

## Appellate Court Decisions - Week of 2/5/18

*Note: This is not a comprehensive list of every case released this week.*

### First Appellate District of Ohio

#### **State v. Dotson, 2018-Ohio-499**

**Search: Waiver: Ineffective Assistance**

**Full Decision:**

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2018/2018-Ohio-499.pdf>

**Summary from the First District: “A suspect may limit the scope of his or her consent; and where defendant consented to a pat down search for weapons only and the state presented no evidence that the officer who conducted the pat down determined by “plain feel” that a thin straw found on defendant’s person was most likely contraband, the seizure of the straw violated the Fourth Amendment.**

**“Where defendant affirmatively relinquished his right to challenge the search of his car, he waived review of the issue on appeal.**

**“Where the record does not show that any alleged deficiency in defense counsel’s representation was outcome-determinative, defendant has failed to demonstrate ineffective assistance of counsel.”**

### Second Appellate District of Ohio

#### **State v. Hudson, 2018-Ohio-423**

**Burglary: Sufficiency**

**Full Decision:**

<https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2018/2018-Ohio-423.pdf>

**Summary from the Second District: “Defendant’s conviction for burglary in violation of R.C. 2911.12(A)(2), a second-degree felony, was not based on sufficient evidence and was against the manifest weight of the evidence. However, the State’s evidence supported a conviction for trespass in a habitation when a person is present or likely to be present, in violation of R.C. 2911.12(B), a fourth-degree felony. Judgment vacated, and case remanded for the trial court to modify its judgment to indicate that Hudson was convicted of trespass in a habitation when a person is present or likely**

to be present, in violation of R.C. 2911.12(B), and for sentencing on that offense. (Hall, J., concurring in judgment only.)”

### **Third Appellate District of Ohio**

**State v. Soto, 2018-Ohio-459**

**Double Jeopardy: Child Endangering: Aggravated Murder**

**Full Decision:**

**<https://www.supremecourt.ohio.gov/rod/docs/pdf/3/2018/2018-Ohio-459.pdf>**

**Appellant was charged with Child Endangering and Involuntary Manslaughter in 2006. He entered into a plea deal to plead to the Child Endangering in exchange for dismissing the Involuntary Manslaughter, and he was sentenced to 5 years in prison. In 2016, he went to police to provide a “truthful” account of what caused the child’s death – stating essentially it was intentional, not accidental. He was indicted for Aggravated Murder, Murder, Felonious Assault, Kidnapping, and Tampering with Evidence. He then filed a motion to dismiss on double jeopardy grounds, which the trial court overruled. Appellant appealed from that judgment, and the Third District reversed the trial court, holding that double jeopardy barred the state from prosecuting Appellant for Aggravated Murder and Murder (which were the only charges Appellant argued against).**

### **Fourth Appellate District of Ohio**

*Nothing to report.*

### **Fifth Appellate District of Ohio**

**Zanesville v. Quinn, 2018-Ohio-429**

**Restitution**

**Full Decision:**

**<https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2018/2018-Ohio-429.pdf>**

**Victim’s car was keyed by the defendant. The trial court did not err in limiting restitution to the Kelley Blue Book value of the vehicle, which was far less than the repair estimates for the vehicle.**

### **State v. Mayle, 2018-Ohio-427**

Speedy Trial

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2018/2018-Ohio-427.pdf>

Appellant was cited for driving under suspension and failure to control. He was later indicted for a felony OVI stemming from the same facts. Before the indictment, he filed a time waiver on the misdemeanor charges. That waiver had no impact on the indicted OVI because it came before indictment. Therefore, the trial court erred in denying Appellant's motion to dismiss his OVI charge for violating his right to a speedy trial. (More than 270 days elapsed on the felony).

### **Sixth Appellate District of Ohio**

*Nothing to report.*

### **Seventh Appellate District of Ohio**

*Nothing to report.*

### **Eighth Appellate District of Ohio**

### **State v. Shaw, 2018-Ohio-403**

Discharging A Firearm On Or Near A Prohibited Premises

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2018/2018-Ohio-403.pdf>

Summary from the Eighth District: "Defendant's tampering with evidence conviction was supported by sufficient evidence where totality of circumstances indicated the defendant knew the police were likely to investigate a shooting incident. Defendant's discharging a weapon on or near a prohibited premises was modified and reduced from third-degree felony to first-degree misdemeanor to conform to the verdict form that did not provide elevating language or the form of the offense. Defendant's right to counsel was not violated even though his trial counsel did not request special jury instructions because the court's charge was a complete and accurate statement of Ohio law."

### ***State v. Jenkins, 2018-Ohio-483***

Ineffective Assistance: Motion to Dismiss

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2018/2018-Ohio-483.pdf>

Summary from the Eighth District: “Jenkins suffered actual prejudice based on the unavailability of a critical witness, and the state was unable to establish any justifiable reason for the nearly 20 year delay in prosecution. Therefore, his conviction is reversed.”

### ***State v. Hakim, 2018-Ohio-492***

Motion to Suppress: Search

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2018/2018-Ohio-492.pdf>

Summary from the Eighth District: “ The trial court's judgment granting defendant's motion to suppress was affirmed. The plain view doctrine did not apply to a common, orange translucent pill bottle because the incriminating nature of the contents in the pill bottle was not immediately apparent to the officer without the officer first manipulating the bottle. The plain smell doctrine did not apply to a "balled up" paper towel because the trial court implicitly found that the officer's testimony that he smelled marijuana lacked credibility; the officer failed to include the fact that he smelled marijuana in his written report and did not mention it on direct examination.”

### **Ninth Appellate District of Ohio**

*Nothing to report.*

### **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 v. Clinton, 2017-Ohio-9423**

Aggravated Murder: Capital Punishment

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/o/2017/2017-Ohio-9423.pdf>

The Supreme Court affirmed the aggravated murder convictions and death sentence of Curtis Clinton.

### **State v. Beasley, 2018-Ohio-493**

Aggravated Murder: Capital Punishment: Sentencing

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/o/2018/2018-Ohio-493.pdf>

The Supreme Court affirmed the aggravated murder convictions and death sentence of Richard Beasley. However, because the trial court did not make a proportionality finding for consecutive sentences on the noncapital convictions, the court remanded the case for resentencing on the noncapital convictions.

## Sixth Circuit Court of Appeals

### **United States v. Harris, No. 17-3087**

Evidence

Full Decision:

<http://www.opn.ca6.uscourts.gov/opinions.pdf/18a0025p-06.pdf>

The trial court “abused its discretion by not allowing Harris to introduce a prior inconsistent statement for impeachment purposes.” In short, Appellant Harris was prevented from playing a recorded statement by his co-conspirator that contradicted another statement the co-conspirator made indicating Harris instructed the co-conspirator to lie to police. The trial court also erred in not holding a hearing on improper juror influence

**where Harris presented a colorable claim of such influence.**

**Supreme Court of the United States**

*Nothing to report.*