Appellate Court Decisions - Week of 7/13/15

First Appellate District of Ohio

***State v. Brown*, 2015-Ohio-2960**

Sentencing: Allocution

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-140509_07242015.pdf

Summary from the First District:

"The trial court did not fail to comply with Crim.R. 32(A)(1) where it afforded the defendant and defense counsel the opportunity to present information in mitigation of punishment, and where the defendant took full advantage of the opportunity by engaging in a vulgar and profanity-laden tirade."

Second Appellate District of Ohio

Nothing new.

Third Appellate District of Ohio

Nothing new.

Fourth Appellate District of Ohio

Nothing new.

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

***State v. Jones*, 2015-Ohio-2853**

Pre-Indictment Delay

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2015/2015-Ohio-2853.pdf

This is a 20-plus-year-old rape case that was dismissed at the trial level for pre-indictment delay. The Eighth District, en banc, yet again affirmed the dismissal. It said, "in this case, where the identity of the defendant as the accused perpetrator was known from the beginning, where the state barely investigated the case and closed it within one week of the start of its investigation and where no further investigation or technological advances occurred in the time between the initial investigation and the indictment, we evaluate Jones's claim of actual prejudice in terms of basic concepts of due process and fundamental justice. ¶ In so evaluating his claim, we find that he suffered actual prejudice in the near 20-year delay in prosecuting him."

This case provides an excellent walkthrough of pre-indictment delay jurisprudence. It also includes three things the Eighth District considered in making its decision: 1. The stage of the proceedings at which the matter is being reviewed. 2. The nature of the state's case against the defendant and the effect of the lost or missing evidence on the pertinent issues. 3. The question of whose problem it should be when we really do not know what the lost or missing evidence would have shown.

Ninth Appellate District of Ohio

***State v. Gilmore*, 2015-Ohio-2930**

Motion to Suppress

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/9/2015/2015-Ohio-2931.pdf

The trial court erred in denying appellant's motion to suppress the marijuana and marijuana paraphernalia found on his person where his encounter with the police was not consensual. Officers were in the area looking for drug activity. When they saw appellant, he turned around and walked away from them quickly. The officers pursued and stopped him. They then questioned him about why he was evading him, and he responded that he did not see them and he lived in the area. He eventually admitted he had marijuana on his person. The Ninth District concluded a reasonable person would not feel he was free to leave in that situation. It is

possible the Appellate Court would not have reversed and would have said this was justified as an investigative stop, but the trial court did not make any determinations on the record regarding that issue.

Tenth Appellate District of Ohio

***In re: D.F.*, 2015-Ohio-2922**

Delinquency: Confession

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/10/2015/2015-Ohio-2922.pdf

The trial court erred in denying appellant's motion to suppress his confession because "appellant did not knowingly and intelligently waive his constitutional rights, and * * * appellant's confession was involuntarily induced." Appellant was 13 with no criminal record, and it was far from clear whether he "understood the nature of his constitutional rights or the import of waiving them." He repeatedly denied participating in the robbery. He was also unaccompanied by a parent or similarly interested adult. He specifically stated he did not know what the constitutional waiver was. The detective never asked if he understood his constitutional rights. Appellant never read the rights waiver form. The detective also used deceptively misleading statements and inducements to cooperate. Finally, the interview took place in the early morning hours and appellant repeatedly yawned and struggled to stay away prior to the interview.

Eleventh Appellate District of Ohio

***State v. Courie*, 2015-Ohio-2894**

Jury

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/11/2015/2015-Ohio-2894.pdf

The trial court erred in denying appellant's for-cause challenge to one juror during voir dire. The juror in question was a retired state highway patrolman who was well-acquainted with the trial court and the prosecutor prosecuting the case. He had extensive ties to local police agencies. His wife was an adult probation officer for the county. He was friends with the lead detective on the case were friends. (The appellate court found this personal relationship particularly problematic.) However, the juror did agree with defense counsel that police make mistakes and said he would be fair to both

sides. Although the for-cause challenge was denied, he was removed with a peremptory challenge.

Twelfth Appellate District of Ohio

Nothing new.

Supreme Court of Ohio

Nothing new.

Sixth Circuit Court of Appeals

***United States v. Bah*, Nos. 14-5178/5179**

Fourth Amendment: Right to Privacy: Credit Card Magnetic Strips

Full Decision: http://www.ca6.uscourts.gov/opinions.pdf/15a0164p-06.pdf

Appellant and his co-defendant were stopped and detained/arrested after it was discovered appellant was driving without a license. During an inventory search, 86 credit, debit, and gift cards were discovered. The police scanned those cards and discovered most or all had re-written magnetic strips that did not match the information on the front of the card. I'm focusing on this, rather than all the other issues with the search and searching cell phones

On appeal, appellant challenged the warrantless scans of the cards as violating his Fourth Amendment rights. The Sixth Circuit held that "[n]o 'search' occurred when law enforcement read the magnetic strips on the backs of the fraudulent cards because: (1) the scans did not involve a physical intrusion of a constitutionally protected area – as required under the trespass-based search analysis; and (2) the scans did not violate the cardholders' reasonable expectations of privacy under *Katz v. United States*, 389 U.S. 347 (1967), and cases following *Katz*."

The Court made the following points: "First, the scans of the magnetic strips of the credit and gift cards did not involve physical intrusions into constitutionally-protected areas. * * * Second, even assuming for the sake of argument that Ban and Harvey (the other appellant) hold a subjective expectation of privacy in the magnet strips – strips that include their account number, a bank identification number, the card's expiration date, a three digit 'CSC' code, and, at times, the cardholder's first and last name – neither Bah nor Harvey holds a *reasonable* expectation of privacy in the magnetic strips. * * * Finally, other courts focus on the fact that a scan of the

magnetic strip will usually only disclose the presence or absence of activity that is not legal."

The Court also focused on the fact that the information on the magnetic strip basically mirrors the information on the front of the card. However, it said, "[o]ur holding today is limited in scope – addressing only the ability of police enforcement to conduct warrantless searches of the magnetic strips on credit cards, gift cards and debit cards – and we do not address hypothetical magnetic strips of the future that may have greater storage capacity and tend to store more private information."

Supreme Court of the United States

Nothing new.