

Appellate Court Decisions - Week of 10/2/17

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

First Appellate District of Ohio

State v. Barfield, 2017-Ohio-8044

Weapons Under Disability: *State v. Hand*

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2017/2017-Ohio-8044.pdf>

Summary from the First District:

“*State v. Hand*, 149 Ohio St.3d 94, 2016-Ohio-5504, 73 N.E.3d 448, does not bar the use of a prior juvenile adjudication as an element of a weapons-under-disability charge, because it is the existence of the disability and not its reliability that is at issue.

“*Lewis v. United States*, 445 U.S. 55, 100 S.Ct. 915, 63 L.Ed.2d 198 (1980), and its progeny expressly permit something less than a valid criminal conviction to be the underlying disability for a weapons-under-disability offense.

“The trial court did not err when it denied defendant’s post-sentence motion to withdraw his guilty plea to a charge of having weapons while under a disability, because the ‘disability’ element of the offense was properly established by defendant’s prior juvenile adjudications. [*But see* DISSENT: If a juvenile adjudication is not reliable enough to enhance a criminal sentence, it is not sufficiently reliable to alone sustain proof beyond a reasonable doubt of an element of a crime.]”

State v. Wynn, 2017-Ohio-8945

Domestic Violence: Evidence: Crim.R. 29

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2017/2017-Ohio-8045.pdf>

Summary from the First District:

“In a prosecution for domestic violence pursuant to R.C. 2919.25(A), which prohibits knowingly causing or attempting to cause physical harm to a family or household member, the trial court properly denied the defendant’s Crim.R. 29 motion for a judgment of acquittal following the state’s case-in-chief, because when the wife victim was asked by the prosecutor whether she and her defendant husband had been

separated on the date of the offense, the wife responded, “No. We were not living together, but we were still together,” and the trial court reasonably interpreted the wife’s testimony to mean that they had previously resided together at some point during their seven-year marriage. [*But see* CONCURRENCE: The wife’s testimony was insufficient to establish that she and defendant had ever lived together where the wife clearly stated that she and defendant were not living together at the time of the offense and she was never asked if she had ever lived with him; however, because defendant presented a defense and he testified that he and his wife had lived together the evidence was sufficient to sustain defendant’s conviction for domestic violence.]”

Second Appellate District of Ohio

State v. Ferguson, 2017-Ohio-7930

Juvenile Bindover: Discretionary: Voluntary Manslaughter

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2017/2017-Ohio-7930.pdf>

Summary from the Second District:

“Defendant, who was 16 years old when the offense occurred, was convicted of voluntary manslaughter, an inferior offense of murder, after being bound over from juvenile court for murder (mandatory bindover) and felonious assault (discretionary bindover). Pursuant to R.C. 2152.12(I), the juvenile court properly bound over the felonious assault charge, which was founded on the same course of conduct as the murder charge. Even if we were to review the juvenile court’s amenability finding on the felonious assault charge, we would find no abuse of discretion in the juvenile court’s conclusion that defendant was not amenable to treatment in the juvenile system. Trial court did not err in denying defendant’s motion to suppress statements to the police; defendant was not under arrest when he was transported by officers to the police station to speak with a detective. Trial court did not err in imposing a maximum 11-year sentence. Trial court erred in ordering defendant’s sentence to be a mandatory sentence, pursuant to R.C. 2929.13(F); *State v. Hand*, 149 Ohio St.3d 94, 2016-Ohio-5504, 73 N.E.3d 448, followed. Trial court erred in failing to stay its sentence and transfer the matter back to juvenile court, pursuant to R.C. 2152.121. Judgment reversed and case remanded to the trial court for resentencing and compliance with R.C. 2152.121.”

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

State v. Clemons, 2017-Ohio-7980

Evid.R. 404(B): Endangering Children

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2017/2017-Ohio-7980.pdf>

Summary from the Sixth District:

“Appellant is entitled to a new trial where the trial court abused its discretion in allowing the victim in an endangering children case to testify as to a prior instance of alleged child abuse in violation of Evid.R. 404(B).”

Specifically: “Upon consideration of the parties’ arguments, we find that the trial court abused its discretion in allowing D.C. to testify of the prior altercation involving appellant. Notably, the state explained the purpose for which D.C.’s testimony was offered when it stated during the trial that the testimony evidenced “a pattern of what he’s done to her in her lifetime. We’re not offering it to prove that he acted in conformity with an earlier crime. This is not ID, not prior plan. It is real. It is her dad. He’s hit her before.” This is precisely the type of argument that Evid.R. 404(B) forecloses.”

Seventh Appellate District of Ohio

Nothing to report.

Eighth Appellate District of Ohio

In re L.M., 2017-Ohio-8067

Juvenile: Interpreter: Polygraph Exam

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2017/2017-Ohio-8067.pdf>

Summary from the Eighth District:

“Trial court erred in failing to provide appellant with an interpreter as required by R.C. 2311.14(A)(1) at his arson plea hearing. Trial court erred in ordering appellant to complete a lie detector examination prior to his adjudication for his rape, kidnapping and aggravated menacing counts.”

Notably, on the polygraph: “We hold that the appropriate remedy is a remand for a de novo resentencing on L.M.’s rape, kidnapping and aggravated menacing counts with the instruction that the trial court not consider the results of the polygraph examination.”

Ninth Appellate District of Ohio

State v. Russell, 2017-Ohio-7923

Motion to Suppress: *Miranda*: Custody

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/9/2017/2017-Ohio-7923.pdf>

The trial court erred in denying Appellant’s motion to suppress where it failed to determine whether the police officer was required to provide *Miranda* warnings before questioning Appellant.

State v. McKay, 2017-Ohio-7918

Bond Remission

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/9/2017/2017-Ohio-7918.pdf>

In determining whether to remit appellant bail bond company’s bond payment, “the trial court erred when it declined to exercise its discretion under [R.C.] 2937.39 and denied [the company’s] motion for remission merely because its forfeiture judgment had been satisfied.”

Tenth Appellate District of Ohio

Nothing to report.

Eleventh Appellate District of Ohio

State v. Cupp, 2017-Ohio-7948

Jail-Time Credit

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2017/2017-Ohio-7948.pdf>

Appellant was being held on a municipal court case, then his bail on the felony endangering children charge was raised to \$400,000. The trial court did not give Appellant credit for any time served until the municipal court sentence was completed. However, the Eleventh District held “[t]he plain language of the statute requires the trial court to give jail-time credit from August 7, 2015, through September 22, 2016, in addition to the three days appellant was held between his arrest and the day he was sentenced in the municipal court case.”

Twelfth Appellate District of Ohio

Nothing to report.

Supreme Court of Ohio

State v. Thomas, 2017-Ohio-8011

Aggravated Murder

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2017/2017-Ohio-8011.pdf>

The supreme court reversed and remanded Thomas’s murder conviction because the state introduced into evidence his knife collection, when the murder was a stabbing: “Similar to the conclusion reached by the Supreme Court of Colorado in [Kaufman v. People, 202 P.3d 542, 555 (Colo.2009)], we recognize that possessing a knife collection has nothing to do with being able to handle knives. Thomas did not carry any of the knives presented to the jury on the night that McSween was brutally assaulted, strangled, raped, and murdered. Here, the prosecution engaged in the conduct Evid.R. 404(B) is designed to prevent by offering these weapons as evidence that Thomas acted in conformity with a character trait for violence. Thus, the trial court committed plain error in admitting evidence that Thomas owned other knives unrelated to the murder. This evidence painted Thomas as someone with bad character and allowed the jury to convict him on the basis that he acted in conformity with it, violating Evid.R. 404(B). Accordingly, we reverse Thomas’s convictions and sentence of death and remand this matter to the trial court for a new trial in accordance with *Lockhart v. Nelson*, 488 U.S. 33, 42, 109 S.Ct. 285, 102 17 L.Ed.2d 265

(1988), and as we did in *State v. Brewer*, 121 Ohio St.3d 202, 2009- Ohio-593, 903 N.E.2d 284, ¶ 26.

Sixth Circuit Court of Appeals

Nothing to report.

Supreme Court of the United States

Nothing to report.