Appellate Court Decisions - Week of 7/24/17

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

First Appellate District of Ohio

***State v. Pippin*, 2017-Ohio-6970**

Rape: Pandering: Search: Sentencing: R.C. 2941.25

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2017/2017-Ohio-6970.pdf

Summary from the First District:

"A criminal defendant cannot challenge for the first time on appeal the seizure of his cell phone during the execution of a search warrant where, in seeking to suppress the evidence against him in the trial court, he challenged the constitutionality of the search of phone's contents, but not the seizure of the phone itself.

"In a prosecution for rape and pandering of sexually-oriented matter involving a minor, the trial court properly denied defendant's motion to suppress the videos found on his cell phone during an unlawful search conducted pursuant to an unsigned warrant, because the state proved by a reasonable probability that the videos were discovered pursuant to a lawful warrant that the officers secured soon after the initial search, and the second warrant was supported by the same facts used to establish probable cause in the initial warrant.

"A search warrant that specifically identified the cell phone to be searched and limited the scope of the search to evidence relating to rape and burglary crimes was neither overbroad nor insufficiently particular for purposes of the Fourth Amendment.

"The trial court properly declined to conduct an evidentiary hearing on defendant's challenge to the veracity of statements in an affidavit supporting a search warrant where, after setting aside the allegedly false material in the affidavit, the remainder of the affidavit sufficiently supported a finding of probable cause.

"Rape offenses involving the same type of sexual conduct committed within a short time were not allied offenses of similar import where the acts were separated by significant intervening acts: defendant committed rape by fellatio on the apparently semi-conscious victim, followed by a withdrawal from the victim's mouth, the victim's apparent loss of consciousness, and then the defendant's forceful penetration of the unconscious victim's mouth, which constituted a second rape by fellatio.

"Multiple convictions for pandering of sexually-oriented matter involving a minor were allowed for each individual video file on defendant's cell phone because a separate animus existed every time a separate image or file was created and saved."

***State v. McKenna*, 2017-Ohio-6986**

Appellate Review: R.C. 2505.02

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2017/2017-Ohio-6986.pdf

Summary from the First District:

"The trial court's entry denying defendant's motion to withdraw his guilty plea to the illegal taking of more than one antlered white-tailed deer per license year in violation of R.C. 1531.02 was not a final, appealable order: the magistrate's decision setting forth the finding of guilt and imposing sentence had not been signed and adopted by the trial court, therefore defendant had not yet been sentenced, and his motion to withdraw his guilty plea was a presentence motion, the denial of which remains interlocutory until sentence is imposed by the trial court."

***In re: Z.P., Y.P., D.P., J.H., and P.H.*, 2017-Ohio-6987**

Custody

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2017/2017-Ohio-6987.pdf

Summary from the First District:

"The juvenile court's decision denying an award of permanent custody of five children to the Hamilton County Department of Job and Family Services and returning them to their mother's custody with orders limiting the fathers' contact with the children was contrary to the manifest weight of the evidence, because the evidence supported findings that the children should not be placed with either parent and that the best interests of the children would be served by an award of permanent custody to the agency where mother had consistently refused to acknowledge overwhelming evidence that her husband had sexually abused and transmitted gonorrhea to her five-year-old child, ignored court orders prohibiting her husband's contact with the children, and lied to the court about whether she and her husband were living apart."

Second Appellate District of Ohio

***State v. Byrd*, 2017-Ohio-6903**

Motion to Suppress: Search: Protective Sweep

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2017/2017-Ohio-6903.pdf

The trial court erred in denying Appellant's motion to suppress the search of her residence as a result of a warrantless protective sweep. The testimony at trial was "consistent with conducting a protective sweep as a matter of course rather than doing so due to any heightened safety concerns derived from particular observations or information the offers obtained after arriving at [the address in question."

Third Appellate District of Ohio

Nothing to report.

Fourth Appellate District of Ohio

Nothing to report.

Fifth Appellate District of Ohio

***In re B.H.*, 2017-Ohio-699**

Juvenile: Sex-Offender Classification

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2017/2017-Ohio-6966.pdf

The trial court erred in denying Appellant's motion to vacate his juvenile sex offender registration. Appellant was classified under the Adam Walsh Act, but should have been classified under Megan's law. The classification under the Adam Walsh Act, therefore, was void.

The state argued "that the trial court had authority to reclassify Appellant as a sexual oriented offender pursuant to Megan's Law, and that such classification does not require a hearing because it attaches as a matter of law." The state relied on *State v. Hayden*, 96 Ohio St.3d 211, 2002-Ohio-4169. Appellant argued *Hayden* only applies to adult offenders, not juvenile offenders. The Fifth District held that *Hayden* "does not apply to juveniles as the juvenile court is required to conduct a hearing, engage in the two-step process * * * and exercise its discretion." It also said, "the original judgment in this case was void, not voidable."

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

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. Wogenstahl*, 2017-Ohio-6873**

Capital Murder: Jurisdiction

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2017/2017-Ohio-6873.pdf

"Appellant, Jeffrey Wogenstahl, was convicted of the 1991 kidnapping and murder of ten-year-old Amber Garrett. Her body was discovered in a wooded area in Bright, Indiana. We reopened Wogenstahl's direct appeal of his capital-murder conviction to consider a single question: Did the trial court have jurisdiction over Wogenstahl's aggravated-murder charge? *See*

145 Ohio St.3d 1455, 2016- Ohio-2807, 49 N.E.3d 318; 145 Ohio St.3d 1467, 2016-Ohio-2956, 49 N.E.3d 1310.

"We now answer that question in the affirmative. Because we find that it cannot be determined whether Amber Garrett was murdered in Ohio or Indiana, we hold that Ohio had jurisdiction over the aggravated-murder charge under R.C. 2901.11(D)."

***Dayton v. State*, 2017-Ohio-6909**

Home Rule: Ohio Constitution, Article XVIII, Section 3 – R.C. 4511.093(B)(1), 4511.0912 and 4511.095: Traffic Cameras

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2017/2017-Ohio-6909.pdf

"In this case, we address whether three statutes regulating local authorities' use of red-light and speed cameras qualify as general laws, such that the statutes do not offend the home-rule powers granted to a municipality in Article XVIII, Section 3 of the Ohio Constitution. We hold that R.C. 4511.093(B)(1), which requires that a law-enforcement officer be present at the location of a traffic camera, infringes on the municipality's legislative authority without serving an overriding state interest and is therefore unconstitutional. We also hold that R.C. 4511.0912, which prohibits the municipality from issuing a fine to a driver who is caught speeding by a traffic camera unless that driver's speed exceeds the posted speed limit by 6 m.p.h. in a school or park zone or 10 m.p.h. in other areas, unconstitutionally limits the municipality's legislative powers without serving an overriding state interest. Finally, we hold that R.C. 4511.095, which directs the municipality to perform a safety study and a public-information campaign prior to using a camera, unconstitutionally limits the municipality's home-rule authority without serving an overriding state interest."

***State v. D.B.*, 2017-Ohio-6952**

Reconsideration: Juvenile: Mandatory Bindover: Sentencing

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2017/2017-Ohio-6952.pdf

"Once the general division of a court of common pleas determines under R.C. 2152.121(B)(4) that a 16-year-old or 17-year-old has been convicted of at least one offense that is subject to mandatory transfer, the court shall

sentence the juvenile under R.C. Chapter 2929 for all the convictions in the case—Motion for reconsideration granted—Judgment reversed."

***Gyugo v. Franklin Cty. Bd. Of Dev. Disabilities*, 2017-Ohio-6953**

Sealing of Records: R.C. 2953.33(B)

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2017/2017-Ohio-6953.pdf

"Appellant, Michael Gyugo, challenges the termination of his employment by appellee, Franklin County Board of Developmental Disabilities ('board'), for his failures to disclose his sealed criminal conviction on an application for employment and on applications to renew his registration as an adult-services worker with the Ohio Department of Developmental Disabilities ('department'). Gyugo maintains that he was not obligated to disclose his sealed conviction because the application questions that required disclosure of sealed convictions violated R.C. 2953.33(B).

"In this opinion, we consider only the questions on the registration applications that explicitly required disclosure of sealed convictions. We hold that those questions did not violate R.C. 2953.33(B) because the questions bore a direct and substantial relationship to Gyugo's position with the board and to his qualifications for registration. Like the court of appeals, we conclude that Gyugo was not excused from honestly answering those questions. Gyugo not only failed to disclose his conviction when answering those questions on his applications to renew his adult-services registration; in each of the four registration applications, he affirmatively denied the existence of any conviction, even if sealed. Those responses constitute dishonesty. We therefore affirm the judgment of the Tenth District Court of Appeals, which affirmed Gyugo's termination."

Sixth Circuit Court of Appeals

Nothing to report.

Supreme Court of the United States

Nothing to report.