

Appellate Court Decisions - Week of 8/28/17

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

First Appellate District of Ohio

State v. Loudermilk, 2017-Ohio-7378

**Public Indecency: R.C. 2907.09: Evidence: Disclosure: Impeachment
Evidence: Unsworn Testimony: Judicial Bias: Jurisdiction**

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2017/2017-Ohio-7378.pdf>

Summary from the First District:

“Defendant’s conviction for public indecency involving a minor was not contrary to the manifest weight of the evidence and was based on sufficient evidence where the state adduced evidence that the minor victim was walking on the opposite side of the street when defendant, who was standing in front of a window in his home, exposed his penis to her: “Physical proximity” as used in R.C. 2907.09(A) means that the victim was near enough to observe defendant’s private parts.

“Defendant was not required to disclose evidence used only for the purpose of impeaching a witness, and the trial court erred in excluding the evidence on that basis; but the error was harmless where defendant’s wife testified to the same effect. [*But see* CONCURRENCE: The trial court did not err in excluding defendant’s evidence where it was extrinsic evidence offered solely for impeachment and it did not fall into one of the listed exceptions in Evid.R. 616.]

“The trial court’s admission of unsworn testimony was not plain error where defendant did not object and has not demonstrated that the error in admitting the testimony affected the outcome of the trial.

“This court has jurisdiction to review a claim of judicial bias that is alleged to have resulted in a violation of defendant’s due process rights. *Earls v. Edwards*, 1st Dist. Hamilton No. C-040531, 2006-Ohio-4029, overruled.”

State v. Lee, 2017-Ohio-7377

Violence: Prosecutor: Counsel: Verdicts: Weight/Sufficiency: Sentencing

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2017/2017-Ohio-7377.pdf>

Summary from the First District:

“At defendant’s trial for aggravated robbery and robbery, the trial court did not abuse its discretion in admitting evidence that tended to show defendant’s motive and access to a gun similar to the gun used in the robbery.

“Defendant’s conviction was not subject to reversal on the ground of prosecutorial misconduct, when much of the conduct did not rise to the level of prosecutorial misconduct, and when the demonstrated misconduct was not outcome-determinative.

“Defendant was not denied the effective assistance of counsel, when the alleged deficiencies in trial counsel’s performance were not outcome-determinative.

“Defendant’s aggravated-robbery conviction was not contrary to the manifest weight of the evidence and was supported by sufficient evidence.

“The trial court did not err in overruling defendant’s motion for acquittal on the ground of inconsistent verdicts, because the guilty verdict on the principal charge was not invalidated by an acquittal on a specification charging identical behavior.

“Defendant’s aggravated-robbery sentence was not contrary to law, when the sentence was within the statutory range, and the court stated that it had considered the purposes of felony sentencing and the seriousness of the offense, as well as the fact that defendant had been on community control at the time of the offense, his criminal record, and his codefendant’s sentence.”

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. Dean, 2017-Ohio-7349

Final Appealable Order

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2017/2017-Ohio-7349.pdf>

Appellant was found guilty of murder and kidnapping back in 1982. He appealed and lost. In 1983, the trial court filed an amended judgment entry fixing the point at which Appellant would be parole eligible. In 2017, Appellant filed a motion for a final appealable order. About a month later, the trial court filed a nunc pro tunc sentencing entry. Appellant appealed from that order, arguing that he was denied his right to counsel at a critical stage of the proceedings because he was not present for the nunc pro tunc sentence. He made basically the same argument as a due process argument as well. The Fifth District held that the nunc pro tunc entry was the proper remedy, and no new sentencing hearing was required.

State v. Saunders, 2017-Ohio-7348

OVI: Motion to Suppress: Blood

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2017/2017-Ohio-7348.pdf>

The trial court did not err in granting Appellant's motion to suppress the use of his medical records to show his blood alcohol level from blood drawn at the hospital. Police did not obtain a warrant for his medical records, and circumstances did not exist to create an exception to the warrant requirement.

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

State v. Purk, 2017-Ohio-7381

Pre-Indictment Delay: Legal Standard

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/9/2017/2017-Ohio-7381.pdf>

The trial court failed to apply the correct legal standard when considering Appellant's motion to dismiss his indictment because of preindictment delay. The trial court never considered whether there was any actual prejudice caused by the 28-year delay before the murder indictment.

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.