Appellate Court Decisions - Week of 8/2/21

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

First Appellate District of Ohio

***State v. Smith*, C-200352**

Suppression; search of vehicle

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

In state's appeal, trial court did not err in granting appellee's motion to suppress the warrantless search of the vehicle he was driving. Despite not being the titled owner, appellee had standing to challenge the search, as he regularly drove the vehicle with permission of the owner. The mere acquiescence of the owner to the officer's statement that he was "going to go through that truck" did not amount to consent. And finally, the search was not justified as an inventory search where "[t]he car was not legally impounded or towed, the owner was present to receive it, and there was no need to keep the personal items in the vehicle safe. The car was legally parked on the street. Moreover, the video of the search showed that the officers were sifting through the vehicle in order to find evidence of a crime . . . the evidence demonstrated the procedure was a pretext for an evidentiary search."

Second Appellate District of Ohio

***State v. McGrath*, 2021-Ohio-2605**

No contest plea

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2021/2021-Ohio-2605.pdf

Trial court "completely failed to comply with the Traf.R. 10(B)(2) requirement that a defendant entering a no contest plea must be advised of the effect of such a plea." Case reversed and remanded.

Third Appellate District of Ohio

Nothing to report.

Fourth Appellate District of Ohio

***State v. Jones*, 2021-Ohio-2601**

Allied offenses and merger

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/4/2021/2021-Ohio-2601.pdf

Trial court erred when it failed to merge the kidnapping and attempted rape convictions as allied offenses; "the kidnapping involved only a relatively brief restraint with no asportation, was committed to facilitate appellant's attempt to rape [the victim], and did not subject [the victim] to additional danger aside from the rape." *State v. Logan*, 60 Ohio St.2d 126, 397 N.E.2d 1345 (1979). The same result would be reached "in applying the tripartite test from *Ruff* [143 Ohio St.3d 114, 2015-Ohio-995, 34 N.E.3d 892]. First, the kidnapping and attempted rape convictions involved a single victim and the harm caused by the two offenses was not separate and identifiable, so the offenses are not dissimilar. Second, both offenses were also committed at the same time, not separately. Lastly, the kidnapping was committed merely to facilitate the attempted rape, so the conduct did not show that these offenses were committed with a separate animus. Therefore, under *Ruff*, the offenses must merge."

***State v. Trimble*, 2021-Ohio-2609**

Sentencing

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/4/2021/2021-Ohio-2609.pdf

Trial court erred when imposed a prison sentence and a no-contact order; a no-contact order is a community-control sanction, and the trial court may not impose both a prison term and community control for the same felony offense. *State v. Anderson*, 143 Ohio St.3d 173, 2015-Ohio-2089, 35 N.E.3d 512.

Fifth Appellate District of Ohio

Nothing to report.

Sixth Appellate District of Ohio

Nothing to report.

Seventh Appellate District of Ohio

Nothing to report.

Eighth Appellate District of Ohio

***State v. Berry*, 2021-Ohio-2588**

Statute of limitations

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2021/2021-Ohio-2588.pdf

In state's appeal, trial court did not err in granting appellee's motion to dismiss "based on the state's failure to commence prosecution within the applicable statute of limitations." The state failed to meet "its burden of establishing that it exercised reasonable diligence in executing the summons or warrant as required to timely commence prosecution under former R.C. 2901.13(E)" and Crim.R. 4(D).

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. Thompson*, 2021-Ohio-2632**

Competency

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/12/2021/2021-Ohio-2632.pdf

Conviction for criminal trespass and menacing by stalking reversed. Trial court, after finding appellant incompetent and ordering restoration, failed to rule on appellant's subsequent competency to stand trial nor issue an entry finding appellant competent. Submission of a forensic evaluation was not sufficient; "[c]ontrary to the state's assertion, the fact that the parties offered the forensic evaluation as a joint exhibit is *not* a stipulation by appellant that he was competent to stand trial. Rather, admitting the forensic evaluation as a joint exhibit merely dispensed with the necessity of calling the examining psychologist as a witness. There is no stipulation in the record that appellant was competent to stand trial."

Supreme Court of Ohio

Nothing to report.

Sixth Circuit Court of Appeals

Nothing to report.

Supreme Court of the United States

Nothing to report.