

## Appellate Court Decisions - Week of 11/7/16

### First Appellate District of Ohio

**State v. Pleatman, 2016-Ohio-7659**

**Telecommunications Harassment: Evidence: Constitution: Waiver**

**Full Decision:**

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2016/2016-Ohio-7659.pdf>

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

“The trial court did not err when it excluded evidence of an underlying civil dispute that was irrelevant under the telecommunications-harassment statute to the question of defendant’s intent in sending an email to the victim.

“There was sufficient evidence that defendant intended to threaten or harass the victim where defendant sent him an email that contained an implied threat to harm a business relationship of the victim.

“The defendant waived her argument that R.C. 2917.21(B) violated her First Amendment rights because she did not raise the issue in the trial court.”

### 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

**State v. Wimbush, 2016-Ohio-7567**

**Sentencing: Consecutive Sentence Findings**

**Full Decision:**

<http://www.supremecourt.ohio.gov/rod/docs/pdf/5/2016/2016-Ohio-7567.pdf>

The trial court erred in imposing consecutive sentences because it did not find that consecutive sentences were necessary to protect the public from future crime or to punish the offender, or that consecutive sentences were not disproportionate to the seriousness of the offender's conduct and to the danger the offender posed to the public. The trial court also did not find that at least two of the multiple offenses were committed as part of one or more courses of conduct, or the harm caused by two or more of the multiple offenses so committed was so great or unusual that no single prison term for any of the offenses committed as part of any of the courses of conduct adequately reflects the seriousness of the offender's conduct. Finally, the trial court did not find that the offender's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender. The case was remanded for resentencing.

### Sixth Appellate District of Ohio

**State v. Lewis, 2016-Ohio-7632**

Sentencing: Forgery: Allied Offenses

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/6/2016/2016-Ohio-7632.pdf>

“[T]he possession of multiple counterfeit currency of the same denomination, in a single place, on a single occasion, constitutes ‘allied offenses’ for purposes of R.C. 2941.25, and the convictions and resulting sentences must be merged.”

### Seventh Appellate District of Ohio

*Nothing to report.*

### Eighth Appellate District of Ohio

**State v. Cotton, 2016-Ohio-7601**

Appeal: Ineffective Assistance

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2016/2016-Ohio-7601.pdf>

**Summary from the Eighth District: “The reversal of a co-defendant's conviction for aggravated burglary, because the evidence did not establish that the defendants were in the building, created a genuine issue as to whether the applicant received the effective assistance of appellate counsel.”**

### **Ninth Appellate District of Ohio**

*Nothing to report.*

### **Tenth Appellate District of Ohio**

*Nothing to report.*

### **Eleventh Appellate District of Ohio**

*Nothing to report.*

### **Twelfth Appellate District of Ohio**

*Nothing to report.*

### **Supreme Court of Ohio**

***State v. Williams, 2016-Ohio-7658***

**Allied Offenses: R.C. 2941.25: Void**

**Full Decision:**

<http://www.supremecourt.ohio.gov/rod/docs/pdf/o/2016/2016-Ohio-7658.pdf>

#### **Summary from the Court:**

“The Ninth District Court of Appeals certified a conflict between its decision in this case and a decision of the Eighth District Court of Appeals in *State v. Holmes*, 8th Dist. Cuyahoga No. 100388, 2014-Ohio-3816, on the following question: ‘Where a trial court sentences a defendant on counts that it had previously determined were subject to merger, is the sentence void or do principles of res judicata apply to preclude a defendant from challenging the sentence after direct appeal?’

“A court only has authority to impose a sentence that conforms to law, and R.C. 2941.25 prohibits the imposition of multiple sentences for allied offenses of similar import. Thus, when a sentencing court concludes that an offender has been found guilty of two or more offenses that are allied offenses of similar import, in conformity with *State v. Whitfield*, 124 Ohio St.3d 319, 2010-Ohio-2, 922 N.E.2d 182, it should permit the state

to select the allied offense to proceed on for purposes of imposing sentence and it should impose sentence for only that offense. Accordingly, imposing separate sentences for allied offenses of similar import is contrary to law and such sentences are void. Therefore, res judicata does not preclude a court from correcting those sentences after a direct appeal.

“The judgment of conviction entered against Cameron D. Williams in this case reflects that the trial court concluded that the two counts of aggravated murder and one count of murder in connection with the killing of Darian Polk are allied offenses of similar import. Although the court ordered them merged for the purposes of sentencing, and although the state elected to have Williams sentenced for the aggravated murder charged in count three, the court imposed concurrent sentences on each of the three offenses instead of sentencing on only one offense. However, the imposition of concurrent sentences is not the equivalent of merging allied offenses, *State v. Damron*, 129 Ohio St.3d 86, 2011-Ohio-2268, 950 N.E.2d 512, ¶ 17, but because the state designated one allied offense for sentencing, a remand for resentencing is not necessary in this case. Rather, pursuant to Article IV, Section 2(B)(2)(f) of the Ohio Constitution, we modify the judgment of the appellate court to vacate the sentences imposed for murder in count one and aggravated murder in count two and affirm the remaining convictions and sentences in all respects.”

### **Sixth Circuit Court of Appeals**

***Nothing to report.***