

Appellate Court Decisions - Week of 9/28/15

First Appellate District of Ohio

State v. Temaj-Felix, 2015-Ohio-3966

Sentencing: Allied Offenses

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2015/2015-Ohio-3966.pdf>

Summary from the First District:

“Where the cause was remanded to the trial court to correct an allied-offenses sentencing error, the trial court was required to hold a new sentencing hearing for the offense that remained after the state selected which allied offense to pursue.

“Upon remand for resentencing on allied offenses, the trial court properly resentenced the defendant where it stated in open court that it was ordering a sentence of one less year than it had previously imposed and where the record reflects that the defendant clearly understood the length of the term imposed. [*But see* DISSENT: The trial court erred in failing to state a specific prison term for the remaining allied offense at the sentencing hearing and by considering the offenses as a group for purposes of sentencing.]

“The trial court made the requisite findings for the imposition of consecutive sentences; however, it erred by failing to incorporate those findings in its sentencing entry.”

State v. Williams, 2015-Ohio-3968

Hearsay: Sex Offenses: Sentencing: Allied Offenses: R.C. 2941.25

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2015/2015-Ohio-3968.pdf>

Summary from the First District:

“Statements made by a rape victim to a sexual-abuse nurse examiner were medically relevant to explain and assess the victim’s injuries and her agitated state, were offered for the purpose of obtaining medical treatment, and would have been understood to be so by an objective witness; therefore, the admission at the defendant’s trial of the statements after the death of the victim did not violate the defendant’s right under the Confrontation Clause and did not constitute inadmissible hearsay.

“When reviewing a challenge to the manifest weight of the evidence in civil proceedings such as a sexual-predator-classification hearing under former R.C. Chapter 2950, also known as Megan’s Law, we apply the standard of review articulated in *Eastley v. Volkman*, 132 Ohio St.3d 328, 2012-Ohio-2179, 972 N.E.2d 517.

“The trial court did not err in not merging aggravated-burglary and rape offenses where the defendant’s immediate motive for breaking into the victim’s apartment was to commit aggravated burglary by committing a theft offense, and where after the victim had turned over her money, the defendant viciously and repeatedly raped the victim demonstrating that he had acted with an animus separate from that of his initial motive in obtaining her money; therefore, the rape offenses and the aggravated-burglary offense were committed with a separate animus and were separately punishable under R.C. 2941.25.

“The trial court did not err in not merging two rape offenses when each offense involved a different type of sexual activity—vaginal intercourse and anal intercourse—even though they were committed in the course of the same sexual encounter; because the offenses involved different, distinct types of sexual activity, they each constituted a separate crime, and their merger was not required by R.C. 2941.25.

“Where the trial court failed to incorporate the R.C. 2929.14(C)(4) findings for consecutive sentences into the sentencing entry, the failure must be corrected on remand.”

In re: C.M., 2015-Ohio-3971

Children: Custody

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2015/2015-Ohio-3971.pdf>

Summary from the First District:

“The juvenile court’s decision, denying the motion of the Hamilton County Department of Job and Family Services for permanent custody of a child, was against the manifest weight of the evidence, because the child’s mother had permanently lost custody of the child’s siblings, and she had failed to demonstrate by clear and convincing evidence that she was capable of providing the child with a legally secure permanent placement and adequate care for the child’s health, welfare and safety.”

Second Appellate District of Ohio

State v. Becraft, 2015-Ohio-3911

Ineffective Assistance

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/2/2015/2015-Ohio-3911.pdf>

Trial counsel was ineffective for failing to object to the order of restitution or to request a restitution hearing when the record did not support the amount of the restitution order. The court was also “concerned about the failure of * * * counsel to object to erroneous factual statements made at the sentencing hearing that led the trial court to make findings of fact in the sentencing entry which [were] not supported in the record * * *.” Finally, the order of restitution was not supported by the record because it “exceeded the amount of the economic loss suffered by the victim as a direct and proximate result of the commission of the offense,” which was specified in the bill of particulars as \$1,7000 – not the \$2,000 ordered.

Third Appellate District of Ohio

Nothing new.

Fourth Appellate District of Ohio

Nothing new.

Fifth Appellate District of Ohio

State v. Coleman, 2015-Ohio-3907

Sentencing: Allied Offenses

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/5/2015/2015-Ohio-3907.pdf>

Appellant’s convictions for Illegal Manufacture of Methamphetamine in the Vicinity of a Juvenile and Illegal Assembly or Possession of Chemicals for Manufacturing of Methamphetamine in the Vicinity of a Juvenile were allied offenses of similar import. “[T]he possession of chemicals and the engagement in any part of the production of drugs are allied offenses that did not cause separate harm, were not committed separately and do not have a separate animus.”

Sixth Appellate District of Ohio

Nothing new.

Seventh Appellate District of Ohio

State v. Hornbuckle, 2015-Ohio-3962

Double Jeopardy

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/7/2015/2015-Ohio-3962.pdf>

It was error to deny appellant's motion to dismiss on double jeopardy grounds his felony indictment for failure to comply with an order or signal of a police officer where he previously pleaded no contest to the same charge as a misdemeanor. This is a good case to read about this scenario as there were allegations thrown around about defense counsel attempting to game the system by pleading to the misdemeanor first. Here, apparently trial counsel apparently tried to remind the assistant city prosecutor of the felony charge before pleading.

Eighth Appellate District of Ohio

Nothing new.

Ninth Appellate District of Ohio

State v. Williams, 2015-Ohio-3932

Venue

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/9/2015/2015-Ohio-3932.pdf>

It was error to convict appellant of rape because the offenses were committed outside the county where the trial was held. In other words, venue was improper.

State v. Hull, 2015-Ohio-4001

Abandonment of Animals: Sufficiency

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/9/2015/2015-Ohio-4001.pdf>

Appellant's three convictions for abandonment of animals was based on insufficient evidence. While appellant took very poor care – or no care at all – of his dogs, and he was in the process of being evicted, he was not actually evicted. Despite the bad situation, there was not affirmative proof that appellant actually intended “to totally discard the [dogs].”

Tenth Appellate District of Ohio

State v. Bass, 2015-Ohio-3979

Sentencing: Gun Specifications

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/10/2015/2015-Ohio-3979.pdf>

Appellant appealed his sentence based on an argument that his 3 and 5-year gun specifications should have merged. Gun specifications are not subject to merger, however. To make things worse, it turns out the trial court incorrectly ran the gun specifications concurrent to one another rather than consecutive, as required. The 10th District obliged appellant's desire for a reversal – it sent the case back to make the gun specifications consecutive rather than concurrent.

Eleventh Appellate District of Ohio

Nothing new.

Twelfth Appellate District of Ohio

Nothing new.

Supreme Court of Ohio

State v. South, 2015-Ohio-3930

OVI: Felony: Sentencing

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/o/2015/2015-Ohio-3930.pdf>

The Supreme Court took this case in on this certified question: “When a defendant is convicted of [an] R.C. 2941.1413 specification, does Ohio’s OVI statute, R.C. 4511.19[,] prevail so that a five year sentence can be imposed for a third degree felony OVI or does R.C. 2929.14(A) require that the maximum sentence that can be imposed is three years?”

The Court responded: “The certified question assumes that the applicable statutes are irreconcilable. We conclude, however, that we can harmonize the statutes; no one provision need prevail over the others. And harmonizing them, we hold that offenders convicted of a third-degree-felony OVI and a repeat-offender specification under R.C. 2941.1413 are subject to the following: (1) for the specification conviction, a one- to five-year mandatory prison sentence, which must be served prior to and consecutive to any additional prison term and (2) for the underlying OVI conviction, a discretionary term of 9 to 36 months.”

State v. Adams, 2015-Ohio-3954

Aggravated Murder: Sufficiency: Death Penalty

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/o/2015/2015-Ohio-3954.pdf>

Syllabus of the Court:

1. The predicate offenses listed in the R.C. 2929.04(A)(7) capital specification are “alternative means” of establishing that an offense of aggravated murder meets the criteria for imposing a death sentence.
2. To find that the R.C. 2929.04(A)(7) specification has been proved when more than one predicate offense is alleged, the jury must unanimously find beyond a reasonable doubt that the defendant committed aggravated murder during the course of one or more of the alleged predicate offenses, but the jury need not unanimously agree on which predicate offense was committed.

3. In an appeal of a death sentence based on an R.C. 2929.04(A)(7) specification when more than one predicate offense is alleged but the jury has not made a finding as to which predicate offense was committed, a reviewing court must determine under R.C. 2929.05(A) whether there is sufficient evidence to support each of the alternative predicate-offense theories. The appellate court must determine whether a rational trier of fact could have found each means of committing the crime of aggravated murder in the course of the alleged R.C. 2929.04(A)(7) predicate offenses proved beyond a reasonable doubt.

4. When an appellate court reviews the sufficiency of the evidence pursuant to R.C. 2929.05(A) as to the R.C. 2929.04(A)(7) aggravating circumstance in an aggravated-murder case in which more than one predicate offense was committed and determines that the state proved some but not all of the alleged alternative means that could establish the aggravating circumstance, the evidence is, as a matter of law, insufficient to support a death sentence and the death sentence must be vacated.

5. When an appellate court reviews the sufficiency of the evidence to support a capital specification and determines that the evidence is, as a matter of law, insufficient to support a death sentence and vacates the death sentence, the state is barred by the Double Jeopardy Clause of the United States Constitution from seeking the death penalty on remand.

Sixth Circuit Court of Appeals

Nothing new.

Supreme Court of the United States

Nothing new.