Appellate Court Decisions - Week of 3/8/21

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

First Appellate District of Ohio

***State v. Frye*, 2021-Ohio-598**

Sufficiency; improper change of course

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/1/2021/2021-Ohio-598.pdf

State presented insufficient evidence that appellant committed the offense of improper chance of course since city ordinance, which is similar to R.C. 4511.36, " 'does not prohibit drivers from turning into the outside, right lane, instead of the inside, left lane.' *Id.* at ¶ 13. Rather, it requires drivers to 'proceed through the intersection and across the center line before turning left.' *Id.* at ¶ 11." *Quoting State v. Kirkpatrick*, 2017-Ohio-7629, 97 N.E.3d 871 (1st Dist.).

***State v. Roberts*, C-1200080**

Confrontation clause

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

In state's appeal after appellant was acquitted of rape, trial court did not err in dismissing DV case; at trial, PW stormed out of the courtroom during her direct examination without defense counsel having an opportunity to cross examine her. Confrontation Clause guarantees necessitated that PW's testimony be stricken, and as this was the only evidence presented by the state, the trial court did not commit plain error in dismissing the case.

Second Appellate District of Ohio

***State v. Pooler*, 2021-Ohio-607**

Evidence

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2021/2021-Ohio-607.pdf

In state's appeal, "trial court did not err in allowing defense counsel to recall and question the complaining witness after the defendant testified that she had demanded $50 for sexual activity." The trial court properly applied the balancing test found in *State v. Gardner*, 59 Ohio St.2d 14, 391 N.E.2d (1979),

and there was no error in the admission of the evidence.

Third Appellate District of Ohio

***State v. Thompson*, 2021-Ohio-642**

Sex offender classification

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2021/2021-Ohio-607.pdf

Trial court erred in resentencing appellant and adding sex offender registration requirements when over six years had passed since appellant completely completed his community control sentence and had been released from his community control sanctions; there had been no mention of these registration requirements in the original sentencing entry.

Fourth Appellate District of Ohio

Nothing to report.

Fifth Appellate District of Ohio

Nothing to report.

Sixth Appellate District of Ohio

***State v. Windon*, 2021-Ohio-617**

Ineffective assistance of counsel

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2021/2021-Ohio-617.pdf

Trial counsel provided ineffective assistance of counsel by failing to file an affidavit of indigency to waive the mandatory fine, and there was a reasonable probability that the trial court would have found appellant indigent and waived the fine.

Seventh Appellate District of Ohio

Nothing to report.

Eighth Appellate District of Ohio

***Cleveland v. Beach*, 2021-Ohio-577**

Speedy trial

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2021/2021-Ohio-577.pdf

Trial court erred in denying appellant's motion to dismiss his case for a statutory speedy trial violation pursuant to R.C.2945.71; although the court issued a capias for appellant's failure to appear at a pretrial, that event did not reset the speedy trial clock because appellant was not rearrested and a new pretrial date was set.

***State v. Walker*, 2021-Ohio-580**

Violent offender database

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2021/2021-Ohio-580.pdf

Trial court erred in ordering appellant to register in the violent offender database, as court failed to given appellant the proper notice as required by R.C. 2903.42(A)(1)(a). "Based on the trial court's failure to provide the proper notice required by R.C. 2903.42(A)(1)(a) to appellant before sentencing, appellant did not have an opportunity to prepare for the enrollment hearing, did not have an opportunity to file a written motion to rebut the presumption, did not have an opportunity to prepare evidence to rebut the presumption in the event that the state did not concede he was not the principal offender, or prepare evidence regarding the four factors under R.C. 2903.42(A)(4)(a)(i)-(iv). Furthermore, appellant was not aware of the effect of the rebuttal or the post-rebuttal hearing procedures and possible outcomes prior to the enrollment hearing. . . [Further,] [b]ased on the state's concession that appellant was not the principal offender in the commission of the attempted murder offense, the presumption of enrollment was rebutted and no longer applied. Accordingly, the trial court erred in concluding that the factors set forth in R.C. 2903.42(A)(4)(i)-(iv) did not overcome the presumption of enrollment in the VOD."

Ninth Appellate District of Ohio

***State v. Double*, 2021-Ohio-632**

Sufficiency; operating a vehicle with a hidden compartment used to transport a controlled substance

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/9/2021/2021-Ohio-632.pdf

The state presented insufficient evidence to support the conviction for operating a vehicle with a hidden compartment used to transport a controlled substance. Appellant's "vehicle contained original factory equipment that had not been modified or altered in anyway;" therefore, there was no hidden compartment as contemplated in R.C. 2923.241(A)(2).

***State v. Myers*, 2021-Ohio-631**

Postconviction petition

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/9/2021/2021-Ohio-6312.pdf

In capital murder case, trial court erred in denying appellant's petition for postconviction relief without a hearing, where appellant claimed his counsel was ineffective for failing to present an expert at the penalty phase of his trial; trial court also erred in denying appellant's request to conduct discovery regarding this issue.

Tenth Appellate District of Ohio

Nothing to report.

Eleventh Appellate District of Ohio

Nothing to report.

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.