

## Appellate Court Decisions - Week of 4/11/16

### First Appellate District of Ohio

#### ***In re E.B., 2016-Ohio-1507***

**Juvenile: Appeal: Jurisdiction: Sentencing: Gun Specification**

Full Decision: [http://www.hamilton-co.org/appealscourt/docs/decisions/C-150351\\_04132016.pdf](http://www.hamilton-co.org/appealscourt/docs/decisions/C-150351_04132016.pdf)

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

“The juvenile’s appeal from a nunc pro tunc order was properly before the appellate court, even though the time to appeal the trial court’s original order had run, where the nunc pro tunc order made substantive changes to the juvenile’s sentence.

“The juvenile court committed plain error when it imposed a three-year gun specification where there was no evidence that the juvenile was the principal offender or that the juvenile had used, furnished or disposed of the firearm used in an aggravated robbery.”

### Second Appellate District of Ohio

*Nothing new.*

### Third Appellate District of Ohio

*Nothing new.*

### Fourth Appellate District of Ohio

*Nothing new.*

### Fifth Appellate District of Ohio

#### ***State v. Van Dyne, 2016-Ohio-1476***

**Double Jeopardy**

Full Decision: <http://www.supremecourt.ohio.gov/rod/docs/pdf/5/2016/2016-Ohio-1476.pdf>

**The trial court conducted a bench trial of appellant’s domestic violence case without a valid jury waiver. Prior to sentencing, the trial court vacated the**

guilty finding and set the case for a jury trial. Prior to the second trial, appellant filed a motion to dismiss on the theory that jeopardy had attached after the first trial. The trial court overruled the motion. On appeal, the Fifth District affirmed the trial court and held that jeopardy had not attached.

### ***State v. Romacko, 2016-Ohio-1512***

Search: Motion to Suppress

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/5/2016/2016-Ohio-1512.pdf>

The trial court did not err in granting the appellee's motion to suppress the search of her person. The police officer observed her walk down an alley, knock on a door, then put something in a trash can when nobody answered the door. He confronted the appellee and asked her what she was doing. She responded that she was a home health aid and was there to see a client. The officer asked her to pull out her pockets. She complied. The officer saw what he thought was a blue balloon, but turned out later to be latex-type gloves. Crack cocaine was later located inside the gloves. Under those facts, the trial court granted the motion to suppress because it was not a consensual encounter and the appellee could not have felt free to leave.

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

*Nothing new.*

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

*Nothing new.*

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

### ***State v. Goodson, 2016-Ohio-1535***

Plea: Sentencing

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2016/2016-Ohio-1535.pdf>

Appellant "appeals from her guilty plea and 44-year sentence in two separate cases, for six counts of sexual battery, five counts of unlawful sexual conduct with a minor, and one count of interference with custody of a child." Appellant withdrew her not guilty plea because her attorney told

her the longest sentence she would receive would be between 10 and 12 years in prison. At sentencing, the trial court “did not clearly explain to [Appellant] that she could be sentenced to either 12, 18, 24, 30, 36, 42, 48, 54, or 60 months for each count. Instead, the court merely stated ‘the potential prison *sentence* that I can give you *in this matter* is as follows: 12, 18, 24, 30, 36, 42, 48, 54, or 60 months.’” (Emphasis added.) Based on this language, [Appellant] had no basis to understand from the court that the maximum sentence she could receive consisted of a sentencing range from 12 to 60 months in prison for each count.” Therefore, the Eighth District found that “the trial court did not substantially comply with Crim.R. 11(C)(2)(a) in accepting her guilty plea.” It was a complete failure to comply with Crim.R. 11(C)(2)(a). Therefore, Appellant’s plea was not knowingly, intelligently, and voluntarily entered. The Eighth District vacated her guilty plea.

#### Ninth Appellate District of Ohio

**State v. Norris, 2016-Ohio-1526**

Sentencing: Court Costs: Restitution

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/9/2016/2016-Ohio-1526.pdf>

The trial court erred at sentencing where it did not provide appellant with an opportunity to seek a waiver of the payment of court costs and where it imposed restitution without giving appellant an opportunity to contest the amount.

#### 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

*Nothing new.*

#### Sixth Circuit Court of Appeals

**United States v. Carpenter, et al., Nos. 14-1572/1805**

**Fourth Amendment: Cell Phones**

**Full Decision:** <http://www.ca6.uscourts.gov/opinions.pdf/16a0089p-06.pdf>

**Summary from the Sixth Circuit:**

“In Fourth Amendment cases the Supreme Court has long recognized a distinction between the content of a communication and the information necessary to convey it. Content, per this distinction, is protected under the Fourth Amendment, but routing information is not. Here, Timothy Carpenter and Timothy Sanders were convicted of nine armed robberies in violation of the Hobbs Act. The government’s evidence at trial included business records from the defendants’ wireless carriers, showing that each man used his cellphone within a half-mile to two miles of several robberies during the times the robberies occurred. The defendants argue that the government’s collection of those records constituted a warrantless search in violation of the Fourth Amendment. In making that argument, however, the defendants elide both the distinction described above and the difference between GPS tracking and the far less precise locational information that the government obtained here. We reject the defendants’ Fourth Amendment argument along with numerous others, and affirm the district court’s judgment.”

**Supreme Court of the United States**

***Nothing new.***