

Appellate Court Decisions - Week of 6/12/17

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

First Appellate District of Ohio

State v. Valdez, 2017-Ohio-4260

Ineffective Assistance of Counsel: *Padilla v. Kentucky*

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2017/2017-Ohio-4260.pdf>

Summary from the First District:

“The municipal court did not abuse its discretion in overruling defendant’s motion to withdraw his guilty plea to misdemeanor domestic violence on the ground that his plea had been the unintelligent product of his trial counsel’s ineffectiveness in advising him concerning the immigration consequences of his conviction: the motion was reviewable under Crim.R. 32.1; and counsel had a duty under *Padilla v. Kentucky*, 559 U.S. 356, 130 S.Ct. 1473, 176 L.Ed.2d 284 (2010), to accurately advise defendant that, with his conviction, his removal was presumptively mandatory; but the record cannot be said to demonstrate that withdrawal was necessary to correct manifest injustice, when the municipal court, in deciding the motion, did not have before it a transcript of the plea hearing. [*But see* DISSENT: Manifest injustice can be established on facts supplied through the affidavit attached to the motion. Since the trial court did not consider whether defendant was prejudiced, this court should not address merits for the first time on appeal and instead should remand the case to the trial court for consideration of this issue.]”

In re D.G., 2017-Ohio-4261

Delinquency: Arrest: Probable Cause: Curfew: Motion to Suppress

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2017/2017-Ohio-4261.pdf>

Summary from the First District:

“The trial court did not err in denying the juvenile’s motion to suppress his arrest for violating the city of Norwood’s daytime-curfew ordinance, because, under the totality of the circumstances, the arrest was supported by probable cause: where traveling to and from school was an exception to the daytime-curfew ordinance, the juvenile’s statement

that he was on his way to school was to be evaluated along with all other circumstances to determine whether he had violated the curfew.

“Where the juvenile had continually shouted profanities at the arresting officer, spit on the officer, and threatened to kill the officer, the officer’s belief that the juvenile would cause him harm was reasonable, and the juvenile’s adjudication for menacing was supported by sufficient evidence.”

State v. Billups, 2017-Ohio-4309

Search: Motion To Suppress: Terry Stop

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2017/2017-Ohio-4309.pdf>

Summary from the First District:

“In a prosecution for trafficking in heroin, the trial court properly overruled the defendant’s motion to motion to suppress evidence recovered from his person and his vehicle during a traffic stop, because the police officer had reasonable suspicion to conduct a *Terry* pat-down of the defendant, the pat-down did not exceed the permissible scope, the officer did not excessively detain the defendant to await the arrival of a drug-sniffing canine, and the officer’s plain-feel discovery of the heroin on the defendant during the pat-down search gave police probable cause to arrest him.”

Second Appellate District of Ohio

State v. Boyer, 2017-Ohio-4199 (See also State v. Jackson, 2017-Ohio-4197)

Having Weapons While Under Disability: Hand

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2017/2017-Ohio-4199.pdf>

The trial court erred in dismissing Appellee’s charge for having weapons while under disability (R.C. 2923.13(A)(2), based on a juvenile adjudication) in reliance on the Ohio Supreme Court’s decision in *State v. Hand*, 149 Ohio St.3d 94, 2016-Ohio-5504, 73 N.E.3d 448. The Second District relied on its reasoning that for having weapons while under disability, because the juvenile adjudication is an element of the offense, it is not being treated as a conviction for a crime. It also relied on the fact that, upon reaching 18 years old, Appellee had the opportunity under R.C. 2923.14(A)(1) to request the removal of the legal disability created by his juvenile adjudication. **Note: Judge Donovan agreed with Judge**

Cunningham's dissent in *State v. Carnes*, 1st Dist. Hamilton No. C-150752, 2016-Ohio-8019.

Third Appellate District of Ohio

Nothing to report.

Fourth Appellate District of Ohio

Nothing to report.

Fifth Appellate District of Ohio

***State v. Boehm*, 2017-Ohio-4285**

Sentencing: Intervention In Lieu Of Conviction

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2017/2017-Ohio-4285.pdf>

A trial court may consider a prior sealed conviction in determining whether a defendant is eligible for intervention in lieu of conviction. A prior sealed conviction does not automatically preclude a defendant from eligibility for intervention in lieu of conviction. R.C. 2953.32(E) does not create a prosecutorial veto to intervention in lieu of conviction.

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.