



CRIMINAL SENTENCING COMMISSION

SUPREME COURT OF OHIO
CRIMINAL JUSTICE
OPINION SUMMARY



2022

INTRODUCTION

This document is a summary of selected 2022 criminal justice jurisprudence from the Supreme Court of Ohio. The cases highlighted here include many of the major criminal decisions from the year, emphasizing those dealing with sentencing related issues. This list is meant to give the Ohio Criminal Sentencing Commission, criminal justice practitioners, and the public an overview of the decisions from the past year in order to inform conversation and highlight areas of the law where legislative changes may be necessary.

The case summaries are collated in three categories:

1. Case Law Addressed by the Uniform Entry Template Package. These summaries illustrate the utility of the Uniform Entry Template Package, emphasizing their nature as “living” documents, able to be quickly updated in response to case law and legislative changes. These updates serve to ensure the entries contain the most up-to-date language under the law and as a resource to educate practitioners on statutory changes and Court holdings. Further, adoption of the uniform entries will help practitioners avoid many of the “unforced” errors that give rise to a substantial number of appellate cases, as many of the decisions in this category illustrate.

2. Cases the Commission May Want to Refer for Legislative Action or to Explore for Further Work by the Commission. As the State of Ohio’s court of last resort, the Supreme Court is called upon to interpret statutes enacted by the legislature and to resolve conflicts in those interpretations amongst the appellate districts of the state. As statutes make their way through the legislative process, there often are unforeseen issues with how those statutes are interpreted in practice. This section highlights holdings that illustrate a potential need for additional legislative clarification or definition, as well as larger policy discussions that may be needed to address the sentencing policy and structure more broadly.

3. An Informational Section For reference and review, the third section of the document collates those decisions not seen as falling into either of the previous categories. The summaries are included as quick resources detailing the Court’s recent criminal jurisprudence.

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UNIFORM SENTENCING ENTRY

State v. Bates, 167 Ohio St.3d 197, 2022-Ohio-475, decided February 22, 2022.

SUMMARY: Defendant was sentenced in 2008 and the sentencing entry failed to include that post-release control would be mandatory and the consequences for violations of post-release control. In 2018 the state brought the error to the court's attention at a hearing regarding the defendant's SORN classification, and the Court advised the defendant of the mandatory nature of PRC and the consequences of violation and issued a new journal entry including that information. The defendant appealed, and the appeals court denied the appeal based on earlier void-versus-voidable jurisprudence. The Supreme Court reversed this decision, holding that errors in the original 2008 journal entry needed to be addressed on direct appeal, otherwise appellate challenges to such errors are barred by res judicata. The Court further noted that it lacked the needed information to address how the error in the 2008 entry could affect the supervision imposed on the defendant.

REVISED CODE SECTION(S): 2967.28, 2929.19

State v. Leegrand, Slip Opinion No. 2022-Ohio-3623, decided October 13, 2022.

SUMMARY: The defendant was found guilty of, among other offenses and specifications, murder. The defendant was sentenced to an aggregate term of 18 years to life in prison. The sentencing entry for the murder conviction read "LIFE IN PRISON WITH ELIGIBILITY OF PAROLE AFTER 15 YEARS." (Capitalization sic.) The relevant sentencing statute states that the penalty for murder of this kind is "an indefinite term of fifteen years to life." The Eighth District held that the trial court's sentencing language was dissimilar enough from the statutory language that the case should be remanded for resentencing. The state appealed. The Supreme Court held that the trial court's failure to use the specific language of the sentencing statute in its sentencing entry was not error. Specifically, this failure was not error because the language contained in the sentencing entry that the trial court used conveys the exact same meaning as the statutory language.

REVISED CODE SECTION(S): 2929.02, 2903.02

LEGISLATIVE ACTION

State v. Bryant, 168 Ohio St.3d 250, 2022-Ohio-1878, decided June 7, 2022.

SUMMARY: Defendant was sentenced to 22 years for multiple felony convictions. Upon hearing the sentence, the defendant had an expletive laden outburst directed at the sentencing judge. As a result, the trial court decided that the defendant was not showing remorse and increased his sentence to 28 years. The defendant appealed the addition of the six years arguing that the appropriate remedy should have been contempt of court and not adding six years to his sentence. The Supreme Court found that the Eleventh District erred in upholding the increased sentence. The Supreme Court found that when a defendant's outburst or other courtroom misbehavior causes a significant disruption that obstructs the administration of justice, that behavior may be punishable as contempt of court and not with an increased prison sentence.

REVISED CODE SECTION(S): 2705.01, 2929.11, 2929.12

State v. G.K., 169 Ohio St.3d 266, 2022-Ohio-2858, decided August 19, 2022.

SUMMARY: The defendant was indicted on seven counts in a 2009 indictment. Ultimately, he pled guilty to one count of the indictment with the remaining six counts being dismissed in accordance with the terms of a plea agreement and he was placed on a period of community control. In 2014, the defendant applied to have the dismissed counts sealed. At the time the application to seal was filed he was not eligible for the sealing of the conviction. The Supreme Court held that, based on a plain reading of the relevant statutory language, records relating to dismissed counts in an indictment are unable to be sealed until records of the counts of the indictment for which the offender has been convicted are eligible to be sealed.

REVISED CODE SECTION(S): 2953.52

State v. Bollar, Slip Opinion No. 2022-Ohio-4370, decided December 9, 2022.

SUMMARY: This appeal answers a certified-conflict question: whether Ohio's legislature has specifically authorized cumulative punishments for multiple firearm specifications that were committed as part of the same act or transaction under the narrowly tailored, specifically designated circumstances set forth in R.C. 2929.14(B)(1)(g), when the underlying felonies attendant to the firearm specifications are merged at sentencing as allied offenses of similar import pursuant to R.C. 2929.14(C)(4). The defendant in this case pleaded guilty to both involuntary manslaughter and felonious assault, each of which carried a firearm specification. He also pleaded guilty to having weapons under disability and an accompanying firearm specification. At sentencing, the trial court merged the involuntary manslaughter and felonious assault counts but imposed consecutive three-year prison terms for each count's linked firearm specification pursuant to 2929.14(B)(1)(g). The Supreme Court held that the plain language of R.C. 2929.14(B)(1)(g) requires the imposition of separate prison terms for multiple firearm specifications in situations like the one in this case, and the certified-conflict question is answered in the affirmative.

REVISED CODE SECTION(S): 2929.14, 2941.25

State v. Jones, Slip Opinion No. 2022-Ohio-4485, decided December 15, 2022.

SUMMARY: The defendant was placed on a 5-year period of community control in 2016, with a 2-year prison term reserved. At the time she was placed on community control, the trial court did not inform her that if she violated the court could run the 2-year reserved term consecutive to any other prison term. In 2018, she was convicted of robbery in a different county and sentenced to a 3-year prison term. The trial court revoked the defendant's community control and ran the 2-year reserved term consecutive to the 3-year term. The Supreme Court held that when a court revokes community control, it may require that the reserved prison term be served consecutively to any other sentence then existing or then being imposed. However, the consecutive sentence can only be imposed if, at the time it imposed community control, the trial court informed the defendant that a consecutive sentence on revocation of community control was a possibility.

REVISED CODE SECTION(S): 2929.14, 2929.15, 2929.41, former 2929.19

In re D.R., Slip Opinion No. 2022-Ohio-4493, decided December 16, 2022.

SUMMARY: The juvenile offender in this case was adjudicated delinquent for sexually assaulting a 12-year-old when the offender was 16 years old. The juvenile court classified him as a Tier I juvenile-offender registrant. At the completion-of-disposition hearing, and in accordance with R.C. 2152.84(A)(2)(b) which requires that offenders 16 or 17 years old at the time of the offense have their classification continued, the juvenile court continued the classification. The majority noted that, because R.C. 2152.85(B)(1) does not permit a juvenile offender to request a classification review for three years, the Tier I classification would follow the juvenile into adulthood. The majority held that because R.C. 2152.84(A)(2)(b) did not allow the juvenile court discretion to determine whether to continue the classification into adulthood, the statute is fundamentally unfair as applied to this juvenile offender and violates due process. The court remanded the case to the juvenile court to hold a new completion-of-disposition hearing and determine whether the classification should be continued or terminated.

REVISED CODE SECTION(S): 2152.84, 2152.85

State v. Ashcraft, Slip Opinion No. 2022-Ohio-4611, decided December 23, 2022.

SUMMARY: The defendant in this case was, for the second time, convicted of failing to provide a change-of-address notification for sex offender registration. The trial court sentenced the defendant to serve a 3 year and 9 months prison term. The 9-month term was imposed in addition to the 3-year term. The 3-year term was imposed because R.C. 2950.99(A)(2)(b) states that when an offender is a repeat violator of failing to provide a change-of-address notification for sex offender registration the court shall impose a definite prison term of no less than 3 years in addition to any other penalty or sanction. The defendant challenged this sentencing scheme on appeal. The appellate court upheld the sentence and stated that the trial court was permitted to impose the 9-month term in addition to the 3-year term. The Supreme Court affirmed the appellate court.

REVISED CODE SECTION(S): 2950.99

State v. Morris, Slip Opinion No. 2022-Ohio-4609, decided December 23, 2022.

SUMMARY: The defendant was convicted of numerous serious felony offenses including complicity to aggravated murder. He was 17 years old at the time of the offenses. As a result of his convictions, he was sentenced to life imprisonment with parole eligibility after 38 to 43 years. The trial court did not specifically state on the record that it had considered the defendant's age before imposing its sentence. The majority held that the failure to expressly consider the defendant's age on the record in sentencing him to life imprisonment constituted cruel and unusual punishment.

REVISED CODE SECTION(S): 2903.01

INFORMATIONAL

State ex rel. Adams v. Winkler, 166 Ohio St.3d 412, 2022-Ohio-271, decided February 7, 2022.

SUMMARY: The defendant sought mandamus relief against the trial court judge, claiming that a nunc pro tunc entry which was corrected to include R.C. 2929.14(C)(4) consecutive sentence findings should be vacated for a lack of jurisdiction. The appeals court denied the motion because it named the wrong respondent, and the defendant had a remedy through direct appeal. The Court upheld the denial based on the error in named parties, declining to address the issue of the trial court's jurisdiction to issue the nunc pro tunc entry.

REVISED CODE SECTION(S): 2929.14

State v. Leyh, 166 Ohio St.3d 365, 2022-Ohio-292, decided February 8, 2022.

SUMMARY: The defendant sought to reopen their appeal based on alleged ineffective assistance of appellate counsel, alleged that original appellate counsel failed to include relevant evidence and records which could have affected the outcome of the appeal. The Court found error in the appellate court's denial of the motion, holding that it held the defendant to a higher standard of proof than that which is required by App. R. 26(B). The defendant need only show that a genuine issue exists for the motion to be granted – the question of whether ineffective assistance was outcome determinative must occur after the appeal is reopened and the case has been briefed.

LEGAL RESOURCE(S): Ohio App. R. 26

State v. Maddox, 168 Ohio St.3d 292, 2022-Ohio-764, decided March 16, 2022.

SUMMARY: The Court resolved the certified conflict regarding whether the non-life felony indefinite sentencing scheme of SB 201 is ripe for constitutional review. In a 4-3 opinion, the majority held that the defendant could challenge the constitutionality of the sentencing scheme on direct appeal. The Court found that requiring the defendant to wait until their incarceration is extended beyond the minimum term would cause hardship, and that as the maximum term is imposed at the initial sentencing hearing, no further factual development is necessary to make the constitutional determination. The Court further found sufficient harm by the potential additional loss of liberty to allow for challenge of the sentencing scheme.

REVISED CODE SECTION(S): 2967.271

State v. Bethel, 167 Ohio St.3d 362, 2022-Ohio-783, decided March 22, 2022.

SUMMARY: The defendant was convicted of capital murder and had the conviction upheld upon review in 2006. In 2009 the defendant filed a postconviction motion for a new trial alleging new information related to the case, which was denied by the trial court. In 2018 the defendant filed a second motion for a new trial, alleging that the State withheld evidence that should have been turned over under the *Brady* rule. The Court held that a defendant seeking postconviction relief

“satisfies the “unavoidably prevented” requirement contained in R.C. 2953.23(A)(1)(a) by establishing that the prosecution suppressed the evidence on which the defendant relies” and found prima facie evidence of the claimed suppression. However, the Court held that the defendant failed to prove by clear and convincing evidence that the constitutional error would have led to a different outcome in the jury’s verdict. The Court also held that the motion for a new trial filed by the defendant was not prohibited under R.C. 2953.21(K) as it is not a collateral challenge to the case, and that it was not within the trial court’s power to deny the motion for leave to within a reasonable time of the discovery of the new evidence. But the motion for a new trial was ultimately denied based on the same finding by the Court that the suppressed evidence was not proven to be material.

REVISED CODE SECTION(S): 2967.271, 2953.21

State v. Eatmon, 169 Ohio St.3d 1, 2022-Ohio-1197, decided April 12, 2022.

SUMMARY: The defendant was charged with multiple felony charges relating to the shooting of Khaalis Miller. Three weeks before trial the State filed a motion for material witness warrants. The state outlined the attempts it had made to contact the victim and his mother. Trial court denied the motion but granted the State a continuance. The State filed a new motion adding that the prosecutor called Miller’s residence and spoke with an individual who identified as Miller until the prosecutor identified herself. Trial court denied State’s motion and granted another continuance. At the next trial date, the State orally renewed its request. The State argued that R.C. 2941.48 does not require a witness to be personally served. The trial court denied the motion and dismissed the case without prejudice. The Eighth District Court of Appeals affirmed the judgment of the trial court. The Supreme Court held that when the State requests a material witness warrant that it must be done by oath or affirmation and be supported by probable cause to believe the witness is material and the warrant is necessary to procure the witness’ attendance at trial.

REVISED CODE SECTION(S): 2937.18, 2941.48

State v. Hudson, 169 Ohio St.3d 216, 2022-Ohio-1435, decided May 4, 2022.

SUMMARY: The defendant, Hudson, was indicted by the Mahoning County Grand Jury after he turned 21 for offenses that occurred when he was 17. Hudson moved to dismiss the indictment arguing that the general division lacked subject matter jurisdiction as he was taken into custody prior to turning 21. The state attempted to cure the jurisdiction defect by dismissing the original indictment and re-indicting when Hudson was 22. The Court found that Hudson was 20 when he was arrested and that he was continually in custody until the time of the new indictment. Therefore, the superseding indictment did not give jurisdiction to the general division. Hudson should have been prosecuted in the juvenile court for the offenses which occurred when he was 17. The juvenile court has exclusive jurisdiction pursuant to 2152.02(C)(3) and 2151.23(I).

REVISED CODE SECTION(S): 2152.02, 2151.23

State v. Moore, 169 Ohio St.3d 18, 2022-Ohio-1460, decided May 5, 2022.

SUMMARY: The defendant, Moore, was in prison for having been convicted of kidnapping and felonious assault against his wife, who was filing for divorce. Moore was sentenced to 8 years and 11 months in prison and placed in Marion County. Moore spoke with his cellmate about murdering his wife, he even offered \$50,000 and drew a map of places she could be at so that the cellmate could kill her. The cellmate contacted the police and wore a wire to record Moore discussing the plot to kill. Moore was indicted for new charges of retaliation, attempted aggravated murder and conspiracy in Erie County. Moore's original felony conviction was from Erie County. Moore moved to dismiss his case multiple times during trial and the trial court denied such motion. Upon conviction, Moore appealed to the Sixth District Court of Appeals. The Sixth District reversed because all the elements of the offense of retaliation occurred in Marion County. The State appealed to the Supreme Court. The Supreme Court held that venue for the crime of retaliation under R.C. 2921.05(B) is proper where the defendant committed the criminal offense or any of its elements, not where the victim previously pursued criminal charges against the defendant. Therefore, the Sixth District Court of Appeals reversal was affirmed.

REVISED CODE SECTION(S): 2921.05, 2901.12

State v. Crawford, 169 Ohio St.3d 25, 2022-Ohio-1509, decided May 10, 2022.

SUMMARY: Following a jury trial, Crawford was found guilty of involuntary manslaughter. Crawford had a firearm while being under disability and discharged the firearm causing the death of another. Crawford appealed arguing that his weapons under disability crime was not the predicate offense for an involuntary manslaughter conviction. The Supreme Court held that there was no basis for reading the involuntary-manslaughter statute in the manner Crawford argued. If a person is prohibited from using a gun but does so anyway, proximately resulting in the death of another, they can be found guilty of involuntary manslaughter. The reason for the prohibition is not relevant.

REVISED CODE SECTION(S): 2903.04, 2923.13

State v. West, 168 Ohio St.3d 605, 2022-Ohio-1556, decided May 11, 2022.

SUMMARY: The defendant did not object to the trial judge's questions of the defendant during cross examination. After conviction, West appealed to the Tenth District Court of Appeals. The Tenth District affirmed his conviction rejecting the argument that the trial court exhibited bias in questioning West at trial and, therefore, committed structural error. The court of appeals applied the plain-error standard of review and concluded that West did not demonstrate plain error. West appealed and the Supreme Court held that a criminal defendant who does not object to an error made during trial, regardless of severity of the mistake, must prove on appeal that the error impacted the outcome of the trial. Further the Supreme Court ruled that West has not established a reasonable probability that the judge's actions affected the outcome of the trial.

REVISED CODE SECTION(S):

State v. McAlpin, 169 Ohio St.3d 279, 2022-Ohio-1567, decided May 12, 2022.

SUMMARY: The defendant represented himself at trial and was convicted of kidnapping, robbing, and murdering husband-and-wife owners of a car dealership. The jury recommended death and defendant was sentenced to death. The Supreme Court affirmed the conviction on direct appeal of right. The Court found that the defendant's Sixth Amendment right to self-representation extends to all phases of a capital trial and that the right under the Ohio constitution does as well.

REVISED CODE SECTION(S): 2929.04, 2941.145, 2930.13, 2930.14, 2947.051, 2929.03

Newburgh Hts. v. State, 168 Ohio St.3d 513, 2022-Ohio-1642, decided May 19, 2022.

SUMMARY: Effective July 3, 2019, R.C. 5747.502(B) required municipalities to report to the tax commissioner the amount of fines collected from traffic cameras and the commissioner was to reduce the share of local-government funds by that amount. Additionally, municipalities are required to make a deposit of costs and fees when commencing a civil action to enforce a citation issued using automated traffic-camera system. Newburgh Heights filed an action for declaratory judgement and injunctive relief arguing R.C. 5747.502(B) violated the Ohio Constitutions home rule power provisions. The trial court denied the request and the appeals court reversed. The Supreme Court held that the General Assembly was permitted to reduce state funding to municipalities that use redlight and speeding photo enforcement.

REVISED CODE SECTION(S): 5747.502

Rance v. Watson, 168 Ohio St.3d 246, 2022-Ohio-1822, decided June 2, 2022.

SUMMARY: The defendant pleaded guilty to felony sex offenses. The trial court, as part of the presentence investigation, ordered a psychological report. The defendant, upon being sentenced to prison, filed a complaint for a writ of habeas corpus against the prison warden. The Third District Court of Appeals dismissed the defendant's complaint. The Supreme Court affirmed the court of appeals decision finding that ordering the psychological report did not call into question the defendant's competency to stand trial.

REVISED CODE SECTION(S): 2953.31, 2945.38

State v. Burroughs, 169 Ohio St.3d 79, 2022-Ohio-2146, decided June 29, 2022.

SUMMARY: The police discovered a closed bookbag while executing an arrest warrant. Without obtaining a search warrant, they opened the bookbag and discovered illegal drugs. The Supreme Court reviewed the "single-purpose-container exception" to the warrant requirement of the Fourth Amendment. The court held that the exception only applies when the illegal nature of the contents of a package is readily apparent because of the distinctive characteristics of the package. The court noted that a bookbag could hold a variety of illegal and legal items.

REVISED CODE SECTION(S): 2925.11

State v. Montgomery, 169 Ohio St.3d 84, 2022-Ohio-2211, decided June 30, 2022.

SUMMARY: The defendant was charged with rape and kidnapping. At trial, the prosecutor moved to allow the victim to sit at the prosecutor table as the State’s representative. The Defense objected and the trial court allowed the victim to sit. After conviction at trial, the defense appealed. The Fifth District allowed the victim to sit at the table citing Marsy’s law and Rule 615(B) of the Ohio Rules of Evidence. The Supreme Court found the Fifth District was correct regarding the victim being present in the courtroom, but the right to be present did not entitle the victim to sit at the prosecutor’s table. The Supreme Court held that sitting the victim at the prosecutor’s table was structural error violating the Sixth Amendment to the U.S. Constitution as applied to the states through the Fourteenth Amendment.

LEGAL REFERENCE(S): Constitution, Article I, Section 10a

State v. Brooks, Slip Opinion No. 2022-Ohio-2478, decided July 21, 2022.

SUMMARY: This case came before the Court on a discretionary appeal from a judgment of the Fifth District Court of Appeals, as well as for consideration of a certified-conflict question (with a judgment from the Twelfth District Court of Appeals). The discretionary appeal dealt with the following proposition of law: “2018 H.B. 228 [eff. March 28, 2019], which shifted the burden of proof on self-defense to the prosecution, applies to all trials held after the effective date of the act, regardless of when the alleged offenses occurred.” The certified-conflict question was: “[d]oes legislation that shifts the burden of proof on self-defense to the prosecution...apply to all subsequent trials even when the alleged offenses occurred prior to the effective date?” The defendant in *Brooks* was charged with a number of offenses alleged to have occurred on June 5, 2018, including aggravated burglary, assault, and domestic violence. At trial, in October of 2019, the defendant sought to raise the defense of self-defense. The trial court held that, because the defendant was charged prior to the effective date of 2018 H.B. 228, the old self-defense burden of proof standard applied, and it was incumbent upon the defendant to prove self-defense by a preponderance. The Fifth District affirmed. The Supreme Court reversed the judgement of the Fifth District and held that the burden shifting amendment contained in 2018 H.B. 228 applied “prospectively to all trials occurring after its effective date, regardless of when the underlying alleged criminal conduct occurred.” The Supreme Court then answered the certified-conflict question in the affirmative.

REVISED CODE SECTION(S): 2901.05

State v. Brinkman, 169 Ohio St.3d 127, 2022-Ohio-2550, decided on July 28, 2022.

SUMMARY: The defendant waived the right to a jury trial and entered guilty pleas to all counts of his indictment. The defendant was convicted of Aggravated Murder (two counts), Aggravated Burglary, Aggravated Robbery (two counts), and Tampering with Evidence. A three-judge panel found the defendant guilty of both counts of aggravated murder and sentenced the defendant to death on each count. The Supreme Court affirmed the convictions and the death sentences. However, the Supreme Court found that the trial court erred by imposing post-release control on the aggravated robbery convictions, because those counts merged with the aggravated murder

convictions for sentencing purposes. The Supreme Court held that when a defendant is sentenced on merged counts the trial court is prohibited from imposing a sentence on those merged counts, including the imposition of post-release control on the merged counts.

REVISED CODE SECTION(S):

State v. McNeal, 169 Ohio St.3d 47, 2022-Ohio-2703, decided August 9, 2022.

SUMMARY: The defendant was charged with rape for an offense that occurred on September 29, 2014. At trial, the victim testified that on the night of the offense she had consumed a large amount of alcohol and could not have consented to sexual intercourse. The defendant was convicted of rape and a repeat-violent-offender specification (by the trial court). On February 12, 2020, the defendant filed in the trial court a motion for leave to move for a new trial. The basis of the request was the defendant’s assertion that he had recently received a previously undisclosed laboratory report pursuant to a public records request, and that the report indicated the victim had no detectable amount of alcohol in her bloodstream approximately three and a half hours after the rape occurred. Without hearing the trial court denied the defendant’s request for leave to file a motion for a new trial. The Supreme Court held that the defendant established a prima facie case that he was unavoidably prevented from moving for a new trial pursuant to the time specified in Crim. R. 33(B) due the prosecution’s suppression of the evidence, and that the trial court abused its discretion when it denied the motion for leave to move for a new trial without a hearing.

LEGAL REFERENCE(S): Criminal Rule 33

State v. Whitaker, Slip Opinion No. 2022-Ohio-2840, decided August 18, 2022.

SUMMARY: The defendant was convicted after a jury trial of aggravated murder and aggravated burglary. The defendant’s conviction for aggravated burglary was vacated by the Supreme Court. In vacating the conviction, the court found that the evidence presented at trial was insufficient to support a guilty finding. Specifically, the structure that was central to the commission of the offense had been unoccupied for several years, was going to be unoccupied indefinitely, was in the process of being renovated, and had not been visited by the owner more than three or four times. Throughout the trial the prosecutor displayed a photo board (referred to as a “cast of characters” display) with photographs of each person that testified in the trial, as well as a photograph of the victim. The Court held that photographs depicting the victim, the victim’s mother, the principal of the school where the victim attended, and two friends of the victim were victim-impact evidence and should not have been displayed during the trial. The Court also addressed the defendant’s assertion that the trial court erred in not allowing evidence of his offer to plead guilty in exchange for a sentence of life without parole during the mitigation phase of the death penalty portion of the case. The Supreme Court held that it was not error, evidence of this type is not relevant during the mitigation phase, and additionally rejected the premise that an offer to plead guilty in exchange for life without parole shows an acceptance of responsibility. In doing so, the Court reaffirmed previous holdings rejecting similar propositions.

REVISED CODE SECTION(S): 2911.11, 2909.11

State v. Sanford, Slip Opinion No. 2022-Ohio-3107, decided September 8, 2022.

SUMMARY: The defendant was arrested on October 6, 2016, on a single felony charge of failure to stop after an accident. The defendant was held in jail on a \$100,000 bail. On December 29, 2016, the grand jury returned an indictment charging: Ct. 1. Aggravated Vehicular Homicide (as a proximate result of violating RC 4511.19(A)), Ct. 2 Aggravated Vehicular Homicide (driving recklessly), Ct. 3 Failure to Stop after an Accident, Ct. 4 Driving While Under Suspension, Ct. 5 Operating Without a Valid License, Ct. 6 OVI (under the influence), and Ct. 7 OVI (per se - marijuana metabolite). Sometime after the arrest, the state obtained blood results showing that the defendant was operating with a prohibited concentration of marijuana metabolites in his system. At the time of his arraignment on the indictment, the defendant had been held a total of 95 days. The trial court dismissed Cts. 3, 4 and 5 on speedy-trial grounds. The Ninth District Court of Appeals dismissed Cts. 2 and 6 on speedy-trial grounds. The Supreme Court held that, at the time of his arrest, the state did not have the information necessary to charge Cts. 1 and 7 and, therefore, the statutory speedy-trial time period on those new charges began when they were filed.

REVISED CODE SECTION(S): 4511.19

State v. Wilson, Slip Opinion No. 2022-Ohio-3202, decided September 14, 2022.

SUMMARY: The defendant had previously been convicted of operating a motor vehicle under the influence of alcohol or drugs (“OVI”) and given a license suspension as a result of that conviction. Sometime after her conviction for OVI, and while still under the related suspension, the defendant was found sleeping in the driver’s seat of a running motor vehicle. A police officer charged her with operating a motor vehicle under an OVI suspension and the defendant was ultimately found guilty of that offense. The Supreme Court held that operation in the context of a license suspension requires that a defendant must cause or have caused movement of a vehicle, pursuant to RC 4511.01(HHH).

REVISED CODE SECTION(S): 4511.01

State v. O’Malley, 169 Ohio St.3d 479, 2022-Ohio-3207, decided September 15, 2022.

SUMMARY: The defendant was convicted of operating a motor vehicle under the influence of drugs or alcohol as a third offense within ten years. As a result of that conviction, and pursuant to 4511.19(G)(1)(c)(v), the trial court ordered the defendant’s vehicle forfeited. The Court held that the forfeiture did not violate the Equal Protection Clauses of either the state or federal Constitutions by treating owners and non-owners differently. Additionally, the court held that, as applied to the defendant in this case, the forfeiture was not an excessive fine in violation of the Eighth Amendment because it was not grossly disproportional to the gravity of his offense.

REVISED CODE SECTION(S): 4511.19

State v. Troisi, 169 Ohio St.3d 514, 2022-Ohio-3582, decided October 11, 2022.

SUMMARY: The defendants in this case were employees of a wholesale drug distribution company. The defendants were charged with violating RC 2925.03(A)(1) by knowingly selling, or offering to sell, a controlled substance. The crucial point in the allegations against the defendants is that they, in violating section 2925.03, did not act in accordance with Chapter 4729 of the Revised Code. If they had acted in accordance with RC Chapter 4729, then section 2925.03 would not have applied to them based on their employment status. The indictment only accused the defendants of acting “not in accordance with Chapter 4729” while violating RC 2925.03. The bill of particulars also failed to include with specificity the acts that the state believed were not in accordance with RC Chapter 4729. The trial court granted the defendant’s motion to dismiss. On appeal, the 8th District reversed the decision of the trial court. Ultimately, the Supreme Court reversed the court of appeals and held that the defendants were prejudiced by the lack of specificity in the indictment and the bill of particulars. Therefore, the state failed to identify the nature and cause of the allegations against the defendants by not clearly elucidating the specific violation of Chapter 4729 that makes the wholesale distributor susceptible to criminal prosecution under RC 2925.03 and, subsequently, the indictment must be dismissed without prejudice.

REVISED CODE SECTION(S): 2925.03, Chapter 4729

State v. Campbell, Slip Opinion No. 2022-Ohio-3626, decided October 13, 2022.

SUMMARY: The defendant was on community control and was being supervised by a probation officer. As a condition of community control, the officer had the defendant sign a consent to search form. The form stated that the defendant consented to “searches of my person, my property, my vehicle, and my residence at any time without a warrant.” On a routine visit to the defendant’s residence, and lacking any “reasonable suspicion”, the probationer officer searched the contents of the defendant’s cell phone. The search revealed possession of child pornography, which resulted in additional criminal charges being filed against the defendant. The court held that, consistent with precedent, this search was not a violation of the defendant’s Fourth Amendment rights, as he was on community control and had consented to searches of his property. However, the court did find that the probation officer exceeded the limits of the statutory authority to search, because the statute expressly states that a probation officer’s authority to search must be based on “reasonable suspicion.” Despite the statutory violation, the appeals court erred in holding that the fruits of the search should have been suppressed.

REVISED CODE SECTION(S): 2951.02

State v. Towns, Slip Opinion No. 2022-Ohio-3632, decided October 18, 2022.

SUMMARY: The defendant was employed as a county sheriff when he was charged with, and convicted of, disclosing confidential information in violation of RC 102.03(B). The complaint was initiated by special prosecutors and filed by a special agent of the Ohio Bureau of Criminal Investigation. The Supreme Court addressed the issue of whether a criminal prosecution can be brought alleging a violation of RC 102.03(B) without a prior review of the charges by the Ohio Ethics Commission. The court held that RC 102.03(B) does not prevent an “appropriate

prosecuting authority” from independently bringing a complaint under Chapter 102, despite the language contained in RC 102.06 that states the appropriate ethics commission “shall receive and may initiate” a complaint against a person. Thus, the defendant could be prosecuted for violating RC 102.03(B) without the Ohio Ethics Commission first investigating or prosecuting the charge.

REVISED CODE SECTION(S): 102.03, 102.06

State v. Drain, Slip Opinion No. 2022-Ohio-3697, decided October 19, 2022.

SUMMARY: The defendant assaulted a fellow inmate in the Residential Treatment Unit at the Warren Correctional Institution. The victim of the assault later died from his injuries. The defendant was indicted on two counts of aggravated murder, two death specifications, two repeat violent offender specifications, and a count of possessing a deadly weapon while under detention for having committed the crime of aggravated murder. The defendant pleaded no contest to all counts and specifications contained in the indictment and was sentenced to death. The defendant raised 16 propositions of law in the appeal. The Supreme Court rejected each proposition and upheld the convictions and the death sentence.

REVISED CODE SECTION(S): 2945.06, 2929.01, 2929.03, 2929.04, 2929.05

State v. Bellamy, 169 Ohio St.3d 366, 2022-Ohio-3698, decided October 19, 2022.

SUMMARY: The defendant in this case was charged with sexually abusing a child. As part of discovery, the state timely disclosed the name and c.v. of an expert witness. However, the state did not provide the expert’s report until six days before trial in violation of Crim.R. 16(K). The rule states that an expert witness’s report “shall be subject to disclosure...no later than twenty-one days prior to trial...” The defendant’s attorney did not object and the defendant was convicted of all counts as charged. On appeal, the Fifth District overturned the conviction and remanded the case to the trial court for a new trial based on the Crim.R. 16(K) violation. In remanding the case, the Fifth District also held that the new trial must be held without the testimony of the expert. The question the court answered in this case is whether the phrase “at trial” relates specifically to the trial commencing fewer than 21 days after the disclosure of the expert report or also at a retrial following a reversal and remand for failure to comply with the rule. The Supreme Court held that Crim.R. 16(K) only precludes an expert witness from testifying at the trial commencing fewer than 21 days after the disclosure of the expert’s written report.

LEGAL REFERENCE(S): Criminal Rule 16

State v. Belville, Slip Opinion No. 2022-Ohio-3879, decided November 2, 2022.

SUMMARY: The defendant was arrested for drug trafficking on July 17, 2019. The defendant was released from jail for a period of 46 days but was rearrested and held an additional 79 days in jail awaiting trial. The state responded to the defendant’s initial discovery request the day after he filed his request for discovery. However, included in that response was an assertion that there was a large amount of video evidence that the state still needed to provide. In lieu of coming to the

prosecutor's office to watch the large amount of video evidence, the defendant's attorney instead elected to have the state copy the video footage from one hard drive to another. This transfer took 43 days to complete. The day before the defendant's trial on November 19, 2019, he moved to dismiss the case based on an alleged violation of his R.C. 2945.71 speedy-trial right. The defendant argued that at the time of his motion a total of 280 speedy-trial days had elapsed, 10 days beyond the 270 days allowed by R.C. 2945.71(C)(2). The defendant also argued that, because the state initially responded to his discovery request one day after he requested the discovery, time was only tolled for one day. Additionally, the defendant asserted that the video evidence that was provided 43 days after the initial discovery response was "supplemental discovery" and should not be considered for tolling purposes. The Supreme Court disagreed with the defendant on all points. The court held that because the video evidence was disclosed with the initial discovery response it was not supplemental in nature. In so holding, the court found that the defendant's request for discovery operated as a tolling event for the time the state reasonably needed to respond and, under the facts of this case, that included the time that was needed to copy the video evidence. Therefore, the defendant's speedy-trial right was not violated.

REVISED CODE SECTION(S): 2945.71, 2945.72

State v. Bortree, Slip Opinion No. 2022-Ohio-3890, decided November 3, 2022.

SUMMARY: The defendant was convicted of attempted aggravated murder and attempted murder. The criminal conduct at issue in these convictions was the July 1993 kidnapping, rape, and assault with a knife of a 19-year-old victim. The defendant was not identified until 2019 when DNA evidence linked him to the crime. The state indicted him that same year and he was convicted after a jury trial. The defendant was then sentenced to 11 years for the offenses, the statutory maximum for a first-degree felony. The defendant filed a motion to dismiss at the trial court alleging that the statute of limitations had elapsed because the crimes he was convicted of were first-degree felonies which carry a 6-year statute of limitations. His motion was denied in the trial court, and the court of appeals upheld that decision. In this appeal to the Supreme Court, the state argued that because the defendant was prosecuted for attempting to violate the aggravated murder and murder sections, which themselves do not have a statute of limitations, the prosecution for the offenses of attempted aggravated murder and attempted murder are also without limitation. Thus, at issue in this case is whether the statute of limitations for the first-degree felonies of attempted aggravated murder and attempted murder is 6 years. The court held that pursuant to the plain and unambiguous language of R.C. 2901.13(A)(1)(a) the statute of limitations for these offenses is 6 years and the defendant's motion to dismiss should have been granted.

REVISED CODE SECTION(S): 2901.13, 2923.02, 2903.01

State v. Hatton, 169 Ohio St.3d 446, 2022-Ohio-3991, decided November 10, 2022.

SUMMARY: The defendant in this case, along with a single codefendant, was convicted of aggravated burglary, kidnapping, rape, felonious assault, and theft in 1997. The defendant had previously been unsuccessful in challenging his convictions. The issues in this appeal are whether the defendant should have been granted leave to file an untimely motion for a new trial and

whether the trial court and court of appeals abused their discretion in holding that res judicata barred him from filing the motion and a successive petition for postconviction relief. The basis of each action was a newly discovered memo from the DNA expert the state relied on at trial. The memo indicates that a third male's DNA was present in the semen collected during the investigation. This memo was never provided to the defendant or any of his previous counsel and was only discovered as the result of a 2018 public records request. Importantly, the DNA expert never testified about the presence of this third male's DNA. Additionally, the state specifically stated at trial that there was "no third person" and that the only people present at the time of the offense were the defendant and his codefendant. The Supreme Court held that, under these circumstances, the defendant established sufficient substantive grounds for a hearing on the motion for a new trial and that the trial and appellate courts abused their discretion in holding that res judicata barred his filing of the motion and a successive petition for postconviction relief.

REVISED CODE SECTION(S): 2953.21, 2953.23

State v. Blanton, Slip Opinion No. 2022-Ohio-3985, decided November 10, 2022.

SUMMARY: The defendant was convicted by jury of the rape and kidnapping of a 15-year-old girl. He was also convicted by jury of the felonious assault and kidnapping of a fellow inmate. The Supreme Court in this case was asked to review its precedent regarding the doctrine of res judicata and its applicability to ineffective assistance of counsel claims. The court has previously held that res judicata does not bar a postconviction ineffective-assistance-of-counsel claim when either the petitioner had the same attorney at trial and on appeal or, if different attorneys, the petitioner must rely on evidence outside the trial record to establish the claim for relief. Thus, when a petitioner had different attorneys for trial and appeal and the claim could have been litigated based on the trial record but wasn't, res judicata applies and the postconviction claim is barred. The Supreme Court went through a detailed analysis of these issues and concluded that the precedent should stand.

REVISED CODE SECTION(S): 2953.21

State v. P.J.F., Slip Opinion No. 2022-Ohio-4152, decided November 23, 2022.

SUMMARY: The defendant was convicted of one felony of the fifth-degree count of non-support of a dependent. As a condition of his community-control, he was ordered to make payments in accordance with the existing domestic relations child support order. After several years elapsed the trial court heard a request to terminate community-control and, ultimately, issued an order discharging the defendant from community control. In so doing, the court also noted that the defendant had failed to comply with the conditions, specifically he failed to make child support payments. After the required time had elapsed, the defendant filed a motion to seal his conviction. The motion was granted. The state appealed, arguing that because the defendant had failed to abide by all of the conditions of his community-control there was no "final discharge." The appellate court agreed with the state and reversed the judgment of the trial court. The Supreme Court disagreed, and ultimately held that the termination of the community control was a "final discharge" for purposes of sealing eligibility. In so holding, the court distinguished between

conditions of nonresidential community-control pursuant to R.C. 2929.17 and financial community control sanctions pursuant to R.C. 2929.18. The court held that a defendant completes a R.C. 2929.18 financial community-control sanction by paying the debt in full, and a defendant completes a R.C. 2929.17 nonresidential community-control sanction at the end of its duration.

REVISED CODE SECTION(S): 2919.21, 2929.17, 2929.18

State v. Yerkey, Slip Opinion No. 2022-Ohio-4298, decided December 5, 2022.

SUMMARY: The defendant was convicted of two felony counts of violating a protection order. The victim, the defendant’s ex-wife, requested restitution for lost wages relating to 7 full days’ worth of work that she missed due to voluntarily attending court hearings. The victim also requested restitution for attorney fees, medical bills, and counseling bills. The trial court ordered restitution for the lost wages but declined to order restitution for the other expenses. When issuing this restitution order, the trial court found that the lost wages could be “arguably directly and proximately related to the cases.” The appellate court reversed the restitution order. The Supreme Court affirmed the appellate court and held that the statutory meaning of restitution was not altered or expanded by Marsy’s Law. Thus, unless the lost wages are directly and proximately caused by the offense, lost wages are not able to be recouped through a criminal restitution order. The majority did note, however, that restitution could be considered directly and proximately caused by the offense when a victim misses time at work because of an injury to the victim caused by the offense.

REVISED CODE SECTION(S): 2929.18

State v. Brunson, Slip Opinion No. 2022-Ohio-4299, decided December 5, 2022.

SUMMARY: The defendant was convicted of 22 serious felonies, including 3 counts of aggravated murder. As a result of his convictions, the defendant was sentenced to life in prison without the possibility of parole. He remained silent at sentencing and waived his right to allocute. The opinion of the Supreme Court focused on 3 issues. Relevant to sentencing was the issue of whether the trial court erred when it considered the defendant’s silence and waiver of the right to allocute in determining whether the defendant had a lack of remorse. The Supreme Court held that when a defendant maintains their innocence by pleading guilty and taking a case to trial, the trial court errs when it considers the defendant’s decision to remain silent and waive allocution when determining whether there was a lack of remorse.

REVISED CODE SECTION(S): 2929.12

State v. Grievous, Slip Opinion No. 2022-Ohio-4361, decided December 9, 2022.

SUMMARY: The defendant was found guilty after a jury trial of aggravated murder and a specification for an aggravating circumstance. Thus, with the absence of an applicable exception, the law required that he be sentenced to either death or one of three life sentences. During the sentencing phase of his trial, the jury did not find proof beyond a reasonable doubt that the

aggravating circumstances outweighed the mitigating factors and then recommended a sentence of life imprisonment without the possibility of parole. In accordance with R.C. 2929.03(D)(2)(c), the trial court followed this recommendation and sentenced the defendant to life imprisonment without the possibility of parole. The defendant appealed his sentence, challenging the constitutionality of R.C. 2953.08(D)(3), which limits the grounds for appeals involving sentences like his under that section. The appellate court upheld the constitutionality of R.C.2953.08(D)(3) and further held that R.C. 2953.08(D)(3) precluded appellate court review of the merits of a constitutional challenge to an aggravated-murder sentence. The Supreme Court of Ohio upheld the appellate court’s decision related to the constitutionality of R.C. 2953.08(D)(3) but reversed and remanded the portion of the appellate court judgment related to that court’s decision to decline to review the merits of the defendant’s constitutional challenges to his aggravated-murder sentence. The portion of the judgment that was reversed and remanded was based on the Supreme Court’s decision in *State v. Patrick*, 164 Ohio St.3d 309, 2020-Ohio-6803 holding that R.C. 2953.08(D)(3) does not preclude an appellate court from reviewing a constitutional challenge to an aggravated-murder sentence.

REVISED CODE SECTION(S): 2953.08

State v. Hough, Slip Opinion No. 2022-Ohio-4436, decided December 13, 2022.

SUMMARY: In this case, the defendant was indicted on 12 counts related to his driving the wrong way on a highway exit ramp, while intoxicated, and killing another driver and injuring three passengers. Prior to trial, his counsel filed a motion for a competency hearing. The trial court never ruled on the motion, no competency evaluation was ordered, and no hearing was held. The Supreme Court followed its precedent and held that a trial court must hold a competency hearing when one is requested prior to trial. The court then proceeded to determine whether the error in this case was harmless. Ultimately, the court concluded that the error was not harmless because there were sufficient indicia of the defendant’s incompetence. The convictions were vacated, and the cause was remanded to the trial court.

REVISED CODE SECTION(S): 2945.37

State v. Bailey, Slip Opinion No. 2022-Ohio-4407, decided December 14, 2022.

SUMMARY: The defendant was convicted of multiple felony counts, including kidnapping and rape. At the time of sentencing, the trial court concluded that the kidnapping and rape counts did not merge for purposes of sentencing. The defendant did not object to that decision. Because the defendant did not object at the trial court, appellate review is limited only to plain error. To establish plain error, a defendant must establish that an error occurred, the error was obvious, and that there is a reasonable probability that the error resulted in prejudice. See *State v. McAlpin*. The court of appeals held that the decision not to merge the kidnapping and rape counts was plain error. Ultimately, the Supreme Court reversed that decision. In so doing, the court recognized that the law governing the merger of allied offenses is dependent on the specific facts of each case. As such, the court concluded that the trial court’s decision not to merge the kidnapping and rape

counts did not constitute an obvious error (if error at all). The defendant did not establish plain error and the court of appeals decision to merge the kidnapping and rape counts was reversed.

REVISED CODE SECTION(S): 2941.25

State v. Barnes, Slip Opinion No. 2022-Ohio-4486, decided December 15, 2022.

SUMMARY: The defendant pleaded guilty to an amended charge of involuntary manslaughter for his role in a shootout that left one person dead. Prior to his sentencing on that count, he filed a motion to withdraw his guilty plea. The basis of the motion was that the night before sentencing he viewed, for the first time, a video of the shooting that included audio. The defendant’s attorneys had previously allowed him to view video of the offense, but never with audio. The defendant claimed that the audio in the video supported his self-defense claim and, thus, he wanted to withdraw his guilty plea. The trial court held two hearings on that motion and ultimately declined to allow the defendant to withdraw his plea. The appellate court upheld that decision. Here, the Supreme Court of Ohio reversed the judgment of the court of appeals affirming the trial court’s judgment. The majority held that the defendant had a reasonable and legitimate basis to withdraw his guilty plea before sentencing.

REVISED CODE SECTION(S): 2903.04

State v. Gwynne, Slip Opinion No. 2022-Ohio-4607, decided December 23, 2022.

NOTE: Motion for Reconsideration filed January 3, 2023.

SUMMARY: This is the second time this case has been before the Supreme Court of Ohio. The defendant was sentenced to a total of 65 years in prison, stemming from her convictions for multiple theft related offenses that occurred over the course of multiple years. In this appeal, the court was asked to determine if a trial court errs when it sentences a defendant to consecutive terms of imprisonment, when such a sentence is clearly and convincingly not supported by the record. Ultimately, the Supreme Court remanded the case to the court of appeals to decide whether the sentence in this case was clearly and convincingly supported by the record. In remanding the case, the court held that 2929.14(C)(4) requires that trial courts, when making the consecutive sentence determinations, must consider the overall number of consecutive sentences and the aggregate sentence to be imposed when making the required necessity and proportionality findings.

REVISED CODE SECTION(S): 2929.14, 2953.08