

OHIO COURT OF APPEALS, SIXTH APPELLATE DISTRICT, ERIE COUNTY

State v. Fenderson

2022-Ohio-1973 (Ohio Ct. App. 2022) · No. E-21-018 · Decided June 10, 2022

SUMMARY

The Sixth District Court of Appeals of Ohio reviews Takye S. Fenderson’s convictions for drug possession, drug trafficking, and corrupting another with drugs. The opinion addresses merger of allied offenses, a requested mistrial, denial of a continuance, ineffective assistance concerning an untimely suppression motion, the sufficiency and manifest weight of the evidence, and alleged constitutional violations in jury selection. The court states that it affirms in part and reverses in part.

CASE DETAILS

COURT	Ohio Court of Appeals, Sixth Appellate District, Erie County
WRITING FOR THE COURT	Thomas J. Osowik; Christine E. Mayle; Myron C. Duhart
JURISDICTION	Ohio
DECIDED	June 10, 2022
DOCKET	E-21-018
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Fenderson appealed his convictions and sentences following a jury trial in the Erie County Court of Common Pleas.
STANDARD OF REVIEW	Ineffective assistance of counsel is analyzed under Strickland's deficient-performance and prejudice requirements. Denial of a continuance and denial of a mistrial are reviewed for abuse of discretion. Sufficiency is reviewed under whether, viewing the evidence most favorably to the prosecution, any rational trier of fact could find the essential elements proven beyond a reasonable doubt. Manifest-weight claims require review of the entire record and reversal only in the exceptional case where the jury clearly lost its way. Allied-offense merger under R.C. 2941.25 is reviewed de novo.
PRECEDENTIAL VALUE	published Ohio Court of Appeals opinion
PARTIES	Takye S. Fenderson v. State of Ohio

TOPICS

suppression of evidence

fourth amendment

search and seizure

ineffective assistance

sentencing

PRACTICE AREAS

criminal law

criminal procedure

constitutional law

evidence

appellate procedure

sentencing

QUESTIONS PRESENTED

1. Whether trial counsel was ineffective for filing the motion to suppress after the deadline.
2. Whether the trial court abused its discretion by denying Fenderson's morning-of-trial motion for a continuance.
3. Whether the trial court abused its discretion by denying a mistrial after an altercation between members of the parties' families occurred in view of some jurors.
4. Whether Fenderson's due-process and equal-protection rights were violated because the jury was all white.
5. Whether the convictions for possession, trafficking, and corrupting another with drugs were supported by sufficient evidence and were not against the manifest weight of the evidence.
6. Whether possession and trafficking were allied offenses of similar import requiring merger at sentencing.

HOLDINGS

1. Counsel was not ineffective because Fenderson failed to show a reasonable probability that a timely motion to suppress would have been granted.
2. The trial court did not abuse its discretion by denying Fenderson's oral motion for a continuance made on the morning of trial.
3. The trial court did not abuse its discretion by denying a mistrial because its curative instruction sufficiently protected the fairness of the trial.
4. The assignment of error was not well taken because Fenderson failed to develop an argument supporting it.
5. The convictions for possession of drugs, trafficking in drugs, and corrupting another with drugs were supported by sufficient evidence and were not against the manifest weight of the evidence.
6. Possession of drugs and trafficking in drugs were allied offenses of similar import based on the same conduct and should have merged at sentencing.

KEY QUOTATIONS

“Under the Fourth Amendment, warrantless searches are per se unreasonable without prior approval by a judge or magistrate, subject to only a few specific exceptions.” (¶ 39)

“Once a law enforcement officer has probable cause to believe that a vehicle contains contraband, he or she may search a validly stopped motor vehicle based upon the well-established automobile exception to the warrant requirement.” (¶ 46)

“Therefore, we hold that the trial court did not abuse its discretion when it denied appellant’s motion for a continuance.” (¶ 58)

“We concur, and we hold that the trial court erred when it failed to merge appellant’s convictions for possession of drugs and trafficking in drugs.” (¶ 86)

FACTUAL BACKGROUND

Police used the victim's phone to arrange what they believed was a drug transaction with the victim's suspected dealer. Fenderson arrived at the arranged location, was the only occupant of a running vehicle, and had a phone that rang when police called the number used to arrange the transaction; officers observed fentanyl-containing pills packaged for sale in plain view in the vehicle. The victim later died of fentanyl toxicity, and two similar fentanyl-containing pills were found in the pocket of the pants he had worn the night before his death. The jury convicted Fenderson of possession, trafficking, and corrupting another with drugs.

PROCEDURAL HISTORY

An Erie County grand jury indicted Fenderson on drug possession, drug trafficking, receiving stolen property, and having weapons while under disability; a later indictment added corrupting another with drugs. The receiving-stolen-property count was dismissed before trial. After a four-day jury trial, Fenderson was convicted of possession, trafficking, and corrupting another with drugs, and acquitted of having weapons while under disability. The trial court imposed concurrent sentences for possession and trafficking and a consecutive sentence for corrupting another with drugs. The appellate court affirmed most of the judgment but reversed the possession and trafficking sentences because the offenses should have merged, remanding for resentencing.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse Fenderson's sentences for possession of drugs and trafficking in drugs and remand for resentencing on those offenses in accordance with the decision, including merger of the allied offenses. Affirm the judgment in all other respects.

CASES CITED

- Strickland v. Washington, 466 U.S. 668, 687-688, 694, 697, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984)
- State v. Hernandez, 6th Dist. Lucas Nos. L-06-1388, L-06-1389, 2009-Ohio-386, ¶ 83
- State v. Kuhn, 9th Dist. Lorain No. 05CA008859, 2006-Ohio-4416, ¶ 11
- State v. Leak, 145 Ohio St.3d 165, 2016-Ohio-154, 47 N.E.3d 821, ¶¶ 13-15
- Florida v. Jimeno, 500 U.S. 248, 250, 111 S.Ct. 1801, 114 L.Ed.2d 297 (1991)
- South Dakota v. Opperman, 428 U.S. 364, 375, 96 S.Ct. 3092, 49 L.Ed.2d 1000 (1976)
- Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968)
- State v. Tidwell, 165 Ohio St.3d 57, 2021-Ohio-2072, 175 N.E.3d 527, ¶¶ 19-20

- Alabama v. White, 496 U.S. 325, 330, 110 S.Ct. 2412, 110 L.Ed.2d 301 (1990)
- United States v. Arvizu, 534 U.S. 266, 273, 122 S.Ct. 744, 151 L.Ed.2d 740 (2002)
- State v. Jordan, 166 Ohio St.3d 339, 2021-Ohio-3922, 185 N.E.3d 1051, ¶ 2
- State v. Buzzard, 112 Ohio St.3d 451, 2007-Ohio-373, 860 N.E.2d 1006, ¶¶ 14-15
- United States v. Fields, 113 F.3d 313, 321 (2d Cir. 1997)
- Florida v. Riley, 488 U.S. 445, 449, 109 S.Ct. 693, 102 L.Ed.2d 835 (1989)
- State v. Moore, 90 Ohio St.3d 47, 51, 734 N.E.2d 804 (2000)
- Maryland v. Dyson, 527 U.S. 465, 466, 119 S.Ct. 2013, 144 L.Ed.2d 442 (1999)
- Pennsylvania v. Labron, 518 U.S. 938, 940, 116 S.Ct. 2485, 135 L.Ed.2d 1031 (1996)
- State v. Unger, 67 Ohio St.2d 65, 67-68, 423 N.E.2d 1078 (1981)
- State v. Adams, 62 Ohio St.2d 151, 157, 404 N.E.2d 144 (1980)
- State v. Treesh, 90 Ohio St.3d 460, 480, 739 N.E.2d 749 (2001)
- State v. Reynolds, 49 Ohio App.3d 27, 33, 550 N.E.2d 490 (2d Dist. 1988)
- State v. Marshall, 2014-Ohio-4677, 22 N.E.3d 207, ¶ 32 (8th Dist.)
- State v. Westwood, 4th Dist. Athens No. 01CA50, 2002-Ohio-2445, ¶ 41
- State v. Garner, 74 Ohio St.3d 49, 59, 656 N.E.2d 623 (1995)
- State v. Franks, 2017-Ohio-7045, 95 N.E.3d 773, ¶ 16 (9th Dist.)
- Cardone v. Cardone, 9th Dist. Summit No. 18349, 1998 WL 224934, *8 (May 6, 1998)
- State v. Jenks, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus
- State v. Lang, 129 Ohio St.3d 512, 2011-Ohio-4215, 954 N.E.2d 596, ¶ 220
- State v. Thompkins, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997)
- State v. Shelby, 2019-Ohio-1564, 135 N.E.3d 508, ¶ 24 (6th Dist.)
- State v. Fykes, 6th Dist. Wood No. WD-07-072, 2009-Ohio-2926, ¶ 36
- State v. Ruff, 143 Ohio St.3d 114, 2015-Ohio-995, 34 N.E.3d 892, ¶ 10
- State v. Williams, 134 Ohio St.3d 482, 2012-Ohio-5699, 983 N.E.2d 1245, ¶ 1