

## Appellate Court Decisions – Week of 7/31/23

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

### First Appellate District of Ohio

***In re: J.S., C-220549, 550, 551, 552***

Discretionary bindover

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

**In state’s appeal, juvenile court did not err in denying the discretionary bindover of appellant to adult court “[b]ecause there was a rational and factual basis to support the juvenile court’s consideration and weighing of all relevant factors to reach its conclusion of amenability \* \* \*.”**

***State v. Dubose, C-220664***

PRC

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

**Trial court erred in failing to advise appellant of his “potential postrelease-control obligations during the sentencing hearing. The state concedes error.” Case remanded for court to so advise appellant.**

***In re: J.T., C-220609, 610, 611, 612***

Suppression; pat-down

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

**Juvenile court erred in denying appellant’s motion to suppress the pat-down of his person which yielded the discovery of a firearm and drugs. “[T]he only description of the shooter is the red sweatshirt and jeans, which is not unusual or distinctive clothing, especially in Cincinnati. The pastor’s tip provided no additional detail as to the identity of the suspects in the shooting, merely the location of a red-sweatshirt-wearing individual walking with two other people. The relevant timeframe is not the few minutes it took [PO] Loeding to respond to the tip, but rather the days between the reported criminal activity and the encounter. Loeding pointed to no indicia that [appellant] or his companions were engaged in criminal behavior at the time of the stop, nor does the state argue that Loeding had any independent basis to conduct a *Terry* stop beyond the vague tip and photo with no faces and so lacking in detail that it was difficult to determine**

whether the suspects were adults or juveniles \* \* \* the totality of the circumstances does not support a reasonable suspicion to justify a *Terry* stop of [appellant] and his companions.”

### **Second Appellate District of Ohio**

*Nothing to report.*

### **Third Appellate District of Ohio**

*Nothing to report.*

### **Fourth Appellate District of Ohio**

*Nothing to report.*

### **Fifth Appellate District of Ohio**

#### **State v. Cross, 2023-Ohio-2335**

Sentencing

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2023/2023-Ohio-2335.pdf>

In convictions for rape of a child, the trial court erred in sentencing appellant to a term of twenty-five years to life on two counts “under the current sentencing statute, rather than life in prison with a possibility of parole in ten years under the statute applicable at the time the crimes were committed, contrary to R.C. §1.58(B).” Case remanded for resentencing on those counts.

### **Sixth Appellate District of Ohio**

*Nothing to report.*

### **Seventh Appellate District of Ohio**

*Nothing to report.*

### **Eighth Appellate District of Ohio**

#### **In re J.O., 2023-Ohio-2293**

Delinquency; merger

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2023/2023-Ohio-2293.pdf>

Juvenile court committed plain error when it failed to merge appellant's convictions and sentences for two counts of felonious assault where there was only one act and one victim. Case remanded to merge counts.

***State v. Tackett, 2023-Ohio-2298***

Guilty plea

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2023/2023-Ohio-2298.pdf>

In conviction for felonious assault, appellant's guilty plea was not made knowingly, voluntarily, nor intelligently where "the trial court's failure to inform [appellant] that he was subject to an indefinite sentence under the Reagan Tokes Law was a complete failure of Crim.R.11(C)(2)(a)."

***State v. Fips, 2023-Ohio-2295***

Suppression; traffic stop

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2023/2023-Ohio-2295.pdf>

In convictions for drug offenses, the trial court erred when it denied appellant's motion to suppress his continued detention following a valid traffic stop of his vehicle. Upon approaching appellant's vehicle, the police officer "discovered that he was wrong about the headlight being out. Thus, at that point, the reason for the stop was over and [appellant] should not have been further detained."

***State v. Wainwright, 2023-Ohio-2292***

Mistrial; discovery violation

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2023/2023-Ohio-2292.pdf>

In conviction for GSI, trial court erred in denying appellant's "request for a mistrial after learning that the state had failed to turn over most of [the victim's] recorded interview with [the police]" which was a 46-minute video. As the issue in the case was one of consent, the alleged victim's credibility was a key factor. "[H]ad defense counsel been able to meaningfully cross-examine her on the additional inconsistencies revealed in the undisclosed material," it is likely the defense would have greatly benefited.

### **State v. Lillo, 2023-Ohio-2380**

Character evidence/vouching

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2023/2023-Ohio-2380.pdf>

In conviction for GSI, "trial court erred by admitting improper rebuttal testimony containing character evidence" where the state played "conversations between [the alleged victim's mother] and her sister [which] included improper character evidence." Court also erred by permitting the alleged victim's mother to vouch for her daughter; "[a]lthough an opinion by a lay witness may be allowed, 'opinion testimony cannot be used to show a child is telling the truth or that the child accurately testified.'" Convictions reversed and case remanded for a new trial.

### **Ninth Appellate District of Ohio**

#### **State v. Anderson, 2023-Ohio-2364**

Suppression; *Miranda*

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/9/2023/2023-Ohio-2364.pdf>

In convictions for aggravated murder and additional offenses and specifications, trial court erred in denying appellant's motion to suppress his statements made during two separate interviews held while he was in prison on other cases. The court's conclusion that these were not custodial interviews was error. Therefore, the COA remanded the cases to the trial court to consider the remaining arguments made by appellant that his *Miranda* rights were violated, as well as his confessions were involuntarily made. "The *Miranda* presumption applies to the conditions inherent in custodial interrogation that compel the suspect to confess. It does not extend to any actual coercion police might engage in, and the Due Process

Clause continues to require an inquiry separate from custody considerations and compliance with *Miranda* regarding whether a suspect's will was overborne by the circumstances surrounding his confession.' *State v. Porter*, 178 Ohio App.3d 304, 2008-Ohio-4627, ¶ 14 (2d. Dist.), citing *Dickerson v. United States*, 530 U.S. 428, 434-435 (2000). 'Voluntariness of a confession and compliance with *Miranda* are analytically separate inquiries.' *Porter* at ¶ 14."

### Tenth Appellate District of Ohio

*Nothing to report.*

### Eleventh Appellate District of Ohio

*Nothing to report.*

### Twelfth Appellate District of Ohio

#### ***State v. Goldberg*, 2023-Ohio-2633**

PRC/community control notifications

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/12/2023/2023-Ohio-2633.pdf>

As appellant was sentenced to community control, the "trial court's designation of a discretionary postrelease control period in the sentencing entry was erroneous \* \* \* [which] may be corrected through a nunc pro tunc sentencing entry \* \* \*." Also, trial court erred in failing to "inform [appellant] of the statutorily required notifications under R.C. 2929.19(B)(4), namely that violating another law or leaving the state without permission could result in additional sanctions, including the prison terms outlined by the trial court." Case remanded for resentencing to include these notifications.

### Supreme Court of Ohio

*Nothing to report.*

### Sixth Circuit Court of Appeals

#### ***United State v. Liggins*, No. 22-1236**

Judge's recusal

**Full Decision:**

<http://www.opn.ca6.uscourts.gov/opinions.pdf/23a0165p-06.pdf>

**District court erred in denying appellant’s motion for recusal where the court’s multiple disparaging comments at a hearing, including that appellant “looks like a criminal to me,” were wholly inappropriate and “evinced bias and prejudice against him.” Such remarks “demonstrated ‘a deep-seated . . . antagonism that would make fair judgment impossible.’”**

**Supreme Court of the United States**

*Nothing to report*