Appellate Court Decisions - Week of 12/15/14

First Appellate District of Ohio

***State v. Kelley*, 2014-Ohio-5565**

Evidence: Jury: Sentencing: Postrelease Control

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-140112_12192014.pdf

Summary from the First District:

"The trial court erred in admitting evidence of the defendant's past violent acts against one of the victims where the past acts did not tend to prove defendant's identity or motive.

"The trial court erred in allowing a witness's interview with police officers to be played to the jury in its entirety where fairness did not require the playing of most of the statements, and the statements, which contained improper other-acts evidence, were not otherwise admissible.

"The trial court erred in permitting a witness to read aloud the entire written statement he had given to police officers after it had been used to refresh his recollection where portions of the statement did not relate to the witness's testimony and included improper other-acts and hearsay evidence.

"The evidentiary errors were harmless, because although the evidence impacted the verdicts, there was overwhelming evidence of the defendant's guilt after the improper evidence was removed.

"The trial court's error in engaging in an ex parte discussion with the jury was harmless where the defendant did not demonstrate that the discussion, which was about juror safety, addressed any substantive matters that could have plausibly impacted the verdict.

"Where the judgment entry contains clerical errors regarding the merger of offenses and length of the defendant's sentence, and where the trial court did not properly inform the defendant about postrelease control, the cause must be remanded for the trial court to correct the clerical errors in the judgment entry by nunc pro tunc order and to properly inform the defendant about postrelease control."

Second Appellate District of Ohio

Nothing new.

Third Appellate District of Ohio

***State v. Allen*, 2014-Ohio-5483**

Sentencing: Merger

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/3/2014/2014-ohio-5483.pdf

The trial court erred in failing to merge Appellant's convictions for attempted theft of a firearm and breaking and entering because they were allied offenses of similar import. "By trespassing in the building [Appellant] took a substantial step in the theft of the firearm, which completed the attempted theft of a firearm. This same step completed the offense of breaking and entering because he illegally entered the building with the intent of committing a felony."

Fourth Appellate District of Ohio

Nothing new.

Fifth Appellate District of Ohio

Nothing new.

Sixth Appellate District of Ohio

Nothing new.

Seventh Appellate District of Ohio

Nothing new.

Eighth Appellate District of Ohio

Nothing new.

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

Nothing new.

Sixth Circuit Court of Appeals

Nothing new.

Supreme Court of the United States

***Heien v. North Carolina*, Slip Opinion No. 13-604**

Fourth Amendment: Search: Mistake of Law

Full Decision: http://www.supremecourt.gov/opinions/14pdf/13-604_ec8f.pdf

Syllabus:

Following a suspicious vehicle, Sergeant Matt Darisse noticed that only one of the vehicle's brake lights was working and pulled the driver over. While issuing a warning ticket for the broken brake light, Darisse became suspicious of the actions of the two occupants and their answers to his questions. Petitioner Nicholas Brady Heien, the car's owner, gave Darisse consent to search the vehicle. Darisse found cocaine, and Heien was arrested and charged with attempted trafficking. The trial court denied Heien's motion to suppress the seized evidence on Fourth Amendment grounds, concluding that the vehicle's faulty brake light gave Darisse reasonable suspicion to initiate the stop. The North Carolina Court of Appeals reversed, holding that the relevant code provision, which requires that a car be "equipped with a stop lamp," N. C. Gen. Stat. Ann. §20–129(g), requires only a single lamp—which Heien's vehicle had—and therefore the justification for the stop was objectively unreasonable. Reversing in turn, the State Supreme Court held that, even assuming no violation of the state law had occurred,

Darisse's mistaken understanding of the law was reasonable, and thus the stop was valid.

***Held*:** Because Darisse's mistake of law was reasonable, there was reasonable suspicion justifying the stop under the Fourth Amendment.

(a) The Fourth Amendment requires government officials to act reasonably, not perfectly, and gives those officials "fair leeway for enforcing the law," *Brinegar* v. *United States*, 338 U. S. 160, 176. Searches and seizures based on mistakes of fact may be reasonable. See, *e.g., Illinois* v. *Rodriguez*, 497 U. S. 177, 183–186. The limiting factor is that "the mistakes must be those of reasonable men." *Brinegar*, *supra*, at 176. Mistakes of law are no less compatible with the concept of reasonable suspicion, which arises from an under standing of both the facts and the relevant law. Whether an officer is reasonably mistaken about the one or the other, the result is the same: the facts are outside the scope of the law. And neither the Fourth Amendment's text nor this Court's precedents offer any reason why that result should not be acceptable when reached by a reasonable mistake of law.

More than two centuries ago, this Court held that reasonable mistakes of law, like those of fact, could justify a certificate of probable cause. *United States* v. *Riddle*, 5 Cranch 311, 313. That holding was reiterated in numerous 19th-century decisions. Although *Riddle* was not a Fourth Amendment case, it explained the concept of probable cause, which this Court has said carried the same "fixed and well known meaning" in the Fourth Amendment, *Brinegar*, *supra,* at 175, and n. 14, and no subsequent decision of this Court has undermined that understanding. The contrary conclusion would be hard to reconcile with the more recent precedent of *Michigan* v. *DeFillippo*, 443 U. S. 31, where the Court, addressing the validity of an arrest made under a criminal law later declared unconstitutional, held that the officers' reasonable assumption that the law was valid gave them "abundant probable cause" to make the arrest, *id.,* at 37. Heien attempts to recast *DeFillippo* as a case solely about the exclusionary rule, not the Fourth Amendment itself, but *DeFillippo*'s express holding is that the arrest was constitutionally valid because the officers had probable cause. See *id.,* at 40. Heien misplaces his reliance on cases such as *Davis* v. *United States*, 564 U. S. ___, where any consideration of reasonableness was limited to the separate matter of remedy, not whether there was a Fourth Amendment violation in the first place.

Heien contends that the rationale that permits reasonable errors of fact does not extend to reasonable errors of law, arguing that officers in the field deserve a margin of error when making factual assessments on the fly. An officer may, however, also be suddenly confronted with a situation requiring application of an unclear statute. This Court's holding does not discourage officers from learning the law. Because the Fourth Amendment tolerates only objectively reasonable mistakes, cf. *Whren* v. *United States*, 517 U. S. 806, 813, an officer can gain no advantage through poor study. Finally, while the maxim "Ignorance of the law is no excuse" correctly implies that the State cannot impose punishment based on a mistake of law, it does not mean a reasonable mistake of law cannot justify an investigatory stop.

(b) There is little difficulty in concluding that Officer Darisse's error of law was reasonable. The North Carolina vehicle code that requires "a stop lamp" also provides that the lamp "may be incorporated into a unit with one or more other rear lamps," N. C. Gen. Stat.Ann. §20–129(g), and that "all originally equipped rear lamps" must be "in good working order," §20–129(d). Although the State Court of Appeals held that "rear lamps" do not include brake lights, the word "other," coupled with the lack of state-court precedent interpreting the provision, made it objectively reasonable to think that a faulty brake light constituted a violation.