Appellate Court Decisions –Week of 6/26/23

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

First Appellate District of Ohio

***State v. Kamara*, C-220614**

Postrelease control

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

Trial court erred in "improperly determined that her conviction for aggravated vehicular assault was an offense of violence, and that postrelease control was mandatory." Case remanded for imposition of postrelease control as discretionary.

***State v. Jackson*, C-220458**

Sentencing; allocution/PRC

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

"[T]rial court erred in "sentencing [appellant] when the court failed to address him personally and ask whether he wished to exercise his right of allocution and failed to properly notify him of postrelease control." Case remanded for resentencing.

Second Appellate District of Ohio

***State v. Ingram*, 2023-Ohio-1998**

Sentencing; consecutive/jail-time credit

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2023/2023-Ohio-1998.pdf

Trial court erred in failing to notify appellant at sentencing how many days of jail-time credit he should receive. Court also erred in sentencing him to consecutive sentences where the court's findings under R.C. 2929.14(C)(4)(b) to support those consecutive sentences were not supported by the record. For appellant's convictions for two underlying felonies, improper handling of a firearm in a motor vehicle and RSP, "there was no statutory requirement for them to be served consecutively to one another." The two offenses were not committed as part of a course of

conduct, as the court found to support the consecutive sentences, because they "occurred approximately a year apart, in separate locations, and involved different firearms." Case remanded for resentencing.

Third Appellate District of Ohio

Nothing to report.

Fourth Appellate District of Ohio

Nothing to report.

Fifth Appellate District of Ohio

Nothing to report.

Sixth Appellate District of Ohio

Nothing to report.

Seventh Appellate District of Ohio

Nothing to report.

Eighth Appellate District of Ohio

***State v. Hindman*, 2023-Ohio-1974**

Guilty plea

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2023/2023-Ohio-1974.pdf

In convictions for sexual battery and endangering children, appellant's guilty plea was not knowingly, intelligently, nor voluntarily made where the trial court "failed to advise [appellant] of the maximum penalty involved given that it failed to advise him that his plea would result in him being a Tier III sex offender and of the accompanying registration requirements."

Ninth Appellate District of Ohio

Nothing to report.

Tenth Appellate District of Ohio

Nothing to report.

Eleventh Appellate District of Ohio

***In re O.E.*, 2023-Ohio-1946**

Suppression; confession - juvenile

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2023/2023-Ohio-1946.pdf

In adjudication for rape, trial court erred in denying appellant's motion to suppress his confession. "Consideration of the totality of the circumstances supports the conclusion that [appellant] was in custody and *Miranda* warnings were necessary." The interview was conducted at the police station in a closed room; appellant was only 13 years old; appellant's mother was not permitted in the interview room; appellant had "high functioning" autism; and appellant was alone in the interview room with an armed, large police officer. Finally, officer's testimony that the interview door was open, and that he told appellant he was free to leave at any time appears no where on the videotaped interview.

***State v. Riebe*, 2023-Ohio-1948**

State's appeal; motion for leave

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2023/2023-Ohio-1948.pdf

In state's appeal, COA dismisses appeal for state's failure to request leave to appeal. R.C. 2945.67 governs when the state may appeal as of right and when the state must request leave to appeal. "One judgment sentences appellee after he entered a plea of no contest to two misdemeanor OVI charges, and the other judgment grants appellee's request for intervention in lieu of conviction on the charges of improperly handling firearms in a motor vehicle and endangering children after appellee entered a plea of guilty * * * neither judgment qualifies as one which can be appealed by the state as a matter of right. Rather, they fall under the category of 'any other decision' for which leave is required."

Twelfth Appellate District of Ohio

***State v. Griffin*, 2023-Ohio-1938**

Community control; jail-time credit

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/12/2023/2023-Ohio-1938.pdf

Trial court erred in miscalculating appellant's jail-time credit in four separate cases. Because the community control sentences for Case One and Two were ordered to be served concurrently (but the trial court was permitted to run the reserved prison terms consecutively after appellant violated his community control), an additional 265 days were omitted from appellant's jail-time credit. Therefore, case remanded to apply 295 days to the eight-month sentence in Case One; 265 days to the 8-month-sentence in Case Two; 13 days to the 18-month sentence in Case Three; and 11 days to either Case Three or the 12-month sentence in Case Four.

Supreme Court of Ohio

Nothing to report.

Sixth Circuit Court of Appeals

***United State v. Morgan*, No. 22-1445**

Suppression; search of vehicle and person

Full Decision:
http://www.opn.ca6.uscourts.gov/opinions.pdf/23a0137p-06.pdf

District court erred in denying appellant's motion to suppress. "Officer * * * violated the Fourth Amendment when he seized and eventually searched [appellant] by unreasonably opening his car door without warning in the absence of any exigency." Government's argument that officer's search and seizure was permitted under the "community caretaking" function rejected; "Concerns about the health of a driver by themselves generally do not permit the unannounced opening of a car door. The scope of any search or seizure must reasonably match its function, and concerns about the health of a driver generally do not stand in the way of announcing oneself or otherwise trying to alert the driver before suddenly opening a car door."

Supreme Court of the United States

***Counterman v. Colorado*, 600 U.S. ____ (2023)**

Fourth Amendment; warrantless home entry

Full Decision:
https://www.supremecourt.gov/opinions/22pdf/22-138_43j7.pdf

Held: The State must prove in true-threats cases that the defendant had some subjective understanding of his statements' threatening nature, but the First Amendment requires no more demanding a showing than recklessness. Pp. 4–14.

(a) The First Amendment permits restrictions upon the content of speech in a few limited areas. Among these historic and traditional categories of unprotected expression is true threats. True threats are "serious expression[s]" conveying that a speaker means to "commit an act of unlawful violence." *Virginia v. Black*, 538 U. S. 343, 359. The existence of a threat depends not on "the mental state of the author," but on "what the statement conveys" to the person on the receiving end. *Elonis v. United States*, 575 U. S. 723, 733. Yet the First Amendment may still demand a subjective mental-state requirement shielding some true threats from liability. That is because bans on speech have the potential to chill, or deter, speech outside their boundaries. An important tool to prevent that outcome is to condition liability on the State's showing of a culpable mental state. *Speiser v. Randall*, 357 U. S. 513, 526. That kind of "strategic protection" features in this Court's precedent concerning the most prominent categories of unprotected speech. *Gertz v. Robert Welch, Inc.*, 418 U. S. 323, 342. With regard to defamation, a public figure cannot recover for the injury such a statement causes unless the speaker acted with "knowledge that it was false or with reckless disregard of whether it was false or not." *New York Times Co. v. Sullivan*, 376 U. S. 254, 280. The same idea arises in the law respecting obscenity and incitement to unlawful conduct. See, e.g., Hess v. Indiana, 414 U. S. 105, 109; *Hamling v. United States*, 418 U. S. 87, 122–123. And that same reasoning counsels in favor of requiring a subjective element in a true-threats case. A speaker's fear of mistaking whether a statement is a threat, fear of the legal system getting that judgment wrong, and fear of incurring legal costs all may lead a speaker to swallow words that are in fact not true threats. Insistence on a subjective element in unprotected-speech cases, no doubt, has a cost: Even as it lessens chill of protected speech, it makes prosecution of otherwise proscribable, and often dangerous, communications harder. But a subjective standard is still required for true threats, lest prosecutions chill too much protected, non-threatening expression. Pp. 5–10.

(b) In this context, a recklessness standard—i.e., a showing that a person "consciously disregard[ed] a substantial [and unjustifiable] risk that [his] conduct will cause harm to another," *Voisine v. United States*, 579 U. S. 686, 691—is the appropriate mens rea. Requiring purpose or knowledge would make it harder for States to counter true threats—with diminished returns for protected expression. Using a recklessness standard also fits with this Court's defamation decisions, which adopted a recklessness rule more than a half-century ago. The Court sees no reason to offer greater insulation to threats than to defamation. While this Court's incitement decisions demand more, the reason for that demand—the need to protect from legal sanction the political advocacy a hair's-breadth away from incitement—is not present here. For true threats, recklessness strikes the right balance, offering "enough 'breathing space' for protected speech," without sacrificing too many of the benefits of enforcing laws against true threats. *Elonis*, 575 U. S., at 748. Pp. 10–14.

(c) The State prosecuted Counterman in accordance with an objective standard and did not have to show any awareness on Counterman's part of his statements' threatening character. That is a violation of the First Amendment. P. 14.

497 P. 3d 1039, vacated and remanded.

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

***Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U.S. ____ (2023)**

Affirmative action

Full Decision:
https://www.supremecourt.gov/opinions/22pdf/20-1199_hgdj.pdf

Held: Harvard's and UNC's admissions programs violate the Equal Protection Clause of the Fourteenth Amendment. Pp. 6–40.

No. 20–1199, 980 F. 3d 157; No. 21–707, 567 F. Supp. 3d 580, reversed.

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

which THOMAS, J., joined. KAVANAUGH, J., filed a concurring opinion. SOTOMAYOR, J., filed a dissenting opinion, in which KAGAN, J., joined, and in which JACKSON, J., joined as it applies to No. 21–707. JACKSON, J., filed a dissenting opinion in No. 21–707, in which SOTOMAYOR and KAGAN, JJ., joined. JACKSON, J., took no part in the consideration or decision of the case in No. 20–1199.