

Appellate Court Decisions - Week of 5/22/17

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

First Appellate District of Ohio

State v. Hilliard, 2017-Ohio-2952

Felonious Assault: Jury Instructions: Ineffective Assistance

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2017/2017-Ohio-2952.pdf>

Summary from the First District:

“Defendant’s convictions for felonious assault were not against the manifest weight of the evidence where the testimony was contradictory regarding whether defendant had acted in self-defense and whether the victim had a right to be in the home.

“The jury instructions were not erroneous where they correctly stated the law on the elements of self-defense, the Castle Doctrine presumption and defendant’s burden of proof.

“Counsel was not ineffective for failing to object to jury instructions that correctly stated the law and where the record shows that counsel extensively reviewed the proposed jury instructions, made objections with well-reasoned arguments and suggested alterations.”

State v. McCray, 2017-Ohio-2996

Having Weapons While Under Disability: Murder: Due Process: Prosecutorial Misconduct: Ineffective Assistance

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2017/2017-Ohio-2996.pdf>

Summary from the First District:

“The defendant’s right to due process was not violated by the use of his prior juvenile adjudication to prove the disability element of his convictions for having a weapon under a disability, under R.C. 2923.13(A)(2). [*But see* DISSENT: A juvenile adjudication alone is not sufficiently reliable to sustain proof beyond a reasonable doubt of the disability element of the adult crime of having a weapon while under a disability.]

“Where the case had been reported in the media, the trial court did not err by allowing the prosecutor to outline the facts and evidence during voir dire, because the prosecutor was reasonably attempting to learn what, if anything, prospective jurors knew about the case.

“The trial court did not err by allowing the prosecutor to reasonably explore during voir dire the possibility that prospective jurors might be disinclined to believe the testimony of witnesses who were accomplices in the offenses.

“The trial court did not err by allowing the prosecutor to ask prospective jurors if they would blame a homicide victim for putting himself near the scene of a fight where he was fatally shot, because the prosecutor was inquiring into potential bias to determine if prospective jurors could fairly weigh the evidence.

“Where the defendant admitted during his trial testimony that he had repeatedly lied to the police, the prosecutor’s remarks in closing argument about the defendant’s credibility were reasonably drawn from the evidence and constituted fair comment on the discrepancy between his statements to police and his trial testimony.

“The prosecutor’s remarks in closing argument that the detectives had done ‘an excellent job of interviewing’ the defendant, and that it was not ‘until the police do their job and do a great job in this case, and get those photos’ of the defendant holding a gun so that he could not deny that the gun was his, did not constitute improper vouching where the remarks addressed the thoroughness of the investigation and not the credibility of the detectives, and were based upon the evidence produced at trial.

“The prosecutor’s isolated remark in closing argument that the ‘only justice’ for the homicide victim was to find the defendant guilty was not inherently improper and fell within the creative latitude afforded both parties in closing argument.”

“Where the defendant was charged with murder and felonious assault, defense counsel’s failure to request jury instructions on the lesser offenses of voluntary manslaughter and aggravated assault did not constitute ineffective assistance of counsel, because the request for instructions would have been at odds with the defendant’s testimony that he had not been the shooter, and the decision by counsel to seek acquittal rather than inviting conviction on lesser offenses was a matter of trial strategy.”

Second Appellate District of Ohio

State v. Villegas, 2017-Ohio-2887

Miranda: Motion to Suppress

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2017/2017-Ohio-2887.pdf>

The trial court did not err in suppressing Appellee's statements to police. Appellee initially invoked his right to remain silent, then later asked a police officer what the "process" or "procedure" would be going forward. The Second District found that question was not "sufficient to show a willingness and a desire to discuss the subject of his criminal case with the police." But, even if it had, the Second District held that he did not knowingly, intelligently, and voluntarily waive his *Miranda* rights when he spoke with the police officer, largely because the officer did not read him his *Miranda* rights again, but instead restarted the interrogation.

State v. Nelson, 2017-Ohio-2884 Enjoy this one, OVI attorneys.

OVI: Motion to Suppress

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2017/2017-Ohio-2884.pdf>

The trial court *did not* err in granting Appellee's motion to suppress because there was no reasonable, articulable suspicion for the officer to conduct field sobriety tests on Appellee. Appellee's vehicle crossed the center line twice and nearly struck the curb on the right. She had no problems looking for her license and insurance, but had neither. Appellee did not have driving privileges and was under numerous suspensions. Her eyes were "bloodshot" and "somewhat watery." There was a "moderate odor of an alcoholic beverage being emitted from her inside the vehicle" that "seemed to intensify as [she] spoke." She admitted to drinking the night before, but not on the day in question. She was confused about what day it was, but was compliant and cooperative throughout the encounter.

State v. D.F., 2017-Ohio-2882

Juvenile: Mandatory Bindover: *Aalim*

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2017/2017-Ohio-2882.pdf>

This case was reversed following *State v. Aalim*, 2016-Ohio-8278, which was the law at the time of this decision, but as you will see below, it is no longer the law in Ohio.

Third Appellate District of Ohio

Nothing to report.

Fourth Appellate District of Ohio

Nothing to report.

Fifth Appellate District of Ohio

State v. Bergman, 2017-Ohio-2944

Expungement

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2017/2017-Ohio-2944.pdf>

The trial court erred in denying Appellant's motion to seal his records of conviction without first holding a hearing, where his motion raised a factual issue concerning his eligibility for expungement. See R.C. 2953.52(B).

Sixth Appellate District of Ohio

State v. Henderson, 2017-Ohio-2900

Sentencing: Allied Offenses: Murder: Endangering Children

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2017/2017-Ohio-2900.pdf>

The trial court erred in failing to merge Appellant's convictions for endangering children and murder, where endangering children was the predicate offense for the murder.

Seventh Appellate District of Ohio

Nothing to report.

Eighth Appellate District of Ohio

State v. Stewart, 2017-Ohio-2993

Having Weapons While Under Disability

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2017/2017-Ohio-2993.pdf>

Summary from the Eighth District:

“Appellant argues for the first time on appeal that weapon while under disability statute, R.C. 2923.13, violates his right to due process because it permits a prior juvenile adjudication to be an element for a subsequent criminal offense. Appellant waived this argument by pleading guilty to the offense. *State v. Hand*, Slip Opinion No. 2016-Ohio-5504, does not prevent a previous delinquency adjudication from establishing an element of the offense of having a weapon while under disability.”

This makes three districts now (1st, 7th, 8th), that have declined to extend *Hand* to having weapons while under disability. That being said, keep making the argument to preserve the issue until the Ohio Supreme Court speaks on it.

***Parma v. Odolecki*, 2017-Ohio-2979**

Obstructing Official Business: Manifest Weight

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2017/2017-Ohio-2979.pdf>

Summary from the Eighth District:

“Appellant's conviction for obstructing justice by warning individuals of an upcoming OVI checkpoint is reversed, and is not supported by the evidence. Appellant's conviction for misconduct at an emergency is affirmed. Appellant approached a scene with five police vehicles, emergency lights activated, and several officers. Police were attempting to diffuse an attempted suicide situation involving an autistic teen whose mother and young sisters were also present. Appellant left his initial video recording location across the street and moved directly adjacent to the scene, aggravating the situation and causing interference with official activities. Appellant's conviction for disorderly conduct is also affirmed.”

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. Grimes, 2017-Ohio-2927

Sentencing: Postrelease Control

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/o/2017/2017-Ohio-2927.pdf>

“In this appeal, we consider what information a trial court must include in a sentencing entry to validly impose a postrelease-control sanction on an offender when the court orally provides all the required advisements to the offender at the sentencing hearing. We hold that to validly impose postrelease control when the court orally provides all the required advisements at the sentencing hearing, the sentencing entry must contain the following information: (1) whether postrelease control is discretionary or mandatory, (2) the duration of the postrelease-control period, and (3) a statement to the effect that the Adult Parole Authority (“APA”) will administer the postrelease control pursuant to R.C. 2967.28 and that any violation by the offender of the conditions of postrelease control will subject the offender to the consequences set forth in that statute. Because the sentencing entry in this case included all the required information, we reverse the judgment of the Fifth District Court of Appeals, reinstate the judgment of the Muskingum County Court of Common Pleas, and remand the cause to the trial court for further proceedings consistent with this opinion.”

State v. Mutter, 2017-Ohio-2928

Double Jeopardy

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/o/2017/2017-Ohio-2928.pdf>

“Indictment for ethnic intimidation violated double-jeopardy clauses where defendants had previously been convicted of aggravated menacing and charges arose from the same incident.”

State v. Aalim, 2017-Ohio-2956 On Reconsideration

Juvenile Procedure: Due Process: Equal Protection: Mandatory Bindover

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/o/2017/2017-Ohio-2956.pdf>

“Mandatory transfer of juveniles to general division of common pleas court does not violate juveniles’ right to due process or equal protection Under Article I, Sections 2 and 16 of Ohio Constitution or Fourteenth Amendment to United States Constitution.”

“Due-process provisions of both constitutions predate creation of juvenile courts and therefore cannot have created substantive right to amenability hearing.”

“Appellant’s mandatory transfer satisfied fundamental fairness because juvenile court issued decision stating its reasons for transfer after conducting hearing at which appellant was represented by counsel.”

“Juveniles are not a suspect class under either federal or Ohio’s Equal Protection Clause.”

“Mandatory transfer is rationally related to legitimate governmental purpose of increased punishments for serious juvenile offenders.”

Sixth Circuit Court of Appeals

Nothing to report.

Supreme Court of the United States

Nothing to report.