

Appellate Court Decisions - Week of 11/20/17

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

First Appellate District of Ohio

State v. Anderson, 2017-Ohio-8641

OVI: Sufficiency

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2017/2017-Ohio-8641.pdf>

Summary from the First District:

“The trial court erred in convicting defendant for operating a motor vehicle while under the influence of drugs in violation of R.C. 4511.19(A)(1)(a), because the state’s evidence that firefighters had found defendant overdosed in the driver’s seat of a vehicle that was parked in the parking lot of a recreation center with the key in the ignition, while probative of defendant’s physical control of the vehicle, was insufficient to prove he had operated the vehicle while under the influence. [*But see* DISSENT: An impaired person in the driver’s seat of a vehicle with the key in the ignition can be convicted of operating a vehicle while under the influence if there is sufficient circumstantial evidence that he operated the vehicle while impaired: the trial court did not err in convicting defendant of operating a vehicle while under the influence of drugs, because a reasonable trier of fact could have found that defendant had operated the vehicle while impaired where he was found overdosed and unconscious in the driver’s seat of the vehicle with the key in the ignition, no drug paraphernalia was found in the vehicle or its immediate vicinity, which the police officer testified means that the drugs had been ingested elsewhere, and defendant admitted that the vehicle had been operated but claimed that it had been operated by a woman who was not on the scene when defendant was found.]”

State v. Feltha, 2017-Ohio-8640

Murder: Weapons Under Disability: Ineffective Assistance: Jury Instructions: Lesser Included Offense: Evidence

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2017/2017-Ohio-8640.pdf>

Summary from the First District:

“Counsel was not ineffective for failing to seek the severance of a weapons-under-disability charge from a murder charge for trial where the evidence for each offense

was simple and direct so that the jury was capable of segregating the proof required for each offense.

“Counsel was not ineffective for failing to request that a weapons-under-disability charge be tried to the court where such a decision is within the realm of trial strategy.

“Defendant did not establish that his counsel was ineffective for failing to have him plead guilty to a weapons-under-disability charge where the record failed to demonstrate that defendant would have been willing to plead guilty to the charge.

“While counsel may have been ineffective for allowing the details of defendant’s three prior juvenile adjudications to be admitted into evidence rather than offering to stipulate to the fact of one prior adjudication for the purposes of a weapons-under-disability charge, the evidence of defendant’s guilt was so overwhelming that there was no reasonable probability that the result of the trial was affected.

“The discussion of defendant’s prior adjudications during defense counsel’s opening statement was sound trial strategy and did not amount to ineffective assistance of counsel.

“The decision of trial counsel to change strategy from claiming that defendant had not committed the shooting to claiming that he had shot the victim accidentally was not ineffective assistance where counsel’s strategy changed due to the way the evidence was developed at trial.

“Counsel was not ineffective for failing to file a motion to suppress the statement defendant made to police because such a motion would have been denied.

“Counsel’s concession that defendant committed the weapons-under-disability offense was not ineffective assistance where his conviction was a foregone conclusion, and the concession allowed counsel to concentrate on the main points of his defense of the murder charge.

“Counsel did not prejudice defendant by the cumulative effect of counsel’s deficient conduct where the evidence against defendant was overwhelming.

“The trial court did not commit plain error by admitting the details of defendant’s three prior juvenile adjudications where the evidence against him was overwhelming and he could not show that the admission of the details affected the outcome of the trial.

“The trial court did not abuse its discretion when it denied defendant’s request for an instruction on reckless homicide where the trial court found that the evidence would not have allowed the jury to conclude that defendant had committed that offense.

“A note passed from defendant to another inmate was properly authenticated where the state claimed only that defendant was the source of the note and not its author, and the witness testified that defendant had handed the note to him.

“Defendant’s conviction for murder was based on sufficient evidence and was not against the manifest weight of the evidence where several witnesses testified that defendant had shot the victim, the shooting was recorded by surveillance cameras, and defendant had admitted to the shooting in a statement to police.”

Second Appellate District of Ohio

Nothing to report.

Third Appellate District of Ohio

Nothing to report.

Fourth Appellate District of Ohio

State v. Wellington, 2017-Ohio-8596

Inducing Panic: Crim.R. 29

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/4/2017/2017-Ohio-8596.pdf>

The trial court erred in denying Appellant’s motion for judgment of acquittal at the close of the state’s case (he was charged with inducing panic) because appellant did not commit a predicate offense – there was no evidence he had entered property without privilege to do so.

Fifth Appellate District of Ohio

Nothing to report.

Sixth Appellate District of Ohio

State v. Rickard, 2017-Ohio-8614

Juvenile: Bindover: Attempted Felonious Assault

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2017/2017-Ohio-8614.pdf>

The court of common pleas lacked jurisdiction to convict Appellant for felonious assault where, “despite appellant being a ‘child,’ for purposes of

R.C. 2153.02,” “the charges were never brought before the juvenile court, and no bindover procedure occurred in compliance with R.C. 2152.12.”

Seventh Appellate District of Ohio

Nothing to report.

Eighth Appellate District of Ohio

State v. Pierce, 2017-Ohio-8578

Sentencing

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2017/2017-Ohio-8578.pdf>

Summary from the Eighth District: “The jury’s verdict form for the escape offense did not state the degree of the offense nor state that an aggravating element - the most serious offense for which appellant was under detention when he committed the escape offense - was found; thus, the verdict form failed to comply with R.C. 2945.75. Appellant’s escape conviction is reduced from a third-degree felony to a fifth-degree felony. The trial court’s denial of defense counsel’s *Batson* challenge was not clearly erroneous. The trial court did not commit plain error by failing to provide an intoxication instruction, sua sponte, to the jury. Appellant’s convictions for harassment by inmate are supported by sufficient evidence.”

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.