

Appellate Court Decisions - Week of 8/23/21

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

First Appellate District of Ohio

State v. Davis, C-200249 - 252

Sentencing; costs

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

Trial court erred by imposing costs in its sentencing entry, despite the fact that it did not impose such costs at the sentencing hearing; remanded to allow appellant to move for a waiver of such costs.

State v. Stonitsch, C-200174

Suppression

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

In the companion case to *State v. Martin*, decided on July 31, 2021, 2021-Ohio-2599, COA “adheres” to that decision. Trial court erred in denying appellant’s motion to suppress the search of his residence. The trial court had properly recognized that the affidavit for the search warrant, which relied on stale evidence that concerned a prior residence in another county and was “17-33-month-old Butler County information [which] fell ‘far beyond the bounds established by other Ohio courts’ for stale evidence” did not establish probable cause. But it erred in finding that the good-faith exception applied. Aside from this stale evidence, the only other recent evidence supporting the search warrant was a single trash pull where “ ‘a marijuana cigar, some marijuana leaves, two straws, and a couple of plastic bags - left on the curb and accessible to the public for an unknown amount of time . . . ’ ” were found. “[A] reasonably well-trained officer should have known that . . . this affidavit [was] . . . ‘so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable’ ”

State v. Ojile, C-200340

Motion for leave to file motion for a new trial

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

In conviction for multiple counts of aggravated robbery and robbery, trial court erred in denying appellant’s motion for leave to file a motion for a new trial,

pursuant to Crim.R. 33(A)(6) “because [appellant] was unavoidably prevented from timely discovering and presenting the evidence upon which his new-trial motion depended.” That evidence included affidavits from his co-defendant and from a jail-house snitch who testified at appellant’s trial.

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

Nothing to report.

Sixth Appellate District of Ohio

State v. Blade, 2021-Ohio-2863

Plea

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2021/2021-Ohio-2863.pdf>

Appellant’s plea to the misdemeanor offense of violating a protection order was not knowingly, intelligently, nor voluntarily made where the trial court failed to advise him of the effect of the plea in accordance with Crim.R. 11(E).

Seventh Appellate District of Ohio

State v. Kirksey, 2021-Ohio-2893

Sentencing; mandatory fine

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/7/2021/2021-Ohio-2893.pdf>

Trial court failed to include in its sentencing entry the waiver of the mandatory fine, despite the fact that it stated at the sentencing hearing it was not imposing

a fine; remanded for a nunc pro tunc sentencing entry.

Eighth Appellate District of Ohio

State v. Fry, 2021-Ohio-2838

Sentencing

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2021/2021-Ohio-2838.pdf>

In conviction of rape of a person less than 13 years old, appellant also admitted to facts during the guilty plea that victim was less than 10 years old and that victim suffered serious physical harm when he also pled to felonious assault with a sexual motivation. Therefore, there were “sufficient facts admitted by him to establish the required factor to authorize the trial court to impose a mandatory 25 years to life sentence pursuant to R.C. 2971.03(B)(1)(c) on Count 1.” However, the trial court erred by adding an additional 5 years to that sentence. “[T]he Ohio Supreme Court was clear in *Bowers* when it stated that: ‘[w]hen a trial court does not sentence a defendant convicted under R.C. 2907.02(A)(1)(b) [rape of a person less than thirteen years of age] to life without parole under R.C. 2907.02(B), R.C. 2971.03(B) provides three possible indefinite sentences that may be imposed instead: 10 years to life, 15 years to life, or 25 years to life.’ *Bowers* at ¶ 5. The statute explicitly states ‘the court shall impose upon the person an indefinite prison term consisting of one of the following’ three options the statute provides for: 10, 15, or 25 years to life. As discussed above, based on the facts admitted to in the indictment, the trial court in this case was required to impose a sentence pursuant to R.C. 2971.03(B)(1)(c) of 25 years to life.” *State v. Bowers*, 163 Ohio St.3d 28, 2020-Ohio-5167, 167 N.E.3d 947.

State v. Carswell, 2021-Ohio-2839

Consecutive sentences

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2021/2021-Ohio-2839.pdf>

And once again, trial court errs by failing to place consecutive sentence findings in sentencing entry pursuant to R.C. 2929.14(C)(4). Case remanded for court to issue a nunc pro tunc sentencing entry.

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

Nothing to report.

Sixth Circuit Court of Appeals

Nothing to report.

Supreme Court of the United States

Nothing to report.