

## Appellate Court Decisions - Week of 12/21/20

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

### First Appellate District of Ohio

***In re: D.O. C-190691***

**Insufficient evidence; burglary**

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

**Conviction for burglary was not supported by sufficient evidence where “the state has failed to identify for this court’s consideration any specific criminal offense that [appellant] had the purpose to commit. And the evidence cited by the state—[appellant’s] act of hiding underneath the box and the askew bedspread and curtains—does not establish beyond a reasonable doubt that [appellant] intended to commit a criminal offense inside the Borgmans’ home. R.C. 2911.12(A)(2) does not allow this court to speculate as to what criminal offense a defendant intended to commit inside the habitation. Rather, that the defendant intended to commit a criminal offense must be proven beyond a reasonable doubt. Here, the facts and circumstances of the case are insufficient to establish that [appellant] had the intent to commit a criminal offense inside the Borgmans’ home.”**

### Second Appellate District of Ohio

*Nothing to report.*

### Third Appellate District of Ohio

*Nothing to report.*

### Fourth Appellate District of Ohio

***State v. Penwell, 2020-Ohio-6727***

**Sentencing**

**Full Decision:**

**<https://www.supremecourt.ohio.gov/rod/docs/pdf/4/2020/2020-Ohio-6727.pdf>**

**Trial court erred when it ordered a “lump sum” community control sanction for multiple counts; state concedes error.**

**What is interesting is this bit of dicta from the decision, a clear spanking of the legislature:**

**“We also again extend our sympathy to trial courts for their unenviable daily task of attempting to navigate Ohio’s convoluted web of felony sentencing statutes and issues. Prior to 1996, Ohio felony sentences involved simple, straight-forward statutes that the bench, bar, and most importantly, the general public could easily understand. Since that time, Ohio’s complex sentencing scheme does not promote judicial economy and diminishes the general public’s understanding of this very important aspect of the criminal justice system. All laws should be clear, precise and uniform. Unfortunately, Ohio’s felony sentence statutes fall short of that important goal.”**

### **Fifth Appellate District of Ohio**

*Nothing to report.*

### **Sixth Appellate District of Ohio**

*Nothing to report.*

### **Eighth Appellate District of Ohio**

#### **State v. Duncan, 2020-Ohio-6740**

**Court costs**

**Full Decision:**

**<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2020/2020-Ohio-6740.pdf>**

**Trial court trial court erred by imposing court costs in its corrected journal entry where the court waived court costs at the sentencing hearing.**

### **Ninth Appellate District of Ohio**

#### **State v. Hunt, 2020-Ohio-6707**

**Sentencing**

**Full Decision:**

**<https://www.supremecourt.ohio.gov/rod/docs/pdf/9/2020/2020-Ohio-6707.pdf>**

**Trial court improperly modified appellant’s 24 months from concurrent to**

consecutive to other sentences, as court “lacks authority to modify a final criminal sentence even if the sentence has yet to be executed.” *State v. Clouser*, 9th Dist. Summit No. 26060, 2012-Ohio-1711, ¶ 7. Such modified sentence was “contrary to law” under R.C. 2953.08(G)(2).

### **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. Patrick*, 2020-Ohio-6803  
*State v. Kinney*, 2020-Ohio-6822**

#### **Sentencing**

##### **Full Decisions:**

<https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2020/2020-Ohio-6803.pdf>

<https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2020/2020-Ohio-6822.pdf>

Ok - I dare anyone to read these opinions and not get a splitting headache. There are dissents, concurrences and dissents, concurrences with opinions in both. Basically, the OSC is faced with the question of whether R.C. 2953.08(D)(3) precludes appellate review of aggravated murder sentences. The majority appears to save appellate review of these sentences only when an appellant raises a constitutional claim regarding that sentence. Donnelly, in his concurrence, concludes that “R.C. 2953.08 does not extinguish other statutory rights of appeal which, in my view, include but are not necessarily limited to appeals challenging the constitutionality of a noncapital aggravated-murder sentence.”

Fischer and DeWine seem to agree with Donnelly’s conclusion, albeit in their dissent in *Kinney*, where Fischer states the following: “Today, in *State v. Patrick*, \_\_\_ Ohio St.3d \_\_\_, 2020-Ohio-6803, \_\_\_ N.E.3d \_\_\_, ¶ 17, this

court holds that R.C. 2953.08(D)(3) does not preclude other potential avenues of appellate review, including constitutional challenges.”

I think it comes down to result-oriented opinions where the OSC just wants appellants who have been sentence to noncapital aggravated murder sentences to be able to appeal their sentences. It just seems it would have been easier for them to strike down R.C.2953.08(D)(3) as unconstitutional under Equal Protection; this would have been a clear signal to the legislature to rewrite R.C. 2953.08 so it did not seem to, at least at first glance, preclude such appellate review.

Summary from OSC in *Patrick*: “R.C. 2953.08(D)(3) does not preclude an appellate court from reviewing a sentence imposed by a trial court for aggravated murder when a defendant raises a constitutional claim regarding that sentence on appeal.”

After the Court determined it could review the aggravated murder sentence, it reversed appellant’s 33 years to life sentence because “[a] trial court must separately consider the youth of a juvenile offender as a mitigating factor before imposing a life sentence under R.C. 2929.03.”

This is a clear signal that the OSC remains focused on youth as a mitigating factor, following *Miller v. Alabama*, \_\_\_ U.S. \_\_\_, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012).

### ***State v. Pendleton, 2020-Ohio-6773***

Suppression; marked lanes violation

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2020/2020-Ohio-6773.pdf>

Summary from OSC: “We hold, based on the plain language of R.C. 4511.33(A)(1), the definitions set forth in R.C. 4511.01, and the statutory scheme as a whole, that the single solid white longitudinal line on the right-hand edge of a roadway—the fog line—merely ‘discourages or prohibits’ a driver from ‘crossing’ it; it does not prohibit ‘driving on’ or ‘touching’ it.” However, the case was remanded to the COA to address the issue of whether the trooper’s mistake of law was reasonable so as to validate the stop.

### ***State v. Taylor, 2020-Ohio-6833***

Sentencing; double jeopardy

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2020/2020-Ohio-6833.pdf>

[6833.pdf](#)

**Summary from OSC: “Imposing two punishments for trafficking based on a single mixture of drugs containing both heroin and fentanyl violates double-jeopardy protections when the total weight of the heroin is calculated as the total weight of the mixture and the total weight of the fentanyl is calculated as the total weight of the mixture, i.e., the total weight of a mixture containing multiple drugs cannot be used to satisfy the individual-weight element of each drug for sentencing purposes.”**

**“[W]e hold that the imposition of two punishments for the same, singular quantity of drugs violated the Double Jeopardy protections of the Ohio and United States Constitutions.”**

**State v. Weber, 2020-Ohio-6832**

Second Amendment; carrying or using a firearm while intoxicated

**Full Decision:**

<https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2020/2020-Ohio-6832.pdf>

**Summary from OSC: “R.C. 2923.15, which prohibits a person from carrying or using a firearm while under the influence of alcohol or a drug of abuse, is not unconstitutional as applied to an intoxicated person carrying a firearm in his or her home.”**

**Lingle v. State, 2020-Ohio-6788**

Out-of-state sex offenders

**Full Decision:**

<https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2020/2020-Ohio-6788.pdf>

**Summary from OSC: “Out-of-state sex offenders challenging their automatic designation as a sexual predator in Ohio—In making a determination under former R.C. 2950.09(F)(2), a trial court is to examine why the out-of-state offender was required to register for life and whether that reason is substantially similar to a classification as a sexual predator in Ohio under former R.C. Chapter 2950—Former R.C. 2950.09(F) does not allow for a recidivism hearing.”**

**State ex rel. Romine v. McIntosh, 2020-Ohio-6826**

Allied offenses; void v. voidable

**Full Decision:**

<https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2020/2020-Ohio-6826.pdf>

**Summary from OSC: “Imposition of two sentences for allied offenses prior to merger is a violation of R.C. 2941.25(A)—Imposition of compound sentences for allied offenses is an error in the exercise of jurisdiction, to be challenged at sentencing and remedied on direct appeal.”** Basically, the writ was denied because the trial court’s sentencing error should have been addressed in the direct appeal, following *State v. Harper*, \_\_\_ Ohio St.3d \_\_\_, 2020-Ohio-2913, \_\_\_ N.E.3d \_\_\_.

**Sixth Circuit Court of Appeals**

*Nothing to report.*

**Supreme Court of the United States**

*Nothing to report.*