

## Appellate Court Decisions - Week of 10/26/15

### First Appellate District of Ohio

*Nothing new.*

### Second Appellate District of Ohio

#### **State v. Helke, 2015-Ohio-4402**

**Traffic: Speeding: Laser Device**

**Full Decision:**

<http://www.supremecourt.ohio.gov/rod/docs/pdf/2/2015/2015-Ohio-4402.pdf>

Appellant was found guilty of speeding for driving 83 miles per hour in a 55 mile per hour zone. The evidence proving the speeding violation was the trooper's estimate of appellant's vehicle's speed and evidence from the trooper's laser speed measuring device. The Second District first pointed out that the trooper's estimate of appellant's vehicle's speed, on its own, was not sufficient to prove a speeding violation. It then held that the trial court erred in failing to sustain appellant's objection to judicial notice and the scientific reliability of the laser evidence. It stressed three facts: (1) the Ultra Light LiDAR laser device the trooper referenced in his testimony had never been held scientifically reliable in the Second District; (2) the specific model was never identified; and (3) the trial court did not take judicial notice of the model's reliability based on the court's own prior findings that the particular laser was scientifically reliable. Because the conviction could not rely solely on the trooper's visual observations of speed, and the scientific reliability of the laser device was not established by any permitted methods, appellant's conviction was not based on sufficient evidence.

#### **State v. Kay, 2015-Ohio-4403**

**Sentencing: Consecutive Sentences**

**Full Decision:**

<http://www.supremecourt.ohio.gov/rod/docs/pdf/2/2015/2015-Ohio-4403.pdf>

The Second District held in this murder/aggravated burglary/aggravated robbery case "that the record clearly and convincingly fails to support the findings necessary for imposing consecutive sentences." This is one you just have to read, but the essence is that the judge just read off the consecutive

sentence findings and there just were not facts in this case to support most of them.

**State v. Skapik, 2015-Ohio-4404**

Sentencing: Allied Offenses

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/2/2015/2015-Ohio-4404.pdf>

The trial court erred failing to merge for sentencing purposes appellant's allied offenses of two felony counts of theft (for stealing two firearms) and one misdemeanor count of theft (for stealing a bulletproof vest and other items from a deputy sheriff's vehicle) because he stole everything at one time, from one location, in a single act against a single victim. The trial court also erred in failing to merge appellant's two counts of receiving stolen property where they were based on a single transaction of him selling both firearms to one person.

**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**

**State v. Turner, 2015-Ohio-4388**

Ineffective Assistance: Indigency: Fines

**Full Decision:**

<http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2015/2015-Ohio-4388.pdf>

**Summary from the Eighth District:**

“Trial court's mistake in stating mandatory fine was discretionary and \$20,000, when in fact it was mandatory and \$10,000, was not prejudicial error because Turner cannot state he was prejudiced when he pled in spite of the fact it could have been a \$20,000 fine. Trial counsel was ineffective for failing to file an affidavit of indigency on behalf of Turner to show he was unable to pay the fine because based on the facts and circumstances there was a reasonable probability that the trial court would have found Turner indigent.”

***In re: D.B., 2015-Ohio-4488***

**Juvenile: Rape: Guardian Ad Litem**

**Full Decision:**

<http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2015/2015-Ohio-4488.pdf>

**Summary from the Eighth District:**

“The trial court abused its discretion in failing to make the mandatory appointment of a guardian ad litem under R.C. 2151.181(A)(1) and Juv.R. 4(B) where in the absence of a parent of legal guardian at a delinquency proceeding, the child must be appointed a guardian ad litem.” Note: Appellant’s mother was present for the first day of trial and the last day for sentencing, but not during the second day.

**Ninth Appellate District of Ohio**

***In re: J.H., 2015-Ohio-4471***

**Juvenile: Sexual Imposition: Weight**

**Full Decision:**

<http://www.supremecourt.ohio.gov/rod/docs/pdf/9/2015/2015-Ohio-4471.pdf>

**Appellant’s adjudication for sexual imposition was against the weight of the evidence because the record did not support the conclusion that appellant either knew the victim would find his actions offensive or that he was reckless in that regard. “The evidence supports the conclusion that two teenagers who had known each other for a number of years were**

experimenting with one another physically when one of them became uncomfortable and notified the other.” Appellant stopped touching the victim when she made it clear she was uncomfortable.

## Tenth Appellate District of Ohio

*Nothing new.*

## Eleventh Appellate District of Ohio

### **State v. Wood, 2015-Ohio-4434**

OVI: Motion to Suppress

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/11/2015/2015-Ohio-4434.pdf>

The trial court did not err in granting appellee’s motion to suppress the evidence in her OVI case because there was no probable cause for the initial stop. The trooper stopped appellee because her license plate light was out, but failed to verify that it was out when he approached the vehicle. Appellee testified she replaced the bulb before the stop because she was stopped previously for the same issue. The trial court found appellee to be more credible because the trooper failed to verify the light was out.

### **State v. Patterson, 2015-Ohio-4423**

Sentencing: Allied Offenses: Trafficking in Heroin

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/11/2015/2015-Ohio-4423.pdf>

The State successfully cross-appealed in this case on the issue that the trial court erred in merging two of appellant’s convictions for trafficking in heroin. The two counts were motivated by a different animus and were based on different conduct and physical evidence.

## Twelfth Appellate District of Ohio

### **In re: K.L.R., 2015-Ohio-4453**

Juvenile: Adult Gross Sexual Imposition: Motion to Amend

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/12/2015/2015-Ohio-4453.pdf>

In this juvenile appeal, the trial court abused its discretion when it amended the language of the complaint from gross sexual imposition by force or threat of force to gross sexual imposition by substantial impairment after the start of the adjudicatory hearing because it changed the identity of the alleged crime.

## Supreme Court of Ohio

***State v. Dean, 2015-Ohio-4347***

Aggravated Murder: Joinder: Sufficiency: Death Penalty

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/o/2015/2015-Ohio-4347.pdf>

The Supreme Court affirmed the conviction and death sentence imposed upon appellant.

***Johnston v. State, 2015-Ohio-4437***

R.C. 2743.48: “Wrongfully Imprisoned Individual”: Retroactivity

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/o/2015/2015-Ohio-4437.pdf>

Syllabus of the Court: “The 2003 amendment to R.C. 2743.48 expanded the definition of a wrongfully imprisoned individual to include those able to demonstrate a procedural error occurring subsequent to sentencing that resulted in the inmate’s release and applies retroactively to permit litigation of claims on that basis.”

## Sixth Circuit Court of Appeals

*Nothing new.*

## Supreme Court of the United States

*Nothing new.*