Appellate Court Decisions - Week of 10/11/21

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

First Appellate District of Ohio

***State v. Hammock*, 2021-Ohio-3574**

Allied offenses; merger

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/1/2021/2021-Ohio-3574.pdf

Trial court committed plain error in failing to merge the convictions for rape and kidnapping, as those offenses were allied offenses for sentencing purposes. As "an element of the kidnapping offense exists solely due to the felony rape of the victim, the harms are not of dissimilar import or separate and identifiable. *State v. Ruff*, 1st Dist. Hamilton No. C-120533, 2015-Ohio-3367, ¶ 18." And the offenses where not committed separately or with a separate animus, as the kidnapping was incidental to the rape. *See State v. Logan*, 60 Ohio St.2d 126, 397 N.E.2d 1345 (1979).

Second Appellate District of Ohio

***State v. Boyd*, 2021-Ohio-3517**

Sentence; jail-time credit

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2021/2021-Ohio-3517.pdf

When imposing a 30-month prison sentence for a community control violation, trial court erred in failing to give appellant jail-time credit for the period of time he spent in West Central community-based correctional facility. *See State v. Napier*, 93 Ohio St.3d 646, 648, 758 N.E.2d 1127 (2001) and R.C. 2967.191(A).

***State v. Perry*, 2021-Ohio-3525**

Sentence; PRC

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2021/2021-Ohio-3525.pdf

Trial court erred in imposing post-release control for a misdemeanor domestic violence conviction in its sentencing entry. Remanded for nunc pro tunc sentencing entry.

Third Appellate District of Ohio

Nothing to report.

Fourth Appellate District of Ohio

Nothing to report.

Fifth Appellate District of Ohio

***State v. Williams*, 2021-Ohio-3579**

Violent Offender Registry Database

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2021/2021-Ohio-3579.pdf

Trial court erred when it "failed to properly inform [appellant], before sentencing, of the procedure and criteria for rebutting the presumption he would be placed in the Violent Offender Registry Database (VOD) . . . ." Placement on the VOD vacated, and case remanded for proper advisements.

***State v. Sohar*, 2021-Ohio-3623**

Insufficient evidence; sexual battery

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2021/2021-Ohio-3623.pdf

"[S]tate failed to present sufficient that [appellant] induced the [victim] to submit to sexual conduct by falsely representing to [the victim] that the sexual conduct [was] necessary for mental health purposes . . . Sexual activity between a counselor and a patient, notwithstanding the existence of a counselor-patient relationship, without more, does not give rise to a criminal responsibility. In order to be a crime the evidence must prove beyond a reasonable doubt that the counselor induced the patient to enter into sexual relations on the pretext that it was a necessary part of the treatment for which the patient has sought out the counselor."

Sixth Appellate District of Ohio

***State v. Dye*, 2021-Ohio-3513**

Suppression; OVI

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2021/2021-Ohio-3513.pdf

Trial court erred in denying appellant's motion to suppress his breathalyzer test where the Intoxilyzer 8000 was not in substantial compliance with Ohio Administrative Code 3701-53-04 "because the dry gas that [the officer] installed in May 2019 [was] not traceable to NIST." And as the officer "lacked the requisite reasonable suspicion, based on specific, articulable facts, to conduct field sobriety tests," those tests should also have been suppressed. "[T]he record lacks evidence of impairment beyond glassy, bloodshot eyes and the odor of alcohol;" those factors, standing alone, were insufficient to provide reasonable suspicion without additional indicia of intoxication.

***State v. Potter*, 2021-Ohio-3502**

Court appointed counsel fees

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2021/2021-Ohio-3502.pdf

Trial court erred in imposing court appointed counsel fees in the sentencing entry, when it failed to specifically order such fees at the sentencing hearing.

***State v. Leveck*, 2021-Ohio-3515**

Sentence; community control violation

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2021/2021-Ohio-3515.pdf

Trial court erred in imposing a 48-month prison sentence for a community control violation, when it had previously reserved only a 36-month sentence at the original sentencing hearing when appellant was placed on community control.

Seventh Appellate District of Ohio

***State v. Novoa*, 2021-Ohio-3585**

Allied offenses; merger

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/7/2021/2021-Ohio-3585.pdf

Trial court committed plain error in imposing sentences on merged counts; case remanded for a limited resentencing hearing.

Eighth Appellate District of Ohio

Nothing to report.

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.