

Appellate Court Decisions - Week of 2/15/16

First Appellate District of Ohio

Nothing new.

Second Appellate District of Ohio

Nothing new.

Third Appellate District of Ohio

Nothing new.

Fourth Appellate District of Ohio

State v. Mutter & Mutter, 2016-Ohio-512

Double Jeopardy

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/4/2016/2016-Ohio-512.pdf>

The trial court erred in dismissing the felony indictments against the Mutters for ethnic intimidation because they pleaded no contest in municipal court to menacing by stalking, not aggravated menacing. Menacing by stalking is not a lesser-included offense of ethnic intimidation, so the Mutters' ethnic intimidation indictments were not barred by double jeopardy.

State v. Chamblin, 2016-Ohio-595

Sentencing: Community Control Sanction

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/4/2016/2016-Ohio-595.pdf>

Appellant pled guilty to four counts of the illegal use of food stamps. As part of appellant's sentence to community control, the trial court ordered appellant to "not enter food pantries for assistance." Appellant had been using food pantries to supplement the food he could not provide for his family after selling the food he purchased with food stamps. Nevertheless,

the ban from food pantries was unreasonable and overbroad because appellant's conviction did not directly involve the local food pantry.

Fifth Appellate District of Ohio

Nothing new.

Sixth Appellate District of Ohio

State v. Sanchez, 2016-Ohio-542

Trafficking in Cocaine

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/6/2016/2016-Ohio-542.pdf>

Appellant's conviction on two counts of trafficking in cocaine was contrary to law where they were based on one transaction that included both powder cocaine and crack cocaine. Powder and crack cocaine are the same substance in a different form. The trial court also erred in convicting appellant of an enhanced level of trafficking in cocaine based on gross weight and not the weight of actual cocaine on the basis of *State v. Gonzalez*, 6th Dist. Wood No. WD-13-086, 2015-Ohio-461. This extends *Gonzalez*, a possession case, to trafficking.

State v. Woods, 2016-Ohio-545

Court Costs: R.C. 2941.51(D); R.C. 2929.18(A)(5)

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/6/2016/2016-Ohio-545.pdf>

"The portions of the trial court's sentencing order imposing the costs of counsel and costs of confinement upon appellant are * * * reversed." There was no evidence, as required by R.C. 2941.51(D) and R.C. 2929.18(A)(5), that appellant had the means to pay either of those costs.

Seventh Appellate District of Ohio

Nothing new.

Eighth Appellate District of Ohio

Nothing new.

Ninth Appellate District of Ohio

Nothing new.

Tenth Appellate District of Ohio

State v. Hand, 2016-Ohio-582

Sentencing: Probation Violation

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/10/2016/2016-Ohio-582.pdf>

Part of appellant's probation for his physical control conviction was that he "[s]ubmit to alcohol/drug screen(s); no refusal of any tests." He was found guilty of a probation violation by the trial court after an incident where he could not produce urine for a drug test at his probation officer's office. Appellant had heart and kidney issues that made it difficult for him to produce urine. He drank water and stayed at the probation office for nearly 10 hours, attempting to produce urine for the test, but he could not. On those facts, the 10th District held the evidence was against the conclusion that appellant "intentionally, designedly, knowingly, or purposely" refused to urinate "without justifiable excuse."

Eleventh Appellate District of Ohio

Nothing new.

Twelfth Appellate District of Ohio

Nothing new.

Supreme Court of Ohio

State ex rel. R.W. v. Williams, 2016-Ohio-562

Writ of Prohibition

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/0/2016/2016-Ohio-562.pdf>

“R.W. has an adequate remedy in the ordinary course of law by way of appeal, and Judge Williams does not patently and unambiguously lack jurisdiction to proceed. Therefore, R.W. has not established his entitlement to the requested writ of prohibition.” Read through the facts and the dissent in this one, it’s a worthy read.

Sixth Circuit Court of Appeals

United States v. Mize, Nos. 13-6558/6559/6560

Indictment: Evidence

Full Decision: <http://www.ca6.uscourts.gov/opinions.pdf/16a0040p-06.pdf>

The Sixth Circuit found a prejudicial variance between the charges in the indictment and the proof offered at trial in this case. This case was basically about a conspiracy to acquire narcotic pills from doctors in Florida to sell in Tennessee. The conspiracy in question arose because one of the defendants got the idea from the head of another conspiracy. The prejudicial variance came about because of the volume of evidence the prosecution used about the other conspiracy in proving the case against the conspiracy in question. The Sixth Circuit held that was plain error, that it affected the substantial rights of the defendants, and it seriously affected the fairness of the trial.

Supreme Court of the United States

Nothing new.