Appellate Court Decisions –Week of 9/12/22

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

First Appellate District of Ohio

Nothing to report.

Second Appellate District of Ohio

Nothing to report.

Third Appellate District of Ohio

Nothing to report.

Fourth Appellate District of Ohio

***State v. Gavin*, 2022-Ohio-3027**

Postconviction; DNA testing

Full Decision:

In conviction for multiple drug charges, trial court erred in denying appellant's application for postconviction DNA testing pursuant to R.C. 2953.71 - 2953.84, and in denying his "unopposed motion" for access to evidence for such testing. Appellant was an "eligible offender," and the COA reasoned that if appellant's DNA was not found on the package of drugs, but someone else's DNA was found (appellant had contended all along he was set up, and the drugs were planted by the state's primary witness against him), that would be "outcome determinative." Because of this holding, the COA also held that the trial court abused its discretion when it denied appellant's request for his expert to have access to bag of drugs for testing, "which should have been granted provided there is a sufficient parent sample and the chain of custody can be maintained."

Fifth Appellate District of Ohio

***State v. Brunner*, 2022-Ohio-3013**

Motion for new trial

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2022/2022-Ohio-3013.pdf

In conviction for rape and attempted rape, trial court was correct in granting a new trial for the rape conviction on the basis that DNA testing confirmed the semen found in the rape case was not appellant's. However, trial court erred when it denied the motion for a new trial for the attempted rape. "Here, the state's theory of the case was that the same perpetrator, [a]ppellant Eric Brunner, committed both the rape of T.W. and the attempted rape of D.D. because he was the only male in the house with the two women when they both fell asleep in the same room, the assaults happened close in time to when the women fell asleep, and the assaults happened very close in time to one another.

If a new jury would find, based on the new DNA evidence, that [a]ppellant did not commit the charge of rape against T.W., the same jury could likely find that [a]ppellant did not commit the crime of attempted rape against D.D."

Sixth Appellate District of Ohio

Nothing to report.

Seventh Appellate District of Ohio

Nothing to report.

Eighth Appellate District of Ohio

Nothing to report.

Ninth Appellate District of Ohio

Nothing to report.

Tenth Appellate District of Ohio

Nothing to report.

Eleventh Appellate District of Ohio

***State v. Lewis*, 2022-Ohio-3006**
***State v. Dunlap*, 2022-Ohio-3007**

Suppression

Full Decisions:
https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2022/2022-Ohio-3006.pdf

https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2022/2022-Ohio-3007.pdf

In convictions for improperly handling firearms in motor vehicle, the trial court erred in denying appellants' motions to suppress. The initial stop of the vehicle driven by appellant Lewis was justified due to the registered owner of the vehicle, appellant Dunlap, who was female, having a suspended license; however, upon approaching appellant Lewis who was driving, it was immediately apparent to the police officer that appellant Lewis was not the registered owner. Therefore, the officer "no longer maintained reasonable suspicion of the crime for which the stop occurred." The extension of the stop was improper, so the evidence "i.e. discovery of the firearm, must be suppressed." *See State v. Chatton*, 11 Ohio St.3d 59, 61, 463 N.E.2d 1237 (1984).

Twelfth Appellate District of Ohio

***State v. Dean*, 2022-Ohio-3105**

Sufficiency; trespass

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/12/2022/2022-Ohio-3105.pdf

Appellant's conviction for trespass was not supported by sufficient evidence where appellant "was never warned by police not to return to the library after having previously being removed from the library's property due to his unruly behavior."

Supreme Court of Ohio

***State v. Wilson*, 2022-Ohio-3202**

Statutory speedy trial

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2022/2022-Ohio-3202.pdf

"Though the definition of "operate" in R.C. 4511.01(HHH) is not facially applicable to R.C. 4510.14 [driving under an OVI suspension], we conclude that the definition is relevant when, as in this case, 'operate' is not specifically defined in the statute under which the offense was charged. We determine that in order for a person whose license is suspended for an OVI offense to be guilty of driving under an OVI suspension, the person must cause movement of a motor vehicle on the public roads or highways within this state. *See* R.C. 4510.14(A); R.C. 4511.01(HHH)."

This case gives a good history of how the "the General Assembly signaled a departure from the judge-made definition of 'operate; when, in 2002, it enacted R.C. 4511.01(HHH), which defines 'operate' as 'to cause or have caused movement of a vehicle,' and enacted R.C. 4511.194, the separate offense of having physical control of a vehicle while under the influence, which forbids a person from being intoxicated while 'in the driver's position * * * of a vehicle * * * [while] having possession of the vehicle's * * * ignition key.' [*State v.* Wilson, 1st Dist. Hamilton No. C-190281,] 2020-Ohio-1584 at ¶ 10-21."

***State v. O'Malley*, 2022-Ohio-3207**

Forfeiture

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2022/2022-Ohio-3207.pdf

"*Statute requiring forfeiture of an offender's vehicle following a third conviction for operating a vehicle while intoxicated does not violate Equal Protection Clause of either the Ohio or federal Constitution—Forfeiture of appellant's vehicle was not an unconstitutionally excessive fine under the Excessive Fines Clause of the Eighth Amendment to the United States Constitution.*"

Sixth Circuit Court of Appeals

Nothing to report.

Supreme Court of the United States

Nothing to report.