Appellate Court Decisions - Week of 6/18/18

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

First Appellate District of Ohio

***State v. Giuggio*, 2018-Ohio-2376**

Guilty Plea: Crim.R. 11: Ineffective Assistance: Sentencing

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2018/2018-Ohio-2376.pdf

Summary from the First District: "Before a trial court accepts a guilty plea in a felony case, Crim.R. 11(C)(2) requires the court to personally address the defendant, ascertain that the plea is voluntary, and entered with an understanding of the effect of the plea, the nature of the charges, and the maximum penalty that may be imposed. In addition, the court must inform the defendant, and determine that the defendant understands, that by pleading guilty, the defendant is waiving her or his constitutional rights (1) to a jury trial, (2) to confront witnesses against her or him, (3) to have compulsory process for obtaining witnesses, (4) to require the state to prove the defendant's guilty beyond a reasonable doubt, and (5) to the privilege against self-incrimination. An appellate court is unable to determine on appeal whether ineffective assistance of trial counsel occurred where the allegations of ineffectiveness are based on facts outside the record. The trial court's imposition of a maximum prison term was not contrary to law where the record reflected that the court considered the purposes and principles of sentencing in R.C. 2929.11 and the factors in R.C. 2929.12, and the sentence fell within the permissible range."

***State v. Wilson*, 2018-Ohio-2379**

Motion to Suppress: Plain View

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2018/2018-Ohio-2377.pdf

Summary from the First District: "Where the trial court specifically found that a marijuana cigarette in defendant's vehicle had been in the plain view of an officer, a search of the vehicle was supported by both the automobile and plain-view exceptions to the warrant requirement, and the trial court erred in suppressing all items found during the search of the vehicle. The trial court erred in suppressing money given by defendant to, and seized by

police from, a third party where the money was recovered based on information received from a source independent of a statement made by defendant to police."

***State v. Green*, 2018-Ohio-2378**

***Anders* Brief**

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2018/2018-Ohio-2378.pdf

Summary from the First District: " Where counsel has filed a no-error brief pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), and where the record indicates that, in accepting the defendant's guilty pleas, the trial court failed to notify the defendant of his constitutional right to confront his accusers, the appellate court must appoint new counsel to address legal points arguable on the merits with respect to the validity of the guilty pleas and any other issues counsel may wish to raise."

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

***State v. McLaughlin*, 2018-Ohio-2333**

Sentencing: Allied Offenses: Theft: Aggravated Robbery

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2018/2018-Ohio-2333.pdf

The trial court committed plain error in failing to merge Appellant's two theft convictions where Appellant took six firearms and a guitar from the same home, on the same night, from the same victim. The trial court also

committed plain error in failing to merge those theft convictions into Appellant's aggravated robbery conviction, which stemmed from the same incident. There was also a reasonable probability Appellant's kidnapping conviction was allied to his aggravated robbery charge, but because trial counsel did not raise the issue at trial, the state was not put on notice of a possible need to place additional facts on the record that the offenses were not allied. The case was remanded to the trial court for a determination whether the kidnapping and aggravated robbery convictions should merge.

Sixth Appellate District of Ohio

Nothing to report.

Seventh Appellate District of Ohio

Nothing to report.

Eighth Appellate District of Ohio

***State v. Gordon*, 2018-Ohio-2292**

Evidence: Authentication

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2018/2018-Ohio-2292.pdf

The trial court erred in admitting into evidence a recorded jail phone call because the call was improperly authenticated. The detective never identified the defendant as the caller. Instead, he simply testified that the defendant identified himself as "Neeko" at the beginning of the call. The detective never testified that he was familiar with the defendant's voice, or that the call originated from the defendant's pin number, or that that the jail-call process was accurate. However, the error was harmless because there was still sufficient evidence to support Appellant's convictions.

The trial court also erred in admitting into evidence an improperly authenticated Facebook photograph, because there was no evidence the defendant had a Facebook page using the name "Yonk Boolin." There was no evidence of who retrieved the photograph, when it was retrieved, or whether the defendant was one of the men in the photograph. The photograph was also improper other-acts evidence because it showed the defendant with a gun, but made no suggestion the gun in the photo was the murder weapon. The photo tended to show the defendant was the type of person who had a gun, make it probable one would conclude he acted in conformity with that character in shooting the victim. Nevertheless, the

error was harmless because there was still substantial independent evidence of Appellant's guilt. The same was true of other-acts evidence testimony that defendant "carries a revolver."

***State v. Fips*, 2018-Ohio-2296**

Assault on a Peace Officer: Disorderly Conduct: Manifest Weight

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2018/2018-Ohio-2296.pdf

Appellant's conviction for assault on a police officer was against the manifest weight of the evidence where the evidence at trial did not support the conclusion that Appellant intentionally hit the officer with her knee. The evidence, however, did support a conviction for disorderly conduct. The court of appeals affirmed the conviction as modified and remanded for resentencing.

***State v. Michailides*, 2018-Ohio-2399**

Speedy Trial

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2018/2018-Ohio-2399.pdf

Summary from the Eighth District: "The State violated defendant's right to a speedy trial. The speedy trial time clock restarted when the defendant was arrested under a subsequent indictment that was premised on the same underlying facts that were known to the state in the previous indictment. However, any time period that has elapsed under the original indictment was added to the time period commencing with the second indictment. Defendant's pro se motion for speedy trial did not stop the speedy trial clock because it was not seeking a dismissal, but merely requesting the trial court to set a trial date."

***In re J.Y. A Minor Child*, 2018-ohio-2405**

Delinquency

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2018/2018-Ohio-2405.pdf

Summary from the Eighth District: "The state, under the plain meaning of R.C. 2945.67, could as a matter of right appeal the trial court's dismissal.

The trial court did not err where it dismissed the state's second complaint with prejudice against the juvenile. The state filed two identical complaints and requested that one complaint be dismissed with no intent to refile that exact complaint."

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

***Rosales-Mireles v. United States*, No. 16-9493**

Sentencing: Plain Error

Full Decision:
https://www.supremecourt.gov/opinions/17pdf/16-9493_e0fi.pdf

Syllabus:

Each year, district courts sentence thousands of individuals to imprisonment for violations of federal law. To help ensure certainty and fairness in those sentences, federal district courts are required to consider the advisory United States Sentencing Guidelines. Prior to sentencing, the United States Probation Office prepares a presentence investigation report

to help the court determine the applicable Guidelines range. Ultimately, the district court is responsible for ensuring the Guidelines range it considers is correct. At times, however, an error in the calculation of the Guidelines range goes unnoticed by the court and the parties. On appeal, such errors not raised in the district court may be remedied under Federal Rule of Criminal Procedure 52(b), provided that, as established in *United States v. Olano, 507 U. S. 725*: (1) the error was not "intentionally relinquished or abandoned," (2) the error is plain, and (3) the error "affected the defendant's substantial rights," *Molina-Martinez v. United States*, 578 U. S. ____, ____. If those conditions are met, "the court of appeals should exercise its discretion to correct the forfeited error if the error ' "seriously affects the fairness, integrity or public reputation of judicial proceedings." ' " *Id.*, at ____. This last consideration is often called *Olano*'s fourth prong. The issue here is when a Guidelines error that satisfies *Olano*'s first three conditions warrants relief under the fourth prong.

Petitioner Florencio Rosales-Mireles pleaded guilty to illegal reentry into the United States. In calculating the Guidelines range, the Probation Office's presentence report mistakenly counted a state misdemeanor conviction twice. As a result, the report yielded a Guidelines range of 77 to 96 months, when the correctly calculated range would have been 70 to 87 months. Rosales-Mireles did not object to the error in the District Court, which relied on the miscalculated Guidelines range and sentenced him to 78 months of imprisonment. On appeal, Rosales-Mireles challenged the incorrect Guidelines range for the first time. The Fifth Circuit found that the Guidelines error was plain and that it affected Rosales-Mireles' substantial rights because there was a "reasonable probability that he would have been subject to a different sentence but for the error." The Fifth Circuit nevertheless declined to remand the case for resentencing, concluding that Rosales-Mireles had not established that the error would seriously affect the fairness, integrity, or public reputation of judicial proceedings because neither the error nor the resulting sentence "would shock the conscience."
***Held:* A miscalculation of a Guidelines sentencing range that has been determined to be plain and to affect a defendant's substantial rights calls for a court of appeals to exercise its discretion under Rule 52(b) to vacate the defendant's sentence in the ordinary case. Pp. 6–15.**

(a) Although "Rule 52(b) is permissive, not mandatory," *Olano*, 507 U. S., at 735, it is well established that courts "should" correct a forfeited plain error affecting substantial rights "if the error 'seriously affect[s] the fairness, integrity or public reputation of judicial proceedings,' " *id.*, at 736. Like the narrow rule rejected in *Olano*, which would have called for relief only for a miscarriage of justice, the Fifth Circuit's shock-the-conscience standard too narrowly confines the extent of the court of appeals' discretion. It is not reflected in Rule 52(b), nor in how the plain-error doctrine has been applied by this Court, which has reversed judgments for plain error based

on inadvertent or unintentional errors by the court or the parties below and has remanded cases involving such errors, including sentencing errors, for consideration of *Olano*'s fourth prong. The errors are not required to amount to a "powerful indictment" of the system. The Fifth Circuit's emphasis on the district judge's "competence or integrity" also unnecessarily narrows *Olano*'s instruction to correct an error if it seriously affects "judicial proceedings." Pp. 6–8.

(b) The effect of the Fifth Circuit's heightened standard is especially pronounced in cases like this one. An error resulting in a higher range than the Guidelines provide usually establishes a reasonable probability that a defendant will serve a prison sentence greater than "necessary" to fulfill the purposes of incarceration, 18 U. S. C. §3553(a). See *Molina-Martinez*, 578 U. S., at ____. That risk of unnecessary deprivation of liberty particularly undermines the fairness, integrity, or public reputation of judicial proceedings in the context of a plain Guidelines error because Guidelines miscalculations ultimately result from judicial error, as the district court is charged in the first instance with ensuring the Guidelines range it considers is correct. Moreover, remands for resentencing are relatively inexpensive proceedings compared to remands for retrial. Ensuring the accuracy of Guidelines determinations also furthers the Sentencing Commission's goal of achieving uniformity and proportionality in sentencing more broadly, since including uncorrected sentences based on incorrect Guidelines ranges in the data the Commission collects could undermine the Commission's ability to make appropriate revisions to the Guidelines. Because any exercise of discretion at the fourth prong of *Olano* inherently requires "a case-specific and fact-intensive" inquiry, *Puckett v. United States*, 556 U. S. 129, 142, countervailing factors may satisfy the court of appeals that the fairness, integrity, and public reputation of the proceedings will be preserved absent correction. But there are no such factors in this case. Pp. 8–11.

(c) The Government and dissent maintain that even though the Fifth Circuit's standard was inaccurate, Rosales-Mireles is still not entitled to relief. But their arguments are unpersuasive. They caution that granting this type of relief would be inconsistent with the Court's statements that discretion under Rule 52(b) should be exercised "sparingly," *Jones v. United States*, 527 U. S. 373, 389, and reserved for "exceptional circumstances," *Meyer v. Kenmore Granville Hotel Co.*, 297 U. S. 160. In contrast to the *Jones* remand, however, no additional jury proceedings would be required in a remand for resentencing based on a Guidelines miscalculation. Plus, the circumstances of Rosales-Mireles' case are exceptional under this Court's precedent, as they are reasonably likely to have resulted in a longer prison sentence than necessary and there are no countervailing factors that otherwise further the fairness, integrity, or public reputation of judicial proceedings. The Government and dissent also assert that Rosales-Mireles' sentence is presumptively reasonable because

it falls within the corrected Guidelines range. But a court of appeals can consider a sentence's substantive reasonableness only after it ensures "that the district court committed no significant procedural error, such as failing to calculate (or improperly calculating) the Guidelines range." *Gall v. United States*, 552 U. S. 38, 51. If a district court cannot properly determine whether, considering all sentencing factors, including the correct Guidelines range, a sentence is "sufficient, but not greater than necessary," 18 U. S. C. §3553(a), the resulting sentence would not bear the reliability that would support a "presumption of reasonableness" on review. See 552 U. S., at 51. And regardless of its ultimate reasonableness, a sentence that lacks reliability because of unjust procedures may well undermine public perception of the proceedings. Finally, the Government and dissent maintain that the Court's decision will create an opportunity for "sandbagging" that Rule 52(b) is supposed to prevent. But that concern fails to account for the realities at play in sentencing proceedings, where it is highly speculative that a defendant would benefit from a strategy of deliberately forgoing an objection in the district court, with hopes of arguing for reversal under plain-error review later. Pp. 12–14.

850 F. 3d 246, reversed and remanded.

SOTOMAYOR, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, GINSBURG, BREYER, KAGAN, and GORSUCH, JJ., joined. THOMAS, J., filed a dissenting opinion, in which ALITO, J., joined.

***Carpenter v. United States*, No. 16-402**

Fourth Amendment: Cell Phones: Location Data

Full Decision:
https://www.supremecourt.gov/opinions/17pdf/16-402_h315.pdf

Syllabus:

Cell phones perform their wide and growing variety of functions by continuously connecting to a set of radio antennas called "cell sites." Each time a phone connects to a cell site, it generates a time-stamped record known as cell-site location information (CSLI). Wireless carriers collect and store this information for their own business purposes. Here, after the FBI identified the cell phone numbers of several robbery suspects, prosecutors were granted court orders to obtain the suspects' cell phone records under the Stored Communications Act. Wireless carriers produced CSLI for petitioner Timothy Carpenter's phone, and the Government was able to obtain 12,898 location points cataloging Carpenter's movements over 127 days—an average of 101 data points per day. Carpenter moved to suppress the data, arguing that the Government's seizure of the records without obtaining a warrant supported by probable cause violated the

Fourth Amendment. The District Court denied the motion, and prosecutors used the records at trial to show that Carpenter's phone was near four of the robbery locations at the time those robberies occurred. Carpenter was convicted. The Sixth Circuit affirmed, holding that Carpenter lacked a reasonable expectation of privacy in the location information collected by the FBI because he had shared that information with his wireless carriers.

Held:

1. The Government's acquisition of Carpenter's cell-site records was a Fourth Amendment search. Pp. 4–18.

(a) The Fourth Amendment protects not only property interests but certain expectations of privacy as well. Katz v. United States, 389 U. S. 347, 351. Thus, when an individual "seeks to preserve something as private," and his expectation of privacy is "one that society is prepared to recognize as reasonable," official intrusion into that sphere generally qualifies as a search and requires a warrant supported by probable cause. Smith v. Maryland, 442 U. S. 735, 740 (internal quotation marks and alterations omitted). The analysis regarding which expectations of privacy are entitled to protection is informed by historical understandings "of what was deemed an unreasonable search and seizure when [the Fourth Amendment] was adopted." Carroll v. United States, 267 U. S. 132, 149. These Founding-era understandings continue to inform this Court when applying the Fourth Amendment to innovations in surveillance tools. See, e.g., Kyllo v. United States, 533 U. S. 27. Pp. 4–7.

(b) The digital data at issue—personal location information maintained by a third party—does not fit neatly under existing precedents but lies at the intersection of two lines of cases. One set addresses a person's expectation of privacy in his physical location and movements. See, e.g., United States v. Jones, 565 U. S. 400 (five Justices concluding that privacy concerns would be raised by GPS tracking). The other addresses a person's expectation of privacy in information voluntarily turned over to third parties. See United States v. Miller, 425 U. S. 435 (no expectation of privacy in financial records held by a bank), and Smith, 442 U. S. 735 (no expectation of privacy in records of dialed telephone numbers conveyed to telephone company). Pp. 7–10.

(c) Tracking a person's past movements through CSLI partakes of many of the qualities of GPS monitoring considered in Jones—it is detailed, encyclopedic, and effortlessly compiled. At the same time, however, the fact that the individual continuously reveals his location to his wireless carrier implicates the third-party principle of Smith and Miller. Given the unique nature of cell-site records, this Court declines to extend Smith and Miller to cover them. Pp. 10–18.

(1) A majority of the Court has already recognized that individuals have a reasonable expectation of privacy in the whole of their physical movements. Allowing government access to cell-site records—which "hold for many Americans the 'privacies of life,' " Riley v. California, 573 U. S. ____, ____— contravenes that expectation. In fact, historical cell-site records present even greater privacy concerns than the GPS monitoring considered in Jones: They give the Government near perfect surveillance and allow it to travel back in time to retrace a person's whereabouts, subject only to the five-year retention policies of most wireless carriers. The Government contends that CSLI data is less precise than GPS information, but it thought the data accurate enough here to highlight it during closing argument in Carpenter's trial. At any rate, the rule the Court adopts "must take account of more sophisticated systems that are already in use or in development," Kyllo, 533 U. S., at 36, and the accuracy of CSLI is rapidly approaching GPS-level precision. Pp. 12–15.

(2) The Government contends that the third-party doctrine governs this case, because cell-site records, like the records in Smith and Miller, are "business records," created and maintained by wireless carriers. But there is a world of difference between the limited types of personal information addressed in Smith and Miller and the exhaustive chronicle of location information casually collected by wireless carriers.

The third-party doctrine partly stems from the notion that an individual has a reduced expectation of privacy in information knowingly shared with another. Smith and Miller, however, did not rely solely on the act of sharing. They also considered "the nature of the particular documents sought" and limitations on any "legitimate 'expectation of privacy' concerning their contents." Miller, 425 U. S., at 442. In mechanically applying the third-party doctrine to this case the Government fails to appreciate the lack of comparable limitations on the revealing nature of CSLI.

Nor does the second rationale for the third-party doctrine— voluntary exposure—hold up when it comes to CSLI. Cell phone location information is not truly "shared" as the term is normally understood. First, cell phones and the services they provide are "such a pervasive and insistent part of daily life" that carrying one is indispensable to participation in modern society. Riley, 573 U. S., at ____. Second, a cell phone logs a cell-site record by dint of its operation, without any affirmative act on the user's part beyond powering up. Pp. 15–17.

(d) This decision is narrow. It does not express a view on matters not before the Court; does not disturb the application of Smith and Miller or call into question conventional surveillance techniques and tools, such as security cameras; does not address other business records that might incidentally reveal location information; and does not consider other collection

techniques involving foreign affairs or national security. Pp. 17–18.

2. The Government did not obtain a warrant supported by probable cause before acquiring Carpenter's cell-site records. It acquired those records pursuant to a court order under the Stored Communications Act, which required the Government to show "reasonable grounds" for believing that the records were "relevant and material to an ongoing investigation." 18 U. S. C. §2703(d). That showing falls well short of the probable cause required for a warrant. Consequently, an order issued under §2703(d) is not a permissible mechanism for accessing historical cell-site records. Not all orders compelling the production of documents will require a showing of probable cause. A warrant is required only in the rare case where the suspect has a legitimate privacy interest in records held by a third party. And even though the Government will generally need a warrant to access CSLI, case-specific exceptions—e.g., exigent circumstances—may support a warrantless search. Pp. 18–22.

819 F. 3d 880, reversed and remanded

ROBERTS, C. J., delivered the opinion of the Court, in which GINSBURG, BREYER, SOTOMAYOR, and KAGAN, JJ., joined. KENNEDY, J., filed a dissenting opinion, in which THOMAS and ALITO, JJ., joined. THOMAS, J., filed a dissenting opinion. ALITO, J., filed a dissenting opinion, in which THOMAS, J., joined. GORSUCH, J., filed a dissenting opinion.

***Currier v. Virginia*, No. 16-1348**

Double Jeopardy

Full Decision:
https://www.supremecourt.gov/opinions/17pdf/16-1348_h315.pdf

Syllabus:

Petitioner Michael Currier was indicted for burglary, grand larceny, and unlawful possession of a firearm by a convicted felon. Because the prosecution could introduce evidence of Mr. Currier's prior burglary and larceny convictions to prove the felon-in-possession charge, and worried that evidence might prejudice the jury's consideration of the other charges, Mr. Currier and the government agreed to a severance and asked the court to try the burglary and larceny charges first, followed by a second trial on the felon-in-possession charge. At the first trial, Mr. Currier was acquitted. He then sought to stop the second trial, arguing that it would amount to double jeopardy. Alternatively, he asked the court to prohibit the state from relitigating at the second trial any issue resolved in his favor at the first. The trial court denied his requests and allowed the second trial to proceed unfettered. The jury convicted him on the felon-in-possession charge. The

Virginia Court of Appeals rejected his double jeopardy arguments, and the Virginia Supreme Court summarily affirmed.

Held: **The judgment is affirmed.**

292 Va. 737, 798 S. E. 2d 164, affirmed.

JUSTICE GORSUCH delivered the opinion of the Court with respect to Parts I and II, concluding that, because Mr. Currier consented to a severance, his trial and conviction on the felon-in-possession charge did not violate the Double Jeopardy Clause, which provides that no person may be tried more than once "for the same offence." Mr. Currier argues that Ashe v. Swenson, 397 U. S. 436, requires a ruling for him. There, the Court held that the Double Jeopardy Clause barred a defendant's prosecution for robbing a poker player because the defendant's acquittal in a previous trial for robbing a different poker player from the same game established that the defendant "was not one of the robbers," id., at 446. Ashe's suggestion that the relitigation of an issue may amount to the impermissible relitigation of an offense represented a significant innovation in this Court's jurisprudence. But whatever else may be said about Ashe, the Court has emphasized that its test is a demanding one. Ashe forbids a second trial only if to secure a conviction the prosecution must prevail on an issue the jury necessarily resolved in the defendant's favor in the first trial. A second trial is not precluded simply because it is unlikely—or even very unlikely—that the original jury acquitted without finding the fact in question. To say that the second trial is tantamount to a trial of the same offense as the first and thus forbidden by the Double Jeopardy Clause, the Court must be able to say that it would have been irrational for the jury in the first trial to acquit without finding in the defendant's favor on a fact essential to a conviction in the second.

Bearing all that in mind, a critical difference emerges between this case and Ashe: Even assuming that Mr. Currier's second trial qualified as the retrial of the same offense under Ashe, he consented to the second trial. In Jeffers v. United States, 432 U. S. 137, where the issue was a trial on a greater offense after acquittal on a lesserincluded offense, the Court held that the Double Jeopardy Clause is not violated when the defendant "elects to have the . . . offenses tried separately and persuades the trial court to honor his election." Id., at 152. If consent can overcome a traditional double jeopardy complaint about a second trial for a greater offense, it must also suffice to overcome a double jeopardy complaint under Ashe's more innovative approach. Holding otherwise would be inconsistent not only with Jeffers but with other cases too. See, e.g., United States v. Dinitz, 424 U. S. 600. And cases Mr. Currier cites for support, e.g., Harris v. Washington, 404 U. S. 55, merely applied Ashe's test and concluded that a second trial was impermissible. They do not address the question whether the Double Jeopardy Clause prevents a second trial when the defendant consents to it.

Mr. Currier contends that he had no choice but to seek two trials, because evidence of his prior convictions would have tainted the jury's consideration of the burglary and larceny charges. This is not a case, however, where the defendant had to give up one constitutional right to secure another. Instead, Mr. Currier faced a lawful choice between two courses of action that each bore potential costs and rationally attractive benefits. Difficult strategic choices are "not the same as no choice," United States v. Martinez-Salazar, 528 U. S. 304, 315, and the Constitution "does not . . . forbid requiring" a litigant to make them, McGautha v. California, 402 U. S. 183, 213. Pp. 3–8.

JUSTICE GORSUCH, joined by THE CHIEF JUSTICE, JUSTICE THOMAS, and JUSTICE ALITO, concluded in Part III that civil issue preclusion principles cannot be imported into the criminal law through the Double Jeopardy Clause to prevent parties from retrying any issue or introducing any evidence about a previously tried issue. Mr. Currier argues that, even if he consented to a second trial, that consent did not extend to the relitigation of any issues the first jury resolved in his favor. Even assuming for argument's sake that Mr. Currier's consent to holding a second trial didn't more broadly imply consent to the manner it was conducted, his argument must be rejected on a narrower ground as refuted by the text and history of the Double Jeopardy Clause and by this Court's contemporary double jeopardy cases, e.g., Blockburger v. United States, 284 U. S. 299; Dowling v. United States, 493 U. S. 342. Nor is it even clear that civil preclusion principles would help defendants like Mr. Currier. See, e.g., Bravo-Fernandez v. United States, 580 U. S. ____, ____. Grafting civil preclusion principles onto the criminal law could also invite ironies—e.g., making severances more costly might make them less freely available. Pp. 8–16.

JUSTICE KENNEDY concluded that, because Parts I and II of the Court's opinion resolve this case in a full and proper way, the extent of the Double Jeopardy Clause protections discussed and defined in Ashe need not be reexamined here. Pp. 1–2.