Appellate Court Decisions - Week of 8/5/19

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

First Appellate District of Ohio

***State v. Bowers*, C-180317**

Judicial factfinding unconstitutional and resentencing

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

In appellant's third appeal of rape of a minor under 10 years of age, trial court erred in sentencing appellant to 25 years to life, as he was neither indicted nor found guilty by the jury of any of the factors in R.C. 2971.09(B)(1)(c) including force. AND "[t]o the extent that this court previously determined that the trial court's factual finding of force was permissible, we conclude that analysis violates the Sixth Amendment . . . The *Bowers II* suggestion that a trial court may engage in judicial factfinding to increase the mandatory minimum sentence is inconsistent with *Alleyne [v. United States*, 570 U.S. 99] . . . and, is, accordingly, overruled. Reversed and remanded for resentencing.

Second Appellate District of Ohio

***State v. Forsythe*, 2019-Ohio-3117**

Plea and sentencing

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/2/2019/2019-Ohio-3117.pdf

State concedes that trial court erred when it failed to advise appellant of the maximum possible penalties, "specifically the sex offender tier and the requirements of registration," prior to entering his guilty plea, and that the trial court erred at sentencing when it designated appellant a Tier III sex offender rather than a Tier II sex offender.

***State v. Clark*, 2019-Ohio-3196**

Post-release control

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/2/2019/2019-Ohio-3196.pdf

State concedes that trial court erred when it incorrectly informed appellant that he could be placed on post-release control for three years, when R.C. 2967.28(C) provided the he could be placed on post-release control for up to three years; post-release control portion of sentence void and vacated, and since appellant has completed his prison term, he cannot be resentenced to post-release control.

***State v. Collier*, 2019-Ohio-3197**

Suppression

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/2/2019/2019-Ohio-3197.pdf

Trial court erred when it denied appellant's motion to suppress search where officers lacked a reasonable, articulable suspicion to warrant an investigatory detention; suspicion was based on an anonymous tip which was never independently corroborated to indicate the tip was reliable.

Third Appellate District of Ohio

Nothing to report.

Fourth Appellate District of Ohio

Nothing to report.

Fifth Appellate District of Ohio

Nothing to report.

Sixth Appellate District of Ohio

***State v. Yates*, 2019-Ohio-3129**

Right of allocution

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/6/2019/2019-Ohio-3129.pdf

Trial court violated Crim.R. 32 when it denied appellant the right to speak at sentencing. Case reversed and remanded for resentencing.

Seventh Appellate District of Ohio

Nothing to report.

Eighth Appellate District of Ohio

***State v. Hardnett*, 2019-Ohio-3090**

Ineffective assistance of appellate counsel

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2019/2019-Ohio-3090.pdf

Appellant's application to reopen his appeal pursuant to App.R. 26(B) is granted, as appellate counsel failed to argue a sentencing error where "the trial court was prohibited from imposing upon [appellant] consecutive prison terms for the two firearm specifications. . . ." Attempted felonious assault of which appellant was convicted is not one of the specific underlying felonies found in R.C. 2929.14(B)(1)(g) for which consecutive prison terms for firearm specification shall be ordered.

Ninth Appellate District of Ohio

***State v. Raubenolt*, 2019-Ohio-3112**

Suppression

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/9/2019/2019-Ohio-3112.pdf

In state's appeal, trial court did not err in granting motion to suppress stop of automobile, as officer did not have a reasonable, articulable suspicion of a violation; appellant did not make an improper lane change nor did he leave his lane of travel.

***State v. Cross*, 2019-Ohio-3133**

Insufficient evidence of identity fraud

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/9/2019/2019-Ohio-3133.pdf

There was insufficient evidence to prove identity fraud where state failed to produce any evidence that appellant possessed another's identity without his consent.

***State v. Urich*, 2019-Ohio-3138**

Improper shift of burden of proof

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/9/2019/2019-Ohio-3138.pdf

Trial court erred by shifting burden of proof to appellant in criminal contempt proceeding by forcing appellant to prove beyond a reasonable doubt that contact with protected person was inadvertent.

***State v. Love*, 2019-Ohio-3168**

Venue

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/9/2019/2019-Ohio-3168.pdf

Judgment reversed where state failed to prove venue for possession of drug abuse instrument offense where only city and street address were listed, and city encompasses two counties.

Tenth Appellate District of Ohio

Nothing to report.

Eleventh Appellate District of Ohio

Nothing to report.

Twelfth Appellate District of Ohio

***State v. Sparks*, 2019-Ohio-3145**

Right of allocution

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/12/2019/2019-Ohio-3145.pdf

Trial court violated Crim.R. 32 when it denied appellant the right to speak at sentencing. Case reversed and remanded for resentencing.

Supreme Court of Ohio

Nothing to report.

Sixth Circuit Court of Appeals

Nothing to report.

Supreme Court of the United States

Nothing to report.