

Appellate Court Decisions - Week of 7/31/17

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

First Appellate District of Ohio

State v. Elahee, 2017-Ohio-7085

Attempt: Theft: Substantial Step: Evidence

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2017/2017-Ohio-7085.pdf>

Summary from the First District:

“The trial court did not err in finding the defendant guilty of attempted theft: defendant’s solicitation of another to open a bank account, hiring a driver to take them to the bank, instructing the other person about how to open an account and obtain starter checks for defendant to cash, and intention to write checks for at least \$200 while knowing that the account would not contain that much constituted a substantial step toward committing a theft offense and demonstrated defendant’s purpose to commit a theft offense.”

State v. Corcoran, 2017-Ohio-7048

Crim.R. 11: R.C. 2941.25: Sentencing

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2017/2017-Ohio-7084.pdf>

Summary from the First District:

“The trial court’s failure at the plea hearing to inform the defendant that she was ineligible for community control as required by Crim.R. 11(C)(2)(a) did not amount to prejudicial error where the trial court informed the defendant of the maximum penalties for the offenses, including ten years to life in prison for the more serious first-degree rape charges, and the plea form that the defendant initialed and signed indicated that five of the counts carried mandatory prison terms.

“The defendant’s convictions for child endangering under R.C. 2919.22(B)(2), corrupting another with drugs, and complicity to rape were not allied offenses of similar import subject to merger under R.C. 2941.25, even though the bill of particulars stated that the child-endangering offense was based upon the repeated sexual assault of the defendant’s child by a codefendant, because the material provided to the trial court at

sentencing demonstrated that the offenses were committed separately: the defendant's actions in facilitating the sexual assault of her child extended beyond the multiple rape offenses, and included instances of masturbation, and other touching, as well as videotaping and photographing assaults, which demonstrate torture or cruel abuse of the victim as those terms are used in the child-endangering statute, even without the defendant's conduct in permitting her codefendant to rape her child."

Second Appellate District of Ohio

Nothing to report.

Third Appellate District of Ohio

Nothing to report.

Fourth Appellate District of Ohio

Nothing to report.

Fifth Appellate District of Ohio

State v. Young, 2017-Ohio-7051

Drug Abuse Instruments: Sufficiency

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2017/2017-Ohio-7051.pdf>

Appellant's conviction for possession of drug abused instruments was not supported by sufficient evidence where there was no evidence the hypodermic needles found in Appellant's vehicle had been used to unlawfully administer or use a dangerous drug, or to prepare a dangerous drug.

Sixth Appellate District of Ohio

Nothing to report.

Seventh Appellate District of Ohio

Nothing to report.

Eighth Appellate District of Ohio

In re K.A., 2017-Ohio-6979

Competency

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2017/2017-Ohio-6979.pdf>

Summary from the Eighth District: “The juvenile court erred when it did not conduct a competency hearing before it accepted defendant’s guilty plea. It was not harmless error as the defendant did not testify and actively participate in his defense. The record establishes that the defendant has learning problems and difficulty understanding, and his two previous cases were dismissed because he was found not competent.”

State v. Esper, 2017-Ohio-7069

Sentencing: Allied Offenses: Felonious Assault: Child Endangering

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2017/2017-Ohio-7069.pdf>

Summary from the Eighth District: “Trial court erred in failing to merge felonious assault and child endangering in violation of R.C. 2919.22(B)(1) (abuse) because the offenses were committed with the same conduct and animus. Although the defendant was charged with child endangering in violation of R.C. 2919.22(A) (neglect), that offense was dismissed pursuant to the plea agreement.”

Strongsville v. Johnson, 2017-Ohio-7066

Carrying Concealed Weapons: Manifest Weight

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2017/2017-Ohio-7066.pdf>

Summary from the Eighth District: “Insufficient evidence of intent to obstruct official business based on defendant’s repeated questioning as to why he had to display a driver’s license prevented the police from issuing a citation. The city incorrectly assumed that grounds for issuing a citation for failing to display a driver’s license existed before defendant questioned why he had to display his driver’s license when, in fact, it was defendant’s repeated questioning of the need to show his license that caused the police to conclude that he was in violation of R.C. 4507.35(A). Insufficient

evidence to prove carrying concealed weapon charge on defendant who had a concealed carry permit but did not immediately notify the police because the police did not stop defendant for any law enforcement purpose, but to render aid because the defendant's vehicle had stalled in the road. Testimony that officer felt a 'twinge' in his neck while trying to arrest defendant but did not seek medical treatment or miss any time off from work insufficient to establish physical harm element of resisting arrest. Defendant's conviction for failure to display a driver's license when requested by the police upheld because, although police did not see defendant driving, he was behind the wheel of a stalled vehicle and wife testified that he was driving before the vehicle stalled."

In re R.H., 2017-Ohio-7064

Ineffective Assistance: Appellate Counsel

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2017/2017-Ohio-7064.pdf>

Summary from the Eight District: "R.C. 5139.52 requires sentences for juvenile parole violations be served concurrently. Appellate counsel was ineffective for not raising this issue. Because the state concedes that the statute applies, the court reopens the appeal, reinstates it to the active docket, vacates the consecutive sentence, and remands for resentencing on the parole violation."

Ninth Appellate District of Ohio

Nothing to report.

Tenth Appellate District of Ohio

State v. Corder, 2017-Ohio-6990

Ineffective Assistance

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/10/2017/2017-Ohio-6990.pdf>

"Although Corder repeatedly expressed concerns about the lack of communication between himself and his counsel and did request new counsel, the trial court made no inquiry into Corder's concerns whatsoever. We therefore reverse and remand with instructions to the Franklin County Court of Common Pleas that the trial court shall conduct the [*State v. Deal,*

17 Ohio St.2d 17 (1969)] inquiry in regard to this case. If Corder's complaints prove unfounded, the trial court may re-enter judgment on the previously render verdicts. However, if the court finds that such complaints are well-taken, the court should conduct a new trial on Counts 1 and 5 (if the prosecution is willing to retry the case) or discharge Corder (if the prosecution is not willing).”

Eleventh Appellate District of Ohio

State v. Phelan, 2017-Ohio-7025

Evidence: Evid.R. 801(C)

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2017/2017-Ohio-7025.pdf>

The trial court erred in refusing to allow Appellant to admit into evidence testimony that would have, in a domestic violence case, provided evidence that the victim had a motive to misrepresent Appellant's role in the altercations, as it would serve his interest to have sole custody of their daughter. The trial court kept the evidence out as hearsay, but it was not being used to assert the truth of the matter, but to establish bias or motive.

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.

Bonus: Hamilton County Court of Common Pleas

State v. Hall, Case No. B-16-07043

Motion to Consolidate Indictments

The trial court in this case denied the state’s motion to consolidate the defendant’s more recently filed indictment with his previously filed indictment. There was a significant time difference between the two cases, and apparently the objective evidence in the second case was much stronger than that in the first case. The cases also involve highly inflammatory subject matter – particularly sexual conduct or sexual contact with under-aged girls. The trial court held “there exists too great of a substantial risk that a jury will tend to [utilize] strong objective evidence apparently supporting the latter-filed case to bolster resolution of credibility issues in the earlier-filed case wherein such strong objective evidence is not readily apparent.”

If you would like a copy of this decision, send me an e-mail at jathompson@cms.hamilton-co.org.