

Appellate Court Decisions - Week of 6/8/15

First Appellate District of Ohio

State v. Ward, 2015-Ohio-2260

Assault: Counsel: ID: Jury Instructions

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-140721_06122015.pdf

Summary from the First District:

“The trial court did not err in failing to suppress the victim’s testimony identifying the defendant as his attacker, because the identification was reliable under the totality of the circumstances: the victim saw the defendant at close range in a well-lit area before and during the assault; the victim’s description to police proved to accurately describe the defendant who was apprehended within 20 minutes of the assault only several blocks away, and the victim was able to identify the defendant with certainty.

“The defendant was not denied the effective assistance of counsel, despite his claim that counsel had failed to timely file a notice of alibi pursuant to Crim.R. 12.1, where counsel’s conduct could be construed to be a trial strategy and where the defendant failed to demonstrate resulting prejudice.

“The defendant’s assault conviction was not against the manifest weight of the evidence where the state presented evidence that the defendant had punched the victim several times, causing physical harm.

“The trial court’s admonitions to the jury that an eyewitness-identification procedure used by police was neither inherently improper nor unconstitutional and that the jurors were the exclusive judges of the facts were proper where the remarks clarified that the legality of the procedure was a matter for the trial court and that the jury would have to decide whether the eyewitness identification was reliable, and where the admonitions were a reasonable response to defense counsel’s apparent defiance in continuing to impugn the police procedure during closing argument despite the court’s explicit ruling on the matter.”

State v. Foreman, 2015-Ohio-2259

Counsel: Pleas

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-140560_06122015.pdf

Summary from the First District:

“Ineffective assistance of trial counsel may be presumed where, at the hearing on defendant’s motions to withdraw his guilty pleas, counsel represented competing interests and defendant was denied the right to cross-examination.

“Defendant was denied the effective assistance of counsel where the same counsel represented defendant at his plea hearing and at the hearing on his motions to withdraw his guilty pleas, and one of the bases for the motion to withdraw was the allegation that the pleas were involuntary because counsel had lied to defendant: counsel could not reasonably be expected to argue that he had lied to defendant, and defendant was without an advocate for purposes of cross-examination.”

Second Appellate District of Ohio

Nothing new.

Third Appellate District of Ohio

Nothing new.

Fourth Appellate District of Ohio

State v. Cave, 2015-Ohio-2233

Evidence: Hearsay: Forfeiture

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/4/2015/2015-Ohio-2233.pdf>

The trial court erred in allowing into evidence hearsay testimony from the police officer that a confidential informant told him they could buy cocaine from Appellant and how much cocaine they saw Appellant with. The testimony was highly prejudicial and tied Appellant to the crime of drug trafficking. The statements definitively labeled appellant as a drug trafficker. This, however, was subject to plain error review because trial counsel did not object. The Fourth District found that the error did not constitute plain error.

The trial court also erred in failing to instruct the jury on the law relating to the forfeiture specification, and the jury did not make a separate finding on the specification. Therefore, it was error to order forfeiture in this case.

Fifth Appellate District of Ohio

Nothing new.

Sixth Appellate District of Ohio

Nothing new.

Seventh Appellate District of Ohio

State v. Burton, 2015-Ohio-2247

Sentencing: Allied Offenses: Aggravated Burglary

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/7/2015/2015-Ohio-2247.pdf>

The trial court erred in failing to merge Appellant's three counts of aggravated burglary where he burglarized one home with three occupants. Despite the fact that there were three victims, and despite the Ohio Supreme Court's recent decision in *Ruff*, it is the trespass that is at the heart of the aggravated burglary conviction, and there was only one trespass.

Eighth Appellate District of Ohio

Nothing new.

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.