

Appellate Court Decisions - Week of 9/12/16

First Appellate District of Ohio

State v. Cockrell, 2016-Ohio-5797

Juvenile: Bindover: Probable Cause: R.C. 2152.12: Ineffective Assistance

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/1/2016/2016-Ohio-5797.pdf>

Summary from the First District:

“There was probable cause to believe that the juvenile defendant had a firearm on or about his person and used it in the commission of an armed robbery where the record contains evidence that the victim of the armed robbery observed that at least two of the four robbers had guns, guns that were within the reach of the juvenile were recovered from a vehicle in which the juvenile was a passenger immediately after the robbery, and there were four guns in the vehicle, one for each participant in the robbery.

“For purposes of R.C. 2152.12(A), a ‘case’ is defined as those charges that arose from a common nucleus of operative facts, regardless of whether the charges were filed under a single case number from a single complaint. Ohio's mandatory-transfer scheme does not violate the Due Process or Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution, or Article I, Sections 2 and 16 of the Ohio Constitution.

“Where the trial court determined that defendant was entitled to a certain number of days of jail-time credit, the court erred in failing to include the number of days of credit in its sentencing entry, and the cause must be remanded for the trial court to correct the error in a nunc pro tunc entry.

“Counsel was not ineffective for failing to raise a constitutional challenge that would not have succeeded. Defendant's claim of ineffective assistance of counsel was rendered moot where the alleged deficient performance related to an assignment of error that was sustained on appeal.”

State v. Williams, 2016-Ohio-5827

Impeachment: Substitution of Trial Judge: Evid.R. 403: New Trial: Allied Offenses: R.C. 2941.24: Sentencing

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/1/2016/2016-Ohio-5827.pdf>

Summary from the First District:

“Evid. R. 607 requires a showing of surprise and affirmative damage before a party may impeach its own witness with a prior inconsistent statement. The trial court erred in finding that the state had demonstrated ‘affirmative damage’ under Evid.R. 607 where the witness’s testimony was neutral testimony in that it did not contradict any facts in that witness’s prior statement; however the defendant was not materially prejudiced by the admission of the witness’s prior inconsistent statement where the jury was properly instructed that the statement was to be used for impeachment purposes only.

“The trial court did not err in allowing the state to impeach its own witness under Evid.R. 607 where the witness’s trial testimony contradicted facts in a statement she had given to police prior to trial, and where the state had no reason to believe that she would not testify in a manner consistent with her prior statement.

“Under Crim.R. 25(A), when a judge presiding over a jury trial is unable to proceed, a new trial judge may be designated, and provided the newly designated judge has familiarized himself with the trial record, that judge may preside over the remainder of the trial. The newly designated judge did not abuse his discretion in violation of defendant’s constitutional rights by failing to grant defendant a new trial where there was no indication that the substitute judge was unable to properly preside over the remainder of the trial; the defendant did not have a Sixth Amendment right to have the same judge preside over his jury trial, and there was no Fifth Amendment due process violation resulting from the substitution.

“The trial court did not violate Evid.R. 403(A) when it allowed the state to play certain portions of the defendant’s interview with police where the complained-of police comments and statements were necessary to put the defendant’s statement into context and were beneficial to the jury’s overall understanding of the defendant’s statement.

“The trial court did not err when it failed to grant defendant’s motion for a new trial because defendant’s bases for a new trial were not supported by the record. The aggravated murders of two separate victims are not allied offenses of similar import. Aggravated murder and aggravated robbery of a single victim are not allied offenses of similar import where the victim was shot in the back of the head at close range demonstrating a specific intent to kill separate from the motive for robbery. The

charge of having a weapon while under a disability was dissimilar to aggravated-murder and aggravated-robbery charges, because the weapon-under-a-disability statute manifests a legislative purpose to punish the act of possessing a firearm while under a disability separately from any offenses committed with the firearm.

“Where the sentence pronounced in open court was subsequently modified in the court's entry imposing sentence, the trial court violated defendant's due-process right, embodied in Crim.R. 43(A), to be present during sentencing.”

State v. Sweeten, 2016-Ohio-5828

Search: Allied Offenses: R.C. 2941.25: Weapons: Sentencing

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2016/2016-Ohio-5828.pdf>

Summary from the First District:

“The stop of the vehicle in which defendant was a passenger did not violate his Fourth Amendment rights where the police officer had authority under former R.C. 2935.03(E)(3) to stop the vehicle on the streets immediately adjacent to the boundaries of his jurisdiction.

“The continued detention of defendant after the stop of the vehicle did not violate defendant's Fourth Amendment rights where the stop lasted only a couple of minutes, defendant made furtive movements, and the officer discovered a warrant in the same name as the defendant's, even though the warrant was actually for the defendant's father, and where the police officer acted in good faith.

“Defendant's arrest did not violate his Fourth Amendment rights because the police officer had probable cause to arrest defendant where, after the officer had ordered the defendant to get out of the vehicle for safety reasons, defendant volunteered that he had a handgun concealed in the waistband of his pants.

“Defendant was not denied the effective assistance of counsel even though counsel did not file a motion to suppress on the basis that the stop of the vehicle was illegal where the police officer had been outside his jurisdiction when he had stopped the vehicle, because that motion would not have been successful.

“Defendant could be convicted of both carrying a concealed weapon and having weapons while under a disability because the having-weapons-while-under-a-disability statute manifests a legislative intent to punish the act of possession of a firearm while under a disability separately from any offense committed with a firearm, and therefore, the two offenses were of dissimilar import.

“The trial court did not err in imposing consecutive sentences where it made the required findings to justify consecutive sentences, announced the findings at the sentencing hearing, and incorporated them into the sentencing entry.

State v. Crawley, 2016-Ohio-5829

Sentencing

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2016/2016-Ohio-5829.pdf>

Summary from the First District:

“Where the appellate court reversed the defendant's sentences for the trial court's failure to provide the defendant his right of allocution and remanded the matter to the trial court for a resentencing hearing, the trial court erred in failing to conduct the resentencing hearing de novo, including a failure to make consecutive-sentencing findings.”

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

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

Nothing new.

Eleventh Appellate District of Ohio

Nothing new.

Twelfth Appellate District of Ohio

Nothing new.

Supreme Court of Ohio

State v. Anderson, 2016-Ohio-5791 Plurality Opinion

Double Jeopardy

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/o/2016/2016-Ohio-5791.pdf>

“[A] double-jeopardy challenge to the retrial of a defendant following a mistrial is analyzed under the Double Jeopardy Clause rather than the more general Due Process Clause.”

“[T]he Double Jeopardy Clause is not offended when the state seeks to retry a defendant after a series of properly declared mistrials.”

Sixth Circuit Court of Appeals

Nothing new.