Appellate Court Decisions –Week of 6/27/22

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. Winters*, 2022-Ohio-2061**

Disorderly conduct; charging instrument/complaint

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2022/2022-Ohio-2061.pdf

As complaint did not mention the level of the offense nor identify the (E)(3)(a) subsection of R.C. 2917.11 or that appellant persisted in her disorderly conduct after reasonable warning, the trial court erred in convicting appellant of a misdemeanor of the fourth degree where she "could only be convicted of the least degree of offense raised in the complaint, disorderly conduct, a minor misdemeanor."

Third Appellate District of Ohio

Nothing to report.

Fourth Appellate District of Ohio

Nothing to report.

Fifth Appellate District of Ohio

***State v. Link*, 2022-Ohio-2067**

Ineffective assistance of counsel

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2022/2022-Ohio-2067.pdf

Trial court erred where "appellant's assertion of a breakdown in communication was a specific objection triggering the trial court's duty to inquire into the complaint and make such inquiry a part of the record. The trial judge recognized appellant's request for new counsel, but did not inquire into

the nature of the breakdown between and appellant and his appointed counsel." Sentence reversed and case remanded to trial court to investigate appellant's allegations.

Sixth Appellate District of Ohio

***State v. Dominique*, 2022-Ohio-2068**

Sufficiency; tampering

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2022/2022-Ohio-2068.pdf

There was insufficient evidence to support appellant's conviction for tampering with evidence. As a condition of appellant's community control, he was required to provide a urine sample to his probation officer. Appellant had arrived at his appointment with a bladder around his waist which was filled with synthetic urine. However, before he could supply that sample to his probation officer, "the bladder leaked, leaving a visible wet spot in the crotch of his pants. . . [therefore, appellant's] plan to submit a false urine sample was thwarted when the bladder of urine tied around his waist leaked. The crime not having been successful, finished, or completed, his conduct rose only to the level of attempted tampering with evidence." Conviction vacated.

***State v. Kamer*, 2022-Ohio-2070**

Evid.R. 404(B)/other-acts evidence

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2022/2022-Ohio-2070.pdf

In conviction for rape of a child, trial court erred in "admitting other-acts testimony for a purpose not permitted by Evid.R. 404(B) and improperly admitting numerous incriminating statements through hearsay testimony—and the state did not prove that these errors were harmless beyond a reasonable doubt. . . the state's specified purposes for the testimony—identity and lack of mistake—were not material facts actually in dispute. . . ." Case remanded for a new trial.

Seventh Appellate District of Ohio

Nothing to report.

Eighth Appellate District of Ohio

Nothing to report.

Ninth Appellate District of Ohio

Nothing to report.

Tenth Appellate District of Ohio

Nothing to report.

Eleventh Appellate District of Ohio

***In re J.P.*, 2022-Ohio-2102**

Delinquency; SYO

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2022/2022-Ohio-2102.pdf

Juvenile court erred when it invoked the stayed adult portion of appellant's SYO sentence. "Pursuant to R.C. 2152.14(E)(1)(b), the trial court was required to find, by clear and convincing evidence, that [appellant] was either admitted to a DYS facility or had pending criminal charges against him, neither of which were present in this case at the time the state filed its motion to invoke or at the time of the hearing. Thus, we agree with the parties that the trial court lacked the statutory authority to invoke [appellant's] adult sentence, and we vacate the consecutive eight-year term of imprisonment."

Twelfth Appellate District of Ohio

***State v. Seymore*, 2022-Ohio-2180**

Allied offenses

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/12/2022/2022-Ohio-2180.pdf

Trial court committed plain error in failing to merge appellant's convictions for aggravated assault and burglary. Initially, appellant lawfully entered the alleged victim's residence, but "appellant committed burglary when he knowingly remained in the victim's home without privilege to do so and by force by shoving the firearm into the victim's mouth and threatening her. Appellant further committed aggravated assault when he knowingly caused or attempted to cause physical harm to the victim by means of a deadly weapon by shoving the firearm

into the victim's mouth and threatening her. Thus, both offenses were based upon appellant's conduct inside the victim's home when he shoved a firearm into her mouth and threatened her." And neither offense "involved separate/multiple victims nor separate and identifiable harms."

Supreme Court of Ohio

***State v. Burroughs*, 2022-Ohio-2146**

Suppression; single-purpose-container

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2022/2022-Ohio-2146.pdf

In warrantless search of a closed bookbag with a plastic bag caught in the zipper, trial court erred in denying appellant's motion to suppress. The " 'single-purpose-container exception' to the warrant requirement" did not apply. "The exception applies only when the illegal nature of the contents of a package are readily apparent because of the distinctive characteristics of the package. A bookbag could hold a variety of items—some illegal, some not.

{¶ 2} Because there was no valid basis to search the bookbag without a warrant, the trial court erred in failing to grant a motion to suppress the evidence."

***State v. Montgomery*, 2022-Ohio-2211**

Sixth Amendment right to fair trial; victim as state's representative; structural error

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2022/2022-Ohio-2211.pdf

"Right to a fair trial—Sixth and Fourteenth Amendments to the U.S. Constitution—Structural error—Designating alleged victim of rape as the state's representative and seating her at prosecutor's table throughout trial undermines the fairness of the fact-finding process and erodes a defendant's presumption of innocence."

Sixth Circuit Court of Appeals

Nothing to report.

Supreme Court of the United States

***Xiulu Ruan v. United States*, 597 U.S. ____ (2022)**

Mens rea

Full Decision:
https://www.supremecourt.gov/opinions/21pdf/20-1410_1an2.pdf

A provision of the Controlled Substances Act, codified at21 U. S. C. §841, makes it a federal crime, "*[e]xcept as authorized*[,] . . . for any person knowingly or intentionally . . . to manufacture, distribute, or dispense . . . a controlled substance," such as opioids. 84 Stat. 1260, 21 U. S. C. §841(a) (emphasis added). Registered doctors may prescribe these substances to their patients. But, as provided by regulation, a prescription is only authorized when a doctor issues it "for a legitimate medical purpose . . . acting in the usual course of his professional practice." 21 CFR §1306.04(a)(2021).

In each of these two consolidated cases, a doctor was convicted under §841 for dispensing controlled substances not "as authorized." The question before us concerns the state of mind that the Government must prove to convict these doctors of violating the statute. We hold that the statute's "knowingly or intentionally" *mens rea* applies to authorization. After a defendant produces evidence that he or she was authorized to dispense controlled substances, the Government must prove beyond a reasonable doubt that the defendant knew that he or she was acting in an unauthorized manner, or intended to do so.

BREYER, J. delivered the opinion of the Court, in which ROBERTS, C. J., and SOTOMAYOR, KAGAN, GORSUCH, and KAVANAUGH, JJ., joined. ALITO, J., filed an opinion concurring in the judgment, in which THOMAS, J., joined, and in which BARRETT, J., joined as to Parts I–A, I–B, and II.

***Concepcion v. United States*, 597 U.S. ____ (2022)**

Fair Sentencing Act

Full Decision:
https://www.supremecourt.gov/opinions/21pdf/20-1650_3dq3.pdf

The First Step Act [of 2018] authorizes district courts to reduce the prison sentences of defendants convicted of certain offenses involving crack cocaine. The Act allows a district court to impose a reduced sentence "as if " the revised penalties for crack cocaine enacted in the Fair Sentencing Act of 2010 were in effect at the time the offense was committed. The question in this case is whether a district court adjudicating a motion under the First Step Act may consider other intervening changes of law (such as changes to the Sentencing Guidelines) or changes of fact (such as behavior in prison) in adjudicating a First Step Act motion.

The Court holds that they may. It is only when Congress or the Constitution limits the scope of information that a district court may consider in deciding

whether, and to what extent, to modify a sentence, that a district court's discretion to consider information is restrained. Nothing in the First Step Act contains such a limitation. Because district courts are always obligated to consider nonfrivolous arguments presented by the parties, the First Step Act requires district courts to consider intervening changes when parties raise them. By its terms, however, the First Step Act does not compel courts to exercise their discretion to reduce any sentence based on those arguments.

SOTOMAYOR, J., delivered the opinion of the Court, in which THOMAS, BREYER, KAGAN, and GORSUCH, JJ., joined. KAVANAUGH, J., filed a dissenting opinion, in which ROBERTS, C. J., and ALITO and BARRETT, JJ., joined.

***Oklahoma v. Castro-Huerta*, 597 U.S. ____ (2022)**

Jurisdiction

Full Decision:
https://www.supremecourt.gov/opinions/21pdf/21-429_8o6a.pdf

"[T]he Federal Government and the State have concurrent jurisdiction to prosecute crimes committed by non-Indians against Indians in Indian country."

KAVANAUGH, J., delivered the opinion of the Court, in which ROBERTS, C. J., and THOMAS, ALITO, and BARRETT, JJ., joined. GORSUCH, J., filed a dissenting opinion, in which BREYER, SOTOMAYOR, and KAGAN, JJ., joined.