Appellate Court Decisions - Week of 12/2/19

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

First Appellate District of Ohio

Nothing to report.

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

***State v. Wimpey*, 2019-Ohio-4823**

Jury instructions

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2019/2019-Ohio-4823.pdf

Where the trial court found sufficient evidence of provocation to warrant a jury instruction on the lesser included offense of voluntary manslaughter, the court committed plain error on not likewise giving an instruction on the inferior degree offense of aggravated assault; conviction for felonious assault reversed and remanded for a new trial.

***State v. Johnson*, 2019-Ohio-4896**

Sex offender classification

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2019/2019-Ohio-4896.pdf

The trial court erred by denying appellant's post conviction petition to reclassify him under Megan's Law, as appellant committed his sex offense prior to the enactment of the Adam Walsh Act ("AWA"); therefore, his classification as a Tier III sex offender is void, as the AWA cannot be applied retroactively.

Seventh Appellate District of Ohio

Nothing to report.

Eighth Appellate District of Ohio

***State v. Garcia*, 2019-Ohio-4885**

Transcript for appeal

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2019/2019-Ohio-4885.pdf

In convictions related to sexual assaults, case is remanded for a new trial where state failed to locate and provide missing exhibits that were in its possession, and exhibits were necessary for resolution of appellant's assignments of error.

***Parma v. Horky*, 2019-Ohio-4886**

Unconstitutional statute

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2019/2019-Ohio-4886.pdf

As appellant was convicted of child enticement under R.C. 2905.05(A), and that subsection was declared unconstitutional by OSC in *State v. Romage*, 128 Ohio St.3d 390, 2014-Ohio-783, convictions reversed and appellant discharged.

***State v. Barker*, 2019-Ohio-4891**

Insufficient evidence; tampering with evidence

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2019/2019-Ohio-4891.pdf

Conviction for tampering with evidence was not supported by sufficient evidence where state failed to prove that appellant knew or should have known that a proceeding or investigation was about to be or likely to be instituted when he threw away his mattress; alleged victim of sex offenses never told appellant or anyone else that she planned on reporting him for rape prior to him disposing of the mattress.

Ninth Appellate District of Ohio

***State v. Gonzalez*, 2019-Ohio-4882**

Guilty plea; failure to comply

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/9/2019/2019-Ohio-4882.pdf

Appellant's "guilty plea for failure to comply was not knowingly, intelligently, and voluntarily made because the trial court failed to substantially comply with Crim.R. 11 and notify him that any prison sentence imposed must be run consecutively to any other prison sentence imposed."

Tenth Appellate District of Ohio

Nothing to report.

Eleventh Appellate District of Ohio

***State v. Marcellino*, 2019-Ohio-4837**

Restitution

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/11/2019/2019-Ohio-4837.pdf

After conviction for cruelty to animals, the trial court erred by ordering restitution be paid to the Humane Society, as it is not a victim of the offense nor a survivor of the victim.

***State v. Rogers*, 2019-Ohio-4834**

Sufficiency of evidence; burglary

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/11/2019/2019-Ohio-4834.pdf

In conviction for six counts of burglary, there was sufficient evidence for four counts; but in two counts, the state failed to establish that a person was likely to be home. As no lesser included offenses were provided in the jury instruction, appellant convictions are vacated as to those two counts, as is the restitution ordered for those two counts.

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.