

Appellate Court Decisions –Week of 7/5/22

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

First Appellate District of Ohio

State v. Sulken, C-210577

Sufficiency; zoning violation

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

State did not present sufficient evidence to support appellant’s conviction for a zoning violation where “riding noisy dirt bikes on the property was an ‘accessory use’ that violated the Delhi Zoning Resolution;” such resolution only regulated “equipment and structures, not actions or activities.”

Second Appellate District of Ohio

State v. Graf, 2022-Ohio-2169

Fair trial/judicial bias

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2022/2022-Ohio-2169.pdf>

Trial court erred when it found appellant’s “trial testimony not credible based on its observation of her out of court on prior occasions. The trial court erred in relying on these other incidents to assess her credibility. The error violated [appellant’s] due-process right to a fair trial.” Therefore, the court erred when it denied her motion for a new trial, as appellant “properly raised the issue of judicial bias and sought a new trial under Crim.R. 33.”

State v. Keller, 2022-Ohio-2164

Sentence

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2022/2022-Ohio-2164.pdf>

In multiple convictions for failure to confine a dog, trial court erred “by journalizing a sentence that conflicts with the sentence orally imposed at her sentencing hearing.” Case remanded for resentencing.

Third Appellate District of Ohio

State v. Haley, 2022-Ohio-2188

Suppression

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/3/2022/2022-Ohio-2188.pdf>

In state's appeal, trial court did not err in granting appellee's motion to suppress; the police officer "did not have a reasonable articulable suspicion to prolong [appellee's] detention to await the arrival of the canine unit. Nothing in the record suggests that the passenger had any significant history of drug activity that would lead to a reasonable articulable suspicion that illegal activity was occurring at the time of the traffic stop in this case. . . [i]n the absence of a reasonable articulable suspicion of criminal activity, the police impermissibly prolonged [appellee's] detention to accommodate the arrival of the canine unit."

Fourth Appellate District of Ohio

Nothing to report.

Fifth Appellate District of Ohio

State v. Davis, 2022-Ohio-2123

Sentence

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2022/2022-Ohio-2123.pdf>

Trial court erred when, after a community control violation, it sentenced appellant to six months in prison. " '[T]he court's conclusion that Appellant failed to comply with his supervision terms, drawn from an unspecified, unproven allegation by his supervising officer, and basing its decision to impose a prison sanction on the same, is clearly erroneous.' Appellant had no notice of such allegation that he had failed to enter into domestic violence counseling and no notice to defend against the same. Moreover, such a violation has not been established or proven by substantial evidence."

Sixth Appellate District of Ohio

Nothing to report.

Seventh Appellate District of Ohio

Nothing to report.

Eighth Appellate District of Ohio

State v. Jones, 2022-Ohio-2133

Consecutive sentences

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2022/2022-Ohio-2133.pdf>

At the sentencing hearing, trial court made the required findings under R.C. 2929.14(C)(4) to justify the imposition of consecutive sentences; “court’s statements on the record clearly indicate that the trial court considered proportionality with regard to both the seriousness of appellant’s conduct and the danger he posed to the public.” However, court failed to include all those findings in the sentencing entry; case remanded to the trial court for a nunc pro tunc entry incorporating those findings.

State v. Wiley, 2022-Ohio-2131

Jury instructions

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2022/2022-Ohio-2131.pdf>

Trial committed plain error when it failed to advise the jury that they could not convict appellant of both murder and the inferior degree offense of voluntary manslaughter for the same killing. “[T]he jury must find a defendant guilty of voluntary manslaughter rather than murder if the prosecution has proven, beyond a reasonable doubt, that the defendant knowingly caused the victim’s death, and if the defendant has established by a preponderance of the evidence the existence of one or both of the mitigating circumstances.’ *Rhodes* [64 Ohio St.3d 613, 617, 590 N.E.2d 261 (1992)] at *id.* Thus, as this court has stated, ‘if the trier of fact determines that the defendant is guilty of voluntary manslaughter, it must enter a verdict of not guilty on any murder charges.’ *State v. Amey, 2018-Ohio-4207, 120 N.E.3d 503, ¶ 12 (8th Dist.).*”

Trial court also committed plain error when it failed to instruct the jury on the inferior degree offense of aggravated assault with respect to the felonious assault count; and also with respect to the felony murder count, if the jury found that appellant had committed aggravated assault which resulted in the victim’s death, it should find him guilty of involuntary manslaughter. Case remanded for a new trial for the murder, felonious assault, and voluntary manslaughter

counts. Case also remanded for the trial court to properly calculate jail-time credit.

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

Nothing to report.

Sixth Circuit Court of Appeals

Nothing to report.

Supreme Court of the United States

Nothing to report.