

## Appellate Court Decisions - Week of 4/25/22

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

### First Appellate District of Ohio

#### **State v. Hampton, C-210423**

Suppression; traffic stop

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 stop of his automobile; police "officer lacked probable cause or reasonable suspicion to effectuate the traffic stop." Trial court's conclusion that no reasonable officer would have believed that appellee was following too closely to other vehicle was based on competent and credible evidence.

#### **State v. Lyles, C-210271, 272, 273**

Guilty plea

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

Appellant's guilty plea to driving under suspension violated Traf.R. 10(D); trial court failed to inform appellant of the effect of his plea. Plea vacated and case remanded.

### Second Appellate District of Ohio

#### **State v. O'Halloran, 2022-Ohio-1342**

Sentencing

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2022/2022-Ohio-1342.pdf>

On remand from COA for resentencing for three counts of rape of a child less than 13 years of age and importuning, state concedes that trial court erred when it imposed consecutive sentences for the rape offenses when the counts had originally been run concurrently. Although that original sentence was based on trial court's erroneous decision that it could not consider consecutive sentence, the state failed to appeal or cross-appeal those original concurrent sentences. And since the appellee's direct appeal only concerned the rape counts, the trial court erred by exceeding the remand instructions and increasing the sentence for importuning from 36 to 48 months. Case remanded again.

## Third Appellate District of Ohio

*Nothing to report.*

## Fourth Appellate District of Ohio

### ***State v. Gavin, 2022-Ohio-1287***

Motion for leave to file a motion for new trial

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/4/2022/2022-Ohio-1287.pdf>

Trial court erred when it denied appellant’s motion for leave to file a motion for new trial based on newly discovered evidence. Based on the OSC’s recent decision in *State v. Bethel*, Slip Opinion 2022-Ohio-783, the COA found prior precedents that held that a motion for a leave to file a motion for a new trial must be filed within a “reasonable time” were “erroneously decided.” Crim.R. 33(B) contains no such time requirement. Therefore, based on the plain language of the rule, “the first inquiry to be made by the trial court is whether the defendant has shown, by clear and convincing proof, that he or she was unavoidably prevented from discovering the evidence at issue within one hundred twenty days of the jury’s verdict. If the answer is yes, then the motion for leave to file a motion for new trial should be granted. Here, as already stated, there is no indication from the trial court’s order that it made a determination one way or the other regarding this threshold inquiry. This question must be answered before the trial court can proceed to the next step of the bifurcated procedure contained in Crim.R. 33(B).” Case remanded for trial court to determine “whether [appellant] was unavoidably prevented from discovery of the evidence upon which his motion for leave is based, without regard to the amount of time that elapsed between the discovery of evidence and filing of his motion for leave.”

### ***State v. Bontrager, 2022-Ohio-1367***

Allied offenses

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/4/2022/2022-Ohio-1367.pdf>

Trial court erred when it failed to merge appellant’s convictions for trafficking in drugs and possession of drugs as allied offense, where “those offenses occurred on the same date, at the same time, with the same drugs, and with the same animus of gifting drugs. . . .” Trial court also erred when it failed to merge appellant’s convictions for involuntary manslaughter and corrupting another with drugs because “[t]he offenses did not result in separate and identifiable

harm. Both offense resulted in the unlawful termination of [the victim's] pregnancy. . . [t]he state relied on the same conduct to prove both offenses. Count III alleged that [appellant] knowingly furnished fentanyl to [the victim] when he knew she was pregnant or was reckless in that regard. This same conduct was the basis for Count II, which alleged that [appellant] caused the unlawful termination of [the victim's] pregnancy as a proximate result of committing or attempting to commit the same felonies charged in Counts III-VI.”

### Fifth Appellate District of Ohio

*Nothing to report.*

### Sixth Appellate District of Ohio

***State v. Daniel, 2022-Ohio-1348***

Arson registry

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2022/2022-Ohio-1348.pdf>

COA finds arson registry constitutional, but what is of interest in this case is this:

“Because our conclusion and analysis with respect to appellant’s first assignment of error is in direct conflict with the Fourth District’s opinion in *Dingus*, [2017-Ohio-2619, 81 N.E.3d 513 (4th Dist.),] *supra*, we sua sponte certify a conflict to the Supreme Court of Ohio on the following question: “Does R.C. 2909.15(D)(2)(b) unconstitutionally violate the doctrine of separation of powers?”

### Seventh Appellate District of Ohio

***State v. Jackson, 2022-Ohio-1306***

Bond forfeiture

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/7/2022/2022-Ohio-1306.pdf>

Bond company appealed after court ordered bond forfeited when Mr. Jackson did not appear for sentencing, stayed that forfeiture, but then lifted stay and ordered bond to be forfeited by January 29, 2019. However, Mr. Jackson was arrested on a bench warrant on January 11, 2019, at which time appellant filed a motion to vacate the bond forfeiture. Trial court denied such motion to vacate,

ordering appellant to forfeit the bond and pay the clerk the bond which appellant paid. Several months later, appellant filed a motion for remission of bond forfeiture, pursuant to R.C. 2937.39, arguing that Mr. Jackson in jail and available to the court before the January 29, 2019 deadline. Trial court denied such motion. COA held that trial court erred when it “failed to set out any findings or basis for its decision despite an application of the remission factors as applied to the facts of this case in appellant’s motion. Moreover, as stated above, the trial court never provided appellant with a hearing to show cause why a judgment of forfeiture should not be entered against it.”

## Eighth Appellate District of Ohio

***State v. Howard, 2022-Ohio-1316***

Sentencing; fine

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2022/2022-Ohio-1316.pdf>

Trial court erred when it entered a nunc pro tunc sentencing entry which added a fine to the sentence, when no such fine had been ordered at the sentencing hearing. Case also remanded for trial court to issue a nunc pro tunc sentencing entry in another case of appellant to reflect that Count 5 was nolle in that case.

## Ninth Appellate District of Ohio

*Nothing to report.*

## Tenth Appellate District of Ohio

***State v. Bamonte, 2022-Ohio-1331***

Allied offenses; grand theft and Medicaid fraud

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/10/2022/2022-Ohio-1331.pdf>

Trial court committed plain error by failing to merge the offenses of grand theft and Medicaid fraud as allied offenses; concurrent sentences are not the same as merging them. “According to the Supreme Court of Ohio, ‘even when the sentences are to be served concurrently, a defendant is prejudiced by having more convictions than are authorized by law.’ *State v. Underwood*, 124 Ohio St.3d 365, 2010-Ohio-1, ¶ 31.”

## **Eleventh Appellate District of Ohio**

*Nothing to report.*

## **Twelfth Appellate District of Ohio**

**State v. Dinka, 2022-Ohio-1365**

Sentencing

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/12/2022/2022-Ohio-1365.pdf>

**Trial court erred when it imposed a sentence of three years of community control in its entry that was not imposed at the sentencing hearing; case 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.*