Appellate Court Decisions –Week of 12/23/24

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

First Appellate District of Ohio

Nothing to report.

Second Appellate District of Ohio

***State v. Brandenburg*, 2024-Ohio-5943**

Restitution/Marsy's Law

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2024/2024-Ohio-5943.pdf

In victim/company's appeal, trial court did not err in failing to hold a restitution hearing and failing to order appellee to pay restitution. "[T]he victim's representative never specifically asked the trial court to award [the victim] restitution . . . Moreover, during the sentencing hearing, the victim's representative raised no objection after the trial court stated that it understood [the victim's] insurance company 'ha[d] made restitution or ha[d] made a payment on the claim to the victim.'" Finally, "[t]he victim's representative also did not raise any objection or request a restitution hearing after the trial court sentenced [appellee] to community control sanctions without a condition requiring [appellee] to pay [the victim] restitution."

Third Appellate District of Ohio

***State v. Benvenuto*, 2024-Ohio-5543**

Allied offenses

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/3/2024/2024-Ohio-5553.pdf

On remand from federal court partially granting appellant's writ of habeas corpus on grounds that certain drug possession convictions should merge, trial court committed structural error when it resentenced appellant while he was represented by appointed counsel without notifying his retained counsel of the sentencing date. The court compounded the error by vacating the rescheduled sentencing hearing requested by retained counsel.

Finally, trial court erred by requiring appellant to attend the resentencing hearing remotely without obtaining a written or oral waiver as required by Crim.R. 43(A)(3). Case remanded for resentencing.

Fourth Appellate District of Ohio

***State v. Jackson*, 2024-Ohio-5543**

Allied offenses

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/4/2024/2024-Ohio-5543.pdf

Trial court erred when it failed to merge appellant's convictions for felonious assault and abduction. Appellant's "conduct was committed with a single animus, i.e., to physically harm [the victim] that day. Any restraint to her liberty was incidental, and [COA is] unable to discern that [appellant] completed the offense of abduction separately from committing felonious assault." Case remanded for trial court to resentence appellant with the sentences merging.

Fifth Appellate District of Ohio

Nothing to report.

Sixth Appellate District of Ohio

***State v. Gebrosky*, 2024-Ohio-5525**

Postconviction

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2024/2024-Ohio-5525.pdf

Trial court erred in denying appellant's postconviction petition without issuing findings of fact and conclusions of law which is required by R.C. 2953.21(H). State concedes error. Case remanded for court to issue such findings and conclusion.

***State v. Ide*, 2024-Ohio-5527**

Sufficiency; building code violations

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2024/2024-Ohio-5527.pdf

Appellant's conviction for a building violation of failing to register as a contractor was not supported by sufficient evidence where the state failed to show that appellant was a contractor or was in the business of construction. That conviction is reversed, and appellant discharged.

***State v. Contreras*, 2024-Ohio-5972**

Disqualification of prosecutor

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2024/2024-Ohio-5972.pdf

In state's appeal, trial court did not err when it disqualified the assistant prosecutor in the case. That assistant prosecutor was the only person to conduct an unrecorded interview with a witness and, as that witness' statements appeared to materially change, the prosecutor became a necessary witness for impeachment purposes. See Prof.Cond.R. 3.7(a) and Evid.R. 616(A).

Seventh Appellate District of Ohio

Nothing to report.

Eighth Appellate District of Ohio

***State v. Weber*, 2024-Ohio-5901**

Forfeiture/interested party

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/9/2024/2024-Ohio-5901.pdf

In criminal forfeiture action where mother of defendant claimed ownership of monies seized during her son's arrest, prosecutor failed to given proper notification of the action to mother. The notification given to mother in the civil forfeiture action did not satisfy "the notification requirements set forth in the criminal forfeiture proceedings." As notification was not given to mother, her petition for a hearing was not untimely; "[t]he prosecutor cannot fail to give notice and then argue that Ms. White's petition for a

hearing is untimely when notice to the interested party starts the clock for filing the petition." Case remanded for trial court to hold a hearing.

Ninth Appellate District of Ohio

***State v. Arroyo*, 2024-Ohio-5539**

Sentencing

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/9/2024/2024-Ohio-5539.pdf

Trial court plainly erred when it sentenced appellant to three years for a fourth-degree felony offense of GSI; maximum sentence was 18 months. State concedes error. Case remanded for resentencing.

Tenth Appellate District of Ohio

***State v. Baker*, 2024-Ohio-5990**

Evidence/hearsay; Rules 401, 403, 404

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/10/2024/2024-Ohio-5990.pdf

In conviction for nonsupport where appellant had put forth the affirmative defense that he provided support within his "ability and means," trial court plainly erred when it permitted the state to admit appellant's entire divorce decree, as opposed to just the portions relating to child support. That document contained statements by the domestic relations judge "attacking [appellant's] credibility, character and mental state . . . The first two assignments of error are sustained due to plain error in the admission of double hearsay that unfairly prejudiced [appellant] under Evid.R. 403 with evidence of prior bad acts under Evid.R. 404. Accordingly, he is entitled to a new trial after remand."

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.