

Appellate Court Decisions –Week of 5/20/24

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

First Appellate District of Ohio

State v. Mathews, 2024-Ohio-1863

Consecutive sentences/Reagan Tokes

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/1/2024/2024-Ohio-1863.pdf>

Trial court erred in imposing consecutive sentences when it failed to make the proportionality findings required by R.C. 2929.14(C)(4); it also erred in failing to provide the require notifications to appellant pursuant to the Reagan Tokes Act, R.C. 2929.19(B)(2)(c), at the sentencing hearing and in the sentencing entry. Case remanded for resentencing.

State v. Tarrance, C-230475

Sufficiency; violating a protection order

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

“[T]rial court committed plain error by admitting a copy of the protection order that was not certified or testified to as correct by a witness who compared the copy with the original order * * * The copy was not authenticated under Evid.R. 901, Evid.R. 902, or Evid.R. 1005.” And “[b]ecause the state did not present a certified copy of the protection order, it failed to prove a prima facie element of the offense * * * [t]herefore, the evidence was insufficient to support the conviction * * *. Conviction reversed, and appellant discharged.

State v. Storms, C-230593

CCW; *Bruen*/Second Amendment

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

Trial court erred in denying appellant’s motion to dismiss the indictment charging him with CCW because the statute violated his Second Amendment rights without applying the *Bruen* decision. Therefore, the COA remanded the case “to the trial court determine whether Ohio’s

firearm regulation under the CCW statute is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms.”

West v. Cincinnati, C-230469

Injunction; Cincinnati Municipal Code 915

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

Trial court did not err in determining that CMC 915-3(b) “is preempted by R.C. 9.68, Ohio’s blanket statute limiting the power of local governments to enact firearm regulations * * * [i]n sum, by specifically establishing that the negligent storage of firearms constitutes a “substantial risk” to children in a way state and federal law do not, CMC 915-3(b) is preempted and nullified by R.C. 9.68(A). However, CMC 915-3(a), which substantially aligns with the state’s child endangerment statute and does not independently relate to firearms in any way, and CMC 915-3(c), which merely provides exemptions to criminal liability under CMC 915-3(a), are not preempted by R.C. 9.68. Additionally, we see no conflict concerning CMC 915-3(d) through (g), which address the penalty for violating CMC 915-3, clarify that the section does not prohibit personal carry and control of a firearm, specify that unlawfully furnishing a firearm to a child is a different crime that would be prosecuted under state law, and provide for seizure and forfeiture of ‘[a]ny instrumentality’ used in violation of the section.” Finally, trial court erred in “enjoining CMC 915-1 and CMC 915-5 * * *.” Trial court’s injunction order modified “to enjoin only CMC 915-3(b).”

Second Appellate District of Ohio

State v. Conard, 2024-Ohio-1906

Right to counsel

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2024/2024-Ohio-1906.pdf>

Trial court erred in accepting appellant’s plea of guilty because appellant “did not knowingly, intelligently, and voluntarily waived (sic) his right to counsel prior to entering his plea.” The trial court’s discussion with appellant about the waiver of counsel was inadequate: “there was no discussion of the potential penalties [appellant] faced (including incarceration), possible defenses to the charges and circumstances in mitigation, and the dangers and disadvantages of self-representation prior to [appellant’s] waiver of counsel * * * [and] it is unclear whether [appellant] understood that an attorney could be appointed for him.”

Conviction affirmed, but sentence modified to remove jail term (which appellant had already served because COA refused to expedite the appeal.).

Third Appellate District of Ohio

Nothing to report.

Fourth Appellate District of Ohio

Nothing to report.

Fifth Appellate District of Ohio

State v. Hicks, 2024-Ohio-1939

Guilty plea

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2024/2024-Ohio-1939.pdf>

Trial court erred in accepting appellant's plea of guilty because such 'plea was not knowingly made.' Neither the trial court nor appellant's counsel ever advised him that by waiving the presentence investigation, he was not eligible for probation. Therefore, the court failed to substantially comply with Crim.R. 11(C).

Sixth Appellate District of Ohio

Nothing to report.

Seventh Appellate District of Ohio

Nothing to report.

Eighth Appellate District of Ohio

State v. Carnegie, 2024-Ohio-1892

Hearsay

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2024/2024-Ohio-1892.pdf>

In conviction for domestic violence, trial court erred in allowing the admission of a statement by appellant that were contained in medical records of the alleged victim, as it was not admissible as a party admission. The witness who testified about the statement “never met nor spoke to [appellant]; therefore she did not verify that he made the statement, nor could she provide proof that he made the statement or adopted it as his own, a prerequisite for admissibility under the rule. It was therefore inadmissible, and the trial court was required to exclude it.” And appellant was prejudiced by the statement. Therefore, conviction overturned, and case remanded for a new trial.

Ninth Appellate District of Ohio

Nothing to report.

Tenth Appellate District of Ohio

Nothing to report.

Eleventh Appellate District of Ohio

State v. Ballish, 2024-Ohio-1855

Community control conditions

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2024/2024-Ohio-1855.pdf>

In conviction for theft, trial court erred in imposing community control conditions on appellant that she not consume alcohol, not enter bars, not possess or use medical marijuana, and submit to random drug and alcohol testing. “[T]he record [was] devoid of any facts indicating that alcohol or drugs contributed to the theft offense of which [appellant] was convicted in the instant case.”

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.