

Appellate Court Decisions - Week of 12/11/17

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

First Appellate District of Ohio

State v. Bell, 2017-Ohio-8959

Confrontation Clause: Cross-Examination: Authentication: Judicial Bias

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2017/2017-Ohio-8959.pdf>

Summary from the First District:

“Defendant was denied his right to cross-examination where the trial court did not allow him to try to draw out testimony that would have, according to defendant’s proffer, cast doubt on the state’s case against him and where the desired cross-examination did not raise concerns of harassment, prejudice, confusion of the issues, or witness safety, and was not repetitive or only marginally relevant.

“The trial court’s error in restricting defendant’s right to cross-examination was harmless beyond a reasonable doubt where, considering the cross-examination that was allowed and the strength of the state’s case, the damaging potential of defendant’s proffer was negligible, at best.

“Testimony explaining when a letter was received and by whom, and where the letter had been until it had been turned over to police for testing was sufficient to prove a chain-of-custody.

“A letter referencing the crimes at issue was properly authenticated as being written by the defendant where there was testimony that the letter, which contained defendant’s fingerprint, had been received by a witness within a few weeks of the crimes.

“Matters outside the record cannot be reviewed on direct appeal.

“Defendant’s claim of judicial bias fails where there is no evidence in the record that the trial judge reached any decision based on bias against defendant.”

State v. Love, 2017-Ohio-8960

Felonious Assault: Affirmative Defense: Jury Instructions

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2017/2017-Ohio-8960.pdf>

Summary from the First District:

“The trial court’s failure to instruct the jury on how to apply its finding on the defendant’s asserted affirmative defense of defense of others was plain error that required reversal of the trial court’s judgment convicting defendant of three counts of felonious assault even though defendant had failed to object: the incomplete instruction prevented the jury from properly applying the law to reconcile any finding on the affirmative defense with its finding that the state had proved the elements of the underlying felonious-assault offenses beyond a reasonable doubt. [*But see* DISSENT: While the trial court erred in failing to instruct the jury on how to apply its finding on the asserted affirmative defense, that error did not affect the defendant’s substantial rights and did not rise to the level of plain error.]”

Arias v. State, 2017-Ohio-8961

Sex Offenses: Due Process: Separation of Powers: Right to Travel

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2017/2017-Ohio-8961.pdf>

Summary from the First District:

“Former R.C. 2950.09, providing that an out-of-state sex offender was automatically classified as a sexual predator in Ohio if he had been convicted of a nonexempt sex offense and was required to register for life in the state where he was convicted, did not violate due process, because former R.C. 2950.09(F)(2) met the requirements of due process by affording the offender a hearing before a judge, along with notice and an opportunity to be heard as to whether he should be exempt from Ohio’s lifetime registration and notification requirements.

“Former R.C. 2950.09 did not violate the separation-of-powers doctrine where the sex offender was automatically classified as a sexual predator in Ohio if he had been convicted of a nonexempt sex offense and was required to register for life in the state of his conviction, the sheriff did not make any legal or factual determinations exclusively reserved to the judiciary, the out-of-state offender presumably had been afforded due process in the state of his conviction on the issue of dangerousness, and Ohio judicial review of the automatic classification was afforded under R.C. 2950.05(F)(2).

“Former R.C. 2950.09 did violate the constitutional right to travel, because similarly-situated sex offenders moving into Ohio were treated the same, Ohio citizens who had committed sex offenses in other states and were required to register under that state’s laws were required to register when they returned to Ohio, the state had a compelling interest in protecting its citizens from offenders who had been deemed dangerous

enough to register for life by a court of competent jurisdiction, and the statute was narrowly tailored to include those sex offenders deemed most dangerous.”

State v. Craig, 2017-Ohio-8962

Appellate Jurisdiction: Final Order

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2017/2017-Ohio-8962.pdf>

Summary from the First District:

“In a criminal action involving a multicount indictment, the trial court's failure to dispose of a count on which the jury fails to reach a verdict is not a final, appealable order. [*But see* SEPARATE CONCURRENCE: the due process clause provides some minimum guarantee to a prompt appeal; under the particular facts of this case, the defendant's due process right has not been violated.]”

State v. Harper, 2017-Ohio-8963

Sentencing

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2017/2017-Ohio-8963.pdf>

Summary from the First District:

“The trial court erred in imposing a two-year prison term for an attempted-tampering-with-evidence offense punishable as a fourth-degree felony, and that sentence was clearly and convincingly contrary to law, when the maximum prison term authorized for that offense was 18 months, and the prison term imposed was outside the permissible statutory range.

“R.C. 2921.331(B) proscribes operating a motor vehicle so as to willfully elude or flee a police officer after receiving a visible or audible signal from a police officer to bring the motor vehicle to a stop.

“Under R.C. 2921.331(C)(5)(a)(ii) and 2921.331(D), if an offender has caused substantial risk of physical harm to person or property while committing the offense and is sentenced to a prison term for that violation, the offender shall serve the prison term consecutively to any other prison term or mandatory prison term imposed upon the offender; R.C. 2929.14(C)(3) also requires that if a prison term is imposed for a felony violation R.C. 2921.331(B), the offender shall serve that prison term consecutively to any other prison term or mandatory prison term previously or subsequently imposed on the offender.

“The trial court was not required to make the consecutive-sentencing findings mandated by R.C. 2929.14(C)(4) for defendant’s violations of R.C. 2921.331(B), because the consecutive-sentencing provisions of R.C. 2929.14(C)(4) are inapposite when the trial court is required to impose consecutive sentences by operation of law under R.C. 2921.331(B) and 2921.331(D).”

State v. Ward, 2017-Ohio-8964

Sentencing: Right of Allocution

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2017/2017-Ohio-8964.pdf>

Summary from the First District:

“Defendant’s sentence must be reversed and the cause remanded for resentencing where the trial court denied defendant his right of allocution and the error was not invited or harmless.”

Second Appellate District of Ohio

State v. Bolton, 2017-Ohio-8903

Forfeiture

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2017/2017-Ohio-8903.pdf>

Summary from the Second District:

“The trial court did not err in vacating its prior decision ordering the release of seized firearms and ammunition to Appellant. Appellant was under a weapons disability pursuant to R.C. 2923.13(A)(2) and was therefore prohibited from knowingly acquiring, having, carrying, or using any firearm or dangerous ordnance. The trial court also did not err in failing to release the property to Appellant’s adult son so that Bolton could facilitate a sale of the property, as such an arrangement provides Bolton with constructive possession of the property in violation of R.C. 2923.13(A)(2). The trial court did, however, err in ordering Bolton’s property to be disposed of ‘in accordance with the applicable statute,’ as such an order treats Bolton’s property as if it were forfeited when no criminal or civil forfeiture proceedings were ever instituted by the State.”

Third Appellate District of Ohio

Nothing to report.

Fourth Appellate District of Ohio

Nothing to report.

Fifth Appellate District of Ohio

State v. Patterson, 2017-Ohio-8970

Evidence: Rape

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2017/2017-Ohio-8970.pdf>

The trial court erred in admitting other-acts evidence of appellant's prior rape conviction in his rape case. The trial court found that the evidence demonstrated appellant's modus operandi for raping women. The Fifth District, however, reversed, holding that the evidence did not establish a unique behavioral footprint. The only similarities between the two crimes were the month the women were encountered, that they were encountered at a bus stop, and the women were similar in age and race. The evidence in this particular case was in fact prejudicial.

Sixth Appellate District of Ohio

Nothing to report.

Seventh Appellate District of Ohio

Nothing to report.

Eighth Appellate District of Ohio

State v. Carter, 2017-Ohio-8864

Evidence

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2017/2017-Ohio-8864.pdf>

The trial court committed reversible error by allowing an expert to testify to her opinion on the veracity of an alleged rape victim's disclosures. Because there was a lack of substantial corroborating evidence, the credibility of the alleged victim's disclosures was significant, and the error was not harmless.

State v. Daver, 2017-Ohio-8862

Plea Withdrawal

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2017/2017-Ohio-8862.pdf>

Summary from the Eighth District: "Trial court abused its discretion in denying defendant's motion to withdraw his guilty pleas. Under the totality of the circumstances, including the limited time period in which defendant was given to consider the state's plea offers, the incomplete information defendant received regarding judicial release, the defendant's lack of a full and complete understanding of the offenses to which he would be pleading guilty and the effect and consequences of his guilty pleas, defense counsel's admission that he was not prepared to try the case if defendant rejected the state's plea offers and defendant's testimony that, but for this confluence of events, he would not have entered his guilty pleas, defendant did not knowingly, intelligently and voluntarily enter his guilty pleas and withdrawal of his guilty pleas was necessary to correct manifest injustice."

Ninth Appellate District of Ohio

Nothing to report.

Tenth Appellate District of Ohio

Nothing to report.

Eleventh Appellate District of Ohio

State v. Burch, 2017-Ohio-8945

Discovery

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2017/2017-Ohio-8945.pdf>

The state filed a Crim.R. 16(D) motion to not disclose a minor victim's video interview in this gross sexual imposition case. The trial court granted part

of appellee's motion for transcripts of the interviews, as well as official transcripts of all "material" witness interviews. The narrow issue on this appeal by the state was the trial court's decision ordering disclosure of the minor victim's statements. The Eleventh District held the trial court erred in granting appellee's motion because the trial court did not hold a hearing on the motion to disclose, which is mandatory under Crim.R. 16(F).

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.