

Appellate Court Decisions - Week of 8/13/18

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

First Appellate District of Ohio

State v. Poe, 2018-Ohio-3279

Sentencing: Allocution

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2018/2018-Ohio-3279.pdf>

Summary from the First District: “The trial court’s failure to ask defendant if she wished to exercise her right of allocution before sentencing her to more than a minimum sentence was not harmless error where nothing in the record demonstrates that defendant was ever adequately informed of or afforded her right to make a statement to the court with respect to the sentence imposed, even though the court had asked defendant about a part of one victim’s testimony, and defendant had touched on the issue of guilt in response.”

Second Appellate District of Ohio

State v. Pendleton, 2018-Ohio-3199

Having Weapons While Under Disability: Affirmative Defense: Double Jeopardy

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2018/2018-Ohio-3199.pdf>

Summary from the Second District: “Defendant-appellant’s indictment for aggravated trafficking in a Schedule II drug as a second degree felony and aggravated possession of a Schedule II drug as a second degree felony, with neither indictment generating an objection before trial, validly charged Defendant-appellant with trafficking in a Schedule II controlled substance and possession of a Schedule II controlled substance based upon the fentanyl contained within the mixtures of controlled substances found at Defendant-appellant’s home. The State presented sufficient evidence of the amount of fentanyl involved to support Defendant-appellant’s convictions for aggravated trafficking in a Schedule II drug as a second degree felony and aggravated possession of a Schedule II drug as a second degree felony. The trial court correctly concluded that the heroin trafficking and the

heroin possession counts and the aggravated trafficking (fentanyl) and the aggravated possession (fentanyl) counts did not merge into one offense as allied offenses of similar import. Defendant-appellant's convictions are not against the manifest weight of the evidence. The trial court's jury instructions did not include an instruction regarding excluded fingerprint evidence nor a formal bulk amount instruction. Neither omission generated an objection, and, on this record, we cannot conclude that the trial's outcome would have been different if the instructions had been given. Based upon the same reasoning, we cannot conclude that trial counsel provided ineffective assistance of counsel by not objecting to the omission of these instructions. Finally, the trial court, as to the offense of having a weapon under disability, erroneously concluded that the State had the burden to prove that the Defendant had not been relieved from disability. Relief from a weapon possession disability is an affirmative defense with the defendant having the burden of proof by a preponderance of the evidence; however, double jeopardy prohibits a retrial of this offense. Judgment affirmed. (Froelich, J., concurring in part and dissenting in part.)”

Third Appellate District of Ohio

Nothing to report.

Fourth Appellate District of Ohio

Nothing to report.

Fifth Appellate District of Ohio

State v. King, 2018-Ohio-3232

Speedy Trial

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2018/2018-Ohio-3232.pdf>

The state filed a charge against appellant in municipal court, but it was a charge for which the juvenile court had exclusive jurisdiction. The Fifth District determined that what occurred was a nolle prosequi and a subsequent refile of the same charge in juvenile court. It held that the speedy trial clock was tolled between the nolle prosequi and the refile, not reset upon the refile. Based on that holding, it calculated time and determined Appellant's speedy trial time had run.

Sixth Appellate District of Ohio

Nothing to report.

Seventh Appellate District of Ohio

Nothing to report.

Eighth Appellate District of Ohio

State v. Cammon, 2018-Ohio-3183

Tampering with Evidence: Obstructing Justice: Carrying a Concealed Weapon: Sufficiency: Weight

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2018/2018-Ohio-3183.pdf>

Appellant's convictions for tampering with evidence, obstructing justice, and carrying a concealed weapon were based on insufficient evidence where the state failed to demonstrate she knew items she was handed by a person arrested in the back of a police cruiser included a gun.

Parma v. Treanor, 2018-Ohio-3166

Jury Instructions: Self-Defense: Castle Doctrine

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2018/2018-Ohio-3166.pdf>

Summary from the Eighth District:

“Trial court erred in refusing to give the jury an instruction on self-defense and the Castle Doctrine. Both defenses are affirmative defenses to offenses where the threat of harm is an element of the offense. The evidence was sufficient to warrant the instructions because the defendant, who was inside his own home, had a reasonable belief of great bodily harm, and that he used a reasonable threat of force to repel what he perceived to be an imminent threat.”

State v. McCaughey, 2018-Ohio-3167

Speedy Trial

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2018/2018-Ohio-3167.pdf>

Summary from the Eighth District: “ Trial court did not err by dismissing indictment on speedy trial grounds. The statutory time for defendant’s subsequent felony indictment began to run on the date of defendant’s arrest, and the subsequent indictment 13 months after the date of arrest, with no other additional facts, violated defendant’s speedy trial rights.”

State v. Henderson, 2018-Ohio-3168

Jail-Time Credit

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2018/2018-Ohio-3168.pdf>

Summary from the Eighth District: “The trial court erred by failing to award appellant jail-time credit for the time he spent in the community-based correctional facility. The trial court did not err in imposing consecutive sentences because the court complied with R.C. 2929.14(C)(4) and made the requisite consecutive sentence findings.”

State v. Barnes, 2018-Ohio-3273

Sixth Amendment: Right to Counsel

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2018/2018-Ohio-3273.pdf>

Summary from the Eighth District: “The motion to withdraw due to conflict of interest and duty of confidentiality is a final appealable order. The elements of a provisional remedy have been met. The office of the public defender is a firm pursuant to the Professional Rules of Conduct. Because the office of the public defender represented a former client who is the alleged victim in the instant case, issues of confidentiality and conflicts of interest arose, resulting in whether counsel would zealously represent the defendant. The defendant would not be afforded a meaningful and effective remedy after trial by way of appeal.”

State v. Hart, 2018-Ohio-3272

Evidence: Other-Acts

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2018/2018-Ohio-3272.pdf>

Summary from the Eighth District: “Trial court properly denied defendant’s motion dismiss for preindictment delay where defendant failed to establish actual prejudice caused by the delay. Trial court’s decision to allow evidence of defendant’s prior sex crime into evidence was an abuse of discretion that resulted in unfair prejudice in violation of Evid.R. 404(B).”

***In re T.W.*, 2018-Ohio-3275**

Delinquency: Sex Offense: Sufficiency

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2018/2018-Ohio-3275.pdf>

Summary from the Eighth District: “The state failed to present independent proof of the sexual act under Evid.R. 807 for the purposes of admitting the incompetent victim’s testimony at trial, and the state failed to present sufficient evidence of force or restraint for the purposes of the rape and kidnapping convictions. In this case, gross sexual imposition was improperly considered as the lesser included offense of the statutory rape count with which the juvenile was charged.”

Ninth Appellate District of Ohio

Nothing to report.

Tenth Appellate District of Ohio

***State v. Gibson*, 2018-Ohio-3261**

Sentencing: Allied Offenses: Unlawful Sexual Conduct with a Minor: Abduction

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/10/2018/2018-Ohio-3261.pdf>

Summary from the Tenth District: “The trial court erred when it failed to merge the offenses of abduction and unlawful sexual conduct with a minor for purposes of sentencing.”

Eleventh Appellate District of Ohio

Nothing to report.

Twelfth Appellate District of Ohio

Nothing to report.

Supreme Court of Ohio

State v. Moore, 2018-Ohio-3237

Jail-Time Credit

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/o/2018/2018-Ohio-3237.pdf>

From the Opinion: “An offender who has been locked up in jail prior to being sentenced to prison is entitled to a credit against his prison term for any time that the offender spent in confinement awaiting trial and sentencing. But an exception in Ohio law dictates that this ‘jail-time credit’ does not apply to the portion of a prison sentence that is imposed for a firearm specification. The primary question presented is whether the exception as applied in this case violates equal-protection guarantees. We conclude that it does not. The court of appeals below held otherwise, so we reverse.”

State v. Martin, 2018-Ohio-3226

Juvenile: Procedure: Human-Trafficking Victim

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/o/2018/2018-Ohio-3226.pdf>

From the Opinion: “This appeal concerns a juvenile court’s duty to consider the applicability of R.C. 2152.021—Ohio’s ‘safe harbor’ law—which benefits certain human-trafficking victims charged with juvenile delinquency. R.C. 2152.021(F)(3) requires the court to appoint a guardian ad litem when a juvenile is a human-trafficking victim and is charged with an offense that is ‘related to’ the victimization. Appellant, Alexis Martin, asks this court to hold that the juvenile court’s failure to consider and apply R.C. 2152.021(F)(3) invalidated its discretionary transfer of her case to adult court.

“We reject the state’s argument that Ohio’s safe-harbor provisions apply only to nonviolent offenses. Nevertheless, we hold that when there was no objection to a juvenile court’s failure to consider the applicability of R.C. 2152.021(F), as in this case, the criminal plain-error standard applies. And here, Martin cannot carry her burden of demonstrating plain error. Because she cannot do so, we need not address whether her guilty plea in adult court waived her claim that the juvenile court erred in failing to consider R.C. 2152.021(F). We affirm the judgment of the Ninth District Court of Appeals that affirmed Martin’s convictions and sentence.”

State v. Carnes, 2018-Ohio-3256

**R.C. 2923.13: Having Weapons Under Disability: Juvenile Adjudication:
*Hand***

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/o/2018/2018-Ohio-3256.pdf>

From the Opinion: “In this discretionary appeal, we consider whether using a prior juvenile adjudication of delinquency for the commission of an offense that would have been felonious assault if it had been committed by an adult as an element of the offense of having a weapon under disability as set forth in R.C. 2923.13(A)(2) violates due process. We conclude that it does not, and we affirm the judgment of the First District Court of Appeals.”

Sixth Circuit Court of Appeals

Nothing to report.

Supreme Court of the United States

Nothing to report.