

## **Appellate Court Decisions - Week of 11/12/18**

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

### **First Appellate District of Ohio**

#### **State v. Landrum, 2018-Ohio-4582**

**Search: Probation: Common Authority: Apparent Authority**

**Full Decision:**

**<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2018/2018-Ohio-4582.pdf>**

**Summary from the First District: “The trial court erred in overruling defendant’s motion to suppress evidence obtained during a warrantless search of his bedroom after probation officers entered the home he shared with a probationer, searched his bedroom, and found cocaine, where the state failed to prove that the probationer had joint access or control over the bedroom, such that the probationer had common authority or apparent authority over the bedroom to consent to the search.”**

#### **State v. Smith, 2018-Ohio-4615**

**Evid.R. 404(B): Prosecutorial Misconduct: Ineffective Assistance: Cumulative Error**

**Full Decision:**

**<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2018/2018-Ohio-4615.pdf>**

**Summary from the First District: “The trial court did not err in admitting testimony about instances of defendant’s prior conduct, even though defendant was acquitted of the criminal charges associated with that conduct, because the testimony was proper under Evid.R. 404(B) to show motive, intent and lack of mistake.**

**“Defendant failed to establish prosecutorial misconduct in the state’s failure to produce a copy of a 1986 police file where there had been no showing that the file contained material that the state was required to disclose in discovery.**

**“Defendant failed to establish prosecutorial misconduct in the state’s eliciting and relying upon witness testimony that was inconsistent with the witnesses’ testimony in an earlier trial: showing that the testimony was**

**merely inconsistent was insufficient to show that the prosecutor knowingly used false testimony.**

**“The prosecutor engaged in misconduct during closing arguments when offering the jury an explanation of the timeline of the investigation that was not testified to during the trial; but because it was an isolated comment about a matter not central to the case, defendant was not prejudiced.**

**“The failure to cross-examine witnesses fully is a matter of trial strategy and will not form the basis for ineffective assistance of defense counsel, especially in cases involving the sexual assault of a child in which the issue of sensitivity to the victim is an important consideration.**

**“Defendant was not prejudiced by his counsel’s failure to more aggressively seek a copy of a 1986 police file that involved an incident between defendant and another victim where the information was about a tertiary issue and the incident was testified to by the parties involved.**

**“There can be no finding of cumulative error in the absence of multiple instances of harmless error.”**

### ***State v. Stidhum, 2018-Ohio-4616***

**In-Court ID: Ineffective Assistance: Due Process: Confrontation: Mistrial: Other-Acts Evidence; Cumulative Error: Sentencing**

**Full Decision:**

**<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2018/2018-Ohio-4616.pdf>**

**Summary from the First District: “A first-time in-court identification is not inherently suggestive and unreliable, and due process is not violated when an in-court identification is not preceded by a successful identification in a nonsuggestive procedure or prescreened by the trial court.**

**“Trial counsel’s decision to cross-examine a witness to undermine the witness’s credibility, rather than object to the witness’s testimony, does not constitute ineffective assistance of counsel.**

**“The failure to preserve recorded witness statements did not violate defendant’s right to present a defense or his right to confront witnesses where the state provided written summaries of the statements, and the witnesses’ testimony was consistent with the summaries.**

**“Defendant failed to demonstrate that he was entitled to a mistrial based on a witness’s reference to his prior arrests for drug trafficking, because the jury was presumed to follow the trial court’s multiple curative instructions.**

**The trial court did not err by determining that other-acts evidence was admissible where the trial court's limiting instruction minimized the likelihood of any undue prejudice.**

**"The doctrine of cumulative error is inapplicable where there are not multiple instances of harmless error.**

**"The trial court did not err in imposing a discretionary fine where the trial court considered defendant's present and future ability to pay the fine."**

## **Second Appellate District of Ohio**

***State v. Garrett, 2018-Ohio-4530***

**Motion to Suppress: Search**

**Full Decision:**

**<https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2018/2018-Ohio-4530.pdf>**

**Summary from the Second District: "The trial court did not err in overruling Appellant's motion to suppress drug evidence that officers lawfully observed in plain view. The trial court also did not err in failing to suppress drug evidence found during multiple pat-down searches of Appellant's person, as the pat-down searches were either justified for purposes of officer safety or as a search incident to arrest. The trial court did, however, err in failing to suppress drug evidence that was discovered underneath some junk mail, as that evidence was not in plain view. Judgment affirmed in part, reversed in part, and remanded for further proceedings."**

## **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**

*Nothing to report.*

## **Seventh Appellate District of Ohio**

*Nothing to report.*

## **Eighth Appellate District of Ohio**

***In re: R.G., 2018-Ohio-4517***

**Juvenile: Serious Youthful Offender**

**Full Decision:**

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2018/2018-Ohio-4517.pdf>

**Summary from the Eighth District: “The juvenile court did not err in dismissing a SYO indictment where the State failed to comply with the notice requirements set forth in 2152.13(A)(4). The State’s proposed interpretation would have allowed it to evade the requirements and the juvenile’s speedy trial rights set forth therein.”**

***Cleveland v. Ruiz, 2018-Ohio-4604***

**Aggravated Menacing: Sufficiency**

**Full Decision:**

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2018/2018-Ohio-4604.pdf>

**Summary from the Eighth District: “A conviction for aggravated menacing is not supported by sufficient evidence where there is no proof that the victim had subjective fear of serious physical harm. It is harmless error where trial court imposes court costs outside of sentencing because the court retains jurisdiction over the issue of waiving the payment of court costs at any time.”**

## **Ninth Appellate District of Ohio**

*Nothing to report.*

## Tenth Appellate District of Ohio

***State v. Watters, 2018-Ohio-4565***

**Firearm Specification: R.C. 2929.14(B)(1)(e)**

**Full Decision:**

**<https://www.supremecourt.ohio.gov/rod/docs/pdf/10/2018/2018-Ohio-4565.pdf>**

**Summary from the Tenth District: “The trial court erred in imposing a prison sentence on the firearm specification accompanying Watters’ conviction of improperly handling a firearm in a motor vehicle.”**

## Eleventh Appellate District of Ohio

***State v. Luther, 2018-Ohio-4568***

**Motion to Suppress: *Terry* Stop: Search**

**Full Decision:**

**<https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2018/2018-Ohio-4568.pdf>**

**The trial court erred in denying Appellant’s motion to suppress. Police received a call about a man urinating in public. These are the relevant facts:**

**“Officer Weber conducted a pat-down search for officer safety because it appeared appellant had tried to evade the officers on his bicycle, was ‘pouring sweat,’ appeared nervous and agitated, and kept looking around as though he was considering trying to escape. Both officers testified that, in their experience, a suspect looking to flee poses a risk to officer safety because the suspect might harm an officer to create an opportunity to flee.**

**“Officer Weber felt a large, sturdy object in appellant’s right front pants pocket, which appellant claimed was ‘cigarettes.’ Because the sturdy object was not consistent with the feel of cigarettes, Officer Weber was concerned it might be a weapon. He removed the object from appellant’s pocket. It was a silver ‘clamshell’ case, approximately 4 inches long by 2¾ inches wide by ½ inch thick. Because it appeared to him large enough to contain a razor blade, knife, or small-caliber gun, Officer Weber opened the case. Inside was a razor blade, two syringes, and a paper fold with an off-white powder inside. The officers arrested appellant on charges of possessing drugs and drug abuse instruments.”**

**The Eleventh District held the officer was within the scope of *Terry* when he**

stopped Appellant and when he pulled out the metal case in his pocket, but exceeded the scope when he opened the case, because there was no reasonable suspicion the case contained a weapon.

***State v. Kiger, 2018-Ohio-4576***

**Escape: Complicity: Sufficiency**

**Full Decision:**

<https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2018/2018-Ohio-4576.pdf>

Appellant's conviction for complicity to escape was based on insufficient evidence where no evidence was presented that she was aware of the conditions of her husband's work release from prison.

**Twelfth Appellate District of Ohio**

*Nothing to report.*

**Sixth Circuit Court of Appeals**

*Nothing to report.*

**Supreme Court of the United States**

*Nothing to report.*