Appellate Court Decisions - Week of 4/13/20

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

***State v. Howard*, 2020-Ohio-1400**

Suppression

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2020/2020-Ohio-1400.pdf

In state's appeal, trial court did not err in granting appellant's motion to suppress the pat-down of his person where appellant was a passenger in a vehicle stopped for a traffic violation, but the pat-down was not supported by reasonable suspicion to justify it as a *Terry* search. The evidence only "established police resolved to search appellee as soon as the driver, Harding, produced contraband. Accordingly, based on the authority of *Terry v. Ohio, supra,* the search of appellee was unreasonable under the facts of this case. A citizen may not be frisked on a belief that he possesses drugs; the belief must be that the citizen possesses a weapon."

Sixth Appellate District of Ohio

Nothing to report.

Seventh Appellate District of Ohiopaypal

***State v. Turner*, 2020-Ohio-1361**

Manifest weight of the evidence; tampering with evidence

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/7/2020/2020-Ohio-1361.pdf

Appellant's conviction for tampering with evidence was against the manifest weight of the evidence where "the only evidence of tampering is the fact that the gun was not found."

Eighth Appellate District of Ohio

***State v. Foster*, 2020-Ohio-1379**

Insufficient evidence; rape

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2020/2020-Ohio-1379.pdf

Conviction for substantial impairment rape pursuant to R.C. 2907.02(A)(1)(c) was not supported by sufficient evidence where the state failed to produce evidence that appellant knew or should have known of the impairment; witnesses testified that the alleged victim "wasn't falling all over the place or slurring her words or anything," and a surveillance video showed the accuser did not appear substantially impaired when walking from the taxi to the hotel lobby on her own. Reversed and appellant discharged.

Ninth Appellate District of Ohio

Nothing to report.

Tenth Appellate District of Ohio

Nothing to report.

Eleventh Appellate District of Ohio

Nothing to report.

Twelfth Appellate District of Ohio

***State v. Hill*, 2020-Ohio-1433**

Restitution

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/12/2020/2020-Ohio-1433.pdf

As offender disputed the amount of restitution ordered by the trial court, it was error for the court to refuse to hold an evidentiary hearing ; case reversed on that issue and remanded for trial court to hold such a hearing.

***State v. Platt*, 2020-Ohio-1430**

Manifest weight of the evidence; domestic violence

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/12/2020/2020-Ohio-1430.pdf

Appellant's conviction for domestic violence "was against the manifest weight of the evidence because there was unpersuasive evidence that appellant knowingly caused the victim injury." Appellant was simply trying to extricate himself from a domestic dispute with victim, while she was actively trying to stop him from leaving; there also was no specific testimony as to how the injury to the victim occurred. Reversed and remanded for new trial.

Supreme Court of Ohio

***State v. Miller*, 2020-Ohio-1420**

Plea colloquy

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2020/2020-Ohio-1420.pdf

Trial courts must strictly comply with the plea colloquy required by Crim.R. 11(C)(2)(c), reaffirming *State v. Veney*, 120 Ohio St.3d 176, 2008-Ohio-5200, 897 N.E.2d 621, but such strict compliance does not mean the court must use particular words. It is sufficient if trial court advises a defendant "in a manner reasonably intelligible to the defendant that the plea waives the rights enumerated in the rule."

***State v. Fips*, 2020-Ohio-1449**

Manifest weight; remedy

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2020/2020-Ohio-1449.pdf

When an appellate court finds that a criminal conviction is against the weight of the evidence, the remedy is a new trial, not reduction of the conviction to a lesser included offense. Reversed and remanded for a new trial.

***In re A.W.*, 2020-Ohio-1457**

Subject-matter jurisdiction

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2020/2020-Ohio-1457.pdf

In an appeal where appellant challenged "the scope of the notice that a juvenile who has been designated as a serious youthful offender ("SYO") must receive regarding the conditions of detention and how a failure to abide by those conditions could result in the imposition of a discretionary adult sentence," the OSC did not reach that issue. Instead, it held that the juvenile court lost subject-matter jurisdiction to invoke the adult portion under the SYO specification because, although the sentencing hearing was held the day before appellant turned 21, the entry was not journalized until the next day, after appellant turned 21. And since a court speaks through its journal, the adult portion of appellant's sentence was sua sponte vacated.

What is amazing in this case is that no one caught this mistake - through an appeal to the 8th District and then onto the OSC. Bet A.W. is happy someone at the OSC was awake.

***State el rel. Davis v. Janas*, 2020-Ohio-1462**

Lack of jurisdiction; sentencing

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2020/2020-Ohio-1462.pdf

Trial court lacked jurisdiction to change and increase appellant's sentence after that sentence was affirmed on direct appeal. Original sentence of life

with parole eligibility after 20 years allowed appellant to reduce the base sentence by earning certain types of credit and was the appropriate sentence for aggravated murder conviction without aggravating circumstances; trial court changed sentence with a nunc pro tunc entry five years after original sentence to life with parole eligibility after 20 *full* years which eliminated appellant's ability to reduce his base sentence. Court of Appeals' erroneous dismissal of appellant's complaint for a writ of mandamus reversed and remanded.

Sixth Circuit Court of Appeals

Nothing to report.

Supreme Court of the United States

Nothing to report.