Appellate Court Decisions - Week of 11/30/20

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

First Appellate District of Ohio

***State v. Pitts*, C-190418**

Self-defense

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

Trial court erred in applying the old version of Ohio self-defense law where the incident in question occurred before the amendment of R.C. 2901.05(B)(1), but the trial occurred after the amendment; the newly enacted statute, although not affecting the burden of production which still remains with the defendant, does shift the burden of proof to the state. " '[T]he prosecution [must] disprove at least one of the elements of self-defense beyond a reasonable doubt." *State v. Williams*, 1st Dist. Hamilton No. C-190380, 2020-Ohio-5245, ¶ 7, quoting *State v. Petway*, 2020-Ohio-3848, ___N.E.3d___, ¶ 38 (11th Dist.). " 'However, the amended statute does not affect the burden of production—it remains with the defendant. Just as before, subsection (A) imposes upon the defendant '[t]he burden of going forward with the evidence of an affirmative defense.' " *Williams* at ¶ 7, quoting R.C. 2901.05(A). Case remanded for new trial.

***In re: J.M.*, C-200075, 76, 77 & 78**

Delinquency; firearm specification

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

"[T]he juvenile court erred in imposing three-year commitments for the firearm specifications where all parties stipulated that she was not the principal offender and did not furnish, use, or dispose of the gun used by the principal offender," as required by R.C. 2152.17(B)(1). Court was limited to imposing a maximum commitment of one year on each specification.

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

Nothing to report.

Eighth Appellate District of Ohio

***In re O.M.*, 2020-Ohio-5433**

Delinquency; SYO imposition

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2020/2020-Ohio-5433.pdf

Juvenile court erred in imposing the adult portion of his serious youthful offender ("SYO") sentence where there was not clear and convincing evidence in the record that appellant was unlikely to be rehabilitated during his remaining time in juvenile detention; "invocation of his adult sentence was premature." R.C. 2152.14(E)(1).

Ninth Appellate District of Ohio

Nothing to report.

Tenth Appellate District of Ohio

Nothing to report.

Eleventh Appellate District of Ohio

***In the Matter of: D.S.S.*, 2020-Ohio-5386**

Contempt

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2020/2020-Ohio-5386.pdf

Trial court abused its discretion in finding appellant in indirect criminal contempt where the court failed to make a finding of guilt beyond a reasonable doubt and where no evidence or testimony was presented as to appellant's intent.

***State v. Torres*, 2020-Ohio-5390**

Record sealing

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2020/2020-Ohio-5390.pdf

Trial court erred in denying appellant's second application to seal his criminal record without a hearing; and "[appellant's] second motion for sealing contained various other attached entries granting the sealing of his records in other courts, which constitutes a change of circumstances that had occurred since the filing of his first motion, rendering res judicata inapposite."

***In the Matter of: T.B., Jr., Delinquent Child*, 2020-Ohio-5389**

Delinquency; sex offender classification

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2020/2020-Ohio-5389.pdf

State concedes that trial court committed plain error when it classified appellant as a Tier II juvenile-offender registrant at the dispositional phase, contrary to R.C. 2152.83(A)(1) where the trial court was mandated by that subsection to wait until his release from DYS to issue its classification.

Twelfth Appellate District of Ohio

***State v. Clemmons*, 2020-Ohio-5394**

Sufficient evidence; aggravated menacing

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/12/2020/2020-Ohio-5394.pdf

Appellant's conviction for aggravated menacing was not supported by sufficient evidence where the state did not prove the victim believed he was in danger of serious physical harm.

***State v. Hardcastle*, 2020-Ohio-5396**

Sufficient evidence; trespass

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/12/2020/2020-Ohio-5396.pdf

Appellant's conviction for trespass was not supported by sufficient evidence where the state was "not able to prove that [appellant] lacked privilege to be on the property or that she knowingly trespassed;" appellant was an equal partner in a business, and the location that appellant was accused of trespassing upon contained the business office of that shared business.

Supreme Court of Ohio

***In re R.B.*, 2020-Ohio-5476**

Juvenile sex offender classification

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2020/2020-Ohio-5476.pdf

Summary from OSC: *"A juvenile court does not lose jurisdiction to enter an order pursuant to R.C. 2152.84 once the juvenile reaches the age of 21—While a juvenile court's failure to hold a hearing in compliance with R.C. 2152.84 in a timely manner may support other claims for relief, the statutory directive that the hearing be held upon a juvenile's completion of his disposition is not a jurisdictional requirement—A hearing may take place within a reasonable amount of time after a juvenile completes his disposition.*" Court distinguished *State ex rel. Jean-Baptiste v. Kirsch*, 134 Ohio St.3d 421, 2012-Ohio-5697, 983 N.E.2d 302, because it dealt with an initial classification pursuant to R.C. 2152.83 not being done before juvenile turned 21 years old; "[i]n this case, the juvenile court had issued its initial classification under R.C. 2152.83 prior to R.B.'s 21st birthday and that classification remained in effect for the duration of R.B.'s registration period. *See* R.C. 2152.83(E) (the initial classification order "shall remain in effect for the period of time specified in section 2950.07 of the Revised Code"). Thus, the imposition of the initial classification order in this case triggered the statutory-review process outlined in the classification statutes, and the juvenile court retained jurisdiction to review R.B.'s classification pursuant to R.C. 2151.23(A)(15)."

***State ex rel. Thomas v. McGinty*, 2020-Ohio-5452**

Writ of prohibition; Marsy's Law and discovery order.

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2020/2020-Ohio-5452.pdf

In crime victim's appeal, summary from OSC: *"Writ of prohibition is not appropriate remedy to challenge discovery order allowing court-supervised defense inspection of appellants' residence, because judge did not lack subject-matter jurisdiction to issue order—Appellants had adequate remedy in ordinary course of law by way of immediate appeal under R.C. 2505.02(B)(4)."* Although Article I, Section 10a allows "crime victims [to]have a right under the Ohio Constitution to judicial review of discovery orders affecting their Marsy's Law rights, a writ of prohibition is not the correct mechanism to challenge Judge McGinty's order." Disapproving of *State ex rel. S.L. v. Judge, Hamilton Cty. Mun. Court*, 1st Dist. Hamilton No. C-190248, 2020-Ohio-584 which granted such a writ.

***In re M.H.*, 2020-Ohio-5485**

Delinquency; *Miranda*

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2020/2020-Ohio-5485.pdf

Summary from OSC: *"Suspect's questioning by child-abuse investigator did not violate Miranda v. Arizona or suspect's federal due process rights, because investigator was neither a law-enforcement officer nor acting under direction or control of police and confession obtained was not causally related to any conduct of police."*

KENNEDY, J wrote opinion; FISCHER and DEWINE, JJ., concur.
FRENCH, J., concurs in judgment only.
STEWART, J., dissents, with an opinion joined by O'CONNOR, C.J., and DONNELLY, J.

Sixth Circuit Court of Appeals

Nothing to report.

Supreme Court of the United States

Nothing to report.