

## Appellate Court Decisions –Week of 10/10/22

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

### First Appellate District of Ohio

#### **In Re R.Z., C-210660**

Juvenile; probable cause

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

In state’s appeal, the juvenile court did not err in finding “no probable cause to believe that defendant-appellee R.Z. committed acts that would constitute burglary under R.C. 2911.12(A)(1) if committed by an adult.”

### Second Appellate District of Ohio

*Nothing to report.*

### Third Appellate District of Ohio

#### **State v. Sims, 2022-Ohio-3184**

Competency

Full Decisions:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/3/2022/2022-Ohio-3184.pdf>

In prosecution for aggravated burglary, kidnapping, and attempted rape, trial court did not err in finding appellant incompetent to stand trial. However, court did err “by imposing consecutive terms of involuntary commitment in violation of R.C. 2945.401(J)(1).” Court was permitted to retain jurisdiction over appellant as an incompetent defendant, but the time period for that jurisdiction “ends upon the expiration of the maximum prison term the defendant could have received,” which was 11 years for the felony of the first degree. Therefore, “court erred by committing him to Twin Valley Behavioral Healthcare-Moritz for a maximum of 30 years.”

### Fourth Appellate District of Ohio

*Nothing to report.*

## 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. Tolliver, 2022-Ohio-3431**

Sentence; Reagan Tokes/mootness

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2022/2022-Ohio-3431.pdf>

In state's appeal, appeal is dismissed as moot. Although state appealed original community-control sentence, if failed to appeal "new sentence" after appellant violated his community control and was sentenced to prison without an Reagan Tokes "tail \* \* \* [s]ee, e.g., *State v. Harper*, 160 Ohio St.3d 480, 2020-Ohio-2913, 159 N.E.3d 248, ¶ 43 (cautioning 'prosecuting attorneys, defense counsel, and pro se defendants' that they must challenge sentencing errors on direct appeal from the judgment of conviction); *State v. Henderson*, 161 Ohio St.3d 285, 2020-Ohio-4784, 162 N.E.3d 776, ¶ 27; see also *State v. Stansell*, 2021-Ohio-2036, 173 N.E.3d 1273, ¶ 3-7 (8th Dist.)."

## Ninth Appellate District of Ohio

*Nothing to report.*

## Tenth Appellate District of Ohio

### **State v. Brock, 2022-Ohio-3439**

Jury instructions; disorderly conduct

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/10/2022/2022-Ohio-3439.pdf>

Trial court committed plain error “in omitting from the instructions the elements in subsection (1) of [Columbus City Code] 2317.11(A) of ‘[e]ngaging in fighting, in threatening harm to persons or property, or in violent or turbulent behavior.’ ” Remanded for a new trial.

## Eleventh Appellate District of Ohio

**State v. Kennedy, 2022-Ohio-3369**

Witnesses

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2022/2022-Ohio-3369.pdf>

Trial court erred in overruling appellant’s objections to testimony by witnesses where such witnesses “provided opinion testimony as to [appellant’s] guilt and [witnesses’] veracity.” Such testimony “impermissibly infringed upon the province of the jury to determine the truthfulness of witnesses and were therefore improper.” COA also finds such admission of testimony was not harmless. Case remanded for a new trial.

**State v. Basile, 2022-Ohio-3372**

Sentence/contempt

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2022/2022-Ohio-3372.pdf>

Trial court erred in modifying appellant’s sentence from 40 months to 60 months following his angry outburst which was “ ‘in reaction to the length of his prison sentence. Nothing more.’ [State v. Bryant, Slip Opinion No. 2022-Ohio-1878,] ¶24. In other words, his reaction was not an indication of his lack of remorse, as the lower court found it to be \* \* \* Thus, appellant’s conduct, while entirely inappropriate, was punishable as contempt of court, but not an increase in his underlying sentence, pursuant to *Bryant*, and the trial court erred in modifying appellant’s sentence due to his outburst.”

## Twelfth Appellate District of Ohio

*Nothing to report.*

## Supreme Court of Ohio

**State v. Troisi, 2022-Ohio-3582**

## Drug trafficking/wholesale distributors

### Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/o/2022/2022-Ohio-3582.pdf>

***“Due process requires that wholesale distributors of dangerous drugs charged with drug trafficking under R.C. 2925.03 for acting “not in accordance with R.C. Chapter 4729” be given notice in the indictment or by subsequent elucidation of the specific violation of R.C. Chapter 4729 that makes the wholesale distributor susceptible to indictment on charges of drug trafficking.”***

**“The Due Process Clauses of the Ohio and United States Constitutions require a felony indictment to set forth the ‘nature and cause of the accusation.’ In a drug-trafficking case against a wholesale distributor under R.C. 2925.03(A)(1) and (2), the state must prove that the wholesale distributor has failed to act in accordance with R.C. Chapter 4729. To adequately set forth the nature and cause of the accusation, the state must notify the wholesale distributor of the specific section or sections in R.C. Chapter 4729 that the wholesale distributor has failed to act in accordance with.**

**Because the state failed to identify the nature and cause of the accusation against appellants in these cases, the indictment must be dismissed without prejudice.”**

### **State v. Campbell 2022-Ohio-3626**

## Suppression; warrantless search/community control conditions

### Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/o/2022/2022-Ohio-3626.pdf>

***“Probation officer’s suspicionless search of probationer’s cell phone did not violate Fourth Amendment when probationer had consented to warrantless searches of his property as a condition of his community control—Probation officer’s suspicionless search did violate statute requiring probation officers to have reasonable grounds that probationer was violating the law or conditions of community control before conducting search—Incriminating evidence collected from cell phone not subject to exclusionary rule when search violated statute but not Fourth Amendment.”***

### **State v. Leegrand, 2022-Ohio-3623**

## Sentencing

### Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/o/2022/2022-Ohio-3623.pdf>

***“Trial court’s failure to use the specific language of sentencing statute in its sentencing entry is not error when the entry conveys exactly the same meaning as the statutory language.”***

**In case where trial court’s sentencing entry stated the sentence for appellant’s murder conviction was life in prison with eligibility of parole after 15 years, but sentencing statute states the penalty for murder is an indefinite term of fifteen years to life, “a sentencing entry need not recite the exact statutory language as long as the entry conveys that the trial court imposed the statutorily required sentence.”**

### **Sixth Circuit Court of Appeals**

*Nothing to report.*

### **Supreme Court of the United States**

*Nothing to report.*