Appellate Court Decisions - Week of 6/20/16

Legislative Changes:

HB171 HEROIN-FELONY (BLESSING III L, DEVER J) To decrease the minimum amount of heroin involved in a violation of trafficking in heroin or possession of heroin that makes the violation a felony of the first degree and that is necessary to classify an offender as a major drug offender.
Current Status: 6/14/2016 - SIGNED BY GOVERNOR; eff. in 90 days
ORC Sections: 2925.03, 2925.11, 2929.01
State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-171

SB204 DRUG VIOLATION-DRIVING SUSPENSION (SEITZ B) To make the suspension of an offender's driver's license for a violation of specified drug offenses discretionary rather than mandatory, to authorize a court to terminate a driver's license suspension imposed for specified drug offenses committed out-of-state, to generally authorize a court to terminate a previously imposed mandatory suspension for specified drug offenses, to provide for the discretionary suspension of an offender's driver's license for possessing nitrous oxide in a motor vehicle, and to make consistent the provisions of law governing the ability of a court to grant limited driving privileges.
Current Status: 6/13/2016 - SIGNED BY GOVERNOR; eff. in 90 days
ORC Sections: 2925.02, 2925.03, 2925.04, 2925.041, 2925.05, 2925.06, 2925.11, 2925.12, 2925.13, 2925.14, 2925.141, 2925.22, 2925.23, 2925.31, 2925.32, 2925.33, 2925.36, 2925.37, 4510.021, 4510.17, 4510.31
State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-204

First Appellate District of Ohio

***State v. Richards*, 2015-Ohio-3518**

OVI: Motion to Suppress

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2016/2016-Ohio-3518.pdf

Summary from the First District:

"The trial court erred in suppressing the results of two of the three field-sobriety tests administered to the defendant: the court did not err in suppressing the results of the HGN test, because the state failed to demonstrate substantial compliance with the National Highway Traffic Safety Administration standards as to issues the defendant raised on cross-examination during the hearing on the defendant's motion to suppress; however, in suppressing the results of the walk-and-turn and one-leg-stand tests the

trial court improperly relied on evidence that was not raised by the defendant on cross-examination, and, with that evidence eliminated, the state met its burden to demonstrate substantial compliance on those two tests.

"The trial court erred when it found the arresting trooper lacked probable cause to arrest the defendant because sufficient indicia of impairment existed to cause a prudent officer to conclude the defendant was impaired.

"The trial court erred in suppressing the defendant's statements after arrest because the troopers had probable cause to arrest, and the evidence supports the trooper's testimony that he properly *Mirandized* the defendant."

***State v. Figgs*, 2016-Ohio-3519**

Venue: R.C. 2941.25: Allied Offenses

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2016/2016-Ohio-3519.pdf

Summary from the First District:

"A conviction cannot be supported when the evidence is not sufficient to establish venue beyond a reasonable doubt, despite the failure of counsel to bring the insufficiency to the attention of the trial court; but where the state adduced direct evidence from victims of a home-invasion robbery that the crime occurred in Hamilton County, Ohio, there was sufficient evidence from which the jury could have found beyond a reasonable doubt that venue was proper.

"The trial court erred and violated the requirements of Ohio's multiple-counts statute, R.C. 2941.25, in failing to merge the defendant's convictions for aggravated robbery and robbery as to each victim of a home-invasion robbery, because, as the state noted at the sentencing hearing, the offenses were not of dissimilar import, and were not committed separately or with a separate animus."

***State v. Smith*, 2016-Ohio-3521**

Appellate Review: Constitutional Law: Jurisdiction: Child Enticement

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2016/2016-Ohio-3521.pdf

Summary from the First District:

"Defendant's appeals from the overruling of his postconviction motions to vacate his convictions for first-degree-misdemeanor child enticement were not subject to dismissal

as moot: although defendant had completed his sentences, his duty under Megan's Law to register as a child-victim-oriented offender, with the accompanying risk of sanctions for violating that duty, constituted a collateral disability that survived the completion of his sentences.

"Defendant's motions to vacate his child-enticement convictions were not reviewable under R.C. 2725.01 et seq., as petitions for writs of habeas corpus, because defendant had already been released from confinement; or under R.C. 2953.21 et seq., as petitions for postconviction relief, because defendant was convicted in municipal court; or as Civ.R. 60(B) motions for relief from a judgment, through Crim.R. 57(B), because the appellate rules provided the procedure for defendant to seek relief from his convictions based on challenges that did not depend for their resolution upon evidence outside of the record.

"The municipal court erred in failing to grant defendant's 2015 motions to vacate his 2004 child-enticement convictions: the Ohio Supreme Court's 2014 decision in *State v. Romage*, 138 Ohio St.3d 390, 2014-Ohio-783, 7 N.E.3d 1156, that the child-enticement statute was unconstitutionally overbroad, applied retroactively, because the case announced a new substantive rule of constitutional law; and the municipal court had jurisdiction to afford defendant the relief sought in his motions, because his convictions under an unconstitutional statute were void ab initio."

Note: Take a minute and think about whether you have ever had a client convicted of child enticement and/or of violating a registration requirement after a child enticement conviction. If you have, then try to contact them. This case is of great significance to them.

***State v. Taylor*, 2016-Ohio-4548**

Sentencing

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2016/2016-Ohio-4548.pdf

Summary from the First District:

"Because the requirement in R.C. 2929.19(B)(2)(f) that the trial court inform the defendant that the defendant should not ingest or be injected with any drug of abuse while in prison confers no substantive rights on a defendant, the trial court's failure to comply with the requirement was harmless error that resulted in no prejudice to the defendant.

"R.C. 2901.07(B)(1)'s requirement that the trial court notify the defendant at sentencing that the defendant must submit to a DNA specimen collection procedure confers no substantive rights upon the defendant, but rather was intended to facilitate the maintenance of a DNA database and the DNA testing of felony offenders; therefore, the

trial court's failure to comply with R.C. 2901.07(B)(1) was harmless error that did not prejudice the defendant."

***State v. Hsu*, 2016-Ohio-4549**

Public Indecency: Sufficiency: Weight: Crim.R. 5: Prosecutorial Misconduct

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2016/2016-Ohio-4549.pdf

Summary from the First District:

"Defendant's conviction for public indecency, as a fourth-degree misdemeanor, was supported by sufficient evidence and was not against the manifest weight of the evidence where the victim testified that she had been walking to her car when defendant had approached her and, after talking with her, had exposed his penis: although defendant testified that he had just been talking to the victim and had not exposed himself to her, the trial court, as the trier of fact, was in the best to position to judge the credibility of the witnesses and it was free to reject defendant's testimony.

"The trial court's failure to advise defendant of his right to a jury trial under Crim.R. 5 did not require reversal of his conviction where the record reflected that the defendant had been charged with public indecency, a petty offense, defendant had been represented by counsel throughout the trial court proceedings, including his initial appearance and arraignment where he had entered a not-guilty plea, and defendant had not filed a written demand for a jury trial, but had elected to proceed with a trial to the court, thereby waiving any error with respect to his initial appearance.

"The prosecutor's repeated cross-examination of defendant regarding defendant's clarification of a sentence in a statement he had given to an investigating officer following the incident for which he was being tried was not improper, because the prosecutor was entitled to test the credibility of defendant on the matter about which he had testified during direct examination, and the prosecutor's repeated questioning was based on defendant's vague responses that did not directly answer the prosecutor's questions.

"While the prosecutor's statement during closing argument that he believed the victim's testimony to be credible was improper, the prosecutor's statement did not constitute plain error where the case was tried to the trial court, there was no indication that the trial court had relied on the prosecutor's statement in convicting defendant, and the trial court had stated on the record that it found the state's witnesses to be more credible."

Second Appellate District of Ohio

***State v. Kinnison*, 2016-Ohio-3481**

Search: Motion to Suppress

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/2/2016/2016-Ohio-3481.pdf

The trial court erred in overruling Appellant's motion to suppress. The police officer directed Appellant to empty his pockets without any concern for his safety. It was not a protective search under *Terry*. It was only based on the officer's only stated concern – finding illegal narcotics. The search of Appellant's person exceeded the scope of a limited pat-down search for weapons under *Terry*.

Third Appellate District of Ohio

***State v. Walker*, 2016-Ohio-3499**

Trafficking In Drugs In The Presence Of A Juvenile

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/3/2016/2016-Ohio-3499.pdf

The evidence was insufficient to prove the specification that Appellant trafficked drugs in the presence of a juvenile where, although Appellant was in the presence of a juvenile and within 100 feet of the drugs at the time of arrest, that was not enough evidence he actually trafficked drugs in the vicinity of a juvenile. Instead, he arrived at the residence where the drugs were with the intent of transporting the drugs, but he never actually made it to the drugs because he was arrested when he opened the door to the residence.

Fourth Appellate District of Ohio

***State v. Malone*, 2016-Ohio-3543**

Sentencing: Allied Offenses: Forgery: Receiving Stolen Property

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/4/2016/2016-Ohio-3543.pdf

Appellant was found guilty of theft, two counts of forgery, and receiving stolen property. The trial court decided the theft count would merge with the two counts of forgery, the forgery counts would not merge with one

another, and the receiving stolen property count would not merge with either forger count. The Fourth District held that the trial court was correct in not merging the two forgery accounts, as multiple instances of forged checks supported multiple convictions. However, the receiving stolen property count should have merged with a forgery count because the offenses involve the same victim, the harm occurred at the same time – when the funds were removed as a result of cashing the forged checks – the offenses were not committed separately, and there was no separate animus.

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

***State v. Newsome*, 2016-Ohio-3509**

Search: Motion to Suppress

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/11/2016/2016-Ohio-3509.pdf

The trial court did not err in granting Appellee's motion to suppress where "an officer testifie[d] that consent to search a home was given through a

statement to 'go ahead' and search, although a reference to consent had not been included in the police report and the officer stated that the authority to search was based on the arrest warrant."

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

***Utah v. Strieff*, Slip Opinion No. 14-1373**

Fourth Amendment: Search

Full Decision: http://www.supremecourt.gov/opinions/15pdf/14-1373_83i7.pdf

***Syllabus*:**

Narcotics detective Douglas Fackrell conducted surveillance on a South Salt Lake City residence based on an anonymous tip about drug activity. The number of people he observed making brief visits to the house over the course of a week made him suspicious that the occupants were dealing drugs. After observing respondent Edward Strieff leave the residence, Officer Fackrell detained Strieff at a nearby parking lot, identifying himself and asking Strieff what he was doing at the house. He then requested Strieff's identification and relayed the information to a police dispatcher, who informed him that Strieff had an outstanding arrest warrant for a traffic violation. Officer Fackrell arrested Strieff, searched him, and found methamphetamine and drug paraphernalia. Strieff moved to suppress the evidence, arguing that it was derived from an unlawful investigatory stop. The trial court denied the motion, and the Utah Court of Appeals affirmed. The Utah Supreme Court reversed, however, and ordered the evidence suppressed.

Held: The evidence Officer Fackrell seized incident to Strieff's arrest is admissible based on an application of the attenuation factors from *Brown v. Illinois*, 422 U. S. 590. In this case, there was no flagrant police misconduct. Therefore, Officer Fackrell's discovery of a valid, pre-existing, and untainted arrest warrant attenuated the connection between

the unconstitutional investigatory stop and the evidence seized incident to a lawful arrest. Pp. 4–10.

(a) As the primary judicial remedy for deterring Fourth Amendment violations, the exclusionary rule encompasses both the "primary evidence obtained as a direct result of an illegal search or seizure" and, relevant here, "evidence later discovered and found to be derivative of an illegality." *Segura v. United States*, 468 U. S. 796, 804. But to ensure that those deterrence benefits are not outweighed by the rule's substantial social costs, there are several exceptions to the rule. One exception is the attenuation doctrine, which provides for admissibility when the connection between unconstitutional police conduct and the evidence is sufficiently remote or has been interrupted by some intervening circumstance. See *Hudson v. Michigan*, 547 U. S. 586, 593. Pp. 4–5.

(b) As a threshold matter, the attenuation doctrine is not limited to the defendant's independent acts. The doctrine therefore applies here, where the intervening circumstance is the discovery of a valid, pre-existing, and untainted arrest warrant. Assuming, without deciding, that Officer Fackrell lacked reasonable suspicion to stop Strieff initially, the discovery of that arrest warrant attenuated the connection between the unlawful stop and the evidence seized from Strieff incident to his arrest. Pp. 5–10.

(1) Three factors articulated in *Brown v. Illinois*, 422 U. S. 590, lead to this conclusion. The first, "temporal proximity" between the initially unlawful stop and the search, id., at 603, favors suppressing the evidence. Officer Fackrell discovered drug contraband on Strieff only minutes after the illegal stop. In contrast, the second factor, "the presence of intervening circumstances, *id.*, at 603–604, strongly favors the State. The existence of a valid warrant, predating the investigation and entirely unconnected with the stop, favors finding sufficient attenuation between the unlawful conduct and the discovery of evidence. That warrant authorized Officer Fackrell to arrest Strieff, and once the arrest was authorized, his search of Strieff incident to that arrest was undisputedly lawful. The third factor, "the purpose and flagrancy of the official misconduct," *id.*, at 604, also strongly favors the State. Officer Fackrell was at most negligent, but his errors in judgment hardly rise to a purposeful or flagrant violation of Strieff's Fourth Amendment rights. After the unlawful stop, his conduct was lawful, and there is no indication that the stop was part of any systemic or recurrent police misconduct. Pp. 6–9.

(2) Strieff's counterarguments are unpersuasive. First, neither Officer Fackrell's purpose nor the flagrancy of the violation rises to a level of misconduct warranting suppression. Officer Fackrell's purpose was not to conduct a suspicionless fishing expedition but was to gather information about activity inside a house whose occupants were legitimately suspected of dealing drugs. Strieff conflates the standard for an illegal stop with the standard for flagrancy, which requires more than the mere absence of proper cause. Second, it is unlikely that the prevalence of outstanding warrants will lead to dragnet searches by police. Such misconduct would expose police to civil liability and, in any event, is already accounted for by *Brown*'s "purpose and flagrancy" factor. Pp. 9–10.

2015 UT 2, 357 P. 3d 532, reversed.

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

***Birchfield v. North Dakota*, Slip Opinion No. 14-1468**

Fourth Amendment: OVI: Blood Tests

Full Decision: http://www.supremecourt.gov/opinions/15pdf/14-1468_8n59.pdf

Syllabus:

To fight the serious harms inflicted by drunk drivers, all States have laws that prohibit motorists from driving with a blood alcohol concentration (BAC) exceeding a specified level. BAC is typically determined through a direct analysis of a blood sample or by using a machine to measure the amount of alcohol in a person's breath. To help secure drivers' cooperation with such testing, the States have also enacted "implied consent" laws that require drivers to submit to BAC tests. Originally, the penalty for refusing a test was suspension of the motorist's license. Over time, however, States have toughened their drunk-driving laws, imposing harsher penalties on recidivists and drivers with particularly high BAC levels. Because motorists who fear these increased punishments have strong incentives to reject testing, some States, including North Dakota and Minnesota, now make it a crime to refuse to undergo testing.

In these cases, all three petitioners were arrested on drunk-driving charges. The state trooper who arrested petitioner Danny Birchfield advised him of his obligation under North Dakota law to undergo BAC testing and told him, as state law requires, that refusing to submit to a blood test could lead to criminal punishment. Birchfield refused to let his blood be drawn and was charged with a misdemeanor violation of the refusal statute. He entered a conditional guilty plea but argued that the Fourth Amendment prohibited criminalizing his refusal to submit to the test. The State District Court rejected his argument, and the State Supreme Court affirmed. After arresting petitioner William Robert Bernard, Jr., Minnesota police transported him to the station. There, officers read him Minnesota's implied consent advisory, which like North Dakota's informs motorists that it is a crime to refuse to submit to a BAC test. Bernard refused to take a breath test and was charged with test refusal in the first degree. The Minnesota District Court dismissed the charges, concluding that the warrantless breath test was not permitted under the Fourth Amendment. The State Court of Appeals reversed, and the State Supreme Court affirmed. The officer who arrested petitioner Steve Michael Beylund took him to a nearby hospital. The officer read him North Dakota's implied consent advisory, informing him that test refusal in these circumstances is itself a crime. Beylund agreed to have his blood drawn. The test revealed a BAC level more than three times the legal limit. Beylund's license was suspended for two years after an administrative hearing, and on appeal, the State District Court rejected his argument

that his consent to the blood test was coerced by the officer's warning. The State Supreme Court affirmed.

Held:

1. The Fourth Amendment permits warrantless breath tests incident to arrests for drunk driving but not warrantless blood tests. Pp. 13–36.

(a) Taking a blood sample or administering a breath test is a search governed by the Fourth Amendment. See *Skinner v. Railway Labor Executives' Assn.*, 489 U. S. 602, 616–617; *Schmerber v. California*, 384 U. S. 757, 767–768. These searches may nevertheless be exempt from the warrant requirement if they fall within, as relevant here, the exception for searches conducted incident to a lawful arrest. This exception applies categorically, rather than on a case-by-case basis. *Missouri v. McNeely*, 569 U. S. ___, ___, n. 3. Pp. 14–16.

(b) The search-incident-to-arrest doctrine has an ancient pedigree that predates the Nation's founding, and no historical evidence suggests that the Fourth Amendment altered the permissible bounds of arrestee searches. The mere "fact of the lawful arrest" justifies "a full search of the person." *United States v. Robinson*, 414 U. S. 218, 235. The doctrine may also apply in situations that could not have been envisioned when the Fourth Amendment was adopted. In *Riley v. California*, 573 U. S. ___, the Court considered how to apply the doctrine to searches of an arrestee's cell phone. Because founding era guidance was lacking, the Court determined "whether to exempt [the] search from the warrant requirement 'by assessing, on the one hand, the degree to which it intrudes upon an individual's privacy and, on the other, the degree to which it is needed for the promotion of legitimate governmental interests.' " Id., at ___. The same mode of analysis is proper here because the founding era provides no definitive guidance on whether blood and breath tests should be allowed incident to arrest. Pp. 16–20.

(c) The analysis begins by considering the impact of breath and blood tests on individual privacy interests. Pp. 20–23.

(1) Breath tests do not "implicat[e] significant privacy concerns." *Skinner*, 489 U. S., at 626. The physical intrusion is almost negligible. The tests "do not require piercing the skin" and entail "a minimum of inconvenience." *Id.*, at 625. Requiring an arrestee to insert the machine's mouthpiece into his or her mouth and to exhale "deep lung" air is no more intrusive than collecting a DNA sample by rubbing a swab on the inside of a person's cheek, *Maryland v. King*, 569 U. S. ___, ___, or scraping underneath a suspect's fingernails, *Cupp v. Murphy*, 412 U. S. 291. Breath tests, unlike DNA samples, also yield only a BAC reading and leave no biological sample in the government's possession. Finally, participation in a breath test is not likely to enhance the embarrassment inherent in any arrest. Pp. 20– 22.

(2) The same cannot be said about blood tests. They "require piercing the skin" and extract a part of the subject's body, *Skinner*, *supra*, at 625, and thus are significantly

more intrusive than blowing into a tube. A blood test also gives law enforcement a sample that can be preserved and from which it is possible to extract information beyond a simple BAC reading. That prospect could cause anxiety for the person tested. Pp. 22–23.

(d) The analysis next turns to the States' asserted need to obtain BAC readings. Pp. 23–33.

(1) The States and the Federal Government have a "paramount interest . . . in preserving [public highway] safety," *Mackey v. Montrym*, 443 U. S. 1, 17; and States have a compelling interest in creating "deterrent[s] to drunken driving," a leading cause of traffic fatalities and injuries, *id.*, at 18. Sanctions for refusing to take a BAC test were increased because consequences like license suspension were no longer adequate to persuade the most dangerous offenders to agree to a test that could lead to severe criminal sanctions. By making it a crime to refuse to submit to a BAC test, the laws at issue provide an incentive to cooperate and thus serve a very important function. Pp. 23–25.

(2) As for other ways to combat drunk driving, this Court's decisions establish that an arresting officer is not obligated to obtain a warrant before conducting a search incident to arrest simply because there might be adequate time in the particular circumstances to obtain a warrant. The legality of a search incident to arrest must be judged on the basis of categorical rules. See e.g., *Robinson, supra*, at 235. *McNeely, supra*, at ___, distinguished. Imposition of a warrant requirement for every BAC test would likely swamp courts, given the enormous number of drunk-driving arrests, with little corresponding benefit. And other alternatives—e.g., sobriety checkpoints and ignition interlock systems—are poor substitutes. Pp. 25–30.

(3) Bernard argues that warrantless BAC testing cannot be justified as a search incident to arrest because that doctrine aims to prevent the arrestee from destroying evidence, while the loss of blood alcohol evidence results from the body's metabolism of alcohol, a natural process not controlled by the arrestee. In both instances, however, the State is justifiably concerned that evidence may be lost. The State's general interest in "evidence preservation" or avoiding "the loss of evidence," *Riley, supra*, at ___, readily encompasses the metabolization of alcohol in the blood. Bernard's view finds no support in *Chimel v. California*, 395 U. S. 752, 763, *Schmerber*, 384 U. S., at 769, or *McNeely, supra*, at ___. Pp. 30–33.

(e) Because the impact of breath tests on privacy is slight, and the need for BAC testing is great, the Fourth Amendment permits warrantless breath tests incident to arrests for drunk driving. Blood tests, however, are significantly more intrusive, and their reasonableness must be judged in light of the availability of the less invasive alternative of a breath test. Respondents have offered no satisfactory justification for demanding the more intrusive alternative without a warrant. In instances where blood tests might be preferable—e.g., where substances other than alcohol impair the driver's ability to operate a car safely, or where the subject is unconscious—nothing prevents the police from seeking a warrant or from relying on the exigent circumstances exception if it

applies. Because breath tests are significantly less intrusive than blood tests and in most cases amply serve law enforcement interests, a breath test, but not a blood test, may be administered as a search incident to a lawful arrest for drunk driving. No warrant is needed in this situation. Pp. 33–35.

2. Motorists may not be criminally punished for refusing to submit to a blood test based on legally implied consent to submit to them. It is one thing to approve implied-consent laws that impose civil penalties and evidentiary consequences on motorists who refuse to comply, but quite another for a State to insist upon an intrusive blood test and then to impose criminal penalties on refusal to submit. There must be a limit to the consequences to which motorists may be deemed to have consented by virtue of a decision to drive on public roads. Pp. 36–37.

3. These legal conclusions resolve the three present cases. Birchfield was criminally prosecuted for refusing a warrantless blood draw, and therefore the search that he refused cannot be justified as a search incident to his arrest or on the basis of implied consent. Because there appears to be no other basis for a warrantless test of Birchfield's blood, he was threatened with an unlawful search and unlawfully convicted for refusing that search. Bernard was criminally prosecuted for refusing a warrantless breath test. Because that test was a permissible search incident to his arrest for drunk driving, the Fourth Amendment did not require officers to obtain a warrant prior to demanding the test, and Bernard had no right to refuse it. Beylund submitted to a blood test after police told him that the law required his submission. The North Dakota Supreme Court, which based its conclusion that Beylund's consent was voluntary on the erroneous assumption that the State could compel blood tests, should reevaluate Beylund's consent in light of the partial inaccuracy of the officer's advisory. Pp. 37–38.

No. 14–1468, 2015 ND 6, 858 N. W. 2d 302, reversed and remanded; No. 14–1470, 859 N. W. 2d 762, affirmed; No. 14–1507, 2015 ND 18, 859 N. W. 2d 403, vacated and remanded.

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

***Mathis v. United States*, Slip Opinion No. 15-6092**

Armed Career Criminal Act: Violent Felonies: Burglary: Arson: Extortion

Full Decision: http://www.supremecourt.gov/opinions/15pdf/15-6092_1an2.pdf

***Syllabus*:**

The Armed Career Criminal Act (ACCA) imposes a 15-year mandatory minimum sentence on a defendant convicted of being a felon in possession of a firearm who also

has three prior state or federal convictions "for a violent felony," including "burglary, arson, or extortion." 18 U. S. C. §§924(e)(1), (e)(2)(B)(ii). To determine whether a prior conviction is for one of those listed crimes, courts apply the "categorical approach"—they ask whether the elements of the offense forming the basis for the conviction sufficiently match the elements of the generic (or commonly understood) version of the enumerated crime. See *Taylor v. United States*, 495 U. S. 575, 600–601. "Elements" are the constituent parts of a crime's legal definition, which must be proved beyond a reasonable doubt to sustain a conviction; they are distinct from "facts," which are mere real-world things—extraneous to the crime's legal requirements and thus ignored by the categorical approach.

When a statute defines only a single crime with a single set of elements, application of the categorical approach is straightforward. But when a statute defines multiple crimes by listing multiple, alternative elements, the elements-matching required by the categorical approach is more difficult. To decide whether a conviction under such a statute is for a listed ACCA offense, a sentencing court must discern which of the alternative elements was integral to the defendant's conviction. That determination is made possible by the "modified categorical approach," which permits a court to look at a limited class of documents from the record of a prior conviction to determine what crime, with what elements, a defendant was convicted of before comparing that crime's elements to those of the generic offense. See, e.g., *Shepard v. United States*, 544 U. S. 13, 26. This case involves a different type of alternatively worded statute—one that defines only one crime, with one set of elements, but which lists alternative factual means by which a defendant can satisfy those elements.

Here, petitioner Richard Mathis pleaded guilty to being a felon in possession of a firearm. Because of his five prior Iowa burglary convictions, the Government requested an ACCA sentence enhancement. Under the generic offense, burglary requires unlawful entry into a "building or other structure." *Taylor*, 495 U. S., at 598. The Iowa statute, however, reaches "any building, structure, [or] land, water, or air vehicle." Iowa Code §702.12. Under Iowa law, that list of places does not set out alternative elements, but rather alternative means of fulfilling a single locational element.

The District Court applied the modified categorical approach, found that Mathis had burgled structures, and imposed an enhanced sentence. The Eighth Circuit affirmed. Acknowledging that the Iowa statute swept more broadly than the generic statute, the court determined that, even if "structures" and "vehicles" were not separate elements but alternative means of fulfilling a single element, a sentencing court could still invoke the modified categorical approach. Because the record showed that Mathis had burgled structures, the court held, the District Court's treatment of Mathis's prior convictions as ACCA predicates was proper.

Held: Because the elements of Iowa's burglary law are broader than those of generic burglary, Mathis's prior convictions cannot give rise to ACCA's sentence enhancement. Pp. 7–19.

(a) This case is resolved by this Court's precedents, which have repeatedly held, and in no uncertain terms, that a state crime cannot qualify as an ACCA predicate if its elements are broader than those of a listed generic offense. See, e.g., *Taylor*, 495 U. S., at 602. The "underlying brute facts or means" by which the defendant commits his crime, *Richardson v. United States*, 526 U. S. 813, 817, make no difference; even if the defendant's conduct, in fact, fits within the definition of the generic offense, the mismatch of elements saves him from an ACCA sentence. ACCA requires a sentencing judge to look only to "the elements of the [offense], not to the facts of [the] defendant's conduct." *Taylor*, 495 U. S., at 601.

This Court's cases establish three basic reasons for adhering to an elements-only inquiry. First, ACCA's text, which asks only about a defendant's "prior convictions," indicates that Congress meant for the sentencing judge to ask only whether "the defendant had been convicted of crimes falling within certain categories," *id.*, at 600, not what he had done. Second, construing ACCA to allow a sentencing judge to go any further would raise serious Sixth Amendment concerns because only a jury, not a judge, may find facts that increase the maximum penalty. See *Apprendi v. New Jersey*, 530 U. S. 466, 490. And third, an elements-focus avoids unfairness to defendants, who otherwise might be sentenced based on statements of "nonelemental fact[s]" that are prone to error because their proof is unnecessary to a conviction. *Descamps v. United States*, 570 U. S. ____, ____.

Those reasons remain as strong as ever when a statute, like Iowa's burglary statute, lists alternative means of fulfilling one (or more) of a crime's elements. ACCA's term "convictions" still supports an elements-based inquiry. The Sixth Amendment problems associated with a court's exploration of means rather than elements do not abate in the face of a statute like Iowa's: Alternative factual scenarios remain just that, and thus off-limits to sentencing judges. Finally, a statute's listing of disjunctive means does nothing to mitigate the possible unfairness of basing an increased penalty on something not legally necessary to a prior conviction. Accordingly, whether means are listed in a statute or not, ACCA does not care about them; rather, its focus, as always, remains on a crime's elements. Pp. 7–16.

(b) The first task for a court faced with an alternatively phrased statute is thus to determine whether the listed items are elements or means. That threshold inquiry is easy here, where a State Supreme Court ruling answers the question. A state statute on its face could also resolve the issue. And if state law fails to provide clear answers, the record of a prior conviction itself might prove useful to determining whether the listed items are elements of the offense. If such record materials do not speak plainly, a sentencing judge will be unable to satisfy "*Taylor*'s demand for certainty." *Shepard*, 544 U. S., at 21. But between the record and state law, that kind of indeterminacy should prove more the exception than the rule. Pp. 16–18.

786 F. 3d 1068, reversed.

KAGAN, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, THOMAS, and SOTOMAYOR, JJ., joined. KENNEDY, J., and THOMAS, J.,

filed concurring opinions. BREYER, J., filed a dissenting opinion, in which GINSBURG, J., joined. ALITO, J., filed a dissenting opinion.