Appellate Court Decisions - Week of 9/24/18

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

First Appellate District of Ohio

***State v. Barnes*, 2018-Ohio-3894**

Resisting Arrest: Hearsay

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2018/2018-Ohio-3894.pdf

Summary from the First District: ""False statements made by a perpetrator to police that defendant had kidnapped him at gunpoint and forced him to pass a bad check were admissible to establish the police officers' probable cause for arresting defendant.

"Defendant's convictions for resisting arrest were supported by sufficient evidence and were not against the manifest weight of the evidence where the state presented evidence that defendant interfered with his arrest by struggling with police on two separate occasions while being transported to jail and where defendant did not prove that he was defending himself against excessive force by the arresting officers."

***State v. Shelton*, 2018-Ohio-3895**

Continuance: Evid.R. 404(B): Identification: Allied Offenses

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2018/2018-Ohio-3895.pdf

Summary from the First District: "The trial court did not abuse its discretion in denying a continuance requested by defense counsel after the jury had been empaneled in order to subpoena materials and a witness that the state had just disclosed: defendant suffered no prejudice from the denial of the continuance where counsel was able to timely obtain the materials and present testimony from the witness that he sought to subpoena, as well as use the information in cross-examination.

"Because photographs depicting ammunition not used in the offenses were admitted to establish defendant's identity as the perpetrator, they were not admitted in violation of Evid.R. 404(B).

"No plain error resulted from the victim's in-court identification of the defendant as the perpetrator of the offenses.

"Where the force used during the commission of the felonious-assault offense was much more than was necessary to effectuate the aggravated-robbery offense, and demonstrated a specific intent to harm the victim separate from any animus to rob him, the two offenses were committed with a separate animus and were not allied offenses of similar import.

"Where the offenses of aggravated robbery and theft from an elderly person were committed as part of the same course of conduct with a single state of mind, and where the harm caused by the offenses was not separate and distinct, the two offenses were allied offenses of similar import, and the trial court erred by imposing a separate sentence for each offense."

***State v. Lowe*, 2018-Ohio-3916**

Resisting Arrest: Evidence: Contempt

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2018/2018-Ohio-3916.pdf

Summary from the First District: "Under R.C. 2921.33(A), no person, either recklessly or by force, is permitted to resist or interfere with his own lawful arrest.

"For purposes of a resisting-arrest offense, an arrest occurs when the following four requisite elements are present: (1) an intent to arrest, (2) under a real or pretended authority, (3) accompanied by an actual or constructive seizure or detention of the person, (4) which is so understood by the person arrested.

"Where the evidence showed that defendant had been informed less than four minutes before that the police were looking specifically for him to execute warrants for his arrest, and that his flight amounted to an obvious interference with his apprehension, the record contains substantial, credible evidence from which the trial court could have reasonably concluded that each element of resisting arrest had been proved beyond a reasonable doubt, including that the police intended to arrest defendant and that defendant knew of that intention.

"To find that a contemnor has committed direct, criminal contempt a court need only determine, beyond a reasonable doubt, that the contemnor's misbehavior, conducted in the presence of the trial court acting in its judicial function, obstructed the administration of justice."

***State v. Morrissette*, 2018-Ohio-3917**

Murder: Evidence: Counsel: Prosecutor: Jury Instructions: Flight

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2018/2018-Ohio-3917.pdf

Summary from the First District: "Defendant's conviction for murder was not against the manifest weight of the evidence where the evidence of his guilt, including credible eyewitness testimony that he was the shooter, and an abundance of circumstantial evidence, such as surveillance video footage, that supported the inference that he was the shooter, was overwhelming.

"Any misconduct by the prosecutor, including, at trial, referring to defendant by his nickname 'Psycho' when not necessary for identification or clarity but without purpose to impugn defendant's character, and during closing argument, fleetingly referring to a matter outside the evidence, making an argument not supported by the evidence, and touching on the issue of punishment in the context of explaining a consciousness of guilt argument, did not result in reversible error, because the impact of such misconduct, even if combined, did not deny defendant a fair trial nor was it outcome determinative, when weighed against the strength of the state's case.

"The trial court did not abuse its discretion by instructing the jury on flight because evidence that defendant had suddenly left town after the murder, had hid in a tree when fleeing from the police, and had rubbed 'hair grease,' 'seasoning' and 'cologne' on his body to avoid detection by K-9 police dogs supported the instruction.

"Defense counsels' failure to object to the prosecutor's unnecessary use of defendant's nickname 'Psycho,' and their own allegedly unnecessary use of that name, was not outcome determinative in light of the state's overwhelming evidence of guilt.

"The cumulative errors at trial did not affect the fairness of defendant's trial."

***State v. Walker*, 2018-Ohio-3918**

Constitution: Confrontation Clause: Evid.R. 804: Witness Unavailability: Counsel: Sentencing

Full Decision:

http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2018/2018-Ohio-3918.pdf

Summary from the First District: "The trial court did not err in determining that a witness was unavailable despite reasonable, good-faith efforts on the part of the state to secure the witness's presence and in allowing the state, pursuant to Evid.R. 804, to introduce the witness's testimony from a prior trial where the state had issued a subpoena to the witness approximately six weeks prior to trial; the appearance docket indicated that the subpoena had been 'returned and endorsed,' despite the record containing a return on the subpoena indicating a failure of service on the witness; a victim's advocate had contacted the witness a few days before the trial; and the state attempted to personally serve the witness with another subpoena the day that the witness failed to appear for trial: the introduction of the witness's testimony from the prior trial, which had ended in a mistrial, did not violate the Confrontation Clause, because the witness was unavailable despite the state's reasonable, good-faith efforts to secure his presence, and defendant had the opportunity to cross-examine the witness during the prior trial. [*But see* DISSENT: The state did not make a good-faith effort to secure the witness's presence for trial, and the trial court erred in relying on the appearance docket as evidence of the state's good-faith efforts where the state presented no testimony at the unavailability hearing regarding the subpoena that had been issued and returned or the clerk's notation regarding the subpoena, and the state's multiple efforts to contact the witness after the subpoena was returned unserved began two days before the scheduled trial date; therefore, the trial court erred in permitting the state to introduce the witness's testimony from the prior trial.]

"Where defendant failed to establish resulting prejudice from counsel's failure to present a mitigation argument at sentencing, counsel's performance will not be considered ineffective.

"The trial court did not err in the imposition of sentence where defendant failed to demonstrate that the trial court's comments at sentencing were the product of actual vindictiveness."

Second Appellate District of Ohio

***State v. Shaw*, 2018-Ohio-3816**

Sentencing: Jail-Time Credit

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2018/2018-Ohio-3816.pdf

Summary from the Second District: "Defendant's plea, which included agreements that he pay a specific amount of restitution in two cases, was made knowingly, intelligently, and voluntarily. The trial court did not err in ordering the amounts of restitution as agreed by the parties. Although the trial court's order of restitution did not specifically identify to whom the restitution was to be paid, the record clearly identifies the victims to whom restitution was owed. The trial court erred in its award of jail time credit in two cases when it imposed concurrent sentences. One judgment affirmed. Two judgments reversed as to the amount of jail time credit, and those matters are remanded for amended judgment entries of conviction reflecting the correct amount of jail time credit and for the trial court to notify the appropriate prison officials of the amended judgment entries. (Welbaum, P.J., concurring in part and dissenting in part.) "

Third Appellate District of Ohio

Nothing to report.

Fourth Appellate District of Ohio

Nothing to report.

Fifth Appellate District of Ohio

***State v. McClurg*, 2018-Ohio-3840**

Sentencing

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2018/2018-Ohio-3840.pdf

The trial court erred in imposing Appellant's suspended prison term because it failed to specifically inform him of the possible prison sentence which would be imposed if he violated community control. The trial court has to re-inform a defendant of the potential prison sentence each time he violates community control and is continued on community control.

***State v. Stotts*, 2018-Ohio-3904**

Sentencing: Allied Offenses

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2018/2018-Ohio-3904.pdf

The trial court erred in failing to merge Appellant's gross sexual imposition and kidnapping charges.

Sixth Appellate District of Ohio

Nothing to report.

Seventh Appellate District of Ohio

***State v. Harrigan*, 2018-Ohio-3836**

Sentencing: RVO Specification

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/7/2018/2018-Ohio-3836.pdf

From the opinion: "[T]he trial court erred in sentencing appellant to two separate RVO sentences on each of the four kidnapping counts. Pursuant to R.C. 2929.14(B)(2), the court should have only imposed one RVO specification sentence for each new offense."

Eighth Appellate District of Ohio

Nothing to report.

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

***State v. Porter*, 2018-Ohio-3852**

Sentencing: Jail-Time Credit: House Arrest

Full Decision:

https://www.supremecourt.ohio.gov/rod/docs/pdf/12/2018/2018-Ohio-3852.pdf

The court, sitting en banc, determined that a defendant is not entitled to jail-time credit for time he or she is subject to house arrest.

Supreme Court of Ohio

Nothing to report.

Sixth Circuit Court of Appeals

Nothing to report.

Supreme Court of the United States

Nothing to report.