

## Appellate Court Decisions - Week of 5/8/17

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

### First Appellate District of Ohio

*Nothing to report.*

### Second Appellate District of Ohio

#### **State v. Bailey, 2017-Ohio-2679**

Sufficiency of evidence

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2017/2017-Ohio-2679.pdf>

**Conviction for assault vacated, as evidence insufficient to support the conviction; no witness could identify appellant as the perpetrator of the offense.**

#### **State v. Smith, 2017-Ohio-2684**

*Hand case/retroactivity*

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2017/2017-Ohio-2684.pdf>

**Trial court did not err in denying appellant's motion to find his 2005 conviction void; claim that trial court improperly relied on appellant's juvenile record to enhance his sentence is erroneous, as subsequent Ohio Supreme Court decision, *State v. Hand*, does not apply retroactively.**

**Note: This appears to be the first court to decide this issue of the retroactive application of *Hand*. I anticipate the issue is headed to the Ohio Supreme Court.**

#### **State v. Hall, 2017-Ohio-2682**

Suppression of search

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2017/2017-Ohio-2682.pdf>

**Trial court did not err in granting appellant's motion to suppress search of automobile, as court correctly concluded that the traffic stop was not expediently completed, and the officer delayed it to obtain a canine sniff.**

### **Third Appellate District of Ohio**

*Nothing to report.*

### **Fourth Appellate District of Ohio**

***State v. Sturgill, 2017-Ohio-2736***

**Sex offender classification**

**Full Decision:**

**<https://www.supremecourt.ohio.gov/rod/docs/pdf/4/2017/2017-Ohio-2736.pdf>**

**Trial court did not err in classifying appellant as habitual sex offender under Megan's Law after appellant had been released from prison; language of former R.C. 2950.09(B)(1) directing the trial court to hold the classification hearing prior to or at the time of sentencing is not language that is jurisdictional, as classification requirements under Megan's Law are civil and remedial.**

### **Fifth Appellate District of Ohio**

*Nothing to report.*

### **Sixth Appellate District of Ohio**

***State v. Cunningham, 2017-Ohio-2689***

**Restitution**

**Full Decision:**

**<https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2017/2017-Ohio-2689.pdf>**

**Trial court erred in ordering restitution to third-party financial institutions who reimbursed victims of the crime, as no agreement to do so had been reached during the plea negotiations.**

### **Seventh Appellate District of Ohio**

*Nothing to report.*

## Eighth Appellate District of Ohio

### ***State v. Miller, 2017-Ohio-2657***

#### Competency

##### Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2017/2017-Ohio-2657.pdf>

**Trial court erred by failing to hold a competency hearing prior to accepting appellant's plea when the issue of competency was raised prior to trial and where there was no indicia of competency on which the court could make an accurate competency determination.**

### ***State v. Crymes, 2017-Ohio-2655***

#### Pre-indictment delay

##### Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2017/2017-Ohio-2655.pdf>

**Trial court did not err in dismissing indictment for rape for pre-indictment delay, as appellee was not charged until 2015, 20 years after the alleged offense; due to 20-year delay in due diligence by state in pursuing this allegation, appellee suffered actual prejudice to his ability to defend himself and state had no justifiable reason for the delay in prosecution.**

### ***State v. M.L., 2017-Ohio-2764***

#### Sealing of record

##### Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2017/2017-Ohio-2764.pdf>

**Trial court erred by denying a motion to seal a record of conviction without holding a hearing.**

### ***State v. Ramos, 2017-Ohio-2763***

#### Postrelease control

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2017/2017-Ohio-2763.pdf>

Because original sentencing entry does not include proper advisement of the consequences for violating postrelease control, imposition of postrelease control was void; and as the appellant had finished his prison sentence, the trial court cannot correct the defect. Therefore, the term of postrelease control was void and should have been terminated.

### Ninth Appellate District of Ohio

*Nothing to report.*

### Tenth Appellate District of Ohio

*Nothing to report.*

### Eleventh Appellate District of Ohio

#### **State v. McFadden, 2017-Ohio-2728**

State's appeal

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2017/2017-Ohio-2728.pdf>

State's appeal from trial court's pretrial discovery order directing state to provide defendant with grand jury transcripts is dismissed for lack of jurisdiction, as state failed to certify that the appeal was not being taken for purposes of delay or that one or more of the scenarios listed in Crim.R. 16 (D) applied.

#### **State v. Gonzales, 2017-Ohio-2720**

Jail-time credit

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2017/2017-Ohio-2720.pdf>

Trial court erred in denying jail-time credit for 89 days during which appellant was confined on a probation violation holder in another case since the reason for that violation and confinement was predicated solely upon the fact that formed the basis of the new offense ie: the drug possession offense for which he was convicted and sentenced; the plain and

unambiguous language of R.C. 2967.191 which provides that a prisoner should be given credit “by the total number of days that the prisoner was confined for any reason arising out of the offense for which the prisoner was convicted and sentenced” mandated such a result.

Note: This case appears to be in direct conflict with several other districts, including the First District’s decision in *State v. Washington*, 1st Dist. Hamilton Nos. C-050462 & C-050722, 2006-Ohio-4790 which held that, even though the community control violation was based upon the same facts as the new charge, the defendant was not entitled to jail-time credit. I anticipate the issue is headed to the Ohio Supreme Court.

## Twelfth Appellate District of Ohio

*Nothing to report.*

## Supreme Court of Ohio

***State v. Polk*, 2017-Ohio-2735**

Search and seizure/school

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/o/2017/2017-Ohio-2735.pdf>

Warrantless search of an unattended book bag by a school employee was justified. The school’s “protocol requiring searches of unattended book bags furthers the compelling governmental interest in protecting public-school students from physical harm. As executed here, the search . . . was limited to fulfilling the purpose of . . . [the] protocol – to identify the bag’s owner and to ensure that its contents were not dangerous.”

‘In light of [this] compelling interest in ensuring that unattended book bags do not contain dangerous items and of Polk’s greatly diminished expectation of privacy in his unattended bag, we conclude that [the school’s] protocol . . . is reasonable under the Fourth Amendment.’

## Sixth Circuit Court of Appeals

*Nothing to report.*

## Supreme Court of the United States

*Nothing to report.*