Appellate Court Decisions - Week of 6/25/18

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

First Appellate District of Ohio

***State v. Smith*, 2018-Ohio-2504**

Evidence: Self-Defense: Sentencing

Full Decision:
http://www.hamiltoncountyohio.gov/UserFiles/Servers/Server_3788196/File/releases/2018/C-170028_06272018.pdf

Summary from the First District:

"The trial court did not err under R.C. 2941.25, Ohio's multiple-count statute, in imposing separate and consecutive sentences for the offenses of murder and having a weapon while under a disability where the offenses were committed separately and with a separate animus.

"The trial court did not err when it refused to suppress statements made by defendant during a police interview, and recorded electronically in their entirety, where the 27-year-old defendant had executed a written *Miranda* rights waiver form, willingly answered police questions, did not exhibit any behavior that would have indicated that he was under the influence of pain medications, had extensive experience with the criminal justice system, and there was little evidence of police coercion or overreaching; and where nothing in the recorded interview refuted the presumption, under R.C. 2933.81(B), that defendant had knowingly and voluntarily made statements to the police.

"The trial court did not abuse its discretion by allowing the state to impeach its own witness with her prior inconsistent statements made to police investigators where the state made a showing of surprise or affirmative damage as the witness's denials of her prior statements were hardly neutral answers such as 'I don't remember,' and where the witness had affirmatively challenged the veracity of the assistant prosecuting attorney's claims that the witness had made the prior statements and had challenged the state to produce the recordings of the police interview.

"Self-defense is an affirmative defense that legally excuses admitted criminal conduct where defendant establishes by a preponderance of the evidence (1) that he was not at fault in creating the violent situation, (2) that he had a bona fide belief that he was in danger of imminent death or great bodily harm and that the only means of escape was by use of force, and (3)

that he did not violate any duty to retreat or avoid the danger; these elements of self-defense are cumulative, and if defendant fails to prove any one of these elements by a preponderance of the evidence he has failed to demonstrate that he acted in self-defense.

"We cannot say that the jury, sitting as the trier of fact, lost its way in rejecting defendant's defense of self-defense where there was no evidence establishing that he was not at fault in creating the violent situation when defendant had brought a handgun with him to an apartment, brandished the gun and readied it for action by cocking the hammer, and remained in the apartment even though one of his victims had confronted him and ordered him to leave, where record also contains no evidence establishing that defendant was in danger of imminent death or great bodily harm when he was substantially younger than his victims and employed brutal measures in response to the victims' alleged attack, and where no evidence established that defendant had not violated any duty to retreat or avoid the danger when, from the forensic physical evidence, it was clear that defendant had reasonable means to retreat and could have ended the altercation or fled at almost any point.

"Where the trial court failed to include its consecutive-sentencing findings in its sentencing entry as required by the Ohio Supreme Court's decision in *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, the trial court's failure does not render the sentence contrary to law; instead, this clerical mistake may be corrected by the court through a nunc pro tunc entry to reflect what actually occurred in open court."

***State v. Evans*, 2018-Ohio-2543**

Aggravated Burglary: Evidence: Other Acts: Opinion Testimony: Prosecutor: Fifth Amendment: Harmless Error: Plain Error: Counsel: Witnessses

Full Decision:
http://www.hamiltoncountyohio.gov/UserFiles/Servers/Server_3788196/File/releases/2018/C-170034_06292018.pdf

Summary from the First District:

"In a prosecution for aggravated burglary and felonious assault, the trial court did not err in admitting the victim's testimony regarding defendant's prior instances of physical violence against the victim where the testimony was relevant to prove defendant's motive and intent, and therefore, did not violate the general prohibition against 'other acts' evidence in Evid.R. 404(B).

"The trial court erred in admitting at trial evidence of defendant's prior misdemeanor-assault conviction in violation of Evid.R. 609 and 404(B), but the error did not rise to the level of plain error where defendant was tried before the court and the erroneous admission of his prior misdemeanor-assault conviction did not affect the outcome of the trial.

"The trial court did not err in admitting, pursuant to Evid.R. 701, the opinion testimony of a responding police officer and the victim's supervisor that scratches on the victim's face were 'fresh' injuries where their testimony was based on their personal observation of the victim and their common understanding of scratches and cuts.

"The defendant was not denied a fair trial due to prosecutorial misconduct where the victim's testimony regarding prior instances of physical harm was properly admissible under Evid.R. 404(B). The assistant prosecuting attorney's erroneous impeachment of the defendant with a prior misdemeanor assault conviction did not deny him a fair trial.

"In a bench trial for aggravated burglary and felonious assault, any alleged error by the trial court in compelling defendant to testify in violation of his Fifth Amendment privilege against self-incrimination was harmless under the three-part test articulated in *State v. Harris*, 142 Ohio St.3d 211, 2015-Ohio-166, 28 N.E.3d 1256, because the admission of defendant's testimony had no effect on the trial court's verdict.

"The actions and omissions by defense counsel alleged to constitute ineffective assistance of trial counsel did not provide a basis for overturning the defendant's aggravated-burglary conviction where counsel's questioning of the victim as to prior instances of physical harm could be construed as legitimate trial strategy; counsel's failure to object to other-acts testimony and testimony from the victim's supervisor and the responding police officer about the age of the victim's facial injuries was properly admitted; and counsel's failure to object to the prosecutor's erroneous impeachment of defendant with a prior misdemeanor-assault conviction and to the trial court's alleged compelling of defendant to testify in violation of the Fifth Amendment were not outcome determinative.

"Defendant's conviction for aggravated burglary was supported by sufficient evidence and was not contrary to the manifest weight of the evidence where the victim testified that defendant had kicked in the sidelight to the front door of her workplace, entered, and punched her in the face multiple times; the victim's supervisor and the responding police officer testified that the victim had sustained facial injuries, including fresh scratches to her face; the victim's medical records showed that she had been treated for a nasal fracture; and the state introduced the victim's 911 calls, as well as the jail-house phone calls between defendant and his ex-girlfriend, in which defendant had admitted hitting the victim and knocking

her to the ground, and the trial court chose to accord more weight to testimony of the state's witnesses and a 911 recording than the testimony of defendant and his witness that defendant had kicked in the door to the victim's workplace, but he had not gone inside or punched the victim."

Second Appellate District of Ohio

Nothing to report.

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

***State v. Liggens*, 2018-Ohio-2431**

Pattern of Corrupt Activity: Sufficiency: Manifest Weight

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2018/2018-Ohio-2431.pdf

Summary from the Sixth District: "Evidence produced at trial only established one incident of corrupt activity; Engaging in a pattern of corrupt activity requires, at minimum two corrupt activities; the engaging in a pattern of corrupt activity conviction was based on insufficient evidence; motion to amend indictment was properly granted by incorrect date in indictment was typographical error."

Seventh Appellate District of Ohio

***State v. Dotson*, 2018-Ohio-2481**

Evidence: Hearsay

Full Decision:

https://www.supremecourt.ohio.gov/rod/docs/pdf/7/2018/2018-Ohio-2481.pdf

The trial court erred in admitting into evidence hearsay describing a truck that was stolen in this receiving stolen property case. It was also plain error for a trooper to testify to the contents of a police report that from a different police department, which he did not produce himself.

***State v. Barnett*, 2018-Ohio-2486**

Motion to Suppress: Search

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/7/2018/2018-Ohio-2486.pdf

The trial court did not err in granting Appellee's motion to suppress the stop and search of his vehicle. The situation is best explained by the Seventh District:

"If the purpose of traffic control devices, including signs, is to indicate and carry out various traffic infractions, including failure to signal a turn in violation of R.C. 4511.39, then the sign at issue indicates that appellee had no duty to signal a turn when Officers Savnik and Caraway initiated a traffic stop. Regardless of the physical necessity to turn slightly to the right when traveling from Oak Hill to Mahoning heading into downtown Youngstown, appellee was in a lane that was designated by a valid traffic control device as a straight-bound lane of travel. At no point did the state challenge the validity of the traffic sign at issue. Ultimately, there was no reasonable suspicion to initiate a traffic stop of appellee. Whatever the reason Officers Savnik and Caraway initiated the traffic stop of appellee, the underlying fact is that there was no suspicion that appellee committed, was committing, or was going to commit a traffic offense. Appellee complied with a validly placed traffic control device when he traveled from Oak Hill to Mahoning. And while at the intersection, but before appellee proceeded right, he did in fact signal.

"Furthermore, as the state points out, it is worth noting that there is a second sign at the intersection facing Oak Hill which reads "no turn on red." There are two signs at the intersection: one that indicates the right lane is straight-bound and one that, potentially, indicates that the right lane is used to turn right. The fact that these conflicting signs exist creates the issue that it is virtually impossible to completely comply with all Ohio traffic laws at this particular intersection or any intersection where conflicting signs may exist. If a person were to signal a turn when traveling from Oak Hill to Mahoning towards downtown Youngstown, police could use the straight lane designation sign as reasonable suspicion to initiate a traffic

stop. If a person were to not signal in time, as in this case, then police could use the no turn on red sign as reasonable suspicion to initiate a traffic stop. The fact that there are conflicting signs at the intersection that potentially create blanket reasonable suspicion for every car traveling from Oak Hill to Mahoning is bothersome."

*** * ***

"Appellee was traveling in a designated straight-bound lane. Pursuant to R.C. 4511.39, a motorist need only signal when required. By not signaling, appellee was complying with a validly placed traffic control sign. Viewing the totality of the circumstances, there was no reasonable suspicion for Officers Savnik and Caraway to believe that appellee committed or was committing a traffic violation."

Eighth Appellate District of Ohio

***State v. Betley*, 2018-Ohio-2516**

Sentencing: Restitution

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2018/2018-Ohio-2516.pdf

Summary from the Eighth District: "The trial court's restitution order was not supported by sufficient competent, credible evidence to establish the appropriate amount of restitution to a reasonable degree of certainty. The trial court based the restitution orders in each of the defendant's two cases on the amounts recommended by the victim in his victim impact statements. These amounts varied from the restitution amount noted in the PSI and as reported by the victim in the police report. The victim was not present at the sentencing hearing to explain the discrepancy, nor did the state introduce separate evidence to support either amount. An evidentiary hearing is required to determine the appropriate amount of restitution."

Ninth Appellate District of Ohio

***In re T.M.*, 2018-Ohio-2500**

Receiving Stolen Property: Manifest Weight

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/9/2018/2018-Ohio-2500.pdf

Appellant's adjudication for receiving stolen property was against the manifest weight of the evidence where "the trial court improperly weighted the evidence because it incorrectly believed it was required to find [Appellant] delinquent based on his lack of a satisfactory explanation of his possession of the stolen car, regardless of the surrounding circumstances. In this case, the surrounding circumstances include the fact that [Appellant] was a minor under the legal driving age and that the responding officers never asked [Appellant] why he was in possession of the stolen vehicle. Rather, he was only asked why he ran from the police, to which he responded that he ran from the police because he did not have a driver's license. Additionally, [the officer] stated that to his knowledge there was nothing in or about the vehicle that would indicate the vehicle was stolen."

Tenth Appellate District of Ohio

Nothing to report.

Eleventh Appellate District of Ohio

***State v. Sandercock*, 2018-Ohio-2448**

Failure to Appear: Sufficiency

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2018/2018-Ohio-2448.pdf

Appellant's conviction for failure to appear was based on insufficient evidence where the state failed to identify the defendant as the offender at trial.

***In re T.M.*, 2018-Ohio-2450**

Juvenile: Sex Offender Classification

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2018/2018-Ohio-2450.pdf

I rarely understand juvenile law. This is not one of the times that I do understand it. Therefore, here is the first paragraph of the case, which indicates what it is about:

"Appellant, T.M., appeals the trial court's decision that he is not entitled to an immediate hearing to modify or terminate his classification as a Tier III sex offender. He contends that the hearing is required because he has

satisfied all requirements placed upon him. Since we agree that an immediate hearing is mandated under the 2 circumstances, we reverse and remand the case for further proceedings."

***State v. Blas*, 2018-Ohio-2461**

Sentencing: Restitution

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2018/2018-Ohio-2461.pdf

The trial court erred in ordering restitution to the victim for the amount of money paid by the insurance company because that amount was not an economic loss for the victim.

***State v. Edwards*, 2018-Ohio-2462**

Sentencing

Full decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2018/2018-Ohio-2462.pdf

The trial court erred in sentencing Appellant to serve community control sanctions consecutive to a prison term. The trial court also erred in ordering an overarching community control sentencing package across two counts.

Twelfth Appellate District of Ohio

Nothing to report.

Supreme Court of Ohio

Nothing to report.

Sixth Circuit Court of Appeals

***United States v. Christian*, No. 17-1799**

Motion to Suppress

Full Decision:
http://www.opn.ca6.uscourts.gov/opinions.pdf/18a0122p-06.pdf

This case ultimately boils down to the search of Appellant's house being unconstitutional because there was no probable cause for the search warrant where the information supporting the warrant was stale and unreliable. Nevertheless, to me, this is the most interesting part:

"Christian argues that the warrant issued to search the Residence was not supported by probable cause because each of the affidavit's supporting facts was either stale or failed to establish a sufficient nexus between the evidence sought and the Residence. To determine whether the affidavit supported probable cause to search the Residence, we will first assess the significance of each piece of evidence relied upon, and then we will consider all the evidence together to determine whether the totality of the circumstances supports a finding of probable cause.

"The dissent contends that our approach is inconsistent with the well-established mandate to assess probable cause by considering the totality of the circumstances. Dissent Op. 33. According to the dissent, we have engaged in a 'divide-and-conquer-approach' to assess the sufficiency of the affidavit that 'has no place in our law.' *Id.* To the contrary, the totality-of-the-circumstances approach requires us to examine each piece of evidence in the affidavit to assess its probative value and then determine whether those pieces of evidence are as a whole sufficient to establish probable cause. *Gardenhire v. Shubert*, 205 F.3d 303, 315 (6th Cir. 2000) (noting that, in the context of an arrest, '[p]robable cause determinations involve an examination of all facts and circumstances within an officer's knowledge at the time of the arrest' (quoting *Estate of Dietrich v. Burrows*, 167 F.3d 1007, 1012 (6th Cir. 1999))); *United States v. Valenzuela*, 365 F.3d 892, 897 (10th Cir. 2004) ('[C]ourts may not engage in a 'divide-and-conquer' analysis of facts to determine whether probable cause existed. However, neither may a court arrive at probable cause simply by piling hunch upon hunch. Thus, in assessing the totality of the circumstances, a reviewing court 'must examine the facts individually in their context to determine whether rational inferences can be drawn from them' that support a probable cause determination.' (citations omitted))."

In addition, here is the Sixth Circuit's conclusion:

"The question of whether a reasonable officer could have believed that the search warrant was supported by probable cause is a close call in this case. But this court's relevant precedents, including *United States v. Hython*, 443 F.3d 480 (6th Cir. 2006), convince us that the supporting affidavit was simply inadequate to establish a good-faith belief in a fair probability that drugs would be found at the Residence on the date of the search. True enough, the affidavit permits speculation of such drug activity. But the probable-cause standard requires more. *See United States v. Arvizu*, 534 U.S. 266, 274 (2002). These cases of legalized home invasions are not ones where the ends justify the means. The Fourth Amendment's goal of

protecting individuals from unreasonable searches of their homes outweighs the occasional loss of incriminating evidence obtained by overzealous law-enforcement officers."

Supreme Court of the United States

Nothing to report.