

## Appellate Court Decisions - Week of 3/23/15

### 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

#### **State v. Debrossard, 2015-Ohio-1054**

Motion to Suppress: *Terry*

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/4/2015/2015-Ohio-1054.pdf>

The trial court erred in denying Appellant's motion to suppress where, although the vehicle stop and canine sniff were constitutional, his consent to be search was involuntary and the search of his person pursuant to *Terry* "was directed at more than just discovering weapons." One police officer stated he asked Appellant for consent to search his person for drugs. He also said the search was conducted as both a weapons pat-down and for drugs. The other officer also said Appellant was asked for consent to search for weapons and drugs. Further, the video shows there was no preliminary or initial frisk conducted prior to going into Appellant's pockets.

### 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**

*Nothing new.*

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

*Nothing new.*

### **Tenth Appellate District of Ohio**

*Nothing new.*

### **Eleventh Appellate District of Ohio**

#### **State v. Lowe, 2015-Ohio-1064**

Motion to Suppress

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/11/2015/2015-Ohio-1064.pdf>

The trial court did not err in granting Appellee's motion to suppress the evidence recovered during the search of his home where, although police had probable cause to arrest Appellee's son, who was in Appellee's house, there was no hot pursuit exception because the officer "paused his pursuit and directed his attention elsewhere on several occasions over an extended period of time." There was also no exception based on the fact that the arrest was initiated in a public place (the porch) and thwarted because the son retreated into the home, a private place, because there still no hot pursuit. Finally, R.C. 2935.04 does not save the state because the Fourth Amendment requires a stricter standard than R.C. 2935.04 when a felony arrest is to occur in the accused's home.

### **Twelfth Appellate District of Ohio**

*Nothing new.*

### **Supreme Court of Ohio**

#### **State v. Ruff, 2015-Ohio-995**

Allied Offenses: R.C. 2941.25: Aggravated Burglary: Rape

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/o/2015/2015-Ohio-995.pdf>

“Rather than compare the elements of two offenses to determine whether they are allied offenses of similar import, the analysis must focus on the defendant’s conduct to determine whether one or more convictions may result because an offense may be committed in a variety of ways and the offenses committed may have a different import. No bright-line rule can govern every situation.

“As a practical matter, when determining whether offenses are allied offenses of similar import within the meaning of R.C. 2941.25, courts must ask three questions when defendant’s conduct supports multiple offenses: (1) Were the offenses dissimilar in import or significance? (2) Were they committed separately? And (3) Were they committed with separate animus or motivation? An affirmative answer to any of the above will permit separate convictions. The conduct, the animus, and the import must all be considered.

“As we previously stated, ‘We recognize that this analysis may be sometimes difficult to perform and may result in varying results for the same set of offenses in different cases. But different results are permissible, given that the statute instructs courts to examine a defendant’s conduct – an inherently subjective determination.’ Johnson, 128 Ohio St.3d 153, 2010-Ohio-6314, 942 N.E.2d 1061, ¶ 52 (plurality opinion per Brown, C.J.).

After reading through this opinion closely, I believe what the Supreme Court is saying is that there are no longer any hard-and-fast rules regarding which offenses are allied. Every case is going to come down to the facts of that case. There is no precedential value except maybe for time-saving purposes. I could be wrong, but I think that’s where this is headed – as much as we all love rules to point to when they help us. At least there won’t be any rules that hurt us either.

### Sixth Circuit Court of Appeals

*Nothing new.*

### Supreme Court of the United States

*Nothing new.*