

Appellate Court Decisions - Week of 10/29/18

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

First Appellate District of Ohio

State v. Robinson, 2018-Ohio-4433

Venue

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2018/2018-Ohio-4433.pdf>

Summary from the First District: “Where the state failed to establish venue, defendant’s conviction for criminal damaging was based on insufficient evidence and must be reversed.”

State v. Bolware, 2018-Ohio-4434

Prosecutor: Sentencing: Consecutive Sentence

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2018/2018-Ohio-4434.pdf>

Summary from the First District: “Even if the prosecutor’s statements could have been interpreted as referring to defendant’s criminal history or as denigrating defense counsel, the comments were isolated, and the evidence against defendant was so overwhelming that he was not prejudiced. Where the trial court failed to make the statutorily-mandated findings before imposing consecutive sentences, the consecutive nature of the sentences must be vacated, and the cause must be remanded for the trial court to make the appropriate findings on the record and record those findings in the sentencing entry.”

State v. Stuckey, 2018-Ohio-4435

Sentencing: Allied Offenses: R.C. 2941.25

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2018/2018-Ohio-4435.pdf>

Summary from the First District: “Defendant’s convictions for trafficking in cocaine and possession of fentanyl were not allied offenses of similar

import, even though defendant possessed both drugs at the same time. Where the trial court expressly stated that it had considered the appropriate sentencing factors, and defendant has not affirmatively shown that the court did not, the trial court did not err in imposing defendant's sentences."

Second Appellate District of Ohio

Nothing to report.

Third Appellate District of Ohio

Nothing to report.

Fourth Appellate District of Ohio

Nothing to report.

Fifth Appellate District of Ohio

State v. Luce, 2018-Ohio-4409

Sentencing

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2018/2018-Ohio-4409.pdf>

The trial court erred in sentencing Appellant to a mandatory 10-year prison sentence for involuntary manslaughter. The underlying felony in this case was not R.C. 4511.19 or a substantially equivalent municipal ordinance. Appellant also had no prior aggravated murder, murder, or first-or second-degree felony convictions.

Sixth Appellate District of Ohio

Toledo v. Williams, 2018-Ohio-4354

Venue

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2018/2018-Ohio-4354.pdf>

Summary from the Sixth District: "Where the state only presented evidence of the street address where the vehicle was found, insufficient evidence of

venue required the reversal of appellant's conviction for unauthorized use of a motor vehicle.”

Seventh Appellate District of Ohio

Nothing to report.

Eighth Appellate District of Ohio

Cleveland v. Caraballo, 2018-Ohio-4418

Fare Evasion: Sufficiency

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2018/2018-Ohio-4418.pdf>

Summary from the Eighth District: “Sufficient evidence was not provided at trial that appellant evaded paying the required transit fare. The trial court’s judgment of guilty was not proper.”

State v. Boyd, 2018-Ohio-4427

Sentencing: Allied Offenses

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2018/2018-Ohio-4427.pdf>

Summary from the Eighth District: “The appellant has failed to demonstrate how there is a reasonable probability that he would have been found not guilty had it not been for trial counsel’s actions or failure to act. The appellant’s convictions were not against the manifest weight of the evidence because the evidence was substantial enough for a jury to reasonably conclude that all of the elements of the alleged crime have been proved beyond a reasonable doubt. The appellant’s convictions for kidnapping and aggravated robbery should merge for the purpose of sentencing because the offenses were not committed with separate animus or motivation.”

Ninth Appellate District of Ohio

Nothing to report.

Tenth Appellate District of Ohio

Nothing to report.

Eleventh Appellate District of Ohio

State v. Lee, 2018-Ohio-4376

Sentencing: Allied Offenses

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2018/2018-Ohio-4376.pdf>

The trial court erred in failing to merge Appellant's convictions for possession of heroin and aggravated possession of drugs (fentanyl). The drugs were in the same bag and the lab only provided the combined weight. The lab showed .566 grams of powder, and the indictment charged .566 grams of heroin and .566 of fentanyl. The state argued under *Gonzales* that every part of the mixture counts as the whole. The Eleventh Circuit held the two convictions should have merged. For what it's worth, I think this is the right conclusion. If the lab tests showed percentages that equal to, say, .366 grams of heroin and .200 grams of fentanyl, then I think two convictions would possibly be upheld. But I think, even in light *Gonzales*, that you have to pick one or the other, not both, when there's a mixture. As the Eleventh District said, there are double jeopardy concerns otherwise.

State v. Casper, 2018-Ohio-4375

Plea Withdrawal

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2018/2018-Ohio-4375.pdf>

The trial court erred in denying Appellant's pre-sentence motion to withdraw his guilty plea because the state failed to make the agreed-upon sentencing recommendation.

Twelfth Appellate District of Ohio

Nothing to report.

Supreme Court of Ohio

Nothing to report.

Sixth Circuit Court of Appeals

Nothing to report.

Supreme Court of the United States

Nothing to report.