Appellate Court Decisions - Week of 8/9/21

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

First Appellate District of Ohio

***State v. Curry*, 2021-Ohio-2746**

Sentencing; driver's license suspension

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/1/2021/2021-Ohio-2746.pdf

After appellant was sentenced to three-years of community control and neither he nor the state appealed, appellant violated his community control. In sentencing appellant for the violations, trial court erred in imposing a mandatory driver's license suspension under R.C. 2921.331(E). "As the state concedes, the court's failure to include in its original sentence and sentencing entry the statutorily mandated license suspension rendered that part of the sentence voidable. *See State v. Henderson*, 161 Ohio St.3d 285, 2020-Ohio-4784, 162 N.E.3d 776, ¶ 1. In order to correct the error, it had to be raised on direct appeal. *See State v. Emanuel*, 1st Dist. Hamilton No. C-190450, 2021-Ohio-448, ¶ 10. But neither party filed a direct appeal . . . [appellant's] sentence on the failure-to-comply charge became final upon the filing of the original sentencing entry and the trial court lacked authority to modify the sentence by imposing the license suspension as part of its sentence for [appellant's] community-control violation.

***State v. Holden*, 2021-Ohio-2749**

Right to retained counsel

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/1/2021/2021-Ohio-2749.pdf

Trial court erred in denying appellant's request for a continuance to permit his retained counsel to argue appellant's motion to withdraw his guilty pleas that he had filed pro se. "While [appellant] did not have a right to *appointed* counsel in a postconviction hearing, he did have the right to have privately-retained counsel present."

Second Appellate District of Ohio

***State v. White*, 2021-Ohio-2703**

Weight of the evidence

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2021/2021-Ohio-2703.pdf

Conviction for failing to use due caution when approaching a stationary public vehicle displaying emergency lights, R.C. 4511.213(A)(1), was against the weight of the evidence where the statute under which appellant was convicted does not require a person to reduce speed. Also, appellant was unable to change lanes because there was another vehicle besides his vehicle.

Weird thing about this case is COA finds conviction is against the manifest weight of the evidence, but then orders conviction vacated and orders the trial court to enter an acquittal. But I think it should have ordered a new trial, as an appellant is only discharged if evidence is insufficient, not just against the weight of the evidence.

Third Appellate District of Ohio

Nothing to report.

Fourth Appellate District of Ohio

***State v. Long*, 2021-Ohio-2672**

Sentencing

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/4/2021/2021-Ohio-2672.pdf

Appellant's indefinite prison sentence under Reagan Tokes Law was contrary to law, as trial court failed to provide the required notifications under R.C. 2929.19(B)(2)(c) at the sentencing.

***State v. McKnight*, 2021-Ohio-2673**

New trial

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/4/2021/2021-Ohio-2673.pdf

Trial court erred in denying appellant's motion for leave to file a motion for a new trial based on juror misconduct. The "trial court erred as a matter of law and applied an incorrect legal test. It did not review [appellant's] efforts during the 14-day period after the verdict was rendered to assess whether [appellant] exercised reasonable diligence to discover any jury misconduct. It did not determine whether [appellant] had shown by clear and convincing evidence that

he had no knowledge of the jury misconduct and could not have learned of it in the exercise of reasonable diligence within 14 days of the jury verdict." Therefore, COA, after reviewing the matter de novo, remanded the case for an evidentiary hearing.

***State v. Wright*, 2021-Ohio-2692**

Restitution

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/4/2021/2021-Ohio-2692.pdf

In conviction for criminal trespass, trial court erred in ordering appellant to pay $5,000 in restitution. The victim did not appear at the restitution hearing nor was any evidence presented as to the value of the trees that appellant unlawfully cut down.

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. Massingill*, 2021-Ohio-2674**

Sufficiency; CCW and attempted tampering with evidence

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2021/2021-Ohio-2674.pdf

Appellant's convictions for CCW and attempted tampering with evidence were not supported by sufficient evidence; police officers saw appellant holding the gun in his hand, then tucking it into his pants with the gun still visible. It was never concealed. As for the attempted tampering with evidence, appellant "did not hide the firearm, but rather left it in plain view. Unlike the defendant in *Shirley*, [appellant] did not run away from the police, but rather approached the police with his hands up and fully cooperated with their commands. And unlike the defendant in *Shirley*, [appellant] showed the police where the firearm could

be found. [Appellant] did not take any steps, substantial or otherwise, to impair the firearm's " 'value or availability as evidence in such proceeding or investigation.' " Convictions vacated.

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

Nothing to report.

Supreme Court of Ohio

Nothing to report.

Sixth Circuit Court of Appeals

***United State v. Warren*, No. 20-3045**

Sentencing; breached plea agreement

Full Decision:
http://www.opn.ca6.uscourts.gov/opinions.pdf/21a0177p-06.pdf

In appellant's second appeal, his first being granted and his original 10-year sentence vacated as unreasonable, new 96-month sentence again vacated, as government breached appellant's plea agreement by stating "it would not have entered the agreement had it known that [appellant's prior] felonious assault convictions involved shootings." Case remanded for sentencing with a different district court judge.

Supreme Court of the United States

Nothing to report.