Appellate Court Decisions –Week of 11/25/24

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

First Appellate District of Ohio

***State v. Olverson*, C-240169**

Sentence; modification

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

Trial court erred when it modified appellant's sentence in the sentencing entry without appellant being present. "Under Crim.R. 43(A), a defendant must be present when the trial court imposes its sentence. While [appellant] was present at the sentencing hearing when the trial court correctly announced his aggregate term of 11 to 13-and-a-half years, the trial court adjusted his aggregate sentence and incorrectly announced an 11-to-12-year aggregate sentence. And then in the sentencing entry, the trial court reverted his aggregate sentence back to the 11-to-13-and-a-half-year aggregate sentence, modifying [appellant's] sentence outside of his presence." Case remanded for resentencing.

***State v. Hale*, C-230420**

Hearsay and Confrontation Clause; non-testifying experts

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

In convictions for rape and GSI, trial court erred when it permitted two experts to testify regarding DNA testing that they had not performed, relying instead "on our-of-court analysts or technicians to perform the procedures . . . The Sixth Amendment to the United States Constitution, which contains many of that document's protections for criminal defendants, commands that '[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him . . .' The [Confrontation] Clause does not require all statements be offered live and in the first person—only those statements that are (1) introduced to prove the truth of the matter they assert (the 'hearsay prong'), and (2) testimonial in character (the 'testimonial prong'). *Id.*" Therefore, COA holds "that forensic experts may not rely upon testimonial, out-of-court statements to form the basis for their conclusions or to explain what transpired in the lab. When such statements, which support an expert's conclusions only if true, come in at trial, they come in for their truth. And when the offending statements come out of a crime lab working

at the behest of law enforcement, they are also testimonial." Case remanded for a new trial.

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. Spivey*, 2024-Ohio-5479**

Guilty plea

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2024/2024-Ohio-5479.pdf

In convictions for multiple offenses in four separate cases, appellant's guilty plea was not knowingly, intelligently, nor voluntarily made where the "trial court's colloquy was insufficient to meet the requirements of Crim.R. 11(C)(2) . . . 'When a trial court fails to explain the constitutional rights outlined in Crim.R. 11 that a defendant waives by pleading guilty, [COA] presume[s] that the plea was entered involuntarily and unknowingly, and no showing of prejudice is required.'" In this case, the "court failed to determine if [appellant] understood those rights as required by the

statute." Court also failed to determine if appellant "understood the nature of the charges and the maximum penalty involved because the trial court was mistaken on the charges and the penalties." Convictions vacated, and case remanded.

Ninth Appellate District of Ohio

Nothing to report.

Tenth Appellate District of Ohio

Nothing to report.

Eleventh Appellate District of Ohio

***State v. Davy*, 2024-Ohio-5550**

Sentencing entry; nunc pro tunc

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2024/2024-Ohio-5550.pdf

As sentencing entry contained a clerical error in regard to the maximum sentence appellant could receive for a PRC violation, case remanded for trial court to issue a nunc pro tunc entry correcting the error.

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.