

## **Appellate Court Decisions - Week of 10/16/17**

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

### **First Appellate District of Ohio**

#### **State v. Buck, 2017-Ohio-8242**

**Kidnapping: Motion to Suppress: Prosecutorial Misconduct: Due Process: Judicial Bias: Conflict of Interest: Prejudicial Evidence**

**Full Decision:**

<https://www.supremecourt.ohio.gov/rod/docs/pdf/1/2017/2017-Ohio-8242.pdf>

#### **Summary from the First District:**

“The trial court properly denied defendant’s motion to suppress evidence seized from his residence under the emergency-aid exception to the warrant requirement where the police reasonably believed, based on specific and articulable facts, that a still-missing and injured kidnapping victim whose life was in jeopardy and the cell phone used by a kidnapper to make ransom calls to the victim’s brother were in the residence.

“The warrantless search of defendant’s cell phone was justified by exigent circumstances where a still-missing kidnapping victim’s life was in danger and the police reasonably believed that the phone had been used in the kidnapping operation.

“Defendant’s kidnapping conviction was based on sufficient evidence where defendant and his accomplices removed a victim by force from the place where he was found and held him for ransom, defendant was found in possession of a cell phone used to make ransom demands, defendant’s voice was recognized by a detective who had monitored multiple ransom calls made by defendant, and defendant’s calls from jail demonstrated that he was involved in the crime and aware of the incriminating nature of his cell phone.

“The jury could have reasonably concluded that defendant made ransom calls to the kidnapping victim’s family where the phone was in defendant’s pocket and contained selfie photographs and videos of defendant, the required-birthdate password for the prepaid account on the phone was one digit different than defendant’s actual birthdate, and defendant’s jail calls demonstrated that he knew that the phone was damning evidence against him.

“Defendant’s claim of prosecutorial misconduct based on the use of false testimony fails where defendant failed to demonstrate that a state’s witness’s statement was false, that the statement was material, or that the prosecutor knew it was false: mere

inconsistencies in the testimony of the state's witness did not establish that the prosecutor knowingly used false testimony.

“An episode where the trial judge confronted defense counsel outside of the courtroom and out of the jury's presence, and the judge expressed impatience and used profanity with defense counsel, did not demonstrate bias or partiality on the judge's part, and defendant failed to establish that he suffered prejudice from not being present for an in-chambers and on-the-record discussion about the confrontation, because defendant implicitly waived his presence for the discussion which was recorded at the request of defense counsel, who was authorized to waive the defendant's presence.

“Where defendant did not inform the court until the tenth day of a jury trial that he had been represented by his codefendant's counsel nine years earlier, defendant did not testify, the codefendant testified that defendant had nothing to do with the charged offense, and codefendant's counsel had done nothing to try to incriminate defendant, defendant failed to demonstrate that he was prejudiced as a result of the prior representation, and the trial court did not err by failing to conduct a further inquiry into a potential conflict of interest.

“The trial court did not abuse its discretion by denying defendant's motion for a mistrial for an alleged discovery violation: even if the prosecutor had failed to disclose a second police interview with a state's witness, there was no indication that any such failure was willful, and foreknowledge of the interview would not have benefitted the defense.

“The trial court did not abuse its discretion in fashioning a remedy for an alleged discovery violation by the state where the state may have failed to disclose a second police interview with a state's witness: the court recessed so that defense counsel could meet with the interviewing detective to discuss the content of the interview and allowed counsel to cross-examine the detective about whether information regarding the interview had been withheld.

“The trial court's failure to record sidebar conferences did not result in reversible error where the court summarized on the record the content of the conferences and allowed defense counsel the opportunity to clarify or modify the summary, defense counsel did not object to the court's procedure, and defendant failed to supplement the record on appeal pursuant to App.R. 9.

“In a kidnapping trial where a gun was allegedly used by a kidnapper, the trial court abused its discretion by admitting into evidence photographs of defendant's tattoos depicting a hand on the trigger of a shotgun with smoke coming from its barrel, above the words 'by all means,' where any probative value that the photographs had was substantially outweighed by the danger of unfair prejudice, because the evidence may have encouraged the jury to draw an improper inference about defendant's familiarity with guns and his willingness to use guns to commit crimes.”

**Second Appellate District of Ohio**

*Nothing to report.*

**Third Appellate District of Ohio**

*Nothing to report.*

**Fourth Appellate District of Ohio**

*Nothing to report.*

**Fifth Appellate District of Ohio**

**State v. Bergk, 2017-Ohio-8210**

Search

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2017/2017-Ohio-8210.pdf>

**The trial court erred in denying appellant's motion to suppress the heroin found in her vehicle where the canine sniff did not happen until after the officer had already learned from dispatch that appellant did not have any licenses suspensions or open warrants. Appellant was not under the influence and it was not an OVI stop.**

**Sixth Appellate District of Ohio**

*Nothing to report.*

**Seventh Appellate District of Ohio**

*Nothing to report.*

**Eighth Appellate District of Ohio**

*Nothing to report.*

**Ninth Appellate District of Ohio**

*Nothing to report.*

## Tenth Appellate District of Ohio

*Nothing to report.*

## Eleventh Appellate District of Ohio

***In re B.J.M., 2017-Ohio-8202***

**Delinquency: Criminal Trespass**

**Full Decision:**

**<https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2017/2017-Ohio-8202.pdf>**

**Appellant’s conviction for Criminal Trespass was based on him entering a public park after being banned from all city public parks for a year by a police officer. The Eleventh District reversed, concluding “that, although a municipality has authority to ban persons from using public property and may delegate such authority to its agents, including police officers, due process requires that such persons have a meaningful opportunity to be heard and to contest the decision. B.J.M. in the present case was not afforded an opportunity to do so and, therefore, his privilege to enter Willowick public parks was not properly revoked. It follows that there was insufficient evidence to adjudicate him delinquent for acts constituting Criminal Trespass.”**

**The Eleventh District continued, noting “hat this holding applies to the categorical expulsion of persons from public property otherwise open to the general public. With respect to property designated for a particular purpose, such as an airport or school, for which access may be conditioned on visitors having a legitimate purpose, a different conclusion could apply. Nor does this holding apply to situations where police officers remove persons from public property on a given occasion to maintain order or when they could otherwise be cited or charged with causing a disturbance \* \* \*.”**

## Twelfth Appellate District of Ohio

*Nothing to report.*

## Supreme Court of Ohio

*Nothing to report.*

**Sixth Circuit Court of Appeals**

*Nothing to report.*

**Supreme Court of the United States**

*Nothing to report.*