

## Appellate Court Decisions - Week of 5/9/16

### First Appellate District of Ohio

#### **State v. Waheed, 2016-Ohio-2951**

##### **Domestic Violence: Ineffective Assistance**

**Full Decision:** [http://www.hamilton-co.org/appealscourt/docs/decisions/C-150254\\_05132016.pdf](http://www.hamilton-co.org/appealscourt/docs/decisions/C-150254_05132016.pdf)

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

“Defendant’s conviction for domestic violence as a first-degree misdemeanor was supported by sufficient evidence where the state offered into evidence defendant’s two prior domestic-violence convictions and defense counsel stipulated to the use of the prior convictions to elevate the degree of the offense from a fourth-degree misdemeanor to a first-degree misdemeanor.

“Trial counsel was not ineffective for failing to collaterally attack defendant’s prior domestic-violence convictions as having been uncounseled where there was nothing in the record to show that counsel’s failure to object to the admission of the prior convictions was not a matter of trial strategy and defendant could not demonstrate that the outcome of the trial would have been different had trial counsel made an objection.”

#### **State v. Conyers, 2016-Ohio-2952**

##### **Child Endangering: Sufficiency**

**Full Decision:** [http://www.hamilton-co.org/appealscourt/docs/decisions/C-150439\\_05132016.pdf](http://www.hamilton-co.org/appealscourt/docs/decisions/C-150439_05132016.pdf)

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

“Defendant-mother’s conviction for child endangering was not supported by sufficient evidence that she had acted recklessly or that she had created a substantial risk to her 15-year-old son’s health by failing to seek medical treatment for him where the evidence did not show that she knew or should have known that the child’s stepfather had thrown him against a wall or that the child had sustained an injury.”

### 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. Klingensmith, 2016-Ohio-2906**

Trial: Reopening Case

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/5/2016/2016-Ohio-2906.pdf>

The trial court erred in *sua sponte* reopening the case in a bench trial for the purpose of viewing Appellant's leg to see if it had a tattoo on it. This was nearly a week after the matter concluded.

### Sixth Appellate District of Ohio

#### **State v. Herman, 2016-Ohio-2871**

Traffic Rule 8(D)

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/6/2016/2016-Ohio-2871.pdf>

Summary from the Sixth District: At an arraignment for a traffic offense, prior to accepting a guilty plea, the trial court must make an individualized inquiry of the defendant to determine that the defendant knows and understands the rights that he or she is waiving, including the right to counsel.

### Seventh Appellate District of Ohio

*Nothing new.*

### Eighth Appellate District of Ohio

#### **State v. Glover, 2016-Ohio-2833**

## Motion for a New Trial: Exculpatory Evidence

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2016/2016-Ohio-2833.pdf>

Summary from the Eighth District: “The trial court properly granted defendants leave to file a motion for a new trial because defendants clearly and convincingly demonstrated that they were unavoidably prevented from discovering the evidence earlier to support their motion. The trial court did not err in granting defendants’ motion for a new trial based on the state’s failure to disclose exculpatory and material evidence, in violation of Brady. Based on the record, a reasonable probability exists that the jury would have reached a different decision if the exculpatory evidence had been known at trial.”

An assistant county prosecutor directed the police to deny any public records requests associated with the case. Those records included two police reports that were suppressed. Those reports included the names of two witnesses who were never disclosed. They saw the murder from a different angle than the other witnesses. There was also information about the victim and the victim’s brother being threatened the day before the murder. The brother had been shot at a week prior also. When the brother was shown the boys who were convicted of the murder, he could not identify any of them as the people who threatened them/shot at him a week earlier.

***State v. Cole, 2016-Ohio-2936***

Burglary: Sufficiency

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2016/2016-Ohio-2936.pdf>

Defendant was convicted of second-degree felony burglaries under R.C. 2911.12(A)(2). However, the State failed to present sufficient evidence that the victims were likely to be present at their homes at the time of the break-ins. The Eighth District modified the trial court’s judgment to convictions for felony burglaries in the third degree under R.C. 2911.12(A)(3).

## Ninth Appellate District of Ohio

***State v. Battle, 2016-Ohio-2917***

Court Costs

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/9/2016/2016-Ohio-2917.pdf>

The trial court failed to comply with former R.C. 2947.23(A)(1) when it sentenced Appellant to pay his court costs. Although it informed him that he would have to pay the costs of his prosecution, it did not inform him that his failure to pay them could result in the imposition of community service or that he would receive credit toward the costs from any community service so imposed.

### Tenth Appellate District of Ohio

***State v. Hartley*, 2016-Ohio-2854**

Sex Offender Registration: Failure to Provide Notice of Change of Address

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/10/2016/2016-Ohio-2854.pdf>

Summary from the Tenth District: “Trial court did not abuse its discretion by granting appellee’s motion to vacate his conviction for failure to provide notice of change of address. The trial court recognized that appellee’s Tier I sex offender classification was rendered void pursuant to *State v. Williams*, 129 Ohio St.3d 344, 2011-Ohio-3374. Because appellee was not subject to a valid sex offender classification, the trial court did not err by concluding that appellee’s failure to notify conviction was void and did not abuse its discretion by granting motion to vacate that conviction.”

***State v. D.S.*, 2016-Ohio-2856**

Sex Offender Registration

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/10/2016/2016-Ohio-2856.pdf>

Summary from the Tenth District: “Appellant’s sentence is not clearly and convincingly contrary to law and the record supports appellant’s sentence where the sentence fell within the range of sentences applicable to the degree of the offense and the trial court properly complied with the applicable sentencing provisions. Because appellant was improperly classified under the AWA, appellant’s classification must be vacated and

remanded to the trial court to conduct a hearing regarding classification under the law applicable at the time of the offense.”

### ***State v. Nigh, 2016-Ohio-2857***

#### **Restitution**

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

<http://www.supremecourt.ohio.gov/rod/docs/pdf/10/2016/2016-Ohio-2857.pdf>

Appellant’s fiancée or girlfriend was in the hospital with heart problems. Appellant took her car without her permission. Around the same time, Appellant’s fiancée/girlfriend stopped making payments on the car loan. Later, Appellant led police on a high-speed chase while driving his fiancée/girlfriend’s car, during which he crashed and damaged the car. Appellant was convicted of theft regarding the car. The lienholder got the car out of impoundment and auctioned it off. The trial court ordered Appellant to pay \$13,348.21, which represented the sum his fiancée/girlfriend owed the lienholder based on a civil judgment against her. That restitution order was error because it exceeded the economic loss of the victim caused by Appellant’s conduct. The Tenth District said, “the economic loss would be measured by the cost of repairs directly attributable to Appellant’s conduct, or the diminution in the value of the vehicle resulting from that conduct.”

#### **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**

*Nothing new.*

#### **Supreme Court of the United States**

*Nothing new.*