

## Appellate Court Decisions - Week of 2/8/16

### First Appellate District of Ohio

#### **State v. Schulze, 2016-Ohio-470**

##### **Sex Offenses: Registration**

##### **Full Decision:**

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2016/2016-Ohio-470.pdf>

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

“The trial court erred in failing to dismiss the indictment and convicting defendant of attempted failure to notify of an address change, because there was no valid order in place requiring defendant to register as a sex offender where the defendant, as a juvenile, initially had been correctly classified under Megan’s Law as a juvenile-offender registrant, but the end-of-disposition hearing was held and defendant was classified as a Tier II juvenile-offender registrant under the Adam Walsh Act: the end-of-disposition order under the Adam Walsh Act was void because defendant had committed his sex offense prior to the Adam Walsh Act’s effective date, and the initial Megan’s Law classification order was not still in effect or revived once the end-of-disposition order was entered without jurisdiction.”

#### **State v. Helm, 2016-Ohio-500**

##### **Jury Instructions**

**Full Decision:** [http://www.hamilton-co.org/appealscourt/docs/decisions/C-150242\\_02122016.pdf](http://www.hamilton-co.org/appealscourt/docs/decisions/C-150242_02122016.pdf)

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

“Because the charge given by the trial court to the deadlocked jury was not coercive and encouraged the jurors to reach a verdict if they could conscientiously do so, the charge substantially complied with that approved by the Ohio Supreme Court in *State v. Howard*, 42 Ohio St.3d 18, 537 N.E.2d 188 (1989).

“The trial court did not err in instructing the jurors to deliberate for an additional 30-minute period where the court did not pressure the jury to reach a verdict within that time frame and did not indicate that it would declare a mistrial if a verdict was not reached.

“Where the record contains no evidence that any juror engaged in misconduct or formed an opinion on the case prior to it being submitted to the jury, no plain error resulted from the trial court’s failure to properly admonish the jury pursuant to R.C. 2945.34.

“Where, when the trial court announced that it was going to release the jury for lunch, a juror left the courtroom to feed a parking meter, and the trial court, along with counsel, entered the jury room to deliver off-the-record admonitions in the juror’s absence and then, when the juror returned, the trial court admonished the entire jury on the record, no plain error occurred in the trial court’s failure to comply with R.C. 2945.33, because the record does not demonstrate that the jury engaged in deliberations without all members present.”

### **State v. Thomas, 2016-Ohio-501**

**Sex Offenses: Community Notification: Motion: R.C. 2950.11(F)(2)**

**Full Decision:** [http://www.hamilton-co.org/appealscourt/docs/decisions/C-150294\\_02122016.pdf](http://www.hamilton-co.org/appealscourt/docs/decisions/C-150294_02122016.pdf)

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

“The trial court did not err in dismissing defendant’s motion, made after he had been released from incarceration for sexual battery, for a hearing under R.C. 2950.11(F)(2) to determine whether he should be exempted from the community-notification requirements, because defendant was not entitled to a hearing where the trial court had not sua sponte held a hearing and defendant had failed to request a hearing at or before the time of sentencing.”

## **Second Appellate District of Ohio**

### **State v. Schlemmer, 2016-Ohio-430**

**Ineffective Assistance**

**Full Decision:**

<http://www.supremecourt.ohio.gov/rod/docs/pdf/2/2016/2016-Ohio-430.pdf>

**Appellant’s trial counsel rendered ineffective assistance in advising him to plead guilty to a sexually violent predator specification, based on the underlying offense of gross sexual imposition in violation of R.C. 2907.05(A)(1). The sexually violent predator specification was not applicable to him. His guilty plea resulted in a sentence of two years to life. Based on his counsel’s deficient representation, his plea was not entered knowingly, intelligently, and voluntarily.**

### **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**

***State v. Telshaw, 2016-Ohio-479***

Sealing Record of Conviction: R.C. 2953.32(B)

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/7/2016/2016-Ohio-479.pdf>

**The trial court erred in overruling appellant's application to seal the record of appellant's conviction without holding a hearing on the application.**

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

***State v. Trem, 2016-Ohio-392***

Sex-Offender Classification

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2016/2016-Ohio-392.pdf>

**Summary from the Eighth District: "Court's finding that state failed to prove that sexual offender was not a sexual predator under former Megan's Law was not against the manifest weight of the evidence. Although the court did cite the results of a Static-99 assessment, an assessment tool that has been criticized, showing that Trem had a low chance of reoffending, it also**

found that offender's excellent prison record and his age weighed against finding that he was likely to commit future sexually oriented crimes.”

***State v. Hardman, 2016-Ohio-498***

Right to Counsel: Pro Se

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2016/2016-Ohio-498.pdf>

Summary from the Eighth District: “Trial court erred by not offering the defendant the assistance of standby counsel when it allowed the defendant to proceed pro se during the middle of trial; thus denying the defendant his constitutional right to counsel. Failing to move for a Crim.R. 29 motion for judgment of acquittal during a jury trial waives all but plain error regarding the issue of sufficiency of the evidence on appeal. A conviction based on insufficient evidence constitutes plain error.”

**Ninth Appellate District of Ohio**

***State v. Johnson, 2016-Ohio-480***

Plea Withdrawal: Crim.R. 11

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/9/2016/2016-Ohio-480.pdf>

Appellant’s guilty plea was invalid and his conviction is reversed where the trial court completely failed to comply with Crim.R. 11. The trial court made no effort whatsoever to explain to appellant the effect of his guilty plea.

**Tenth Appellate District of Ohio**

***State v. Oliver, 2016-Ohio-475* This is potentially a very big deal.**

Judgment

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/10/2016/2016-Ohio-475.pdf>

Appellant entered into a plea agreement with the state that included a recommended sentence in exchange for his cooperation in another case. The plea agreement included an agreement that if appellant refused to

testify or testified falsely in the case in which he agreed cooperate, the agreement would be null and void and the state would reinstate the original charges and prosecute them fully. Appellant proceeded to violate the agreement and the state filed a motion to void appellant's plea agreement. The trial court granted the motion and appellant entered into a new plea agreement, this time with a longer sentence. Appellant did not appeal from that conviction and sentence.

Eight years later, the Supreme Court of Ohio decided *State v. Gilbert*, 143 Ohio 1St.3d 150, 2014-Ohio-4562. Based on *Gilbert*, appellant filed a motion for resentencing to vacate the void judgment that allowed the state to void his first plea agreement. The 10th District agreed with appellant that *Gilbert* is directly applicable to his case and concluded that "the trial court lacked jurisdiction to entertain the state's post-sentence motion to vacate [appellant's] guilty plea and sentence based on his alleged violation of the plea agreement."

The 10th District rejected the state's arguments that appellant waived the jurisdiction argument by not filing a direct appeal when his sentence was vacated and he was resentenced; that *Gilbert* does not apply retroactively; whether *Gilbert* precludes the state from utilizing Civ.R. 60(B), via Crim.R. 57(B), to seek relief from a final judgment of conviction; whether *Gilbert* would apply to bar the state from filing a Crim.R. 32.1 motion to withdraw a plea after sentencing; and whether the equitable doctrine of laches prohibits a defendant from waiting an unreasonable amount of time before asserting a right.

### Eleventh Appellate District of Ohio

*Nothing new.*

### Twelfth Appellate District of Ohio

*Nothing new.*

### Supreme Court of Ohio

***State ex rel. Stewart v. Russo*, 2016-Ohio-421**

Mandamus: R.C. 2929.03(F): Capital Offense: Sentencing

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/o/2016/2016-Ohio-421.pdf>

In a capital case, “[c]onstruing R.C. 2929.03(D) and (F) together, we conclude that division (F)’s requirement that the trial judge issue a separate sentencing opinion when it imposes a life sentence can refer *only* to a situation in which the jury recommends death and the trial judge overrides that recommendation and imposes a life sentence.”

***State v. Baker, 2016-Ohio-451***

OVI: Blood-Alcohol Results: Ohio Adm.Code 3701-53-05

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/o/2016/2016-Ohio-451.pdf>

“[F]ailing to refrigerate a blood specimen for a period of four hours and ten minutes before placing it in transit for analysis is a de minimis error and does not render the test result inadmissible for failure to substantially comply with Ohio Adm.Code 3701-53-05(F).”

The Court also clarified the *Burnside* burden-shifting test as follows:

“A defendant must first challenge the validity of the alcohol test by way of a pretrial motion to suppress evidence; failure to file such a motion ‘waives the requirement on the state to lay a foundation for the admissibility of the test results.’ *State v. French*, 72 Ohio St.3d 446, 451, 650 N.E.2d 887 (1995). The state then has the burden to show that it substantially complied with regulations prescribed by the director of health in the Ohio Administrative Code. If the state meets its burden of going forward with the evidence in this regard, a presumption of admissibility arises, and the burden then shifts back to the defendant to rebut the presumption by demonstrating prejudice from the state’s failure to strictly comply with the applicable regulations in the Ohio Administrative Code.”

## Sixth Circuit Court of Appeals

***United States v. Houston, No. 14-5800***

Fourth Amendment: Privacy

Full Decision: <http://www.ca6.uscourts.gov/opinions.pdf/16a0031p-06.pdf>

“Rocky Houston appeals his conviction of being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1). At trial, the primary evidence against Houston was video footage of his possessing firearms at his and his brother’s rural Tennessee farm. The footage was recorded over the course of ten weeks by a camera installed on top of a public utility pole

approximately 200 yards away. Although this ten-week surveillance was conducted without a warrant, the use of the pole camera did not violate Houston's reasonable expectations of privacy because the camera recorded the same view of the farm as that enjoyed by passersby on public roads."

### Supreme Court of the United States

*Nothing new.*