Appellate Court Decisions - Week of 3/30/20

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

First Appellate District of Ohio

***State v. White*, C-190262**

Affirmative defense; duress

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

In bench trial, the trial court erred as a matter of law in rejecting and limiting appellant's affirmative defense of duress: "[f]irst, the affirmative defense of duress can apply to situations involving continued violations of the law. The only requirement is that the elements of the defense be met with respect to each charge. That is to say, as long as the duress is ongoing, the defendant's ability to use the duress as an affirmative defense is likewise ongoing . . .[s]econd, the victim of the defendant's conduct need not be the source of the threatened harm, as the trial court determined . . . [f]inally, while the trial court was unwilling to extend a duress analysis beyond the first confrontation with Vega and White, this incident was not at issue—White was not charged for the first accident involving Vega. White was only charged for the events involving Reide, and the court was obligated to consider duress as a defense under those facts." Judgment reversed.

Second Appellate District of Ohio

***State v. Steinmetz*, 2020-Ohio-1145**

Jail-time credit

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2020/2020-Ohio-1145.pdf

Trial court erred in failing to award appellant jail-time credit for the time he was incarcerated pretrial in two cases simultaneously where he was granted community control in the other case and did not receive credit in either case for the time he was held on both.

Third Appellate District of Ohio

Nothing to report.

Fourth Appellate District of Ohio

***State v. Blackburn*, 2020-Ohio-1084**

Ineffective assistance of counsel

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/4/2020/2020-Ohio-1084.pdf

Trial counsel was ineffective for failing to object to the trial court's jury instruction on the obstructing justice charge where such instruction failed to contain an essential element that appellant's conduct had to be for the benefit of another person.

Fifth Appellate District of Ohio

***State v. Jarvis*, 2020-Ohio-1127**
***State v. Devore*, 2020-Ohio-1131**

Violent offender database

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2020/2020-Ohio-1127.pdf

https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2020/2020-Ohio-1131.pdf

Provisions of R.C. 2903.41, "Sierah's Law" which create a violent offender database cannot be applied to an offender whose offenses occurred before the effective date of March 19, 2019; appellate court holds the provisions of R.C. 2903.41 are substantive, not remedial, and therefore, cannot be applied retroactively. Doing so would be a clear violation of Section 28, Article II of the Ohio Constitution.

These cases are in direct conflict with the Twelfth District's decision in *State v. Hubbard*, 12th Dist. Butler No. CA2019-05-086, 2020-Ohio-856, decided March 9, 2020. I imagine we will be hearing from the OSC on this issue in the not-to-distant future.

***State v. Kennedy*, 2020-Ohio-1128**

Forfeiture

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2020/2020-Ohio-1128.pdf

Trial court's forfeiture order must be vacated where the indictment did not contain a forfeiture specification; state concedes error.

***State v. Jackson*, 2020-Ohio-1125**

Insufficient evidence; sexual battery

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2020/2020-Ohio-1125.pdf

Sexual battery conviction not supported by sufficient evidence where state failed to present evidence of actual penile penetration.

Sixth Appellate District of Ohio

Nothing to report.

Seventh Appellate District of Ohiopaypal

***State v. Nickelson*, 2020-Ohio-1149**

Withdrawal of plea

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/7/2020/2020-Ohio-1149.pdf

Trial court erred when it denied appellant's post-sentence motion to withdraw his no contest plea to two counts of trafficking in drugs; appellant's state convictions and sentences were void under R.C. 2925.50 where "[t]hat statute abrogates dual sovereignty by barring prosecution for a state drug offense if the offender was acquitted or convicted under the federal drug abuse control laws for the "same act." Both of appellant's state convictions were based on the same acts as his federal conspiracy conviction.

Eighth Appellate District of Ohio

***State v. Jackson-Williams*, 2020-Ohio-1118**

Insufficient evidence; endangering children

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2020/2020-Ohio-1118.pdf

Evidence was sufficient to support conviction for domestic violence, but endangering children convictions were not supported by sufficient evidence where mere presence of children, who were secured safely inside a car, at the scene of their parents' domestic dispute did not create a substantial risk to the health or safety of the children.

***State v. Ellis*, 2020-Ohio-1115**

Insufficient evidence; obstructing official business

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2020/2020-Ohio-1115.pdf

Obstructing official business conviction was not supported by sufficient evidence where refusal to be fingerprinted is not an affirmative act that hindered the police investigation.

Ninth Appellate District of Ohio

***State v. Castagnola*, 2020-Ohio-1096**

Forfeiture

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/9/2020/2020-Ohio-1096.pdf

Trial court erred in denying appellant's motion for return of all seized property where its conclusion that it lacked jurisdiction after appellant's guilty plea and conviction was erroneous. "A trial court has authority to order the return of property which is no longer needed in a completed criminal case and which is not the subject of forfeiture proceeding . . . [and a] motion for the return of property is a viable means to seek the return of property after conviction . . . ."

***State v. Beasley*, 2020-Ohio-1170**

Forfeiture; innocent owner

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/9/2020/2020-Ohio-1170.pdf

Trial court did not err in returning appellant's vehicle to entity with a security interest in said vehicle, as that entity was an innocent owner.

***State v. Bryant*, 2020-Ohio-1175**

Insufficient evidence; GSI

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/9/2020/2020-Ohio-1175.pdf

In bench trial, trial court erred in finding appellant guilty of two counts of gross sexual imposition; conviction for one count was not supported by sufficient evidence because spitting on someone's erogenous zones does not constitute touching under R.C. 2907.01(B). Trial court also erred in excluding testimony of alleged victim's mother that victim told mother that she fabricated whole incident; case reversed and remanded for new trial because error was not harmless.

Tenth Appellate District of Ohio

Nothing to report.

Eleventh Appellate District of Ohio

Nothing to report.

Twelfth Appellate District of Ohio

***State v. Harner*, 2020-Ohio-1184**

Sentence

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/12/2020/2020-Ohio-1184.pdf

Trial court sentence was contrary to law when it sentenced appellant to 14 months for WUD, a felony of the third degree, when only available sentences are 9, 12, 18, 24, 30 or 36 months.

Supreme Court of Ohio

Nothing to report.

Sixth Circuit Court of Appeals

Nothing to report.

Supreme Court of the United States

Nothing to report.