# Appellate Court Decisions –Weeks of 10/17/22, 10/24/22, 10/31/22

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

## First Appellate District of Ohio

***State v. Ledger*, C-210067**

**Pleas**

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

**"[T]rial court abused its discretion when it rejected a plea agreement under an arbitrary policy of refusing plea agreements in 'these cases.' " Such a "blanket policy of refusing pleas in child pornography cases and without regard for any facts or circumstances of the case" was error.**

***State v. Revere*, C-210018**

**Restitution; driver's license suspension**

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

**Trial court erred in imposing a 12-year driver's license suspension where it mistakenly relied on R.C. 4511.19(G)(1)(c)(iv) which calls for a suspension of two to twelve year if a defendant has been convicted of two OVI suspensions within ten years of the current offense; appellant had only been convicted of one prior OVI offense, so the statute called only for a one to seven-year suspension.**

**Trial court also erred in imposing restitution in the amount of $5,000 because appellant was insured and had demonstrated that his insurance company had "accepted liability for the claim and agreed to reimburse or pay for all damages."**

***State v. Andrews*, C-210635**

**Sufficiency - disorderly conduct**

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

**Where appellant was initially charged with telecommunications harassment, but convicted of disorderly conduct following a bench trial, the evidence was insufficient to support such a conviction. As appellant's " ' I want to fight' posts on Facebook did not 'rise to the level of threatening,' [COA] hold[s] that the essential element of 'threatening harm to persons or property' required for a**

**conviction under R.C. 2917.11(A)(1) was not proven beyond a reasonable doubt." Conviction reversed and appellant discharged.**

***State v. Brown*, C-210433**

**Sufficiency - domestic violence**

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

**State failed to present sufficient evidence that the victim was a family or household member. "A 'family or household member' is defined, in relevant part, as '[t]he natural parent of any child of whom the offender is the other natural parent or is the putative other natural parent.' R.C. 2919.25(F)(1)(b)." However, the COA concluded that the natural parent of a child does not include an unborn child of the pregnant victim. The "putative father" instruction was error since the child had not yet been born. However, where the state fails "to prove the element of 'family or household member,' [the COA] has the authority to modify the conviction to the lesser-included offense of disorderly conduct, a minor misdemeanor, in violation of R.C. 2917.11(A)(1). *See State v. Harris*, 109 Ohio App.3d 873, 876, 673 N.E.2d 237 (1st Dist.1996); App.R. 12(B)." Conviction so modified.**

***State v. A.S.*, C-220259**

**Record sealing**

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

**Trial court erred in failing to grant appellant's application for sealing her theft conviction where "the trial court invoked no cognizable legitimate government interest to support its decision to deny A.S.'s application to seal her record. Indeed, its rationale would mean that virtually no one would ever qualify for sealing their records, which represents the antithesis of 'liberally,' *R.S.* at ¶ 10, construing the statute. *See McVean*, 1st Dist. Hamilton Nos. C-210459 and C-210460, 2022-Ohio-2753, at ¶ 13 ('The state seemed content with sealing for Mr. McVean, but the trial court refused to accept that outcome, going out of its way to divine a justification that even the state didn't seriously advance.'). On this record, '[t]o deny the sealing of the record in this case, where the government has not expressed or demonstrated any need to maintain it, is unreasonable and thus an abuse of discretion.' *See State v. Garry*, 173 Ohio App.3d 168, 2007-Ohio-4878, 877 N.E.2d 755, ¶ 7 (1st Dist.); *McVean* at ¶ 14."**

***State v. Parker*, C-210440**

**Consecutive sentences**

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

**Trial court failed to make the required findings pursuant to R.C. 2929.14(C)(4) before imposing consecutive sentences; case remanded for a new sentencing hearing to make the appropriate findings to support the consecutive sentences.**

## Second Appellate District of Ohio

***State v. Jackson*, 2022-Ohio-3662**

**Plea**

**Full Decision:**
**https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2022/2022-Ohio-3662.pdf**

**Appellant "did not knowingly, intelligently, and voluntarily enter his guilty plea, because the trial court failed to inform him of the effect of a guilty plea prior to accepting his plea."**

## Third Appellate District of Ohio

***State v. Bloom*, 2022-Ohio-3604**

**Plea**

**Full Decision:**
**https://www.supremecourt.ohio.gov/rod/docs/pdf/3/2022/2022-Ohio-3604.pdf**

**Trial court erred by failing to advise appellant of all his constitutional rights during his plea hearing; court failed to advise him of "his right to require the state prove his guilt beyond a reasonable doubt as is required by Criminal Rule 11 (C)(2)(c)."**

## Fourth Appellate District of Ohio

***Nothing to report.***

## Fifth Appellate District of Ohio

***State v. Wood*, 2022-Ohio-3536**

**Major drug offender**

**Full Decision:**
**https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2022/2022-Ohio-3536.pdf**

**Trial court erred in sentencing appellant; although he was "subject to the 11-year sentence as a major drug offender, he [was] not subject to the [two] additional 3-year terms imposed by the trial court pursuant to R.C. 2941.1410 * * * these additional terms are applicable only to offenses involving fentanyl-related compounds." Case remanded to remove additional 6 years.**

## Sixth Appellate District of Ohio

***State v. Bricker*, 2022-Ohio-3494**

**Consecutive sentences**

**Full Decision:**
**https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2022/2022-Ohio-3494.pdf**

**Although trial court, in its sentencing entry, made the required findings for consecutive sentences pursuant to R.C. 2929.14(C)(4), it failed to make such findings at the sentencing hearing. Case remanded for a new sentencing hearing to make such findings.**

***State v. Seem*, 2022-Ohio-3507**

**Suppression; search of cell phone**

**Full Decision:**
**https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2022/2022-Ohio-3507.pdf**

**Trial court erred in denying appellant's motion to suppress the warrantless search of his cell phone. There was no probable cause demonstrated to justify the search of the phone; there were no exigency exceptions to the warrant requirement; and appellant did not consent to the search of his phone, as any alleged consent "was premised on his acquiescence to [the police officer's] claim of lawful authority to immediately seize the phone."**

***State v. Fowler*, 2022-Ohio-3499**

**Sentencing; right of allocution**

**Full Decision:**
**https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2022/2022-Ohio-3499.pdf**

**Appellant's sentence was " 'contrary to law' because the trial court relied on information from a source outside of those authorized by R.C. 2929.19(B)(1)(a), which requires a sentencing court to consider the record in the case, any presentence investigation report, any victim impact statement, and 'any information presented at the [sentencing] hearing by any person * * *.' A sentencing court may only consider information that is properly before it at the sentencing hearing and cannot consider information from outside of the record * * * By using information outside of the record to sentence [appellant], the trial court left [him] and his attorney without the ability to prepare a response to the observations that the judge's wife made about the accident. R.C. 2929.19(B)(1)(a) exists, at least in part, to help prevent this type of unfair surprise." Court also violated appellant's right of allocution by failing to give him or his attorney a chance to respond to this new information from the judge's wife that she had heard a motorcycle revving that night.**

## Seventh Appellate District of Ohio

***Nothing to report.***

## Eighth Appellate District of Ohio

***State v. Bobo*, 2022-Ohio-3555**

**Reagan Tokes**

**Full Decision:**
**https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2022/2022-Ohio-3555.pdf**

**Trial court failed to give the proper Reagan Tokes advisements contained in R.C. 2929.09(B)(2)(c) to appellant at his sentencing hearing; however, this failure did not affect the underlying conviction. Case remanded to provide appellant with such notifications.**

***State v. Brown*, 2022-Ohio-3736**

**Driver's license suspension**

**Full Decision:**
**https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2022/2022-Ohio-3736.pdf**

**Trial court erred in imposing a driver's license suspension after conviction for attempted failure to comply, as "the law does not authorize a license suspension for a conviction of attempt under R.C. 2923.02."**

***State v. Ester*, 2022-Ohio-3678**

**Motion to withdraw plea**

**Full Decision:**
**https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2022/2022-Ohio-3678.pdf**

**Trial court erred in denying appellant's motion to withdraw his guilty plea, as "plea was not knowingly, voluntarily, and intelligently made." Court failed to inform appellant that he was subject to mandatory post-release control and also failed to advise appellant of the potential penalties if he pled guilty.**

***State v. Mallory*, 2022-Ohio-3667**

**Sentencing; enhancement and postrelease control**

**Full Decision:**
**https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2022/2022-Ohio-3667.pdf**

**Trial court erred in failing to apply the amendment made to the postrelease control statute, R.C. 2967.28, as "R.C. 1.58(B) applies and allows [appellant] to seek the benefit of the amendment to R.C. 2967.28(B), which has reduced the duration of the postrelease control sanction applicable to a felony of the first degree that is not a felony sex offense."**

**Court also erred in elevating appellant's domestic violence conviction from a misdemeanor of the first degree to a felony of the fourth degree. The journal entry of appellant's prior assault conviction did not specify if that victim was a family or household member which is required for the enhancement.**

***State v. Allen*, 2022-Ohio-3737**

**Sentencing**

**Full Decision:**
**https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2022/2022-Ohio-3737.pdf**

**Trial court erred in imposing 10-year sentences for felonious assault convictions; the maximum sentence for felonious assault, a felony of the second degree, is 8 years. The 10-year sentence for each felonious assault conviction vacated and case remanded for resentencing on these two counts.**

***State v. Ismail*, 2022-Ohio-3742**

**Subject-matter jurisdiction**

**Full Decision:**
**https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2022/2022-Ohio-3742.pdf**

**As appellant was charged in the complaint with a felony offense, the municipal court did not have jurisdiction to proceed to trial.**

## Ninth Appellate District of Ohio

***State v. Lewis*, 2022-Ohio-3468**

**Right of allocution**

**Full Decision:**
**https://www.supremecourt.ohio.gov/rod/docs/pdf/9/2022/2022-Ohio-3468.pdf**

**Trial court erred in failing to provide appellant with his right to allocution, in violation of Crim.R. 32(A)(1), before sentencing him.**

## Tenth Appellate District of Ohio

***Nothing to report.***

## Eleventh Appellate District of Ohio

***State v. Jackson*, 2022-Ohio-3483**

**Hearsay; self-defense**

**Full Decision:**
**https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2022/2022-Ohio-3483.pdf**

**Trial court erred when it prevented appellant from introducing statements made by the alleged victim on social media and via a text message that the victim had threatened to kill him. These statements, although hearsay, were submitted to prove appellant's mindset and were improperly excluded since they fell under the hearsay exception contained in Evid.R. 803(3).**

***State v. Anderson*, 2022-Ohio-3486**

**Sufficiency - escape**

**Full Decision:**
**https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2022/2022-Ohio-3486.pdf**

**State presented insufficient evidence to support conviction for escape. After release from prison, appellant was aware he was on postrelease control; however, there was insufficient evidence that appellant had received notice of "where, when, and to whom he was required to report * * * *." Therefore, conviction for escape for failure to report to a halfway house is vacated.**

***State v. Boykin*, 2022-Ohio-3485**

**Sentencing; concurrent/consecutive**

**Full Decision:**
**https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2022/2022-Ohio-3485.pdf**

**Because "[t]he trial court expressed a clear intention at the sentencing hearing that each sentence would run concurrently with one another," COA "conclude[d] the imposition of consecutive sentences in the judgment was an administrative oversight." Case remanded to correct judgment.**

## Twelfth Appellate District of Ohio

***Nothing to report.***

## Supreme Court of Ohio

***State v. Towns*, 2022-Ohio-3632**

**Ethics laws**

**Full Decision:**
**https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2022/2022-Ohio-3632.pdf**

***"R.C. 102.03—Sheriff's unauthorized disclosure of confidential information in the course of his official duties—R.C. 102.06—Appropriate ethics commission shall receive and may initiate complaints for violations of ethics laws—Prosecuting authority may independently bring a complaint for violations of ethics laws—Prior review under R.C. 102.06 of charges is not a prerequisite for criminal prosecution."***

**"R.C. 102.03 allows a prosecuting authority to proceed with a criminal complaint that is subject to R.C. Chapter 102 when the complaint has not been reviewed by the Ohio Ethics Commission."**

***State v. Drain*, 2022-Ohio-3697**

**Death penalty**

**Full Decision:**
**https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2022/2022-Ohio-3697.pdf**

**Death sentence is appropriate; "although significant mitigating factors exist, the aggravating circumstances outweigh the mitigating factors beyond a reasonable doubt."**

***State v. Bellamy*, 2022-Ohio-3698**

**Crim.R. 16(K)/expert testimony**

**Full Decision:**
**https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2022/2022-Ohio-3698.pdf**

**"*Crim.R. 16(K) precludes an expert witness from testifying only at the trial commencing fewer than 21 days after the disclosure of the expert's written report.*"**

**The rule "does not preclude otherwise admissible expert testimony at a defendant's retrial."**

***State v. Belville*, 2022-Ohio-3879**

**Statutory speedy trial**

**Full Decision:**
**https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2022/2022-Ohio-3879.pdf**

**"*Statutory speedy-trial right—Defendant's request for discovery operates as a tolling event pursuant to R.C. 2945.72(E) for the time the state reasonably needs to fulfill defendant's request—Trial court not required to contemporaneously identify tolling events on the record.*"**

**The state provided appellant with most of the discovery the day after he requested it, but it took the state another 43 days to provide contents of a DVR. OSC held that was a reasonable time period, and it was not supplemental discovery which the state could use to indefinitely toll speedy trial time by offering discovery in several batches. The DVR was identified in the initial discovery response; it just took the state 43 days to copy and deliver it.**

***State v. Bortree*, 2022-Ohio-3890**

**Statute of limitations; attempted aggravated murder and attempted murder**

**Full Decision:**
**https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2022/2022-Ohio-3890.pdf**

***"The statute of limitations for attempted aggravated murder and attempted murder is six years under R.C. 2901.13(A)(1)(a)."***

***State ex rel. Standifer v. Cleveland*, 2022-Ohio-3711**

**Public Records Act**

**Full Decision:**
**https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2022/2022-Ohio-3711.pdf**

***"Mandamus—Public Records Act—Confidential-law-enforcement-investigatory-records ("CLEIR") exception to disclosure requirement—City's police use-of-force ("UOF") reports satisfy first requirement of CLEIR definition under R.C. 149.43(A)(2) because they pertain to law-enforcement matters and cannot be characterized as simply personnel documents—City's UOF reports satisfy second requirement of CLEIR definition because city failed to prove that their release would create a high probability of disclosure of any of four types of information specified in R.C. 149.43(A)(2), including the 'identity of a suspect who has not been charged with the offense to which the record pertains'—A UOF report could, in certain circumstances, identify an uncharged suspect, but there is no per se rule that UOF reports always do so—Court of appeals' denial of writ reversed and cause remanded."***

***In re K.K.*, 2022-Ohio-3888**

**Subject-matter jurisdiction; juvenile court/dependency**

**Full Decision:**
**https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2022/2022-Ohio-3888.pdf**

***"Former R.C. 2151.35(B)(1) does not divest a juvenile court of subject-matter jurisdiction when the court fails to hold a dispositional hearing within 90 days after a complaint alleging abuse, neglect, or dependency was filed—A parent's claim that a judgment rendered when a dispositional hearing was held after 90 days is barred by res judicata when the parent did not raise the claim before the juvenile court or in a direct appeal from the dispositional order."***

**Pretty important case for those folks who practice in the dependency arena.**

## Sixth Circuit Court of Appeals

***Nothing to report.***

## Supreme Court of the United States

***Nothing to report.***