Appellate Court Decisions –Week of 8/12/24

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

First Appellate District of Ohio

***State v. Yu*, C-240081 & 82**

Record sealing and expungement

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

Trial court erred in denying appellant's applications to seal a dismissed misdemeanor charge, a misdemeanor charge of which she was acquitted, and a misdemeanor conviction without holding a hearing and without any analysis to justify the denials. State did not object, and probation report indicated appellant was eligible. Case "remanded for the trial court to conduct the required analysis set forth in R.C. 2953.32(D) and R.C. 2953.33(B)."

***State v. Lee*, C-230619**

Jail-time credit

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

Trial court plainly erred when it failed to include appellant's jail-time credit in the sentencing entries. State concedes error. Case remanded for court to award such credit.

Second Appellate District of Ohio

***State v. Simmons*, 2024-Ohio-3036**

Sufficiency; forcible rape

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2024/2024-Ohio-3036.pdf

In convictions for forcible rape, aggravated burglary, and sexual battery, all of which merged into one conviction for forcible rape, that conviction of forcible rape was not supported by sufficient evidence. State did not establish that appellant used force to compel the alleged victim to submit to the sexual conduct. The victim "woke up to a perpetrator, [appellant] digitally penetrating her vagina . . . there was no evidence indicating that

[appellant] had threatened M.H. or engaged in any struggle, restraint, or sexual conduct with M.H. after she woke up. In addition, there was no evidence that [appellant] ever moved or relocated any part of M.H.'s body." And although appellant "had to have manipulated M.H.'s underwear in order to digitally penetrate her vagina and thus used some amount force during the offense . . . evidence in this case did not establish that the force used by [appellant] to manipulate M.H.'s underwear compelled M.H. to submit to the sexual conduct in question. This is because M.H. was asleep and was unaware of what was happening when [appellant] manipulated her underwear to facilitate the sexual conduct. Because M.H. was unaware of that force, her submission to the sexual conduct could not have been compelled by it. Rather, the evidence established that M.H. submitted simply because she was sleeping." (COA did conclude that appellant should have been charged under another subsection of the rape statute concerning "substantial impairment). Conviction vacated, and case remanded for trial court to "(1) consider whether the vacation of the forcible rape conviction affects the merged aggravated burglary offense for which [appellant] was found guilty and, if necessary, whether the guilty verdict for sexual battery supports a lesser-included offense of aggravated burglary; and (2) sentence [appellant] for the offenses that merged into his forcible rape conviction."

Third Appellate District of Ohio

Nothing to report.

Fourth Appellate District of Ohio

Nothing to report.

Fifth Appellate District of Ohio

***State v. Cook*, 2024-Ohio-2966**

Allied offenses

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2024/2024-Ohio-2966.pdf

In convictions for robbery and multiple theft offenses, as well as failure to comply, trial court plainly erred in failing to merge all the theft offenses into one theft offense and all the theft offenses with the robbery offense. "[T]he grand theft of the items from the same place are not separate and distinct offenses. They were not committed with a separate animus or motivation. The convictions stem from [appellant's] theft of a Richland County Sheriff Deputy F-150 truck/cruiser which contained two firearms

positioned in a gun rack behind the driver's seat. The thefts were all motivated by [appellant's] attempt to flee law enforcement. There is no evidence that [appellant] specifically stole the truck because there were firearms inside. While the firearms were accessible to [appellant] and under his control for over thirty minutes, there is no evidence that [he] stole the truck/cruiser to gain access to the firearms . . . [and] the offenses of robbery involving a firearm and grand theft of a firearm are similar in import. The offenses were committed on the same day in the same manner. They were not separate and distinct offenses. There was only one victim. The offenses were committed with the same animus or motivation – to flee law enforcement." Case remanded for resentencing.

Sixth Appellate District of Ohio

***State v. Vasquez*, 2024-Ohio-2947**

Motion to withdraw plea

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2024/2024-Ohio-2947.pdf

In 1994 conviction for murder where appellant filed a Crim.R. 32.1 motion to withdraw his *Alford* plea based on newly discovered evidence, trial court erred in denying such motion for lack of jurisdiction. As appellant did not appeal his conviction and sentence, there is no time limit on the filing. Therefore, the case is remanded for the trial court to consider if the motion is barred by res judicata (and COA suggests that motion was supported by newly discovered evidence which would not be contained in the trial court record) and if not, to consider the merits of the motion and determine if appellant should be permitted to withdraw his plea.

Seventh Appellate District of Ohio

***Nothing to report*.**

Eighth Appellate District of Ohio

***State v. Price*, 2024-Ohio-3016**

Plea/self-incrimination

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2024/2024-Ohio-3016.pdf

Appellant was convicted of aggravated robbery and felonious assault in one case after a bench trial and convicted by guilty plea to aggravated vehicular assault and failure to stop after an accident in another case. However, "trial court erred in failing to inform him of his right against self-incrimination during his plea colloquy . . . as required by Crim.R. 11(C)(2)(c)." And appellant did not have to show prejudice; "[w]hen a trial court omits an advisement dealing with one of the five constitutional rights under Crim.R. 11(C)(2)(c), the plea is invalid as a matter of law, without any requirement of demonstrating prejudice to the defendant." Those convictions in second case vacated, and case remanded.

Ninth Appellate District of Ohio

Nothing to report.

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

Nothing to report.

Fifth Circuit Court of Appeals

***United State v. Smith*, No. 23-60321**

Fourth Amendment/suppression/geofence warrant

Full Decision:
http://www.ca5.uscourts.gov/opinions/pub/23/23-60321-CR0.pdf

Convictions affirmed because law enforcement acted in good faith in relying on geofence warrants. HOWEVER, going forward, Circuit Court holds that the use of geofence warrants is unconstitutional under the Fourth Amendment. And Circuit Court recognizes that its decision conflicts

with the Fourth Circuit's decision in *United States v. Chatrie*, 107 F.4th 319 (4th Cir. 2024).

Sixth Circuit Court of Appeals

Nothing to report.

Supreme Court of the United States

Nothing to report.