Appellate Court Decisions –Week of 8/28/23

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

First Appellate District of Ohio

***State v. Schuster*, C-220525, 526, & 649**

Sufficiency; refusal of OVI chemical test/no-contest plea

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

In convictions for two separate incidents where appellant was charged with OVI and refusal and where he pled no contest to the charges in both case and to a subsequent probation violation, trial court erred when it "completely failed to advise [appellant] of the effects of his no-contest pleas as required by Traf.R. 10(B) and (D)." And in the first conviction for the 2020 refusal, "the state's explanation of circumstances failed to establish an essential element of refusing a chemical test in violation of R.C. 4511.19(A)(2) * * *." This failure was "'akin to a failure to introduce sufficient evidence.' *City of Seven Hills v. McKernan*, 2019-Ohio-1001, 124 N.E.3d 898, ¶ 26 (8th Dist.)." Therefore, appellant's conviction is reversed, and he is discharged from further prosecution on this charge. Remaining convictions are reversed and remanded.

***In re S.D.*, C-220603, 604, 605, & 606**

Jurisdiction of juvenile court

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

Juvenile court erred in classifying appellant as a Tier II juvenile sex offender by nunc pro tunc entries; such entries were filed after S.D. turned 21 years old. Therefore, the juvenile court lacked jurisdiction to enter those orders.

***State v. Lewis*, C-220457**

Suppression; automobile search

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

Trial court erred when it denied appellant's motion to suppress the search of her purse which was in her possession while she was standing "roughly 25 away from [a] car" that she had driven, exited, and that had been subsequently searched by police after arresting its passenger who had

felony warrants. Appellant had argued that officers were not permitted, "in the course of a car search, search a container held roughly 25 feet away from the car." The COA agreed, holding "that the automobile exception does not extend to containers removed from the car before officers develop probable cause to search the car." Conviction reversed and appellant discharged from further prosecution.

***State v. Dorsey*, C-230067**

Merger

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

In convictions for two counts of workers' compensation fraud and one count of theft, where state argued that all three offenses "arose out of the same course of conduct," trial court erred when it imposed separate, concurrent sentences for each count instead of merging them as allied offenses of similar import. State concedes error.

***In re J.C.*, C-220544**

Sufficiency; resisting arrest

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

Juvenile court erred in adjudicating appellant delinquent for resisting arrest where the state failed to prove the officer had probable cause to arrest appellant for aggravated menacing (such menacing charge was eventually voluntarily dismissed by the state). "[B]ecause the state is required to prove a lawful arrest as an element of resisting arrest, the absence of testimony from [Officer] Woodruff as to the basis for arresting [appellant] is fatal to the state's case."

Second Appellate District of Ohio

Nothing to report.

Third Appellate District of Ohio

***State v. Palmer*, 2023-Ohio-2719**

Consecutive sentences/clerical error

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/3/2023/2023-Ohio-2719.pdf

"[T]rial court erred by including different consecutive-sentencing findings in the judgment entry than those made at the sentencing hearing." "As the discrepancy between the sentencing hearing and the judgement entry of sentence was a clerical error, case remanded for court to issue a corrected entry nunc pro tunc.

***State v. Mazur*, 2023-Ohio-2717**

Sentencing/credit after judicial release revoked

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/3/2023/2023-Ohio-2717.pdf

After appellant was granted judicial release and that judicial release was revoked, trial court erred by imposing the original "four-year prison term rather than the balance of the prison term as required by R.C. 2929.20(K)."

***State v. Pummell*, 2023-Ohio-2721**

Plea/involuntary

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/3/2023/2023-Ohio-2721.pdf

Appellant's guilty plea was not knowingly, intelligently, nor voluntarily made. Although "the trial court did not officially participate in the plea bargaining process * * * [it] did make statements telling [appellant] that he would receive a lower sentence if he entered a guilty plea than if he went to trial. The trial court guaranteed that the sentence would be at the lower end of the sentencing range if [appellant] entered a plea, threatened a harsher sentence if [appellant] was convicted after a trial, and then took a recess to allow the parties time to discuss. The trial court specifically stated 'at the end of the trial, if you were to be found guilty, you could count on the penalties being more severe than what I've told you.' This statement is the equivalent of the trial court making a threat that there will be additional punishment if the defendant did not reach a plea agreement and was found guilty after trial, thus rendering the plea involuntary."

Fourth Appellate District of Ohio

Nothing to report.

Fifth Appellate District of Ohio

Nothing to report.

Sixth Appellate District of Ohio

Nothing to report.

Seventh Appellate District of Ohio

Nothing to report.

Eighth Appellate District of Ohio

***State v. Kyles*, 2023-Ohio-2691**

Sufficiency; cruelty to animals

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2023/2023-Ohio-2691.pdf

In conviction for a fifth-degree felony count of cruelty to animals which requires the animal to be a "companion animal," state failed to present evidence that the injured cat was "kept somewhere" which is required for the animal to be classified a "companion animal." Conviction reversed and sentence vacated.

***State v. Evans*, 2023-Ohio-2688**

Sufficiency; Involuntary manslaughter

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2023/2023-Ohio-2688.pdf

In conviction for involuntary manslaughter where state must prove that appellant caused the death of the victim "as a proximate result" of appellant "committing or attempting to commit a felony," trial court erred when it found that the underlying felony of WUD was the proximate cause of the victim's death to support the conviction. State' first theory of proximate cause that appellant's initial firing of his gun into the hood of a car "triggered" his co-defendant and others to start shooting was not supported by the evidence; "there [was] no evidence that a bullet from [appellant's] gun killed A.T.'s fetus; there is no evidence that but for [appellant's] shots

into the hood of A.T.'s car her fetus would not have died; and there is no evidence that the tragic events on that night were the reasonably foreseeable consequence of [appellant's] actions." And the state's second theory of proximate cause that appellant was complicit with his co-defendant was also not supported by the evidence; "the state failed to present any evidence that [appellant] 'supported, assisted, encouraged, cooperated with, advised, or incited' Johnson concerning the death of A.T.'s fetus or that [appellant] shared Johnson's purposeful state of mind when Johnson killed A.T.'s fetus. The evidence that the state presented to show a connection between [appellant] and Johnson did nothing more than establish that the two were acquaintances who had minimal communication about benign topics on the day they separately attended a neighborhood event with approximately 200 other people."

***State v. Walker*, 2023-Ohio-2689**

Motion for leave to file a motion for a new trial

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2023/2023-Ohio-2689.pdf

In 2005 convictions for aggravated murder and attempted aggravated murder, trial court erred in denying appellant's motion for leave to file a delayed motion for a new trial based on newly discovered evidence of a witness "that he was unavoidably prevented from discovering * * *." Appellant "was unavoidably prevented from receiving the evidence contained in [the alleged witness'] affidavit because [the witness] stated that he never disclosed what he observed after the shooting. As a result, he could not discover a witness that no one knew existed * * * Because [appellant] established by clear and convincing proof that he was unavoidably prevented from discovering this evidence, he is entitled to a hearing on his motion for leave.

Ninth Appellate District of Ohio

Nothing to report.

Tenth Appellate District of Ohio

***State v. Butts*, 2023-Ohio-2670**

State's motion for leave to appeal/new trial

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/10/2023/2023-Ohio-

2670.pdf

In state's motion for leave to appeal the trial court's order "that granted defendant-appellee, Alan J. Butts, leave to file a delayed motion for new trial and his motion for a new trial based on newly discovered evidence," that motion was denied. The state "failed to sufficiently demonstrate a probability that the trial court abused its discretion in granting either," where appellee had presented evidence of the significant medical and scientific changes related to shaken baby syndrome which "created a strong probability of a different result at trial * * *."

***State v. Robertson*, 2023-Ohio-2746**

Suppression; traffic stop

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/10/2023/2023-Ohio-2746.pdf

In conviction for WUD, trial court erred when it denied appellant's motion to suppress the stop of his vehicle. Officer had no reasonable suspicion to stop appellant's vehicle for expired tags because H.B. 197, passed during the COVID outbreak, "created a moratorium on the expiration of vehicle registrations." Therefore, the officer's mistake of law was unreasonable. Also, "the good-faith exception is inapplicable as the officer's mistake was based on his own ignorance of the law and not from incorrect information in the LEADS report."

Eleventh Appellate District of Ohio

Nothing to report.

Twelfth Appellate District of Ohio

Nothing to report.

Supreme Court of Ohio

***State v. Schilling*, 2023-Ohio-3027**

Sex-offender registration and reporting

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2023/2023-Ohio-3027.pdf

"A person's classification as a sexually oriented offender under Ohio's Megan's Law occurs by operation of law—* State v. Henderson *does not apply to a trial court's error in determining a person's sex-offender classification—A person convicted of a sexually oriented offense in Ohio is entitled to relief from his or her registration and reporting obligations under Megan's Law after reporting period has ended, even if person was living outside Ohio and reported in another state during registration and reporting period."

Sixth Circuit Court of Appeals

Nothing to report.

Supreme Court of the United States

Nothing to report.