

## Appellate Court Decisions - Week of 8/20/18

Note: This is not a comprehensive list of every case released this week.

### First Appellate District of Ohio

#### **State v. Patterson, 2018-Ohio-3348**

**Felonious Assault: Receiving Stolen Property: Evidence: ID: Ineffective Assistance: Sufficiency: Weight: Sentencing**

**Full Decision:**

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2018/2018-Ohio-3348.pdf>

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

**“In a felonious-assault prosecution, the trial court did not abuse its discretion in admitting a Facebook photograph depicting defendant with a gun where a detective testified that he had used the photograph in the course of his investigation to confirm defendant’s identity as the perpetrator, and the victim testified that the gun in the photograph was similar to the gun that the victim had seen defendant brandish.**

**“Where a police officer testified that in the aftermath of a shooting he had shown the victim several Facebook photographs of defendant’s accomplice to confirm the accomplice’s identity, the trial court did not err in overruling defendant’s motion for a mistrial based upon the state’s failure to preserve those photographs: defendant argued that the photographs may have contained defendant, so the photographs would have been at most potentially useful for defendant, and nothing suggested that the officer had acted in bad faith by failing to save the photographs.**

**“Defendant did not demonstrate ineffective assistance of counsel for counsel’s failure to file a motion to suppress defendant’s admission to a police officer that he had been at the scene of a shooting, but had not been the shooter, because the record does not demonstrate that defendant made the statement without having been advised of his rights under *Miranda v. Arizona*, 384 U.S. 436, 479, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).**

**“Defendant’s felonious-assault conviction was neither based on legally insufficient evidence nor contrary to the manifest weight of the evidence: the evidence adduced by the state at trial showed that defendant and an accomplice pointed guns at the victim, defendant threatened to shoot him, and the accomplice’s gun discharged.**

**“Defendant’s receiving-stolen-property conviction was neither based on legally insufficient evidence nor contrary to the manifest weight of the evidence: the evidence adduced by the state at trial showed that defendant had been driving a stolen vehicle the same day it had been reported stolen, and once a police officer initiated a stop of the vehicle, defendant crashed the vehicle into a post and fled on foot.**

**“The trial court did not err in imposing consecutive sentences: the trial court’s judgment entry tracked the necessary statutory language for consecutive-sentencing findings, and although the trial court did not recite the statutory language at the sentencing hearing, the appellate court can discern from the trial court’s comments that it engaged in the necessary analysis.”**

***State v. McHenry, 2018-Ohio-3383***

**Vehicular Manslaughter: R.C. 2945.75(A)(2): Ineffective Assistance**

**Full Decision:**

**<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2018/2018-Ohio-3383.pdf>**

**Summary from the First District: “Where defendant was charged with vehicular manslaughter, a misdemeanor of the second degree in violation of R.C. 2903.06(A)(4), and the complaint did not allege any element that would have elevated the degree of the offense, R.C. 2945.75(A)(2) was inapplicable.**

**“Where trial counsel’s decision not to hire a crime scene reconstructionist and to instead cross-examine the state’s witness was a matter of trial strategy, and where it cannot be demonstrated that the outcome of the proceedings would have been different but for counsel’s failure to hire such an expert, counsel did not render ineffective assistance.”**

**Second Appellate District of Ohio**

*Nothing to report.*

**Third Appellate District of Ohio**

*Nothing to report.*

**Fourth Appellate District of Ohio**

*Nothing to report.*

## Fifth Appellate District of Ohio

**State v. Woods, 2018-Ohio-3379**

Search: Motion to Suppress

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2018/2018-Ohio-3379.pdf>

The trial court did not err in granting Appellee's motion to suppress where "the trial court's determination that the troopers did not have probably cause to stop [Appellee] is supported by competent, credible evidence." The video evidence did not support the troopers' determination that Appellee was following the car in front of him too closely.

## Sixth Appellate District of Ohio

*Nothing to report.*

## Seventh Appellate District of Ohio

*Nothing to report.*

## Eighth Appellate District of Ohio

**State v. Huffman, 2018-Ohio-3315**

Plea: Agreed Sentence

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2018/2018-Ohio-3315.pdf>

Summary from the Eighth District: "State concedes error when court agreed to accept a plea bargain that would order prison time in the case to be served concurrently with prison time in another case, yet ultimately decided to order sentences in both cases to be served consecutively. The proper remedy was for the court to resentence the defendant under the plea agreement or allow the defendant to withdraw his guilty plea."

## Ninth Appellate District of Ohio

**State v. Woods, 2018-Ohio-3352**

**Search: Motion to Suppress: Marked-Lanes Violation**

**Full Decision:**

<https://www.supremecourt.ohio.gov/rod/docs/pdf/9/2018/2018-Ohio-3352.pdf>

**The trial court erred in denying Appellant's motion to suppress where the video of the alleged traffic infraction did not show Appellant's car driving on the yellow line for five seconds.**

**Tenth Appellate District of Ohio**

*Nothing to report.*

**Eleventh Appellate District of Ohio**

*Nothing to report.*

**Twelfth Appellate District of Ohio**

**State v. Kremer, 2018-Ohio-3339**

**Sentencing: Ineffective Assistance**

**Full Decision:**

<https://www.supremecourt.ohio.gov/rod/docs/pdf/12/2018/2018-Ohio-3339.pdf>

**Appellant pled guilty to possession of drugs with a previous conviction for a drug abuse offense under R.C. 2925.11(C)(2)(b). The offense is usually a first-degree misdemeanor, but if the offender has previously been convicted of a drug-abuse offense, it rises to a fifth-degree felony. Here, Appellant's previous offense was actually a juvenile adjudication. He had no adult conviction for a drug-abuse offense. Under *State v. Hand*, a juvenile adjudication cannot be used to enhance a penalty as an adult. Appellant's trial counsel was ineffective for failing to raise the issue in the trial court.**

**Supreme Court of Ohio**

*Nothing to report.*

**Sixth Circuit Court of Appeals**

**English v. Berghuis, No. 16-2676**

**Voir Dire: Sixth Amendment**

Full Decision:

<http://www.opn.ca6.uscourts.gov/opinions.pdf/18a0177p-06.pdf>

Appellant's conviction is reversed and remanded to state court where a juror failed to disclose – apparently willfully failed to disclose – that she had been a victim of sexual abuse. Appellant was charged with criminal sexual conduct.

**WELL, HERE'S ONE YOU'LL PROBABLY NEVER SEE AGAIN:**

***Ayers v. Hall*, No. 17-5038**

Right to Counsel

Full Decision:

<http://www.opn.ca6.uscourts.gov/opinions.pdf/18a0181p-06.pdf>

From the Opinion: “William Ayers was an experienced criminal-defense attorney in Kentucky who found himself on the wrong end of counsel’s table when he was indicted in 2008 on five counts of failing to file state tax returns. While Ayers undeniably represented himself throughout the twenty-one months between his indictment and his trial, it is undisputed that he never formally elected to do so: he never waived his right to counsel on the record, “file[d] a notice of appearance of any kind, appear[ed] with a co-counsel for any purpose, or file[d] a motion to be allowed to proceed pro se” during that time. Despite Ayers’s pro se status, the trial court allegedly failed to inform him at his arraignment that he had a right to counsel and never subsequently sought to determine whether Ayers’s selfrepresentation was a voluntary, intelligent, and knowing waiver of his right to counsel. Then, when Ayers asked for a continuance a day before his trial was scheduled to begin so that he could hire an attorney with whom he attested he was already in negotiations, the trial court denied his request and forced him to proceed pro se. Ayers was convicted on all five counts and now seeks habeas relief from these convictions.

“Because the Kentucky Supreme Court acted contrary to clearly established Supreme Court precedent when it held that trial courts need not “obtain a waiver of counsel” before allowing “experienced criminal trial attorneys” to represent themselves, and because we conclude upon de novo review of the record that Ayers did not validly waive his right to counsel, we REVERSE the district court’s denial of Ayers’s petition under 28 U.S.C. § 2254 and remand with instructions to grant the writ unless the Commonwealth of Kentucky elects to retry Ayers within ninety days of this court’s judgment. As Ayers is entitled to full relief on his waiver claim, we decline to decide whether the state trial court also violated Ayers’s right to counsel of his choice by declining to grant a continuance so that he could secure counsel.”

**Supreme Court of the United States**

*Nothing to report.*