

## Appellate Court Decisions - Week of 12/5/16

### First Appellate District of Ohio

#### **State v. Carnes, 2016-Ohio-8019**

#### **Weapons Under Disability: Juvenile Adjudication: *State v. Hand***

#### **Full Decision:**

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2016/2016-Ohio-8019.pdf>

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

“The trial court did not err in considering evidence aside from the indictment itself in ruling on defendant’s motion to dismiss his indictment where the issue raised in the motion could be determined without trial of the general issue.

“The trial court did not err in failing to dismiss defendant’s indictment: defendant’s prior uncounseled juvenile adjudication that had carried the possibility of punishment and had been obtained without an effective waiver of counsel may be used by the state to prove the disability element of a charge of having a weapon while under a disability in violation of R.C. 2923.13(A)(2), because the disability element is not a penalty-enhancing element. *See State v. Bode*, 144 Ohio St.3d 155, 2015-Ohio-1519, 41 N.E.3d 1156, which prohibits the use of an uncounseled prior adjudication obtained without a valid waiver to enhance the penalty for a later offense. [*But see* DISSENT: It is fundamentally unfair, sufficient to deny defendant due process of law, to use a prior juvenile adjudication as proof beyond a reasonable doubt of an element of a subsequent adult crime where its use results in not just a longer sentence but in a loss of liberty. *See State v. Hand*, \_\_\_ Ohio St.3d \_\_\_, 2016-Ohio-5504, \_\_\_ N.E.3d \_\_\_, holding that a juvenile adjudication may not be used to enhance the degree of or the sentence for a subsequent adult criminal offense.]”

**Obviously, this is bad news. However, given one dissent and one concurrence in judgment only, I think it can be argued that this particular decision is of limited precedential value.**

### Second Appellate District of Ohio

#### **State v. Turner, 2016-Ohio-7983**

#### **Search: *Miranda*: Suppression**

#### **Full Decision:**

<https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2016/2016-Ohio-7983.pdf>

The trial court erred in granting Appellee's motion to suppress the search of his vehicle, but did not err in granting his motion to suppress the statements he made to police, where police did not give him *Miranda* warnings.

Police saw Appellee, who is male, driving a vehicle registered to a female and talking on a cell phone. The officers followed the vehicle. They saw Appellee stop, then saw another vehicle pull up behind Appellee. The other driver got out of his vehicle, then talked to the driver of another vehicle coming down the road at the time. After speaking to that driver for five seconds, the man then walked toward Appellee's vehicle, handed Appellee a white envelope and quickly walked away. Appellee did not give anything back to the man.

Appellee then drive away and parked in an alley behind an apartment building. The police followed and approached Appellee. One officer identified himself as "police" and saw Appellee holding an envelope containing a plastic baggie. Appellee, placed the envelope and baggie into the glove compartment and closed it. The officer saw Appellee also holding a paper towel with blood on it, but the origin of the blood was not apparent.

The officer then opened the driver's door and ordered Appellee out. He then grabbed Appellee's right wrist while the other officer grabbed Appellee's left wrist. The first officer then placed Appellee in handcuffs, fearing Appellee would flee on foot. At that point, the officers explained what they saw. Appellee offered to snitch on his dealer, thought the police did not ask him any questions. Appellee made several more incriminating statements without questioning. However, he was never given his *Miranda* rights.

After that, the officers found the envelope and baggie in the glove compartment. Inside were cocaine and heroin. Long story short, the Second District found that the police had reasonable and articulable suspicion Appellee was engaged in illegal drug activity. It also found Appellee was arrested when removed from the vehicle. It found there were exigent circumstances, however, because the vehicle was readily mobile at the time of the stop. It found that Appellee's movement to the glove box was a furtive movement. Then, based on the totality of the circumstances, held there was probable cause to search the glove box.

Regarding the statements, there was an arrest and an interrogation, so the *Miranda* warnings were necessary.

### Third Appellate District of Ohio

*Nothing to report.*

### Fourth Appellate District of Ohio

**State v. Lute, 2016-Ohio-7978**

Right to Testify

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/4/2016/2016-Ohio-7978.pdf>

**Appellant was improperly prohibited from testifying in his own defense. Appellant did not state his desire to testify until after both parties had rested, but before final jury instructions. The denial of Appellant's substantive right to testify affected a fundamental constitutional interest.**

### Fifth Appellate District of Ohio

*Nothing to report.*

### Sixth Appellate District of Ohio

**State v. Lampela, 2016-Ohio-8007**

Aggravated Menacing: Lesser-Included Offense: Disorderly Conduct

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2016/2016-Ohio-8007.pdf>

**The trial court erred in finding Appellant guilty of disorderly conduct because disorderly conduct under R.C. 2917.11(A)(5) contains an additional element not found in the aggravated menacing statute, and therefore is not a lesser-included offense of aggravated menacing.**

### Seventh Appellate District of Ohio

**State v. Grier, 2016-Ohio-8036**

Sentencing

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/7/2016/2016-Ohio-8036.pdf>

The trial court did not have jurisdiction to resentence Appellant where its original sentence contained findings that a non-prison sanction would not demean the seriousness of the offense, etc., and the only reason Appellant was resentenced to prison instead of a non-prison sanction was that Appellant was originally accepted into a “Teen Challenge” program, but that acceptance fell through. Appellant was in custody awaiting placement in the program the whole time. The trial court relied on the same PSI and mental health assessment as it did in the first sentencing.

### Eighth Appellate District of Ohio

*Nothing to report.*

### Ninth Appellate District of Ohio

**State v. Hopp, 2016-Ohio-8027**

OVI: Motion to Suppress

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/9/2016/2016-Ohio-8027.pdf>

Appellant was stopped at an OVI checkpoint. The trial court erred in denying the motion to suppress because there was not sufficient evidence to cause a prudent person to believe he was driving while impaired. There was no indication of impaired driving and Appellant’s speech was only “slightly, slightly slurred.” The officer did smell alcohol, Appellant had bloodshot eyes, and admitted to having a couple of drinks.

### 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 ex rel. Cincinnati Enquirer v. Ohio Dept. of Pub. Safety, 2016-Ohio-7987***

**Mandamus: Public Records: R.C. 149.43: Dashboard Cameras**

**Full Decision:**

**<https://www.supremecourt.ohio.gov/rod/docs/pdf/o/2016/2016-Ohio-7987.pdf>**

**Police dash-cam recordings are public records, but “decisions about whether an exception to public-records disclosure applies to dash-cam recordings require a case-by-case review to determine whether the requested recordings contain investigative work product.”**

***State v. Sowell, 2016-Ohio-8025***

**Aggravated Murder: Capital Punishment: Right to a Public Trial**

**Full Decision:**

**<https://www.supremecourt.ohio.gov/rod/docs/pdf/o/2016/2016-Ohio-8025.pdf>**

**The Supreme Court affirmed Appellant’s death penalty and held that he was not denied his right to a public trial, despite the trial court’s failure to make express findings that the limited closure of the proceeding was in fact no broader than necessary to protect the interest in a public trial.**

## Sixth Circuit Court of Appeals

***United States v. Abernathy, No. 16-5314***

**Motion to Suppress**

**Full Decision: <http://www.opn.ca6.uscourts.gov/opinions.pdf/16a0284p-06.pdf>**

**The marijuana roaches and residue-laced plastic bags recovered by police from Appellant’s trash were insufficient to create a fair probability that drugs would be found in Appellant’s home. Notably, part of the police officer’s statements were redacted from the affidavit provided with the warrant request because of a *Franks* hearing.**

**This is a big one folks. Pay attention.**

**Supreme Court of the United States**

***Nothing to report.***