Appellate Court Decisions –week of 7/14/25

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

First Appellate District of Ohio

***State v. Kirkendall*, C-240438**

Sentencing; house arrest

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

In conviction for aggravated menacing, trial court erred in imposing a sentence "of house arrest consisting of '24/7 lockdown' with a sole exception for treatment, for five years, as a condition of community control." Court "exceeded its authority" because the condition did not permit appellant to leave his confinement for employment. The plain language of R.C. 2929.01(P)(1) which permits courts to impose house arrest also "requires courts to allow offenders time away from their confinement for employment." Sentence vacated, and case remanded for resentencing.

Second Appellate District of Ohio

Nothing to report.

Third Appellate District of Ohio

***State v. Topp*, 2025-Ohio-2388**

Sufficiency of indictment; grand theft

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/3/2025/2025-Ohio-2388.pdf

In conviction for grand theft, COA holds that "the language of the indictment was insufficient to permit the aggregation of multiple theft offenses into a single-count indictment for purposes of establishing the value of the funds stolen . . . [appellant] should not have been convicted of Grand Theft equal to or over $7500.00, a fourth-degree felony, because each individual theft was less than $7500.00 and because the indictment was not sufficient to permit the prosecution to aggregate the individual theft offenses into a single count for purposes of establishing that $7500.00 or more was stolen by [appellant]." And as appellant "was not provided

with any notice as required by R.C. 2913.61(C)(4) that the prosecution intended to aggregate multiple theft offenses into a single count for purposes of establishing the value alleged in the indictment, the prosecution acted without legal authority in trying the offenses as a single offense and in aggregating the value of the funds stolen." Conviction reversed, and case remanded for trial court to enter judgment of conviction for first-degree misdemeanor theft as opposed to fourth-degree felony theft.

Fourth Appellate District of Ohio

Nothing to report.

Fifth Appellate District of Ohio

***State v. Collier*, 2025-Ohio-2492**

Sentencing/new evidence/allocution

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2025/2025-Ohio-2492.pdf

After appellant pled guilty to, inter alia, felonious assault, trial court erred in considering new evidence presented by the prosecutor when sentencing appellant. "The record shows that [appellant] and his counsel had no opportunity to address the information provided by the prosecutor about the ramming of the victim's vehicle and no opportunity to talk about the photographs that the judge himself described as exhibits on which he was basing his sentencing decision . . . The judge went astray, though, by not giving defense counsel and [appellant] himself another opportunity to speak once that additional information had been presented." Sentence vacated, and case remanded for resentencing.

Sixth Appellate District of Ohio

Nothing to report.

Seventh Appellate District of Ohio

Nothing to report.

Eighth Appellate District of Ohio

***State v. Lewis*, 2025-Ohio-2454**

Sufficiency; firearm specification

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2025/2025-Ohio-2454.pdf

In convictions of, inter alia, murder with multiple gun specifications, trial court erred in imposing a five-year firearm specification pursuant to R.C. 2941.146(A), proof that "the offender either (1) committed a violation of R.C. 2923.161, improperly discharging a firearm at or into a habitation; or (2) committed 'a felony that includes, as an essential element, purposely or knowingly causing or attempting to cause the death of or physical harm to another and that was committed by discharging a firearm from a motor vehicle other than a manufactured home.' Here, the trial court imposed the five-year firearm specification on a violation of R.C. 2923.162(A)(3), which requires proof that the offender discharged a firearm upon or over a public road or highway. However, [COA] has found that a violation of R.C. 2923.162(A)(3) is a strict liability offense and, therefore, it has no culpable mental state, such as purposeful or knowing . . . Given the facts of this case, R.C. 2923.161 does not apply as it requires discharging a firearm at or into a habitation. Additionally, this court has previously found that the five-year firearm specification does not apply to violations of R.C. 2923.162(A) because it is not 'a felony that includes, as an essential element,' purposeful or knowing conduct. *State v. Wilson*, 2023-Ohio-1042, ¶ 49 (8th Dist.); *State v. Maldonado*, 2021-Ohio-1724, ¶ 17 (8th Dist.). Therefore, there was insufficient evidence to support the finding of guilty to the five-year firearm specification attached to Counts 14 through 16."

Trial court also erred in issuing two nunc pro tunc sentencing entries after the appeal was filed and matter was pending in the COA. Those entries "are void and vacated."

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.

Sixth Circuit Court of Appeals

Nothing to report.

Supreme Court of the United States

Nothing to report.