

Appellate Court Decisions – Week of 2/13/23

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

State v. Gillian, 2023-Ohio-325

Jury instruction; self-defense

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2023/2023-Ohio-325.pdf>

“[T]rial court provided an incorrect instruction which allocated the burden of proof on self-defense to [appellant] and omitted the State’s burden to disprove, beyond a reasonable doubt, [appellant’s] claimed use of self-defense. When, as here, the defendant is entitled to a self-defense instruction, the failure to correctly instruct the jury regarding the burden of proof on self-defense affects a substantial right. Given this, the error is not harmless.”

Third Appellate District of Ohio

Nothing to report.

Fourth Appellate District of Ohio

State v. Caldwell, 2023-Ohio-355

Restitution

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/4/2023/2023-Ohio-355.pdf>

In conviction for unauthorized use of a motor vehicle, trial court erred in ordering appellant to pay \$16,613.26 in restitution where the evidence presented at the restitution hearing was the totaled truck was worth \$8,000 to \$10,000. The cost of repairing the truck, \$16,613.26, exceeded the market value of the truck immediately preceding the accident. *See Falter v.*

Toledo, 169 Ohio St. 238, 158 N.E.2d 893 (1959) (If the damage to the vehicle is so extensive that the cost of repairs exceeds the difference in market value immediately before and after the accident, the party will not receive the cost of repair but will be awarded the diminution in value.” Case remanded to determine appropriate restitution.

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. Angers, 2023-Ohio-369

Driver’s license suspension

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2023/2023-Ohio-369.pdf>

After appellant was sentenced to five years of community control, with the trial court specifically stating that it would not order appellant’s driver’s license suspended, and appellant subsequently violated that community control, trial court erred in imposing a two-year license suspension when it ordered appellant to serve a nine-month prison term. “The trial court could not therefore modify its original sentence to include a license suspension upon [appellant’s] violation of his community-control sanctions.”

State v. Scott, 2023-Ohio-370

Sex offender classification; failure to verify address

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2023/2023-Ohio-370.pdf>

In 2008, appellant was erroneously classified as an AWA registrant because AWA was not retroactive to appellant's offenses which occurred in 2007. During one of appellant's many appeals following that erroneous classification, the OSC remanded the case to the trial court to hold a Megan's Law classification hearing. That did not occur until 2022 when appellant was finally classified a sexually oriented offender. Therefore, appellant's 2018 conviction for failure to register was in error. "Of great import is the *Scott V* mandate to hold a hearing for classification. The failure to hold that hearing for a decade and only upon [appellant's] motion, resulted in the confusion regarding status and responsibilities."

Ninth Appellate District of Ohio

Nothing to report.

Tenth Appellate District of Ohio

Nothing to report.

Eleventh Appellate District of Ohio

State v. Amero, 2023-Ohio-345

Consecutive sentences

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2023/2023-Ohio-345.pdf>

In convictions for sexual battery and sexual imposition, trial court erred in imposing consecutive sentences where "the record lacks an evidentiary basis to fully support the trial court's findings." The record did not reveal any evidence that the "harm caused by the offenses was so great or unusual that more than a single term is warranted." And "[t]he trial court's emphasis on the harm caused focuses primarily on the element of the crime that made [appellant's] actions criminal: her position as a principal. R.C. 2907.03(A)(7) ('[n]o person shall engage in sexual conduct with another, not the spouse of the offender, when * * * [t]he offender is a teacher, administrator, coach, or other person in authority employed by or serving in a school * * *'). In *Polizzi, 2019-Ohio-2505*, this court [] not[ed] case law holding '[a] trial court may not elevate the seriousness of an offense by pointing to a fact that is also an element of the offense itself.'"

State v. Powell, 2023-Ohio-344

Jail-time credit; nunc pro tunc

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2023/2023-Ohio-344.pdf>

After awarding appellant 443 days of jail-time credit at the sentencing hearing and in the sentencing entry, the trial court erred in entering a nunc pro tunc sentencing entry which reduced appellant's credit from 443 days to 151 days. This was an improper use of a nunc pro tunc entry, as "[t]his did not correct a mere clerical error, but altered the court's initial sentence." Nunc pro tunc entry is vacated.

Twelfth Appellate District of Ohio

State v. Delehanty, 2023-Ohio-337

Violent offender registry

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/12/2023/2023-Ohio-337.pdf>

Trial court erred when it failed to advise appellant of the mandatory notifications pursuant to R.C. 2903.42(A), the Violent Offender Registry. Case remanded for resentencing and for the court to comply with these mandatory advisements.

Supreme Court of Ohio

Nothing to report.

Sixth Circuit Court of Appeals

United State v. Waide, No. 21-5827

Suppression; search warrant

Full Decision:

<http://www.opn.ca6.uscourts.gov/opinions.pdf/23a0028p-06.pdf>

After a shed caught on fire on the property next to appellant, the subsequent affidavit in support of a search warrant for appellant's DVR of his video surveillance system "did not establish probable cause to believe a crime had been committed." There was not reliable evidence to even establish that the fire was due to criminal activity. After arriving at appellant's apartment to execute the faulty warrant, appellant admitted to

having a small amount of marijuana. Therefore, without executing the first search warrant, the police instead secured two subsequent warrants to search appellant's two units in the duplex, with such search yielding guns, money, and drugs. As these items were "fruit of the poisonous tree" from the first unlawful search warrant, they must be suppressed. The trial court erred in failing to suppress all items discovered during the second searches. And the good faith exception to the exclusionary rule did not apply, as the first affidavit "failed to establish probable cause to believe that a crime had been committed in the first instance."

United State v. \$774,830.00 in U.S. Currency, No. 22-3392

Civil forfeiture

Full Decision:

<http://www.opn.ca6.uscourts.gov/opinions.pdf/23a0086n-06.pdf>

Appellant's rental vehicle was stopped for a traffic violation and subsequently searched. Police found \$774,830.00 in the trunk. After the government filed a civil forfeiture action where appellant filed an answer to the government's complaint and "a Verified Claim to assert an ownership and possessory interest in the currency," the district court erred in granting summary judgment to the government by finding appellant did not have standing. Appellant's "assertions of an *ownership* interest, combined with the admissions by the government of a claimant's association with the currency, are sufficient factual support." And because the district court also found appellant lacked standing to contest the search of his vehicle, thereby dismissing his motion to suppress, that dismissal is vacated, and the case remanded for further proceedings.

Supreme Court of the United States

Nothing to report.