

Appellate Court Decisions - Week of 10/5/20

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

First Appellate District of Ohio

State v. Parrish, C-190379

Self-defense (good analysis of burden of going forward still being on defendant, but burden of proof beyond a reasonable doubt now being on the state)

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

Trial court erred in failing to apply the amended version of R.C.2901.05(B)(1) which, after a defendant meets its burden of going forward with the affirmative defense of self-defense, shifts the burden to the state to “prove beyond a reasonable doubt that the accused person did not use the force in self-defense, defense of another, or defense of that person’s residence, as the case may be.” As appellant did meet its burden of production, the case was remanded for the trial court to either retry the case or consider the evidence presented at trial under the new, appropriate standard since the case involved a bench trial. (Yes, I foresee another appeal in this case if trial judge decides to just remember the proceedings that occurred over a year ago, as opposed to retrying the case.)

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

Nothing to report.

Sixth Appellate District of Ohio

State v. McCullough, 2020-Ohio-4703

Speedy trial

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2020/2020-Ohio-4703.pdf>

In conviction of involuntary manslaughter following new charges being filed in second indictment, appellant's speedy trial rights were violated where appellant's waiver of speedy trial rights made prior to the second indictment did not extend to the new charges.

Seventh Appellate District of Ohio

Nothing to report.

Eighth Appellate District of Ohio

Nothing to report.

Ninth Appellate District of Ohio

Nothing to report.

Tenth Appellate District of Ohio

State v. Bland, 2020-Ohio-4662

Merger of sentence

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/10/2020/2020-Ohio-4662.pdf>

Trial court erred in not merging appellant's sentences for grand theft of a motor vehicle and receiving stolen property, where court held offenses were allied, but then imposed concurrent sentences. Trial court also erred in imposing consecutive sentences for perjury and grand theft where the offenses were not part of an ongoing course of conduct.

State v. Briggs, 2020-Ohio-4652

Removal from courtroom

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/10/2020/2020-Ohio-4652.pdf>

Trial court abused its discretion when it ordered appellant removed from the courtroom during the latter part of the sentencing hearing before imposition of the sentence was completed; this was error, as a defendant must be present during every stage of the criminal proceeding, including sentencing. Crim.R. 43(B). There was no evidence in the record that appellant was demonstrating a pattern of being disruptive or was given a warning that he would be removed. Cases remanded.

State v. McPhillips, 2020-Ohio-4654

Suppression

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/10/2020/2020-Ohio-4654.pdf>

In state's appeal, trial court did not err in granting appellant's motion to suppress where police officer immediately escalated encounter to an arrest of appellant, as opposed to a *Terry* stop. And as officer was looking for a particular individual, officer failed to verify appellant's identity and any mistake in identification was not objectively reasonable.

Eleventh Appellate District of Ohio

State v. McPhillips, 2020-Ohio-4641

Withdraw plea

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2020/2020-Ohio-4641.pdf>

Trial court erred in denying appellant's motion to withdraw his guilty plea where trial counsel was ineffective; counsel misinformed appellant that offense of having physical control of automobile while intoxicated was a minor offense, did not tell appellant of the possible penalties, appellant was erroneously told it would automatically come off his record, appellant was not informed of difference between a guilty plea and no contest plea, and counsel did not review the evidence with appellant prior to entering the plea. Also, trial court failed to properly advise appellant of the effect of his plea pursuant to Crim.R. 11 nor did record reveal any discussion of the potential penalties or rights being waived. Case remanded with instructions to vacate plea.

Twelfth Appellate District of Ohio

Nothing to report.

Supreme Court of Ohio

State v. Henderson, 2020-Ohio-4784

Sentence (Continuing its recent void vs. voidable case law correction started in *State v. Harper*, Slip Opinion 2020-Ohio-2913)

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2020/2020-Ohio-4784.pdf>

Summary from OSC: “*State cannot challenge a voidable sentence through a postconviction motion for resentencing—R.C. 5145.01 cannot be read to give correctional institutions the power to transform a sentence from what the sentencing entry expressly contains—A judgment or sentence is void only if it is rendered by a court that lacks subject-matter jurisdiction over the case or personal jurisdiction over the defendant—If a court has jurisdiction over the case and the person, any error in the court’s exercise of that jurisdiction is voidable, including sentences in which a trial court fails to impose a statutorily mandated term.*” Apparently, “*res judicata* applies equally to the state and the defendant.” Donnelly, J., concurring in judgment only. Here, the trial court had erroneously sentenced appellant to 15 years on a murder conviction, consecutive to three-year gun specification, for a total of 18 years flat instead of 18 years to life. As state did not object at original sentencing hearing nor appeal that sentence, it cannot now be corrected 18 years after it was journalized through a postconviction motion for resentencing to correct sentence. Original 18-year flat sentence reinstated.

Sixth Circuit Court of Appeals

Nothing to report.

Supreme Court of the United States

Nothing to report.