

## Appellate Court Decisions - Week of 1/29/18

*Note: This is not a comprehensive list of every case released this week.*

### First Appellate District of Ohio

#### **State v. Kinney, 2018-Ohio-404**

**Guilty Plea: Crim.R. 11**

**Full Decision:**

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2018/2018-Ohio-404.pdf>

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

“Defendant’s guilty pleas to two counts of aggravated burglary, two counts of aggravated robbery, two counts of kidnapping, each with a three-year gun specification, carrying a concealed weapon and vandalism were unknowing, unintelligent and involuntary where the trial court informed the defendant at the plea hearing that he was subject to a mandatory prison term on each of the first-degree felonies, but it misinformed him of the length of the mandatory prison terms and the effect on his eligibility for judicial release; the defendant relied on the trial court’s assurances that he would be eligible for judicial release after serving 18 years on the gun specifications; and the trial court sentenced the defendant to 34 years in prison, 33 years of which was mandatory time.”

### Second Appellate District of Ohio

*Nothing to report.*

### Third Appellate District of Ohio

*Nothing to report.*

### Fourth Appellate District of Ohio

*Nothing to report.*

### Fifth Appellate District of Ohio

*Nothing to report.*

### Sixth Appellate District of Ohio

#### **State v. Walls, 2018-Ohio-329**

## Evidence: Expert Witness

### Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2018/2018-Ohio-329.pdf>

The state violated Crim.R. 16(K) to the extent that it did not disclose its expert witness's testimony, findings, analysis, conclusions, and opinions in a written report produced 21 days before trial. "We \* \* \* hold that Crim.R. 16(K) mandates exclusion of expert testimony where a written report has not been disclosed in accordance with the rule." Here, "[b]ecause there was no genuine debate that [the expert's] proposed testimony exceeded the scope of what was disclosed in his report, it was incumbent on the court to preclude [the expert] from testifying to these undisclosed opinions." Further, the expert's undisclosed opinions resulted in prejudice to the defendant.

## Seventh Appellate District of Ohio

***State v. Moses, 2018-Ohio-356***

### Prosecutorial Misconduct

### Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/7/2018/2018-Ohio-356.pdf>

The trial court committed reversible error in allowing a police officer to testify regarding the credibility of a confidential informant. It was improper bolstering.

## Eighth Appellate District of Ohio

***Euclid v. Cannon, 2018-Ohio-286***

### Assault: Sufficiency

### Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2018/2018-Ohio-286.pdf>

Summary from the Eighth District: "Where the defendant's explanation of circumstances did not establish the elements of assault, the offense with which defendant was charged, the trial court erred in finding him guilty after his no contest plea and entering a judgment of conviction."

## **State v. Mahon, 2018-Ohio-295**

### Sentencing

#### Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2018/2018-Ohio-295.pdf>

**Summary from the Eighth District: “The trial court abused its discretion when it imposed an alcohol-related community control condition where the condition bears no relationship to appellant's crime, nor is it reasonably related to rehabilitating appellant. Likewise, the trial court abused its discretion when it imposed house arrest with GPS monitoring where the condition is not reasonably related to rehabilitating the appellant, nor does it relate to conduct regarding future criminality.” (Note: Appellant was convicted of one count of unlawful use of a telecommunications device.)**

### Ninth Appellate District of Ohio

*Nothing to report.*

### Tenth Appellate District of Ohio

*Nothing to report.*

### Eleventh Appellate District of Ohio

## **State v. Bernard, 2018-Ohio-351**

### Evidence

#### Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/11/2018/2018-Ohio-351.pdf>

**Appellant’s convictions for aggravated robbery, aggravated burglary, felonious assault, and kidnapping are vacated because she was denied a fair trial by the admission of prejudicial other acts evidence, and because her convictions were based on insufficient evidence. The other acts evidence introduced by the state included evidence of other home invasions in which Appellant was the getaway driver. The evidence for conviction was insufficient because “the state failed to produce adequate evidence to permit the further information that appellant was complicit in the crimes that were committed by the principals \* \* \*.” The convictions relied on impermissible inference stacking.**

## Twelfth Appellate District of Ohio

***In re A.H., 2018-Ohio-364***

Delinquency

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/12/2018/2018-Ohio-364.pdf>

Summary from the Twelfth District: “Juvenile court erred in accepting a juvenile's admission to a rape charge where the court first failed to rule on the juvenile's competency to stand trial and then subsequently failed to comply with the requirements of Juv.R. 29(D) by neglecting to inform the juvenile of the nature of the allegations against him, the consequences of an admission, and the rights he was waiving by entering an admission.”

## Supreme Court of Ohio

***State v. Gordon, 2018-Ohio-259***

Joinder: Crim.R. 8(A); Crim.R. 13; Crim.R. 14; Plain Error

Full Decision:

<https://supremecourt.ohio.gov/rod/docs/pdf/o/2018/2018-ohio-259.pdf>

Gordon was charged with aggravated robbery, etc. His attorney received a video of a witness making a statement against Gordon, which the attorney showed to Gordon. Gordon then posted an edited version of the video to Instagram in an effort to intimidate the witness. Gordon was charged with attempting to intimidate that witness. The state moved to have the cases joined, and the attorney removed from representing Gordon because he was a material witness.

“Gordon’s alleged attempt to intimidate [the witness] from testifying about the robbery connects the robbery-case charges with the intimidation charge. Also, the robbery case and intimidation case together form a course of criminal conduct. Thus, pursuant to Crim.R. 8(A), the crimes could have been charged in the same indictment. Therefore, the trial court properly joined the two indictments for trial under Crim.R. 13.

\* \* \*

“Neither the trial court’s joinder of the two cases nor its failure to sua sponte separate the two cases for trial pursuant to Crim.R. 14 constituted

plain error. The trial court could reasonably have determined that Baker should be disqualified from both cases even without the joinder. There was thus no obvious defect in the trial proceedings that affected the outcome of the trial. The trial court's decision did not result in a 'manifest miscarriage of justice.'"

\* \* \*

"It is well settled that the law favors joinder. Gordon failed to object to the joinder of the robbery case and the intimidation case, and there was no plain error in joining the two cases. Accordingly, we reverse the judgment of the court of appeals. Because the court of appeals did not reach Gordon's remaining assignments of error, we remand this cause to the court of appeals for consideration of those issues."

## Sixth Circuit Court of Appeals

### *In re Ohio Execution Protocol, No. 17-4221*

#### Capital Punishment

Full Decision: <http://www.opn.ca6.uscourts.gov/opinions.pdf/18a0022p-06.pdf>

"Two death-row inmates, Raymond Tibbetts and Alva Campbell, moved to enjoin their pending executions, claiming that Ohio's midazolam based, three-drug execution protocol presents a constitutionally unacceptable risk of pain and suffering. The district court considered the proffered evidence, determined that the inmates had not met their burden, and denied the requested injunctions. We AFFIRM."

### *Hill v. Anderson, Nos. 99-4317/14-3718*

#### Capital Punishment: Intellectual Disability

Full Decision: <http://www.opn.ca6.uscourts.gov/opinions.pdf/18a0024p-06.pdf>

"In this death penalty case out of Ohio, Danny Hill asserts in his habeas petition that he may not be executed because he is "intellectually disabled," as now defined in three Supreme Court cases decided in the past fifteen years. *Atkins v. Virginia*, 536 U.S. 304 (2002), was decided and made retroactive after Hill was convicted of murder and sentenced to death, so although Hill raised his intellectual disability as a mitigating factor in the penalty phase of his trial, he was not afforded the constitutional protections set forth in *Atkins* during his original trial. Our court issued a remand

order in 2002 directing the State of Ohio to assess Hill's intellectual functioning in light of Atkins. *Hill v. Anderson*, 300 F.3d 679 (6th Cir. 2002). The issue now before us is whether that assessment comports with Atkins and the Supreme Court's later opinions on the subject. We conclude that the courts in Ohio have unreasonably applied the Supreme Court's three-part standard in this case.

\* \* \*

“In light of the Ohio Court of Appeals' unreasonable determinations under both the adaptive-skills and age-of-onset prongs of the Atkins standard, we REVERSE the judgment of the district court and REMAND the case with instructions to grant the petition and to issue the writ of habeas corpus with respect to Hill's death sentence.”

Supreme Court of the United States

*Nothing to report.*