Appellate Court Decisions - Week of 4/30/18

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

First Appellate District of Ohio

***State v. Daniels*, 2018-Ohio-1701**

Crim.R. 48(A): Counsel: Domestic Violence. R.C. 2919.25(A): Evidence: Physical Harm

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2018/2018-Ohio-1701.pdf

Summary from the First District:

"The trial court did not abuse its discretion in denying the state's Crim.R. 48(A) motion to dismiss the complaint, because the state did not establish good cause where the complaint was sufficient to charge a domestic-violence offense, the victim was present to testify, and the only explanation given by the state for the motion was that the victim, defendant's wife, had indicated that the charge stemmed from a heated argument with defendant. Defendant failed to show ineffective assistance of trial counsel where counsel's decision to try the case to the court was trial strategy, counsel's failure to object to certain evidence was not outcome determinative, and counsel's eliciting of allegedly prejudicial testimony from the victim was an attempt to impeach the witness. Defendant's conviction for domestic violence was not against the manifest weight of the evidence where the victim testified that the injury inflicted by defendant caused her pain, and the trial court found the victim to be more credible than defendant."

***State v. Flagg*, 2018-Ohio-1702**

Double Jeopardy: Aggravated Murder: Aggravated Robbery: Evidence: Allied Offenses: R.C. 2941.25

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2018/2018-Ohio-1702.pdf

Summary from the First District:

"Defendant's second trial on charges of aggravated murder, aggravated robbery, tampering with evidence and gross abuse of a corpse was not barred by double jeopardy where the judicial conduct giving rise to

defendant's successful motion for a mistrial during her first jury trial was not intended to provoke the defendant into moving for a mistrial.

"Where defendant was charged with stabbing the victim to death, the trial court did not err in admitting into evidence four kitchen knives, none of which were the murder weapon, that were found at the scene of the crime, because the knives were admitted only to show the extent of the police investigation. The trial court did not err in admitting into evidence a folding knife, which was not the weapon that had caused the fatal wound, where the knife contained fibers that the trace-evidence expert testified could have come from the shirt the victim had been wearing at the time of the murder and where the coroner's report indicated that the folding knife could have made the three stab wounds on the victim's upper back.

"Defendant's convictions were supported by sufficient evidence and were not contrary to the manifest weight of the evidence where it was undisputed that the victim was killed shortly before 3:00 p.m.; defendant's drug dealer testified that he picked defendant up close to 2:30 p.m. outside of the victim's apartment, and defendant had offered him the victim's cell phone in exchange for drugs; a paper towel shaped like it had been wrapped around a door knob contained the defendant's DNA and was found just inside the victim's apartment; and the state showed that defendant's half-brother, whom defendant claimed she believed killed the victim, was at work at the time of the murder.

"Aggravated murder and aggravated robbery were not allied offenses of similar import because the offenses were committed with a separate animus where the jury found that defendant's conduct demonstrated a specific intent to kill while in the course of committing the aggravated robbery."

***State v. Barrow*, 2018-Ohio-1703**

Kidnapping: Evidence: Constitutional Law: Other Acts: Evid.R. 404(B): R.C. 2945.59: Counsel: Conflict of Interest

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2018/2018-Ohio-1703.pdf

Summary from the First District:

"In a kidnapping prosecution, the trial court did not err in admitting a police officer's testimony regarding the state's investigation of and defendant's conviction for a prior kidnapping where the prior conviction was relevant to prove defendant's motive and intent, and therefore, did not violate the prohibition against 'other acts' evidence in Evid.R. 404(B) and

R.C. 2945.59, and the trial court properly instructed the jury that it could not consider the evidence to prove the defendant's character or that he had acted in conformity with that character; but the trial court erred in permitting the officer to testify regarding a second kidnapping investigation in which defendant had not been charged, however, the testimony was harmless where the state presented overwhelming evidence of the defendant's guilt.

"The trial court did not abuse its discretion when it overruled defendant's motion for a mistrial, which was based on defendant's assertion that the state had failed to disclose the kidnapping victim's second interview with the investigating police officer in violation of *Brady v. Maryland*, 373 U.S. 87, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963), because the defendant could not show that there was a reasonable probability that the outcome of the trial would have been different had the second statement been disclosed to defense counsel prior to trial.

"Defendant's kidnapping conviction was based on sufficient evidence where the state presented evidence, through testimony and telephone records, that defendant had arranged a meeting with the victim, defendant and his accomplices had removed the victim by force and held him for ransom in a van, telephone records connected defendant and his accomplices to a cell phone used to make ransom demands, and defendant's fingerprints and mail were found in the van where the victim had been held.

"Defendant's kidnapping conviction was not contrary to the manifest weight of the evidence where the jury chose to accord more weight to testimony of the state's witnesses than to defendant's testimony that he and the victim had devised a plan with others to extort $100,000 from the victim's brother and that victim was to receive $40,000 of the ransom money.

"Where a codefendant informed the trial court before closing arguments that he had been represented by defendant's counsel nine years earlier in an unrelated matter, and defendant did not raise any objection to the purported conflict, the trial court did not err by failing to conduct a further inquiry into the alleged conflict of interest, and defendant's counsel was not ineffective for failing to ask the court to further investigate the matter where the codefendant did not testify at trial and defendant testified against his counsel's advice that his codefendant had nothing to do with the kidnapping."

***In re: B.M.*, 2018-Ohio-1733**

Self-Defense

Full Decision:

http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2018/2018-Ohio-1733.pdf

Summary from the First District:

"The juvenile court erred in determining that the juvenile did not establish each element of the affirmative defense of self-defense using deadly force where she had stabbed her step-father in the arm and leg with a kitchen knife to free herself from his chokehold."

***State v. Steelman*, 2018-Ohio-1732**

Fifth Amendment: Excited Utterance: Confrontation Clause: Prosecutorial Misconduct

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2018/2018-Ohio-1732.pdf

Summary from the First District:

"Where the state presented evidence of defendant's silence and his refusal to talk to police as probative of defendant's guilt his Fifth Amendment right against self-incrimination was violated; however, there was no plain error because, absent the tainted evidence, there was overwhelming evidence of defendant's guilt.

"The trial court abused its discretion in admitting a witness's statement under the excited utterance exception to the hearsay rule where the statement did not relate to the startling event, was clearly self-serving, and was not the type of reactive statement contemplated by Evid.R. 803(2); but the error was harmless beyond a reasonable doubt where, even without the statement, there was overwhelming evidence of defendant's guilt.

"The prosecutor committed misconduct during closing argument by commenting on defendant's silence as evidence of his guilt and stating that the prosecutor knew several things 'for a fact'; but there was no plain error where the evidence of defendant's guilt was overwhelming."

Second Appellate District of Ohio

Nothing to report.

Third Appellate District of Ohio

Nothing to report.

Fourth Appellate District of Ohio

***State v. Coleman*, 2018-Ohio-1709**

Sentencing: Restitution

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/4/2018/2018-Ohio-1709.pdf

The trial court erred in ordering restitution to the sheriff's department for the money it advanced for an undercover drug purchase because such restitution is not permitted by R.C. 2929.18, and such restitution was not clearly provided for in the negotiated plea agreement.

Fifth Appellate District of Ohio

Nothing to report.

Sixth Appellate District of Ohio

***In re R.J.*, 2018-Ohio-1658**

Delinquency: Sex Offender Registration

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2018/2018-Ohio-1658.pdf

When appellant was released from the Department of Youth Services, he was erroneously classified as a Tier III sexual offender for registration purposes. The trial court erred in denying his motion to vacate his classification as R.C. 2152.82 and R.C. 2152.86 were erroneously applied.

Seventh Appellate District of Ohio

Nothing to report.

Eighth Appellate District of Ohio

***State v. Magwood*, 2018-Ohio-1634**

Evidence: Theft: Rape

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2018/2018-Ohio-1634.pdf

Summary from the Eighth District: "The conviction for rape was not against the manifest weight of the evidence. The factfinder found the victim more credible and the victim's testimony was supported by other witness testimony. The sexual assault nurse examiner's reading of the victim's narrative regarding the theft of the victim's money was not protected by the hearsay exception of Evid.R. 803(4), and because this narrative was the only evidence of the theft, admission of this testimony amounted to plain error and Magwood's conviction for petty theft must be reversed. Magwood's maximum sentence was supported by the record. The sentence was within the statutory range, and the court considered R.C. 2929.11 and 2929.12. Additionally, we cannot clearly and convincingly find that the record does not support consecutive sentences."

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

***Giancolo v. Azem*, Slip Opinion No. 2018-Ohio-1694**

Law-of-the-Case Doctrine

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2018/2018-Ohio-1694.pdf

"In this discretionary appeal from a judgment of the Eighth District Court of Appeals, we consider the limitations of the law-of-the-case doctrine. The

law-of-the-case doctrine provides that legal questions resolved by a reviewing court in a prior appeal remain the law of that case for any subsequent proceedings at both the trial and appellate levels. *Nolan v. Nolan*, 11 Ohio St.3d 1, 3, 462 N.E.2d 410 (1984). The decision of the appellate court in the first appeal in this case was limited to whether Nicholas Giancola's mother had apparent authority to sign an arbitration agreement on behalf of her son. Therefore, the law of the case from the first appeal was not relevant in the second appeal, because on remand from the first appeal, the trial court had relied on new evidence to decide that Giancola had signed the arbitration agreement. We reverse the Eighth District's judgment, which was based on the law-of-the-case doctrine, and we remand the matter to that court for review of the assignments of error that were not considered."

Sixth Circuit Court of Appeals

Nothing to report.

Supreme Court of the United States

Nothing to report.