

Appellate Court Decisions - Week of 1/1/18

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

State v. Wilson, 2017-Ohio-9317

Motion to Suppress

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2017/2017-Ohio-9317.pdf>

Summary from the Second District:

“The trial court made factual findings that, when defendant’s vehicle turned in front of the police cruiser, the cruiser ‘gently decelerated’ to the posted speed limit and that there was ample distance between the police cruiser and defendant’s vehicle. Given the trial court’s findings, the officers lacked a reasonable articulable suspicion that defendant failed to yield to the cruiser when he turned in front of the cruiser, and the trial court did not err in suppressing evidence found as a result of the unlawful stop. Judgment affirmed.”

State v. Lewis, 2017-Ohio-9311

Right to Counsel: Sentencing

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2017/2017-Ohio-9311.pdf>

Summary from the Second District:

“The trial court erred in imposing a sentence of confinement for the appellant’s misdemeanor offense of contributing to the delinquency of a minor without first inquiring and determining whether she knowingly, intelligently, and voluntarily waived her right to counsel and asserted her right to self-representation. The record contains legally sufficient evidence to support a finding that the appellant recklessly failed to provide written excuses for her son’s school absences for purposes of her conviction for

contributing to the delinquency of a minor. The confinement portion of the appellant's sentence is vacated. As so modified, the trial court's judgment is affirmed. (Froelich, J., dissenting.)”

Third Appellate District of Ohio

Nothing to report.

Fourth Appellate District of Ohio

Nothing to report.

Fifth Appellate District of Ohio

Nothing to report.

Sixth Appellate District of Ohio

Nothing to report.

Seventh Appellate District of Ohio

Nothing to report.

Eighth Appellate District of Ohio

State v. Thomas, 2017-Ohio-9274

Sentencing

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2017/2017-Ohio-9274.pdf>

Summary from the Eighth District:

“Presumption of vindictive sentencing applied where trial court, after defendant’s successful appeal of nonmaximum sentences erroneously imposed based on law at the time of the commission of offenses, resentenced defendant to maximum sentences on remand. Presumption was not rebutted where trial court offered no explanation on the record as to why it imposed maximum sentences on remand when it did not impose maximum sentences originally.”

Ninth Appellate District of Ohio

Nothing to report.

Tenth Appellate District of Ohio

State v. Dibble, 2017-Ohio-9321

Motion to Suppress

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/10/2017/2017-Ohio-9321.pdf>

Summary from the Tenth District:

“Where a search warrant affidavit provided no information about criminal activity that occurred or was likely to have occurred at a criminal defendant's home or about criminal activity that occurred between the defendant, a school teacher, with a student at school but did not indicate the existence of evidence stored at the defendant's home, no probable cause existed to search the defendant's house and no officer could, in good faith, have executed and relied on a warrant issued in connection with that affidavit.”

Eleventh Appellate District of Ohio

State v. Ferrell, 2017-Ohio-9341

Motion to Suppress

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2017/2017-Ohio-9341.pdf>

The trial court erred in denying Appellant’s motion to suppress. Appellant was the backseat passenger in a car that was pulled over for a marked-lanes violation. Appellant consented to a search of his pockets. Eventually, contraband was found in his socks. The Eleventh District held that consent to search his pockets did not extend to the search of his socks. The Eleventh District also held that Appellant’s admissions to the police officers should have been suppressed because the police officers did not give him his *Miranda* warnings after placing him in handcuffs, or before questioning him.

State v. Struble, 2017-Ohio-9326

Evidence

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2017/2017-Ohio-9326.pdf>

The trial court erred to the prejudice of appellant in admitting the National Precursor Log Exchange (NPLEx) report on his purchases or attempted purchases of pseudoephedrine at pharmacies because the testimony of pharmacists was not sufficient to lay a foundation for the report, which is created and kept by a private company, Appriss, which receives the information from pharmacies.

Twelfth Appellate District of Ohio

Nothing to report.

Supreme Court of Ohio

State v. Beasley, 2018-Ohio-16

No-Contest Pleas: Crim.R. 11

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2018/2018-Ohio-16.pdf>

“{¶ 1} Defendant-appellant, Andrea Beasley, appeals the judgment of the First District Court of Appeals, which concluded that Beasley forfeited her right to challenge the trial court’s policy of refusing to accept no-contest pleas. We agree with the court of appeals that the trial court erred by adhering to such an arbitrary policy. But we also conclude that Beasley preserved the error for appeal. For the reasons below, we reverse the judgment of the court of appeals and remand the matter to the trial court to allow Beasley to enter a new plea in accordance with Crim.R. 11.”

In re D.H., 2018-Ohio-17

Juvenile Court: Appeals: R.C. 2505.02: Bindover

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2018/2018-Ohio-17.pdf>

“{¶ 1} May a juvenile who is “bound over” to adult court immediately appeal the bindover decision, or must his appeal wait until the end of the adult-court proceedings? We conclude that the appeal must wait. That is what the court of appeals decided, so we affirm its judgment.”

State v. Pountney, 2018-Ohio-22

Aggravated Possession of Drugs: Fentanyl: Enhanced Felony Levels: R.C. 2925.01(D)(1)(d)

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/o/2018/2018-Ohio-22.pdf>

“{¶ 1} In this appeal, we examine the statutory requirements for proving enhanced felony levels of aggravated possession of fentanyl based on the amount of the drug involved. Ohio defines these levels in terms of multiples of the ‘bulk amount,’ which for the fentanyl at issue in this case means ‘five times the maximum daily dose in the usual dose range specified in a standard pharmaceutical reference manual.’ R.C. 2925.01(D)(1)(d). Appellant, the state of Ohio, asks this court to hold that ‘because there is no ‘usual dose range’ of fentanyl, the State may rely upon the usual dose range of morphine, the prototype drug for fentanyl, to establish the bulk amount of fentanyl under R.C. 2925.01(D)(1)(d).’

“{¶ 2} Fentanyl, a Schedule II controlled substance, is a synthetic opioid that is approximately 100 times more potent than morphine and 50 times more potent than heroin. R.C. 3719.41 (Schedule II(B)(9)); United States Dept. of Justice, Drug Enforcement Administration, Drugs of Abuse, A DEA Resource Guide 40 (2017), https://www.dea.gov/pr/multimedia-library/publications/drug_of_abuse.pdf#page=40 (accessed Dec. 12, 2017). Fentanyl and related drugs were involved in nearly 60 percent of Ohio’s 4,050 overdose deaths in 2016. Ohio Dept. of Health, News Release, Fentanyl, Carfentanil and Cocaine Drive Increase in Drug Overdose Deaths in 2016 (Aug. 30, 2017), <http://www.odh.ohio.gov/-/media/ODH/ASSETS/Files/health/injury-prevention/ODH-News-Release--2016-Ohio-Drug-Overdose-Report.pdf?la=en> (accessed Dec. 12, 2017). And in the first two months of 2017, approximately 90 percent of unintentional overdose deaths in 25 Ohio counties involved fentanyl, fentanyl analogs or both. Daniulaityte, Juhascik, Strayer, Sizemore, Harshbarger, Antonides, and Carlson, Overdose Deaths Related to Fentanyl and its Analogs—Ohio, January-February 2017, 66 Morbidity & Mortality Weekly Report No. 34, 904, 905-906, <https://www.cdc.gov/mmwr/volumes/66/wr/pdfs/mm6634a3.pdf> (accessed Dec. 12, 2017), datum corrected in Errata: Vol. 66 No. 34, 66 Morbidity & Mortality Weekly Report No. 38, 1030, <https://www.cdc.gov/mmwr/volumes/66/wr/pdfs/mm6638a8.pdf>

(accessed Dec. 12, 2017) (clarifying that the number of counties was 25).

“{¶ 3} To be sure, enhanced felony prosecution for possession of fentanyl is one weapon in the state’s arsenal in the war on drug-related crime. But what the state asks here requires the General Assembly, not this court, to act. We reject the state’s interpretation of the enhancement provisions for fentanyl possession because it conflicts with unambiguous statutory language. We affirm the judgment of the court of appeals.”

In re R.K., 2018-Ohio-23

Termination of Parental Rights: R.C. 2151.352

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/o/2018/2018-Ohio-23.pdf>

“When the state seeks to terminate a parent’s parental rights, the parent has the right to counsel. The parent cannot be deprived of that right unless the court finds that the parent has knowingly waived the right to counsel. Waiver of counsel cannot be inferred from the unexplained failure of the parent to appear at a hearing.”

Sixth Circuit Court of Appeals

Stimmel v. Sessions, No. 15-4196

Second Amendment: Domestic Violence

Full Decision:

<http://www.opn.ca6.uscourts.gov/opinions.pdf/18a0003p-06.pdf>

“Plaintiff Terry Lee Stimmel tried to purchase a firearm at a Walmart store in 2002. However, the store rejected Stimmel’s offer because a mandatory national background check revealed that he had been convicted of misdemeanor domestic violence in 1997 and federal law prohibits domestic violence misdemeanants from possessing firearms. 18 U.S.C. § 922(g)(9). Thereafter, he unsuccessfully appealed to the Federal Bureau of Investigation (‘FBI’) and challenged the law in district court. Following the district court’s dismissal of his complaint, Stimmel appeals.

“The gravamen of Stimmel’s appeal to this court is a question of first impression in our circuit: whether the firearm restriction, 18 U.S.C. § 922(g)(9), unconstitutionally burdens his Second Amendment rights. We hold that it does not.

“In affirming the district court, we join the growing consensus of our sister circuits that have unanimously upheld the constitutionality of the domestic violence misdemeanor restriction to firearms possession. Here, the record contains sufficient evidence to reasonably conclude that disarming domestic violence misdemeanants is substantially related to the government’s compelling interest of preventing gun violence and, particularly, domestic gun violence. Because Stimmel’s conviction remains in effect, and he fails to rebut the government’s evidence that domestic violence misdemeanants pose a significant risk of future armed violence, we conclude that § 922(g)(9) survives intermediate scrutiny.”

Supreme Court of the United States

Nothing to report.