

## **Appellate Court Decisions - Week of 2/9/15**

### **First Appellate District of Ohio**

#### **State v. Dawson, 2015-Ohio-488**

**Juvenile: Jurisdiction: Bindover: Jury**

**Full Decision:** [http://www.hamilton-co.org/appealscourt/docs/decisions/C-130765\\_02112015.pdf](http://www.hamilton-co.org/appealscourt/docs/decisions/C-130765_02112015.pdf)

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

“Pursuant to R.C. 2151.12(B), the juvenile court did not err in transferring jurisdiction of the defendant’s case to the general division of the Hamilton County Court of Common Pleas, because the defendant was 15 years old at the time of the offense, probable cause existed that the defendant had committed the offense, and the record showed that the defendant was not amenable to care or rehabilitation in the juvenile system.

“Pursuant to R.C. 2961.01 and 2967.16, a convicted felon may have the right to serve on a jury restored by either obtaining a pardon or by complying with R.C. 2967.16(C).

“The trial court did not err in excusing for cause two jurors who had prior felony convictions, because neither of the jurors had obtained a pardon and the record failed to demonstrate that the jurors had had their rights restored pursuant to R.C. 2967.16(C).”

#### **In Re: A.W. and T.W., 2015-Ohio-489**

**Children: Custody**

**Full Decision:** [http://www.hamilton-co.org/appealscourt/docs/decisions/C-140142\\_02112015.pdf](http://www.hamilton-co.org/appealscourt/docs/decisions/C-140142_02112015.pdf)

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

“The juvenile court did not abuse its discretion in awarding legal custody of two minor boys to their great aunt and great uncle where the evidence showed that the great aunt and great uncle were appropriate custodians, having served as prior foster and adoptive parents, had stable employment, had visited with the boys consistently throughout the pendency of the juvenile court proceedings, and were willing to maintain a relationship between the boys and their mother.

“The juvenile court did not abuse its discretion in determining that returning legal custody to mother would not be in the minor boys’ best interest where mother had not completed significant portions of her case-plan services, had been terminated from her mental-health services and substance-abuse treatment for missing appointments, had self-reported using marijuana and alcohol, had been convicted of assaulting her nephew, had failed to take drug screens in connection with drug charges, and had refused to acknowledge the boys’ behavioral problems.”

**State v. Jones, 2015-Ohio-490**

**Assault: Self-Defense: Lesser-Included: Jury Instructions: Sentencing**

**Full Decision:** [http://www.hamilton-co.org/appealscourt/docs/decisions/C-140241\\_02112015.pdf](http://www.hamilton-co.org/appealscourt/docs/decisions/C-140241_02112015.pdf)

**Summary from the First District:**

“To prevail on his non-deadly-force affirmative defense of self-defense, defendant had to prove by a preponderance of the evidence that (1) he was not at fault in creating the violent situation; (2) he reasonably believed that some force was necessary to defend himself against the imminent use of unlawful force; and (3) the force used was not likely to cause death or great bodily harm.

“On the state of the record, the jury was entitled to believe that defendant had attacked his victim without provocation, and to reject his claim that he had acted in self-defense.

“In a prosecution for assault in violation of R.C. 2903.13(A), the trial court did not err in instructing the jury, over defendant’s objection, on the lesser-included offense of disorderly conduct under R.C. 2917.11(A)(1) where, under a reasonable view of the evidence, it was possible for the jury to find defendant not guilty of assault and guilty of disorderly conduct.

“Where the jury found defendant guilty of misdemeanor assault, the trial court did not abuse its discretion in sentencing defendant to 100 days’ incarceration where the sentence fell within the statutory range, and where defendant, without provocation, had violently knocked the victim unconscious and then kicked him in the head.”

**Second Appellate District of Ohio**

**State v. Johnston, 2015-Ohio-450**

**Motion in Limine: Final Appealable Order**

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/2/2015/2015-ohio-450.pdf>

The trial court granted the state's motion in limine to keep out Appellant's expert's testimony. Appellant preserved the error (granting the motion) for appeal when he pleaded no contest after the motion in limine was granted. The motion in limine was the functional equivalent of a suppression ruling that was fully developed and ripe for determination.

### 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

**State v. Czech, 2015-Ohio-458**

Plea: R.C. 2937.07

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/6/2015/2015-ohio-458.pdf>

The trial court erred in finding Appellant guilty after a no contest plea where its statement that it had "review[ed] the complaint" did not satisfy the "explanation of the circumstances" requirement set forth in R.C. 2937.07.

**State v. Gonzales, 2015-Ohio-461** This case is really important.

Sentencing: Drug Possession

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/6/2015/2015-ohio-461.pdf>

R.C. 2925.11(C)(4)(f) increases the level of the offense for possession of cocaine when the amount possessed “equals or exceeds one hundred grams of cocaine.” The “of cocaine” part modifies the “one hundred grams” part of the statute. This is especially clear when compared to how other drugs are treated under R.C. 2925.11. Therefore, a defendant may be held liable for cocaine offenses under R.C. 2925.11 for only the portion of the disputed substance that is chemically identifiable as cocaine. In this case, where there was no evidence offered as to the purity of the cocaine, it was impossible for the factfinder to determine the weight of *actual* cocaine contained therein. Therefore, “the state, in prosecuting cocaine offenses under R.C. 2925.11(C)(4)(a) through (f), must prove that the weight of *actual* cocaine possessed by the defendant met the statutory threshold.”

In other words, if the substance in dispute weighed 200 grams, but was only 40% cocaine, it would only contain 80 grams of cocaine and not exceed the statutory threshold.

### Seventh Appellate District of Ohio

*Nothing new.*

### Eighth Appellate District of Ohio

*Nothing new.*

### Ninth Appellate District of Ohio

***State v. Wang, 2015-Ohio-439***

Interpreter

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/9/2015/2015-ohio-439.pdf>

The trial court erred in allowing a witness to continue testifying through an interpreter, over objection, where evidence was presented to the trial court that the interpreter was interpreting incorrectly and summarizing the witness’s testimony.

### Tenth Appellate District of Ohio

*Nothing new.*

## **Eleventh Appellate District of Ohio**

*Nothing new.*

## **Twelfth Appellate District of Ohio**

*Nothing new.*

## **Supreme Court of Ohio**

### **State v. Bevely, 2015-Ohio-475**

**Gross Sexual Imposition: Mandatory Prison Terms: Constitutionality**

**Full Decision:**

<http://www.supremecourt.ohio.gov/rod/docs/pdf/o/2015/2015-Ohio-475.pdf>

### **Syllabus of the Court:**

1. Because there is no rational basis for the provision in R.C. 2907.05(C)(2)(a) that requires a mandatory prison term for a defendant convicted of gross sexual imposition when the state has produced evidence corroborating the crime, the statute violates the due-process protections of the Fifth and Fourteenth Amendments to the United States Constitution.
2. In cases in which a defendant has pled guilty, imposing a mandatory prison term pursuant to R.C. 2907.05(C)(2)(a) when corroborating evidence of the charge of gross sexual imposition is produced violates the defendant's right to a jury trial as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution.

### **State v. Jones, 2015-Ohio-483**

**Motion to Suppress: Probable Cause: Trash Pull**

**Full Decision:**

<http://www.supremecourt.ohio.gov/rod/docs/pdf/o/2015/2015-Ohio-483.pdf>

**“Evidence seized from a single trash pull that corroborates tips and background information involving drug activity is sufficient to establish probable cause.”**

## **Sixth Circuit Court of Appeals**

*Nothing new.*

**Supreme Court of the United States**

*Nothing new.*