Appellate Court Decisions - Week of 12/12/16

First Appellate District of Ohio

***State v. Nelson*, 2016-Ohio-8064** **Sorry, I missed this one last week.**

Sixth Amendment: Right to Counsel

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2016/2016-Ohio-8064.pdf

Summary from the First District:

"Defendant waived his Sixth Amendment right to counsel through his conduct where defendant had expressed a desire to proceed pro se, had been informed of the consequences of proceeding pro se, and had rejected appointed counsel three times. [But see DISSENT: The record does not reflect a valid waiver of the right to counsel where defendant was not fully informed of the hazards and consequences of self-representation, defendant was not informed that when the court allowed appointed counsel to withdraw defendant would have to proceed on his own, and defendant twice expressed a mistaken belief that he would have a 'legal coach' available to aid in his defense.]"

***State v. Beck*, 2016-Ohio-8122**

Theft: Securities Fraud: Statute of Limitations: Subpoena *Duces Tecum*: Perjury

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2016/2016-Ohio-8122.pdf

Summary from the First District:

"The trial court did not err in convicting defendant of three counts of theft by deception where the six-year statute-of-limitations period had been tolled until the discovery of the crimes, and where the state had filed the theft charges within six years of that discovery.

"Pursuant to R.C. 1707.28, the five-year limitations period for securities fraud under R.C. 1707.44 begins to run when the violation occurs; there is no exception tolling the running of the limitations period until the discovery of the corpus delicti.

"The trial court erred in finding defendant guilty of three counts of securities fraud under R.C. 1707.44 where the crimes occurred more than five years before the state filed the indictment.

"Where defendant served subpoenas duces tecum on third parties a month before trial, which requested all forms of communication between 15 separate parties on 11 separate subjects, but did not state with specificity what information was being sought and did not contain a time restriction, the trial court did not abuse its discretion in quashing the subpoenas duces tecum because they were unreasonable and oppressive."

"The trial court erred by convicting defendant of seven counts of perjury where the evidence did not demonstrate that defendant's answers to the questions were clearly false or where defendant's answer was to a vague and ambiguous question."

***State v. Williams*, 2016-Ohio-8123**

Discovery

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2016/2016-Ohio-8123.pdf

When is a loss not a loss? When the trial court found that the state acted in bad faith in failing to preserve a police cruiser video, the First District found that the record supports that finding, but reversed because the trial court did not make a record considering the proper factors before imposing the harshest sanction possible, dismissal of the charges. So, this may be a loss for the defense, but if the trial court makes a record considering the factors and still dismisses the charges, then a loss here may not be a loss.

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

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. Smith*, 2016-Ohio-8043**

Rape: Kidnapping: Sentencing: Merger

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2016/2016-Ohio-8043.pdf

The trial court erred in failing to merge appellant's convictions for rape and kidnapping. The kidnapping here was based on removing a bedroom door knob so the victim could not escape. The purpose of the kidnapping was to perpetrate the rape that followed. There was no separate identifiable harm. The kidnapping and rape were committed simultaneously and with the same animus.

***State v. Jackson*, 2016-Ohio-8144**

Evidence: *Miranda*: Child Advocate: Right to Counsel

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2016/2016-Ohio-8144.pdf

Summary from the Eighth District: "The trial court erred in admitting the testimony of a child advocate who operated as an agent of law enforcement and conducted a custodial interrogation of appellant in jail without providing *Miranda* warnings or obtaining a waiver of appellant's sixth amendment rights after he was assigned counsel at his arraignment."

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

Nothing to report.

Supreme Court of Ohio

***State v. Cepec*, 2016-Ohio-8076**

Aggravated Murder: Capital Punishment

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/0/2016/2016-Ohio-8076.pdf

The Supreme Court affirmed Appellant's conviction and death penalty sentence.

***State v. V.M.D.*, 2016-Ohio-8090**

Sealing Records: Attempted Robbery

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/0/2016/2016-Ohio-8090.pdf

"In this case, we determine whether R.C. 2953.36 precludes the sealing of the record of conviction for a specific crime—attempted robbery pursuant to R.C. 2911.02(A)(3) and 2923.02. We hold that attempted robbery is a crime of violence and that, pursuant to R.C. 2953.36, a person convicted of that crime is ineligible to have the record of that conviction sealed."

***State v. Jackson*, 2016-Ohio-8127**

Allocution: Crim.R. 32(A)(1): R.C. 2919(A)

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/0/2016/2016-Ohio-8127.pdf

"A trial court must afford an offender an opportunity for allocution at a community-control-revocation hearing before imposing a sentence for violating the conditions of community control."

***State v. Spaulding*, 2016-Ohio-8126**

Aggravated Murder: Sentencing

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/0/2016/2016-Ohio-8126.pdf

The Supreme Court affirmed Appellant's convictions and death penalty sentence.

Sixth Circuit Court of Appeals

***United States v. Atkins*, No. 16-5531**

Batson

Full Decision: http://www.opn.ca6.uscourts.gov/opinions.pdf/16a0285p-06.pdf

The trial court erred in denying Appellant's *Batson* challenge. Appellant made a prima facie case of racial discrimination, and the prosecutor gave race-neutral reasons for striking the juror in question (5 African-American jurors in total, and only African-American jurors), but those explanations were pretexts for improper racial discrimination. Through a comparative analysis with Caucasian jurors who remained on the jury, it was clear that those jurors had very similar "issues" to those given by the prosecutor for striking the juror in question, yet those "issues" with the other jurors did raise any questions from the prosecutor at all.

***Hill v. Mitchell*, Nos. 13-3412/3492 I am slipping. Another one that I missed.**

Evidence: *Brady v. Maryland*

Full Decision: http://www.opn.ca6.uscourts.gov/opinions.pdf/16a0281p-06.pdf

First, the summary:

"An Ohio jury convicted Genesis Hill of kidnapping and murdering his infant daughter and sentenced him to death. The district court held that the prosecution violated the rule of *Brady v. Maryland*, 373 U.S. 83 (1963), by suppressing favorable evidence—a

police report and the baby's mother's grand jury testimony—and granted a conditional writ of habeas corpus. However, Hill violated a congressionally mandated procedural requisite to habeas relief by bringing his Brady claim well beyond AEDPA's one-year statute of limitations period. Because Hill's Brady claim is procedurally barred and is otherwise without merit, and because his other grounds for relief are also without merit, we reverse the grant of habeas relief."

And here's the interesting stuff:

"Our decision should not be viewed as condoning in any way law enforcement officials' suppression of information that may have been favorable to Hill's defense. **To the contrary, we reiterate our disapproval of Hamilton County's consistent history of suppressing evidence.** But AEDPA requires habeas petitioners to bring their claims within its one-year limitations period. Hill did not bring the police report to the district court's attention for over three years, and he did not bring the grand jury testimony forward for almost two years."

And from the dissent:

"**Today a grim game of 'prosecutor may hide, defendant must seek' plays out in the federal courts.** Genesis Hill was convicted of murder and sentenced to death in Hamilton County, Ohio. At nearly every chance since, in both state and federal postconviction proceedings, Hill has maintained that the state withheld favorable evidence in violation of Brady v. Maryland, 373 U.S. 83 (1963). His claims proved prophetic: **Sixteen years after Hill's conviction, a private investigator learned that the Cincinnati Police Department, through its infamous practice of creating "homicide books," *Bies v. Sheldon*, 775 F.3d 386 (6th Cir. 2014), suppressed a report which pointed to a key prosecution witness as a suspect in the murder investigation.** The district court granted a conditional writ of habeas corpus. But the majority reverses, concluding that the claim is time barred, since Hill failed to come forward with the long-suppressed report at his earliest convenience. Because the rule of Brady should encourage disclosure, not deception, I respectfully dissent."

* * *

"The majority ultimately concedes that Hamilton County's 'consistent history of suppressing evidence' gave Hill a 'colorable basis' to assert his *Brady* claim; that the state is in no position to 'invoke equitable principles'; and that Hill could not have spelled out the minutia of his *Brady* claim 'based on the undiscovered police report or grand jury testimony in his original habeas petition.' *Ante*, at 16, 53. For all that, the majority merely expresses "disapproval" of the state's decades-long deception, and disclaims the idea that it is 'condoning the State's actions in suppressing evidence favorable to Genesis Hill.' *Ante*, at 53. I fear the opposite is true. **The willingness of federal judges to turn a 'blind eye,' will likewise incentivize 'prosecutors to avert their gaze from exculpatory evidence, secure in the belief that, if it turns up after the defendant has been convicted, judges will dismiss the**

***Brady* violations as immaterial,' or worse, on procedural grounds.** *See United States v. Olsen*, 737 F.3d 625, 633 (9th Cir. 2013) (Kozinski, J., dissenting from denial of rehearing en banc)."

Supreme Court of the United States

Nothing to report.