Appellate Court Decisions - Week of 12/16/19

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

First Appellate District of Ohio

***State v. Dye*, 2019-Ohio-5111**

Sex offender classification

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2019/2019-Ohio-5111.pdf

Although appellant's 2001 sex offender classification as a habitual sexual offender was incorrect, it was a final, appealable order that the state failed to appeal. Therefore, the trial court erred in reclassifying appellant as a sexual predator 18 years later because the state's challenge to the original classification was barred by res judicata; and as the original classification was voidable, not void, it cannot be challenged at any time.

***In re: C.W.*, C-180677 & C-180690**

Sufficiency of evidence; telephone harassment and inducing panic

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

Juvenile court erred in adjudicating appellant delinquent for telephone harassment as the state failed to present sufficient evidence that appellant's social media posts were directed at a specific person, nor did it establish that appellant's purpose was the abuse, threaten, or harass; and as the predicate offense for the inducing panic charge was telephone harassment, that adjudication is lacking an essential element and must be reversed as well. Appellant discharged.

***State v. Smith*, C-180151**

Sufficiency of evidence; aggravated burglary and burglary

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

In case with multiple convictions for felonious assault, burglary, and robbery, there was insufficient evidence on two counts. The state presented insufficient evidence to support one aggravated burglary count when it failed to prove that appellant actually trespassed into a habitation where he only twisted the doorknob, but no part of his body entered the dwelling; and

the state failed to prove that a person was likely to be present to support one burglary count, as the homeowner was on vacation.

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. Rhodman*, 2019-Ohio-5176**

Appointed counsel fees

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/5/2019/2019-Ohio-5176.pdf

Trial court erred in ordering appellant to pay appointed counsel fees without a finding of the amount or a finding that appellant had or reasonably would have the ability to pay those fees.

Sixth Appellate District of Ohio

Nothing to report.

Seventh Appellate District of Ohio

Nothing to report.

Eighth Appellate District of Ohio

***State v. Prescott*, 2019-Ohio-5114**

Evidence

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2019/2019-Ohio-5114.pdf

Social media posts that showed photos of appellant holding guns were improperly admitted as "other acts" evidence under Evid.R. 404(B) because the state did not suggest that the guns in the photograph were used in the robberies; however, any error was harmless due to the substantial independent evidence of the defendant's guilt.

***State v. Hawkins*, 2019-Ohio-5133**

Ineffective assistance of counsel

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2019/2019-Ohio-5133.pdf

"[T]rial counsel provided ineffective assistance of counsel for failing to file a motion to dismiss the indictment on grounds of the state's failure to commence the criminal action within the statute of limitations prescribed in R.C. 2901.13."

***State ex rel. Thomas v. McGinty*, 2019-Ohio-5129**

Writ of prohibition; discovery

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2019/2019-Ohio-5129.pdf

Writ of prohibition filed by alleged assault victims and homeowner against trial judge to prevent judge from allowing defense counsel to enter residence where assaults occurred and inspect and photograph crime scene is dismissed; trial judge has broad discretion over discovery matters and the constitutional rights of crime victims under Marsy's Law must be balanced against the constitutional rights of a criminal defendant.

Ninth Appellate District of Ohio

***State v. Tackett*, 2019-Ohio-5220**

Sentencing

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/9/2019/2019-Ohio-5220.pdf

Trial court erred in imposing a 12-month sentence on an escape charge because it did not pronounce that sentence at the sentencing hearing; also, the court erred by ordering the appellant to pay court costs in the entry without addressing them during the sentencing hearing and allowing the appellant to request that those costs be waived.

Tenth Appellate District of Ohio

Nothing to report.

Eleventh Appellate District of Ohio

***State v. Tackett*, 2019-Ohio-5188**

Other acts

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/11/2019/2019-Ohio-5188.pdf

Trial court erred in allowing testimony about "other acts" which was largely based upon hearsay, the vague nature of the criminal activities did not establish substantial proof that appellant committed these criminal activities, nor did the state give any type of notice to appellant of its intention to use the "other acts" evidence.

Twelfth Appellate District of Ohio

***State v. Green*, 2019-Ohio-5164**

Sentencing

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/12/2019/2019-Ohio-5164.pdf

Trial court erred in sentencing appellant to community control in two cases and prison in another case to run consecutive since a community control sanction may not run consecutive to a prison sentence. *See Hitchcock*.

Supreme Court of Ohio

***State v. Jones*, 2019-Ohio-5159**

Withdrawal of guilty plea

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/0/2019/2019-Ohio-5159.pdf

Summary from OSC: "We hold that a prior designation of dangerousness pursuant to R.C. 955.222 or otherwise is not a prerequisite to prosecution for failing to abide by R.C. 955.22's dangerous-dog laws. Instead, where the state has probable cause to believe the dog in question is dangerous, based on prior actions of the dog that meet the definition contained in R.C. 955.11(A)(1)(a), the state may initiate prosecution and prove the dog's dangerousness at trial along with the other elements of the offense. In the present case, however, we find that the state failed to present sufficient evidence that the dog in question was in fact "'dangerous.'"

***State v. Wintermeyer*, 2019-Ohio-5156**

Standing

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/0/2019/2019-Ohio-5156.pdf

Summary from OSC: "When the state does not assert in the trial court that a defendant lacks Fourth Amendment standing to challenge a contested search or seizure, the state may not assert that argument in its own appeal from a judgment granting a motion to suppress."

***State v. Straley*, 2019-Ohio-5206**

Withdrawal of guilty plea

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/0/2019/2019-Ohio-5206.pdf

A defendant who pleads guilty does not suffer a manifest injustice under Crim.R. 32.1 Withdrawal of guilty plea if the trial court fails to tell the defendant during his plea colloquy that a portion of his agreed-upon sentence is mandatory.

Sixth Circuit Court of Appeals

Nothing to report.

Supreme Court of the United States

Nothing to report.