

## Appellate Court Decisions - Week of 9/25/17

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

### First Appellate District of Ohio

*Nothing to report.*

### Second Appellate District of Ohio

#### **State v. Schimmel, 2017-Ohio-7747**

**Fifth Amendment: Polygraph: Motion to Suppress**

**Full Decision:**

<https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2017/2017-Ohio-7747.pdf>

**The trial court erred in granting appellee’s motion to suppress the statements he made during a polygraph examination that was required for employment with the Clark County’s Sheriff’s Department. During the interview, which was non-compulsory and the appellee was free to end at any time, he admitted to viewing pornography of underage girls. Those admissions led to the discovery of such images on his personal computer. There was no Fifth Amendment violation because there was no coerced testimony in this scenario.**

#### **State v. Adams, 2017-Ohio-7743**

**OVI: Motion to Suppress**

**Full Decision:**

<https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2017/2017-Ohio-7743.pdf>

**The trial court erred in denying appellant’s motion to suppress where, “after the first HGN test was administered, the officer informed [appellant] that he passed the test was free or fine to go. This terminated the lawful detention absent the discovery of additional evidence of impairment or other criminal activity that would support a reasonable, articulable suspicion to conduct further testing.”**

### Third Appellate District of Ohio

*Nothing to report.*

## Fourth Appellate District of Ohio

**State v. Smith, 2017-Ohio-7864**

Ineffective Assistance

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/4/2017/2017-Ohio-7864.pdf>

Trial counsel was ineffective for “failing to file an affidavit of indigency before sentencing. The trial court twice appointed counsel for Smith on the basis of his affidavits of indigency, and it noted at sentencing that Smith had been ‘legally indigent \* \* \* up to this point’ in the proceedings. It also appointed counsel for him on appeal. If Smith’s trial counsel had filed an affidavit of indigency for consideration in the trial court’s sentencing decision, a reasonable probability exists that the trial court would have found Smith indigent and would not have imposed the \$16,250 in mandatory fines as part of his sentence.”

## 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

**Brecksville v. Grabowski, 2017-Ohio-7885**

Plea Withdrawal

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2017/2017-Ohio-7885.pdf>

Summary from the Eighth District: “The trial court’s failure to make any mention of the effect of appellant’s no contest plea constituted a complete failure to comply with Ohio Crim.R. 11(E). Accordingly, the trial court erred in denying appellant’s motion to vacate his plea in light of the Ohio

Supreme Court's holding in *State v. Clark*, 119 Ohio St.3d 239, 2008 Ohio 3748, 893 N.E.2d 462 and this court's holding in *Parma v. Buckwald*, 8th Dist. Cuyahoga Nos. 92354 and 92356, 2009 Ohio 4032. Additionally, although appellant acknowledged in writing that he was advised of his right to counsel at arraignment, the court did not advise him of such before accepting his plea and did not attempt to obtain his waiver of his right to counsel until after accepting his no contest plea.”

***State v. Asadi-Ousley*, 2017-Ohio-7880**

Appeal: App.R. 26(B) Reopening

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2017/2017-Ohio-7880.pdf>

Summary from the Eighth District: “The appellant’s App.R. 26(B) application for reopening is granted. Reopening of the appellant’s appeal is warranted because there exists a genuine issue as to whether the appellant was prejudiced by the failure of appellate counsel to argue on appeal that trial counsel was deficient by not filing a motion to dismiss the count of felonious assault as based upon the expiration of a six-year statute of limitations.”

**Ninth Appellate District of Ohio**

***State v. Meinke*, 2017-Ohio-7787**

Jury Instructions: Violating a Protection Order

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/9/2017/2017-Ohio-7787.pdf>

The trial court erred when it failed to instruct the jury that service of the protection order was an element of the offense of violating a protection order.

**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 v. Dye, 2017-Ohio-7823**

Sealing of Records

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/o/2017/2017-Ohio-7823.pdf>

**“Pursuant to R.C. 2953.52(B)(4), a trial court may seal the records in a case dismissed without prejudice before statute of limitations has expired.”**

## Sixth Circuit Court of Appeals

*Nothing to report.*

## Supreme Court of the United States

*Nothing to report.*