

## Appellate Court Decisions –Week of 7/18/22

*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

*Nothing to report.*

### Third Appellate District of Ohio

*Nothing to report.*

### Fourth Appellate District of Ohio

*Nothing to report.*

### Fifth Appellate District of Ohio

#### **State v. Monaco, 2022-Ohio-2353**

Postconviction petition; findings of fact and conclusions of law

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2022/2022-Ohio-2353.pdf>

Trial court “erred as a matter of law in failing to support its decision [to deny appellant’s Petition to Vacate and Set Aside Sentence] with findings of fact and conclusions of law \* \* \* R.C. 2953.21(H) states, ‘if the court does not find grounds for granting relief, it shall make and file findings of fact and conclusions of law and shall enter judgment denying relief on the petition.’ If a court fails to do so, the decision is subject to reversal on appeal.”

#### **State v. Moore, 2022-Ohio-2349**

Insufficient evidence; GSI

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2022/2022-Ohio-2349.pdf>

The state presented insufficient evidence to support appellant’s conviction for GSI; the evidence presented was insufficient to prove force or threat of force,

and the state failed to request an amendment of the charge to sexual imposition or request a jury instruction for that lesser-included offense.

### **Sixth Appellate District of Ohio**

*Nothing to report.*

### **Seventh Appellate District of Ohio**

*Nothing to report.*

### **Eighth Appellate District of Ohio**

#### **State v. Morton, 2022-Ohio-2358**

Postconviction petition; findings of fact and conclusions of law

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2022/2022-Ohio-2358.pdf>

Trial court “erred in denying [appellant’s] petition for postconviction relief without issuing findings of fact and conclusions of law. See R.C. 2953.21(D), (H).” And appellant’s petition filed on the 365<sup>th</sup> day after the transcripts in the direct appeal were filed was timely even though it “was docketed under the wrong case number in the wrong court.”

#### **State v. Beckwith, 2022-Ohio-2362**

Restitution

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2022/2022-Ohio-2362.pdf>

Trial court committed plain error when it ordered appellant to pay restitution to the sheriff’s office for a damaged ankle monitor and to the prosecutor’s office for the cost of his extradition; neither governmental agency was a victim of appellant’s crime of menacing by stalking. And pursuant to R.C. 2949.14, indigent felony offenders cannot be ordered to pay the extradition costs.

#### **State v. Freeman, 2022-Ohio-2364**

Return of property

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2022/2022-Ohio-2364.pdf>

After charge of felonious assault was dismissed, trial court erred in denying appellant's motion to return the firearm she had used to defend another from an assault. "[T]rial court possesses continuing jurisdiction to resolve issues with the retention of seized property following a dismissal of the indictment for which the property was seized."

***State v. McNear, 2022-Ohio-2365***

Sentencing; defendant not present

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2022/2022-Ohio-2365.pdf>

Trial court in sentencing appellant to lifetime driver's license suspensions without appellant being present; case remanded for limited purpose of resentencing him and correcting journal entries which contained clerical errors.

***State v. Lewis, 2022-Ohio-2357***

Juvenile bindover

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2022/2022-Ohio-2357.pdf>

In multiple convictions, adult court lacked jurisdiction over the offense of improperly-discharging-firearm-into-habitation count where the juvenile "court had previously dismissed an identical charge after finding that there was no probable cause to believe [appellant] committed the offense." *See State v. Smith*, Slip Opinion No. 2022-Ohio-274.

***State v. Owens, 2022-Ohio-2415***

Consecutive sentences

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2022/2022-Ohio-2415.pdf>

Consecutive sentences affirmed where trial court made the necessary statutory findings pursuant to R.C. 2929.14(C)(4) at the sentencing hearing. However, as court failed to incorporate those findings into the sentencing entry, case remanded for court to issue a nunc pro tunc entry, incorporating those findings into the entry.

***State v. Rentas, 2022-Ohio-2412***

Speedy trial

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2022/2022-Ohio-2412.pdf>

In state's appeal of dismissal of 1981 indictment for rape and GSI, trial court did not err in dismissing case for violation of appellant's constitutional speedy trial rights. Under the four factors in *Barker v. Wingo*, 407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972), the 39-year delay was "presumptively prejudicial which triggered the three other *Barker* factors. The next factor, reason for the delay, was "at a minimum neglig[ence by the state]" that weighed less heavily, but still against the state. As to the third *Barker* factor, appellant "asserted his speedy trial rights in a timely fashion; this factor weigh[ed] in his favor." Finally, as to the fourth *Barker* factor, appellant "made an affirmative showing of prejudice. As the trial court found, the amount of evidence that was originally available at the time of indictment that is now either missing or destroyed has prejudiced [appellant]."

### Ninth Appellate District of Ohio

*Nothing to report.*

### Tenth Appellate District of Ohio

*Nothing to report.*

### Eleventh Appellate District of Ohio

*Nothing to report.*

### Twelfth Appellate District of Ohio

*Nothing to report.*

### Supreme Court of Ohio

***State v. Brooks, 2022-Ohio-2478***

Self-defense amendment; retroactivity

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2022/2022-Ohio-2478.pdf>

"2018 Am.Sub.H.B. No. 228 \* \* \* [which shifted the burden of proof on self-defense to the prosecution] must be applied to all pending and new trials that occur on or after its effective date. Further, we hold that this application violates

**neither Ohio’s Retroactivity Clause nor the United States Constitution’s Ex Post Facto Clause. Accordingly, H.B. 228 applies to all trials conducted on or after its effective date of March 28, 2019, irrespective of when the underlying alleged criminal conduct occurred.”**

**Sixth Circuit Court of Appeals**

*Nothing to report.*

**Supreme Court of the United States**

*Nothing to report.*