Appellate Court Decisions –Week of 9/30/24

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

First Appellate District of Ohio

***State v. Cook*, C-240241 & C-240243**

Plea and Reagan Tokes

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

Appellant's guilty plea was not made knowingly, voluntarily, and intelligently made where "the trial court entirely failed to advise [appellant] of the mandatory consecutive sentence that attached to his failure to comply guilty plea, and thus he was not accurately informed of the maximum sentence he faced. Neither the plea form [appellant] executed nor the trial court at sentencing notified [appellant] that his guilty plea to the failure to comply charge carried a mandatory consecutive sentence." Trial court also erred in the second case in failing to provide appellant with the notifications required by Reagan Tokes, R.C. 2919.19(B)(2)(c) at sentencing. Cases remanded.

***State v. Jackson, et al.*, C-230660 & C-230661**

Suppression; automobile stop

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

In state's appeal of grant of MTS, COA concluded that there was no reasonable suspicion to stop and seize appellees' vehicle. Therefore, it held "that no exception to the warrant requirement applies, and the officers violated [appellees'] Fourth Amendment rights by seizing them. Lacking any justification to legally stop and seize the vehicle and its occupants, the officers' discovery of the firearms in the vehicle after they escalated the stop to a felony arrest is fruit of the poisonous tree and is subject to suppression under the exclusionary rule. *See State v. Bembry*, 2017-Ohio-8114, ¶ 17, citing *Mapp v. Ohio*, 367 U.S. 643, 652 (1961); *see also State v. Smith*, 2005-Ohio-5204, ¶ 23 (1st Dist.).

Furthermore, [court's] conclusion that the stop violated the Fourth Amendment foreclose[d] the State's argument that the marijuana smell and smoke emanating from [appellees'] vehicle after the stop was initiated, but before [appellees] were ordered out of the vehicle, gave officers probable cause to search the car and thus discovery of the firearms was inevitable. It also precludes the argument that the firearms were in plain view after the

stop was initiated."

***State v. Dod*, C-240197**

Community control violation

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

Trial court erred when it imposed a 48-month prison sentence where it "lacked jurisdiction to modify [appellant's community control] sentence to Talbert House because it never explicitly found that he violated his community control." The prison sentence was vacated. Also, trial court erred when it "failed to give him the statutorily-required warnings under R.C. 2919.19(B)(4) . . . it made no mention of the violation-triggering events outlined in the statute, nor did it admonish him that such violations could result in specific prison sentences." Therefore, should appellant violate his community control again, prison would not be an option.

***State v. Griffin*, C-240039**

PRC

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

Trial court erred by failing to inform appellant of his PRC obligations which are "mandated by R.C. 2929.19(B)(2)(f). The State concedes the error." Case remanded for the limited purpose of providing such notifications.

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. Wesley*, 2024-Ohio-4798**

PRC

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2024/2024-Ohio-4798.pdf

Trial court erred by failing to inform appellant at the sentencing hearing of the consequences of violating PRC; case remanded to provide such notifications.

Ninth Appellate District of Ohio

***State v. N.C.*,, 2024-Ohio-4739**

Record sealing

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/12/2024/2024-Ohio-4622.pdf

In state's appeal, trial court did not err in granting appellee's application to seal his dismissed pandering convictions nor in granting appellee's application to seal his conviction for retaliation where court found appellee's interests in having the cases sealed outweighed the interests of the state. For the retaliation case, the court found that appellee was successfully rehabilitated.

Tenth Appellate District of Ohio

Nothing to report.

Eleventh Appellate District of Ohio

Nothing to report.

Twelfth Appellate District of Ohio

***State v. Flack*, 2024-Ohio-4622**

Allied offenses

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/12/2024/2024-Ohio-4622.pdf

Trial court plainly erred when it failed to merge appellant's convictions for safecracking and criminal damaging as allied offenses. "The offenses of safecracking and criminal damaging were committed with the same conduct and the same animus, resulting in the same harm to the same victim."

Supreme Court of Ohio

***State v. Wogenstahl*, 2024-Ohio-2714**

Delayed application to reopen appeal

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2024/2024-Ohio-2714.pdf

"App.R. 26(B)—Delayed application to reopen direct appeal of capital-murder conviction—Appellant failed to show good cause for the delay in filing his application to reopen—Claim that trial court lacked jurisdiction over appellant's case is barred by this court's caselaw precluding the filing of a successive application to reopen and by res judicata."

Sixth Circuit Court of Appeals

Nothing to report.

Supreme Court of the United States

Nothing to report.

I also wanted to bring *State v. Redmond*, 2024 IL 129201 (https://cases.justia.com/illinois/supreme-court/2024-129201.pdf?ts=1726754999) to everyone's attention.

In *Redmond*, the Illinois Supreme Court held that "given the fact that under Illinois law the use and possession of cannabis is legal in some situations and illegal in others, the odor of burnt cannabis in a motor vehicle, standing alone, is not a sufficiently inculpatory fact that reliably points to who used the cannabis, when the cannabis was used, or where the cannabis was used . . . [although it may provide reasonable suspicion], based on our precedent and the state of cannabis laws at the time of the search, we hold that the odor of burnt cannabis is a fact that should be considered when determining whether police have probable cause to search a vehicle, but the odor of burnt cannabis, standing alone without other inculpatory facts, does not provide probable cause to search a vehicle."

The court compared the case to cases where the odor of alcohol, standing alone and without more, did not provide probable cause.