

Supreme Court Update

by Evy M. Jarrett and Tammy G. Lavalette

Johnson v. Montgomery, Slip Opinion No. 2017-Ohio-7445 (September 6, 2017).

A dancer was served alcohol (purchased by patrons) while working as an independent contractor at an adult night club, and subsequently caused a motor vehicle collision after leaving the club. The trial court directed a verdict in favor of the club, finding the Dram Shop Act, R.C. 4399.18, was inapplicable. The Second District agreed and concluded the Dram Shop Act provided the exclusive cause of action against the club, but that the statute did not impose liability with regard to alcohol served to the dancer. The Supreme Court held that the phrase “intoxicated person” contained within the Dram Shop Act includes any person, not just a permit holder’s patrons. Thus, the Dram Shop Act applies to determine the liability of a permit holder who served intoxicating beverages to an intoxicated worker or independent contractor, whose intoxication causes an injury. However, in this case, the trial court found the dancer was not noticeably intoxicated at the club, and that determination that was not challenged on appeal. Thus, the club was not liable under the Dram Shop Act.

State v. Mohamed, Slip Opinion No. 2017-Ohio-7468 (September 7, 2017).

A reduction in the felony level of a kidnapping offense for release of a victim in a safe place “unharmful” requires the absence of both physical and psychological harm. Trial counsel may have a reasonable trial

strategy in failing to request a safe-place-unharmful instruction when the trial strategy is to deny completely that any kidnapping or assault occurred and to attack the credibility of the victim.

State v. Jackson, Slip Opinion No. 2017-Ohio-7469 (September 7, 2017).

A dismissal without prejudice of a count in an indictment resolves that count and does not prevent a judgment of conviction on remaining counts from being final and appealable.

Stewart v. Vivian, Slip Opinion No. 2017-Ohio-7526 (September 12, 2017).

This case involved the admissibility of statements made by a treating physician to the family of a suicide victim. Ohio’s apology statute, R.C. 2317.43, provides that in any civil action brought by an alleged victim of an unanticipated outcome of medical care, “statements, affirmations, gestures, or conduct expressing apology, sympathy, commiseration, condolence, compassion, or a general sense of benevolence” are inadmissible. Both the Twelfth and Ninth District Courts of Appeals found the statute ambiguous. Disagreeing, the Supreme Court held for purposes of the statute, the plain and ordinary meaning of the term “apology,” is a statement expressing a feeling of regret for an unanticipated outcome of the patient’s medical care and may include an acknowledgment that the patient’s medical care fell below the standard of care. Accordingly, the

Court found the trial court properly excluded the treating physician’s statements.

Reid v. Cleveland Police Dept., Slip Opinion No. 2017-Ohio-7527 (September 12, 2017).

The law-of-the-case doctrine applies only to proceedings within the same case and does not limit the actions of a court in another case, even if that case has a party in common with the other case. Thus, the doctrine does not require a court to apply the findings of a higher court in a criminal case to a civil case brought by the criminal defendant against individuals and entities who were not parties to the criminal case.

State v. Morgan, Slip Opinion No. 2017-Ohio-7565 (Sept. 13, 2017).

A juvenile court holding an amenability hearing should appoint a guardian ad litem for a juvenile whose parents are deceased and has no guardian or legal custodian. The opinion contains an interesting discussion of the distinction between the criminal and civil plain error review standards, and the Court holds that the failure to appoint a guardian ad litem is subject to review for plain error under the criminal law standard of review. *State v. Morgan*, Slip Opinion No. 2017-Ohio-7565.

State v. Martin, Slip Opinion No. 2017-Ohio-7556 (Sept. 13, 2017).

Martin’s conviction of aggravated murder and his death sentence were affirmed. The Court rejected assignments of error related to change of venue; jury voir dire; the use of peremptory challenges; the propriety of police effecting an arrest in another person’s home, which they enter without a search warrant; Miranda issues; and sentencing.

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State ex rel. Camaco, L.L.C. v. Albu, Slip Opinion No. 2017-Ohio-7569 (Sept. 14, 2017).

After an employee suffered a head injury in the course of employment, the Industrial Commission granted an additional award to the employee based upon its finding that the employer had violated a “specific safety requirement” (VSSR) in failing to provide the employee with protective headgear. The hearing officer found, sua sponte, that a latent defect existed in the employer’s equipment, but also found the company that designed and installed the equipment was unaware of the defect when it trained employees on the equipment. The hearing officer did not make a specific finding that the employer remained unaware of the defect at the time

of the injury. The Tenth District affirmed the award, finding that it could not consider the employer’s arguments regarding the latent defect issue under the doctrine of appellate waiver. The Supreme Court found the doctrine of appellate waiver does not apply where the hearing officer sua sponte introduced the latent-defect issue, and the employer had no opportunity to challenge the finding at the administrative level. The Court further found that that an employer does not face liability for a VSSR when it lacked knowledge of a specific danger requiring a safety device, and remanded the matter for a determination as to whether the employer knew or should have known about the latent defect at the time of the injury.

Lucas County Bar Association

October 2017 Meetings

Oct. 2: Erin Thompson, Social Security Administration—*Social Security Administration Update*

Oct. 9: Columbus Day – No Meeting

Oct. 16: Peter Kanios, Esq.—*Adult Protective Services in Lucas County*

Oct. 23: Steve Dettelbach, Esq.—*Hate Crimes*

Oct. 30: Christopher J. Stieben
Director, Long-Term Care Ombudsman Program—*What does the Long-Term Care Ombudsman do?*

Speaker Chair: Hon. Jack R. Puffenberger
All luncheons on Mondays, 12 NOON ~ \$12
Program: 12:30 – 1:00 ~ All are welcome
Georgio’s Café International ~ 426 N. Superior

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