Appellate Court Decisions - Week of 2/18/19

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

First Appellate District of Ohio

Nothing to report.

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. Hootman*, 2019-Ohio-607**

Restitution

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2019/2019-Ohio-607.pdf

The trial court erred in ordering appellant to pay restitution on a theft for which he was found not guilty.

Sixth Appellate District of Ohio

Nothing to report.

Seventh Appellate District of Ohio

Nothing to report.

Eighth Appellate District of Ohio

Nothing to report.

Ninth Appellate District of Ohio

Nothing to report.

Tenth Appellate District of Ohio

***State v. Simmons*, 2019-Ohio-559**

OVI: Motion to Suppress

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/10/2019/2019-Ohio-559.pdf

From the opinion: "Plaintiff-appellant, State of Ohio, appeals a decision of the Franklin County Municipal Court, entered on March 14, 2018, suppressing the results of a chemical test for marijuana as the poisonous fruit of an illegal arrest. Because the trial court's factual conclusions were consistent with and supported by evidence presented during the suppression hearing, and because the trial court did not err in articulating the law or applying it to the facts, we affirm the suppression decision."

Eleventh Appellate District of Ohio

Nothing to report.

Twelfth Appellate District of Ohio

***State v. Bishop*, 2019-Ohio-592**

Sentencing: Community Control

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/12/2019/2019-Ohio-592.pdf

Summary from the Twelfth District: "The 90-day maximum prison sentence allowed under R.C. 2929.15(B)(1)(c)(i) applies to a defendant serving a community control sanction for one or more felonies of the fifth degree. As a result, the trial court erred by finding that R.C. 2929.15(B)(1)(c)(i) was inapplicable based on the singular form of the term used in the statute."

Supreme Court of Ohio

Nothing to report.

Sixth Circuit Court of Appeals

Nothing to report.

Supreme Court of the United States

***Moore v. Texas*, 586 U.S. ___ (2019)**

Death Penalty: Intellectual Disability

Full Decision:
https://www.supremecourt.gov/opinions/18pdf/18-443_8m58.pdf

First Paragraph from the Per Curium Opinion: "In 2015, the Texas Court of Criminal Appeals held that petitioner, Bobby James Moore, did not have intellectual disability and consequently was eligible for the death penalty. Ex parte Moore, 470 S. W. 3d 481, 527–528 (Ex parte Moore I). We previously considered the lawfulness of that determination, vacated the appeals court's decision, and remanded the case for further consideration of the issue. Moore v. Texas, 581 U. S. ___, ___ (2017) (slip op., at 18). The appeals court subsequently reconsidered the matter but reached the same conclusion. Ex parte Moore, 548 S. W. 3d 552, 573 (Tex. Crim. App. 2018) (Ex parte Moore II). We again review its decision, and we reverse its determination."

***Timbs v. Indiana*, 586 U.S. ___ (2019)**

Eight Amendment: Fourteenth Amendment

Full Decision:
https://www.supremecourt.gov/opinions/18pdf/17-1091_5536.pdf

Syllabus:

"Tyson Timbs pleaded guilty in Indiana state court to dealing in a controlled substance and conspiracy to commit theft. At the time of Timbs's arrest, the police seized a Land Rover SUV Timbs had purchased for $42,000 with money he received from an insurance policy when his father died. The State sought civil forfeiture of Timbs's vehicle, charging that the SUV had been used to transport heroin. Observing that Timbs had recently purchased the vehicle for more than four times the maximum $10,000 monetary fine assessable against him for his drug conviction, the trial court denied the State's request. The vehicle's forfeiture, the court determined, would be grossly disproportionate to the gravity of Timbs's offense, and therefore unconstitutional under the Eighth Amendment's Excessive Fines Clause.

The Court of Appeals of Indiana affirmed, but the Indiana Supreme Court reversed, holding that the Excessive Fines Clause constrains only federal action and is inapplicable to state impositions.

"Held: The Eighth Amendment's Excessive Fines Clause is an incorporated protection applicable to the States under the Fourteenth Amendment's Due Process Clause. Pp. 2–9

"(a) The Fourteenth Amendment's Due Process Clause incorporates and renders applicable to the States Bill of Rights protections "fundamental to our scheme of ordered liberty," or "deeply rooted in this Nation's history and tradition." *McDonald v. Chicago*, 561 U. S. 742, 767 (alterations omitted). If a Bill of Rights protection is incorporated, there is no daylight between the federal and state conduct it prohibits or requires. Pp. 2–3

"(b) The prohibition embodied in the Excessive Fines Clause carries forward protections found in sources from Magna Carta to the English Bill of Rights to state constitutions from the colonial era to the present day. Protection against excessive fines has been a constant shield throughout Anglo-American history for good reason: Such fines undermine other liberties. They can be used, e.g., to retaliate against or chill the speech of political enemies. They can also be employed, not in service of penal purposes, but as a source of revenue. The historical and logical case for concluding that the Fourteenth Amendment incorporates the Excessive Fines Clause is indeed overwhelming. Pp. 3–7.

"(c) Indiana argues that the Clause does not apply to its use of civil in rem forfeitures, but this Court held in *Austin v. United States*, 509 U. S. 602, that such forfeitures fall within the Clause's protection when they are at least partially punitive. Indiana cannot prevail unless the Court overrules Austin or holds that, in light of Austin, the Excessive Fines Clause is not incorporated because its application to civil in rem forfeitures is neither fundamental nor deeply rooted.

"The first argument, overturning Austin, is not properly before this Court. The Indiana Supreme Court held only that the Excessive Fines Clause did not apply to the States. The court did not address the Clause's application to civil in rem forfeitures, nor did the State ask it to do so. Timbs thus sought this Court's review only of the question whether the Excessive Fines Clause is incorporated by the Fourteenth Amendment. Indiana attempted to reformulate the question to ask whether the Clause restricted States' use of civil in rem forfeitures and argued on the merits that Austin was wrongly decided. Respondents' "right, . . . to restate the questions presented," however, "does not give them the power to expand [those] questions," *Bray v. Alexandria Women's Health Clinic*, 506 U. S. 263, 279, n. 10 (emphasis deleted), particularly where the proposed reformulation would lead the Court to address a question neither pressed nor passed upon below, cf.

***Cutter v. Wilkinson*, 544 U. S. 709, 718, n. 7.**

"The second argument, that the Excessive Fines Clause cannot be incorporated if it applies to civil in rem forfeitures, misapprehends the nature of the incorporation inquiry. In considering whether the Fourteenth Amendment incorporates a Bill of Rights protection, this Court asks whether the right guaranteed—not each and every particular application of that right—is fundamental or deeply rooted. To suggest otherwise is inconsistent with the approach taken in cases concerning novel applications of rights already deemed incorporated. See, *e.g.*, *Packingham v. North Carolina*, 582 U. S. ___, ___. The Excessive Fines Clause is thus incorporated regardless of whether application of the Clause to civil in rem forfeitures is itself fundamental or deeply rooted. Pp. 7–9.

"84 N. E. 3d 1179, vacated and remanded."

GINSBURG, J., delivered the opinion of the Court, in which ROBERTS, C. J., and BREYER, ALITO, SOTOMAYOR, KAGAN, GORSUCH, and KAVANAUGH, JJ., joined. GORSUCH, J., filed a concurring opinion. THOMAS, J., filed an opinion concurring in the judgment.