

Appellate Court Decisions - Week of 12/19/16

First Appellate District of Ohio

Nothing to report.

Second Appellate District of Ohio

State v. Swift, 2016-Ohio-8191

Search: Motion to Suppress

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2016/2016-Ohio-8191.pdf>

The trial court did not err in granting Appellee's motion to suppress the evidence discovered during a search of his person after he was stopped on his bicycle. The police did not articulate a reason for the stop. They had no reasonable, articulable reason to stop Appellee or to search him. The encounter was not consensual, as one would not feel free to leave even a stop of a bicycle.

State v. Mansfield, 2016-Ohio-8189

Fair Trial: Experts: Indigence

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2016/2016-Ohio-8189.pdf>

"The trial court abused its discretion in summarily overruling [Appellant's] motion claiming indigence and asking for public funds to pay an expert witness to assist with her defense." Also, "a person cannot be found not indigent for purposes of obtaining expert assistance based solely on the fact that the person is represented by private counsel, although representation by retained counsel is an important factor in evaluating indigency when a request for expert assistance is made."

State v. Jirac, 2016-Ohio-8187

Miranda: Motion to Suppress

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2016/2016-Ohio-8187.pdf>

The trial court did not err in suppressing Appellee's statements to police. Basically, Appellee was caught in a sting after trying to pick up 9 kilograms of khat from a UPS pickup location. The police interviewed him afterward without reading him his *Miranda* rights. He was not free to leave the interview. It was not a consensual encounter, it was a custodial interrogation.

State v. Bowshier, 2016-Ohio-8184

Aggravated Burglary: Sufficiency

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2016/2016-Ohio-8184.pdf>

Appellant's convictions for aggravated burglary and of burglary in violation of R.C. 2911.12(A)(1) were based on insufficient evidence because there was no evidence someone other than her or her accomplice was present in the premises at the time of the offense.

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

Nothing to report.

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. Noling, 2016-Ohio-8252

R.C. 2953.73: Postconviction DNA Testing: Appellate Jurisdiction: Capital Cases

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/o/2016/2016-Ohio-8252.pdf>

“R.C. 2953.73(1), which denies appeals of right from rejections of applications for DNA testing in cases in which the death penalty is imposed, is unconstitutional.” The unconstitutional portions of R.C. 2953.73 are severed, after which R.C. 2953.73 entitles capital offenders to appeals of right to the Supreme Court.

State v. Moore, 2016-Ohio-8288

Eight Amendment: Cruel and Unusual Punishment: *Graham v. Florida*

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/o/2016/2016-Ohio-8288.pdf>

“We decide in this case whether the United States Supreme Court’s holding in *Graham v. Florida*, 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010), prohibiting the imposition of sentences of life imprisonment without parole on juvenile nonhomicide offenders also prohibits the imposition of a term-of-years prison sentence that exceeds the offender’s life expectancy on a

juvenile nonhomicide offender. We hold that pursuant to *Graham*, a term-of-years prison sentence that exceeds a defendant's life expectancy violates the Eighth Amendment to the United States Constitution when it is imposed on a juvenile nonhomicide offender.”

***State v. Aalim*, 2016-Ohio-8278**

Juvenile Procedure: Due Process: Mandatory Bindovers

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/o/2016/2016-Ohio-8278.pdf>

“The mandatory transfer of juveniles to the general division of common pleas court violates juveniles’ right to due process as guaranteed by Article I, Section 16 of the Ohio Constitution.”

“The discretionary transfer of juveniles 14 years or older to the general division of common pleas court pursuant to the process set forth in R.C. 2152.10(B) and 2152(B) through (E) satisfies due process as guaranteed by Article I, Section 16 of the Ohio Constitution.”

***State v. Gonzales*, 2016-Ohio-8319**

Cocaine: Possession: R.C. 2925.11

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/o/2016/2016-Ohio-8319.pdf>

“In this case, we are asked to resolve a conflict between the appellate districts presented by the following certified question: ‘Must the state, in prosecuting cocaine offenses involving mixed substances under R.C. 2925.11(C)(4)[(b)] through (f), prove that the weight of the cocaine meets the statutory threshold, excluding the weight of any filler materials used in the mixture?’ We answer the certified-conflict question in the affirmative and affirm the judgment of the Sixth District Court of Appeals.”

For example, assume the police have found your client with 100 grams of a white powder. The police have it tested, and it comes back 50% cocaine and 50% filler. That means your client has 50 grams of cocaine, not 100.

***State v. Pittman*, 2016-Ohio-8314**

R.C. 2919.21(B): Failure to Provide Support Pursuant to a Court's Order

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/o/2016/2016-Ohio-8314.pdf>

“In this case, we hold that a person is not subject to prosecution under R.C. 2919.21(B) for the nonpayment of a court’s order to pay a child-support arrearage when the person has no current obligation of support because the child who is the subject of the order is emancipated.”

State v. Walker, 2016-Ohio-8295

Aggravated Murder: R.C. 2903.01

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/o/2016/2016-Ohio-8295.pdf>

“The elements of purpose and prior calculation and design are distinct, and the state must prove both to support a conviction of aggravated murder under R.C. 2903.01.”

“We accepted this discretionary appeal by the state of Ohio from a judgment of the Eighth District Court of Appeals that reversed a conviction of aggravated murder because it was not supported by sufficient evidence of prior calculation and design. During a bar fight, Dajhon Walker knowingly killed Antwon Shannon, and for that act Walker was properly convicted of felony murder under R.C. 2903.02(B). But the evidence did not show that this killing was done with prior calculation and design as required to sustain a conviction for aggravated murder. The elements of purpose and of prior calculation and design are distinct, and the state must prove both to support a conviction of aggravated murder under R.C. 2903.01.”

Sixth Circuit Court of Appeals

Nothing to report.

Supreme Court of the United States

Nothing to report.