Appellate Court Decisions - Week of 11/28/16

First Appellate District of Ohio

***State v. Stacy*, 2016-Ohio-7977**

Sexual Impositions: Corroboration: Registration: Notification

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2016/2016-Ohio-7977.pdf

Summary from the First District:

"Where defendant was convicted of sexual imposition under R.C. 2907.06, evidence that the 16-year-old victim immediately went to her mother's bedroom to report what defendant had done, the victim was upset and crying, the victim called her stepmother and her boyfriend to tell them what had happened, the victim, according to a police officer, looked as if "something had happened to her," and defendant stated that he might have "accidentally" touched the victim while reaching for her dog was sufficient to meet the corroboration requirement of R.C. 2907.06(B)."

"Where the trial court informed defendant that he was a Tier I sex offender and that he would have to register for 15 years and would have to register with the sheriff of his county of residence within three days after his release from jail, but delegated the task of providing defendant with specific notice about his registration duties to the "Clerk's Office or the Sheriff's Department," and where there is no indication in the record that the trial court provided the defendant with the notification form required by R.C. 2950.03, the trial court erred in failing to provide defendant the notification required by R.C. 2950.03 of his registration duties and the cause must be remanded for the trial court to properly notify defendant of his sex-offender registration requirements."

***State v. Merriweather*, Nos. C160365-7**

OVI: Motion to Suppress: Appellate Jurisdiction

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-160365_12022016.pdf

This is not an opinion from the court. Appellant was charged with and OVI, driving under suspension, and operating a vehicle without reasonable control after a one-car accident.

First, the First District dismissed the appeals regarding the driving under suspension and failure-to-control charges because, it said, there was no sentence. The trial court only imposed court costs on those charges, then

remitted them. The First District said that because costs do not constitute a sanction that can be imposed as a sentence, there was no sentence. With no sentence, it said there was no final appealable order. So, it would appear that if you have a case that you want to appeal, but the trial court only imposed costs, remitted or not, you are now in the unfortunate position of potentially needing to ask that the court impose some kind of penalty. Perhaps requesting a $1 fine would do? Maybe a fine then a finding of indigency? We are certainly open to suggestions on how to get around this problem.

Second, there was a motion to suppress in this case. The state intended to use the results of a blood test taken at the hospital after Appellant was taken to the hospital as a result of the one-car accident. The state initially argued there was no constitutional violation because the results were properly obtained using the authority of R.C. 2917.022. The case was taken under submission, but the trial court never heard any evidence – it only heard arguments from counsel. While under submission, the state "allegedly" obtained a warrant for the blood-test results. (I don't know why the court uses "allegedly." Although the warrant may not have been in the record, both parties and the court agreed there was a search warrant.). The trial court ultimately ruled that the motion to suppress was moot because the after-the-fact search warrant cured any problems. The First District reversed. It said an after-the-fact warrant does not render moot a pending motion to suppress. It also remanded for an evidentiary hearing to be held on the issue.

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. Johnson*, 2016-Ohio-7931**

Post-Release Control: Judicial Sanction

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2016/2016-Ohio-7931.pdf

The trial court erred in failing to grant Appellant's motion to vacate his sentence for violating his postrelease control where the trial court failed to properly advise Appellant of the consequences contained within R.C. 2929.141(A) for violating postrelease control.

Sixth Appellate District of Ohio

Nothing to report.

Seventh Appellate District of Ohio

Nothing to report.

Eighth Appellate District of Ohio

***State v. Rawls*, 2016-Ohio-7962**

Post-Conviction: DNA Testing

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2016/2016-Ohio-7962.pdf

The trial court erred in denying Appellant's application for postconviction DNA testing. The state did not act with reasonable diligence to determine whether the evidence to be tested, which was indisputably collected, still existed. The trial court also failed to state on the record its reasons for finding the DNA evidence would not be outcome determinative.

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

***State v. Black*, 2016-Ohio-7914**

Motion in Limine

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/12/2016/2016-Ohio-7914.pdf

Appellee was charged with possession and trafficking of hashish-infused chocolate bars. There were 150 bars weighing more than 2,000 grams. Each bar was labeled as containing 100 milligrams of hashish. The trial court erred in ruling Appellee had a right to reweigh the alleged contraband. The trial court also erred in ruling against the state's motion in limine to prevent Appellee from arguing weight of the contraband did not include the chocolate and any other filler. The chocolate and other filler should have counted toward the total weight of contraband.

Supreme Court of Ohio

Nothing to report.

Sixth Circuit Court of Appeals

Nothing to report.

Supreme Court of the United States

***Bravo-Fernandez v. United States*, 580 U.S. _____ (2016)**

Double Jeopardy

Full Decision: https://www.supremecourt.gov/opinions/16pdf/15-537_ap6b.pdf

Syllabus:

"The issue-preclusion component of the Double Jeopardy Clause bars a second contest of an issue of fact or law raised and necessarily resolved by a prior judgment. *Ashe v. Swenson*, 397 U. S. 436, 443. The burden is on the defendant to demonstrate that the issue he seeks to shield from reconsideration was actually decided by a prior jury's verdict of acquittal. *Schiro v. Farley*, 510 U. S. 222, 233. When the same jury returns irreconcilably inconsistent verdicts on the issue in question, a defendant cannot meet that burden. The acquittal, therefore, gains no preclusive effect regarding the count of conviction. *United States v. Powell*, 469 U. S. 57, 68–69. Issue preclusion does,

however, attend a jury's verdict of acquittal if the same jury in the same proceeding fails to reach a verdict on a different count turning on the same issue of ultimate fact. *Yeager v. United States*, 557 U. S. 110, 121–122.

"In this case, a jury convicted petitioners Juan Bravo-Fernandez (Bravo) and Hector Martínez-Maldonado (Martínez) of bribery in violation of 18 U. S. C. §666. Simultaneously, the jury acquitted them of conspiring to violate §666 and traveling in interstate commerce to violate §666. Because the only contested issue at trial was whether Bravo and Martínez had violated §666 (the other elements of the acquitted charges—agreement and travel—were undisputed), the jury's verdicts were irreconcilably inconsistent. Unlike the guilty verdicts in *Powell*, however, petitioners' convictions were later vacated on appeal because of error in the judge's instructions unrelated to the verdicts' inconsistency. In the First Circuit's view, §666 proscribes only quid pro quo bribery, yet the charge had permitted the jury to find petitioners guilty on a gratuity theory. On remand, Bravo and Martínez moved for judgments of acquittal on the standalone §666 charg es. They argued that the issue-preclusion component of the Double Jeopardy Clause barred the Government from retrying them on those charges because the jury necessarily determined that they were not guilty of violating §666 when it acquitted them of the related conspiracy and Travel Act offenses. The District Court denied the motions, and the First Circuit affirmed, holding that the eventual invalidation of petitioners' §666 convictions did not undermine *Powell*'s instruction that issue preclusion does not apply when the same jury returns logically inconsistent verdicts.

"Held: The issue-preclusion component of the Double Jeopardy Clause does not bar the Government from retrying defendants, like petitioners, after a jury has returned irreconcilably inconsistent verdicts of conviction and acquittal and the convictions are later vacated for legal error unrelated to the inconsistency. Pp. 12–19.

"(a) Because petitioners' trial yielded incompatible jury verdicts, petitioners cannot establish that the jury necessarily resolved in their favor the question whether they violated §666. In view of the Government's inability to obtain review of the acquittals, *Powell*, 469 U. S., at 68, the inconsistent jury findings weigh heavily against according those acquittals issue-preclusive effect. The subsequent vacatur of petitioners' bribery convictions does not alter this analysis. The critical inquiry is whether the jury actually decided that petitioners did not violate §666. *Ashe* instructs courts to approach that task with "realism and rationality," 397 U. S., at 444, in particular, to examine the trial record "with an eye to all the circumstances of the proceedings," ibid. The jury's verdicts convicting petitioners of violating §666 remain relevant to this practical inquiry, even if the convictions are later vacated on appeal for unrelated trial error. Petitioners could not be retried if the Court of Appeals had vacated their §666 bribery convictions because of insufficient evidence, see *Burks v. United States*, 437 U. S. 1, 10–11, or if the trial error could resolve the apparent inconsistency in the jury's verdicts. But the evidence here was sufficient to convict petitioners on the quid pro quo bribery theory the First Circuit approved. And the instructional error cannot account for the jury's inconsistent determinations, for the error applied equally to every §666-related count. Pp. 12–16.

"(b) Petitioners argue that vacated judgments should be excluded from the *Ashe* inquiry because vacated convictions, like the hung counts in *Yeager*, are legal nullities that "have never been accorded respect as a matter of law or history." *Yeager*, 557 U. S., at 124. That argument misapprehends the *Ashe* inquiry. Bravo and Martínez bear the burden of showing that the issue whether they violated §666 has been "determined by a valid and final judgment of acquittal." 557 U. S., at 119 (internal quotation marks omitted). To judge whether they carried that burden, a court must realistically examine the record to identify the ground for the §666-based acquittals. *Ashe*, 397 U. S., at 444. A conviction that contradicts those acquittals is plainly relevant to that determination, no less so simply because it is later overturned on appeal for unrelated legal error. See *Powell*, 469 U. S., at 65. Petitioners further contend that, under *Yeager*, the §666 convictions are meaningless because the jury was allowed to convict on the basis of conduct not criminal in the First Circuit—payment of a gratuity. But *Yeager* did not rest on a court's inability to detect the basis for a decision the jury in fact rendered. Rather, when a jury hangs, there is no decision, hence no inconsistency. 557 U. S., at 124–125. By contrast, a verdict of guilt is a jury decision, even if subsequently vacated, and therefore can evince jury inconsistency. That is the case here. Petitioners gained a second trial on the standalone bribery charges, but they are not entitled to more. Issue preclusion is not a doctrine they can commandeer when inconsistent verdicts shroud in mystery what the jury necessarily decided. Pp. 16–19.

"790 F. 3d 41, affirmed.

"GINSBURG, J., delivered the opinion for a unanimous Court. THOMAS, J., filed a concurring opinion."