Appellate Court Decisions –2/18/25

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

First Appellate District of Ohio

Nothing to report.

Second Appellate District of Ohio

Nothing to report.

Third Appellate District of Ohio

Nothing to report.

Fourth Appellate District of Ohio

***State v. Kozee*, 2025-Ohio-364**

Reagan Tokes

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/4/2025/2025-Ohio-364

In conviction for felonious assault, conviction affirmed, but case remanded for resentencing for trial court to properly advise appellant "of the mandatory indefinite-prison-sentence notifications pursuant to the Reagan Tokes Act."

Fifth Appellate District of Ohio

***State v. Palmer*, 2025-Ohio-523**

Jail-time credit

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2025/2025-Ohio-523

In convictions and concurrent sentences out of two separate counties, trial court erred in failing to award appellant 99 days of jail-time credit on both cases where he was incarcerated on one county's case before he was sentenced on the other county's case. State concedes error.

Sixth Appellate District of Ohio

***State v. Latham*, 2025-Ohio-495**

Second Amendment/*Bruen*/improperly handling

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2025/2025-Ohio-495

In state's appeal, trial court did not err in dismissing the indictment for improperly handling firearms in a motor vehicle, trial court did not err. Appellant was a person protected by the Second Amendment, and "[t]he state failed to proffer any historical analogue that demonstrated a history and tradition of limiting the Second Amendment rights for a person in [appellant's] circumstances." Trial court's decision affirmed.

***State v. McClain*, 2025-Ohio-577**

Costs of confinement

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2025/2025-Ohio-577

Trial court erred in imposing the costs of confinement in the sentencing entry without considering appellant's ability to pay and when it failed to impose them on the record at the sentencing hearing. Order to pay costs of confinement vacated.

Seventh Appellate District of Ohio

Nothing to report.

Eighth Appellate District of Ohio

***State v. Humphries*, 2025-Ohio-455**

Sentencing; Reagan Tokes

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2025/2025-Ohio-455.pdf

In convictions for, inter alia, aggravated robbery, trial court erred in failing to "'advise [appellant] of the consequences he faced if he violated postrelease control.'" Court also erred when it failed to "advise [appellant]

of all the mandatory notification provisions under R.C. 2929.19(B)(2)(c)." Case remanded for resentencing for trial court to properly advis[e] [appellant] of the consequences of violating postrelease control and properly notify[] him as mandated under R.C. 2929.19(B)(2)(c)."

Ninth Appellate District of Ohio

Nothing to report.

Tenth Appellate District of Ohio

Nothing to report.

Eleventh Appellate District of Ohio

Nothing to report.

Twelfth Appellate District of Ohio

Nothing to report.

Supreme Court of Ohio

***State ex rel. Adkins v. Cole*, 2025-Ohio-558**

Mandamus/statutory damages

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2025/2025-Ohio-558.pdf

Petitioner made a public records request to inspect and obtain a copy of an inmate's handbook to the warden's assistant at his prison; the assistant failed to respond to the request and failed to provide petitioner with such a copy for 18 days. Pursuant to R.C. 149.43(C)(2), "[s]tatutory damages are set at $100 a day for each business day the public office failed to comply with its obligations under R.C. 149.43(B), starting with the day the requester filed the mandamus action, with a maximum award of $1,000." Therefore, OSC awards petitioner damages in the amount of $1,000.

Sixth Circuit Court of Appeals

Nothing to report.

Supreme Court of the United States

***Gossip v. Oklahoma*, 604 U.S. ____ (2025)**

Death penalty; prosecutorial misconduct

Full Decision:
https://www.supremecourt.gov/opinions/24pdf/22-7466_5h25.pdf

***Held*:**

1. This Court has jurisdiction to review the OCCA's judgment. The independent and adequate state ground doctrine precludes the Court from considering a federal question if the state court's decision rests on an independent and adequate state law ground. OCCA's application of the PCPA was not such a ground, because the OCCA's decision to apply the PCPA depended on its antecedent rejection of the attorney general's confession of a *Napue* error, which was based solely on federal law. The OCCA held that the confession could not overcome the PCPA's limitations because it lacked a basis in law or fact, specifically finding no *Napue* error.

Oklahoma precedent confirms that the OCCA normally rejects an attorney general's confession of error only after finding it unsupported by law and the record. By making the application of the PCPA contingent on its determination that the attorney general's confession of federal constitutional error was baseless, the OCCA made the procedural bar dependent on an antecedent ruling on federal law. To the extent that the OCCA's reasoning on this point is insufficiently "clear from the face of the opinion," the Court presumes reliance on federal law under *Michigan v. Long*, 463 U. S. 1032, 1040–1041.

2. The prosecution violated its constitutional obligation to correct false testimony.

(a) Under *Napue*, a conviction obtained through the knowing use of false evidence violates the Fourteenth Amendment's Due Process Clause. To establish a *Napue* violation, a defendant must show that the prosecution knowingly solicited or allowed false testimony to go uncorrected. If a violation is established, a new trial is warranted if the false testimony could in any reasonable likelihood have affected the jury's judgment; meaning, ordinarily, that the prosecution must establish harmlessness beyond a reasonable doubt. *United States v. Bagley*, 473 U. S. 667, 680, n. 9; *Chapman v. California*, 386 U. S. 18, 24. Here, Oklahoma's attorney general joins Glossip in asserting a *Napue* error, conceding that Sneed's testimony about his lithium prescription was false and that the prosecution knowingly failed to correct it. The record supports that confession of error. Evidence showed that Sneed was prescribed lithium to treat bipolar disorder, not after asking for cold medicine as he claimed at trial. The evidence likewise establishes that the prosecution knew Sneed's

testimony was false. The prosecution almost certainly had access to Sneed's medical file through Sneed's competency evaluation. And Smothermon's notes show that she had a pre-trial conversation with Sneed at which he mentioned "lithium" and "Dr. Trumpet." The straightforward inference is that Smothermon was aware before trial that Sneed had received his lithium prescription from Dr. Trombka, a psychiatrist and the sole medical professional at the Oklahoma County jail authorized to prescribe lithium.

Because Sneed's testimony was the only direct evidence of Glossip's guilt, the jury's assessment of Sneed's credibility was material and necessarily determinative. Correcting Sneed's lie would have undermined his credibility and revealed his willingness to lie under oath. The false testimony also bore on Glossip's guilt because evidence of Sneed's bipolar disorder, which could trigger impulsive violence when combined with his drug use, would have contradicted the prosecution's portrayal of Sneed as harmless without Glossip's influence. Hence there is a reasonable likelihood that correcting Sneed's testimony would have affected the judgment of the jury. *Napue*, 360 U. S., at 271. Additional prosecutorial misconduct, such as violating the rule of sequestration, destroying evidence, and withholding witness statements, further undermines confidence in the verdict. Consequently, the prosecution's failure to correct Sneed's false testimony entitles Glossip to a new trial under *Napue*.

(b) The OCCA's contrary holding rests on a mistaken interpretation of *Napue*. The OCCA held that there was no violation because the defense was aware or should have been aware that Sneed was taking lithium. But Sneed's false testimony concerned the reasons for his prescription, not merely the fact that he had taken lithium. Moreover, the Due Process Clause imposes the duty to correct false testimony on the State, not the defense. The OCCA's holding that Sneed was likely in denial of his mental health disorders is beside the point; what matters is that the testimony was false and the prosecutor knowingly allowed it to stand.

Additional arguments in support of the OCCA's position are unpersuasive. *Napue* does not require that the false testimony itself must have directly affected the trial's outcome; *Napue* requires assessing whether the prosecutor's failure to correct the testimony could have contributed to the verdict. Also unpersuasive are arguments based on extra-record materials and insufficient time spent interviewing the prosecutor.

Because the attorney general's confession of error is supported by ample evidence, the Court declines to remand this case for further evidentiary proceedings. When the Court has jurisdiction, a new trial is the appropriate remedy for a violation of *Napue*.

157 P. 3d 143, reversed and remanded.

SOTOMAYOR , J., delivered the opinion of the Court, in which ROBERTS , C. J., and KAGAN, KAVANAUGH, and JACKSON, JJ., joined, and in which BARRETT , J., joined as to Part II. BARRETT , J., filed an opinion

concurring in part and dissenting in part. THOMAS , J., filed a dissenting opinion, in which ALITO, J., joined, and in which BARRETT , J., joined as to Parts IV–A–1, IV–A–2, and IV–A–3. GORSUCH, J., took no part in the consideration or decision of the case.