by an acquittal on one count in the case.

“The defendant’s conviction for the aggravated trafficking of oxycodone in an amount equaling or exceeding bulk was supported by sufficient evidence and not against the manifest weight of the evidence where the evidence showed that the defendant obtained at least 85 Percocet pills containing oxycodone, put a few in a container marked “personal,” and put the rest aside in two other containers with the intent that those pills would be sold and either crushed for regular customers who kept snorting straws in the defendant’s home, or placed in one of the miniature zip-lock like bags recovered with the pills in the defendant’s laundry basket.

“The defendant’s convictions for sex offenses against his daughter, including rape and gross sexual imposition, were supported by sufficient evidence and not against the manifest weight of the evidence, even though the state did not present DNA test results to corroborate his daughter’s testimony, where the daughter’s testimony was unequivocal, detailed, and credible, and bolstered by other evidence, including incriminating text messages from the defendant.

“The defendant failed to demonstrate that defense counsel was ineffective for not presenting an expert witness to testify about DNA test results of items recovered from the rape victim’s room, and for not hiring an expert to examine those items, because there is nothing in the record from which the court can determine that such testimony or additional testing would have been favorable to the defendant and outcome determinative.

“The trial court did not err by ordering that the defendant serve his sentence for a drug offense consecutively to sex-offense sentences where the trial court made the appropriate R.C. 2929.14(C)(4) findings at the sentencing hearing and included those findings in the sentencing entry.”

State v. Bullucks, 2018-Ohio-2159

Speedy Trial: Instructions: Rape: Felonious Assault

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2018/2018-Ohio-2159.pdf>

Summary from the First District:

“Defendant was not denied his Sixth Amendment right to the effective assistance of counsel by defense counsel’s failure to move to dismiss on speedy-trial grounds his rape and felonious assault charges: defendant, who had been held in jail without bail, was brought to trial within the 90 days required by R.C. 2945.71 et seq., because defense counsel had signed two of the three continuance entries, each entry contained an asterisk next the signature line with the words, ‘Defense counsel waives all speedy trial rights in accord with R.C. 2945.71 et seq.,’ and with those continuances, only 47 days chargeable to the state had elapsed from the date of defendant’s arrest through the trial date.

“The trial court did not commit plain error by returning the jury to its deliberations without giving the instruction set forth in *State v. Howard*, 42 Ohio St.3d 18, 537 N.E.2d 188 (1989), after the jury had indicated it was deadlocked four hours into its deliberations; nor did the court abuse its discretion by giving the *Howard* charge over defendant’s objection, or by failing to declare a mistrial, after the jury had reported that it was deadlocked a second time, because the jury’s submission of an additional question showed that it had remained engaged in reviewing the evidence related to the rape counts, and because the jury reached a unanimous verdict the following day.

“The jury’s verdicts finding defendant guilty of the forceful vaginal rape of a 15-year-old girl and the felonious assault of her stepmother were not contrary to the manifest weight of the evidence: the rape victim testified that defendant had forced her to engage in vaginal sex, her DNA was found on defendant’s penis, and the victim had sustained a tear and abrasion to her cervix consistent with a penetrating trauma; and the assault victim testified that defendant had choked, punched, bitten, and stabbed her, and her testimony was corroborated by photographs and her medical and dental records.”

State v. Embry, 2018-Ohio-2204

Sex Offender Classification

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2018/2018-Ohio-2204.pdf>

Summary from the First District: “Where the trial court correctly classified defendant as a Tier II sex offender under the Adam Walsh Act, but the notice form given to defendant was blank where it indicates whether defendant is a sex offender or child-victim offender, the boxes on the form that indicate defendant’s tier classification were left blank, and the boxes that indicate the duration and frequency of defendant’s registration duties were left blank, and where the trial court did not inform defendant that she had to register with the sheriff or orally provide any of the R.C. 2950.03(B) notifications, the trial court failed to provide defendant with the required notice of her registration duties, and the cause must be remanded for the trial court to correctly notify defendant of her Tier II registration and verification duties and their duration. [See CONCURRENCE: The only error committed by the trial court was failing to check the appropriate boxes on the notification form.]”

State v. Furr, 2018-Ohio-2205

Right to Counsel: Waiver: Due Process: Jail Clothes

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2018/2018-Ohio-2205.pdf>

Summary from the First District: “Defendant’s waiver of trial counsel was valid where the trial court made a sufficient inquiry to determine whether defendant fully understood and intelligently relinquished his constitutional right to counsel with respect to a prosecution for burglary and possessing criminal tools, defendant clearly and unequivocally asserted his right to represent himself on multiple occasion, and the court warned of the disadvantages of proceeding without counsel, explained that defendant would be required to follow the rules of procedure and evidence, and thoroughly explained the nature and elements of the charges, possible defenses to the charges, and the potential sentences that defendant faced. Defendant failed to demonstrate that his constitutional right to due process was violated when he stood trial before a jury while dressed in identifiable jail clothes where the trial court informed defendant of the option of wearing civilian clothes, defendant failed to object to being tried in jail clothes, and the court told the jurors to disregard the fact that defendant was wearing jail clothes.”

In re D.C., 2018-Ohio-2206

Juvenile: Jurisdiction

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2018/2018-Ohio-2206.pdf>

Summary from the First District: “Where the juvenile court failed to independently adjudicate the juvenile delinquent, the dispositional order was not final; therefore, the juvenile’s appeal from the dispositional order must be dismissed for lack of jurisdiction.”

Second Appellate District of Ohio

State v. Beverly, 2018-Ohio-2116

Reopening: Ineffective Assistance

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2018/2018-Ohio-2116.pdf>

Summary from the Second District: “The trial court erred at resentencing by modifying the appellant’s sentence to resentence him consecutively on those counts for which he already had completed his previously imposed concurrent prison terms. Judgment reversed and remanded for resentencing. (Donovan, J., concurring.)”

Third Appellate District of Ohio

Nothing to report.

Fourth Appellate District of Ohio

State v. Brooks, 2018-Ohio-2210

Speedy Trial

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/4/2018/2018-Ohio-2210.pdf>

“On May 17, 2016, Perry Brooks was arrested and jailed on drug charges. His jury trial did not occur until almost a year later on May 11, 2017. Brooks asserts that the trial court erred by failing to grant his motion to dismiss the

charges based on the denial of his statutory right to a speedy trial. We agree. Brooks established a prima facie speedy-trial violation, but the record does not affirmatively demonstrate that the court's next-to-last continuance of the trial date was reasonable in both purpose and length.

“We sustain his assignment of error, reverse the judgment, and remand with instructions to vacate the convictions and discharge him.”

* * *

“Because the record does not affirmatively demonstrate that rescheduling the trial to February 16, 2017 was reasonable in either purpose or length, we find that the speedy-trial time was not tolled beginning November 25, 2016. Thus, the 90-day trial deadline would have expired by Monday, December 19, 2016 at the latest.

“Because the trial court did not conduct a trial for Brooks within the applicable 90-day speedy-trial period, it erred by failing to dismiss the charges.”

Fifth Appellate District of Ohio

Nothing to report.

Sixth Appellate District of Ohio

Nothing to report.

Seventh Appellate District of Ohio

Nothing to report.

Eighth Appellate District of Ohio

Nothing to report.

Ninth Appellate District of Ohio

Nothing to report.

Tenth Appellate District of Ohio

Nothing to report.

Eleventh Appellate District of Ohio

Nothing to report.

Twelfth Appellate District of Ohio

Nothing to report.

Supreme Court of Ohio

State v. Jackson, 2018-Ohio-2169

Fifth and Sixth Amendments

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/o/2018/2018-Ohio-2169.pdf>

Syllabus: “A social worker’s statutory duty to cooperate and share information with law enforcement with respect to a child abuse investigation does not render the social worker an agent of law enforcement for purposes of the Fifth and Sixth Amendments to the United States Constitution when the social worker interviews an alleged perpetrator unless other evidence demonstrates that the social worker acted at the direction or under the control of law enforcement.”

Sixth Circuit Court of Appeals

Nothing to report.

Supreme Court of the United States

Nothing to report.