

## Appellate Court Decisions –Week of 7/17/23

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

### First Appellate District of Ohio

#### **State v. Morales, C-220355**

No-contact order

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

**Trial court erred in imposing a no-contact order in addition to a 30-month prison sentence. The no-contact order is a community control sanction , and the trial court cannot impose both a prison term and a community control sanction for the same offense. State v. Anderson, 143 Ohio St.3d 173, 2015-Ohio-2089, 35 N.E.3d 512.**

#### **State v. Andrews, C-220589**

Sentencing; mandatory v. non-mandatory

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

**In conviction for fourth-degree felony OVI, “[t]rial court erred as a matter of law when it did not articulate which portion of his sentence was mandatory, contrary to the sentencing requirements under R.C. 4511.19(A)(1)(a). Because the mandatory and non-mandatory sentences were not distinguished from each other in accordance with the relevant statutes \* \* \* \*” Case remanded for resentencing to “articulate the mandatory and non-mandatory components.”**

### Second Appellate District of Ohio

*Nothing to report.*

### Third Appellate District of Ohio

#### **State v. Gibson, 2023-Ohio-2202**

Sufficiency; disorderly conduct

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/3/2023/2023-Ohio-2202.pdf>

Trial court erred in denying appellant’s Crim.R. 29 motion for acquittal where the state failed to present sufficient evidence that appellant “insulted [his neighbor] with constitutionally unprotected ‘fighting words.’” Calling his neighbor a “redheaded bitch” did not constitute “‘fighting words’ sufficient to result in [appellant’s] conviction for disorderly conduct in violation of R.C. 2917.11(A)(3).”

#### Fourth Appellate District of Ohio

*Nothing to report.*

#### Fifth Appellate District of Ohio

**State v. Parker, 2023-Ohio-2127**

Second Amendment; dismissal of weapons offenses

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2023/2023-Ohio-2127.pdf>

In state’s appeal, trial court did not err in dismissing complaints for WUD based on appellant being a “fugitive from justice” because a warrant had been issued from another county, and improperly handling firearms in a motor vehicle. SCOTUS’s decision in *New York State Rifle & Pistol Assn., Inc. v. Bruen*, 597 U.S. \_\_\_\_, 142 S.Ct. 2111, 213 L.Ed.2d 387 (2022), “shifts the burden of proof and alters the court’s standard of review for determining the constitutionality of statutes regulating firearms. The state now bears the burden of proof and is required to ‘justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation.’ *Id.* at 2130.” The state “presented no case authority or historical evidence addressing persons merely accused of committing a crime or having a warrant \* \* \* [nor] offer factual, historical, or case authority support for his premise that appellee is not a ‘law-abiding citizen’ such that she may be stripped of any degree of Second Amendment protection.” Therefore, “the trial court did not err in concluding appellant failed to meet its new burden under *Bruen* and did not err in granting appellee’s motion to dismiss.”

#### Sixth Appellate District of Ohio

*Nothing to report.*

## Seventh Appellate District of Ohio

*Nothing to report.*

## Eighth Appellate District of Ohio

*Nothing to report.*

## Ninth Appellate District of Ohio

### **State v. Castagnola, 2023-Ohio-2218**

Forfeiture

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/9/2023/2023-Ohio-2218.pdf>

**Trial court erred in denying appellant’s motion for the return of his automobile “without having any evidence before it as to what became of the car.” Case remanded for court to receive evidence and determine if appellant is entitled to relief.**

### **State v. Ford, 2023-Ohio-2220**

Sentencing; solitary confinement

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/9/2023/2023-Ohio-2220.pdf>

**In convictions for aggravated murder and attempted aggravated murder in which appellant received a life sentence without the possibility of parole, the trial court erred in also sentencing appellant to solitary confinement every year on six separate days. “[T]he current sentencing statutes do not contain a provision authorizing trial courts to impose solitary confinement as punishment.”**

## Tenth Appellate District of Ohio

### **State ex rel. Barber v. Hoying, 2023-Ohio-2204**

Writ of mandamus; parole violation

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/10/2023/2023-Ohio-2204.pdf>

Relator, an inmate at the Ohio Reformatory for Women filed a writ of mandamus against respondents, members of the parole board, requesting the COA to order “respondents to hold a new postrelease control violation hearing and find relator not guilty of the alleged violation.” The alleged violation for which relator was found guilty was that she possessed a firearm. However, there was insufficient evidence presented to support a finding that relator ever actually or constructively possessed the firearm clipped to the driver’s side door in a car stopped in which she was only a passenger and did not own the vehicle. Also, the driver was the registered owner of the firearm and testified that she never disclosed to relator that she possessed the firearm. Finally, there was no evidence presented that relator would have been able to see the firearm from her position in the passenger seat. Writ granted, “ordering respondents to vacate the order finding relator violated the terms of her postrelease control \* \* \* \*.”

### Eleventh Appellate District of Ohio

*Nothing to report.*

### Twelfth Appellate District of Ohio

**State v. Rasnick, 2023-Ohio-2434**

Sentence; minor misdemeanor

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/12/2023/2023-Ohio-2434.pdf>

In conviction for marked lanes violation, the trial court erred in ordering appellant to retest for a driver’s license at the Ohio BMV as part of his sentence. “A trial court lacks authority to impose a jail term, community control sanctions, or community residential sanctions for a minor misdemeanor. See R.C. 2929.24 thru 2929.26. Moreover, there is no legislative authority for ordering an offender convicted of a minor misdemeanor offense to retest for a driver’s license at the BMV. R.C. 2901.02(G)(2).”

### Supreme Court of Ohio

*Nothing to report.*

**Sixth Circuit Court of Appeals**

*Nothing to report*

**Supreme Court of the United States**

*Nothing to report*