

Appellate Court Decisions - Week of 8/3/15

First Appellate District of Ohio

State v. Frazier, 2015-Ohio-3116

Murder: Evidence: Complicity: Misconduct

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2015/2015-Ohio-3116.pdf>

Summary from the First District:

“The evidence was sufficient to support the defendant’s convictions for the murder and felonious assault of a woman, the attempted murder and felonious assault of the woman’s fiancé, and the accompanying three-year firearm specifications, and the convictions were not against the manifest weight of the evidence: the state’s witnesses testified that the defendant had argued with the woman and threatened to kill her fiancé; the defendant had followed the victims; and, as the victims were unloading gifts from their car, the defendant and an accomplice had exited from a vehicle, pulled out guns, and shot repeatedly at the woman fatally wounding her and striking her fiancé in the head.

“Although the defendant testified that he was at home at the time of the shootings and maintained that his father had committed the offenses, the jury did not lose its way in choosing to accord little weight to his testimony where the state introduced cell phone records to show that the defendant was near the scene of the shooting, and where the fiancé’s testimony was supported by the physical evidence recovered at the scene and by the testimony of the woman’s mother and the defendant’s business associate that the defendant had conspired with his father to kill the fiancé and that in carrying out the hit, he had shot the fiancé in the head and had killed the woman.

“The trial court did not abuse its discretion in admitting into evidence three empty gun boxes, two magazines, a holster, and test-fire bullet shells based on its determination that they were relevant and more probative than prejudicial, because the items showed the defendant had access to 9 mm ammunition, which was used in the crime, and tended to show the defendant knew how to use firearms and carried them on his person. **Note: The First District leaves out the fact that only 9mm shell casings were found at the scene, one of the gun boxes belonged to a 45-caliber handgun, and the test-shell casings from the 9mm boxes were shown by the state’s expert not to match the shells found at the scene.**

“There was no plain error in the trial court’s admission of maps made by a Cincinnati Bell records custodian with the Google Earth program showing the distance from two cell tower locations to the address of the shootings and the distance between

the cell tower to the address where the defendant was located following the shootings: the maps were demonstrative aids, which contained information that had been properly admitted as business records, and no confrontation clause violation existed because the records custodian, who had created the maps, had been subject to extensive cross-examination by the defendant.

“The trial court properly instructed the jury on complicity where the state presented evidence that the defendant had aided or abetted another in committing the offenses and that he had conspired with his father to kill the victims.

“The defendant failed to demonstrate that he was entitled to a mistrial based on the prosecutor’s conduct in writing on and throwing a placard that had been used by defense counsel during closing argument, where the trial court had instructed the jury to disregard the conduct and the jury was presumed to follow the trial court’s instruction, and the trial court’s reasons for denying the motion were supported by the record.

“The trial court’s failure to journalize an entry discharging the jury after the defendant’s first trial ended in a mistrial was harmless error where the record showed that the mistrial had been declared at the request of the defendant with the concurrence of the state, the reasons for granting the mistrial were apparent from the record, and the defendant had then been retried without objection.

“The trial court properly imposed consecutive sentences where it made the mandatory findings required by R.C. 2929.14(C) and the findings were supported by the record, but remand was necessary for the trial court to incorporate its findings into the sentencing entry by a nunc pro tunc order.”

State v. Meadows, 2015-Ohio-3117

Jury Demand/Waiver: Bench Trial

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2015/2015-Ohio-3117.pdf>

Summary from the First District:

“Where the defendant in a petty offense case filed a written demand for a jury trial, the trial court had no jurisdiction to conduct a bench trial in the absence of a knowing, voluntary, and intelligent written waiver of the defendant’s right to a jury trial that was made a part of the record pursuant to R.C. 2945.05.”

Second Appellate District of Ohio

Nothing new.

Third Appellate District of Ohio

Nothing new.

Fourth Appellate District of Ohio

Nothing new.

Fifth Appellate District of Ohio

State v. Johnson, 2015-Ohio-3113

Aggravated Burglary: Sufficiency

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/5/2015/2015-Ohio-3113.pdf>

The trial court erred in finding appellant guilty of aggravated burglary where the state failed to present sufficient evidence that the BB gun used by appellant in the burglary was a deadly weapon. The actual guns used were not introduced into evidence at trial, nor was any testimony regarding their size, weight, shape, or design. There was no evidence presented appellant used to threatened to use the gun as a bludgeon, nor could any inference of of such use be made from the evidence.

Sixth Appellate District of Ohio

State v. Kiser, 2015-Ohio-3076

Motion to Suppress: Search Warrant: Probable Cause

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/6/2015/2015-Ohio-3076.pdf>

The trial court erred in denying appellant’s motion to suppress the search of his home. The Sixth District held “that the totality of the circumstances fails to support the probable cause basis for the issuance of the search warrant. The CI’s reliability was neither established nor was it independently corroborated by police investigation.” The good-faith exception did not apply here either: “there is nothing in the record evidencing any attempts at corroboration prior to the execution of the warrant. No other independent, objective basis for reliance on the warrant was demonstrated.”

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. McCord, 2015-Ohio-3045

Sentencing: Abuse of a Corpse

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/10/2015/2015-Ohio-3045.pdf>

The trial court erred in sentencing appellant to a prison term after he pleaded guilty to abuse of a corpse in violation of R.C. 2927.01. Appellant had no prior felony convictions. The conviction as based upon appellant transporting the dead body of a woman who overdosed on heroin and died in his apartment. There could be no physical harm to the victim because the victim had already died when appellant transported her.

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.