

Appellate Court Decisions - Week of 1/4/16

First Appellate District of Ohio

Nothing new.

Second Appellate District of Ohio

State v. Johnson, 2015-Ohio-5491

Evidence: Impeachment: Hostile Witness: Evid.R. 613(B)

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/2/2015/2015-Ohio-5491.pdf>

Summary from the Second District: “Conviction was supported by sufficient evidence. The trial court did not err in overruling Defendant's motion to suppress his statements to law enforcement officers or in treating certain uncooperative witnesses as a hostile witness and a court's witness. The trial court did err in allowing the State to impeach the hostile witness and court's witness through extensive questioning about the specific, detailed aspects of their prior statements, such that the manner of impeachment amounted to the presentation of substantive evidence. The court also erred in allowing the State to call a detective to provide extrinsic evidence of a witness's prior statements; there was no proper evidence of those prior statements before the court, such that impeachment was appropriate. Error was not harmless, notwithstanding Defendant's confession, because the prior statements of the other witnesses cast Defendant in a more culpable light than his own confession. Defendant's other assignments of error are moot, as is the State's cross-assignment of error related to merger. The judgment is reversed and the matter is remanded for further proceedings consistent with the opinion. (Hall, J.,dissenting).”

State v. Mabra, 2015-Ohio-5493

Tampering With Evidence: Sufficiency

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/2/2015/2015-Ohio-5493.pdf>

Appellant's conviction for tampering with evidence was not supported by sufficient evidence. The conviction for tampering with evidence was based on the fact that no gun was found after appellant was involved in a shooting incident. The only evidence presented at trial was that appellant fired a shot

or shots from a car. The car stopped, the two other occupants in the car ran, and appellant was seen standing in the street without a weapon in his hands. He then went directly into his home, and no weapon was found in the car, on appellant, or on the premises. There was no evidence that appellant was the one responsible for the disappearance of the gun. Therefore, the conviction was not based on sufficient evidence.

Third Appellate District of Ohio

Nothing new.

Fourth Appellate District of Ohio

Nothing new.

Fifth Appellate District of Ohio

State v. Lovett, 2015-Ohio-5509

Bail: Forfeiture: R.C. 2937.35(C)

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/5/2015/2015-Ohio-5509.pdf>

“[T]he trial court erred in failing to schedule a show-cause hearing following its declaration of the forfeiture of the bond.”

State v. Tirado, 2015-Ohio-5512

Motion to Suppress: Consent to Search

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/5/2015/2015-Ohio-5512.pdf>

The trial court did not err in granting appellee’s motion to suppress. The trial court made a factual determination that the evidence did not support the state’s argument that appellee consented to a search of his person that yielded methamphetamine. There was a video of the incident, but the audio was unintelligible.

State v. Carr, 2016-Ohio-9

Sentencing: Merger

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/5/2016/2016-Ohio-9.pdf>

The trial court erred in failing to merge for sentencing purposes appellant's convictions for illegal manufacture of methamphetamine and assembly or possession of chemical used in the manufacturing of methamphetamine.

Sixth Appellate District of Ohio

Nothing new.

Seventh Appellate District of Ohio

Nothing new.

Eighth Appellate District of Ohio

State v. Scabel, 2016-Ohio-18

Speedy Trial

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2016/2016-Ohio-18.pdf>

Summary from the Eighth District: "Trial court erred in denying defendant's motion to dismiss for violating his right to a speedy trial. The state failed to exercise reasonable diligence in securing the defendant's availability when it had knowledge that the defendant was being held in a foreign state awaiting extradition. The state failed to continue with its responsibility after it applied for a governor's warrant to ensure the warrant was issued and the foreign state received the warrant."

Cleveland v. Oles, 2016-Ohio-23

Motion to Suppress

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2016/2016-Ohio-23.pdf>

Summary from the Eight District: "The trial court correctly granted appellant's motion to suppress evidence obtained as a result of alcohol consumption questioning conducted in the front seat of an officer's patrol vehicle during a traffic stop. The trial court correctly found that the questioning constituted a custodial interrogation because a reasonable

person, removed from his or her own vehicle and questioned about their alcohol consumption in the passenger seat of a police cruiser would not feel free to leave the interrogation.”

Ninth Appellate District of Ohio

Nothing new.

Tenth Appellate District of Ohio

State v. Polk, 2016-Ohio-28

Motion to Suppress

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/10/2016/2016-Ohio-28.pdf>

Summary from the Tenth District: “The trial court, in the exercise of its discretion, was permitted to believe that a school security guard conducted a second, more thorough search a backpack based solely on rumors that the owner of the backpack was associated with a gang. Rumors of gang affiliation are an insufficient basis for a search, even in a school. Because the exclusionary rule does apply in criminal prosecutions even when the evidence was collected in a school and because there is no operative good faith exception to the exclusionary rule in this context, the trial court properly suppressed the evidence.”

Eleventh Appellate District of Ohio

Painesville v. Kincaid, 2015-Ohio-5532

Traffic Violation: R.C. 4511.12

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/11/2015/2015-Ohio-5532.pdf>

Appellant was convicted for failing to obey a traffic control device for running a stop sign. “Because a stop sign is only enforceable when it is both legible and in a proper position, a motorist can escape punishment when the stop sign is not properly placed, notwithstanding the fact that it is still legible.” Appellant’s conviction was error because the stop sign was not posted in accordance with applicable state requirements. Because it was in a rural area, it was supposed to be at least 60 inches above the ground.

However, the testimony of a licensed land surveyor showed the sign was only 47 inches above the ground.

State v. Stack, 2015-Ohio-5521

Perjury: Sufficiency

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/11/2015/2015-Ohio-5521.pdf>

Appellant's perjury conviction was based on insufficient evidence because while he testified that he did not see the defendant strike the victim with a breaker bar, he did not claim it did not happen.

State v. Schwentker, 2015-Ohio-5526

Speedy Trial

Full decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/11/2015/2015-Ohio-5526.pdf>

The trial court did not err in granting appellant's motion to dismiss on speedy-trial grounds. This one is pretty fact-specific.

Twelfth Appellate District of Ohio

State v. Calhoun, 2015-Ohio-5505

Assault: Transferred Intent: Strict Liability: R.C. 2903.13(C)(4)(a): Double Jeopardy

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/12/2015/2015-Ohio-5505.pdf>

Two inmates got in a fight. Appellant, one of the men fighting, tried to hit the other inmate, but accidentally hit the corrections officer trying to break them up instead. The trial court properly used the doctrine of transferred intent to find appellant guilty of assault. It erred, however, in refusing to also use transferred intent to elevate the conviction to a fifth-degree felony because the victim was a corrections officer. The corrections officer enhancement is a strict liability enhancement. However, because appellant was acquitted of the felony and convicted of the misdemeanor, double

jeopardy stops appellant's conviction being enhanced to a fifth-degree felony.

Supreme Court of Ohio

Nothing new.

Sixth Circuit Court of Appeals

Nothing new.

Supreme Court of the United States

Nothing new.