

## Appellate Court Decisions - Week of 8/15/16

### First Appellate District of Ohio

#### **State v. Hengehold, 2016-Ohio-5383**

#### **Appellate Review: Jurisdiction: Postconviction**

#### **Full Decision:**

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2016/2016-Ohio-5383.pdf>

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

“In an appeal from the overruling of a postconviction motion, the court of appeals had no jurisdiction to entertain an assignment of error challenging the denial of postconviction relief on a ground not advanced in the motion.

“R.C. 2953.21 et seq. did not confer upon the common pleas court jurisdiction to entertain defendant’s postconviction challenge to his trial counsel’s effectiveness in failing to object to the trial court’s failure to provide at sentencing the community-service-for-nonpayment-of-costs notification required by R.C. 2947.23(A)(1): the claim was reviewable under the postconviction statutes, but did not satisfy the statutes’ time restrictions or jurisdictional requirements for a late postconviction claim.

“In an appeal from the overruling of a postconviction motion, the court of appeals had no jurisdiction to entertain an assignment of error challenging the denial of relief on the ground that the trial court had failed to provide at sentencing the community-service-for-nonpayment-of-costs notification required by R.C. 2947.23(A)(1): the judgment denying relief on that ground was not reviewable under the jurisdiction conferred upon an intermediate appeals court by R.C. 2953.02 or 2953.08 to review a judgment of conviction entered in a criminal case, by R.C. 2953.23(B) to review an order awarding or denying postconviction relief, or by R.C. 2505.03(A) to review, affirm, modify, or reverse a ‘final order, judgment or decree’; nor was the matter reviewable by either the common pleas court or the court of appeals under the jurisdiction to correct a void judgment.

“Defendant’s sentences were not subject to correction under a court’s jurisdiction to correct a void judgment, because his sentences would not have been rendered void by the alleged error in the imposition of costs, by the lack of community-service-for-nonpayment-of-costs notification, or by trial counsel’s alleged ineffectiveness concerning that notification.”

#### **State v. Emmons, 2016-Ohio-5384**

#### **Search: Motion to Suppress**

**Full Decision:**

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2016/2016-Ohio-5384.pdf>

**Summary from the First District:**

“The trial court erred in suppressing evidence of defendant’s illegal drug possession that had been obtained during a traffic stop of a car in which defendant had been a passenger: the trooper’s questions did not convert the stop into something other than a lawful seizure, because the questions did not unlawfully prolong the duration of the stop.”

**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**

*Nothing new.*

**Sixth Appellate District of Ohio**

*Nothing new.*

**Seventh Appellate District of Ohio**

*Nothing new.*

**Eighth Appellate District of Ohio**

**State v. Gordon, 2016-Ohio-5407**

**Joinder: Right to Counsel: Crim.R. 14**

**Full Decision:**

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2016/2016-Ohio-5407.pdf>

Appellant was charged with two counts of aggravated robbery, two counts of felonious assault, and one count of kidnapping. Later, appellant was charged with intimidation of a witness for posting on social media an edited version of the alleged victim's statement, making the alleged victim look like a snitch. The alleged victim received threats because of the video.

The state filed a motion to join the two cases and a motion to disqualify appellant's retained counsel because defense counsel would be a material witness in the intimidation cause. The trial court granted both motions. The cases proceeded to a jury trial. The jury found appellant guilty of all the charges except intimidation.

The Eighth District held that because appellant's original retained counsel was not a material witness in the robbery case, the trial court committed plain error in joining the two cases. Appellant sustained prejudice that outweighed the benefits of joinder because he lost the right to retain counsel of his choice in the robbery trial.

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

*Nothing new.*

### **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.*