

Appellate Court Decisions – Week of 1/22/24

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

First Appellate District of Ohio

State v. Lavender, C-230042

Postconviction relief/ineffective assistance of counsel

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

Trial court erred in dismissing appellant’s petition for postconviction relief without an evidentiary hearing where such petition was timely filed, and appellant “submitted evidence outside the record to raise an issue of ineffective assistance of counsel in challenging the eyewitness and informant testimony and in preparing for and presenting mitigation evidence at sentencing, and thus, demonstrated substantive grounds for relief entitling him to a hearing with respect to these claims.”

State v. Brady, C-230251 & C-230252

Sufficiency; violation of a protective order

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

“[S]tate failed to establish venue for the offense of violating a protection order, as well as failed to present sufficient evidence that [appellant] acted recklessly.” Appellant’s conviction reversed, and he was discharged as to that offense.

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

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. Tripplett, 2023-Ohio-4644

Allied offenses/merger

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2023/2023-Ohio-4644.pdf>

In two convictions for felonious assault (one for causing serious physical harm and the other for causing harm by means of a deadly weapon), trial court committed plain error when it failed to merge the two as allied offenses. Both offenses “were committed with the same act – [appellant] striking his sister in the face multiple times with a bottle. Additionally, the state’s theory at trial was that the bottle caused serious physical harm * * *.

[Appellant’s] felonious assault offenses were committed at the same time, at the same location. The offenses were committed with the same animus, to harm his sister. The offenses were also not dissimilar in import; the state did not show that [appellant’s] conduct caused separate identifiable harm to the victim.”

State v. Franco, 2023-Ohio-4653

Sufficiency; GSI

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2023/2023-Ohio-4653.pdf>

In conviction, inter alia, for GSI, state did not present sufficient evidence to support such conviction. “[N]o evidence was presented that [appellant]

smacked the victim on the buttocks for purpose of sexual gratification.” Nor did the state present sufficient evidence that appellant “purposely compelled the victim to submit to the touch of her buttocks by force.” However, COA does find that there was sufficient evidence to support conviction for lesser-included offense of sexual imposition.

State v. Banks, 2023-Ohio-4655

Consecutive sentences

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2023/2023-Ohio-4655.pdf>

Trial court erred in imposing consecutive sentences without making the mandatory findings that “consecutive sentences were not disproportionate to the seriousness of the offender’s conduct and were not disproportionate to the danger the offender posed to the public.” Case remanded for resentencing, as court did not make the findings during the sentencing hearing nor in its sentencing hearing.

Ninth Appellate District of Ohio

Nothing to report.

Tenth Appellate District of Ohio

State v. Camper, 2023-Ohio-4673

Suppression; search of backpack

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/10/2023/2023-Ohio-4673.pdf>

In convictions for CCW and improperly handling a firearm in a motor vehicle, trial court erred in denying appellant’s motion to suppress the search of his backpack. Appellant did not abandon his backpack when he gave it to a friend to hold, as “a person does not abandon his property merely because he gives it to someone else to store or keep watch over.” Also, “appellant never disclaimed ownership of the backpack prior to Officer Nance’s search.” Therefore, any statements made by appellant “at the police station occurred in response to Detective Journey’s questions about the firearm discovered during the unlawful search, [so] these statements did not amount to a voluntary act of abandonment and should have been suppressed as fruit of the poisonous tree.” Finally, since “no

exception to the warrant requirement justified Officer Nance’s warrantless search of the backpack, the search violated the Fourth Amendment to the United States Constitution.”

Eleventh Appellate District of Ohio

Nothing to report.

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.