

Appellate Court Decisions - Week of 7/10/17

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

First Appellate District of Ohio

State v. Pierce, 2017-Ohio-5791

Speedy Trial

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2017/2017-Ohio-5791.pdf>

Summary from the First District:

“The trial court erred in overruling the defendant’s motion to dismiss his indictment on constitutional speedy-trial grounds under the four-factor analysis set forth in *Barker v. Wingo*, 407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972), because all four factors weighed in favor of the defendant: first, the 13½-month delay between the defendant’s indictment and arrest is presumptively prejudicial; second, the state failed to offer any evidence to explain the delay, and the state bears the burden to explain the reason for the delay under the second *Barker* factor; third, the defendant timely asserted his speedy-trial right by filing a motion to dismiss the indictment five days after the return of the warrant; fourth, the defendant did not have to show actual prejudice as a result of the state’s delay, because prejudice was presumed under the first *Barker* factor, and the state offered no evidence to rebut this presumption of prejudice.”

In re: D.B., 2017-Ohio-5792

Children: Custody: Evidence: Due Process

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2017/2017-Ohio-5792.pdf>

Summary from the First District:

“The trial court did not err in adopting the magistrate’s decision granting permanent custody of the children to the Hamilton County Department of Job and Family Services where the decision was supported by sufficient evidence and was not against the manifest weight of the evidence.

“Mother’s due-process rights were not violated where she did not have the opportunity to cross-examine the magistrate presiding over the custody trial, because the comment

made by the magistrate concerning the credibility of a witness did not constitute testimony and there was no jury that could have been prejudicially influenced by it.”

In re: A.T., 2017-Ohio-5821

Appellate Review: Jurisdiction: Final Order: Juv.R. 40

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2017/2017-Ohio-5821.pdf>

Summary from the First District:

“Juv.R. 40 contains language identical to Civ.R. 53, and therefore, the requirements outlined in *Alexander v. LJMgt., Inc.*, 1st Dist. Hamilton No. C-090091, 2010-Ohio-2763, ¶ 12, are applicable to juvenile court entries regarding magistrate’s decisions: the entries are not final until the juvenile court reviews the magistrate’s decision and (1) rules on any objections, (2) adopts, modifies or rejects the decision, and (3) enters a judgment that determines all the claims for relief in the action or determines that there is no just reason for delay.

“The juvenile court’s entries adopting the magistrate’s decisions were not final, appealable orders pursuant to Juv.R. 40(D)(4)(e), which provides that a court that adopts, rejects, or modifies a magistrate’s decision shall also enter a judgment: the entries reviewed the magistrate’s decisions, ruled on the objections and adopted the magistrate’s decisions, but they did not enter judgments, and therefore, they are not final appealable orders and the appeals from the entries must be dismissed for lack of jurisdiction.”

Second Appellate District of Ohio

Nothing to report.

Third Appellate District of Ohio

Nothing to report.

Fourth Appellate District of Ohio

State v. Wilson, 2017-Ohio-5772

Anders

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/4/2017/2017-Ohio-5772.pdf>

The Fourth District Court of Appeals is no longer accepting *Anders* briefs for the reasons spelled out in its decision. It adopted the “Idaho rule,” that counsel cannot withdraw solely on the basis that the appeal is frivolous. Instead, attorneys must file a brief on the merits.

Fifth Appellate District of Ohio

State v. Hall, 2017-Ohio-5805

Motion to Suppress: Pat-Down Search

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2017/2017-Ohio-5805.pdf>

The trial court erred in denying Appellant’s motion to suppress where the officers lacked “a reasonable specific and articulable suspicion that appellant was armed and dangerous justifying the need for a pat-down/weapons check for officer safety.”

State v. Miller, 2017-Ohio-5801

Sentencing

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2017/2017-Ohio-5801.pdf>

The trial court lacked jurisdiction to revoke Appellant’s community control because an order from a chief probation officer does not toll the period of community control pending a court appearance by the defendant.

Sixth Appellate District of Ohio

Nothing to report.

Seventh Appellate District of Ohio

Nothing to report.

Eighth Appellate District of Ohio

State v. Cotton, 2017-Ohio-5807

Aggravated Burglary: Sufficiency: Ineffective Assistance

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2017/2017-Ohio-5807.pdf>

Appellant was permitted to re-open his appeal based on the ineffective assistance of appellate counsel for failing to raise the issue of the sufficiency of hi aggravated burglary conviction. Appellant's aggravated burglary conviction was based on insufficient evidence because there was no evidence the theft occurred inside the apartment building in question.

Ninth Appellate District of Ohio

Nothing to report.

Tenth Appellate District of Ohio

Nothing to report.

Eleventh Appellate District of Ohio

State v. McGhee, 2017-Ohio-5773

Evidence: Expert Testimony

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2017/2017-Ohio-5773.pdf>

The trial court erred in allowing an expert to testify regarding the effect of sexual abuse on minors where the state did not provide the expert's report until a few days before trial.

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.