

Appellate Court Decisions - Week of 9/18/17

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

First Appellate District of Ohio

State v. Zeigler, 2017-Ohio-7673

Allied Offenses: R.C. 2941.25

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2017/2017-Ohio-7673.pdf>

Summary from the First District:

“The trial court did not commit plain error by failing to merge as allied offenses of similar import defendant’s convictions for aggravated burglary, two counts of rape, and felonious assault where the aggravated-burglary conviction required proof of physical harm, and the state produced evidence of physical harm to support the aggravated-burglary conviction that was separate from the physical harm supporting the two counts of rape and the serious physical harm supporting the felonious assault.”

In re J.F., 2017-Ohio-7675

Jurisdiction: Delinquency: Competency

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2017/2017-Ohio-7675.pdf>

Summary from the First District:

“The state’s appeal from the juvenile court’s dismissal of the complaint alleging that the juvenile was unruly must be dismissed, because the state did not have an appeal of right under R.C. 2945.67(A): the statute only provides an appeal of right from the juvenile court’s dismissal of a delinquency complaint.

“The time for a juvenile to attain competency under R.C. 2152.59 is not tolled for periods of time that the juvenile fails to participate in competency-attainment services; rather, R.C. 2152.59 provides mechanisms to address a juvenile’s failure to participate in such services, such as placing the juvenile in a more restrictive setting to receive services.”

State v. Gibert, 2017-Ohio-7676

Theft/Receiving Stolen Property: Evidence: Sufficiency: Verdict Form: Degree of Offense

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2017/2017-Ohio-7676.pdf>

Summary from the First District:

“Defendant’s conviction for receiving stolen property was supported by sufficient evidence where she continued to retain possession of a rental car for several weeks after the car rental agency had unequivocally and expressly withdrawn its consent for her to use the car and had notified her that she was no longer entitled to use it.

“Where the jury’s verdict form included neither the degree of the offense for which defendant was convicted, nor a statement that the aggravating element—that the property involved was a motor vehicle—was found, defendant could only be convicted of a misdemeanor of the first degree, which is the least degree under R.C. 2913.51 of the offense of receiving stolen property.”

State v. Greenway, 2017-Ohio-7720

Evidence: Witnesses: Drugs: Allocution: Sentencing

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2017/2017-Ohio-7729.pdf>

Summary from the First District:

“In defendant’s trial for possessing drug-abuse instruments, the trial court’s questioning of the police officer, who responded to the dispatch of an overdose, about the life squad’s use of Narcan on defendant did not establish an essential element of the state’s case and was not an abuse of discretion.

“The record did not demonstrate that the trial judge was biased where nothing in the record showed that the trial judge exhibited favoritism toward the state and against the defendant or that the judge did not have an open mind.

“The failure to submit a properly notarized affidavit into evidence along with the crime laboratory report was harmless error.

“Evidence showing that the police officer dispatched to the scene for a ‘non-breather’ found the defendant in a basement receiving life-saving procedures with a syringe

containing drug residue at the foot of the bed on which defendant was lying was sufficient to support defendant's conviction for possessing drug-abuse instruments.

"The trial court erred in denying defendant her right of allocution where it failed to address defendant personally and ask her if she wished to make a statement on her own behalf or present any evidence in mitigation, and therefore, defendant's sentence must be reversed and the cause remanded for resentencing."

Second Appellate District of Ohio

Nothing to report.

Third Appellate District of Ohio

State v. Winger, 2017-Ohio-7660

Search: Motion to Suppress

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/3/2017/2017-Ohio-7660.pdf>

The trial court did not err in granting Appellee's motion to suppress her confession that a pouch containing drugs belonged to her. Appellee repeatedly denied the pouch belonged to her until the police officer promised to only charge her with a misdemeanor instead of a felony, which prompted her to confess the pouch was hers. The confession, therefore was coerced and involuntary.

Fourth Appellate District of Ohio

Nothing to report.

Fifth Appellate District of Ohio

Nothing to report.

Sixth Appellate District of Ohio

Nothing to report.

Seventh Appellate District of Ohio

Nothing to report.

Eighth Appellate District of Ohio

State v. Westley, 2017-Ohio-7717

Endangering Children

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2017/2017-Ohio-7717.pdf>

Appellant's conviction for endangering children was based on insufficient evidence. "The record reflects that [the expert] failed to offer any testimony to establish that her ultimate opinion, that the injuries suffered by [the child] were the result of nonaccidental child abuse, was offered to a reasonable degree of medical or scientific certainty." Basically, it appears the state forgot to ask the question. Oddly, it also appears the Eighth District raised this issue *sua sponte*.

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

State ex rel. Prade v. Ninth District Court of Appeals et al., 2017-Ohio-7651

Prohibition: Criminal Procedure

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2017/2017-Ohio-7651.pdf>

Summary from the Supreme Court:

“In 1998, relator, Douglas Prade, was convicted of murdering his former wife, Dr. Margo Prade. In January 2013, the Summit County Court of Common Pleas determined, based on results from new DNA testing and other evidence, that Prade was actually innocent of the aggravated murder and granted him postconviction relief under R.C. 2953.21. However, upon the state’s appeal from the postconviction judgment, the Ninth District Court of Appeals reversed. On remand, a new common pleas judge, Judge Christine Croce, reinstated Prade’s aggravated-murder conviction and sentence.

“In this original action, Prade requests a writ of prohibition to void respondent the Ninth District Court of Appeals’ judgment in the state’s appeal of the postconviction judgment, to void respondent Judge Croce’s subsequent orders on remand, and to preclude the Ninth District from ruling on Prade’s direct appeal of Judge Croce’s denial of his motion for a new trial.

“We deny the writ of prohibition because R.C. 2945.67(A) and 2953.23(B) unambiguously allow the state an absolute right to appeal a judgment granting postconviction relief, and therefore, respondents’ exercise of jurisdiction following the trial court’s judgment was not unauthorized by law.”

Sixth Circuit Court of Appeals

Nothing to report.

Supreme Court of the United States

Nothing to report.