

## Appellate Court Decisions - Week of 2/16/15

### 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

*Nothing new.*

### 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. Miller, 2015-Ohio-519**

**Evidence: Rule 404(B)**

**Full Decision:**

**<http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2015/2015-Ohio-519.pdf>**

**In a case where Appellant was accused of placing a wood shim into the throttle mechanism in his wife's car engine in order to keep it open/accelerating, the trial court erred by allowing the introduction of improper other-acts evidence that 30 years prior Appellant threatened his**

first wife with tampering with her brakes if she divorced him. Although the previous threat was relevant, it was not admissible to prove identity. It was plausible it could have been shown to be part of a common plan or scheme. Nevertheless, the evidence was unduly prejudicial because it was an undocumented verbal claim made at a very remote time.

The trial court also erred in allowing a mechanic who examined the car to testify as a lay witness, not an expert witness, that the shim could not have fallen into the throttle mechanism and must have been “jammed in there somehow.” That conclusion could not be rationally based on firsthand observations.

### 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

#### **State v. Graham, 2015-Ohio-576**

Forfeiture

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/12/2015/2015-Ohio-576.pdf>

The trial court erred in failing to order the return of \$129 taken from Appellant’s wallet when he was arrested. The money was not forfeited according to the forfeiture proceedings under R.C. 2981.04.

### Supreme Court of Ohio

#### **State v. Brown, 2015-Ohio-486**

Search Warrant: Probate Judges

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/o/2015/2015-Ohio-486.pdf>

**“Unless a probate judge has been assigned by the chief justice pursuant to Article IV, Section 5(A)(3) of the Ohio Constitution to temporarily sit or hold court, a probate judge does not have the authority to hear evidence and issue search warrants in criminal matters.”**

**However, the police officers who conducted the search in this case, based on a search warrant issued by a probate judge, acted in good faith. The trial court erred in granting the motion to suppress the evidence collected during the search.**

***State v. White, 2015-Ohio-492***

**Firearm Specification: R.C. 2941.145: On-Duty Police Officer**

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/o/2015/2015-Ohio-492.pdf>

**The R.C. 2941.145 firearm specification is not applicable to an on-duty police officer acting within the course and scope of law-enforcement duties. “[A] police officer who does not abandon employment or act outside the course and scope of official duties or contravene departmental policy by engaging in criminal activity, but who misperceives a threat of harm, displays, brandishes, possesses, or uses a firearm while engaging in legitimate law enforcement duties does not become subject to the firearm specification; the officer’s actions in such a situation involve a judgment determination regarding the use of the firearm.”**

**The trial court’s instruction on deadly force potentially misled the jury and constituted reversible error where it informed the jury that White could establish an affirmative defense if “his use of deadly force was objectively reasonable under the circumstances,” rather than use the instruction from *Tennessee v. Garner*, 471 U.S. 1, 105 S.Ct. 1694, 85 L.Ed.2d 1 that a police officer may use deadly force “[w]here the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others.”**

**“The trial court erred by precluding White from answering the question, ‘What charges on that evening did you feel that you could file against [the victim] if you decided to do so?’ \*\*\* Without that testimony, the jury had no basis to conclude that [the victim] was believed to have committed any crimes, and it could not gauge whether the seriousness of those potential**

offenses would have altered a police officer to a potential threat, and therefore it could only weigh this factor against White.”

***State v. Black, 2015-Ohio-513***

**R.C. 2963.30: Interstate Agreement on Detainers**

**Full Decision:**

<http://www.supremecourt.ohio.gov/rod/docs/pdf/o/2015/2015-Ohio-513.pdf>

“The term ‘penal or correctional institution of a party state,’ as it is used in R.C. 2963.30 [Interstate Agreement on Detainers], includes a county jail as well as a state prison or correctional facility.”

**Sixth Circuit Court of Appeals**

*Nothing new.*

**Supreme Court of the United States**

*Nothing new.*