

Appellate Court Decisions - Week of 8/8/16

First Appellate District of Ohio

State v. Keelings, 2016-Ohio-5292

Procedure: Crim.R. 19: Magistrate

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2016/2016-Ohio-5292.pdf>

Summary from the First District:

“Where the defendant was convicted of falsification, but was never served with a copy of the magistrate’s decision, noncompliance with the requirements of Crim.R. 19(D)(3)(a)(iii), including the requirement that the magistrate’s decision be served on the defendant by the clerk, resulted in reversible error where the defendant lost the opportunity to file timely objections to the magistrate’s decision.”

State v. Neumeister, 2016-Ohio-5293

Postconviction: Sentencing: Theft

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2016/2016-Ohio-5293.pdf>

Summary from the First District:

“The trial court lacked jurisdiction to consider the defendant’s challenges to his convictions on the grounds that Hamilton County was not the proper venue and ineffective assistance of counsel: neither the alleged violation of the venue statute nor counsel’s alleged ineffectiveness, even if demonstrated, would have rendered the defendant’s convictions void.

“The trial court correctly determined that the defendant’s convictions were not void for lack of subject-matter jurisdiction where the defendant contented that the Hamilton County grand jury had lacked jurisdiction to indict him for certain offenses and thus the trial court lacked subject-matter jurisdiction to convict him of those offenses: even though subject-matter jurisdiction of the court may be raised at any time, the indictment to which the defendant pled guilty alleged that the offenses had occurred in Hamilton County, and the defendant effectively admitted that fact with his guilty pleas.

“This court may review under its jurisdiction to correct a void judgment the defendant’s contention that the trial court erred in overruling the defendant’s request to be

resentenced on certain counts of the indictment in accordance with 2011 Am.Sub.H.B. 86 ('H.B. 86').

“The trial court did not err in denying the defendant’s request to be resentenced on certain counts of the indictment under H.B. 86, which reduced the classification of theft-related felonies, where the defendant had pled guilty, and the defendant’s indictment had either (1) listed the values of loss in terms of pre-H.B. 86 ranges, and those ranges overlapped the ranges of loss amended by H.B. 86, or (2) listed a range of loss without a maximum threshold value. [*But see* DISSENT: Where the bill of particulars shows that the amount of loss underlying one of the defendant’s theft convictions constituted a fourth-degree-felony theft under H.B. 86, the defendant’s sentence for a third-degree-felony theft is void, and the defendant should be resentenced for a fourth-degree felony.]

“Where the trial court resentenced the defendant, the trial court erred in issuing its judgment entry of conviction nunc pro tunc to the original judgment of conviction because a nunc pro tunc entry may be issued only to correct a clerical error, or to reflect what a court actually decided, not to modify a sentence.”

State v. Nelson, 2016-Ohio-5344

Search: Motion to Suppress

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-150650_08122016.pdf

Summary from the First District:

“The trial court erred in granting defendant’s motion to suppress evidence obtained during a warrantless search of his bedroom after probation officers entered the home he shared with a probationer, peeked through a blanket hanging in the entrance to defendant’s bedroom, and saw a gun and a bag of marijuana: the probationer had consented to the search of his residence when he agreed to the terms of his community control, provided that the probation officers had reasonable grounds to believe the probationer was not abiding by the law or the conditions of his community control, and even if the probationer’s consent did not extend to the defendant’s bedroom, concerns for officer safety justified the limited intrusion into the bedroom.”

State v. Long, 2016-Ohio-5345

Sentencing: Allocution

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-150713_08122016.pdf

Summary from the First District:

“The trial court did not deny the defendant his right of allocution even though it refused to allow him to speak following a discussion of the presentence-investigation report where the trial court had allowed the defendant to speak earlier in the sentencing hearing and where the defendant had the presentence-investigation report prior to the sentencing hearing and had had an opportunity to address its contents.”

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. Hampton, 2016-Ohio-5321

Jury: *Batson*

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2016/2016-Ohio-5321.pdf>

The Eighth District reversed Appellant’s convictions for murder, involuntary manslaughter, felonious assault, and assault and remanded for a new trial because the trial court erred in its *Batson* analysis. The state never gave a reason for its use of one of its peremptory challenges against an African-American female. Instead, the state merely argued the removal

of the African-American female was not prejudicial because she would be replaced by another African-American female. Without the analysis of a race-neutral reason for removing the juror, the case had to be remanded for a new trial.

State v. Radney, 2016-Ohio-5328

Kidnapping: Sexual Motivation Specification

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2016/2016-Ohio-5328.pdf>

Appellant's kidnapping conviction should have been a second-degree felony rather than a first-degree felony where the trial court erred in concluding that the victim was not left in a safe place unharmed. The victim, a 27-year-old developmentally disabled adult who graduated high school, was left at a Walmart in a city where she did not live and where she did not have a vehicle. However, she was able to make calls and secure a ride home. Also, although there was also a gross sexual imposition conviction, there was no evidence of any injuries, and psychological harm is not the type of harm contemplated. The Eighth District remanded the case for resentencing to a second-degree felony.

Ninth Appellate District of Ohio

State v. Kuhns, 2016-Ohio-5312

Theft: Sufficiency

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/9/2016/2016-Ohio-5312.pdf>

Appellant rented a saw from a tool rental business for one day. He never returned the saw. After a month, the tool rental business filed charges for theft. In determining the value of the saw for the purpose of determining the level of the theft offense, the trial court included the rental fees for the whole month. The Ninth District held including the rental fees was error, and remanded the case back to the trial court for determination of the value of the saw without the rental fees included.

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.