Appellate Court Decisions –Week of 5/8/23

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. Thornton*, 2023-Ohio-1404**

Suppression; *Terry* stop

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2023/2023-Ohio-1404.pdf

Trial court erred in denying appellant's motion to suppress where the police "officers lacked particularized suspicion of criminal activity to justify an investigatory stop."

Third Appellate District of Ohio

Nothing to report.

Fourth Appellate District of Ohio

***State v. Bertram*, 2023-Ohio-1406**

Sufficiency; rape and GSI

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/4/2023/2023-Ohio-1406.pdf

State failed to present sufficient evidence to sustain appellant's conviction for rape and GSI where "there was insufficient evidence that he used 'force or threat of force' to compel the victim to engage in sexual conduct or contact."

Fifth Appellate District of Ohio

***State v. Corn*, 2023-Ohio-1407**

Speedy trial

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2023/2023-Ohio-1407.pdf

In state's appeal, trial court did not err in dismissing the indictment on speedy trial grounds pursuant to R.C. 2941.401 where "the ODRC failed to promptly inform [appellant] of the indictment and [appellant] substantially complied to provide the State with Notice of Availability in August 2020."

***State v. Stotts*, 2023-Ohio-1411**

Consecutive sentences

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2023/2023-Ohio-1411.pdf

"Because [the]trial court did not make the necessary findings [pursuant to R.C. 2929.14(C)(4)] during the sentencing hearing and incorporate them into its sentencing entry, [COA] find[s] the imposition of consecutive sentences for Trafficking in Drugs in violation of R.C. 2925.03(A)(2) [and] Improper Handling of a Firearm in a Motor Vehicle in violation of R.C. 2923.16(B) was error." Case remanded for resentencing.

Sixth Appellate District of Ohio

Nothing to report.

Seventh Appellate District of Ohio

***State v. Keys*, 2023-Ohio-1454**

Suppression; *Miranda*

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/7/2023/2023-Ohio-1454.pdf

Trial court erred when it failed to suppress appellant's statements to police. "Since [a]ppellant's statements concerning a firearm were made in response to an unlawful interrogation in violation of *Miranda*, [a]ppellant's statements about the location of the gun, that he had fired a gun that day,

and the gun itself, were obtained illegally and are therefore fruit of the poisonous tree."

Eighth Appellate District of Ohio

***State v. Johnson*, 2023-Ohio-1367**

Sentencing; procedural error on merged counts

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2023/2023-Ohio-1367.pdf

In convictions for various offenses which all merged, "trial court made a procedural error in sentencing [appellant]her on the voluntary-manslaughter charge because the state had elected to proceed to sentencing on the involuntary-manslaughter charge." Case remanded for resentencing.

Ninth Appellate District of Ohio

***State v. Ellis*, 2023-Ohio-1464**

Restitution

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/9/2023/2023-Ohio-1464.pdf

Trial court erred in failing to impose restitution at the sentencing hearing, although it was included in the sentencing hearing; case remanded for resentencing to impose restitution and determine the amount of restitution.

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. Bertram*, 2023-Ohio-1456**

Sufficiency; burglary

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2023/2023-Ohio-1456.pdf

" *Sufficiency of the evidence—Burglary—R.C. 2911.12(A)—To prove that a defendant trespassed by stealth or deception in a burglary case, the state must prove that the defendant actively avoided discovery or used deceptive conduct to gain entry into the structure.*

In the case at bar, "the evidence utterly failed to establish that during his trespass, [appellant] engaged in any secret, sly, or clandestine conduct. [Appellant] did not act to avoid his discovery or to reduce the chance of his being noticed. Nor did [appellant] deceive, mislead, lie to, or trick Huff into granting him entry into the garage."

Sixth Circuit Court of Appeals

Nothing to report.

Supreme Court of the United States

Nothing to report.