Appellate Court Decisions - Week of 11/18/19

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

First Appellate District of Ohio

***In re: J.C.*, C-180478 & C-180479**

Suppressiion

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

In adjudication for CCW, juvenile court erred in denying appellant's motion to suppress warrantless search of his person; the totality of the circumstances did not amount to reasonable and articulable suspicion of criminal activity for initiating a *Terry* stop." Adjudication for CCW reversed and appellant discharged.

Second Appellate District of Ohio

Nothing to report.

Third Appellate District of Ohio

Nothing to report.

Fourth Appellate District of Ohio

***State v. Brown*, 2019-Ohio-4663**

Insufficient evidence; theft

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/4/2019/2019-Ohio-4663.pdf

Appellant's conviction for theft of a dog was not supported by sufficient evidence where alleged victim's testimony confirmed appellant attempted to locate owner of dog by posting picture on internet.

***State v. Cook*, 2019-Ohio-4745**

Insufficient evidence; tampering with evidence

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/4/2019/2019-Ohio-

4745.pdf

Appellant's conviction for tampering with evidence was not supported by sufficient evidence where "the evidence does not support a finding that [a]ppellant knew an official investigation into his possession of unlawful drugs was in progress, or about to be or likely to be instituted, when he tossed a bag containing heroin and cocaine out of a state trooper's view during a traffic stop."

Fifth Appellate District of Ohio

Nothing to report.

Sixth Appellate District of Ohio

Nothing to report.

Seventh Appellate District of Ohio

***State v. Bailey*, 2019-Ohio-4746**

Postrelease control

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2019/2019-Ohio-4672.pdf

As appellant did not allege any prejudice in trial court's suggestion at the plea hearing that postrelease control would be discretionary when it was, in fact, mandatory, plea was knowingly, intelligently, and voluntarily made; however, case remanded for limited purpose of "proper imposition of postrelease control and the issuance of a new sentencing entry."

Eighth Appellate District of Ohio

***State v. Davis*, 2019-Ohio-4672**

Allocution

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2019/2019-Ohio-4672.pdf

As appellant was denied his right to allocution at sentencing, sentence vacated and case remanded for resentencing in accordance with Crim.R. 32(A)(1).

***State v. Johnson*, 2019-Ohio-4668**

Consecutive sentences

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2019/2019-Ohio-4668.pdf

Trial court failed to make consecutive sentence findings; case remanded for the limited purpose of considering whether consecutive sentences are appropriate and entering them on the record.

***State v. Squires*, 2019-Ohio-4676**

Consecutive sentences

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2019/2019-Ohio-4676.pdf

Trial court failed to make consecutive sentence findings; case remanded for the limited purpose of considering whether consecutive sentences are appropriate and entering them on the record.

***State v. Azeen*, 2019-Ohio-4677**

Dismissal; aggravated murder

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2019/2019-Ohio-4677.pdf

In state's appeal, trial court did not err in dismissing aggravated murder indictment; state could not bring a murder indictment against appellant for death of a victim after the appellant had previously pled guilty to attempted murder for the injuries the victim sustained in 1987 and state did not reserve the right to reindict. *See State v. Carpenter*, 68 Ohio St.3d 59 (1993) and *State v. Dye*, 127 Ohio St.3d 357 (2010).

***State v. Wilkins*, 2019-Ohio-4679**

Consecutive sentences

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2019/2019-Ohio-4679.pdf

Trial court lacked statutory authority to order the community-control sanctions and jail term in one case to run consecutively to the prison term imposed in a second case. *See State v. Hitchcock*, Slip Opinion 2019-Ohio-3246.

***State v. Busek*, 2019-Ohio-4683**

Speedy trial

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2019/2019-Ohio-4683.pdf

On reconsideration in state's appeal, trial court did not err in dismissing case on statutory speedy trial grounds; subsequent drug possession charge nine months after original arrest arose from facts that related to the original charge and involved the "same facts [which] were known at the time of the [misdemeanor] drug paraphenila [*sic*] complaint. . . ." No new facts were revealed by the results of the lab results.

Ninth Appellate District of Ohio

Nothing to report.

Tenth Appellate District of Ohio

***State v. Hicks*, 2019-Ohio-4691**

Speedy trial

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/10/2019/2019-Ohio-4691.pdf

Trial court erred in denying appellant's motion to dismiss for constitutional speedy trial violation since trial court did not assess appellant's claims; remanded for trial court to consider these constitutional claims.

Eleventh Appellate District of Ohio

***State v. Kapsouris*, 2019-Ohio-4734**

Plea

Full Decision:

https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2019/2019-Ohio-4734.pdf

Appellant's guilty plea to burglary and *Alford* plea to attempted burglary were not knowingly, voluntarily, and intelligently made where both the trial court and defense counsel mistakenly instructed appellant that he would be able to appeal the denial of his pre-trial motion to suppress and motion to dismiss.

Twelfth Appellate District of Ohio

Nothing to report.

Supreme Court of Ohio

***State v. Allen*, 2019-Ohio-4757**

Restitution

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/0/2019/2019-Ohio-4757.pdf

"A bank that cashes a forged check and then recredits the depositor's account is a victim to which the forger may be required to pay restitution."

***State v. Gwynne*, 2019-Ohio-4761**

Waiver of appeal and sentencing

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/0/2019/2019-Ohio-4761.pdf

"[S]tate forfeits its right to argue that a court of appeals is barred from reviewing a sentencing appeal when the state does not time invoke a defendant's appeal waiver. We also conclude that *Marcum* has no application to consecutive-sentencing cases that are governed by R.C. 2953.08(G)(2)." Case remanded to properly analyze appellant's 65-year sentence under R.C. 2953.08(G)(2)(a) which is only avenue to review consecutive sentences.

Sixth Circuit Court of Appeals

Nothing to report.

Supreme Court of the United States

Nothing to report.