

Appellate Court Decisions - Week of 12/18/17

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

First Appellate District of Ohio

State v. Buttery, 2017-Ohio-9113

Sex Offenses: Indictment: Failure to Register: Juvenile Adjudication

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2017/2017-Ohio-9113.pdf>

Summary from the First District:

“Where defendant was convicted of failing to register under R.C. 2950.04 based upon a juvenile adjudication for gross sexual imposition, the trial court did not err in overruling defendant’s motion to dismiss the indictment, because the juvenile court’s decision adjudicating defendant a Tier I juvenile-offender registrant was a valid judgment of the juvenile court where the juvenile court judge had signed the magistrate’s dated decision below a typed line stating, “The Magistrate’s Decision is hereby approved and entered as the judgment of the Court,” the decision was entered on the juvenile court’s journal, and the decision contained a clear pronouncement of the juvenile court’s judgment and expressed the parties’ rights and responsibilities.

“The trial court did not err in convicting defendant of failing to register on his no-contest plea where the indictment alleged that defendant failed to register when he was required to register under R.C. 2950.04, and defendant admitted to the facts as alleged in the indictment.

“*State v. Hand*, 149 Ohio St.3d 94, 2016-Ohio-5304, 73 N.E.3d 448, did not require reversal of defendant’s conviction for failing to register based upon his juvenile adjudication: R.C. 2950.04 distinguishes between an adult offender convicted of a sexually-oriented offense and a juvenile adjudicated delinquent and classified for having committed a sexually-oriented offense; the statute does not treat a juvenile adjudication as an adult conviction; the juvenile is required to register based upon the juvenile adjudication and classification; the juvenile adjudication requires registration in its own right; and the juvenile adjudication is not a penalty-enhancing element, it is an element of the crime of failing to register.”

State v. Rice, 2017-Ohio-9114

OVI: Due Process: Hearsay

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2017/2017-Ohio-9114.pdf>

Summary from the First District:

“The defendant’s due-process rights were not violated by the police officer’s failure to preserve a urine sample that, at best, could have been subjected to further testing, the results of which may have been favorable to the defendant, because the defendant failed to demonstrate that the officer, who discarded the sample after obtaining a valid breathalyzer test, had acted in bad faith.

“The defendant’s arrest for operating a vehicle while under the influence of alcohol or drugs (“OVI”) was supported by probable cause, even though the defendant, who had been involved in a car accident, had denied drinking, and the arresting officer had not observed before the arrest the odor of alcohol or drugs, or an open container of alcohol, because the totality of the circumstances—including the defendant’s slurred speech, impaired motor skills, erratic behavior, lack of serious injury, and the presence of an odor-masking agent—would lead a prudent person to believe that the defendant was driving under the influence.

“The defendant’s convictions for OVI per se breath high tier and reckless operation of a vehicle were not against the manifest weight of the evidence, where the offenses were supported by a valid breath test, an officer’s testimony about the defendant’s impairment, as corroborated by the dash cam video, and a 911 caller’s in-court testimony concerning the defendant’s unsafe driving.

“Any error in the court’s admission of alleged hearsay testimony was harmless beyond a reasonable doubt, because the testimony had no impact on the verdicts and the remaining evidence established the defendant’s guilt beyond any reasonable doubt.

“The defendant’s sentence for OVI is void, and his conviction for OVI must be vacated, where the trial court imposed a sentence for OVI after determining that OVI and OVI per se were allied offenses of similar import subject to merger under R.C. 2941.25, and the state elected sentencing on OVI per se.”

State v. Rodgers, 2017-Ohio-?

Evidence: Mistake of Fact

Full Decision:

http://www.hamiltoncountyohio.gov/UserFiles/Servers/Server_3788196/File/releases/C-170057_12222017.pdf

Summary from the First District:

“The trial court erred in finding the defendant guilty of theft in violation of R.C.

2913.02(A)(1), because the state failed to establish that the defendant had the specific intent to deprive the owners of the property because the defendant mistakenly believed that the property belonged to him.”

State v. Perez, 2017-Ohio-?

Pleas: Crim.R. 32.1

Full Decision:

http://www.hamiltoncountyohio.gov/UserFiles/Servers/Server_3788196/File/releases/C-170052_12222017.pdf

Summary from the First District:

“Where defendant’s Crim.R. 32.1 motion to withdraw his guilty plea asserted grounds for relief that were or should have been asserted in his previously filed Crim.R. 32.1 motion, res judicata applied, and the trial court did not err in denying defendant’s second Crim.R. 32.1 motion.”

State v. Ham, 2017-Ohio-?

Telecommunications Harassment: Crim.R. 7(D): Procedure: Rules

Full Decision:

http://www.hamiltoncountyohio.gov/UserFiles/Servers/Server_3788196/File/releases/C-170043_12222017.pdf

Summary from the First District:

“The trial court did not abuse its discretion in granting the state’s motion to amend the complaint from a charge of telecommunications harassment under R.C. 2917.21(B) to a charge of telecommunications harassment under R.C. 2917.21(A)(5) to conform to the evidence where the amendment did not change the name or identity of the charged offense.”

State v. Olverson, 2017-Ohio-9188

Sentencing

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2017/2017-Ohio-9188.pdf>

Summary from the First District:

“When sentencing an offender for violations of community-control sanctions imposed for more than one offense, the trial court must notify the offender of the

specific prison term that may be imposed as to each offense for an additional violation, as a prerequisite to imposing a prison term on the offender for a subsequent violation.

“The sentences the trial court imposed upon defendant for community-control violations on two offenses were contrary to law where the court had not notified defendant of the specific prison term it would impose as to each offense for a subsequent community-control violation.”

State v. Wallace, 2017-Ohio-9187

Murder: Discovery: Hearsay: Conspiracy: Confrontation Clause: Other-Acts Evidence: Witnesses: Prosecutor

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2017/2017-Ohio-9187.pdf>

Summary from the First District:

“Any error by the trial court in denying defendant’s motion to strike the state’s certification of nondisclosure of witnesses for lack of specificity was harmless because the case was not actually tried until 16 months after the disclosure of the witnesses’ names.

“Any error by the trial court in admitting into evidence statements of a coconspirator before the state presented independent proof of the conspiracy was harmless where the state proffered the evidence it would present to show the conspiracy and it later presented that evidence.

“The admission into evidence of the statements of a coconspirator did not violate defendant’s right to confront the witnesses against him because statements in furtherance of a conspiracy are inherently nontestimonial.

“Evidence that about two weeks before the murder for which he was being tried, defendant had possessed a backpack containing marijuana, a bag of bullets and a cardboard case for a 9 mm firearm was not impermissible other-acts evidence, because it was relevant to show knowledge, absence of mistake, preparation or plan, and intent.

“The trial court did not err in allowing the state to impeach its own witness where the witness did not give neutral answers, but instead denied knowing another witness and did not remember seeing that witness on the night of the murder, contrary to her previous statement to police, and therefore, the state showed affirmative damage.

“None of the prosecutor’s alleged improper comments was so egregious as to affect the defendant’s substantial rights or to deny him a fair trial.”

Second Appellate District of Ohio

State v. Miller, 2017-Ohio-9056

Sentencing: Intervention in Lieu of Conviction

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2017/2017-Ohio-9056.pdf>

Because appellant met all the requirements of R.C. 2929.13(B)(1)(1), the trial court erred in sentencing her to prison rather than community control. This came after her intervention in lieu of conviction was revoked.

Third Appellate District of Ohio

Nothing to report.

Fourth Appellate District of Ohio

State v. Wright, 2017-Ohio-9041

Evidence: Drug Offense: Expert

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/4/2017/2017-Ohio-9041.pdf>

“After a jury convicted * * * Wright of three drug offenses, the trial court sentenced him to prison. * * *

“Wright asserts because the pills introduced into evidence were not properly tested, the trial court committed reversible error in denying his motion to exclude them as evidence. We agree. The state’s expert witness, a forensic scientist, testified that he did not test a sample size large enough to determine the content of the remaining pills with a reasonable degree of scientific certainty. Thus, the remaining pills should have been excluded from evidence.”

Fifth Appellate District of Ohio

State v. Morgan, 2017-Ohio-9142

Speedy Trial

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2017/2017-Ohio-9142.pdf>

The trial court erred in denying appellant’s motion to dismiss for violating his right to a speedy trial. The interesting part: “We conclude that five months’ elapsed time between the filing of the motion to suppress and the date the trial court rendered its decision is excessive and the record does not justify this amount of time.”

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

Nothing to report.

Sixth Circuit Court of Appeals

Nothing to report.

Supreme Court of the United States

Nothing to report.