

Appellate Court Decisions - Week of 9/27/21

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

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. Arthurs, 2021-Ohio-3296

Targeted Community Alternatives to Prison (“TCAP”)

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2021/2021-Ohio-3296.pdf>

Trial court erred when it found that appellant was not an eligible TCAP offender under R.C. 2929.34(B)(3)(c) without reviewing the alleged factual errors in the pre-sentence investigation and making the required findings under R.C. 2951.03(B)(5).

Sixth Appellate District of Ohio

State v. Staten, 2021-Ohio-3382

Consecutive sentences

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2021/2021-Ohio-3382.pdf>

“Although the trial court made the appropriate statutory findings at the sentencing hearing, our review of the record reveals that the trial court failed to incorporate those findings in its judgment entries . . . [c]onsecutive sentencing findings must be made at both the sentencing hearing and in the judgment entry.” Case remanded for *nunc pro tunc* entry.

State v. Wear, 2021-Ohio-3384

Insufficient evidence; RSP

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2021/2021-Ohio-3384.pdf>

Appellant’s conviction for RSP was not supported by sufficient evidence; the state failed to introduce any evidence as to who the persons were whose names were on the debit cards found in appellant’s possession; it failed to present any evidence as to how or when appellant came into possession of the debit cards; and it failed to offer any evidence that the debit cards were, in fact, stolen.

Seventh Appellate District of Ohio

Nothing to report.

Eighth Appellate District of Ohio

State v. Kyle, 2021-Ohio-3346

Restitution

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2021/2021-Ohio-3346.pdf>

Trial court erred when it relied on the victim’s unsworn statement and estimate of \$80,000 worth of medical bills rather than the amount established by the actual bills; “[f]urthermore, subsequent briefing cannot satisfy the hearing requirements in [R.C. 2929.18]” after appellant has objected to the amount.

State v. Osborne, 2021-Ohio-3352

Restitution

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2021/2021-Ohio-3352.pdf>

Trial court committed plain error in awarding restitution in an amount greater than the actual loss suffered; it “based its restitution order solely on the victim statement summary prepared by the probation department as part of the presentence investigation report. The reliance on such report is allowable under R.C. 2929.18(A)(1). However, the information contained in the report [was] unsupported and at times, based on speculation” instead of “documentary evidence or testimony before the court. Accordingly, those amounts are not supported by competent, credible evidence.”

In re D.R., 2021-Ohio-3350

Juvenile bindover

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2021/2021-Ohio-3350.pdf>

In state’s appeal, trial court did not err when it did not find probable cause to believe that juvenile/appellant committed aggravated robbery as alleged in the complaint which would have resulted in a mandatory bindover to adult court; the court of appeals “defer[red] to the juvenile court’s credibility determination” regarding the testimony of the alleged eyewitness and detective where the juvenile court apparently questioned the credibility of each witness.

In re L.S., 2021-Ohio-3353

Delinquency; allied offenses and merger

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2021/2021-Ohio-3353.pdf>

Trial court erred found failed to merge appellant’s dispositions for robbery and grand theft with the dispositions for aggravated robbery, as those offenses were allied offenses of a similar import and subject to merger. Concurrent dispositions are not the same as merged dispositions.

Ninth Appellate District of Ohio

Nothing to report.

Tenth Appellate District of Ohio

Nothing to report.

Eleventh Appellate District of Ohio

State v. Studer, 2021-Ohio-3177

Right to counsel

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2021/2021-Ohio-3177.pdf>

Trial court erred when it ordered trial for violation of a protection order to go forward and appellant was unrepresented by counsel and did not sign a waiver of counsel nor give a valid oral waiver. Suspended sentence and probation vacated; however, conviction affirmed. Crim.R. 44(B); *State v. Brandon*, 45 Ohio St.3d 85, 543 N.E.2d 501 (1989).

Twelfth Appellate District of Ohio

Nothing to report.

Supreme Court of Ohio

State v. Foreman, 2021-Ohio-3409

Sufficient evidence; drug possession

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2021/2021-Ohio-3409.pdf>

After appellant gave birth, the results of drug testing showed the presence of cocaine metabolites. However, the “[m]ere presence of drug metabolites in [appellant’s] body, without more, is insufficient evidence to establish venue in the charging county for drug-possession offense.”

Sixth Circuit Court of Appeals

Nothing to report.

Supreme Court of the United States

Nothing to report.