

Appellate Court Decisions - Weeks of 3/2/20 & 3/9/20

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

First Appellate District of Ohio

State v. Devaughn, 2020-Ohio-651

Insufficient evidence

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/1/2020/2020-Ohio-651.pdf>

Convictions for drug offenses were not supported by sufficient evidence where the car in which the drugs were found was not registered to appellant; there was no evidence presented that appellant had ever driven the car or possessed its keys; the state did not present any DNA or fingerprint evidence connecting him to the drugs and scale or the center console where the drugs were found nor evidence that appellant placed or removed any items; and there was no evidence or testimony regarding how far appellant leaned into the car, for how long, or whether he made any furtive movements.

State v. Showes, 2020-Ohio-650

Suppression

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/1/2020/2020-Ohio-650.pdf>

Trial court erred in denying appellant's motion to suppress the gun and drugs found because the stop and pat-down of appellant were unconstitutional; the police officer lacked reasonable suspicion that appellant was armed and dangerous. "An individual may not be frisked on a belief that he possesses drugs; the belief must be that the individual possesses a weapon."

State v. Bush, 2020-Ohio-772

Insufficient evidence

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/1/2020/2020-Ohio-772.pdf>

Conviction for child endangering was not supported by sufficient evidence that appellant recklessly created a substantial risk to the safety of her daughter. Appellant sent her four-year-old daughter to play in the front yard with her older brother and, at most, lost track of her for five minutes; the state also failed to present evidence that appellant “knew of any tendency of her daughter’s to leave the front yard and run across the street or her son’s inability to adequately watch his sister.”

State v. Brown, C-190186

Suppression

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

In state’s appeal, trial court did not err in granting appellant’s motion to suppress the traffic stop where the police officer’s belief that appellant’s temporary license placard was obstructed was not objectively reasonable; therefore, the officer lacked both probable cause and reasonable suspicion to stop appellant’s vehicle.

State v. Reynolds, C-190055

Sentencing

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

In conviction for failure to stop after an accident, a fourth-degree felony, where appellant struck and seriously injured a police officer, R.C. 2929.13(B)(1)(a) does not authorize a prison sentence for a conviction for a felony of the fourth degree, as appellant had not previously been convicted of a felony nor a violent misdemeanor within the past two years. R.C. 2929.13(B)(1)(b)(ii), which does allow for a prison term when “the offender caused physical harm to another person while committing the offense” did not apply in this case, as the physical harm occurred when the officer was struck, not when appellant fled. *State v. Jones*, 1st Dist. Hamilton No. C-140299, 2015-Ohio-1189.

Second Appellate District of Ohio

State v. Thaler, 2020-Ohio-827

Gun specification

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2020/2020-Ohio-827.pdf>

The trial court erred in applying a three-year firearm specification where there was no evidence that appellant displayed, brandished, indicated that he possessed, or used the firearm to facilitate the offenses of WUD or vandalism; case remanded for resentencing to one-year firearm specification that appellant had a firearm on or about his person while committing the offenses.

Third Appellate District of Ohio

State v. Lawler, 2020-Ohio-849

Suppression

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/3/2020/2020-Ohio-849.pdf>

In state's appeal, trial court did not err in granting appellee's motion to suppress where state trooper unreasonably prolonged the traffic stop for 25 minutes while awaiting the arrival of a drug-sniffing dog without a reasonable, articulable suspicion to justify prolonging the stop.

Fourth Appellate District of Ohio

State v. Bowling, 2020-Ohio-813

Ineffective assistance of counsel; court costs

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/4/2020/2020-Ohio-813.pdf>

Trial counsel may have been ineffective for failing to request waiver of court costs in light of *State v. Davis*, Slip Opinion 2020-Ohio-309; case remanded for further development of the record.

Fifth Appellate District of Ohio

State v. Hawthorne, 2020-Ohio-756

Jury instructions

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2020/2020-Ohio-756.pdf>

Since voluntary manslaughter is not an inferior-degree offense to felony murder, the trial court erred in instructing the jury on voluntary manslaughter where appellant had been indicted for felony murder under R.C. 2903.02(B). Reversed and remanded for a new trial.

State v. Pennington, 2020-Ohio-757

Suppression

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2020/2020-Ohio-757.pdf>

Trial court erred in denying motion to suppress search of appellant-passenger's backpack where driver's consent to search car did not extend to closed items not belonging to driver; also, there was "no evidence that the state proved the Massillon Police Department has a standardized policy or practice for conducting a warrantless, non-inventory search and opening of closed containers inside a vehicle stopped for any traffic violation before the vehicle is released to a third party.

State v. Beaver, 2020-Ohio-751

Sentence

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2020/2020-Ohio-751.pdf>

Trial court erred by ordering community control sanctions to be served consecutive to prison. *See Hitchcock, 2019-Ohio-3246.*

State v. Redden, 2020-Ohio-878

Allied offenses

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2020/2020-Ohio-878.pdf>

Convictions for illegal manufacture of drugs, R.C. 2925.04(A), and illegal assembly or possession of chemicals for the manufacture of drugs, R.C. 2925.041(A) should have merged as allied offenses; the offenses were not

committed separately nor with a separate animus.

Sixth Appellate District of Ohio

Nothing to report.

Seventh Appellate District of Ohio

State v. Allen, 2020-Ohio-811

Guilty plea

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/7/2020/2020-Ohio-811.pdf>

Appellant's guilty plea was not made voluntarily where the trial court failed to advise appellant of the maximum sentence, that the sentence was mandatory, and that he was not eligible for community control in violation of Crim.R. 11(C)(2)(a).

Eighth Appellate District of Ohio

State v. McCully, 2020-Ohio-659

Jury instructions

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2020/2020-Ohio-659.pdf>

Trial court erred in not submitting a full set of written jury instruction to the jury, and the state failed to satisfy its burden that the error was harmless. Crim.R. 30(A) and Crim.R. 52(A).

State v. Hines, 2020-Ohio-663

Withdrawal of guilty plea

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2020/2020-Ohio-663.pdf>

Trial court erred in denying pre-sentence motion to withdraw guilty plea; appellant's motion was timely, filed within a month of his plea; his new counsel needed time to get up to speed with the facts of the case; appellant

asserted his innocence of the charges; the record is unclear as to his innocence or guilt; and there was a clear lack of communication between appellant and his former attorney.

State v. Hines, 2020-Ohio-668

Sentencing

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2020/2020-Ohio-668.pdf>

In community control violation for fifth-degree felony, trial court erred in sentencing appellant to prison rather than at a T-Cap facility because his prior conviction for aggravated vehicular homicide is not an offense of violence as defined in R.C. 2901.01(A)(9). *See* R.C. 2929.34.

Ninth Appellate District of Ohio

State v. Frederick, 2020-Ohio-714

Right to counsel

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/9/2020/2020-Ohio-714.pdf>

“The trial court committed reversible error when it failed to conduct an adequate colloquy in accordance with Crim.R. 44(B) prior to allowing [appellant] to proceed pro se . . . the trial court neither inquired as to whether he understood the nature of the proceedings, nor advised him of the dangers of self-representation.

State v. N.C., 2020-Ohio-777

Sealing of record

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/9/2020/2020-Ohio-777.pdf>

The trial court applied the wrong standard to justify the denial of appellant’s application to seal his dismissed case; the court required the appellant to prove his interests outweighed the government’s interest rather than demonstrating his interests were equal to or greater than that of the state.

Tenth Appellate District of Ohio

Nothing to report.

Eleventh Appellate District of Ohio

State v. Lusane, 2020-Ohio-737

Sentencing entry

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2020/2020-Ohio-737.pdf>

Trial court erred when it denied appellant’s “Motion to Revise Judgment of Conviction” of 2000 OVI conviction because original sentencing entry failed to comply with Crim.R. 32(C) and was not a final, appealable order since there was no singular entry that stated both the fact of conviction and the sentence.

Twelfth Appellate District of Ohio

State v. Dobbins, 2020-Ohio-726

Jail-time credit

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/12/2020/2020-Ohio-726.pdf>

For convictions in four criminal cases, trial court erred in failing to give appellant jail-time credit for the time he was held exclusively for those cases and in the overall calculation of credit. Case remanded to amend sentencing entries.

Supreme Court of Ohio

State v. Bates, 2020-Ohio-634

Ineffective assistance of counsel

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2020/2020-Ohio-634.pdf>

In capital murder case, OSC holds that “defense counsel’s performance during voir dire was objectively unreasonable and that counsel’s deficient performance prejudiced Bates by allowing the empaneling of a biased juror in violation of Bates’s Sixth Amendment right to effective assistance of counsel. We therefore reverse Bates’s convictions and sentence and remand this case to the trial court for a new trial.”

State v. Nettles, 2020-Ohio-768

Warrant

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/o/2020/2020-Ohio-768.pdf>

Summary from OSC: *For purposes of R.C. 2933.53, an interception of a cell-phone call takes place both at the location of the cell phone and at the location of the government agent listening in on the call.*” Therefore, either a judge in the county where the cell phone is located or a judge in the county where law enforcement is listening to the calls may properly sign a warrant.

State v. Christian, 2020-Ohio-828

Sentence (I have to say I find the reasoning in this case a little hard to follow)

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/o/2020/2020-Ohio-828.pdf>

Summary from OSC: *“When a portion of a defendant’s sentence has been vacated on direct appeal, the trial court has the authority to resentence the defendant de novo on any of the vacated sentences.”* This is true even if “the defendant has been confined for the length of the original prison term that had been attached to that count.” The Court then went on to hold that “because Christian served prison time simultaneously on Count Two and Count Five before her original sentence was vacated, she is entitled to have that time credited toward both of her new sentences on those counts.” This despite the fact that the trial court, when resentencing her, ordered those two counts to run consecutive.

Sixth Circuit Court of Appeals

United State v. Paulus, No. 19-3021

***Brady* violation**

Full Decision:

<http://www.opn.ca6.uscourts.gov/opinions.pdf/20a0072p-06.pdf>

Because the government failed to disclose a letter, upon the trial court's order, which was *Brady* material, appellant's Fifth Amendment right to due process was violated; conviction vacated and case remanded for a new trial.

United State v. Pedicini, No. 19-5532

Suppression

Full Decision:

<http://www.opn.ca6.uscourts.gov/opinions.pdf/20a0128n-06.pdf>

Trial court erred in denying appellant's motion to suppress search of his person where Highway Patrol Trooper lacked reasonable suspicion to conduct a pat-down, and appellant did not equivocally consent to the search.

Supreme Court of the United States

Nothing to report.