

Appellate Court Decisions - Week of 8/29/16

First Appellate District of Ohio

In re: L.S., a minor child, 2016-Ohio-5582

Search

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-150526_08312016.pdf

Summary from the First District:

“In an adjudication for carrying a concealed weapon, the trial court erred in holding that the search of the juvenile’s book bag that was located between his legs on the floor of the vehicle in which the juvenile was a passenger was justified as an inventory search, because the police department’s official policies and procedures for an inventory search did not have a specific policy about the opening of closed containers during an inventory search.

“The search of the juvenile’s book bag was justified under the automobile exception to the warrant requirement, because the officers had probable cause to believe that it might contain contraband or evidence of a crime where the vehicle in which the juvenile was a passenger ran a stop sign, engaged in a high-speed chase with police, ran a red light and stopped only after crashing into a sign, the officers approached the car at gunpoint, and the juvenile not only ignored the officers’ repeated requests to drop the bag and put his hands up, but acknowledged that the bag was his and told the officers he was taking it.

“The trial court erred in denying the juvenile’s motion to be tried free of restraints without a showing of a particularized need for the restraints, but the error was harmless where the case was tried to the court and the record did not show that the shackles interfered with the juvenile’s ability to communicate with his counsel.”

Second Appellate District of Ohio

State v. Bush, 2016-Ohio-5536

Plea Withdrawal: Pre-Sentence

Full Decision: <https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2016/2016-Ohio-5536.pdf>

Summary from the Second District: “The trial court erred in summarily overruling the defendant’s pre-sentence request to withdraw his guilty plea

without affording him an opportunity to present evidence of an alleged recantation by a complaining witness that he suggested was the reason for his request to withdraw his plea.”

State v. Reeves, 2016-Ohio-5540

Ineffective Assistance

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2016/2016-Ohio-5540.pdf>

Summary from the Second District:

“The record establishes that appellant’s right to speedy trial was not violated with respect to the charges stated in the original complaint. However, regarding the additional counts in the indictment issued after the case was transferred to common pleas court, speedy trial time elapsed. Accordingly, Counts VII and VIII are to be dismissed by the trial court. Because the repeat violent offender specifications were ancillary to the charges of rape and unlawful sexual conduct with a minor to which they attached, appellant does not have a separate right to a speedy trial for the RVO specifications. Therefore, the RVO specifications are not subject to dismissal. Appellant received ineffective assistance when his counsel failed to object to the trial court’s decision to not allow him the opportunity to accept the plea bargain offered by the State. Additionally, the trial court erred when it refused to provide appellant the opportunity to accept the plea bargain offered by the State as previously promised.”

Third Appellate District of Ohio

State v. Malone, 2016-Ohio-5556

Engaging in a Pattern of Corrupt Activity: Dismissal: Double Jeopardy

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/3/2016/2016-Ohio-5556.pdf>

Summary from the Third District: “The trial court did not err in ordering a period of community control sanctions for one offense to begin after the completion of a prison term imposed for another offense. The trial court erred in concluding as a matter of law that an individual using his business entity to engage in a pattern of corrupt activity cannot constitute an ‘enterprise’ under R.C. 2923.31 et seq.”

However, because the trial court’s error was in an acquittal via Crim.R. 29, double jeopardy prevents retrying the issue.

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

Middleburg Heights v. Troyan, 2016-Ohio-5625

Continuance: Competency

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2016/2016-Ohio-5625.pdf>

Appellant was cited for failing to confine her dog. Prior to trial, her counsel made an oral motion for continuance, arguing she was unable to assist in her defense at the time. The trial court denied the request. Apparently the trial court was told in chambers the basis for the motion for continuance was that Appellant was intoxicated. The Eighth District reversed and remanded because merely asking Appellant whether she was “able to assist her attorney” was an insufficient inquiry.

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

State v. Duncan, 2016-Ohio-5559

Sentencing: Community Control

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/12/2016/2016-Ohio-5559.pdf>

Summary from the Twelfth District:

“Appellate court held that when a defendant is sentenced at the original sentencing hearing to community control on a count of conviction and notified at that time of the specific prison term he faces should he violate his community control, the defendant is only sentenced to community control and is not sentenced to that prison term. As a result, the notice of the prison term the defendant faces if he violates community control is neither ‘imposed’ nor ‘pronounced’ at the original sentencing hearing when community control is imposed. In so holding, appellate court clarified its prior decision in *State v. Painter*, 12th Dist. Clermont No. CA2012-04-031, 2013-Ohio-529.”

Supreme Court of Ohio

State v. Thomas, 2016-Ohio-5567

House Bill 86: R.C. 158(B): R.C. 1.52(A)

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/o/2016/2016-Ohio-5567.pdf>

Summary from the Supreme Court: “Defendant, who was convicted and sentenced in 2014 for offenses committed in 1993, is entitled to the benefit of the shorter potential sentences under the law in effect at the time of sentencing.”

Sixth Circuit Court of Appeals

Nothing new.