

Appellate Court Decisions - Week of 5/6/19

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. Brown, 2019-Ohio-1666

Child Support

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/2/2019/2019-Ohio-1666.pdf>

Charges for child support may be initiated when the child is emancipated, as long as the time frame of the alleged non-support was before the child's emancipation; sua sponte certifying a conflict with *State v. Hubbard, 2018-Ohio-3627, 119 N.E.3d 798 (11th Dist.)*.

State v. Moore, 2019-Ohio-1671

Evid.R. 803: Hearsay

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/2/2019/2019-Ohio-1671.pdf>

In conviction of sex offenses involving a minor, admission of minor's non-medical statements made to forensic interviewer was error, but constituted harmless error. Other statements regarding specific sex acts were admissible under Evid.R. 803(4) as information for medical diagnosis and treatment.

Third Appellate District of Ohio

Nothing to report.

Fourth Appellate District of Ohio

Nothing to report.

Fifth Appellate District of Ohio

State v. Shaw, 2019-Ohio-1674

Tampering with Evidence: Sufficiency

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/5/2019/2019-Ohio-1674.pdf>

In conviction of two counts of tampering with evidence, one count is supported by sufficient evidence where defendant flushed drugs down the toilet following the overdoses of two fellow inmates. However, there was insufficient evidence to support the second conviction since the record is devoid of evidence that the police officers were conducting or likely to conduct a drug investigation when defendant secreted carfentanyl in his rectum, following *State v. Straley*, 139 Ohio St.3d 339, 2014-Ohio-2139, 11 N.E.3d 1175.

Sixth Appellate District of Ohio

State v. Wenner, 2019-Ohio-1684

Sentencing

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/6/2019/2019-Ohio-1684.pdf>

In conviction for fifth-degree felony theft, imposition of prison sentence was error since offense was not an offense of violence, and none of the factors found in R.C. 2929.13(B)(1)(b)(i)-(xi) were present.

Seventh Appellate District of Ohio

Nothing to report.

Eighth Appellate District of Ohio

State v. Nix, 2019-Ohio-1640

Ineffective Assistance of Appellate Counsel

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2019/2019-Ohio-1640.pdf>

Application to re-open appeal pursuant to App.R. 26(B) granted, as colorable claim of ineffective assistance of appellate counsel presented; appellate counsel failed to present as error trial court's failure to make clear the mandatory, consecutive nature of any sentence imposed for a violation of postrelease control which likely rendered appellant's guilty plea not knowingly, voluntarily, and intelligently made, see *State v. Bishop*, Slip Opinion No. 2018-Ohio-5132.

***In re: T.C.*, 2019-Ohio-1654**

Delinquency

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2019/2019-Ohio-1654.pdf>

Following adjudication of delinquency for felonies and violation of parole, juvenile court lacked jurisdiction to reconsider its grant of juvenile's post-conviction motion to reduce commitment to 90 days in accordance with R.C. 5139.52(F), as a trial court lacks authority to reconsider its own final judgments; and as the state failed to appeal this final, appealable order, res judicata bars any postconviction claim that could have been raised in a direct appeal.

***In re: M.J.*, 2019-Ohio-1651**

Delinquency

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2019/2019-Ohio-1651.pdf>

Juvenile court did not have the authority to vacate adjudication and disposition of juvenile for burglary and theft despite the fact that juvenile was subject to mandatory bindover. Although juvenile court erred in its "exercise of jurisdiction," it did not lack subject-matter jurisdiction. Therefore, its judgment was merely voidable, not void; and as a voidable judgment may only be set aside if successfully challenged in a direct appeal, the state's failure to appeal the adjudication and disposition waived any challenge to the juvenile court's "exercise of jurisdiction."

***State v. Mason*, 2019-Ohio-1773**

Resentencing

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2019/2019-Ohio-1673.pdf>

In remand for resentencing to correct postrelease control from three years to five years, a resentencing hearing is necessary pursuant to Crim.R. 43 and R.C. 2929.191, and Appellant is entitled to be either physically present or to appear by video conference.

Ninth Appellate District of Ohio

Nothing to report.

Tenth Appellate District of Ohio

Nothing to report.

Eleventh Appellate District of Ohio

State v. Rue, 2019-Ohio-1720

Sentencing

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/11/2019/2019-Ohio-1720.pdf>

The trial court lacked jurisdiction to revoke community control and impose a prison term where Appellant's term of community control had expired prior to the revocation, and the state failed to initiate community control violation proceedings during the original term of community control, following *State v. Yates*, 58 Ohio St.3d 78, 567 N.E.2d 1306 (1991).

Twelfth Appellate District of Ohio

Nothing to report.

Supreme Court of Ohio

Nothing to report.

Sixth Circuit Court of Appeals

United State v. Fortney, No. 18-4160

Motion to Suppress

Full Decision:

<http://www.opn.ca6.uscourts.gov/opinions.pdf/19a0251n-06.pdf>

Denial of motion to suppress search of backpack where handgun discovered was error; search, although conducted by a private party, was imputed to the government due to “the police officers’ active involvement” which “enabled the search.”

Supreme Court of the United States

Nothing to report.