Appellate Court Decisions - Week of 4/6/20

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

First Appellate District of Ohio

***State v. O'Connell*, C-180600 and C-180601**

Other acts evidence

Full Decision: (No web cite as of yet).

After conviction for sex offenses and sentence of life without parole x 4, case is reversed and remanded for new trial. Trial court improperly allowed the testimony of alleged victim of 20-year old allegations, without any limiting instruction to the jury, which violated Evid.R. 404(B) and the error was not harmless.

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. Dunn*, 2020-Ohio-1261**

Sufficiency of evidence; failure to disclose personal information

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2020/2020-Ohio-1261.pdf

The state failed to present sufficient evidence to support conviction of failure to disclose personal information, R.C. 2921.29(A)(1). Appellant was on private property with owner's permission, not in a public place as required by the statute; and neither police officer testified that they

"reasonably suspected" that appellant was committing, had committed, or was about to commit a criminal act, also required by the statute.

Sixth Appellate District of Ohio

Nothing to report.

Seventh Appellate District of Ohiopaypal

Nothing to report.

Eighth Appellate District of Ohio

***State v. Hawley*, 2020-Ohio-1270**

Sentencing

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2020/2020-Ohio-1270.pdf

Appellant's consecutive sentences for a total of 56 years was excessive, contrary to law, and violates his due process rights; sentence modified to concurrent, with an aggregate sentence of eight years.

***State v. Jones*, 2020-Ohio-1273**

Sentencing

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2020/2020-Ohio-1273.pdf

Appellant's consecutive sentences for six misdemeanors totaling 24 months was erroneous, as maximum sentence is 18 months; it was also error to impose costs of extradition, as such costs can only be imposed on nonindigent felons.

***Cleveland v. Holley*, 2020-Ohio-1275**

Ineffective assistance of counsel

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2020/2020-Ohio-1275.pdf

In assault case, trial counsel was ineffective for failing to present text messages from alleged victim as evidence in trial that stated appellant was not the aggressor in the fight.

***Cleveland v. Colon*, 2020-Ohio-1282**

Insufficient evidence; unsafe operation while approaching safety vehicle

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2020/2020-Ohio-1282.pdf

There was insufficient evidence that appellant operated his vehicle with undue caution as required for a conviction under R.C. 4511.213 where trial court stated on the record that "I believe that you actually operated in the safest manner. . . ."

***Cleveland v. Rushton*, 2020-Ohio-1281**

Restitution

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2020/2020-Ohio-1281.pdf

"[T]he proper remedy when a trial court orders restitution without specifying the amount to be paid is to remand for an evidentiary hearing on restitution."

***State v. Wright*, 2020-Ohio-1271**

Insufficient evidence; rape and kidnapping

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2020/2020-Ohio-1271.pdf

Although appellant was found incompetent and unrestorable, R.C. 2945.39, there was not clear and convincing evidence presented that appellant committed the 2001 rape and kidnapping. Only evidence presented by state to substantiate charges was the testimony of an investigator whom "read into the record an 18-year old police report containing statements from a now deceased but formerly mentally ill complainant. . . ." This narrative by the alleged victim was uncorroborated and contradicted by the results of the rape kit which showed no injuries to the complainant and no male DNA. Trial court also erred in finding Appellant "guilty" of the sexually violent predator specification where his alleged offenses occurred prior to the

2005 amendment to R.C. 2971.01(H), and such application of the specification statute would be unconstitutional as a retroactive application and in violation of the Ex Post Facto Clause of the United States Constitution and the Retroactivity Clause of the Ohio Constitution. Case reversed and remanded for dismissal of all charges and specifications.

Ninth Appellate District of Ohio

***State v. Oaks*, 2020-Ohio-1200**

Suppression

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/9/2020/2020-Ohio-1200.pdf

Trial court erred when it denied motion to suppress results of appellant's urine test. In per curiam decision, one judge reversed because trial court relied on Crim.R. 12(I), but "did not make findings of fact or engage in any legal analysis; other judge which concurred in judgement only held that appellant's plea was not knowingly and voluntarily made where it was predicated on the belief that she could appeal the trial court's ruling.

***State v. King*, 2020-Ohio-1312**

Suppression

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/9/2020/2020-Ohio-1312.pdf

Trial court erred when it denied motion to suppress search of vehicle after traffic stop was completed where consent of driver for search was not freely and voluntarily given, as driver was in police car which was surrounded by multiple police cars. Officer also prolonged traffic stop after the lawful basis for the stop had ended by requesting a second canine sniff of the vehicle after first canine did not alert.

Tenth Appellate District of Ohio

Nothing to report.

Eleventh Appellate District of Ohio

***State v. Cleavenger*, 2020-Ohio-1325**

Evidence

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2020/2020-Ohio-1325.pdf

Trial court erred in admitting a recording between the alleged victim and her mother as an admission of a co-conspirator, pursuant to Evid.R. 801(D)(2)(e), where the state "failed to establish the existence of a conspiracy related to the charged crimes" between appellant and his wife. Trial court also erred when it permitted the state to impeach the victim's brother with the results of the victim's polygraph test.

Twelfth Appellate District of Ohio

***State v. Oaks*, 2020-Ohio-1316**

Sufficiency of evidence; felonious assault

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/12/2020/2020-Ohio-1316.pdf

Summary from Judge Rodenberg: "The trial court erred in not granting appellant's Crim.R. 29(A) motion, where the state presented insufficient evidence that appellant had the required mental state to aid or abet her boyfriend's felonious assault of two officers during his resisting arrest."

Supreme Court of Ohio

Nothing to report.

Nothing to report.

Sixth Circuit Court of Appeals

Nothing to report.

Supreme Court of the United States

***Kansas v. Glover*, 589 U.S. ____ (2020)**

Suppression

Full Decision:

http://www.supremecourt.gov/opinions/19pdf/18-556_e1pf.pdf

***Held*: When the officer lacks information negating an inference that the owner is driving the vehicle, an investigative traffic stop made after running a vehicle's license plate and learning that the registered owner's driver's license has been revoked is reasonable under the Fourth Amendment. Pp. 3–10.**

(a) An officer may initiate a brief investigative traffic stop when he has "a particularized and objective basis" to suspect legal wrongdoing. *United States* v. *Cortez*, 449 U. S. 411, 417. The level of suspicion required is less than that necessary for probable cause and "depends on' "the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." ' " *Prado Navarette* v. *California*, 572 U. S. 393, 402. Courts must therefore permit officers to make "commonsense judgments and inferences about human behavior." *Illinois* v. *Wardlow*, 528 U. S. 119, 125. P. 3

(b) Here, the deputy's commonsense inference that the owner of a vehicle was likely the vehicle's driver provided more than reasonable suspicion to initiate the stop. That inference is not made unreasonable merely because a vehicle's driver is not always its registered owner or because Glover had a revoked license. Though common sense suffices to justify the officer's inference, empirical studies demonstrate that drivers with suspended or revoked licenses frequently continue to drive. And Kansas' license-revocation scheme, which covers drivers who have already demonstrated a disregard for the law or are categorically unfit to drive, reinforces the reasonableness of the inference that an individual with a revoked license will continue to drive. Pp. 4–6.

(c) Glover's counterarguments are unpersuasive. He argues that the deputy's inference was unreasonable because it was not grounded in his law enforcement training or experience. Such a requirement, however, is inconsistent with this Court's Fourth Amendment jurisprudence. See, *e.g.*, *Navarette*, 572 U. S., at 402. It would also place the burden on police officers to justify their inferences by referring to training materials or experience, and it would foreclose their ability to rely on common sense obtained outside of their work duties. Glover's argument that Kansas' view would permit officers to base reasonable suspicion exclusively on probabilities also carries little force. Officers, like jurors, may rely on probabilities in the reasonable suspicion context. See, *e.g.*, *United States* v. *Sokolow*, 490 U. S. 1, 8–9. Moreover, the deputy here did more than that: He combined facts obtained from a database and commonsense judgments to form a reasonable suspicion that a specific individual was potentially engaged in specific criminal activity. Pp. 6–8.

(d) The scope of this holding is narrow. The reasonable suspicion standard

" 'takes into account the totality of the circumstances.' " *Navarette*, 572 U. S., at 397. The presence of additional facts might dispel reasonable suspicion, but here, the deputy possessed no information sufficient to rebut the reasonable inference that Glover was driving his own truck. P. 9.

308 Kan. 590, 422 P. 3d 64, reversed and remanded.

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