

## **Appellate Court Decisions - Weeks of 10/19/20 and 10/26/20**

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

### **First Appellate District of Ohio**

#### **State v. Howard, C-190451, 452**

**Crim.R. 16(K); expert report**

**Full Decision: (No web cite as of yet).**

**In conviction for rape and felonious assault (failure to disclose HIV status), “trial court erred when it allowed the state’s expert witness to render expert opinions without providing the defense with a Crim.R. 16(K) expert report.” Convictions reversed and remanded for new trial. Following *State v. Hall*, 1st Dist. Hamilton Nos. C-170699 and C-170700, 2019-Ohio-2985.**

#### **State v. Hummel, C-190610, 612**

**Allied offenses**

**Full Decision: (No web cite as of yet).**

**Trial court committed plain error when it failed to merge the domestic violence and telecommunications harassment convictions as allied offenses of similar import. “Both of [appellant’s] offenses were directed at the same victim, and the same alleged statements supported the ‘threaten’ prong of the telecommunications charge and the ‘imminent physical harm’ prong of the domestic violence charge. . . the record here fails to substantiate a finding of separate animus or dissimilar import.”**

#### **State v. McCoy, C-190448**

**Jail-time credit**

**Full Decision: (No web cite as of yet).**

**Trial court erred in failing to give appellant the proper jail-time credit for time spent in jail where he was unable to pay an \$8,000 appeal bond.**

#### **State v. Williams, C-190504, 505, 506**

**Sentencing**

**Full Decision: (No web cite as of yet).**

Following community-control violation, trial court erred in imposing 36 month sentence for trafficking in heroin case, where that sentence was greater than the two and one-half year sentence the trial court “specified would be imposed for a community-control violation in the notice provided to [appellant] at the original sentencing hearing, as set forth in the sentencing entry from that hearing.”

## **Second Appellate District of Ohio**

***State v. Mallory, 2020-Ohio-4848***

Consecutive sentences

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2020/2020-Ohio-4848.pdf>

Trial court erred when it denied appellant’s motion to suppress the search of his backpack, where the encounter that was initially consensual “morphed into a *Terry* stop.” Appellant never consented to the search nor did the state present any evidence to support a reasonable suspicion that appellant was armed and dangerous, so as to justify the search.

## **Third Appellate District of Ohio**

*Nothing to report.*

## **Fourth Appellate District of Ohio**

*Nothing to report.*

## **Fifth Appellate District of Ohio**

***State v. Anderson, 2020-Ohio-4937***

Right to counsel

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2020/2020-Ohio-4937.pdf>

Trial court erred in failing to hold a hearing “to inquire as to the breakdown in the attorney-client relationship prior to trial. . . appellant’s assertion of a breakdown in communication was a specific objection triggering the trial court’s duty to inquire into the complaint and make such inquiry a part of the

**record.”**

***State v. Mott, 2020-Ohio-4979***

**Other acts evidence**

**Full Decision:**

<https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2020/2020-Ohio-4979.pdf>

**Trial court erred in permitting the state to introduce certain text messages where “the state failed to establish a permissible nonpropensity purpose for the admission of the messages;” court committed plain error by failing to give the jury a limiting instruction regarding the other acts evidence; and court erred in giving unredacted exhibits to the jury. Finally, the state committed prosecutorial misconduct by insinuating that appellant was exchanging drugs for food stamp.**

**Sixth Appellate District of Ohio**

***State v. Hardin, 2020-Ohio-5039***

**Ineffective assistance of appellant counsel**

**Full Decision:**

<https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2020/2020-Ohio-5039.pdf>

**Pro se application to reopen appeal under App.R. 26(B)(1) is granted; appellate counsel did not raise any assignments of error with respect to the criminal case in Sandusky County Court of Common Pleas. Appellant’s claim that his appellate counsel failed to raise numerous legal errors, including the fact that his appointed trial counsel had worked as a prosecutor in his case, had merit. Appeal reopened.**

**Seventh Appellate District of Ohio**

***State v. Yukon, 2020-Ohio-4738***

**Consecutive sentences**

**Full Decision:**

<https://www.supremecourt.ohio.gov/rod/docs/pdf/7/2020/2020-Ohio-4738.pdf>

**Trial court made the required findings at the sentencing hearing for the**

imposition of consecutive sentences, but failed to include those findings in the sentencing entry; but such error is clerical, so case remanded for court to issue a nunc pro tunc entry to include such findings.

***State v. Yerkey, 2020-Ohio-4822***

**Restitution**

**Full Decision:**

<https://www.supremecourt.ohio.gov/rod/docs/pdf/7/2020/2020-Ohio-4822.pdf>

Trial court erred in imposing restitution for lost wages the victim incurred for voluntary court appearances; those losses were not directly and proximately caused by appellant's criminal conduct as required by R.C. 2929.18(A)(1). Victims are not parties in the criminal proceedings so their attendance is not mandatory; even under Marsy's Law which expanded victim's rights, victims have a right to be present, but no duty to be present at all hearings.

***State v. Abdullah, 2020-Ohio-4813***

**Juvenile reverse bindover**

**Full Decision:**

<https://www.supremecourt.ohio.gov/rod/docs/pdf/7/2020/2020-Ohio-4813.pdf>

Trial court erred when it failed to sentence appellant in accordance with the reverse bindover procedures found in R.C. 2152.121(B); in aggravated robbery case that had been bound over from the juvenile court, appellant was convicted only of robbery which would not have been subject to a mandatory bindover. Therefore, the trial court should have sentenced appellant, stayed that sentence, and then transferred the case back to the juvenile court to engage in the analysis for a discretionary bindover. Trial court also erred in failing to give appellant jail-time credit for the time spent in juvenile detention.

**Eighth Appellate District of Ohio**

***State v. Crenshaw, 2020-Ohio-4922***

**Insufficient evidence; endangering children**

**Full Decision:**

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2020/2020-Ohio-4922.pdf>

**On reconsideration, the evidence was insufficient to support convictions for F-3 child endangering under either R.C. 2919.22(A) or R.C. 2919.22(B)(1). The state failed to present sufficient evidence that the victim suffered serious physical harm; nor did the state present sufficient evidence that appellant violated a duty of care by not taking the victim to the hospital where medical attention was not needed because there was not serious physical harm. Finally, the trial court erred in convicting appellant of F-4 domestic violence, where the state failed to establish that her prior aggravated assault conviction was against a family member and therefore, an enhancing offense.**

***State v. G.W., 2020-Ohio-4831***

**Record sealing**

**Full Decision:**

**<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2020/2020-Ohio-4831.pdf>**

**Denial of appellant's application to seal records of conviction was error, as appellant was an eligible offender. "[A]ll four of [appellant's] convictions resulted from guilty pleas entered during a single plea hearing, and all the charges were alleged in the same information. The convictions also resulted from criminal acts committed within a three-month period and involved the same conduct; forgery and tampering with records. Indeed, the information alleged that, in both instances, [appellant] was engaged in forging car titles. Therefore, under the plain and unambiguous language of the statute, 'they shall be counted as one conviction' unless the court determines, pursuant to R.C. 2953.32(C), that it is not in the public interest for the two convictions to be counted as one conviction. R.C. 2953.32(C)(1)(a).**

***State v. Patterson, 2020-Ohio-4832***

**Ineffective assistance of counsel**

**Full Decision:**

**<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2020/2020-Ohio-4832.pdf>**

**Defense counsel provided ineffective assistance of counsel by not filing a motion to waive mandatory fines, R.C. 2929.18(B)(1), where there was a reasonable probability that the trial court would have found appellant indigent and granted the motion.**

***State v. Kidd, 2020-Ohio-4994***

**Amending indictment; jury instruction**

**Full Decision:**

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2020/2020-Ohio-4994.pdf>

**Trial court committed plain error in amending the misdemeanor domestic violence count to misdemeanor assault; “the inclusion of assault as a lesser included offense is improper where the domestic violence and assault charges are of the same degree.” The court also committed plain error in instructing the jury on misdemeanor assault as a lesser included offense of misdemeanor domestic violence; conviction vacated.**

**Cleveland v. Alrefaei, 2020-Ohio-5009**

**Insufficient evidence; endangering children**

**Full Decision:**

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2020/2020-Ohio-5009.pdf>

**The evidence was sufficient to support conviction for child endangering against one child, but insufficient to support conviction for child endangering against second child. Mere presence of second child during altercation did not create a risk of harm.**

**Ninth Appellate District of Ohio**

*Nothing to report.*

**Tenth Appellate District of Ohio**

**State v. Wood, 2020-Ohio-4895**

**Sentence**

**Full Decision:**

<https://www.supremecourt.ohio.gov/rod/docs/pdf/10/2020/2020-Ohio-4895.pdf>

**Trial court erred in sentencing appellant to the three-year prison term on the firearm specification attached to the count for discharge of a firearm on or near prohibited premises where court believed imposition of the prison term was mandatory, when, in fact, it was discretionary under R.C. 2929.14(B)(1)(g). Case remanded for resentencing.**

## **Eleventh Appellate District of Ohio**

***State v. Bechtel, 2020-Ohio-4889***

**Sentence**

**Full Decision:**

**<https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2020/2020-Ohio-4889.pdf>**

**Trial court erred in sentencing appellant to a suspended jail sentence totaling 720 days, when the maximum aggregate sentence for multiple misdemeanors is 18 months; sentence modified to 18 months, with those days suspended.**

## **Twelfth Appellate District of Ohio**

***Nothing to report.***

## **Supreme Court of Ohio**

***State v. Price, 2020-Ohio-4926***

**Jury instruction; causation**

**Full Decision:**

**<https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2020/2020-Ohio-4926.pdf>**

**Trial court properly instructed jury on causation for corrupting another with drugs; at trial, appellant “sought an instruction that the jury was required to find either that his conduct was the but-for cause of Dawson’s death or that it was an independently sufficient cause of Dawson’s death. The trial court provided the essence of that instruction. And because the trial court did not instruct the jury that it could convict [appellant] if it found that the drugs he supplied to Dawson were a substantial or contributing cause of Dawson’s death, the propriety of such an instruction is not before this court in this case.”**

***State v. Castner, 2020-Ohio-4950***

**Sentencing; technical v. nontechnical violations of community control**

**Full Decision:**

**<https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2020/2020-Ohio-4950.pdf>**

**Failure to complete a court-ordered drug treatment program as condition of community control is not a technical violation of that community control; therefore, trial court did not err in sending appellant to prison for a year after he was kicked out of his drug-treatment program. “By failing to complete treatment through the Alvis House program and by being unsuccessfully terminated from the Re-Entry Court, [appellant] violated two substantive rehabilitative conditions of his community control that were specifically tailored to address his criminal drug use. And the circumstances surrounding the violations were such that they cannot be deemed merely technical in nature. Thus, the sentencing cap in R.C. 2929.15(B)(1)(c)(i) does not apply. . . .”**

## **Sixth Circuit Court of Appeals**

### ***United State v. Fletcher, No. 19-3153***

#### **Suppression**

##### **Full Decision:**

<http://www.opn.ca6.uscourts.gov/opinions.pdf/20a0339p-06.pdf>

**Trial court erred in denying appellant’s motion to suppress search of his cell phone where probation officer lacked reasonable suspicion to justify the search; “[p]ossession of two cell phones, alone, is not a sufficient basis to suspect activity.” And appellant’s probation agreement, which authorized warrantless searches of his person, his automobile, or his residence, did not authorize such a search of his cell phone.**

### ***United State v. Hazelwood, et al., Nos. 18-6023/6101/6102***

#### **Other acts evidence**

##### **Full Decision:**

<http://www.opn.ca6.uscourts.gov/opinions.pdf/20a0345p-06.pdf>

**Trial court erred in permitting the state to introduce audio recordings of one of the appellants using racist and misogynistic language; none of the recordings were admissible under Fed.R.Evid. 401, 404(a), nor for any of the purposes in 404(b). And even if the recordings were relevant and admissible, their probative value was substantially outweighed by the danger of unfair prejudice. Convictions reversed.**

## **Supreme Court of the United States**

***Nothing to report.***