

## Appellate Court Decisions - Week of 2/22/16

### First Appellate District of Ohio

#### **State v. Crawley, 2016-Ohio-658**

**Plea: Sentencing: Allocution**

**Full Decision:**

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2016/2016-Ohio-658.pdf>

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

“The trial court did not abuse its discretion when it refused to allow the defendant to withdraw his guilty pleas where the sole basis for the motion to withdraw was the increased sentence that the defendant faced because he had failed to appear on the original sentencing date.

“The trial court’s error in failing to afford the defendant his right of allocution was not harmless.”

#### **State v. Phelps, 2016-Ohio-\_\_\_\_\_**

**Plea: Crim.R. 11: R.C. 2941.25: Allied Offenses: Sentencing**

**Full Decision:** [http://www.hamilton-co.org/appealscourt/docs/decisions/C-150204\\_02262016.pdf](http://www.hamilton-co.org/appealscourt/docs/decisions/C-150204_02262016.pdf)

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

“The trial court did not err in accepting defendant’s guilty pleas to aggravated robbery and felonious assault where the court complied with Crim.R. 11 and the record showed that the pleas were made knowingly, intelligently, and voluntarily.

“The trial court erred in failing to merge defendant’s convictions for aggravated robbery and felonious assault, because the offenses were of similar import and were not committed separately or with a separate animus where the crimes were committed at the same time against one victim and there was no evidence of a separate or further harm to the victim.

“The trial court did not err in sentencing defendant to a 12-month prison term for his community-control violation where the court complied with R.C. 2929.15(B) and 2929.14(C).”

## **Second Appellate District of Ohio**

**State v. Chandler, 2016-Ohio-599**

Plea: Crim.R. 11

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/2/2016/2016-Ohio-599.pdf>

Appellant's no contest plea to his failure to verify charge was not knowingly, intelligently, and voluntarily entered "because at the plea hearing and in the written plea form, the trial court erroneously advised him that he could be sentenced to 9, 12, 18, 24, 30 or 36 months in prison when, under the circumstances of this case, R.C. 2950.99(A)(2)(b) mandated that he receive a minimum of three years in prison."

## **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. Durham, 2016-Ohio-691**

Aggravated Murder: Sufficiency

**Full Decision:**

<http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2016/2016-Ohio-691.pdf>

While there was sufficient evidence for appellant's convictions for murder and felonious assault, his conviction for aggravated murder lacked sufficient evidence that appellant acted with "prior calculation and design." While appellant and the victim did know each other for more than 20 years, there was no indication appellant gave thought or consideration to choosing a murder weapon or location – rather, the evidence supported "an almost spontaneous eruption of events." Notably, appellant was known to always carry a gun.

***State v. Davis, 2016-Ohio-694***

**Domestic Violence: Sufficiency**

**Full Decision:**

<http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2016/2016-Ohio-694.pdf>

Appellant's conviction for domestic violence was based on insufficient evidence of the physical harm element where appellant pulled the victim's hair weave, loosening it, and the victim threw it to the ground.F

***Walton Hills v. Tate, 2016-Ohio-697***

**Aggravated Menacing: Sufficiency**

**Full Decision:**

<http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2016/2016-Ohio-697.pdf>

The Eighth District modified appellant's conviction from aggravated menacing to menacing, vacated his conviction and sentence for vehicular vandalism, and remanded for resentencing on the menacing conviction. There was no evidence – in this road rage incident – the victim believed she would suffer serious physical harm where, although appellant was holding a "tire thumper" that resembled a baseball bat, she only testified that appellant screamed "pretty provocative and mean things at me." There was however, sufficient evidence for the physical harm element of menacing.

Vehicular vandalism requires a person to drop or throw any object at, onto, or in the path of any vehicle. There was no evidence appellant dropped or threw his tire thumper at, onto, or in the path of the victim's car. Therefore, the Eighth District vacated appellant's conviction for vehicular vandalism.

**State v. Hall, 2016-Ohio-698**

Trafficking: Sufficiency

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2016/2016-Ohio-698.pdf>

Appellant's convictions for trafficking in heroin and cocaine are reversed and vacated. Merely associating with drug dealers and being present in the house where the drugs are at the time of the drug dealers' arrest is insufficient to sustain a complicity in drug trafficking conviction.

**Ninth Appellate District of Ohio**

*Nothing new.*

**Tenth Appellate District of Ohio**

**State v. Woods, 2016-Ohio-661**

Jury Instructions

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/10/2016/2016-Ohio-661.pdf>

It was plain error in appellant's obstructing official business trial for the trial court to fail to define "purpose" for the jury in the jury instructions.

**State v. Phipps, 2016-Ohio-663**

Sentencing: Allied Offenses: Aggravated Robbery: Kidnapping

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/10/2016/2016-Ohio-663.pdf>

The trial court erred in failing to merge appellant's convictions for aggravated robbery and kidnapping.

**Eleventh Appellate District of Ohio**

*Nothing new.*

## **Twelfth Appellate District of Ohio**

*Nothing new.*

## **Supreme Court of Ohio**

**State v. Polus, 2016-Ohio-655**

**Sentencing: Consecutive Sentences: Felony: Misdemeanor**

**Full Decision:**

**<http://www.supremecourt.ohio.gov/rod/docs/pdf/o/2016/2016-Ohio-655.pdf>**

**“A trial court may not impose consecutive sentences for felony and misdemeanor convictions under R.C. 2929.41(B)(1).”**

## **Sixth Circuit Court of Appeals**

*Nothing new.*

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

*Nothing new.*