Appellate Court Decisions - Week of 11/4/19

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

First Appellate District of Ohio

***State v. Tidwell*, 2019-Ohio-4493**

Suppression

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/1/2019/2019-Ohio-4593.pdf

In state appeal, grant of motion to suppress evidence gathered from a traffic stop was not error where information provided by an unknown tipster and officer's observations of appellant's driving which trial court found was not erratic did not constitute reasonable suspicion necessary to justify a *Terry* stop.

***In re: K.M.P.*, 2019-Ohio-4551**

Juvenile confinement credit

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/1/2019/2019-Ohio-4551.pdf

After imposition of a serious youthful offender dispositional sentence, the juvenile court erred in denying jail-time credit toward juvenile's adult sentence for the time that he was detained pending disposition of the delinquency charges.

***In re: T.M.*, 2019-Ohio-4552**

Delinquency; continuance

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/1/2019/2019-Ohio-4552.pdf

Juvenile court abused its discretion when during trial for the charge of felonious assault, the court refused to grant appellant's first and only request for a recess or brief continuance to secure two subpoenaed witnesses who were in school. The court had previously granted the state's requests for continuance on two prior occasions where the defense

witnesses had missed school; inconvenience to the parties would have been minimal, as the period of delay would have short; defense counsel had expected the subpoenaed witnesses to be present, but the defense investigator was delayed in picking them up; and the witnesses' testimony "was important because none of the state's witnesses provided clear testimony about what had occurred. . . ."

Second Appellate District of Ohio

Nothing to report.

Third Appellate District of Ohio

***State v. Garey*, 2019-Ohio-4525**

Sentencing; court costs

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/3/2019/2019-Ohio-4525.pdf

The trial court erred by assessing court costs and GAL fees that were incurred exclusively for charges of which appellant was acquitted.

***Bellefontaine v. Shafer*, 2019-Ohio-4524**

Insufficient evidence; garbage

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/3/2019/2019-Ohio-4524.pdf

There was insufficient evidence presented that appellant allowed garbage to accumulate where a stack of used cement blocks do not fall within the definitions of garbage, trash, rubbish, or refuse.

Fourth Appellate District of Ohio

***State v. Clagg*, 2019-Ohio-4527**

Bond forfeiture

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/4/2019/2019-Ohio-4527.pdf

Trial court erred in ordering bond forfeiture due to a violation of a condition of bond, as a court may only order bond forfeiture for a failure to appear, Crim.R. 46(I) and R.C. 2937.35.

Fifth Appellate District of Ohio

***In re: M.W.*, 2019-Ohio-4564**

Sex offender classification

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2019/2019-Ohio-4564.pdf

Since appellate review of juvenile court's reaffirmation of classification of juvenile as Tier II juvenile register offender is not possible without the court providing any factual findings as required by R.C. 2152.83, the matter is remanded to the juvenile court for consideration of these statutory factors.

Sixth Appellate District of Ohio

Nothing to report.

Seventh Appellate District of Ohio

Nothing to report.

Eighth Appellate District of Ohio

***State v. Barron*, 2019-Ohio-4464**

Sentencing

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2019/2019-Ohio-4464.pdf

After trial court's sentence of 11 months for a community control sanction violation was vacated and modified to a 90-day term due to appellate court finding violation only "technical," trial court again erred by imposing a nine-month prison term when it only had jurisdiction to impose 90 days; case remanded again for imposition of only 90 days.

***State v. Reed*, 2019-Ohio-4471**

Sentencing

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2019/2019-Ohio-4471.pdf

Trial court erred in sentencing appellant on counts that were merged; in failing to hold a hearing where the state could elect the counts on which to sentence appellant; in failing to notify appellant of the consequences of violating postrelease control; and in sentencing appellant to "25 years to life" for aggravated murder which did not properly comply with the language in R.C. 2929.03(A).

Ninth Appellate District of Ohio

Nothing to report.

Tenth Appellate District of Ohio

Nothing to report.

Eleventh Appellate District of Ohio

***State v. Habeeb-Ullah*, 2019-Ohio-4517**

Insufficient evidence; attempted rape

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2019/2019-Ohio-4517.pdf

There was insufficient evidence presented that appellant committed attempted rape; appellant's actions support the conclusion he was engaging in sexual contact, but do not demonstrate he took a substantial step towards committing sexual conduct.

Twelfth Appellate District of Ohio

Nothing to report.

Supreme Court of Ohio

***State v. Ford*, 2019-Ohio-4539**

Death penalty; intellectual disability

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/0/2019/2019-Ohio-4539.pdf

Convictions for aggravated murder affirmed, but case remanded to determine, under new guidelines if appellant is so intellectually disabled as to prohibit death penalty. The holding in *State v. Lott*, 97 Ohio St.3d 303, 2002-Ohio-6625, 779 N.E.2d 1011 that there is a rebuttable presumption that a defendant is not intellectually disabled if his or her IQ is above 70 is no longer valid, as is *Lott's* requirement that there is a finding of significant deficits in two or more adaptive-skill sets; the current diagnostic standard recognized by the majority requires significant deficits in any of the three adaptive-skill sets.

O'CONNOR, C.J., and FRENCH, FISCHER, and DONNELLY, J.J., Concur. DEWINE, J., concurs in part and dissents in part, with an opinion joined by KENNEDY, J.

Sixth Circuit Court of Appeals

Nothing to report.

Supreme Court of the United States

Nothing to report.