Appellate Court Decisions - Week of 1/18/16

First Appellate District of Ohio

Nothing new.

Second Appellate District of Ohio

***State v. Hughes*, 2016-Ohio-137**

Preservation of Evidence

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/2/2016/2016-Ohio-137.pdf

The trial court erred in overruling appellant's motion to preserve physical evidence. While appellant was sentenced before the enactment of R.C. 2933.82 (*See State v. Roberts*, 134 Ohio St.3d 459, 2012-Ohio-5684, 983 N.E.2d 334), he was entitled to the preservation of evidence still in the possession of certain government entities at the time of the statute's effective date. The statute's effective date was July 6, 2010, so appellant is entitled to an order preserving all the physical evidence in the possession of the State as of July 6, 2010.

Third Appellate District of Ohio

Nothing new.

Fourth Appellate District of Ohio

Nothing new.

Fifth Appellate District of Ohio

***State v. Elmore*, 2016-Ohio-129**

Search: Motion to Suppress

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/5/2016/2016-Ohio-129.pdf

The trial court erred in granting appellee's motion to suppress the drug contraband located at an illegal camp. Appellee and others were camping

illegally on property they did not have permission to be on. Even after the officers arrested the members of the group who had open warrants, and the officers did not announce they arresting the others for trespassing, and appellee had reason to believe he was not free to leave, the officer still did not have to leave the property or stop searching. All the people present at the camp told the officer they did not know who owned the property and they did not have permission to be there. There was nothing in the record to suggest appellee had a reasonable expectation of privacy in the area searched.

Sixth Appellate District of Ohio

Nothing new.

Seventh Appellate District of Ohio

Nothing new.

Eighth Appellate District of Ohio

***State v. Dansby-East*, 2016-Ohio-202**

Consecutive Sentences: R.C. 2929.16(A)(2)

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2016/2016-Ohio-202.pdf

Summary from the Eighth District: "Crim.R. 11(C) does not require the court to advise a defendant of consecutive sentencing. The trial court committed plain error in imposing consecutive six-month jail sentences in this matter; although the total of all of the jail terms imposed (360 days) is less than the range of possible prison terms for drug trafficking, a jail sentence served in county jail is not the equivalent of, or part of, a prison term; claim that court erred in ordering defendant to pay costs because he is indigent was rendered moot."

Ninth Appellate District of Ohio

Nothing new.

Tenth Appellate District of Ohio

Nothing new.

Eleventh Appellate District of Ohio

Nothing new.

Twelfth Appellate District of Ohio

Nothing new.

Supreme Court of Ohio

***State v. Leak*, 2016-Ohio-154**

Fourth Amendment: Article I, Section 14, Ohio Constitution: Search

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/0/2016/2016-Ohio-154.pdf

"The arrest of a recent occupant of lawfully parked vehicle does not, by itself, establish reasonableness to justify warrantless search of the vehicle the arrestee had been riding in."
*** * ***
"In sum, finding no support in the statute or municipal ordinance for a lawful impoundment of the car on the facts of this case, and given the officer's testimony that the sole reason he towed the car was his belief that he had just arrested the owner and that he was looking for evidence of a crime, we conclude that the search of this car was not a reasonable exercise of the officer's community-caretaking role under *Blue Ash*. Because no exception to the prohibition on warrantless searches applies here, we hope that the search of the car in which Leak had been a passenger violated the Fourth Amendment to the United States Constitution and Article I, Section 14 of the Ohio Constitution.

Sixth Circuit Court of Appeals

Nothing new.

Supreme Court of the United States

***Kansas v. Carr*, No. 14-449**

Capital Punishment: Jury Instructions

Full Decision: http://www.supremecourt.gov/opinions/15pdf/14-449_907d.pdf

Syllabus of the Court:

A Kansas jury sentenced respondent Sidney Gleason to death for killing a co-conspirator and her boyfriend to cover up the robbery of an elderly man.

A Kansas jury sentenced respondents Reginald and Jonathan Carr, brothers, to death after a joint sentencing proceeding. Respondents were convicted of various charges stemming from a notorious crime spree that culminated in the brutal rape, robbery, kidnaping, and execution-style shooting of five young men and women. The Kansas Supreme Court vacated the death sentences in each case, holding that the sentencing instructions violated the Eighth Amendment by failing "to affirmatively inform the jury that mitigating circumstances need only be proved to the satisfaction of the individual juror in that juror's sentencing decision and not beyond a reasonable doubt." It also held that the Carrs' Eighth Amendment right "to an individualized capital sentencing determination" was violated by the trial court's failure to sever their sentencing proceedings.

Held:

1. The Eighth Amendment does not require capital-sentencing courts to instruct a jury that mitigating circumstances need not be proved beyond a reasonable doubt. Pp. 8–13.

(a) Because the Kansas Supreme Court left no doubt that its ruling was based on the Federal Constitution, Gleason's initial argument—that this Court lacks jurisdiction to hear his case because the state court's decision rested on adequate and independent state-law grounds—is rejected. See *Kansas v. Marsh*, 548 U. S. 163, 169. Pp. 8–9.

(b) This Court's capital-sentencing case law does not support requiring a court to instruct a jury that mitigating circumstances need not be proved beyond a reasonable doubt. See, e.g., *Buchanan v. Angelone*, 522 U. S. 269, 275. Nor was such an instruction constitutionally necessary in these particular cases to avoid confusion. Ambiguity in capital-sentencing instructions gives rise to constitutional error only if "there is a reasonable likelihood that the jury has applied the challenged instruction in a way that prevents the consideration of constitutionally relevant evidence," *Boyde v. California*, 494 U. S. 370, 380, a bar not cleared here. Even assuming that it would be unconstitutional to require the defense to prove mitigating circumstances beyond a reasonable doubt, the record belies the defendants' contention that the instructions caused jurors to apply such a standard of proof here. The instructions make clear that both the existence of aggravating circumstances and the conclusion that they outweigh mitigating circumstances must be proved beyond a reasonable doubt but that mitigating circumstances must merely be "found to exist," which does not suggest proof beyond a reasonable doubt. No juror would have reasonably speculated that "beyond a reasonable doubt" was the correct burden for mitigating circumstances. Pp. 9–13.

2. The Constitution did not require severance of the Carrs' joint sentencing proceedings. The Eighth Amendment is inapposite when a defendant's claim is, at bottom, that evidence was improperly admitted at a capital-sentencing proceeding. The question is whether the allegedly improper evidence "so infected the sentencing proceeding with unfairness as to render the jury's imposition of the death penalty a denial of due process." *Romano v. Oklahoma*, 512 U. S. 1, 12. In light of all the evidence presented at the guilt and penalty phases relevant to the jury's sentencing determination, the contention that the admission of mitigating evidence by one Carr brother could have "so infected" the jury's consideration of the other's sentence as to amount to a denial of due process is beyond the pale. The Court presumes that the jury followed its instructions to "give separate consideration to each defendant." *Bruton v. United States*, 391 U. S. 123, distinguished. Joint proceedings are permissible and often preferable when the joined defendants' criminal conduct arises out of a single chain of events. *Buchanan v. Kentucky*, 483 U. S. 402, 418. Limiting instructions, like those given in the Carrs' proceeding, "often will suffice to cure any risk of prejudice," *Zafiro v. United States*, 506 U. S. 534, 539, that might arise from codefendants' "antagonistic" mitigation theories, id., at 538. It is improper to vacate a death sentence based on pure "speculation" of fundamental unfairness, "rather than reasoned judgment." Romano, supra, at 13–14. Only the most extravagant speculation would lead to the conclusion that any supposedly prejudicial evidence rendered the Carr brothers' joint sentencing proceeding fundamentally unfair when their acts of almost inconceivable cruelty and depravity were described in excruciating detail by the sole survivor, who, for two days, relived the Wichita Massacre with the jury. Pp. 13–17.

No. 14–449, 300 Kan. 340, 329 P. 3d 1195; No. 14–450, 300 Kan. 1, 331 P. 3d 544; and No. 14–452, 299 Kan. 1127, 329 P. 3d 1102, reversed and remanded.

SCALIA, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, THOMAS, GINSBURG, BREYER, ALITO, and KAGAN,