Appellate Court Decisions –Week of 12/4/23

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

First Appellate District of Ohio

***In re J.A.*, C-230076**

Sufficiency; rape

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

In adjudication for rape, there was insufficient evidence presented by the state that appellant "exerted violence, compulsion, or constraint against K.T. through physical means or created the belief that physical force would be used if K.T. rejected [appellant's] requests, as required by R.C. 2907.02(A)(2)." And since both appellant and the alleged victim were under the age of 13, force had to be shown to support a conviction for rape. *See In re D.B., 129 Ohio St.3d 104, 2011-Ohio-2671, 950 N.E.2d 528, ¶ 28* (R.C. 2907.02(A)(1)(b) is unconstitutional as applied to a child under the age of 13 who engages in sexual conduct with another child under the age of 13 in the absence of proof that: (1) the offender substantially impaired the other person's judgment or control, R.C. 2907.02(A)(1)(a); (2) the other person's ability to resist or consent was substantially impaired because of a mental or physical condition, R.C. 2907.02(A)(1)(c); or (3) the offender compelled the other person to submit by force or threat of force, R.C. 2907.02(A)(2).).

***State v. Davis*, C-230121**

Plea

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

Because "the trial court mistakenly advised [appellant] that he faced a discretionary two-year period of postrelease control if convicted of robbery under R.C. 2911.02(A)(2) * * * [and] [t]he trial court ultimately imposed a mandatory one-to-three-year period of postrelease control as was required by R.C. 2967.28," appellant's guilty plea must be vacated. Appellant "entered a guilty plea without understanding the maximum penalty."

***State v. Mazan*, C-230053**

Restitution

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

In convictions for OVI and failure to maintain control where appellant ran into and totaled victim's car, trial court erred in awarding restitution where the victim had been fully compensated by her insurance company for the fair market value of her totaled automobile. The award of restitution for repairs the victim had made to a replacement car she purchased "exceeded the economic loss the victim incurred as a proximate result of [appellant's] criminal conduct."

Second Appellate District of Ohio

***State v. Bond*, 2023-Ohio-3996**

Sentencing; right to counsel

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2023/2023-Ohio-3996.pdf

After remand from COA for resentencing, "trial court erred by proceeding with the resentencing hearing when [appellant] did not have an attorney present * * * [nor was there] evidence in the record, including the resentencing transcript, that [appellant] waived his right to have counsel present at the resentencing hearing. Further, at the time of the resentencing hearing, there was a motion pending before the trial court requesting that it appoint new counsel to represent [appellant]." Case again remanded for resentencing.

***State v. Norris*, 2023-Ohio-4057**

Sentencing; Reagan Tokes

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2023/2023-Ohio-4057.pdf

Trial court miscalculated appellant's maximum sentence at 24 years when maximum sentence should have been 20 years pursuant to Reagan Tokes. Case remanded for resentencing.

Third Appellate District of Ohio

***State v. Morris*, 2023-Ohio-4021**

Sentencing; court-appointed counsel fees

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/3/2023/2023-Ohio-4021.pdf

Trial court erred in imposing court-appointed counsel fees as part of appellant's sentence because such fees can never be a part of a sentence.

Fourth Appellate District of Ohio

Nothing to report.

Fifth Appellate District of Ohio

***State v. Brooks*, 2023-Ohio-3986**

Self-defense

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2023/2023-Ohio-3986.pdf

After remand from OSC where OSC found that new self-defense law applied to all trials which occurred after the law's effective date of March 28, 2019, regardless of when the offense occurred, COA finds that appellant was entitled to a self-defense jury instruction. "This evidence, when construed in [a]ppellant's favor, tends to support her claim that she used force in self-defense. Accordingly, it was necessary, not discretionary, for the trial court to instruct the jury as to the elements of self-defense."

Sixth Appellate District of Ohio

Nothing to report.

Seventh Appellate District of Ohio

Nothing to report.

Eighth Appellate District of Ohio

Nothing to report.

Ninth Appellate District of Ohio

Nothing to report.

Tenth Appellate District of Ohio

Nothing to report.

Eleventh Appellate District of Ohio

***State v. Riddle*, 2023-Ohio-3943**

NGRI/Commitment/Level change

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2023/2023-Ohio-3943.pdf

In case where appellant had been found NGRI and committed to a psychiatric hospital, the trial court erred in denying the hospital's "request for change in movement to Level 4 community movement" because the state failed to "present clear and convincing evidence that the change posed a danger to the community, any person, or appellant." As this was simply a request for a level change and not a request for nonsecured status (conditional release) or termination of commitment, the trial court should not have considered appellant's past history of violence and psychotic symptoms. As the "[s]tate did not present any evidence of appellant's current violent tendencies, current psychotic behavior, current antisocial behavior toward other patients or hospital staff, or current inability to abide by hospital rules * * * the trial court ha[d] not alternative but to approve the recommendation under R.C. 2945.401."

***State v. Allen*, 2023-Ohio-4032**

Return of property

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2023/2023-Ohio-4032.pdf

In state's appeal, trial court did not err in ordering the conditional release of seized property to appellees. Pursuant to R.C. 2981.03(D), appellees did "demonstrate *in the petition* (a) a possessory interest in the property, (b) sufficient ties to the community to ensure that the property will be available at the time of trial, and (c) a substantial hardship to the claimant." The state's possession that appellees needed "to submit evidence evidentiary quality materials establishing the circumstances required under R.C. 2981.03(D)(3)(a) through (c)" was rejected.

Twelfth Appellate District of Ohio

Nothing to report.

Supreme Court of Ohio

Nothing to report.

Sixth Circuit Court of Appeals

Nothing to report.

Supreme Court of the United States

Nothing to report.