

Appellate Court Decisions – Weeks of 10/25/21 & 11/1/21

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

First Appellate District of Ohio

State v. Fisher, C-200461, 463, 464, 465

Forfeiture

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

Trial court erred in ordering the forfeiture of appellant’s firearm “without including a forfeiture specification in the complaint or the bill of particulars, as R.C. Chapter 2981 requires.”

State v. Bailey, 2021-Ohio-3664

Allied offenses

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/1/2021/2021-Ohio-3664.pdf>

Convictions for rape and kidnapping were allied offenses and should have been merged. Movement of the victim was incidental to the rape, with no separate animus, and “the state relied on the rape offense to prove an essential element of the kidnapping offense.” See *State v. Logan*, 60 Ohio St.2d 126, 134-135, 397 N.E.2d 1345 (1979).

In re R.B., 2021-Ohio-3749

Insufficient evidence; obstructing official business

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/1/2021/2021-Ohio-3749.pdf>

Adjudication for obstructing official business was not supported by sufficient evidence where state failed to demonstrate that appellant “hampered or impeded the performance of a public official’s duty . . . [appellant’s] acts in closing the back door and momentarily retreating from the back room, which did not cause any substantial stoppage of Officer Herring’s progress in securing the house, were not enough to satisfy all elements of the statute proscribing obstructing official business.”

Dubose v. McGuffey, 2021-Ohio-3815

Writ of habeas

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/1/2021/2021-Ohio-3815.pdf>

In case where appellant is charged with murder and held on \$1.5 million bail, petition for writ of habeas corpus granted where the amount of his pretrial bail is excessive; “high bail was effectively a denial of bail, without the trial judge making any of the required statutory findings. This is improper.”

State v. Cook, 2021-Ohio-3841

Allied offenses

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/1/2021/2021-Ohio-3841.pdf>

It was plain error for trial court not to merge convictions for domestic violence and child endangerment. Remanded for state to elect which offense it will pursue.

State v. Kidd, 2021-Ohio-3838

Venue

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/1/2021/2021-Ohio-3838.pdf>

Conviction of one count of rape was error, as state failed to prove venue beyond a reasonable doubt.

Second Appellate District of Ohio

State v. Fields, 2021-Ohio-3845

Sentencing

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2021/2021-Ohio-3845.pdf>

Trial court erred in sentencing appellant to a mandatory 120 days for a fourth-degree felony OVI conviction, along with an additional prison term of 30 months when the maximum sentence was 30 months; court also failed to identify which portion was mandatory, and failed to advise appellant of the potential consequences of violating post-release control. Remanded for resentencing.

Third Appellate District of Ohio

Nothing to report.

Fourth Appellate District of Ohio

State v. Brandau, 2021-Ohio-3688

Suppression

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/4/2021/2021-Ohio-3688.pdf>

Trial court erred in denying appellant’s motion to suppress, as appellant’s “brother did not have authority to consent to law enforcement’s entry into [appellant’s] residence.” Officer was aware that brother “lived elsewhere and had only just shown up at [appellant’s] house. His only connection to the house was that his father and adult brother lived there, that he possessed a set of keys, and claimed that he was entitled to come and go. However, we cannot conclude that his claim that he was entitled to come and go, even if accepted as true, constitutes ‘common authority’ for purposes of providing third-party consent. Even if he was permitted to come and go, there is no testimony or other evidence in the record from which it could be reasonably inferred that he mutually used the property or had joint control over the property *for most purposes*, which is necessary to establish common authority or apparent authority.”

Fifth Appellate District of Ohio

State v. Snow, 2021-Ohio-3644

Suppression

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2021/2021-Ohio-3644.pdf>

Trial court erred in denying appellant's motion to suppress; trooper impermissibly extended the traffic stop for speeding and not wearing a seatbelt to search appellant's vehicle based solely on "furtive movements." Also, appellant's consent to be patted down for weapons did not extend as consent to search his vehicle.

***In re E.S.*, 2021-Ohio-3722**

Juvenile sex offender registry

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2021/2021-Ohio-3722.pdf>

Trial court erred in classifying appellant as a Tier III juvenile sex offender because "it did not make that determination upon his release from a secure facility in violation of R.C. 2152.83(B)(1)." Therefore, the juvenile court lacked jurisdiction.

***State v. Flink*, 2021-Ohio-3833**

Suppression

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2021/2021-Ohio-3833.pdf>

Trial court did not err in granting appellee's motion to suppress; appellee's consent to search her vehicle was not voluntary where officer "after ascertaining that [a]ppellee had a valid license, did not issue a citation, deliver a warning, or instruct [a]ppellee that she was free to leave. Instead, Officer Cook asked [a]ppellee to exit the vehicle. He threatened a canine sniff of the vehicle. He told [a]ppellee he did not want to take anyone to jail tonight, implying that [a]ppellee may go to jail. Even though the communication between [a]ppellee and the officer was friendly, [a]ppellee was not free to leave, multiple police officers were on the scene as she was asked for consent, and she was visibly confused why Officer Cook threatened a canine search and implied she may go to jail."

Sixth Appellate District of Ohio

***State v. Walker*, 2021-Ohio-3860**

Consecutive sentences

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2021/2021-Ohio-3860.pdf>

Trial court erred in imposing consecutive sentences where it failed to make the required findings pursuant to R.C. 2929.14(C)(4) at the sentencing hearing that the offenses were committed by appellant as part of one or more courses or conduct. Case remanded for resentencing.

Seventh Appellate District of Ohio

Nothing to report.

Eighth Appellate District of Ohio

Nothing to report.

Ninth Appellate District of Ohio

State v. N.V., 2021-Ohio-3868

Record sealing

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/9/2021/2021-Ohio-3868.pdf>

Trial court erred in concluding that appellant's convictions for tampering with evidence and contributing to the unruliness or delinquency of a child were not eligible offense.

Tenth Appellate District of Ohio

Nothing to report.

Eleventh Appellate District of Ohio

Nothing to report.

Twelfth Appellate District of Ohio

State v. Roberson, 2021-Ohio-3705

Sentencing

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/12/2021/2021-Ohio-3705.pdf>

“[T]rial court erred during sentencing when it failed to comply with R.C. 2929.19(B)(2)(c) by imposing the aggregate indefinite prison term [under Reagan Tokes] of nine to twelve years and neglected to provide the required statutory notifications at the sentencing hearing.” Case remanded for limited purpose of providing notifications at resentencing.

Supreme Court of Ohio

State v. Hubbard, 2021-Ohio-3710

Violent offender database; retroactivity

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2021/2021-Ohio-3710.pdf>

In appellant’s challenge to Sierah’s Law, R.C. 2903.41 through 2903.44 which was enacted subsequent to the date of his offense, law does not violate the prohibition against retroactive statutes as prohibited by Article II, Section 28 of the Ohio Constitution. “Sierah’s Law does not impair a vested, substantial right or impose new burdens, duties, obligations, or liabilities as to a past transaction.”

Sixth Circuit Court of Appeals

Nothing to report.

Supreme Court of the United States

Nothing to report.