

## **Appellate Court Decisions - Week of 9/10/18**

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

### **First Appellate District of Ohio**

#### **State v. Pennington, 2018-Ohio-3640**

**Murder: Ineffective Assistance: Evidence: Invited Error:  
Sufficiency/Weight**

**Full Decision:**

**<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2018/2018-Ohio-3640.pdf>**

#### **Summary from the First District:**

**“Trial counsel’s decision not to call a forensic pathology expert and instead rely on cross-examination of the state’s forensic pathology expert fell within the wide range of reasonable professional assistance and did not constitute ineffective assistance of counsel.**

**“Defendant failed to establish that prejudice resulted from trial counsel’s decision not to call a forensic pathology expert where nothing in the record indicated that testimony from another forensic pathologist would have been favorable to defendant and would have altered the outcome of the trial.**

**“Defendant could not establish that trial counsel was ineffective for failing to discover that the model of handgun used in a murder offense was the subject of a class-action lawsuit that had alleged defects with the handgun’s firing, because defendant’s allegations of ineffectiveness were based on facts not appearing in the record.**

**“The appellate court will not second-guess trial counsel’s decision not to call a witness, because that is a matter of trial strategy.**

**“In defendant’s trial for murder and having weapons while under a disability, the trial court properly admitted into evidence a weapon and ammunition not used in the shooting of the victim where the evidence was relevant to the question of whether defendant knowingly possessed any firearm, for purposes of the weapons-under-disability charge, and the admission of the evidence did not contravene Evid.R. 404(B).**

**“Defendant cannot challenge testimony elicited during his cross-examination of a state’s witness on hearsay and confrontation grounds,**

**because any error in the admission of the testimony was invited or induced by the defendant.**

**“The appellate court engages in the presumption that, in a bench trial, even where defense counsel has failed to object to a prosecutor’s question to a witness, the trial court is able to distinguish between what the prosecutor tries to get the witness to say and the witness’s actual testimony.**

**“Where the defense elicited testimony about defendant’s nonviolent character, the trial court did not err by allowing the prosecutor to rebut the character evidence by inquiring into a prior domestic-violence complaint against defendant, even though the complaint had not resulted in a conviction.**

**“The ten-year limitation in Evid.R. 609 for use of evidence of a prior conviction for impeachment purposes does not apply if it is being used as a prior specific instance of conduct pursuant to Evid.R. 405.**

**“Defendant’s murder conviction under R.C. 2903.02(A) was based upon sufficient evidence, because a rational trier of fact could have concluded beyond a reasonable doubt that defendant had purposely killed the victim by shooting her in the face where a forensic pathologist opined that the manner of death was homicide and not suicide as claimed by defendant, and the state presented evidence that defendant was the only other person in the home at the time of the shooting, defendant had been so angry with the victim that the victim was scared that defendant would harm her, the murder weapon was clean and devoid of blood and other matter that, according to experienced investigators, would normally be present if the gunshot wound had been self-inflicted, and defendant lied about having the gun.”**

***In re T.J., 2018-Ohio-3639***

**Children: Temporary Custody**

**Full Decision:**

**<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2018/2018-Ohio-3639.pdf>**

**Summary from the First District:**

**“The juvenile court did not err in adjudicating the child abused and dependent and in determining that it was in the child’s best interest to be placed in the temporary custody of a children’s services agency where the record contained evidence that the child suffered from mental-health issues and had extensive behavioral problems at school, and mother refused to recognize the child’s fault in these aggressive incidents and refused offered**

therapeutic services for the child; mother had thrown a mirror at the child; the child expressed that she did not want to return to mother's care; mother and child had a volatile relationship; and mother had refused to sign a release of information, a necessary prerequisite to participating in a diagnostic assessment."

"Where the magistrate and the child were able to effectively communicate in an in camera hearing held via a video teleconference, and the child was able to clearly articulate her feelings regarding placement despite being hospitalized, the juvenile court did not err in overruling mother's motion to set aside the magistrate's order reflecting that the in camera hearing had taken place and continuing the matter for disposition."

"Where a children's services agency was not required to obtain an agreement between the parties before filing a proposed change to a case plan, and where mother failed to file objections and request a hearing after receiving notice of the proposed change to the case plan, the juvenile court did not err by approving and incorporating the amended case plan."

#### ***State v. Howard, 2018-Ohio-3692***

**Violating a Civil Protection: Evidence: Sufficiency**

**Full Decision:**

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2018/2018-Ohio-3692.pdf>

**Summary from the First District: "Testimony that a Facebook messenger screenshot fairly and accurately depicts the messages received is sufficient evidence to support the document's authenticity, and the burden shifts to the opponent to present evidence to rebut the testimony."**

**"Defendant's conviction for violating a civil protection order was supported by sufficient evidence where the state presented unrefuted evidence that defendant attempted to contact the victim through Facebook messenger."**

#### **Second Appellate District of Ohio**

#### ***State v. Evilsizor, 2018-Ohio-3599***

**Sentencing: Post-Release Control**

**Full Decision:**

<https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2018/2018-Ohio-3599.pdf>

**Summary from the Second District: “While on post-release control, defendant committed two separate offenses on different dates and was charged in separate cases for the new offenses. At a joint plea hearing on the new offenses, the trial court erred in informing the defendant that it could terminate defendant’s post-release control in both cases and order prison sentences for the violation in both cases to be served consecutively. However, we find no basis to conclude that defendant was prejudiced by the trial court’s erroneous notification. After terminating defendant’s post-release control, the trial court erred in imposing a sentence for violating post-release control based on the amount of time remaining on defendant’s post-release control as of the time of the offense, rather than the amount of time he had remaining on post-release control at sentencing. Judgment affirmed as to the case where the court did not impose a prison sentence for the violation of post-release control. In the case where a prison sentence was imposed for the post-release control violation, the prison sentence for the violation of post-release control is reversed, and the matter is remanded for resentencing on that issue; in all other respects, that judgment is affirmed.”**

### **Third Appellate District of Ohio**

***In re R.A., 2018-Ohio-3620***

**Juvenile: Plea**

**Full Decision:**

**<https://www.supremecourt.ohio.gov/rod/docs/pdf/3/2018/2018-Ohio-3620.pdf>**

**Appellant’s admission was not knowing, intelligent, and voluntary because it was based on a belief – apparently shared by all parties to the proceeding – that his admission would preserve his right to appeal the denial of his motion to suppress. It did not.**

### **Fourth Appellate District of Ohio**

***Nothing to report.***

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

***Nothing to report.***

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

***Nothing to report.***

## **Seventh Appellate District of Ohio**

*Nothing to report.*

## **Eighth Appellate District of Ohio**

### **Cleveland v. Mincy, 2018-Ohio-3565**

**Fair Trial**

**Full Decision:**

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2018/2018-Ohio-3565.pdf>

**Summary from the Eighth District: “The appellant’s conviction for domestic violence was supported by sufficient evidence. The trial court’s interrogation of the victim was not prejudicial to the appellant and, therefore, did not violate his right to a fair trial. The trial court’s comments concerning the appellant’s decision not to testify, however, did violate the appellant’s right to a fair trial.” (Yes, that does say *did.*)**

### **Cleveland v. K.C., 2018-Ohio-3567**

**Violation of Protection Order: Sufficiency**

**Full Decision:**

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2018/2018-Ohio-3567.pdf>

**Summary from the Eighth District: “Judgment reversed and remanded with instructions to vacate conviction. The city failed to present an essential element of the offense when it did not establish that the defendant was served with the protection order. As a result, there was insufficient evidence to sustain the defendant’s conviction.”**

### **State v. Buehner, 2018-Ohio-3668**

**Murder: Post-Conviction**

**Full Decision:**

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2018/2018-Ohio-3668.pdf>

**Summary from the Eighth District: “Denial of motion for leave to file a motion for new trial without a hearing was an abuse of discretion where the state failed to disclose exculpatory evidence in pretrial. However, because it**

was unclear whether the exculpatory evidence would have changed the outcome of the trial, the case was remanded for a hearing on the motion for new trial.”

### ***State v. Johnson, 2018-Ohio-3670***

#### **Attempted Felony Murder**

##### **Full Decision:**

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2018/2018-Ohio-3670.pdf>

**Summary from the Eighth District: “Vacated appellant’s conviction and sentence for felony attempted murder under R.C. 2923.02 and 2903.02(B) because it is not a cognizable claim and is void. Appellant’s convictions for aggravated arson were not against the manifest weight of the evidence, and the challenged convictions were based upon sufficient evidence. The trial court did not abuse its discretion by permitting expert to testify as to the cause and origin of the fire, and no plain error occurred. Trial court’s imposition of consecutive sentences was upheld. The amount of restitution ordered was arbitrary because the state did not present sufficient competent, credible evidence from which the trial court could discern the appropriate amount of restitution to a reasonable degree of certainty. Case was remanded to the trial court for resentencing on Count 2 only, which had been merged with the vacated count, and for an evidentiary hearing to determine the appropriate amount of restitution.”**

### ***In re T.S., 2018-Ohio-3680***

#### **Delinquency: Serious Youthful Offender**

##### **Full Decision:**

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2018/2018-Ohio-3680.pdf>

**Summary from the Eighth District: “Trial court did not err in dismissing a serious youthful offender indictment where the state failed to comply with the notice requirements set forth in R.C. 2152.13(A)(4). The state’s proposed interpretation of the statute would have allowed it to evade the requirements and the juvenile’s speedy trial right set forth therein.”**

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

### ***State v. Sage, 2018-Ohio-3662***

#### **Jury Instructions: Violating a Civil Protection Order**

**Full Decision:**

<https://www.supremecourt.ohio.gov/rod/docs/pdf/9/2018/2018-Ohio-3662.pdf>

**The trial court committed plain error in failing to instruct the jury that a conviction under former R.C. 2919.27(B) required a finding that the defendant had been properly served with an ex parte civil protection order.**

### **Tenth Appellate District of Ohio**

*Nothing to report.*

### **Eleventh Appellate District of Ohio**

***State v. Hubbard, 2018-Ohio-3627***

**Nonsupport of Dependents: Motion to Dismiss**

**Full Decision:**

<https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2018/2018-Ohio-3627.pdf>

**The trial court erred in denying Appellant's motion to dismiss his indictment for nonsupport of dependents because the child in question had been emancipated, leaving no current support obligation. *State v. Pittman*, 150 Ohio St.3d 113, 2016-Ohio-8314, 79 N.E.3d 531, followed.**

### **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.*