

Appellate Court Decisions - Week of 7/6/15

First Appellate District of Ohio

State v. Smith, 2015-Ohio-2769

Constitutional Law: R.C. 2923.16

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2015/2015-Ohio-2769.pdf>

Summary from the First District:

“R.C. 2923.16 is not void for vagueness or ambiguous, because it provides a person of ordinary intelligence with fair notice as to what type of conduct is prohibited.

“While R.C. 2923.16(B) prohibits carrying a loaded firearm in a motor vehicle if the firearm is accessible to any operator or passenger without leaving the vehicle, it does not make lawful the carrying of a loaded firearm in a motor vehicle if the firearm is not accessible without leaving the vehicle.

“R.C. 2923.16(B) and (C) are not internally inconsistent: R.C. 2923.16(B) prohibits carrying a loaded firearm in the passenger compartment of a vehicle, while R.C. 2923.16(C) regulates the manner in which an unloaded firearm may be transported.

“Where the defendant violated R.C. 2923.16(C) by transporting loaded firearms in the trunk of his car, the trial court erred in finding the defendant guilty of and imposing sentence for a first-degree misdemeanor, because a violation of R.C. 2923.16(C) is a fourth-degree misdemeanor.”

Second Appellate District of Ohio

State v. Roberts, 2015-Ohio-2716

Theft: Sufficiency

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/2/2015/2015-Ohio-2716.pdf>

Appellant’s conviction for theft under R.C. 2913.02(A)(1) was based on insufficient evidence where the State proved the elements of R.C. 2913.02(A)(2), but not (A)(1). Appellant used her landlord’s air conditioning units from her apartment to secure a loan at a pawn shop.

State v. Miller, 2015-Ohio-2714

Evidence: Other-Acts

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/2/2015/2015-Ohio-2714.pdf>

In a case where Appellant was convicted of grand theft for acting as a lookout for two others stealing from Toys 'R Us, the trial court erred in admitting unduly prejudicial other-acts evidence that Appellant had previously been associated with two other unidentified people who were suspects, but never charged, in a similar theft in Cincinnati.

Third Appellate District of Ohio

State v. Castillo, 2015-Ohio-2738

Evidence: Hearsay

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/3/2015/2015-Ohio-2738.pdf>

In Appellant's conviction for violating a protection order, the trial court erred in admitting inadmissible hearsay testimony from a police officer of the victim's identity, which he obtained between two encounters with Appellant and the victim by looking through an unspecified computer database. The State neglected to present the computer printout from the database, which may have been admissible.

Fourth Appellate District of Ohio

State v. Laber, 2015-Ohio-2758

Terrorist Threats: Ineffective Assistance

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/4/2015/2015-Ohio-2758.pdf>

Trial counsel was ineffective for failing to challenge the constitutionality of R.C. 2909.23, making terrorist threats. Although the Fourth District could not in this case declare the statute unconstitutional, it's a fair assumption that it would if given the chance. The Fourth District is concerned by the

statute's failure to define "threat" or "threaten" and the lack of "intent" in the statute.

Fifth Appellate District of Ohio

Nothing new.

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. Tabler, 2015-Ohio-2651

Motion to Suppress

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/10/2015/2015-Ohio-2651.pdf>

The trial court did not err in granting Appellee's motion to suppress the search of the vehicle (and the gun found inside) in which he was a passenger. The police officer parked behind the vehicle and approached it because it was running with the lights off in a high-crime area. The car was parked legally. The officer asked the three men inside for identification. That part was consensual, but the encounter became an illegal seizure when the officer took the IDs to run a warrant check. There was no reasonable suspicion for any sort of detention or search at that point. It did not matter that the driver seemed nervous.

State v. Oliveira, 2015-Ohio-2652

Jury Instruction

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/10/2015/2015-Ohio-2652.pdf>

In Appellant's trial for two counts of kidnapping, the trial court erred in refusing to provide the jury an instruction on the second-degree felony form of kidnapping based on the victim being released in a safe place, unharmed. There was sufficient evidence at trial to support a claim that Appellant released the victim in a safe place, unharmed.

State v. J.M., 2015-Ohio-2669

Sealing Record: R.C. 4503.11

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/10/2015/2015-Ohio-2669.pdf>

R.C. 4503.11, failure to timely apply to register a motor vehicle, does not count as a conviction for the purposes of determining eligibility to seal records of convictions under R.C. 2953.31. The Tenth District certified a conflict on this issue with the Fourth District to the Ohio Supreme Court.

Eleventh Appellate District of Ohio

State v. Sergent, 2015-Ohio-2603

Sentencing: Consecutive Findings

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/11/2015/2015-Ohio-2603.pdf>

The Eleventh District certified the following conflict question to the Ohio Supreme Court: "In the context of a jointly-recommended sentence, is the trial court required to make consecutive-sentence findings under R.C. 2929.14(C) in order for its sentence to be authorized by law and thus not appealable?" The Eleventh District came down on the side of consecutive-sentence findings being required.

State v. Herbert, 2015-Ohio-2605

Self-Defense: Jury Instruction

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/11/2015/2015-Ohio-2605.pdf>

The trial court erred in refusing to instruct the jury as to self-defense. Appellant did not need to admit to causing harm to the alleged victim in order to receive a self-defense instruction. It is also appropriate to present inconsistent defenses, such as, (1) the victim was not harmed in the altercation, but even if he were harmed (2) the Appellant acted in self-defense.

The trial court also erred in giving a flight instruction where, although Appellant left the scene, he went directly to a police station. “[L]eaving a volatile situation and going to a police station does not constitute consciousness of guilt as that is simply not the destination of one with a guilty conscious.”

State v. Rose, 2015-Ohio-2607

Ineffective Assistance

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/11/2015/2015-Ohio-2607.pdf>

Trial counsel was ineffective for failing to object to hearsay statements made by a non-testifying witness. A police officer testified that he spoke with a woman who informed him that she did not know her license plates had been taken from her broken-down vehicle. One of Appellant’s conviction was for receiving stolen license plates.

Twelfth Appellate District of Ohio

Nothing new.

Supreme Court of Ohio

Nothing new.

Sixth Circuit Court of Appeals

Williams v. Mitchell, Nos. 03-3626/12-4269

Capital Habeas Corpus

Full Decision: <http://www.ca6.uscourts.gov/opinions.pdf/15a0138p-06.pdf>

I won't pretend to be of much use for analyzing this case. Capital cases and federal habeas are two things with which I've never dealt. The gist of this case seems to be that the Ohio appellate court that reviewed Mr. Williams' case did not consider really old evidence that he had a really low IQ. The Sixth Circuit granted habeas on this case for it to be reviewed in conjunction with its decision. If you have a case involving an intellectually disabled person facing the death penalty, you should give this case a read.

Supreme Court of the United States

Nothing new.