

Appellate Court Decisions – Week of 12/5/22

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

First Appellate District of Ohio

State v. Collins, C-220147

Allied offenses

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

Trial court erred by failing to merge the CCW and improper handling of a firearm in a motor vehicle.

State v. Mitchell, C-220156 & C-220157

Forfeiture; allied offenses

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

“[Trial court erred in issuing a broad firearms forfeiture edict and in failing to merge his offenses for trafficking in and possession of marijuana.” State concedes error.

Second Appellate District of Ohio

State v. Greene, 2022-Ohio-4113

Sentencing; Reagan Tokes

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2022/2022-Ohio-4113.pdf>

In imposing an indefinite sentence of 8 years to 12 years, trial court erred in failing to provide appellant with the notifications required by R.C. 2929.19(B)(2)(c) at sentencing. Case remanded for new sentencing hearing.

Third Appellate District of Ohio

Nothing to report.

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

In re C.P., 2022-Ohio-4087

Juvenile sex offender classification

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2022/2022-Ohio-4087.pdf>

Juvenile court erred when it classified appellant a Tier II sex offender one month prior to his release from the Ohio Department of Youth Services. “A plain reading of R.C. 2152.82(A) and (B) unambiguously conveys the legislature’s intent that the classification must occur at the time of the dispositional order when certain criteria are met, including a determination that “the child previously was adjudicated a delinquent child for committing any sexually oriented offense or child-victim oriented offense[.]” R.C. 2152.82(A)(3). The statute’s clear requirement is that the court must issue the order classifying the repeat-offending child as a juvenile offender registrant at the child’s disposition.” Because the court failed to do this, the sex offender classification was vacated.

Court also erred when it classified appellant as a Public Registry Qualified Juvenile Offender Registrant pursuant to R.C. 2152.86, as that automatic lifelong registration and notification requirements was found to be unconstitutional in *In re C.P.*, 131 Ohio St.3d 513, 2012-Ohio-1446, 967, N.E.2d 729. Such classification was also vacated.

In re D.C., 2022-Ohio-4086

Delinquency

Full Decision:

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

[4086.pdf](#)

State presented insufficient evidence to support appellant’s adjudication as delinquent for felonious assault because, although there was evidence that the victim suffered physical harm, there was not sufficient evidence of serious physical harm.

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

State v. Volz, 2022-Ohio-4134

Consecutive sentences

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/12/2022/2022-Ohio-4134.pdf>

Trial court erred in imposing consecutive sentences where it “failed to make all the statutorily mandated findings at the sentencing hearing.” Court failed to “make the proportionality finding mandated by R.C. 2919.14(C)(4) before sentencing.” Case remanded for resentencing.

Supreme Court of Ohio

State v. Nicholas, 2022-Ohio-4276

Bindover

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/o/2022/2022-Ohio-4276.pdf>

“R.C. 2152.12(B)—Discretionary transfer of a juvenile for prosecution in an adult court—R.C. 2152.12(B) by its terms establishes a preponderance-of-the-

evidence standard for deciding a juvenile’s amenability—R.C. 2152.12(C)—Amenability hearings—Facts presented to a juvenile court with respect to a discretionary transfer must persuade the court that the juvenile is not amenable to care or rehabilitation in the juvenile system—State need not produce affirmative evidence of nonamenability—Juvenile court need not consider all potential juvenile dispositions, including a serious-youthful-offender disposition, when balancing the factors weighing in favor of and against discretionary transfer.”

OSC determined that R.C. 2152.12(D) “establishes only a preponderance-of-the-evidence standard for deciding a juvenile’s amenability.” But “the juvenile court’s decision that [appellant] is not amenable to treatment and rehabilitation in the juvenile system was based on a perception that DYS lacks the necessary resources to treat {appellant’s} mental illness—a perception that is not only unsupported by the record but that is, in fact, *contrary to the reality established by the record*. Absent that misperception, the juvenile court’s amenability determination is not supported by the preponderance of the evidence and constitutes an abuse of discretion.”

Court reverses decision to transfer [appellant’s] case to adult court as not supported by a preponderance of the evidence.

State v. Garrett, 2022-Ohio-4277

Postconviction DNA testing

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/o/2022/2022-Ohio-4277.pdf>

“Postconviction DNA testing—R.C. 2953.74(C)(4) and (5)—R.C. 2953.74(D)—The possibility that an offender’s postconviction DNA test results could match the profile of a person other than the offender in the Combined DNA Index System database is not “available admissible evidence” that a trial court must consider under R.C. 2953.74(D) when deciding whether to grant an offender’s application for postconviction DNA testing—The trial court and the court of appeals abused their discretion in unreasonably concluding that postconviction DNA test results would not be outcome determinative, because a presumed exclusion result when viewed in the context of the circumstantial evidence of the case presents a strong probability that a reasonable factfinder would not have found the offender guilty of the offense for which he was convicted—Judgment reversed and cause remanded to the trial court to approve application for postconviction DNA testing.”

State v. Bourn, 2022-Ohio-4321

Preindictment delay

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/o/2022/2022-Ohio-4321.pdf>

“Preindictment delay—A defendant must provide evidence of actual prejudice to move forward on a claim of preindictment delay—Actual prejudice exists when missing evidence or unavailable testimony, identified by the defendant and relevant to the defense, would minimize or eliminate the impact of the state’s evidence and bolster the defense.”

Court was all over the place with this one. Fischer wrote the opinion, but then there was this:

O’CONNOR, C.J., concurs, with an opinion.

KENNEDY, J., concurs in judgment only.

DEWINE, J., concurs in judgment only, with an opinion.

BRUNNER, J., dissents, with an opinion joined by DONNELLY and STEWART, JJ.

State v. Brunson, 2022-Ohio-4299

Attorney-client privilege; confrontation; allocution; evidence

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/o/2022/2022-Ohio-4299.pdf>

“Waiver of attorney-client privilege—Sixth Amendment right to confrontation—R.C. 2929.12(D)(5)—Fifth Amendment right to remain silent—

Codefendant who became a state witness pursuant to proffer agreement did not voluntarily waive his attorney-client privilege when state disseminated to all parties during discovery recording of conversation between codefendant and his attorney, because codefendant and his attorney believed they were having private conversation in police-station interview room when recording was made—Codefendant’s suppression-hearing testimony did not reveal substance of privileged communications with his attorney and therefore did not constitute voluntary waiver of his attorney-client privilege—

Defendant failed to establish a violation of his Sixth Amendment right to confrontation because he did not demonstrate reasonable probability that but for his inability to cross-examine codefendant using recording of attorney-client privileged communication between codefendant and his counsel, result of defendant’s trial would have been different—

Trial court erred in considering defendant’s decision to waive allocution and remain silent at sentencing hearing in its evaluation of defendant’s lack of remorse under R.C. 2929.12(D)(5) when defendant pleaded not guilty to offenses with which he was charged and exercised his right to jury trial, but

error did not affect sentence imposed, because defendant’s sentence would have been the same given other factors trial court considered under R.C. 2929.12(D).”

State v. Yerkey, 2022-Ohio-4298

Marsy’s Law

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/o/2022/2022-Ohio-4298.pdf>

“Marsy’s Law, Article I, Section 10a of the Ohio Constitution—Restitution—R.C. 2929.18(A)(1)—Statutory meaning of restitution was not altered or expanded by Marsy’s Law—Wages lost by crime victim as a result of victim’s voluntarily attending criminal-court proceedings do not qualify for restitution from offender, because such losses are not a direct and proximate result of the commission of the offense.”

State v. Brown, 2022-Ohio-4347

Tampering with records

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/o/2022/2022-Ohio-4347.pdf>

“R.C. 2913.42(A)(1)—Tampering with records—Litigation privilege—The common-law litigation privilege does not shield a person from criminal liability for tampering with records in violation of R.C. 2913.42(A)(1)—Litigation privilege applies to civil suits only for defamatory statements made during judicial proceedings that were reasonably related to those proceedings.”

OSC “hold[s] that the litigation privilege, which protects a person from civil liability for defamatory statements that were made during judicial proceedings and that were reasonably related to the proceedings in which they were made, does not shield a person from criminal liability related to those statements.”

State v. Jackson, 2022-Ohio-4365

Suppressions; search of vehicle

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/o/2022/2022-Ohio-4365.pdf>

“Search—Fourth Amendment to the United States Constitution—Motion to suppress—A search occurs only when there is an attempt to find something or

to obtain information—Officer’s intent is determined through an objective inquiry—Motion to suppress correctly denied when gun was found in search that ensued after contraband was found in plain view in a car.”

“During a traffic stop, an officer ordered an uncooperative driver to step out of the car and then opened the door for him to do so. Later, a second officer looked through the open door and observed a marijuana cigarette on the floor. That observation led to a search of the car and the discovery of an illegal firearm.

We are asked to determine whether either the officer who opened the car door, or the officer who looked through the open car door and observed the marijuana cigarette, conducted an illegal search under the Fourth Amendment to the United States Constitution. We find that under the circumstances of this case, neither officer’s action constitutes a search. And the subsequent search of the car after the marijuana cigarette was observed was permissible under the Fourth Amendment.”

State v. Weaver, 2022-Ohio-4371

Postconviction; ineffective assistance of trial counsel/judicial bias

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/o/2022/2022-Ohio-4371.pdf>

“A postconviction petitioner should be entitled to a fair and impartial fact-finder when an evidentiary hearing has been granted—When a record demonstrates bias or prejudice on the part of a fact-finder, an appellate court should reverse the trial court’s judgment.”

OSC holds that trial counsel was ineffective for failing to offer a detailed explanation of neonaticide in mitigation which would have provided “a compelling narrative that could have framed [appellant’s] actions not as premeditated, but those of desperation and panic from an immature and isolated young woman * * *[and] there is a reasonable probability that her sentence would have been different but for defense counsel’s deficient performance.”

Court further holds that judicial bias by the trial court was shown, so case remanded to a new judge for a new sentencing hearing.

Sixth Circuit Court of Appeals

Nothing to report.

Supreme Court of the United States

Nothing to report.