# Appellate Court Decisions - Week of 6/24/19

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

## First Appellate District of Ohio

***In re A.S.*, 2019-Ohio-2558**

**Confinement credit**

**Full Decision:**
**https://www.supremecourt.ohio.gov/rod/docs/pdf/1/2019/2019-Ohio-2558.pdf**

**Juvenile court erred in failing to give confinement credit toward juvenile's DYS commitment for the time he spent at Abraxas Youth Center; court also violated juvenile's due-process rights by revoking his probation without following Juv.R. 29 and 35.**

***State v Tolbert*, 2019-Ohio-2557**

**Sentencing**

**Full Decision:**
**https://www.supremecourt.ohio.gov/rod/docs/pdf/1/2019/2019-Ohio-2557.pdf**

**Trial court err in ordering defendant to stay away from victims; as defendant was sentenced to prison, court could not impose a no-contact order which is a community-control sanction.**

## Second Appellate District of Ohio

***State v. Easterling*, 2019-Ohio-2470**

**Verdict; sentencing**

**Full Decision:**
**https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2019/2019-Ohio-2470.pdf**

**Trial court erred in sentencing defendant for a third-degree felony domestic violence since the jury verdict form did not include the degree of the offense or a jury finding of an aggravating element of two or more prior convictions, R.C. 2945.75; parties' stipulation did not remove requirement that verdict form include the degree of the offense or the aggravating**

**element. Sentence modified to maximum 180 days in jail for misdemeanor conviction.**

## Third Appellate District of Ohio

***State v. Gideon*, 2019-Ohio-2482**

**Suppression; Fifth Amendment**

**Full Decision:**
**https://www.supremecourt.ohio.gov/rod/docs/pdf/3/2019/2019-Ohio-2482.pdf**

**Trial court erred by denying his motion to suppress defendant's statements because they were compelled in violation of his Fifth Amendment right to remain silent; actions of state created an impression that defendant's refusal to cooperate with investigation would result in his medical license being penalized, *Garrity v. New Jersey*, 385 U.S. 493, 87 S.Ct. 616, 17 L.Ed.2d 562 (1967).**

## Fourth Appellate District of Ohio

***Nothing to report.***

## Fifth Appellate District of Ohio

***State v. George*, 2019-Ohio-2548**

**Jurisdiction**

**Full Decision:**
**https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2019/2019-Ohio-2548.pdf**

**Trial court committed plain error in convicting and sentencing defendant for operating a motor vehicle with an expired license, as R.C. 4510.12(C)(2) does not create a separate offense of which a defendant may be convicted, but just establishes the penalty for having an expired license.**

## Sixth Appellate District of Ohio

***State v. Weaver*, 2019-Ohio-2477**

**Bindover**

**Full Decision:**
**https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2019/2019-Ohio-2477.pdf**

**Following mandatory bindover, trial court erred by not staying sentence in adult court for reverse-bindover proceedings where actual convictions, with acquittal on the firearm specifications, warranted only discretionary transfer under R.C. 2152.121(B)(3). Conviction of participation in a criminal gang also vacated since indictment on that count specified conduct that occurred beyond the date for the offenses charged in juvenile court requiring bindover.**

## Seventh Appellate District of Ohio

***Nothing to report.***

## Eighth Appellate District of Ohio

***State v. Croskey*, 2019-Ohio-2444**

**Fifth Amendment**

**Full Decision:**
**https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2019/2019-Ohio-2444.pdf**

**Conviction for attempted aggravated burglary, felonious assault, and misdemeanor assault reversed and case remanded for a new trial due to state's improper use of defendant's postarrest and trial silence as evidence of his guilt, in violation of the Fifth Amendment.**

***In re C.M.*, 2019-Ohio-2446**

**Juvenile record sealing**

**Full Decision:**
**https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2019/2019-Ohio-2446.pdf**

**Pursuant to R.C. 2152.356(C)(2)(d)(iii), juvenile court erred in denying juvenile's application to seal his records without holding a hearing which is required to be held within 30 days of prosecutor objecting. Remanded for a hearing.**

## Ninth Appellate District of Ohio

***State v. Reed*, 2019-Ohio-2544**

**Post-release control**

**Full Decision:**
**https://www.supremecourt.ohio.gov/rod/docs/pdf/9/2019/2019-Ohio-2544.pdf**

**Trial court erred in denying defendant's motion to vacate and release from post-release control supervision where the sentencing entry did not include the consequences of violating post-release control and trial court cannot resentence him, as he has been released from prison for the offense for which post-release control was to be imposed.**

## Tenth Appellate District of Ohio

***State v. Ping*, 2019-Ohio-2458**

**Restitution**

**Full Decision:**
**https://www.supremecourt.ohio.gov/rod/docs/pdf/10/2019/2019-Ohio-2458.pdf**

**Trial court erred in ordering restitution to Chase Bank, as a bank is not a victim of the offense under R.C. 2929.18(A)(1).**

***State v. Prater*, 2019-Ohio-2535**

**Post-conviction; ineffective assistance of counsel**

**Full Decision:**
**https://www.supremecourt.ohio.gov/rod/docs/pdf/10/2019/2019-Ohio-2535.pdf**

**Trial court erred in denying a petition for post-conviction relief without a hearing since petition raised issues concerning ineffective assistance of counsel and "provided 'evidentiary documents containing sufficient operative facts which, if believed, would establish' both ineffective assistance of counsel and resulting prejudice with regard to each of the new trial motions." *State v. Howard*, 10th Dist. No. 15AP-161, 2016-Ohio-504.**

## 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

***Mitchell v. Wisconsin*, 588 U.S. ____ (2019)**

***SORNA***

**Full Decision:**
**https://www.supremecourt.gov/opinions/18pdf/18-6210_2c03.pdf**

**Summary from the SCOTUS website: "The Wisconsin Supreme Court's judgment – affirming the drunk-driving convictions of petitioner Mitchell, who was administered a warrantless blood test while he was unconscious – is vacated, and the case is remanded." (But warrantless blood draw of an unconscious person upheld.)**

***Syllabus:***

**"Petitioner Gerald Mitchell was arrested for operating a vehicle while intoxicated after a preliminary breath test registered a blood alcohol concentration (BAC) that was triple Wisconsin's legal limit for driving. As is standard practice, the arresting officer drove Mitchell to a police station for a more reliable breath test using evidence-grade equipment. By the time Mitchell reached the station, he was too lethargic for a breath test, so the officer drove him to a nearby hospital for a blood test. Mitchell was unconscious by the time he arrived at the hospital, but his blood was drawn anyway under a state law that presumes that a person incapable of withdrawing implied consent to BAC testing has not done so. The blood analysis showed Mitchell's BAC to be above the legal limit, and he was charged with violating two drunk-driving laws. Mitchell moved to suppress**

**the results of the blood test on the ground that it violated his Fourth Amendment right against "unreasonable searches" because it was conducted without a warrant. The trial court denied the motion, and Mitchell was convicted. On certification from the intermediate appellate court, the Wisconsin Supreme Court affirmed the lawfulness of Mitchell's blood test.**

***Held*: The judgment is vacated, and the case is remanded.**

**2018 WI 84, 383 Wis. 2d 192, 914 N. W. 2d 151, vacated and remanded. JUSTICE ALITO, joined by THE CHIEF JUSTICE, JUSTICE BREYER, and JUSTICE KAVANAUGH, concluded that when a driver is unconscious and cannot be given a breath test, the exigent-circumstances doctrine generally permits a blood test without a warrant. Pp. 5–17.**

**(a) BAC tests are Fourth Amendment searches. See *Birchfield* v. *North Dakota*, 579 U. S. ___, ___. A warrant is normally required for a lawful search, but there are well-defined exceptions to this rule, including the "exigent circumstances" exception, which allows warrant less searches "to prevent the imminent destruction of evidence." *Mi souri* v. *McNeely*, 569 U. S. 141, 149. In *McNeely*, this Court held that the fleeting nature of blood-alcohol evidence alone was not enough to bring BAC testing within the exigency exception. *Id.*, at 156. But in *Schmerber* v. *California*, 384 U. S. 757, the dissipation of BAC did justify a blood test of a drunk driver whose accident gave police other pressing duties, for then the *further* delay caused by a warrant application would indeed have threatened the destruction of evidence. Like *Schmerber*, unconscious-driver cases will involve a heightened degree of urgency for several reasons. And when the driver's stupor or unconsciousness deprives officials of a reasonable opportunity to administer a breath test using evidence-grade equipment, a blood test will be essential for achieving the goals of BAC testing. Pp. 5–7.**

**(b) Under the exigent circumstances exception, a warrantless search is allowed when " 'there is compelling need for official action and no time to secure a warrant.' " *McNeely*, 569 U. S., at 149. Pp. 7– 16.**

**(1) There is clearly a "compelling need" for a blood test of drunk- driving suspects whose condition deprives officials of a reasonable opportunity to conduct a breath test. First, highway safety is a vital public interest—a "compelling" and "paramount" interest, *Mackey* v. *Montrym*, 443 U. S. 1, 17–18. Second, when it comes to promoting that interest, federal and state lawmakers have long been convinced that legal limits on a driver's BAC make a big difference. And there is good reason to think that such laws have worked. *Birchfield*, 579 U. S., at ___. Third, enforcing BAC limits obviously requires a test that is accurate enough to stand up in court. *Id.*, at ___. And such testing must be prompt because it is "a biological certainty" that "[a]lcohol dissipates from the bloodstream," "literally disappearing by the**

**minute." *McNeely*, 569 U. S., at 169 (ROBERTS, C. J., concurring). Finally, when a breath test is unavailable to promote the interests served by legal BAC limits, "a blood draw becomes necessary." *Id.*, at 170. Pp. 9–12.**

**(2) *Schmerber* demonstrates that an exigency exists when (1) BAC evidence is dissipating and (2) some other factor creates press- ing health, safety, or law enforcement needs that would take priority over a warrant application. Because both conditions are met when a drunk-driving suspect is unconscious, *Schmerber* controls. A driver's unconsciousness does not just create pressing needs; it is *itself* a medical emergency. In such a case, as in *Schmerber*, an officer could "reasonably have believed that he was confronted with an emergency." 384 U. S., at 771. And in many unconscious-driver cases, the exigency will be *especially* acute. A driver so drunk as to lose consciousness is quite likely to crash, giving officers a slew of urgent tasks beyond that of securing medical care for the suspect—tasks that would require them to put off applying for a warrant. The time needed to secure a warrant may have shrunk over the years, but it has not disappeared; and forcing police to put off other urgent tasks for even a relatively short period of time may have terrible collateral costs. Pp. 12–16.**

**(c) On remand, Mitchell may attempt to show that his was an unusual case, in which his blood would not have been drawn had police not been seeking BAC information and police could not have reasonably judged that a warrant application would interfere with other pressing needs or duties. Pp. 16–17.**

**JUSTICE THOMAS would apply a *per se* rule, under which the natural metabolization of alcohol in the blood stream "creates an exigency once police have probable cause to believe the driver is drunk," regardless of whether the driver is conscious. *Missouri* v. *McNeely*, 569 U. S. 141, 178 (THOMAS, J., dissenting). Pp. 1–4.**

**ALITO, J., announced the judgment of the Court and delivered an opinion, in which ROBERTS, C. J., and BREYER and KAVANAUGH, JJ., joined. THOMAS, J., filed an opinion concurring in the judgment. SOTOMAYOR, J., filed a dissenting opinion, in which GINSBURG and KAGAN, J., joined. GORSUCH, J., filed a dissenting opinion.**