Appellate Court Decisions –Week of 10/7/24

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

First Appellate District of Ohio

***State v. Wallace*, C-220509 & C-220510**

Right to counsel

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

In convictions for failing to give notice of address change and failure to register as a sex offender, convictions are reversed because appellant "did not knowingly, voluntarily, and intelligently waive his right to counsel before proceeding to represent himself in these cases." Trial court failed 'to determine whether [appellant] fully understood his right to counsel and to establish that he knowingly relinquished it . . . [where] the record reveals the absence of a colloquy that substantially complies with Crim.R. 44." Case remanded.

Second Appellate District of Ohio

Nothing to report

Third Appellate District of Ohio

***State v. Snyder*, 2024-Ohio-4860**

Plea

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/3/2024/2024-Ohio-4860.pdf

In convictions for robbery and intimidation, appellant's guilty plea was not made knowingly, intelligently, nor voluntarily where the trial court failed to advise him of his right against self-incrimination and the right to compulsory process pursuant to Crim.R. 11(C)(2)(c). Plea vacated, and case remanded.

Fourth Appellate District of Ohio

***State v. Dunn*, 2024-Ohio-4555**

Reagan Tokes

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/7/2024/2024-Ohio-4555.pdf

Trial court erred in failing to advise appellant at the sentencing hearing of the Reagan Tokes factors pursuant to R.C. 2929.19(B)(2)(c). State concedes error. Case remanded for resentencing.

Fifth Appellate District of Ohio

Nothing to report.

Sixth Appellate District of Ohio

Nothing to report.

Seventh Appellate District of Ohio

***State v. Farone*, 2024-Ohio-4859**

Plea

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/7/2024/2024-Ohio-4859.pdf

In conviction for resisting arrest, appellant's guilty plea was not made knowingly, intelligently, nor voluntarily where the trial court failed to advise her that her guilty plea was a complete admission of guilt pursuant to Crim.R. 11(E). And although the advisement was in the written plea form that appellant signed, the "record does not indicate whether Appellant signed her written plea agreement form before, or after, her plea hearing." Plea vacated, and case remanded. COA also found that appellant was denied her right to allocution at the sentencing hearing, but that issue was deemed moot.

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

***State v. Stacy*, 2024-Ohio-4539**

***Miranda*/polygraph**

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2024/2024-Ohio-4539.pdf

In convictions for rape and GSI, trial court erred when it denied appellant's motion in limine/motion to suppress statements made by him after the polygraph examination had concluded. Although appellant signed a stipulation that he was waiving his right to remain silent during the test, this did not extend to the post-test interrogation where "Trooper Reno harangued him for an hour for the sole purpose of obtaining a confession . . . [a]s interrogation this may be fine, but to maintain that such questioning is a normal part of the polygraph procedure is untenable. Nor is it tenable to believe that either [appellant] or his counsel contemplated that such questioning would be encompassed by the Stipulation." Convictions reversed, and case remanded for a new trial.

***Stallworth v. Mackey*, 2024-Ohio-4540**

Habeas corpus/life tail/state's failure to appeal

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2024/2024-Ohio-4540.pdf

In conviction for, inter alia, aggravated murder, 1991 sentencing entry stated that appellant was sentenced to 33 years without parole with no mention of "'the life-tail portion of the sentence.'" State did not appeal this sentence, and the time for such an appeal has long passed; therefore, similarly as *State v. Henderson*, 2020-Ohio-4784, appellant must be released. His 33-year definite sentence was completed on May 20, 2024. Therefore, his continued detention is unlawful.

Twelfth Appellate District of Ohio

Nothing to report.

Supreme Court of Ohio

***State v. Gasper*, 2024-Ohio-4782**

Jury instruction/substantial impairment

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2024/2024-Ohio-4782.pdf

"Ohio Jury Instruction CR § 507—Substantial impairment of a victim—R.C. 2907.02(A)(1)(c)—Rape victim can be found to be substantially impaired based on a permanent mental condition."

OSC determines that the "jury instruction defining a victim's substantial impairment does include impairment from a permanent mental condition."

But see Donnelly's concurrence where he concludes that the jury instruction "fundamentally altered the nature of the charges against him without providing him adequate notice of the change" which should have raised the question of a violation of his constitutional rights to due process and a fair trial.

***State v. Dunlap*, 2024-Ohio-4821**

Suppression

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2024/2024-Ohio-4821.pdf

Another plurality opinion.

"Criminal law—Fourth Amendment to United States Constitution—Whether officer violated Fourth Amendment by asking driver for license after realizing that driver was not car's owner."

OSC determines that a police officer who has probable cause to pull over a car because he has information that the car owner's had a suspended license, but upon approaching the vehicle realizes that the driver is not the car owner, may still ask the driver for his driver's license. Such a request does not violate the Fourth Amendment. Therefore, after finding that the driver was also without a valid license, the subsequent discovery of an illegal firearm should not have been suppressed. COA's decision is reversed.

What might be most fascinating about this case is the dissent was written by Kennedy and joined by Brunner. Those are pretty strange bedfellows.

***State v. Hale*, 2024-Ohio-4866**

Warrantless seizure

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2024/2024-Ohio-4866.pdf

"Criminal law—Warrantless seizure—Fourth Amendment to United States Constitution—A passenger who has alighted from a parked vehicle may be detained by law-enforcement officers under Fourth Amendment as part of an investigatory stop of vehicle's driver long enough to allow officers to dispel any reasonable, articulable suspicion of criminal activity officers had for initiating the stop, and detention of the passenger may continue as facts evolve during encounter that give officers reasonable suspicion to believe the passenger was involved in other criminal activity."

But see Fischer dissent: "The majority opinion holds that the Fourth Amendment to the United States Constitution allows law-enforcement officers to seize recent passengers of vehicles when the driver was stopped on suspicion of driving with a suspended license, because those officers have reasonable suspicion to believe that the passengers were involved in criminal activity. Because this holding runs afoul of the Fourth Amendment, I respectfully dissent."

Sixth Circuit Court of Appeals

Nothing to report.

Supreme Court of the United States

Nothing to report.