Appellate Court Decisions - Week of 7/11/16

First Appellate District of Ohio

***State v. Johnson*, 2016-Ohio-4934**

Rape: Gross Sexual Imposition: Under 13: Sufficiency

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2016/2016-Ohio-4934.pdf

Summary from the First District:

"Defendant's convictions for rape and gross sexual imposition involving a victim under the age of 13 were based upon insufficient evidence where the acts occurred at 3 a.m. on the victim's 13th birthday: the victim had turned 13 at 12:01 a.m. on her birthday, rather than at the precise time of her birth, and therefore, she had not been under the age of 13 when the acts took place.

"Defendant's conviction for rape was not against the manifest weight of the evidence where the victim repeatedly confirmed during her trial testimony that defendant had penetrated her, and it was for the jury to assess her credibility.

"Where defendant was charged with multiple counts of rape and gross sexual imposition against multiple victims, the joinder of the indictments was not improper, because the evidence of each offense was simple and direct and defendant was not prejudiced by the joinder.

"Trial counsel was not ineffective for failing to (1) cross-examine sexual-abuse victims in a certain manner, because cross-examination is a matter of trial strategy, (2) strike two jurors who were uncomfortable with the subject matter of the trial, because counsel was not required to ask specific questions during voir dire and both jurors stated that they could be fair, and (3) renew his objection to the joinder of the indictments at the close of the evidence, because joinder was proper.

"The sentencing entry must be corrected where it does not reflect that two rape counts were amended to gross sexual imposition at the request of the state, and the jury returned guilty verdicts for gross sexual imposition."

Second Appellate District of Ohio

***State v. Main*, 2016-Ohio-4892**

Evidence: Photo Identification

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/2/2016/2016-Ohio-4892.pdf

The trial court properly excluded the eyewitness identification of Appellee because it was unreliable. The photo array used by police and shown to the victim's neighbor only contained two photos, both of them of Appellee. The administrator was also not a blind administrator. The out-of-court identification procedure was overly suggestive.

Third Appellate District of Ohio

Nothing new.

Fourth Appellate District of Ohio

Nothing new.

Fifth Appellate District of Ohio

***State v. Taylor*, 2016-Ohio-4948**

Community Control: Violation: Criminal Charge

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/5/2016/2016-Ohio-4948.pdf

The trial court erred in revoking Appellant's community control based upon a consideration of his being charged with a crime. "A criminal charge, by itself, is not sufficient to prove, even by a preponderance of the evidence, a criminal act was committed."

***State v. Sherman*, 2016-Ohio-4967**

Mistrial: Double Jeopardy

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/5/2016/2016-Ohio-4967.pdf

The trial court did not abuse its discretion, and Double Jeopardy did not attach, where the trial court declared a mistrial after determining the jury was deadlocked and the votes would not change, but did not give a *Howard* charge before doing so.

Sixth Appellate District of Ohio

***State v. Sledge*, 2016-Ohio-4904**

Plea

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/6/2016/2016-Ohio-4904.pdf

Summary from the Sixth District:

"A motion in limine that is not the functional equivalent of a motion to suppress is not a final, appealable order. *State v. Lemmon*, 9th Dist. Wayne No. 2531, 1990 WL 72357 (May 23, 1990). A no contest plea based on an erroneous representation as to the applicable law is not knowingly and intelligently made. *State v. Sheeks*, 6th Dist. Wood No. WD-09-031, 2010-Ohio-94, ¶ 17."

Seventh Appellate District of Ohio

Nothing new.

Eighth Appellate District of Ohio

***In re C.H.*, 2016-Ohio-4965**

Delinquency: Community Control: Due Process: Juv.R. 35

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2016/2016-Ohio-4965.pdf

Summary from the Eighth District:

"Juvenile court has continuing jurisdiction to initiate and conduct review hearings of its dispositional orders in delinquency cases, but it may not transform a review hearing into a community control violation hearing unless the delinquent child has received notice of the alleged violation, and the court complies with Juv.R. 29 and 35 at the violation hearing."

Ninth Appellate District of Ohio

Nothing new.

Tenth Appellate District of Ohio

Nothing new.

Eleventh Appellate District of Ohio

***State v. Carver*, 2016-Ohio-4926**

Motion to Suppress: Search

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/11/2016/2016-Ohio-4926.pdf

The trial court erred in denying Appellant's motion to suppress the search of his vehicle. The police officer properly stopped Appellant for speeding.

"The main question here, however, is whether the next encounter with appellant, where Trooper Acciavatti continued the detention, questioned appellant further, and then asked for appellant's consent to search, was reasonable under the circumstances. This court concludes that it was not reasonable.

"Specifically, after stopping appellant for driving seven miles over the speed limit, Trooper Acciavatti, approached the vehicle and observed appellant was driving with two passengers. The trooper advised appellant regarding the reason for the stop and appellant acknowledged he was speeding. The trooper asked appellant if he had any weapons or anything illegal in his car and appellant replied that he did not. The trooper asked each of the occupants for their identifications. They appeared nervous and failed to make eye contact with the trooper. However, appellant and his passengers provided their identifications. The trooper checked the identifications, verified they were valid, indicated there were no outstanding warrants, but said that appellant had a couple of drug offenses on his record. The trooper did not smell any odor of alcohol or marijuana and did not observe any contraband in the vehicle.

"Thereafter, Trooper Acciavatti asked appellant to step outside the vehicle. * * * Appellant complied with the trooper's request and exited his vehicle. The trooper told appellant he was giving him a warning for the speeding violation. About 30 minutes had elapsed from the initial time of the stop to the warning for speeding.

"Instead of just issuing the warning and allowing appellant to go on his way, however, the trooper continued the detention for about another half hour and questioned appellant further even though there was no ongoing criminal activity that the trooper could observe. The trooper merely believed that appellant may have been involved in something else and

wanted to see what he could find through a search. This court finds that the trooper did not have a sufficient, reasonable basis to expand the detention due to appellant's and his passengers' nervousness, avoidance of eye contact, and appellant's prior record of drug offenses."

Twelfth Appellate District of Ohio

***State v. Metcalf*, 2016-Ohio-4923**

Sex-Offender Classification

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/12/2016/2016-Ohio-4923.pdf

Summary from the Twelfth District:

"Trial court erred by classifying appellant as a sexual offender because appellant had already completed his sentence for the relevant offense. As the Adam Walsh Act ('AWA') is punitive in nature, the trial court could not impose an additional sanction following the completion of his prison term for that offense."

Supreme Court of Ohio

Nothing new.

Sixth Circuit Court of Appeals

Nothing new.