

Appellate Court Decisions - Week of 2/4/19

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

First Appellate District of Ohio

State v. Hill, 2019-Ohio-365

New Trial: Appellate Review

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2019/2019-Ohio-365.pdf>

Summary from the First District:

“The common pleas court abused its discretion in overruling without an evidentiary hearing that part of defendant’s Crim.R. 33(A)(2) and (A)(6) motion seeking a new trial on *Brady* and actual-innocence grounds, but not the part of the motion seeking a new trial on ineffective-counsel grounds: Crim.R. 33 contemplates a hearing, the nature of which is discretionary with the court; the court could not, consistent with *Calhoun*, have decided the actual-innocence claim in a “paper hearing”; and the new-trial motion, on its face, demonstrated substantive grounds for relief on the *Brady* and actual-innocence claims, but not on the ineffective-counsel claim.

“In the appeal from the common pleas court’s judgment overruling on the merits defendant’s Crim.R. 33(A)(2) and (A)(6) motion for a new trial, App.R. 3(C) precluded the state from arguing in defense of that judgment that the grounds for relief presented in the motion were time-barred under Crim.R. 33(B), because the common pleas court had granted defendant’s Crim.R. 33(B) motion for leave to file the new-trial motion, and the state did not, as App.R. 3(C)(1) required, file a cross-appeal.”

State v. Robinson, 2019-Ohio-387

Due Process: *Miranda*: Self-Incrimination: Ineffective Assistance: Evidence: Expert Witness: Allied Offenses: R.C. 2941.25

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/1/2019/2019-Ohio-387.pdf>

Summary from the First District:

“Where the record demonstrates that the evidence against defendant was overwhelming, limited references to his post-*Miranda* silence did not violate defendant’s right to due process or his right to remain silent. [*But see* DISSENT: The state violated defendant’s right against self-incrimination when it used defendant’s silence as substantive evidence

of his guilt, and the error was not harmless beyond a reasonable doubt, because the evidence of defendant's guilt was not overwhelming.]

"Counsel was not ineffective for failing to file a motion to suppress evidence seized during a search of defendant's girlfriend's apartment where none of the evidence seized was consequential to the material issues at trial.

"Any prejudice defendant suffered due to the state's failure to correct testimony from a forensic expert about gunshot stippling on the shooting victim, who may have been wearing a sweatshirt about which the expert was unaware and which would have affected the expert's opinion, was cured when defense counsel addressed the issue with the witness during cross-examination.

"Because the murder of one victim and the felonious assault of another victim were the sole aggravating harms in the aggravated-burglary and aggravated-robbery counts related to each victim, the three offenses related to each victim were allied offenses of similar import.

"Aggravated-burglary counts that have as their aggravating factors the physical harm of different victims are not allied offenses of similar import, because the harms are separate and identifiable.

"An aggravated-burglary count predicated on defendant's possession of a firearm is not an allied offense of similar import to an aggravated-burglary count relating to the same breaking and entering but aggravated by physical harm to a victim, because the harms are separate and identifiable."

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. Johnson, 2019-Ohio-376

Community Control Violation: Technical Violation: Sentencing

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2019/2019-Ohio-376.pdf>

Appellant's methamphetamine use, although not followed by a criminal charge, was not a technical violation of her community control. The violation was "criminal in nature," and did not require a new crime to be filed to not be technical in nature.

Sixth Appellate District of Ohio

Nothing to report.

Seventh Appellate District of Ohio

Nothing to report.

Eighth Appellate District of Ohio

State v. Hartness, 2019-Ohio-316

Sex Offender: Megan's Law

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2019/2019-Ohio-316.pdf>

Summary from the Eighth District:

"In 1996, the General Assembly enacted Ohio's version of the federal 'Megan's Law' legislation, which created a comprehensive registration and classification system for sex offenders. Under Megan's Law, a sentencing court was required to determine whether a sex offender fell into one of three classifications (1) sexually oriented offender, (2) habitual sex offender, or (3) sexual predator. This court reviews these determinations under a civil manifest weight of the evidence standard. This is because a sex offender classification under Megan's Law is considered civil in nature. A plea agreement is generally contractual in nature and subject to contract law standards. Plea agreements should be construed strictly against the government. 'When a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled.'" *State v. Parham*, 8th Dist. Cuyahoga No. 105983, 2018 Ohio 1631, quoting *Santobello v. New York*, 404 U.S. 257, 92 S.Ct. 495, 30 L.Ed.2d 427 (1971).

State v. Frierson, 2019-Ohio-317

**Sexually Violent Predator Specification, Ex Post Factor Clause:
Confrontation Clause: Allied Offenses**

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2019/2019-Ohio-317.pdf>

Summary from the Eighth District:

“The application of the sexually violent offender definition found in R.C. 2971.01, as amended in 2005, to appellant violated the Ex Post Facto Clause of the United States Constitution. At the time of appellant’s offenses, appellant was not eligible for sexually violent predator specifications under the language of R.C. 2971.01 as interpreted by the Ohio Supreme Court in *State v. Smith*, 104 Ohio St. 3d 106, 2004-Ohio-6238, 818 N.E.2d 283. The application of the 2005 amended version of R.C. 2971.01 to appellant violated the Ex Post Facto Clause because it enhanced the sentencing penalties available for his previously committed offenses. The Confrontation Clause was not violated when the trial court admitted the skype testimony of a noncitizen witness who was unavailable due to deportation. The trial court erred in failing to merge appellant’s kidnapping and rape offenses as allied offenses where the asportation of the victim was slight.”

State v. Dailey, 2019-Ohio-356

Guilty Plea: Mandatory Sentence

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2019/2019-Ohio-356.pdf>

Summary from the Eighth District:

“The trial court did not advise appellant that the rape offense carried a mandatory prison term. Accordingly, the trial court failed to substantially comply with Crim.R. 11 in advising appellant of the maximum penalty he faced on the rape count. There is no evidence in the record indicating that appellant subjectively understood that he was facing a mandatory prison sentence for the rape offense.”

Ninth Appellate District of Ohio

Nothing to report.

Tenth Appellate District of Ohio

State v. Graggs, 2019-Ohio-361

Post-Conviction Relief

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/10/2019/2019-Ohio-361.pdf>

Summary from the Tenth District:

“Trial court erred in denying appellant's successive petition for postconviction relief, without a hearing, because the trial court's decision shows that it did not consider one of the affidavits submitted in support of appellant's claim of ineffective assistance of trial counsel, and because the affidavits submitted with the petition, if believed, arguably support a finding that appellant was unavoidably prevented from discovery of the facts on which his claim of ineffective assistance of trial counsel relies and that, but for trial counsel's ineffectiveness, no reasonable jury could have found appellant guilty of the offenses. Judgment reversed and cause remanded for the trial court to consider all the evidence submitted in support of the petition and to re-determine whether appellant is entitled to a hearing on the merits of his petition.”

State v. Gibson, 2019-Ohio-383

Jail-Time Credit: En Banc Decision

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/10/2019/2019-Ohio-383.pdf>

Summary from the Tenth District:

“Trial court did not have continuing jurisdiction to hear and determine appellant's motion to correct jail-time credit because appellant did not meet his burden under R.C. 2929.19(B)(2)(g)(iii).”

Eleventh Appellate District of Ohio

Nothing to report.

Twelfth Appellate District of Ohio

In re C.I.R., 2019-Ohio-335

Juvenile: Inducing Panic

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/12/2019/2019-Ohio-335.pdf>

The juvenile court erred in adjudicating Appellant a delinquent child for committing an act that if charged as an adult would have constituted

inducing panic under R.C. 2917.31(A)(1), a second-degree felony in violation of R.C. 2917.31(C)(5), rather than a first-degree misdemeanor in under R.C. 2917.31(C)(2), because the school at a which appellant directed his social media message was never evacuated.

Supreme Court of Ohio

Nothing to report.

Sixth Circuit Court of Appeals

Nothing to report.

Supreme Court of the United States

Nothing to report.