Appellate Court Decisions - Week of 4/1/19

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

First Appellate District of Ohio

***State v. Rogers*, 2019-Ohio-1251**

Speedy Trial

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2019/2019-Ohio-1251.pdf

Summary from the First District: "The trial court did not err in denying defendant's motion to dismiss the indictment: defendant was not deprived of his constitutional right to a speedy trial even though the state's inaction caused the post-accusation delay, because under the circumstances the state's mere negligence did not outweigh the absence of some particularized trial prejudice."

Second Appellate District of Ohio

***State v. Webb*, 2019-Ohio-1145**

Court Costs

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2019/2019-Ohio-1145.pdf

Summary from the Second District: "The trial court erred by issuing a sentencing entry that referred to an improper payment schedule for the collection of court costs. The sentencing entry at issue will be modified to excise the language referring to the improper payment schedule. Judgment affirmed as modified."

Third Appellate District of Ohio

Nothing to report.

Fourth Appellate District of Ohio

Nothing to report.

Fifth Appellate District of Ohio

Nothing to report.

Sixth Appellate District of Ohio

Nothing to report.

Seventh Appellate District of Ohio

Nothing to report.

Eighth Appellate District of Ohio

***State v. Wochele*, 2019-Ohio-1122**

Ethnic Intimidation: Sufficiency: Aggravated Menacing

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2019/2019-Ohio-1122.pdf

Summary from the Eighth District: "Insufficient evidence supported defendant's ethnic intimidation conviction where the record did not demonstrate that the defendant intentionally and specifically threatened the victim with a gun because of his race. Rather, the threats were prompted by their dispute over where the car was parked. There is sufficient evidence in the record, however, that the defendant knowingly caused the victim to believe that he would cause serious physical harm to him. Therefore, the defendant's conviction for ethnic intimidation is modified to aggravated menacing and remanded for sentencing."

***State v. Townsend*, 2019-Ohio-1134**

Sexually Violent Predator

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2019/2019-Ohio-1134.pdf

Summary from the Eighth District: "The trial court engaged in extensive dialogue with appellant on trial procedures, questioned appellant on his understanding of those procedures, informed appellant that he would be held to the same standards as that of an attorney, referred appellant to a psychiatric evaluation and accepted appellant's timely written waiver. Appellant's request to represent himself was clearly and knowingly made.

The trial court did not err in granting appellant's request to represent himself. Representing himself, a portion of appellant's questions were either inappropriate or inadmissible and properly objected to; the trial court did not show bias against appellant. The trial court established the procedure that standby counsel would assist appellant. It was not error, for security reasons, that appellant was not allowed at sidebar, rather standby counsel communicated appellant's wishes to the trial court at sidebar. Appellant suffered no reversible prejudice where appellant failed to properly serve proposed witnesses with a subpoena. Appellant failed to provide any authority showing that a victim is required to testify in a rape case; the trier of fact can determine guilt based on circumstantial and direct evidence and the credibility of other witnesses. Sufficient evidence was shown that a second offender was involved with the sexual assault of the victim and that appellant worked in concert with the other offender. The trial court's jury instruction on complicity was proper. Appellant's offenses occurred prior to the amendment of the statute and it was error to classify appellant a sexually violent predator based on the amended statute. Appellant's offenses involved different types of sexual activity and the trial court properly ruled that the offenses were not allied offenses."

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

***State v. White*, 2019-Ohio-1215**

Final Appealable Order: Minor Misdemeanor

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2019/2019-Ohio-1215.pdf

Summary from the Court: "A trial court's decision to exercise its discretion not to impose a monetary or community-service sentence must be clearly communicated in text of entry."

In other words, if the trial court chooses not to impose a fine on a minor misdemeanor, it has to write that it did not impose a fine on the sentencing entry, or it's not a final appealable order. Also, judges are not required to impose a fine on minor misdemeanors (dissent disagreed).

Sixth Circuit Court of Appeals

Nothing to report.

Supreme Court of the United States

***Bucklew v. Precythe*, 587 U.S. ____ (2019)**

Eighth Amendment: Capital Punishment

Full Decision:
https://www.supremecourt.gov/opinions/18pdf/17-8151_new_0pm1.pdf

Syllabus:

In *Baze v. Rees*, 553 U. S. 35, a plurality of this Court concluded that a State's refusal to alter its execution protocol could violate the Eighth Amendment only if an inmate first identified a "feasible, readily implemented" alternative procedure that would "significantly reduce a substantial risk of severe pain." *Id.*, at 52. A majority of the Court subsequently held *Baze*'s plurality opinion to be controlling. See *Glossip v. Gross*, 576 U. S. ____.

Petitioner Russell Bucklew was convicted of murder and sentenced to death. The State of Missouri plans to execute him by lethal injection using a single drug, pentobarbital. Mr. Bucklew presented an as-applied Eighth Amendment challenge to the State's lethal injection protocol, alleging that, regardless whether it would cause excruciating pain for all prisoners, it would cause him severe pain because of *his* particular medical condition.

The District Court dismissed his challenge. The Eighth Circuit, applying the *Baze-Glossip* test, remanded the case to allow Mr. Bucklew to identify a feasible, readily implemented alternative procedure that would significantly reduce his alleged risk of pain. Eventually, Mr. Bucklew identified nitrogen hypoxia, but the District Court found the proposal lacking and granted the State's motion for summary judgment. The Eighth Circuit affirmed.

***Held*:**

1. *Baze* and *Glossip* govern all Eighth Amendment challenges, whether

facial or as-applied, alleging that a method of execution inflicts unconstitutionally cruel pain. Pp. 8–20.

(a) The Eighth Amendment forbids "cruel and unusual" methods of capital punishment but does not guarantee a prisoner a painless death. See *Glossip*, 576 U. S., at ____. As originally understood, the Eighth Amendment tolerated methods of execution, like hanging, that involved a significant risk of pain, while forbidding as cruel only those methods that intensified the death sentence by "superadding" terror, pain, or disgrace. To establish that a State's chosen method cruelly "superadds" pain to the death sentence, a prisoner must show a feasible and readily implemented alternative method that would significantly reduce a substantial risk of severe pain and that the State has refused to adopt without a legitimate penological reason. *Baze*, 553 U. S., at 52; *Glossip*, 576 U. S., at ____. And *Glossip* left no doubt that this standard governs "all Eighth Amendment method-of-execution claims." *Id.*, at ____. *Baze* and *Glossip* recognized that the Constitution affords a "measure of deference to a State's choice of execution procedures" and does not authorize courts to serve as "boards of inquiry charged with determining 'best practices' for executions." *Baze*, 553 U. S., at 51–52. Nor do they suggest that traditionally accepted methods of execution are necessarily rendered unconstitutional as soon as an arguably more humane method becomes available. Pp. 8–14

(b) Precedent forecloses Mr. Bucklew's argument that methods posing a "substantial and particular risk of grave suffering" when applied to a particular inmate due to his "unique medical condition" should be considered "categorically" cruel. Because distinguishing between constitutionally permissible and impermissible degrees of pain is a necessarily comparative exercise, the Court held in *Glossip*, identifying an available alternative is "a requirement of all Eighth Amendment method-of-execution claims" alleging cruel pain. 576 U. S., at ____. Mr. Bucklew's argument is also inconsistent with the original and historical understanding of the Eighth Amendment on which *Baze* and *Glossip* rest: When it comes to determining whether a punishment is unconstitutionally cruel because of the pain involved, the law has always asked whether the punishment superadds pain well beyond what's needed to effectuate a death sentence. And answering that question has always involved a comparison with available alternatives, not an abstract exercise in "categorical" classification. The substantive meaning of the Eighth Amendment does not change depending on how broad a remedy the plaintiff chooses to seek. Mr. Bucklew's solution also invites pleading games, and there is little likelihood that an inmate facing a serious risk of pain will be unable to identify an available alternative. Pp. 14–20

2. Mr. Bucklew has failed to satisfy the *Baze-Glossip* test. Pp. 20– 28.

(a) He fails for two independent reasons to present a triable question on the

viability of nitrogen hypoxia as an alternative to the State's lethal injection protocol. First, an inmate must show that his proposed alternative method is not just theoretically "feasible" but also " 'readily implemented,' " *Glossip*, 576 U. S., at ____–____. This means the inmate's proposal must be sufficiently detailed to permit a finding that the State could carry it out relatively easily and reasonably quickly. Mr. Bucklew's proposal falls well short of that standard. He presented no evidence on numerous questions essential to implementing his preferred method; instead, he merely pointed to reports from correctional authorities in other States indicating the need for additional study to develop a nitrogen hypoxia protocol. Second, the State had a "legitimate" reason for declining to switch from its current method of execution as a matter of law, *Baze*, 553 U. S., at 52, namely, choosing not to be the first to experiment with a new, "untried and untested" method of execution. *Id.*, at 41. Pp. 20–22.

(b) Even if nitrogen hypoxia were a viable alternative, neither of Mr. Bucklew's theories shows that nitrogen hypoxia would significantly reduce a substantial risk of severe pain. First, his contention that the State may use painful procedures to administer the lethal injection, including forcing him to lie flat on his back (which he claims could impair his breathing even before the pentobarbital is administered), rests on speculation unsupported, if not affirmatively contradicted, by the record. And to the extent the record is unclear, he had ample opportunity to conduct discovery and develop a factual record concerning the State's planned procedures. Second, Mr. Bucklew contends that while either method will cause him to experience feelings of suffocation for some period of time before he is rendered fully unconscious, the duration of that period will be shorter with nitrogen than with pentobarbital. But nothing in the record suggests that he will be capable of experiencing pain for significantly more time after receiving pentobarbital than he would after receiving nitrogen. His claim to the contrary rested on his expert's testimony regarding a study of euthanasia in horses that everyone now agrees the expert misunderstood or misremembered. Pp. 23–28. 883 F. 3d 1087, affirmed.

GORSUCH, J., delivered the opinion of the Court, in which ROBERTS, C. J., and THOMAS, ALITO, and KAVANAUGH, JJ., joined. THOMAS, J., and KAVANAUGH, J., filed concurring opinions. BREYER, J., filed a dissenting opinion, in which GINSBURG, SOTOMAYOR, and KAGAN, JJ., joined as to all but Part III. SOTOMAYOR, J., filed a dissenting opinion.