Appellate Court Decisions - Week of 5/29/17

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

First Appellate District of Ohio

State v. Foster, 2017-Ohio-4036

Fourth Amendment: Motion to Suppress: Inventory Search

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2017/2017-Ohio-4036.pdf

Summary from the First District:

"The trial court properly denied a motion to suppress money that was found on the defendant after he was lawfully stopped for a traffic violation and placed into custody due to an open warrant.

"The trial court erred by denying a motion to suppress contraband found during a search of the vehicle the defendant had been operating before his arrest on an open warrant: the search did not fall under the inventory-search exception to the warrant requirement because the state failed to demonstrate that the search was performed pursuant to the police department's standard procedure for inventory searches of vehicles taken into custody for impoundment and was therefore 'reasonable' under the Fourth Amendment where there was no evidence presented at the suppression hearing that the officer complied with the department's restrictions on impoundments and inventory searches, including the provisions concerning the driver's 'right' to arrange for someone to remove the vehicle."

State v. Thornton, 2017-Ohio-4037

Sentencing: Restitution

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2017/2017-Ohio-4037.pdf

Summary from the First District:

"In reviewing a restitution order imposed as part of a felony sentence, the proper standard of review is whether the appellate court clearly and convincingly finds that the order is contrary to law.

"Where, prior to defendant's sentencing, the victims of defendant's theft had been reimbursed by their bank for the amount that defendant had stolen, the victims had not

suffered an economic loss, and therefore, pursuant to R.C. 2929.18(A)(1), the trial court erred in ordering defendant to pay restitution to the victims."

Second Appellate District of Ohio

***State v. McComb*, 2017-Ohio-2010**

Juvenile Adjudications: *Hand*: Sentencing: Weapons Under Disability

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2017/2017-Ohio-4010.pdf

Pursuant to *State v. Hand*,2016-Ohio-5504, the trial court erred in imposing mandatory prison terms for Apellant's three first-degree –felony counts of aggravated robbery and for his second-degree-felony count of felonious assault because those mandatory terms were based on his juvenile adjudication for an offense that, had he been an adult, would have been aggravated robbery. However, the Second District held that *Hand* does not apply to the disability element of a having weapons while under disability charge/conviction.

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

***State v. Sellers*, 2017-Ohio-4020**

Sentencing: License Suspension: Failure to Stop

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2017/2017-Ohio-4020.pdf

The trial court did not have the authority to suspend Appellant's driver's license upon its acceptance of her no-contest plea for failure to stop under R.C. 4549.03.

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

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. Roberts*, 2017-Ohio-2998**

Aggravated Murder: Death Penalty

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2017/2017-Ohio-2998.pdf

The Supreme Court affirmed Appellant's convictions for aggravated murder, aggravated burglary, and aggravated robbery. It also affirmed Appellant's death penalty sentence, which was imposed after a resentencing hearing.

Sixth Circuit Court of Appeals

Nothing to report.

Supreme Court of the United States

***County of Los Angeles, California, Et. Al. v. Mendez, Et. Al.*, Slip Opinion No. 16-369**

Fourth Amendment

Full Decision: https://www.supremecourt.gov/opinions/16pdf/16-369_09m1.pdf

Syllabus:

The Los Angeles County Sheriff's Department received word from a confidential informant that a potentially armed and dangerous parolee-at-large had been seen at a certain residence. While other officers searched the main house, Deputies Conley and Pederson searched the back of the property where, unbeknownst to the deputies, respondents Mendez and Garcia were napping inside a shack where they lived. Without a search warrant and without announcing their presence, the deputies opened the door of the shack. Mendez rose from the bed, holding a BB gun that he used to kill pests. Deputy Conley yelled, "Gun!" and the deputies immediately opened fire, shooting Mendez and Garcia multiple times. Officers did not find the parolee in the shack or elsewhere on the property.

Mendez and Garcia sued Deputies Conley and Pederson and the County under 42 U. S. C. §1983, pressing three Fourth Amendment claims: a warrantless entry claim, a knock-and-announce claim, and an excessive force claim. On the first two claims, the District Court awarded Mendez and Garcia nominal damages. On the excessive force claim, the court found that the deputies' use of force was reasonable under *Graham v. Connor*, 490 U. S. 386, but held them liable nonetheless under the Ninth Circuit's provocation rule, which makes an officer's otherwise reasonable use of force unreasonable if (1) the officer "intentionally or recklessly provokes a violent confrontation" and (2) "the provocation is an independent Fourth Amendment violation," *Billington v. Smith*, 292 F. 3d 1177, 1189. On appeal, the Ninth Circuit held that the officers were entitled to qualified immunity on the knock-and-announce claim and that the warrantless entry violated clearly established law. It also affirmed the District Court's application of the provocation rule, and held, in the alternative, that basic notions of proximate cause would support liability even without the provocation rule.

Held: **The Fourth Amendment provides no basis for the Ninth Circuit's "provocation rule." Pp. 5–10.**

(a) The provocation rule is incompatible with this Court's excessive force jurisprudence, which sets forth a settled and exclusive framework for analyzing whether the force used in making a seizure complies with the Fourth Amendment. *See Graham, supra*, at 395. The operative question in such cases is "whether the totality of the circumstances justifie[s] a particular sort of search or seizure." *Tennessee v. Garner*, 471 U. S. 1, 8–9. When an officer carries out a seizure that is reasonable, taking into account all relevant circumstances, there is no valid excessive force claim. The provocation rule, however, instructs courts to look back in time to see if a different Fourth Amendment violation was somehow tied to the eventual use of force, an approach that mistakenly conflates distinct Fourth Amendment claims. The proper framework is set out in *Graham*. To the extent that a plaintiff has other Fourth Amendment claims, they should be analyzed separately.

The Ninth Circuit attempts to cabin the provocation rule by defining a two-prong test: First, the separate constitutional violation must "creat[e] a situation which led to" the use of force; and second, the separate constitutional violation must be committed recklessly or intentionally. 815 F. 3d 1178, 1193. Neither limitation, however, solves the fundamental problem: namely, that the provocation rule is an unwarranted and illogical expansion of Graham. In addition, each limitation creates problems of its own. First, the rule relies on a vague causal standard. Second, while the reasonableness of a search or seizure is almost always based on objective factors, the provocation rule looks to the subjective intent of the officers who carried out the seizure.

There is no need to distort the excessive force inquiry in this way in order to hold law enforcement officers liable for the foreseeable consequences of all their constitutional torts. Plaintiffs can, subject to qualified immunity, generally recover damages that are proximately caused by any Fourth Amendment violation. See, e.g., *Heck v. Humphrey*, 512 U. S. 477, 483. Here, if respondents cannot recover on their excessive force claim, that will not foreclose recovery for injuries proximately caused by the warrantless entry. Pp. 5–10.

(b) The Ninth Circuit's proximate-cause holding is similarly tainted. Its analysis appears to focus solely on the risks foreseeably associated with the failure to knock and announce—the claim on which the court concluded that the deputies had qualified immunity—rather than the warrantless entry. On remand, the court should revisit the question whether proximate cause permits respondents to recover damages for their injuries based on the deputies' failure to secure a warrant at the outset. Pp. 10–11.

815 F. 3d 1178, vacated and remanded.

ALITO, J., delivered the opinion of the Court, in which all other Members joined, except GORSUCH, J., who took no part in the consideration or decision of the case.

***Esquivel-Quintana v. Sessions*, Slip Opinion No. 16-54**

Immigration: Deportation: Statutory Rape

Full Decision: https://www.supremecourt.gov/opinions/16pdf/16-54_5i26.pdf

Syllabus:

Petitioner, a citizen of Mexico and lawful permanent resident of the United States, pleaded no contest in a California court to a statutory rape offense criminalizing "unlawful sexual intercourse with a minor who is more than three years younger than the perpetrator." Cal. Penal Code Ann. §261.5(c). For purposes of that offense, California defines "minor" as "a person under the age of 18." §261.5(a). Based on this conviction, the Department of Homeland Security initiated removal proceedings under the Immigration and Nationality Act (INA), which makes removable "[a]ny alien who is convicted of an aggravated felony," 8 U. S. C. §1227(a)(2)(A)(iii), including "sexual abuse of a minor," §1101(a)(43)(A). An Immigration Judge ordered petitioner removed to Mexico. The Board of Immigration Appeals agreed that petitioner's crime constituted sexual abuse of a minor and dismissed his appeal. A divided Court of Appeals denied his petition for review.

***Held*: In the context of statutory rape offenses that criminalize sexual intercourse based solely on the ages of the participants, the generic federal definition of "sexual abuse of a minor" requires the age of the victim to be less than 16. Pp. 2–12.**

(a) Under the categorical approach employed to determine whether an alien's conviction qualifies as an aggravated felony, the Court asks whether " 'the state statute defining the crime of conviction' categorically fits within the 'generic' federal definition of a corresponding aggravated felony." *Moncrieffe v. Holder*, 569 U. S. 184, 190. Petitioner's state conviction is thus an "aggravated felony" only if the least of the acts criminalized by the state statute falls within the generic federal definition of sexual abuse of a minor. *Johnson v. United States*, 559 U. S. 133, 137. Pp. 2–3.

(b) The least of the acts criminalized by Cal. Penal Code §261.5(c) would be consensual sexual intercourse between a victim who is almost 18 and a perpetrator who just turned 21. Regardless of the actual facts of the case, this Court presumes that petitioner's conviction was based on those acts. Pp. 3–4.

(c) In the context of statutory rape offenses that criminalize sexual intercourse based solely on the ages of the participants, the generic federal definition of "sexual abuse of a minor" requires that the victim be younger than 16. The Court begins, as always, with the text. Pp. 4–7.

(1) Congress added sexual abuse of a minor to the INA in 1996. At that time, the ordinary meaning of "sexual abuse" included "the engaging in sexual contact with a person who is below a specified age or who is incapable of giving consent because of age or mental or physical incapacity." Merriam-Webster's Dictionary of Law 454. By providing that the abuse must be "of a minor," the INA focuses on age, rather than mental or physical incapacity. Accordingly, to qualify as sexual abuse of a minor, the

statute of conviction must prohibit certain sexual acts based at least in part on the age of the victim. Statutory rape laws, which are one example of this category of crimes, generally provide that an older person may not engage in sexual intercourse with a younger person under the "age of consent." Reliable dictionaries indicate that the "generic" age of consent in 1996 was 16, and it remains so today. Pp. 4–6.

(2) The Government argues that sexual abuse of a minor includes any conduct that is illegal, involves sexual activity, and is directed at a person younger than 18. For support, it points to the 1990 Black's Law Dictionary, which defined sexual abuse of a minor as "[i]llegal sex acts performed against a minor by a parent, guardian, relative, or acquaintance" and defined "[m]inor" as "[a]n infant or person who is under the age of legal competence," which in "most states" was "18." But the generic federal offense does not correspond to the Government's definition, for three reasons. First, the Government's definition is inconsistent with its own dictionary's requirement that a special relationship of trust exist between the victim and offender. Second, in the statutory rape context, "of a minor" refers to the age of consent, not the age of legal competence. Third, the Government's definition turns the categorical approach on its head by defining the generic federal offense as whatever is illegal under the law of the State of conviction. Pp. 6–7.

(d) The structure of the INA, a related federal statute, and evidence from state criminal codes confirm that, for a statutory rape offense based solely on the age of the participants to qualify as sexual abuse of a minor under the INA, the victim must be younger than 16. The INA lists sexual abuse of a minor as an "aggravated" felony, §1227(a)(2)(A)(iii), and lists it in the same subparagraph as "murder" and "rape," §1101(a)(43)(A), suggesting that it encompasses only especially egregious felonies. A different statute, 18 U. S. C. §2243, criminalizes "[s]exual abuse of a minor or ward." Section 2243 was amended to protect anyone under age 16 in the same omnibus law that added sexual abuse of a minor to the INA, suggesting that Congress understood that phrase to cover victims under (but not over) age 16. Finally, a significant majority of state criminal codes set the age of consent at 16 for statutory rape offenses predicated exclusively on the age of the participants. Pp. 7–11.

(e) This Court does not decide whether the generic crime of sexual abuse of a minor requires a particular age differential between the victim and the perpetrator or whether it encompasses sexual intercourse involving victims over 16 that is abusive because of the nature of the relationship between the participants. P. 11.

(f) Because the statute, read in context, unambiguously forecloses the Board's interpretation of sexual abuse of a minor, neither the rule of lenity nor Chevron deference applies. Pp. 11–12.

810 F. 3d 1019, reversed.

THOMAS, J., delivered the opinion of the Court, in which all other Members joined, except GORSUCH, J., who took no part in the consideration or decision of the case.