

## Appellate Court Decisions - Week of 6/13/16

### First Appellate District of Ohio

**State v. Lowe, 2016-Ohio-3423**

Counsel: Waiver: Sixth Amendment

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2016/2016-Ohio-3423.pdf>

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

“Defendant did not knowingly, intelligently, and voluntarily waive his Sixth Amendment right to counsel where defendant did not sign a written waiver of his right to counsel and where the trial court failed to explain the charge, the range of possible punishments, possible mitigating factors, defenses to the charge, or other pertinent facts.”

### Second Appellate District of Ohio

**State v. Palmer, 2016-Ohio-3359**

Motion to Suppress

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/2/2016/2016-Ohio-3359.pdf>

**Appellee was indicted for transporting more than ten scrap tires without obtaining an EPA registration certificate, in violation of R.C. 3734.83(A) and R.C. 3734.99(F), and possession of criminal tools (motor vehicle), in violation of R.C. 2923.24(A). The trial court did not err in granting Appellee’s motion to suppress. The police officer did not have a reasonable, articulable suspicion that Appellee had more than 10 tires or that Appellee lacked a scrap tire transporter registration.**

### Third Appellate District of Ohio

**State v. Koehler, 2016-Ohio-3384**

Sentencing: Intervention in Lieu of Conviction

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/3/2016/2016-Ohio-3384.pdf>

The trial court erred in sentencing Appellant to a prison term and community-control sanctions for the same offense – violating the terms of her intervention in lieu of conviction after pleading guilty to fifth-degree felony possession of heroin.

### Fourth Appellate District of Ohio

*Nothing new.*

### Fifth Appellate District of Ohio

**State v. Cooke, 2016-Ohio-3445**

Criminal Mischief: Sufficiency/Weight

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/5/2016/2016-Ohio-3445.pdf>

Appellant’s conviction for criminal mischief was based on insufficient evidence where there was no evidence she “in any way tampered with the property of another as defined by the statute.” Appellant was apparently intoxicated and ran up and down a couple of streets rapping and dancing. She jumped from one porch to another, frightening several children. She also beat on a person’s door, frightening his daughter. That conduct was already punished by her disorderly conduct conviction, which she did not challenge on appeal.

### Sixth Appellate District of Ohio

**State v. Haddox, 2016-Ohio-3368**

Sentencing: Theft: H.B. 86

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/6/2016/2016-Ohio-3368.pdf>

Because Appellant was sentenced after the effective date of H.B. 86 (Sept. 30, 2011), he was entitled to a reduction in the offense classification of some of his theft convictions. H.B. 86 increased the monetary ranges for the different offense levels for theft.

**State v. Rickard, 2016-Ohio-3374**

**Post-Conviction: Ineffective Assistance**

**Full Decision:**

<http://www.supremecourt.ohio.gov/rod/docs/pdf/6/2016/2016-Ohio-3374.pdf>

The trial court abused its discretion in finding that Appellant was not prejudiced by his trial counsel's failure to investigate the state of his mental health at the time of his offense. There was a reasonable probability a jury faced with the evidence of a possible mental defect on Appellant's part would have reached a different result at a new trial. Appellant was convicted of murder, two counts of aggravated vehicular homicide, two counts of felonious assault, and two counts of vehicular assault. Basically, he closed his eyes while driving and put his foot on the accelerator because God told him he would look out for him. A lot of extremely erratic behavior ensued after police and paramedics arrived. His trial attorney did no investigation into his mental state whatsoever, despite being confronted with that evidence.

**State v. Tingler, 2016-Ohio-3376**

**Sentencing: Restitution**

**Full Decision:**

<http://www.supremecourt.ohio.gov/rod/docs/pdf/6/2016/2016-Ohio-3376.pdf>

The trial court erred in not including Appellant's jail-time credit in his sentence and in not holding a restitution hearing.

**Seventh Appellate District of Ohio**

*Nothing new.*

**Eighth Appellate District of Ohio**

**Berea v. Moorer, 2016-Ohio-3452**

**Plea: No Contest**

**Full Decision:**

<http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2016/2016-Ohio-3452.pdf>

Summary from the Eighth District: “[Following a no contest plea, the] trial court failed to comply with R.C. 2937.07 because it did not call for an explanation of the circumstances of the OVI offense before finding defendant guilty, such that pursuant to judicial precedent, remand is required for defendant’s discharge.”

***State v. Truhlar, 2016-Ohio-3453***

Mistrial

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2016/2016-Ohio-3453.pdf>

Appellant was indicted for rape, among other offenses, one day before the 20-year statute of limitations ran, as a result of a CODIS DNA hit. He had a bench trial. The case was delayed nearly two years after indictment because the State was trying to get the victim’s medical records. Five days before the trial had ended, but before a finding of guilt or innocence, the state moved to supplement the trial record with the victim’s medical records. The trial court proceeded to declare a mistrial dismiss the case with prejudice. The Eighth District held that the trial court did not err in declaring a mistrial, but did err in dismissing the case with prejudice. The trial court did not invite a mistrial, so the dismissal should have been without prejudice.

**Ninth Appellate District of Ohio**

***State v. McClelland, 2016-Ohio-3436***

Plea Withdrawal

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/9/2016/2016-Ohio-3436.pdf>

Appellant pleaded guilty, but prior to sentencing, he filed a pro se motion to withdraw his plea, alleging that he entered the plea against his will, that he was innocent, and that his lawyer was ineffective for failing to file any of the motions he thought the lawyer would file on his behalf. During the inquiry on the motion at the sentencing hearing, the trial court inquired with the lawyer about Appellant’s allegations. The lawyer then related the full history of his representation of Appellant. The court then denied Appellant’s motion to withdraw his plea and sentenced him to five years in prison.

The Ninth District, based on those facts, held “that the trial court deprived [Appellant] of his right to counsel when it put his lawyer in a situation where the lawyer had to testify against his client’s interests when ruling on [Appellant’s] motion to withdraw his plea.” It also held that the trial court should have appointed Appellant new counsel before examining his lawyer about the adequacy of his representation.

**State v. White, 2016-Ohio-3440**

Restitution

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/9/2016/2016-Ohio-3440.pdf>

The trial court failed to hold a proper restitution hearing where Appellant was absent from the restitution hearing without explanation.

**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**

*Nothing new.*

**Supreme Court of the United States**

*Nothing new.*