

## **Appellate Court Decisions - Week of 10/9/17**

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

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

#### **State v. Hamilton, 2017-Ohio-8140**

**Search: Continuances: Voir Dire: Hearsay: Tampering with Evidence: Allied Offenses: Sentencing**

#### **Full Decision:**

<https://www.supremecourt.ohio.gov/rod/docs/pdf/1/2017/2017-Ohio-8140.pdf>

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

“The trial court did not err in overruling defendant’s motion to suppress evidence recovered during the search of an automobile, because defendant was properly detained where a police officer observed a traffic violation, executed a traffic stop, and detained defendant, who was a passenger in the vehicle.

“The trial court properly overruled defendant’s motion to suppress evidence recovered during the search of an automobile, because he lacked standing to challenge the search where he did not own the vehicle, had not been driving the vehicle, and had voluntarily exited from the vehicle prior to the search.

“The trial court properly overruled defendant’s motion to dismiss based on the failure to preserve evidence that had been requested where the trial court made the factual determination that the requested video recordings had been corrupted by faulty recording equipment and had never existed in a usable form.

“The trial court did not abuse its discretion in overruling defendant’s motion to continue a suppression hearing for the testimony of an absent witness where the trial court determined that the motion to suppress could be overruled on an independent basis not involving the witness’s testimony.

“The trial court did not abuse its discretion in overruling defendant’s motion for a continuance where the continuance was sought to secure the testimony of a witness, but the movant could not say what the witness would testify to or if the testimony would be different than testimony already provided by other witnesses.

“Defendant was not prejudiced where he was not present for the voir dire of a juror who had been approached by a third party who had attempted to influence the juror, because counsel was present to protect his rights.

“Defendant’s temporary restraint during his testimony did not cause the trial to be fundamentally unfair such that a mistrial was warranted where the need for restraint arose abruptly, defendant’s restraint was limited to the time required to allow the incident to pass, the jury was instructed not to consider the incident, and the jurors indicated that they would not consider it.

“The testimony of a police officer who said that a third party had told him that defendant lived in a certain apartment was not hearsay as the testimony was presented for the purpose of explaining why the officer attempted to use defendant’s key on a certain apartment door. [But see CONCURRENCE: The testimony was hearsay, but the admission of the testimony was harmless in light of other overwhelming evidence of defendant’s guilt and tying defendant to the apartment.]

“The trial court did not abuse its discretion when it refused to allow defendant to replay during his testimony video evidence that had been played in its entirety during the state’s case-in-chief where defense counsel was able to cross-examine during the original playing and defendant was able to testify about the recordings without having them replayed.

“Defendant was properly convicted of tampering with evidence where he was recorded in telephone calls from jail instructing a third party to get money by flipping the largest item in the apartment bedroom, and when officers searched the apartment they found that the box spring had a hole in the bottom and the cavity was empty.

“Defendant was properly convicted of trafficking in and possession of heroin where a bag of heroin was found in a diaper bag in a vehicle in which defendant was a passenger, his DNA was found on the bag, and police officers testified that he admitted that the heroin was his.

“The trial court committed plain error when it convicted defendant of trafficking in and possession of heroin where both charges stemmed from the same bag of heroin, because those offenses were allied offenses of similar import, and the trial court’s decision to run the sentences concurrently did not cure the error.”

### **State v. Ward, 2017-Ohio-8141**

#### **Search: Automobile Exception**

#### **Full Decision:**

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2017/2017-Ohio-8141.pdf>

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

“The trial court erred in overruling defendant’s motion to suppress evidence recovered during a search of his automobile, because the evidence presented at the hearing on the motion failed to establish that the officer’s search of defendant’s vehicle was permitted

under the automobile exception to the warrant requirement where the evidence showed that in a high-drug-activity area the officer saw defendant's car parked near a sidewalk with a person leaning into it and, as the officer approached, the person walked away, defendant then pulled away from the curb without signaling and was stopped by the officer.”

### ***State v. Acoff, 2017-Ohio-8182***

#### **Criminal Trespass: Search: Automobile Exception**

##### **Full Decision:**

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2017/2017-Ohio-8182.pdf>

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

“The police officer had probable cause to arrest defendant for criminal trespass where defendant was sitting in a car in the parking lot of a business; defendant was parked near a ‘no loitering’ sign; the officer had observed defendant remain in the vehicle for approximately ten minutes without entering the business; and when asked his purpose for being on the premises, defendant told the officer that he was just ‘hanging out.’

“The warrantless search of the vehicle in which defendant and another individual were sitting was permissible under the automobile exception to the warrant requirement where the occupants were arrested for criminal trespass, the vehicle was located in an area known for drug activity and heroin was found on one of the occupants.

“The absence of a traffic stop did not prevent the application of the automobile exception to the warrant requirement, because it did not detract from the automobile’s inherent mobility or affect the officer’s belief that the vehicle contained contraband.”

### ***State v. Chapman, 2017-Ohio-8181***

#### **Expert Testimony: OVI**

##### **Full Decision:**

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2017/2017-Ohio-8181.pdf>

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

“In a prosecution for operating a vehicle while under the influence of alcohol, the trial court did not abuse its discretion in excluding as irrelevant expert testimony regarding defendant’s performance on field-sobriety tests from a chiropractor who had only seen defendant three times and had not seen him for over a year prior to the date of the offense. [See CONCURRENCE: The trial court did not abuse its discretion in excluding the testimony where the chiropractor was unaware of defendant’s condition at the time

of the offense and the testimony was equivocal.] [*But see* DISSENT: The trial court abused its discretion in excluding the chiropractor’s testimony where he was qualified as an expert, he had personally examined and treated defendant, and, as an expert, he could have based his opinion on facts personally perceived by him or admitted into evidence; any questions about how often and how long ago the chiropractor had seen defendant went to the weight of the testimony and not its admissibility.]”

**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**

*Nothing to report.*

**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**

*Nothing to report.*

**Twelfth Appellate District of Ohio**

*Nothing to report.*

**Supreme Court of Ohio**

**State v. Bembry, 2017-Ohio-8114**

**Ohio Constitution: Article I, Section 14: Search: Knock-and-Announce Rule**

**Full Decision:**

**<https://www.supremecourt.ohio.gov/rod/docs/pdf/o/2017/2017-Ohio-8114.pdf>**

**“Once a warrant has been issued, the exclusion of evidence is not the appropriate remedy under Article I, Section 14 of the Ohio Constitution for a violation of the knock-and-announce statute, R.C. 2935.12.”**

**Sixth Circuit Court of Appeals**

*Nothing to report.*

**Supreme Court of the United States**

*Nothing to report.*