

Appellate Court Decisions - Week of 9/26/16

First Appellate District of Ohio

State v. Geary, 2016-Ohio-7001

Inducing Panic: Jury Instructions: Sentencing: Court Costs

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2016/2016-Ohio-7001.pdf>

Summary from the First District:

“Where the jury instruction on inducing panic under R.C. 2917.31(A)(3) did not identify a specific predicate offense by statute number or list the elements of that offense, the omission was harmless error where the undisputed evidence at trial showed the defendant had violated R.C. 4511.50(B) by walking on and kneeling in a lane of travel on the interstate.

“The trial court did not err in instructing the jury that the First Amendment right to free speech can be subject to time, manner, and place restrictions.

“Defendant’s conviction for inducing panic was supported by sufficient evidence where the state presented evidence that the defendant, as part of a group of 80-100 protestors, had walked on the interstate blocking oncoming traffic despite the officers’ warnings, causing the interstate to be closed to the motoring public for 15-30 minutes so the defendant and other protestors could be removed.

“The trial court erred by imposing court costs in the judgment of conviction without addressing court costs at the sentencing hearing and affording the defendant the opportunity to argue he was entitled to a waiver of costs.”

State v. Barker, 2016-Ohio-7059

Juvenile: Motion to Suppress: *Miranda*

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2016/2016-Ohio-7059.pdf>

Summary from the First District:

“The trial court did not err in overruling the juvenile defendant’s motion to suppress his statements made to police officers where, despite the child’s age and intelligence level,

the totality of the circumstances showed that he voluntarily, intelligently and knowingly waived his *Miranda* rights.

“The trial court did not err in overruling the defendant’s motion to suppress his statements where there was no indication of police coercion and the totality of the circumstances demonstrated that the defendant made his statements voluntarily.”

State v. Palazzolo, 2016-Ohio-7043

Sentencing

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2016/2016-Ohio-7043.pdf>

Summary from the First District:

“The defendant’s sentences for one count of gross sexual imposition and three counts of attempted gross sexual imposition were not clearly and convincingly contrary to law where the trial court sentenced the defendant within the statutory ranges, considered the purposes and principles of sentencing, and did not sentence the defendant to the maximum sentence of incarceration on all counts.

“The trial court made the proper consecutive-sentencing findings pursuant to R.C. 2929.14(C)(4), but because the trial court failed to journalize those findings in the judgment entry, the cause must be remanded for a nunc pro tunc entry to include the consecutive-sentencing findings in the judgment entry.

“The trial court did not violate the defendant’s due-process rights in imposing sentence where the trial court afforded the defendant his right to allocution, the state did not present any new information in rebuttal to the defendant’s statements, and defense counsel was permitted to respond to the state’s remarks.”

State v. Holden, 2016-Ohio-7042

Solicitation: Indictment: Speedy Trial

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2016/2016-Ohio-7042.pdf>

Summary from the First District:

“The trial court did not err in overruling the defendant’s motion to dismiss the complaint where it tracked the statutory language of the offense of solicitation, and it was sufficient to provide the defendant with notice of the offense charged and to invoke the trial court’s subject-matter jurisdiction.

“R.C. 2907.24(E) does not add an element to the offense of solicitation, but rather defines the element of ‘sexual activity for hire.’

“The defendant was brought to trial within the 45 days of speedy-trial time prescribed by R.C. 2945.71(B)(1) for a third-degree misdemeanor.

“The trial court did not err in finding the defendant guilty of solicitation following his plea of no contest, because the complaint contained sufficient allegations to support the offense of solicitation where it specifically alleged that the defendant had solicited a police officer to engage in sexual activity for hire.”

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

State v. Fowler, 2016-Ohio-5940

Motion to Suppress: *Miranda*

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2016/2016-Ohio-5940.pdf>

The trial court did not err in granting Appellee’s motion to suppress his statements because the state failed to meet its burden to show his waiver of his rights was knowing, intelligent, and voluntary. Basically, apparently the video shows Appellee was handed the waiver form. He told the detectives he could not see without his glasses. The detective basically made him sign the waiver “on the X” without Appellee every acknowledging he knew what he was signing or the significance of what he was signing.

Sixth Appellate District of Ohio

Nothing new.

Seventh Appellate District of Ohio

Nothing new.

Eighth Appellate District of Ohio

Nothing new.

Ninth Appellate District of Ohio

Nothing new.

Tenth Appellate District of Ohio

State v. Urbina, 2015-Ohio-7009

Evidence

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/10/2016/2016-Ohio-7009.pdf>

Appellant was charged with OVI two ways and driving under OVI suspension after he allegedly skidded off the road into an embankment during a snowstorm. Appellant only spoke Spanish and it was not readily apparent he was the driver. The woman who Appellant presented as the actual driver claimed she was supposed to get a 4x4 vehicle to use to get the car out of the embankment, but did not make it back because she had to rush to the hospital instead. She had a miscarriage because of the accident. The trial court did not allow the woman to testify about her pregnancy, or the fact that she was also undergoing cancer treatment, “bleeding nausea, vomiting or any of that.” She was only allowed to mention she had a medical condition.

Appellant’s entire defense was that he was not driving. The woman was unable to testify to key details about her behavior that night. The state used the lack of detail against her, and she could not explain herself. The Tenth District held the trial court abused its discretion in precluding the woman’s testimony regarding being pregnant and about suffering a miscarriage immediately after the accident.

There was also an issue with regarding to the officer testifying that the tire tracks in the snow had been there “less than ten minutes.” Without the proper foundation that the officer was an expert, his lay opinion on how long the tire tracks had been in the snow was impermissible.

State v. Scarberry, 2016-Ohio-7065

Motion to Suppress

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/10/2016/2016-Ohio-7065.pdf>

The trial court erred in denying Appellant's motion to suppress. Although Appellant conceded the initial traffic stop was legitimate, the officer intended to give Appellant a warning and send him on his way. He told Appellant he was free to go. Before Appellant pulled away, the officer asked if Appellant would consent to a pat-down search. In other words, the officer sought consent after the purpose of the stop was complete.

There was no separate reasonable suspicion of other criminal activity to justify further detention. However, because the trial court did not consider whether Appellant's consent to search was voluntary in the context of an unlawful detention, the 10th District remanded the case for further proceedings under that analysis.

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.