

Appellate Court Decisions - Week of 11/13/17

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

First Appellate District of Ohio

State v. Saunders, 2017-Ohio-8557

Assault: Evidence: Witnesses: Credibility: Allocution: Sentencing

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2017/2017-Ohio-8557.pdf>

Summary from the First District:

“Defendant’s conviction for assault was supported by sufficient evidence where the victim testified that defendant had started the fight and had repeatedly hit and kicked him, and the trial court specifically found the victim’s testimony to be more credible than defendant’s testimony.

“Defendant’s sentence must be reversed and the cause remanded for resentencing, because the trial court denied defendant’s right of allocution where the court failed to personally address defendant and allow him the opportunity to speak.”

State v. Smith, 2017-Ohio-8558

Constitutional Law: Counsel: Pro Se Motions: Evidence: Burglary: Drugs: Tampering With Evidence: Rebuttal Testimony: Hearsay: Evid.R. 613(B): Prosecutor: Allied Offenses: R.C. 2941.25: Sentencing

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2017/2017-Ohio-8558.pdf>

Summary from the First District:

“The trial court properly determined that the police officer had probable cause to arrest defendant when the officer witnessed a large bag of marijuana sticking out of defendant’s pocket.

“The trial court did not abuse its discretion in denying defendant’s request for new counsel where defendant failed to articulate a basis for the motion.

“A trial court may not address a pro se motion to dismiss and a pro se motion for an independent laboratory analysis, filed by a defendant who is represented by counsel, when counsel informs the trial court that the motions are without merit.

“Where defendant stipulated to the admissibility of a 911 call, he may not challenge its admissibility on appeal: 911 calls are usually admissible under the excited-utterance or present-sense-impression exceptions to the hearsay rule; they are not testimonial in nature, and therefore, not subject to the requirements of the Confrontation Clause.

“Evid.R. 613(B) permits the impeachment of an adverse witness with the extrinsic evidence of the witness’s prior inconsistent statement when the witness denies making the statement, and the evidence concerns a fact of consequence.

“The trial court did not abuse its discretion in allowing the police officers to testify that the substantial amount of cocaine recovered from defendant indicated that it was for distribution, because the testimony did not constitute an expert opinion and was based on the officers’ knowledge and perceptions through their experience.

“The prosecutor’s comments during closing argument were a fair commentary on the evidence and not a misstatement of the law; therefore, defendant failed to establish that the prosecutor committed misconduct during closing argument.

“Trial counsel’s conclusion that defendant’s pro se motions were without merit and counsel’s conduct during voir dire were sound trial strategy, and did not constitute ineffective assistance of counsel.

“Defendant’s convictions for burglary, trafficking in cocaine, possession of cocaine, and tampering with evidence were supported by sufficient evidence and were not against the manifest weight of the evidence where the victim testified that he lived in the burglarized apartment, had recently left to take a friend to work, and could have been home at the time of the burglary; the officers’ testimony that the amount of cocaine was inconsistent with personal use and indicated trafficking demonstrated the cocaine was intended for sale or resale; and testimony demonstrated that defendant threw the cocaine, threw the marijuana, and dispersed the marijuana throughout the apartment.

“The trial court properly considered the statutory sentencing factors before imposing sentence and made the requisite findings to impose consecutive sentences and incorporated them into the sentencing entry.

“The failure of the trial court to inform defendant of the requirement to submit to DNA testing was harmless.

“The trial court erred by imposing sentences for both trafficking in cocaine and possession of cocaine because they were allied offenses of similar import, and therefore, the cause must be remanded for a resentencing hearing at which the state may elect which offense to pursue for resentencing.”

State v. Colbert, 2017-Ohio-8559

Jail-Time Credit: Appellate Review: Jurisdiction

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2017/2017-Ohio-8559.pdf>

Summary from the First District:

“The common pleas court cannot be said to have erred in declining to grant the relief sought in prisoner’s motion to correct jail-time credit, when he failed to invoke the jurisdiction conferred by R.C. 2929.19(B)(2)(g)(iii) by requesting that a transcript of proceedings demonstrating that the error had not been raised at sentencing be filed with the common pleas court for its decision on his motion.”

State v. Carney, 2017-Ohio-8585

Weapons Under Disability: State v. Hand: Juvenile Adjudication: Sentencing

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2017/2017-Ohio-8585.pdf>

Summary from the First District:

“A juvenile adjudication can constitute the disability upon which defendant’s having-weapons-under-a-disability conviction is based. (*State v. Carnes*, 2016-Ohio-8019, 75 N.E.3d 774 (1st Dist.), *State v. McCray*, 1st Dist. Hamilton No. C-160272, 2017-Ohio-2996, and *State v. Barfield*, 1st Dist. Hamilton No. C-160678, 2017-Ohio-8243, followed.) [*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.]

“Defendant failed to meet his burden to show that the trial court acted vindictively in sentencing him because he rejected a plea bargain where the record shows that the trial court referenced the rejected plea bargain only in a discussion about the performance of defendant’s counsel, it did not discuss plea bargaining at sentencing, it considered the serious nature of the charges and defendant’s criminal history, and it listened to defendant and his family members at sentencing.

“The trial court did not err in considering defendant’s juvenile adjudication in determining whether consecutive sentences were appropriate. (*State v. Bromagen*, 1st Dist. Hamilton No. C-120148, 2012-Ohio-5757, followed.)”

Second Appellate District of Ohio

Nothing to report.

Third Appellate District of Ohio

State v. Kerr, 2017-Ohio-8516

Motion to Suppress: Search

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/3/2017/2017-Ohio-8516.pdf>

The trial court erred in denying Appellant’s motion to suppress. Appellant pulled his car into a gas station parking lot. Someone walked up, reached into Appellant’s driver’s side window, quickly turned around, and walked away. A police officer observed the interaction, then radioed another officer. The second officer stopped appellant’s vehicle, not for a traffic violation, but as an investigatory stop. The Third District found “that the facts available to the police at the time of the traffic stop—without more—do not constitute a reasonable, articulable suspicion that criminal activity was afoot. Under the totality of the circumstances, the activities the police officer observed were lawful in their appearance. He witnessed a pedestrian walk up to a car, reach inside, turn around, and walk away. * * * From his vantage point, the police officer could not even determine whether an exchange had occurred between the pedestrian and [Appellant]. * * * Thus, the police officer was not able to cite facts that articulated why his suspicions were raised by his observations.”

Fourth Appellate District of Ohio

State v. Pribble, 2017-Ohio-8499

Sentencing: R.C. 2924.041: R.C. 2929.14

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/4/2017/2017-Ohio-8499.pdf>

Appellant was convicted of illegal assembly of chemicals that may be used to manufacture a controlled substance in Schedule I or II with the intent to manufacture a Schedule I or II controlled substance in violation of R.C. 2925.051(A). The Fourth District said, “[i]n the case sub judice, the record indicates that appellant has previous methamphetamine related convictions for illegal manufacturing (2009) and aggravated possession

(2015). Thus, it appears that appellant has the requisite prior convictions to trigger R.C. 2925.041(C)(1), and therefore, appellant’s mandatory sentence for violating R.C. 2925.041 should be 60 months (5 years) in prison. However, while the language of R.C. 2925.041(C)(1) is unambiguous in isolation, ambiguity does exist because R.C. 2929.14(A)(3)(b) requires a different result.” That different result, explained in the opinion and in *State v. Clark*, 4th Dist. Highland No. 14CA20, 2015-Ohio-5003, is that the rule of lenity requires the sentence be 36 months, following R.C. 2929.14(A)(3)(b).

Fifth Appellate District of Ohio

Nothing to report.

Sixth Appellate District of Ohio

State v. Roach, 2017-Ohio-8511

Sentencing: Restitution

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2017/2017-Ohio-8511.pdf>

“[A] victim does not possess the requisite standing to unilaterally make a motion in a criminal case regarding restitution.” In other words, the state and the defendant are the only parties, so a restitution request has to come from the state. That being said, I am not sure what impact the passing of Marsy’s law will have on this decision.

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

Nothing to report.

Sixth Circuit Court of Appeals

Nothing to report.

Supreme Court of the United States

Nothing to report.