

## Appellate Court Decisions - Week of 12/28/15

### First Appellate District of Ohio

#### **State v. Rice, 2015-Ohio-5481**

**Speedy Trial: Statutory: Constitutional**

**Full Decision:**

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2015/2015-Ohio-5481.pdf>

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

“The trial court properly overruled defendant’s motion to dismiss his indictment on statutory speedy-trial grounds, because R.C. 2941.401 did not, as defendant argued, impose upon the state a duty to exercise reasonable diligence to serve him with a copy of the complaint and warrant.

“The trial court properly overruled defendant’s motion to dismiss his indictment on constitutional speedy-trial grounds, because, under the four-factor analysis set forth in *Barker v. Wingo*, 407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972), the state, although dilatory in its efforts to bring defendant to trial, had not acted willfully, while defendant had been dilatory in asserting his speedy-trial right and did not demonstrate actual prejudice to his defense. [But see DISSENT: defendant demonstrated that his constitutional speedy-trial right had been violated, when the first three factors under the *Barker* test weighed heavily against the state and in favor of defendant, and existing precedent of the Ohio Supreme Court and this court required a presumption of prejudice under the fourth factor. *State v. Selvage*, 80 Ohio St.3d 465, 687 N.E.2d 433 (1997), and *State v. Sears*, 166 Ohio App.3d 166, 2005-Ohio-5963, 849 N.E.2d 1060, followed.]”

### Second Appellate District of Ohio

*Nothing new.*

### Third Appellate District of Ohio

*Nothing new.*

### Fourth Appellate District of Ohio

#### **State v. Taylor, 2015-Ohio-5394**

**Sentencing: Community Control Violation: R.C. 2929.25**

Full Decision;

<http://www.supremecourt.ohio.gov/rod/docs/pdf/4/2015/2015-Ohio-5394.pdf>

The trial court erred in sentencing appellant to jail for violating his community control sanctions where it failed to inform appellant of the consequences of violating those sanctions at his original sentencing. F

### 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. Banks, 2015-Ohio-5413**

**Jury Instruction: Repeat Violent Offender Specification: Other-Acts Evidence**

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2015/2015-Ohio-5413.pdf>

Summary from the Eighth District: “It was error for the trial court to submit the repeat violent offender specification to the jury. Appellant received ineffective assistance of counsel where appellant's counsel's actions did not reflect reasonable trial strategy. However, where appellant's counsel failed to oppose joinder with appellant's codefendant for trial, appellant did not suffer ineffective assistance of counsel. Appellant failed to show that he was prejudiced by the joinder of offenses, and it was therefore not an abuse of discretion for the trial court to join those offenses that were of the same or similar character. It was not error where the trial court did not inquire into appellant's Notice of Termination of Representation prior to trial. Appellant did not meet his burden by presenting any grounds for disqualifying appointed counsel or allege facts sufficient for relief.”

***State v. Banks, 2015-Ohio-5418***

**Statute of Limitations: Rape: Preindictment Delay: DNA**

**Full Decision:**

**<http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2015/2015-Ohio-5418.pdf>**

**Summary from the Eighth District of the State’s appeal of the trial court’s granting of appellee’s motion to dismiss his rape charge for pre-indictment delay of 20 years: “[Appellee] alleged that he was unable to provide alibi witnesses because he lacked specific times and dates of the alleged activity. [Appellee], however, was provided a bill of particulars that included information on the date and location of the alleged crime. DNA testing in this case advanced the case where appellant's identity was not previously known. [Appellee] failed to show substantial and actual prejudice and it was error for the trial court to dismiss on the ground of preindictment delay.”**

***State v. Vangilder, 2015-Ohio-5420***

**Sentencing: R.C. 2929.15(A)(1)**

**Full Decision:**

**<http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2015/2015-Ohio-5420.pdf>**

**Summary from the Eighth District: “The maximum term of incarceration under R.C. 2929.16(A)(2) is six months. The maximum term, if combined with community control sanctions under R.C. 2929.15(A)(1), cannot exceed a total period of five years. The trial court's sentencing exceeded the five-year maximum.”**

***State v. James, 2015-Ohio-5429***

**Dismissal: Interstate Agreement on Detainers Act**

**Full Decision:**

**<http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2015/2015-Ohio-5429.pdf>**

**Summary from the Eighth District: “Article III(d) of the interstate agreement on detainers, known as the anti[-]shuttling provision, codified in R.C. 2963.30, mandates that the Cuyahoga County complaint against the defendant be dismissed where defendant was transferred back to his original place of imprisonment outside of Ohio prior to being tried on the Cuyahoga County complaint.”**

The anti-shuttling provision “provides that if a trial is not held in the receiving state [of the prisoner] ‘prior to the return of the prisoner to the original place of imprisonment,’ the indictment or complaint ‘shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.’”

### Ninth Appellate District of Ohio

*Nothing new.*

### Tenth Appellate District of Ohio

*Nothing new.*

### Eleventh Appellate District of Ohio

*Nothing new.*

### Twelfth Appellate District of Ohio

*Nothing new.*

### Supreme Court of Ohio

***State v. Barry, 2015-Ohio-5449***

R.C. 2921.12(A)(1): Tampering With Evidence

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/o/2015/2015-Ohio-5449.pdf>

“Ohio does not recognize the ‘unmistakable crime’ doctrine in connection with the offense of tampering with evidence because that doctrine erroneously imputes to the perpetrator constructive knowledge of a pending or likely investigation into a crime; merely establishing that the crime committed is an unmistakable crime is insufficient to prove that the accused knew at the time the evidence was altered, destroyed, concealed, or removed that an official proceeding or investigation into that crime was ongoing or likely to be instituted.”

\* \* \*

**“Chelsey Barry appeals from a judgment of the Fourth District Court of Appeals affirming her conviction for tampering with evidence arising from an incident involving the concealment of 56 grams of heroin within a body cavity. The appellate court certified that its decision conflicted with *State v. Cavalier*, 2d Dist. Montgomery No. 24651, 2012-Ohio-1976, on the following question of law: ‘Whether a person who hides evidence of a crime that is unmistakable to him or her commits tampering with evidence in the absence of evidence that a victim or the public would report a crime?’ 141 Ohio St.3d 1452, 2015-Ohio-239, 23 N.E.3d 1195**

**“The answer to this question is no, because an element of tampering with evidence requires the state to prove beyond a reasonable doubt that the accused knew that an official proceeding or investigation is in progress or likely to be instituted at the time the evidence is altered, destroyed, concealed, or removed. Ohio law does not impute constructive knowledge of an impending investigation based solely on the commission of an offense, and therefore, the fact that an act was unmistakably a crime does not, by itself, establish that the accused knew of an investigation into that crime or that such an investigation was likely to be instituted. Rather, the state must demonstrate that the accused knew of a pending official proceeding or investigation or knew that such a proceeding or investigation was likely to be instituted at the time of the concealment.**

**“In this case, there is no evidence that at the time she concealed the heroin in her body in Middletown, Ohio, Barry knew or could have known that a state trooper would stop her car in Scioto County and begin an investigation of her for drug trafficking and drug possession. Thus, the trial court erred in instructing the jury that by committing an unmistakable crime, Barry had constructive knowledge of an impending investigation of that crime, and her tampering conviction is not supported by sufficient evidence.**

**“Accordingly, we reverse the judgment of the appellate court and remand the matter to the trial court for further proceedings consistent with this opinion.”**

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

*Nothing new.*

### **Supreme Court of the United States**

*Nothing new.*