

Appellate Court Decisions - Week of 5/7/18

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

First Appellate District of Ohio

State v. Robinson, 2018-Ohio-1797

Drug Abuse Instruments: Sufficiency

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2018/2018-Ohio-1797.pdf>

Summary from the First District: “Where defendant entered a no-contest plea to possessing drug-abuse instruments under R.C. 2925.12, which applies only where the instrument involved is a hypodermic or syringe, and the state’s explanation of the circumstances showed that defendant possessed a crack pipe, the state failed to establish all of the elements of the offense, and the trial court erred in finding defendant guilty of possessing drug-abuse instruments.”

State v. Owens, 2018-Ohio-1853

Sentencing: Mandatory Fine: Indigency

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2018/2018-Ohio-1853.pdf>

Summary from the First District:

“Even though defendant did not file an affidavit of indigency under R.C. 2929.18(B)(1) to avoid the imposition of mandatory fines, defendant did not waive his right to challenge on appeal the imposition of mandatory fines where the trial court’s insistence on defendant’s submission of five years of tax returns before it would consider whether he was indigent made clear that the filing of an affidavit of indigency would be of no consequence and a futile act.

“The trial court’s imposition of mandatory fines pursuant to R.C. 2929.18(B)(1) was contrary to law where the court required as a prerequisite to a finding of indigency the submission of five years of defendant’s tax returns.”

Second Appellate District of Ohio

Nothing to report.

Third Appellate District of Ohio

State v. Teeple, 2018-Ohio-1767

Failure to Stop After an Accident: Sufficiency

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/3/2018/2018-Ohio-1767.pdf>

Appellant's conviction for hit-skip was based on insufficient evidence where the record was devoid of evidence the accident took place "on a public road or highway" where he went off the roadway into a ditch and then struck a road sign. There was also no evidence another vehicle was involved in the accident. The police officer who arrived on scene also did not find Appellant or a vehicle, so Appellant could not report the accident to the police officer at the scene. Finally, Appellant was also located and charged before the 24-hour reporting period was over.

Fourth Appellate District of Ohio

State v. Link, 2018-Ohio-1730

Disobeying A Stop Sign: R.C. 4511.12: R.C. 4511.43

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/4/2018/2018-Ohio-1730.pdf>

In interpreting R.C. 4511.43, the Fourth District said:

"There is little guidance available regarding the common, ordinary, and accepted meaning of what it means to stop "at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering it." A review by this writing judge reveals no published case law from the Ohio Supreme Court or any other Ohio court addressing the proper interpretation of what it means to stop at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway. A cursory reading of the language can mean a multitude of things depending on the reader. Accordingly, we conclude that R.C. 4511.43(A)'s requirement that a motorist stop "at the point nearest the intersecting roadway where the

driver has a view of approaching traffic on the intersecting roadway before entering it” is reasonably susceptible to more than one interpretation.”

It then continued:

“We conclude that the General Assembly did not intend that motorists stopping well past the marked stop sign and at the point nearest the intersection would constitute compliance with R.C. 4511.43(A). Rather, we hold that when the stop sign is not accompanied by a marked stop line or crosswalk, the motorist must stop his or her vehicle at the point nearest the stop sign where they have a clear view of approaching traffic on the intersecting roadway.”

State v. Phillips, 2018-Ohio-1794

Speedy Trial: Obstructing Official Business

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/4/2018/2018-Ohio-1794.pdf>

The obstructing official business charge against Appellant arose from the same conduct and/or transaction as the disorderly conduct charge filed against him. Therefore, the speedy trial clock for both charges started with the original charge. Accordingly, Appellant’s speedy trial rights were ultimately violated on the obstructing official business charge.

State v. Lincoln, 2018-Ohio-1816

Discovery Violation

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/4/2018/2018-Ohio-1816.pdf>

“Lincoln contends that the trial court erred in its ruling regarding a discovery violation by the State, by allowing the State to introduce evidence when the proper chain of custody had not been established, and by accepting deficient verdict forms.

“We conclude that the trial court erred in failing to properly remedy the State’s discovery violation; resulting in prejudice to Lincoln and necessitating reversal and remand for a new trial.”

Fifth Appellate District of Ohio

Nothing to report.

Sixth Appellate District of Ohio

State v. Edwards, 2018-Ohio-1739

Identity Fraud: Sufficiency

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2018/2018-Ohio-1739.pdf>

Appellant's conviction for identity fraud was based on insufficient evidence where the state failed to present any evidence either she or her accomplice "claimed to be the victim or used the Best Buy information as their own."

Seventh Appellate District of Ohio

Nothing to report.

Eighth Appellate District of Ohio

Cleveland v. Calhoun, 2018-Ohio-1758

Domestic Violence: Sufficiency

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2018/2018-Ohio-1758.pdf>

Summary from the Eighth District: "Appellant's convictions of domestic violence and endangering children were not supported by sufficient evidence in the record. Appellant disciplined his 11 year old son by removing him from a car, shaking his arm, poking him in the chest with a finger and raising his voice. Appellant's son was unharmed and the state failed to present sufficient evidence of abuse to support a conviction for child endangering. Appellant's conviction for domestic violence also lacked sufficient evidence where appellant used his forearm to push his son's mother away from him when she intervened in the discipline."

State v. Smith, 2018-Ohio-1756

Double Jeopardy

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2018/2018-Ohio-1756.pdf>

Summary from the Eight District: “Appellant was acquitted of felonious assault during the first trial, and thus, retrial on this count is barred by the Double Jeopardy Clause. Double jeopardy does not bar the state from retrying appellant on the abduction count because the jury was unable to reach a verdict on this count during the first trial. The trial court's judgment permitting the state to retry appellant for felonious assault is reversed and the matter is remanded for a new trial on only the abduction count.”

State v. Khoshknabi, 2018-Ohio-1752

Crim.R. 32.1: Plea Withdrawal

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2018/2018-Ohio-1752.pdf>

Summary from the Eighth District: “Appellant’s trial counsel failed to properly advise him about the deportation consequences of his guilty plea. Appellant demonstrated a reasonable probability that but for counsel's erroneous advice, and had he known about the mandatory deportation consequences of his guilty plea, he would not have pled guilty and would have insisted on going to trial. Accordingly, the trial court abused its discretion in denying appellant's motion to withdraw his guilty plea.”

State v. Bozso, 2018-Ohio-1750

Crim.R. 32.1: Plea Withdrawal

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2018/2018-Ohio-1750.pdf>

Summary from the Eighth District: “Appellant was prejudiced where his trial counsel failed to inform appellant that relief from immigration consequences was wholly unavailable to appellant.”

State v. Briscoe, 2018-Ohio-1746

Sentencing

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2018/2018-Ohio-1746.pdf>

Summary from the Eighth District: “The court erred by incorrectly journalizing the degree of the offense to which the defendant pleaded guilty, by misstating the maximum penalty for violating the terms of community control, and by imposing a mandatory term of postrelease control.”

Palmer-Tesema v. Pinkney, 2018-Ohio-1852

Habeas Corpus

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2018/2018-Ohio-1852.pdf>

Summary from the Eighth District: “The petitioner, through his petition for a writ of habeas corpus, argues that the amount of bail ordered by the trial court is excessive. Habeas corpus actions involving claims of excessive pretrial bail are hybrid cases requiring either or both appellate and original review. Because of the hybrid nature of habeas actions, which permit us to hold a hearing de novo after the trial court denies a motion to reduce bail, we can make our own independent decision as to the requisite bail. Herein, no hearings were conducted by the trial court prior to denial of the petitioner's motions to reduce the amount of bail. Following an evidentiary hearing before this court, we find that bail in the amount of \$250,000 is excessive. Accordingly, the amount of bail is reduced to \$100,000 with the bail bond secured by the deposit of ten percent in the amount of the bond in cash, a surety bond, or a bond secured by real estate or securities as allowed by law. Additional conditions placed upon the petitioner include: 1) no contact with the victims; 2) electronically monitored home detention (GPS); 3) surrender all passports; 4) prohibition from drinking alcohol; and 5) prohibited from leaving Cuyahoga County. Costs waived.”

State v. Moore, 2018-Ohio-1825

Sexual Battery

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2018/2018-Ohio-1825.pdf>

Summary from the Eighth District: “Appellant’s conviction for sexual battery is supported by sufficient evidence because under the sufficiency standard, a reasonable juror could find that the appellant knowingly coerced the victim to engage in sexual conduct, if the jury believed the

victim's testimony. However, his conviction is against the manifest weight of the evidence because the victim's trial testimony was inconsistent and contradictory with her narrative given to medical professionals a day after the incident, and with the statement given to police. These inconsistencies coupled with no DNA evidence substantiating the victim's testimony, warranted reversal."

State v. Yavorek, 2018-Ohio-1825

Venue

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2018/2018-Ohio-1824.pdf>

Summary from the Eighth District: "The trial court erred in denying defendant's motion for judgment of acquittal for lack of venue pursuant to Crim.R. 29(C) and determining that venue was proper in Cuyahoga County. Venue lies where a member of an enterprise conducts an illegal act in furtherance of the purpose of the enterprise. The evidence is insufficient to support that the alleged conspiracies are related to the affairs of the same enterprise and formed for a common purpose. A pattern of corrupt activity by a criminal enterprise is not established by asserting that various unindicted individuals engaged in predicate crimes at various times independently and without coordination. Separate conspiracies by different enterprises for different purposes may not be boot strapped in an attempt to support a pattern of corrupt activity for the purpose of establishing venue in a legally remote jurisdiction."

Ninth Appellate District of Ohio

Nothing to report.

Tenth Appellate District of Ohio

Nothing to report.

Eleventh Appellate District of Ohio

State v. Anderson, 2018-Ohio-1776

Sentencing: Post-Release Control Violation

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2018/2018-Ohio-1776.pdf>

“Anderson challenges the trial court’s imposition of two, one-year prison terms for his post-release control violations as contrary to law because the plain language of R.C. 2929.141 only allows a sentencing court to impose one prison term for a post-release control violation. The state agrees and concedes error.”

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.