

Appellate Court Decisions - Week of 7/2/18

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

First Appellate District of Ohio

State v. Buttery, 2018-Ohio-2651

Jurisdiction: Sentencing: Community Control Violation

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2018/2018-Ohio-2651.pdf>

Summary from the First District: “A trial court has jurisdiction to sentence a defendant for a community-control violation during the pendency of the defendant’s appeal from the underlying judgment of conviction.”

State v. Evans, 2018-Ohio-2534

Aggravated Burglary: Evidence: Prosecutorial Misconduct: Fifth Amendment: Plain Error: Ineffective Assistance: Witnesses

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/1/2018/2018-Ohio-2534.pdf>

Summary from the First District:

“In a prosecution for aggravated burglary and felonious assault, the trial court did not err in admitting the victim’s testimony regarding defendant’s prior instances of physical violence against the victim where the testimony was relevant to prove defendant’s motive and intent, and therefore, did not violate the general prohibition against ‘other acts’ evidence in Evid.R. 404(B).

“The trial court erred in admitting at trial evidence of defendant’s prior misdemeanor-assault conviction in violation of Evid.R. 609 and 404(B), but the error did not rise to the level of plain error where defendant was tried before the court and the erroneous admission of his prior misdemeanor-assault conviction did not affect the outcome of the trial.

“The trial court did not err in admitting, pursuant to Evid.R. 701, the opinion testimony of a responding police officer and the victim’s supervisor that scratches on the victim’s face were ‘fresh’ injuries where their

testimony was based on their personal observation of the victim and their common understanding of scratches and cuts.

“The defendant was not denied a fair trial due to prosecutorial misconduct where the victim’s testimony regarding prior instances of physical harm was properly admissible under Evid.R. 404(B). The assistant prosecuting attorney’s erroneous impeachment of the defendant with a prior misdemeanor assault conviction did not deny him a fair trial.

“In a bench trial for aggravated burglary and felonious assault, any alleged error by the trial court in compelling defendant to testify in violation of his Fifth Amendment privilege against self-incrimination was harmless under the three-part test articulated in *State v. Harris*, 142 Ohio St.3d 211, 2015-Ohio-166, 28 N.E.3d 1256, because the admission of defendant’s testimony had no effect on the trial court’s verdict.

“The actions and omissions by defense counsel alleged to constitute ineffective assistance of trial counsel did not provide a basis for overturning the defendant’s aggravated-burglary conviction where counsel’s questioning of the victim as to prior instances of physical harm could be construed as legitimate trial strategy; counsel’s failure to object to other-acts testimony and testimony from the victim’s supervisor and the responding police officer about the age of the victim’s facial injuries was properly admitted; and counsel’s failure to object to the prosecutor’s erroneous impeachment of defendant with a prior misdemeanor-assault conviction and to the trial court’s alleged compelling of defendant to testify in violation of the Fifth Amendment were not outcome determinative.

“Defendant’s conviction for aggravated burglary was supported by sufficient evidence and was not contrary to the manifest weight of the evidence where the victim testified that defendant had kicked in the sidelight to the front door of her workplace, entered, and punched her in the face multiple times; the victim’s supervisor and the responding police officer testified that the victim had sustained facial injuries, including fresh scratches to her face; the victim’s medical records showed that she had been treated for a nasal fracture; and the state introduced the victim’s 911 calls, as well as the jail-house phone calls between defendant and his ex-girlfriend, in which defendant had admitted hitting the victim and knocking her to the ground, and the trial court chose to accord more weight to testimony of the state’s witnesses and a 911 recording than the testimony of defendant and his witness that defendant had kicked in the door to the victim’s workplace, but he had not gone inside or punched the victim.”

Second Appellate District of Ohio

Nothing to report.

Third Appellate District of Ohio

State v. Stein, 2018-Ohio-2621

Ineffective Assistance: Felonious Assault

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/3/2018/2018-Ohio-2621.pdf>

Summary from the Third District: “Counsel was ineffective for not objecting to testimony regarding the fact that defendant was a thief and a drug dealer when the charges were unrelated to those prior bad acts. The State then argued that testimony as a basis for finding that the defendant was not entitled to a verdict of self-defense. Given that the remaining testimony was conflicting, the evidence is not overwhelming that a jury would have convicted the defendant. Thus, the appellant was prejudiced.”

Fourth Appellate District of Ohio

State v. Nance, 2018-Ohio-2637

Plea Withdrawal: Pre-Sentence

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/4/2018/2018-Ohio-2637.pdf>

The trial court abused its discretion in denying Appellant’s pre-sentence motion to withdraw his guilty plea where it failed to hold a hearing on his motion.

Fifth Appellate District of Ohio

Nothing to report.

Sixth Appellate District of Ohio

State v. Adkins, 2018-Ohio-2588

Pre-Indictment Delay

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2018/2018-Ohio-2588.pdf>

Summary from the Sixth District: “Trial court erred in the conviction of appellant for murder as a result of appellant demonstrating actual prejudice for the preindictment delay and appellee failing to demonstrate justification. Judgment reversed and conviction vacated.”

State/Toledo v. Neal, 2018-Ohio-2596

OVI: No-Contest Plea: Waiver: Sufficiency

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2018/2018-Ohio-2596.pdf>

Summary from the Sixth District: “Appellant properly waived the explanation of circumstances required by R.C. 2937.07. When appellant waived the explanation of circumstances, he consented to the trial court making its determination of guilt based on the facts as admitted in the complaint. The complaint, however, failed to support each element of the offense charged. Thus, the trial court’s finding of guilt was not supported by sufficient evidence.”

Seventh Appellate District of Ohio

Nothing to report.

Eighth Appellate District of Ohio

State v. Hartman, 2018-Ohio-2641

Evidence

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2018/2018-Ohio-2641.pdf>

Summary from the Eighth District: “Evidence sufficient to sustain count of forcible rape and substantially impaired rape when victim testified that she thought the person with whom she engaged in sexual conduct while asleep was her boyfriend before discovering that the person was, in fact, the defendant. Court abused its discretion by allowing other acts testimony because it was irrelevant, prejudicial, and used to show the defendant’s character and that he acted in conformity therewith. Court’s instruction on other acts testimony compounded the error. Court abused its discretion by giving flight instruction when state’s request plainly showed that the defendant left the scene because the victim demanded that he leave, not for

the purpose of eluding apprehension by the police.”

Ninth Appellate District of Ohio

State v. Masalko, 2018-Ohio-2560

Evidence

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/9/2018/2018-Ohio-2560.pdf>

Appellant was on trial for public indecency alleged by his co-worker, who was the only one who claimed to have seen him commit the offense. The trial court abused its discretion in sustaining the state’s objection to Appellant cross-examining the co-worker about a civil lawsuit she filed against Appellant and his employer.

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.