Appellate Court Decisions - Week of 3/6/17

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. Bryson*, 2017-Ohio-830**

Motion to Suppress: Leave To File

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/5/2017/2017-Ohio-830.pdf

The trial court abused its discretion in denying Appellant's request for leave to file an untimely motion to suppress where the request and a contemporaneous motion to suppress were filed promptly after the state provided the discovery that prompted the motion to suppress. This case was an OVI and the evidence provided after the 35-day motion to suppress period was the video of the traffic stop.

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. Oller*, 2017-Ohio-814**

Jury Verdict

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/10/2017/2017-Ohio-814.pdf

Summary from the Tenth District:

"Defendant-appellant, Timothy M. Oller, appeals a judgment of the Franklin County Court of Common Pleas entered May 17, 2016, sentencing him to serve 21 years in prison. The sentence resulted from a criminal trial whereby a jury found him guilty of a single count of involuntary manslaughter after making the specific finding that Timothy acted under provocation. On conviction and sentencing, the trial court judge stated on the record that he rejected the jury's finding that Timothy had acted under provocation and stated that his acts resulting in Davis' death were calculated. As part of sentencing, the trial court judge found Timothy to be a repeat violent offender under R.C. 2941.149. Because we agree that the trial court erred by rejecting the jury's finding that Timothy acted while under provocation in order to justify the sentence the trial court imposed, we reverse and remand for a new sentencing hearing with the instruction that the trial court must accept the factual findings of the jury and proceed to sentence from that basis. We also instruct that if, on resentencing, the trial court again imposes a period of imprisonment as a consequence of the repeat-violent-offender specification, the trial court must state such findings on the record as required by R.C. 2953.08(G)(1) and 2929.14(B)(2)(e). Because we find no basis on which to sustain any of Timothy's other six assignments of error or related subparts, we otherwise affirm."

Eleventh Appellate District of Ohio

Nothing to report.

Twelfth Appellate District of Ohio

Nothing to report.

Supreme Court of Ohio

***State v. Gonzales*, 2017-Ohio-777 (on reconsideration)**

Cocaine: Weight/Filler

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/0/2017/2017-Ohio-777.pdf

The Supreme Court granted reconsideration and reversed its previous decision in *State v. Gonzales*, 2016-Ohio-8319. It previously held that the state must prove the weight of cocaine without filler, now it holds the state does not need to prove the weight of cocaine without filler.

Of note, here's a quote from the first decision: "The remedy is to be found in the legislature, not a tortured judicial interpretation of a statute unambiguous on its face. Given the unambiguous language of the statute, we answer the certified conflict question in the affirmative * * *."

And here's a quote from this decision: "Because we conclude that the statute is unambiguous, legislative history is not controlling here."

Very odd how the same statute was unambiguous on December 23, 2016, and unambiguous on March 6, 2017, but it was unambiguous in completely different ways.

I am also forced to wonder, now, whether an opinion has any precedential value until the reconsideration process is complete.

Sixth Circuit Court of Appeals

Nothing to report.

Supreme Court of the United States

***Pena-Rodriguez v. Colorado*, No. 15-606**

Sixth Amendment: Juror Bias: No-Impeachment Rule

Full Decision: https://www.supremecourt.gov/opinions/16pdf/15-606_886b.pdf

Syllabus:

A Colorado jury convicted petitioner Peña-Rodriguez of harassment and unlawful sexual contact. Following the discharge of the jury, two jurors told defense counsel that, during deliberations, Juror H. C. had expressed anti-Hispanic bias toward petitioner and petitioner's alibi witness. Counsel, with the trial court's supervision, obtained affidavits from the two jurors describing a number of biased statements by H. C. The court acknowledged H. C.'s apparent bias but denied petitioner's motion for a new trial on the ground that Colorado Rule of Evidence 606(b) generally prohibits a juror from testifying as to statements made during deliberations in a proceeding inquiring into the validity of the verdict. The Colorado Court of Appeals affirmed, agreeing that H. C.'s alleged statements did not fall within an exception to Rule 606(b). The Colorado Supreme Court also affirmed, relying on *Tanner v. United States*, 483 U. S. 107, and *Warger v. Shauers*, 574 U. S. ___, both of which rejected constitutional challenges to the federal no-impeachment rule as applied to evidence of juror misconduct or bias.

"Held: **Where a juror makes a clear statement indicating that he or she relied on racial stereotypes or animus to convict a criminal defendant, the Sixth Amendment requires that the no-impeachment rule give way in order to permit the trial court to consider the evidence of the juror's statement and any resulting denial of the jury trial guarantee. Pp. 6–21.**

"(a) At common law jurors were forbidden to impeach their verdict, either by affidavit or live testimony. Some American jurisdictions adopted a more flexible version of the no-impeachment bar, known as the 'Iowa rule,' which prevented jurors from testifying only about their own subjective beliefs, thoughts, or motives during deliberations. An alternative approach, later referred to as the federal approach, permitted an exception only for events extraneous to the deliberative process. This Court's early decisions did not establish a clear preference for a particular version of the no-impeachment rule, appearing open to the Iowa rule in *United States v. Reid*, 12 How. 361, and *Mattox v. United States*, 146 U. S. 140, but rejecting that approach in *McDonald v. Pless*, 238 U. S. 264.

"The common-law development of the rule reached a milestone in 1975 when Congress adopted Federal Rule of Evidence 606(b), which sets out a broad no-impeachment rule, with only limited exceptions. This version of the no-impeachment rule has substantial merit, promoting full and vigorous discussion by jurors and providing considerable assurance that after being discharged they will not be summoned to recount their deliberations or otherwise harassed. The rule gives stability and finality to verdicts. Pp. 6–9.

"(b) Some version of the no-impeachment rule is followed in every State and the District of Columbia, most of which follow the Federal Rule. At least 16 jurisdictions have recognized an exception for juror testimony about racial bias in deliberations. Three Federal Courts of Appeals have also held or suggested there is a constitutional exception for evidence of racial bias. In addressing the common-law no-impeachment rule, this Court noted the possibility of an exception in the 'gravest and most important cases.' *United States v. Reid*, *supra*, at 366; *McDonald v. Pless*, *supra*, at 269. The Court has addressed the question whether the Constitution mandates an exception to Rule 606(b)

just twice, rejecting an exception each time. In *Tanner*, where the evidence showed that some jurors were under the influence of drugs and alcohol during the trial, the Court identified 'long-recognized and very substantial concerns' supporting the no-impeachment rule. 483 U. S., at 127. The Court also outlined existing, significant safeguards for the defendant's right to an impartial and competent jury beyond post-trial juror testimony: members of the venire can be examined for impartiality during *voir dire*; juror misconduct may be observed the court, counsel, and court personnel during the trial; and jurors themselves can report misconduct to the court before a verdict is rendered. In *Warger*, a civil case where the evidence indicated that the jury forewoman failed to disclose a prodefendant bias during *voir dire*, the Court again put substantial reliance on existing safeguards for a fair trial. But the Court also warned, as in *Reid* and *McDonald*, that the no-impeachment rule may admit of exceptions for 'juror bias so extreme that, almost by definition, the jury trial right has been abridged.' 574 U. S., at ____–____, n. 3. *Reid*, *McDonald*, and *Warger* left open the question here: whether the Constitution requires an exception to the no-impeachment rule when a juror's statements indicate that racial animus was a significant motivating factor in his or her finding of guilt. Pp. 9–13.

"(c) The imperative to purge racial prejudice from the administration of justice was given new force and direction by the ratification of the Civil War Amendments. '[T]he central purpose of the Fourteenth Amendment was to eliminate racial discrimination emanating from official sources in the States.' *McLaughlin v. Florida*, 379 U. S. 184, 192. Time and again, this Court has enforced the Constitution's guarantee against state-sponsored racial discrimination in the jury system. The Court has interpreted the Fourteenth Amendment to prohibit the exclusion of jurors based on race, *Strauder v. West Virginia*, 100 U. S. 303, 305–309; struck down laws and practices that systematically exclude racial minorities from juries, *see, e.g.*, *Neal v. Delaware*, 103 U. S. 370; ruled that no litigant may exclude a prospective juror based on race, *see, e.g.*, *Batson v. Kentucky*, 476 U. S. 79; and held that defendants may at times be entitled to ask about racial bias during *voir dire*, *see, e.g.*, *Ham v. South Carolina*, 409 U. S. 524. The unmistakable principle of these precedents is that discrimination on the basis of race, 'odious in all aspects, is especially pernicious in the administration of justice,' *Rose v. Mitchell*, 443 U. S. 545, 555, damaging 'both the fact and the perception' of the jury's role as 'a vital check against the wrongful exercise of power by the State,' *Powers v. Ohio*, 499 U. S. 400, 411. Pp. 13–15.

"(d) This case lies at the intersection of the Court's decisions endorsing the no-impeachment rule and those seeking to eliminate racial bias in the jury system. Those lines of precedent need not conflict. Racial bias, unlike the behavior in *McDonald*, *Tanner*, or *Warger*, implicates unique historical, constitutional, and institutional concerns and, if left unaddressed, would risk systemic injury to the administration of justice. It is also distinct in a pragmatic sense, for the *Tanner* safeguards may be less effective in rooting out racial bias. But while all forms of improper bias pose challenges to the trial process, there is a sound basis to treat racial bias with added precaution. A constitutional rule that racial bias in the justice system must be addressed—including, in some instances, after a verdict has been entered—is necessary to prevent a systemic loss

of confidence in jury verdicts, a confidence that is a central premise of the Sixth Amendment trial right. Pp. 15–17.

"(e) Before the no-impeachment bar can be set aside to allow further judicial inquiry, there must be a threshold showing that one or more jurors made statements exhibiting overt racial bias that cast serious doubt on the fairness and impartiality of the jury's deliberations and resulting verdict. To qualify, the statement must tend to show that racial animus was a significant motivating factor in the juror's vote to convict. Whether the threshold showing has been satisfied is committed to the substantial discretion of the trial court in light of all the circumstances, including the content and timing of the alleged statements and the reliability of the proffered evidence.

"The practical mechanics of acquiring and presenting such evidence will no doubt be shaped and guided by state rules of professional ethics and local court rules, both of which often limit counsel's post-trial contact with jurors. The experience of those jurisdictions that have already recognized a racial-bias exception to the no-impeachment rule, and the experience of courts going forward, will inform the proper exercise of trial judge discretion. The Court need not address what procedures a trial court must follow when confronted with a motion for a new trial based on juror testimony of racial bias or the appropriate standard for determining when such evidence is sufficient to require that the verdict be set aside and a new trial be granted. Standard and existing safeguards may also help prevent racial bias in jury deliberations, including careful *voir dire* and a trial court's instructions to jurors about their duty to review the evidence, deliberate together, and reach a verdict in a fair and impartial way, free from bias of any kind. Pp. 17–21. 350 P. 3d 287, reversed and remanded."

KENNEDY, J., delivered the opinion of the Court, in which GINSBURG, BREYER, SOTOMAYOR, and KAGAN, JJ., joined. THOMAS, J., filed a dissenting opinion. ALITO, J., filed a dissenting opinion, in which ROBERTS, C. J., and THOMAS, J., joined.

***Rippo v. Baker*, 580 U.S. ____ (2017)**

Judicial Bias: Recusal: Standard of Review

Full Decision: https://www.supremecourt.gov/opinions/16pdf/16-6316_32h6.pdf

A judge's "[r]ecusal is required when, objectively speaking, 'the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable.'"