

## Appellate Court Decisions - Week of 8/31/15

### First Appellate District of Ohio

#### **State v. King, 2015-Ohio-3565**

**Sex Offender: Registration: Plea Withdrawal**

**Full Decision:**

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2015/2015-Ohio-3565.pdf>

#### **Summary from the First District:**

“The trial court erred in overruling defendant’s postsentence motions to withdraw his guilty pleas to two separate counts of failing to verify his address, because defendant had no duty to register as a sex offender in Ohio when he had committed his sex offense in Michigan, but had no duty to register in that state, and thus defendant demonstrated manifest injustice.”

#### **State v. Griffin, 2015-Ohio-3566**

**Motion to Suppress: Sentencing: Allied Offenses**

**Full Decision:**

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2015/2015-Ohio-3566.pdf>

#### **Summary from the First District:**

“The trial court properly denied defendant’s motion to suppress evidence seized during the execution of a search warrant where, under the totality of the circumstances, the supporting affidavit by an experienced drug investigator demonstrated probable cause that contraband or evidence of marijuana cultivation would be found in the residence and in a vehicle parked at the residence: the affiant described an anonymous tip that there was a large ‘marijuana grow’ in the house, and a trash pull that revealed marijuana plant trimmings, which were indicative of the cultivation of marijuana, as well as mail addressed to the owner of the vehicle that was parked at the residence.

“Where the search warrant authorized the search of the residence and any vehicles registered to a certain person, police officers were justified in seizing a vehicle registered to that person and detaining its driver.

“The trial court erred by imposing sentences for both illegal cultivation of marijuana and possession of marijuana, because the offenses were allied offenses of similar import.”

## **State v. Mosley, 2015-Ohio-3597**

### **Sex Offender Registration: Constitutional**

#### **Full Decision:**

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2015/2015-Ohio-3597.pdf>

#### **Summary from the First District:**

“The trial court did not err in dismissing the indictment against defendant for failing to provide notice of an address change, because defendant’s initial classification as a sexually oriented offender violated his right to due process: requiring defendant to register as a sexually oriented offender for abduction with no sexual motivation is not rationally related to the stated legislative intent of Ohio’s Megan’s Law to protect the public from sex offenders, and defendant is not subject to the child-victim-oriented-offender law, because he was not incarcerated on its effective date and did not have a lawful duty to register when the law became effective. [*But see* DISSENT: The legislature constitutionally classified defendant as a child-victim offender, and the state may prosecute him for a violation of that duty to register; further, a rational basis supports defendant’s previous classification as a sexually oriented offender.]”

### **Second Appellate District of Ohio**

## **State v. Wells, 2015-Ohio-3511**

### **Sentencing**

#### **Full Decision:**

<http://www.supremecourt.ohio.gov/rod/docs/pdf/2/2015/2015-Ohio-3511.pdf>

**The trial court erred in sentencing appellant to prison rather than mandatory community control (pursuant to R.C. 2929.13(B)(1)(a)) for his three F5 theft offenses. It also erred in sentencing him to consecutive sentences because his offenses did not rise to the level of such seriousness and danger to the public that consecutive terms in prison were necessary to protect the public. Appellant used his security clearance into a storage facility to break into three victims’ units, steal property therefrom, and then put the property in his own storage unit.**

### **Third Appellate District of Ohio**

## **State v. Schaeffer, 2015-Ohio-3531**

### **Jury Instructions: Complicity: Aggravated Murder: Felony Murder**

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/3/2015/2015-Ohio-3531.pdf>

Appellant was improperly convicted of complicity to attempted felony murder because the Ohio Supreme Court held it is not a cognizable crime in *State v. Nolan*, 141 Ohio St.3d 454. Appellant's conviction for complicity to aggravated murder is reversed and remanded for a new trial where the jury instructions failed to include a mental state for appellant – it only included a mental state for the principal offender.

### Fourth Appellate District of Ohio

*Nothing new.*

### Fifth Appellate District of Ohio

***State v. Salinas*, 2015-Ohio-3501**

Motion to Suppress: *Miranda*

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/5/2015/2015-Ohio-3501.pdf>

The trial court erred in denying Appellant's motion to suppress the statements he made to police after the encounter became custodial but before he was read his *Miranda* rights. Appellant was handcuffed after the trooper who pulled him over found a baggie of a powdery substance in his pocket. He then admitted the powder was 10 grams of cocaine, that he intended to sell the cocaine, and that he was in the country illegally – all before being read his *Miranda* rights.

***State v. Fox*, 2015-Ohio-3515**

Sentencing: Allied Offenses

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/5/2015/2015-Ohio-3515.pdf>

The trial court erred in failing to merge one of Appellant's rape convictions with one of his kidnapping convictions where they were allied offenses of similar import. Appellant moved the victim from one room to another in order to continue raping him. The kidnapping, therefore, was incidental to

**commission of the second rape and was not committed with a separate animus.**

## **Sixth Appellate District of Ohio**

*Nothing new.*

## **Seventh Appellate District of Ohio**

***State v. Ortello, 2015-Ohio-3503***

**Plea Withdrawal**

**Full Decision:**

**<http://www.supremecourt.ohio.gov/rod/docs/pdf/7/2015/2015-Ohio-3503.pdf>**

**Appellant may withdraw his guilty plea where the trial court made statements during plea negotiations that could reasonably be interpreted as a promise to impose a sentence between eight and ten years in prison, but instead imposed a fourteen-year sentence.**

## **Eighth Appellate District of Ohio**

***State v. Gulley, 2015-Ohio-3582***

**Rape: Statute of Limitations**

**Full Decision:**

**<http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2015/2015-Ohio-3582.pdf>**

**The trial court did not err in granting Appellee's motion to dismiss his rape indictment. The statute of limitations expired prior to the indictment. Police knew the entire time who the suspect was, yet, days prior to the end of the statute of limitations, they indicted the case as against John Doe. They not add Appellee's name until months after the statute expired. Because the suspect was known, it was improper to use a John Doe indictment, the statute of limitations was not tolled, and it was proper to dismiss Appellee's indictment.**

## **Ninth Appellate District of Ohio**

***Groom v. Ohio, 2015-Ohio-3447***

**Sex Offender Classification**

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/9/2015/2015-Ohio-3447.pdf>

Appellant should not have been automatically classified as a sexual predator under Megan's Law when he moved from Colorado to Ohio. Although Colorado sex offenders do not have a definite time period when their reporting classifications terminate, Appellant is eligible to petition for removal after 10 years.

**State v. Jackson, 2015-Ohio-3520**

Motion to Suppress

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/9/2015/2015-Ohio-3520.pdf>

The trial court did not err in granting Appellee's motion to suppress the search of his home for drugs where the affidavit for the search warrant contained deliberate falsehoods or statements made with reckless disregard for the truth. The affidavit included untrue statements that the confidential informant (CI) could purchase heroin and pills from Appellee, that the CI ordered heroin from Appellee, that a controlled purchase/buy occurred outside of Appellee's residence, and that a package Appellee gave the CI included pills. Without those statements, the exchange between Appellee and the CI was reduced to Appellee handing the CI a bag containing heroin. There were no other facts in the affidavit to support the conclusion that the Appellee had more drugs or other contraband inside his home.

**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.*