

Appellate Court Decisions - Week of 5/2/22

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

First Appellate District of Ohio

State v. Jordan, C-210198 & 199

Insufficient evidence; sexual imposition

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

The state did not present sufficient evidence to support appellant's conviction for sexual imposition where there was nothing in the record that appellant should have known of or "perceived a substantial impairment" of the alleged victim. Visual impairment, standing alone, does equate to a substantial impairment.

Second Appellate District of Ohio

Nothing to report.

Third Appellate District of Ohio

Nothing to report.

Fourth Appellate District of Ohio

Nothing to report.

Fifth Appellate District of Ohio

State v. Clark, 2022-Ohio-1387

Sentencing; consecutive

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2022/2022-Ohio-1387.pdf>

Trial court erred when it imposed a misdemeanor sentence consecutive to appellant's felony prison sentence, *see State v. Polus*, 145 Ohio St. 3d 266, 2016-Ohio-655, 48 N.E.3d 530.

State v. Stalder, 2022-Ohio-1386

Batson

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2022/2022-Ohio-1386.pdf>

Trial court erred when it failed to consider “the merits of appellant’s objections or the state’s responses because it found *Batson* inapplicable to white males.” And when a trial court “errs in applying *Batson*, that error is structural.” Conviction vacated and case remanded for a new trial.

Sixth Appellate District of Ohio

Nothing to report.

Seventh Appellate District of Ohio

State v. Robinson, 2022-Ohio-1451

Sentencing; community control violation

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/7/2022/2022-Ohio-1451.pdf>

After appellant violated his community control, trial court erred in sentencing him to prison. Court had failed to advise him at his original sentencing hearing of the prison term he would receive if he violated his community control so court was precluded from imposing a prison sentence for the violation. See *State v. Brooks*, 103 Ohio St.3d 134, 2004-Ohio-4746, 814 N.E.2d 837, ¶ 15.

Eighth Appellate District of Ohio

State v. Ferricci, 2022-Ohio-1393

Expert witness

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2022/2022-Ohio-1393.pdf>

In appellant’s second trial (the first ended in a hung jury on one count of rape), trial court erred when it allowed the state to call as an expert witness a doctor who had been retained by the defense appellant’s first trial. Such defense expert from the first trial “is an agent of the defense and thus protected by the attorney-client privilege and work-product privilege in a subsequent retrial when the defense chooses not to call that expert to testify.” In addition, “the state failed to

follow the discovery rules of Crim.R. 16(K) and, therefore, the court should have precluded Dr. McPherson's testimony at trial."

State v. Smith, 2022-Ohio-1411

Insufficient evidence; WUD

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2022/2022-Ohio-1411.pdf>

The state did not present sufficient evidence to support appellant's conviction for WUD. No witness testified they saw appellant with a gun on the day in question; no forensic evidence was presented to support that appellant possessed a gun that day; and no gun was ever recovered nor was it identified. Conviction vacated and appellant discharged on that case.

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

State v. Tidwell, 2022-Ohio-1435

Juvenile court; subject-matter jurisdiction

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/o/2022/2022-Ohio-1435.pdf>

Appellant was arrested when he was 20 years old for a murder that was committed when he was 17 years old; the state recognized the original indictment was jurisdictionally defective so it dismissed that indictment and immediately reindicted appellant for the same murder when he was 22 years

old. The OSC held that pursuant to “R.C. 2152.02(C)(3) and 2151.23(I), the jurisdiction of the general division of the court of common pleas is not invoked when a person is arrested at the age of 20 for felonious acts that he allegedly committed as a juvenile. The juvenile court has exclusive jurisdiction over that person.” The OSC further held that “the dismissal of the original indictment followed by the reindictment of Hudson when he was 22 years old was of no consequence. Therefore, the general division does not have jurisdiction and the superseding indictment is defective.”

State v. Moore, 2022-Ohio-1460

Venue

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/o/2022/2022-Ohio-1460.pdf>

“Venue for the crime of retaliation under R.C. 2921.05(B) is proper where the defendant committed the criminal offense or any of its elements, not where the victim previously pursued criminal charges against the defendant.” Venue was not proper where the victim was located when the alleged retaliation occurred where the appellant “did not take any action there.”

Sixth Circuit Court of Appeals

Nothing to report.

Supreme Court of the United States

Nothing to report.