

## **Appellate Court Decisions - Week of 11/9/20**

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

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

*Nothing to report.*

### **Second Appellate District of Ohio**

#### **State v. Powelette, 2020-Ohio-5212**

**Sufficient evidence; amendment of complaint**

**Full Decision:**

**<https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2020/2020-Ohio-5212.pdf>**

**In conviction of operating a bed and breakfast without a conditional-use permit, state did not present sufficient evidence that appellant used the property as a bed and breakfast where appellant's intent to use the property as a B&B was not the same as use. Also, trial court erred in permitting the state to amend the "dates for the offense to encompass events not included in or contemplated by the refiled complaint . . . ."**

### **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**

*Nothing to report.*

### **Seventh Appellate District of Ohio**

*Nothing to report.*

## **Eighth Appellate District of Ohio**

### **State v. Roan, 2020-Ohio-5179**

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

**Full Decision:**

**<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2020/2020-Ohio-5179.pdf>**

**In conviction for rape, “it [was] undisputed that the state never sought to have Detective Kellums qualified as an expert witness nor did the state provide an expert report pursuant to Crim.R. 16(K).” Trial court erred when it allowed that state’s witness to render “improper opinion testimony regarding the consistency of statements.” Convictions reversed and remanded for new trial.**

### **Cleveland v. Bright, 2020-Ohio-5180**

**Contempt/sentencing**

**Full Decision:**

**<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2020/2020-Ohio-5180.pdf>**

**Trial court erred in imposing a sentence of community control sanctions, where that sentence is not a suitable punishment for criminal contempt of court.**

### **State v. T.S., 2020-Ohio-5182**

**Record sealing**

**Full Decision:**

**<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2020/2020-Ohio-5182.pdf>**

**Trial court did not err in granting appellee’s application for sealing of his conviction for third-degree felony drug offense; appellee’s misdemeanor convictions are not counted because they are considered minor misdemeanors under state law notwithstanding that they were misdemeanors of the fourth degree under municipal ordinances. To treat them otherwise would be a violation of appellee’s equal protection rights.**

**State v. Koenig, 2020-Ohio-5192**

Jail-time credit

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2020/2020-Ohio-5192.pdf>

In imposing concurrent sentences for a felony conviction and a misdemeanor conviction, trial court erred in failing to give jail-time credit in the misdemeanor case. See *State v. Fugate*, 117 Ohio St.3d 261, 2008-Ohio-856, 883 N.E.2d 440.

**In re C.H., 2020-Ohio-5188**

Jail-time credit

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2020/2020-Ohio-5188.pdf>

Trial court erred in failing to give jail-time credit for time appellant/juvenile spent at Carrington Youth Academy where that facility qualified as a secure facility under R.C. 2152.18(B); appellant/juvenile was not free to come and go, and “Carrington has sufficient measures to ensure the safety of the surrounding community.”

**In re A.T., 2020-Ohio-5191**

Jail-time credit

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2020/2020-Ohio-5191.pdf>

Trial court erred in failing to hold a hearing to determine if appellant/juvenile was entitled to confinement credit for time spent at Cleveland Christian Home (“CCH”). “Without evidence regarding (1) the qualities of CCH; and (2) the specific nature of appellant’s experience at CCH, the trial court could not adequately determine whether appellant was sufficiently restricted or “confined” for purposes of R.C. 2152.18(B) and consequently whether he was entitled to credit for the time he spent at CCH.”

**Ninth Appellate District of Ohio**

*Nothing to report.*

## **Tenth Appellate District of Ohio**

*Nothing to report.*

## **Eleventh Appellate District of Ohio**

*Nothing to report.*

## **Twelfth Appellate District of Ohio**

*Nothing to report.*

## **Supreme Court of Ohio**

### **State v. Bowers, 2020-Ohio-5167**

Jury trial; sentence findings

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2020/2020-Ohio-5167.pdf>

In conviction for rape of child under the age of 10 years old, “permitting a trial court to make a finding of force for the purpose of imposing a sentence under R.C. 2971.03(B)(1)(c) would violate the Sixth Amendment based on the United States Supreme Court’s decision in *Alleyne v. United States*, 570 U.S. 99, 133 S.Ct. 2151, 186 L.Ed.2d 314 (2013) . . . the Sixth Amendment requires a finding that force was used to be made by the jury in order for a sentence of 25 years to life under R.C. 2971.03(B)(1)(c) to be imposed.”

### **Centerville v. Knar, 2020-Ohio-5219**

Restitution; Marsy’s Law

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2020/2020-Ohio-5219.pdf>

Summary from OSC: “Article I, Section 10a of the Ohio Constitution—Marsy’s Law focuses on private rights that are incongruent with an understanding of “victim” that includes a public corporation—A municipality is not a victim and has no right to restitution under Marsy’s Law.”

**Sixth Circuit Court of Appeals**

*Nothing to report.*

**Supreme Court of the United States**

*Nothing to report.*