

Appellate Court Decisions - Week of 12/26/16

First Appellate District of Ohio

State v. Barker, 2016-Ohio-8476

Postconviction: Counsel

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2016/2016-Ohio-8476.pdf>

Summary from the First District:

“The common pleas court had jurisdiction to entertain petitioner’s postconviction petition because it was timely filed: the time for filing a postconviction petition is triggered by the filing of ‘the trial transcript * * * in the court of appeals in the direct appeal of the judgment of conviction’; consistent with App.R.9(A) and (B), the ‘trial transcript’ consists of those transcripts of the proceedings before the trial court that were ‘necessary for inclusion in the record [on appeal]’; the transcripts necessary for petitioner’s direct appeal were filed in three parts; and his petition was filed before the appeals court’s second order for the filing of ‘a complete transcript of the proceedings’ was at last satisfied by the filing of the third part.

“The common pleas court properly denied as unsupported petitioner’s postconviction claim that his no-contest pleas had been the unknowing and unintelligent product of his trial counsel’s ineffectiveness in investigating, preparing, and presenting his case at the juvenile-court hearing resulting in the transfer of jurisdiction to the common pleas court: res judicata did not bar the claim because it presented matters that depended for their resolution upon evidence outside the record; but the claim was subject to dismissal without a hearing because petitioner failed to submit with his petition evidentiary material setting forth sufficient operative facts to demonstrate substantive grounds for relief.”

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

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

State v. Nasca, 2016-Ohio-8223

Motion to Suppress: Exigent Circumstances: Obstructing Official Business

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2016/2016-Ohio-8223.pdf>

The trial court did not err in granting Appellee's motion to suppress and then dismissing his obstructing official business charge. Police responded to Appellee's house after receiving an anonymous call that someone inside had a gun and was threatening suicide. Appellee was the father of the person the caller said was threatening suicide. Nobody in Appellee's household was under suspicion of any criminal activity during the officers' investigation. The state argued that the warrantless search and seizure of Appellee for refusing to cooperate with the officers fell under the exigent circumstances and/or the community caretaking exception to the warrant requirement. The trial court found that exigent circumstances dissipated because Appellee went inside for three to five minutes, presumably to check

on his son. The Eleventh District held that the trial court's findings were supported by competent, credible evidence.

Twelfth Appellate District of Ohio

Nothing to report.

Supreme Court of Ohio

State v. Shalash, 2016-Ohio-8358

Controlled Substance Analogs

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/o/2016/2016-Ohio-8358.pdf>

“Although controlled substance analogs were not specifically proscribed by Title 29 when Shalash was arrested and indicted for selling them, other provisions of the Revised Code incorporated controlled substance analogs into Title 29. Specifically, R.C. 3719.013 states that controlled substance analogs ‘shall’ be treated as a controlled substance for purposes of ‘any provision of the Revised Code.’

“The certified conflict before us asks ‘whether ‘controlled substance analogs’ were criminalized as of October 17, 2011, the effective date of House Bill 64.’ We conclude that H.B. 64 criminalized controlled substance analogs, and we affirm the judgment of the court of appeals.”

State ex rel. Caster v. Columbus, 2016-Ohio-8394

Mandamus: Public Records Act. R.C. 149.143

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/o/2016/2016-Ohio-8394.pdf>

“This public-records case involves an attempt by an independent entity to obtain certain law-enforcement records concerning a convicted criminal defendant whose direct appeals ended more than four years prior to the making of the request for public records. We hold that the exception from the required disclosure of public records set forth in R.C. 149.43(A)(2)(c) for specific investigatory work product does not extend beyond the completion of the trial of the underlying criminal case at issue.”

State v. Richardson, 2016-Ohio-8448

OVI: R.C. 4511.19(A)

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/o/2016/2016-Ohio-8448.pdf>

“In this appeal, we consider what evidence is sufficient to convict a defendant charged with operating a vehicle while under the influence (‘OVI’) of a drug of abuse. Here, the state presented evidence that the defendant’s driving was impaired. The state also presented evidence that the defendant had ingested hydrocodone, a widely known drug of abuse. And the state presented an experienced police officer’s testimony that the defendant appeared to be under the influence of pain medication at the time of his arrest. If believed, this evidence was sufficient to support the OVI conviction and no expert testimony was necessary. Because the Second District Court of Appeals reached a contrary holding, we reverse its judgment.”

State v. Creech, 2016-Ohio-8440

Evid.R. 403: R.C. 2923.13: Weapons Under Disability: *Old Chief*

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/o/2016/2016-Ohio-8440.pdf>

“Defendant-appellee, Stedmund Creech, was charged with three counts of violating R.C. 2923.13; under that statute, persons previously convicted of, or under indictment for, certain felonies are prohibited from possessing firearms. Creech sought to limit how much the jury could learn about the underlying offenses upon which the weapons charges were based. We consider whether the trial court abused its discretion by not allowing Creech to stipulate to his prior convictions and indictment and by admitting the full record of his prior offenses. We adopt the reasoning of the United States Supreme Court in *Old Chief v. United States*, 519 U.S. 172, 117 S.Ct. 644, 136 L.Ed.2d 574 (1997), and hold that the trial court did abuse its discretion in this case.”

Sixth Circuit Court of Appeals

Nothing to report.

Supreme Court of the United States

Nothing to report.