Appellate Court Decisions –Week of 6/10/24

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

Nothing to report.

Third Appellate District of Ohio

***State v. Eller*, 2024-Ohio-2121**

Consecutive sentences; jail-time credit

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/3/2024/2024-Ohio-2121.pdf

In revocation of community control in two cases, trial court erred in imposing consecutive sentences because "no notice was given that the sentences could be ordered to be served consecutively at the time the prison terms were reserved." The sentences had to be served concurrently; therefore, "the amount of jail time credit must be applied against all terms to the extent that the jail time was served in both cases." *See State v. Fugate*, 117 Ohio St.3d 261, 2008-Ohio-856, 883 N.E.2d 440.

Fourth Appellate District of Ohio

Nothing to report.

Fifth Appellate District of Ohio

***State v. Striblin*, 2024-Ohio-2142**

Illegal possession of a firearm in a liquor permit premises/constitutionality/*Bruen*

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2024/2024-Ohio-2142.pdf

In conviction for illegal possession of a firearm in a liquor permit premises, COA finds that appellant's conduct of possessing the firearm was "covered by the text of the Second Amendment and thus presumptively protected by the Second Amendment * * * [and] the state did not meet its burden to show this regulation is consistent with the historical tradition of firearms regulation." Appellant's constitutional challenge against R.C. 2923.121(A) upheld, and his conviction reversed.

Sixth Appellate District of Ohio

***State v. Patterson*, 2024-Ohio-2198**

Costs

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2024/2024-Ohio-2198.pdf

In conviction failure to comply and imposition of 18-month prison sentence, trial court erred when it included the costs of supervision and the costs of confinement in the sentencing entry because it had failed to impose such costs at the sentencing hearing. Also, as appellant was sent to prison, there would be no costs of supervision. Finally, the trial court failed to address the court-appointed attorney fees at the sentencing hearing but assessed them in the sentencing entry "without making findings on the record and without specifying 'an amount that the person reasonably can be expected to pay.' *See* R.C. 2941.51(D)." Judgment imposing costs of supervision and confinement vacated, as well as the court-appointed counsel fees.

Seventh Appellate District of Ohio

***State v. Gaito*, 2024-Ohio-2132**

Sufficiency; misconduct at an emergency

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/7/2024/2024-Ohio-2132.pdf

Appellant's conviction for misconduct at an emergency was not supported by sufficient evidence. Although there was sufficient evidence "presented to establish the existence of an emergency (a fire), the state failed to show that appellant "hampered the firefighters from extinguishing the fire." Although appellant made comments to the firefighters and used profanity, "[h]is words did not rise to the level of 'fighting words' and did not match

the conduct by the defendants in the other cases where courts upheld convictions for misconduct in an emergency under R.C. 2917.13(A)(1) and (C).”

***State v. Knight*, 2024-Ohio-2176**

Cumulative error

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/7/2024/2024-Ohio-2176.pdf

In convictions for, inter alia, aggravated murder, “the cumulative nature of errors in this unique case infringed on [a]ppellant’s fundamental right to a fair trial.” After it was discovered that there was possible juror misconduct, court erred by failing to allow defense counsel time to research and prepare for jury voir dire. Court also erred by denying appellant’s motion to dismiss after it was discovered that the prosecution failed to disclose favorable DNA evidence for three years, as well as the fact that a prosecutor “handling this case [was] disqualified and removed * * * from [a]ppellant’s other criminal case * * * [t]he lengthy delay in disclosing the favorable evidence in this case, the questionable tactics used by the same assistant prosecutor in another of [a]ppellant’s cases, and the trial court’s leniency to the State in [a]ppellant’s other case for similar conduct, lead us to conclude that more than a continuance in this case was warranted.” These numerous errors violated appellant’s right to a fair trial. Case remanded for a new trial.

Eighth Appellate District of Ohio

***State v. Green*, 2024-Ohio-2174**

Guilty plea

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2024/2024-Ohio-2174.pdf

Appellant’s guilty “plea was invalid based on the inadvertent omission during the change-of-plea colloquy of an advisement regarding [appellant’s] Fifth Amendment privilege against compulsory self-incrimination.” Conviction vacated, and case remanded.

***State v. Barnes*, 2024-Ohio-2184**

Marsy’s Law/restitution/res judicata

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2024/2024-Ohio-2184.pdf

Trial court erred in ordering appellant to pay restitution; court is without jurisdiction to order restitution after appellant had completed his sentence. "[T]he sentencing journal entry, which did not order [appellant] to pay restitution is a final order and res judicata attached."

Ninth Appellate District of Ohio

***State v. Mastrobuono*, 2024-Ohio-2154**

Jury waiver

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/9/2024/2024-Ohio-2154.pdf

In conviction for defrauding creditors, the trial court violated appellant's Sixth Amendment right to a jury trial. Prior to holding a bench trial, appellant never waived his right to a jury trial in open court; he never "acknowledged the jury waiver to the trial court." Case remanded for a new trial.

Tenth Appellate District of Ohio

Nothing to report.

Eleventh Appellate District of Ohio

***State v. Cleveland*, 2024-Ohio-2126**

Authentication/hearsay

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2024/2024-Ohio-2126.pdf

In conviction for theft of scooters, trial court erred "by admitting documentary and photographic evidence which was not properly authenticated, as well as hearsay testimony concerning that evidence." The alleged victim testified as to "the truth of the information reflected in the document as a business record without satisfying the foundational components of Evid.R. 803(6)." Similarly, the detective failed to properly authenticate the documents/receipt as well. And since this improper

evidence was the linchpin of the state's case, the admission of such evidence was not harmless. Conviction vacated, and case remanded for a new trial.

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

***FDA v. Alliance for Hippocratic Medicine*, 602 U.S. ____ (2024)**

Abortion tablets

Full Decision:
https://www.supremecourt.gov/opinions/23pdf/23-235_n7ip.pdf

***Held:* Plaintiffs lack Article III standing to challenge FDA's actions regarding the regulation of mifepristone. Pp. 5–25.**

(a) Article III standing is a "bedrock constitutional requirement that this Court has applied to all manner of important disputes." *United States v. Texas*, 599 U. S. 670, 675. Standing is "built on a single basic idea—the idea of separation of powers." *Ibid.* Article III confines the jurisdiction of federal courts to "Cases" and "Controversies." Federal courts do not operate as an open forum for citizens "to press general complaints about the way in which government goes about its business." *Allen v. Wright*, 468 U. S. 737, 760. To obtain a judicial determination of what the governing law is, a plaintiff must have a "personal stake" in the dispute. *TransUnion LLC v. Ramirez*, 594 U. S. 413, 423.

To establish standing, a plaintiff must demonstrate (i) that she has suffered or likely will suffer an injury in fact, (ii) that the injury likely was caused or will be caused by the defendant, and (iii) that the injury likely would be redressed by the requested judicial relief. See *Summers v. Earth Island Institute*, 555 U. S. 488, 493. The two key questions in most standing disputes are injury in fact and causation. By requiring the plaintiff to show an injury in fact, Article III standing

screens out plaintiffs who might have only a general legal, moral, ideological, or policy objection to a particular government action. Causation requires the plaintiff to establish that the plaintiff 's injury likely was caused or likely will be caused by the defendant's conduct. Causation is "ordinarily substantially more difficult to establish" when (as here) a plaintiff challenges the government's "unlawful regulation (or lack of regulation) of someone else." *Lujan v. Defenders of Wildlife*, 504 U. S. 555, 560–561. That is because unregulated parties often may have more difficulty linking their asserted injuries to the government's regulation (or lack of regulation) of someone else. Pp. 5–12.

(b) Plaintiffs are pro-life, oppose elective abortion, and have sincere legal, moral, ideological, and policy objections to mifepristone being prescribed and used by others. Because plaintiffs do not prescribe or use mifepristone, plaintiffs are unregulated parties who seek to challenge FDA's regulation of others. Plaintiffs advance several complicated causation theories to connect FDA's actions to the plaintiffs' alleged injuries in fact. None of these theories suffices to establish Article III standing. Pp. 13–24.

(1) Plaintiffs first contend that FDA's relaxed regulation of mifepristone may cause downstream conscience injuries to the individual doctors. Even assuming that FDA's 2016 and 2021 changes to mifepristone's conditions of use cause more pregnant women to require emergency abortions and that some women would likely seek treatment from these plaintiff doctors, the plaintiff doctors have not shown that they could be forced to participate in an abortion or provide abortion-related medical treatment over their conscience objections. Federal conscience laws definitively protect doctors from being required to perform abortions or to provide other treatment that violates their consciences. Federal law protects doctors from repercussions when they have "refused" to participate in an abortion. §300a–7(c)(1). The plaintiffs have not identified any instances where a doctor was required, notwithstanding conscience objections, to perform an abortion or to provide other abortion-related treatment that violated the doctor's conscience since mifepristone's 2000 approval. Further, the Emergency Medical Treatment and Labor Act (or EMTALA) neither overrides federal conscience laws nor requires individual emergency room doctors to participate in emergency abortions. Thus, there is a break in any chain of causation between FDA's relaxed regulation of mifepristone and any asserted conscience injuries to the doctors. Pp. 14–17.

(2) Plaintiffs next assert they have standing because FDA's relaxed regulation of mifepristone may cause downstream economic injuries to the doctors. The doctors cite various monetary and related injuries that they will allegedly suffer as a result of FDA's actions—in particular, diverting resources and time from other patients to treat patients with mifepristone complications; increasing risk of liability suits from treating those patients; and potentially increasing

insurance costs. But the causal link between FDA's regulatory actions in 2016 and 2021 and those alleged injuries is too speculative, lacks support in the record, and is otherwise too attenuated to establish standing. Moreover, the law has never permitted doctors to challenge the government's loosening of general public safety requirements simply because more individuals might then show up at emergency rooms or in doctors' offices with follow-on injuries. Citizens and doctors who object to what the law allows others to do may always take their concerns to the Executive and Legislative Branches and seek greater regulatory or legislative restrictions. Pp. 18–21.

(3) Plaintiff medical associations assert their own organizational standing. Under the Court's precedents, organizations may have standing "to sue on their own behalf for injuries they have sustained," *Havens Realty Corp. v. Coleman*, 455 U. S. 363, 379, n. 19, but organizations must satisfy the usual standards for injury in fact, causation, and redressability that apply to individuals, *id.*, at 378–379. According to the medical associations, FDA has "impaired" their "ability to provide services and achieve their organizational missions." Brief for Respondents 43. That argument does not work to demonstrate standing. Like an individual, an organization may not establish standing simply based on the "intensity of the litigant's interest" or because of strong opposition to the government's conduct, *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U. S. 464, 486. The plaintiff associations therefore cannot establish standing simply because they object to FDA's actions. The medical associations claim to have standing based on their incurring costs to oppose FDA's actions. They say that FDA has "caused" the associations to conduct their own studies on mifepristone so that the associations can better inform their members and the public about mifepristone's risks. Brief for Respondents 43. They contend that FDA has "forced" the associations to "expend considerable time, energy, and resources" drafting citizen petitions to FDA, as well as engaging in public advocacy and public education, all to the detriment of other spending priorities. *Id.*, at 44. But an organization that has not suffered a concrete injury caused by a defendant's action cannot spend its way into standing simply by expending money to gather information and advocate against the defendant's action. Contrary to what the medical associations contend, the Court's decision in *Havens Realty Corp. v. Coleman* does not stand for the expansive theory that standing exists when an organization diverts its resources in response to a defendant's actions. Havens was an unusual case, and this Court has been careful not to extend the *Havens* holding beyond its context. So too here. Finally, it was suggested that plaintiffs must have standing because otherwise it may be that no one would have standing to challenge FDA's 2016 and 2021 actions. That suggestion fails because the Court has long rejected that kind of argument as a basis for standing. The

"assumption" that if these plaintiffs lack "standing to sue, no one would have standing, is not a reason to find standing." *Schlesinger v. Reservists Comm. to Stop the War*, 418 U. S. 208, 227. Rather, some issues may be left to the political and democratic processes. Pp. 21–24.

78 F. 4th 210, reversed and remanded.

KAVANAUGH, J., delivered the opinion for a unanimous Court. THOMAS, J., filed a concurring opinion.