Appellate Court Decisions - Week of 9/7/15

First Appellate District of Ohio

***State v. Reece*, 2015-Ohio-3638**

Motion to Suppress: Search

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2015/2015-Ohio-3638.pdf

Summary from the First District:

"The trial court did not err in overruling the defendant's motion to suppress the evidence recovered from his vehicle where the police had probable cause to stop the defendant's vehicle for two traffic violations, and the drug-dog sniff of the vehicle occurred while police were still investigating the traffic violations."

***In re: M.E.*, 2015-Ohio-3663**

Counsel: Evidence: *Miranda*

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2015/2015-Ohio-3663.pdf

Summary from the First District:

"The trial court did not err in adjudicating the juvenile delinquent for committing an act which, if it had been committed by an adult, would have constituted aggravated robbery with firearm specifications where the evidence that the juvenile had robbed the victim at gunpoint was overwhelming and the juvenile admitted his involvement.

"Counsel was not ineffective for failing to file a motion to suppress statements the juvenile made to the police, because the motion to suppress would not have been granted where the totality of the circumstances showed that the juvenile had knowingly, intelligently and voluntarily waived his *Miranda* rights: the absence of a parent or attorney was only one factor to be considered in assessing voluntariness."

Second Appellate District of Ohio

Nothing new.

Third Appellate District of Ohio

Nothing new.

Fourth Appellate District of Ohio

***State v. Moss*, 2015-Ohio-3651**

Discovery

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/4/2015/2015-Ohio-3651.pdf

The trial court erred in ruling that appellant could not call any of his witnesses at trial because trial counsel did not provide a witness list to the state in reciprocal discovery. "A trial court must consider not only the extent to which the prosecution will be surprised or prejudiced by the witnesses' testimony, but also the impact of witness preclusion on the evidence at trial and the outcome of the case, whether violation of the discovery rules was willful or in bad faith, and the effectiveness of less severe sanctions."

Here, appellant only wanted to call witnesses who were disclosed to him through the prosecution's discovery. There would not have been any surprise or prejudice under those circumstances. (The appellate court does not condone defense counsel's behavior, however.)

Fifth Appellate District of Ohio

Nothing new.

Sixth Appellate District of Ohio

***State v. Pheils*, 2015-Ohio-3664**

Post-Conviction

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/6/2015/2015-Ohio-3664.pdf

Appellant was convicted of reckless homicide on an accusation that he caused a child's death by shaken baby syndrome. On appeal of the trial court's denial of appellant's post-conviction petition, the Sixth District held that the trial court abused its discretion in finding appellant was not

prejudiced by his trial counsel's failure to secure expert testimony at trial to rebut the shaken baby diagnosis. Further, "there is a reasonable probability that a jury faced with competing medical opinions as to the manner of [the child's] death, by natural causes or homicide, would reach a different result at a new trial." (There was a hearing after previous appeals/post-conviction motions where two doctors testified for appellant that the child did not die from shaken baby syndrome, but rather by natural causes.)

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

***State v. Galdamez*, 2015-Ohio-3681**

Post-Conviction: OVI: Ineffective Assistance: *Padilla*

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/10/2015/2015-Ohio-3681.pdf

Summary from the Tenth District:

"The trial court abused its discretion in denying defendant's motion to withdraw his guilty pleas, as the trial court's recitation of the R.C. 2943.031(A) advisement during the plea colloquy did not cure the prejudice resulting from defendant's trial attorney's constitutionally deficient representation. Defense counsel told defendant he might have problems becoming a citizen in the future as a result of his guilty pleas, but counsel failed to inform defendant that he would be deported as a result of his pleas. Case remanded for a determination regarding what the likely outcome of a trial would have been."

Eleventh Appellate District of Ohio

Nothing new.

Twelfth Appellate District of Ohio

Nothing new.

Supreme Court of Ohio

***In re: J.T.*, 2015-Ohio-3654**

Deadly Weapon: Inoperable Pistol

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/0/2015/2015-Ohio-3654.pdf

"The juvenile in this matter was carrying a broken pistol in his waistband that was no longer capable of firing a round. That fact notwithstanding, he was charged with carrying a concealed deadly weapon and was found delinquent. Today, we apply a common-sense reality check to that fact pattern. When a person has an inoperable handgun tucked into his or her waistband and does not use it as a bludgeoning implement, it is not a deadly weapon. While it had been designed as a deadly weapon in that it was meant to fire a potentially lethal projectile, its essence as a deadly weapon ended when it became inoperable. In effect, since it was inoperable, it was no different from a stone or a brick. If it had been used as a bludgeon or otherwise used, possessed, or carried as a weapon, it could be considered a deadly weapon. As nothing more than a heavy object tucked into a waistband or a pocket, however, it was not. Just as it would be improper to convict someone of carrying a concealed weapon simply because he had a stone in his pocket, it is also improper to convict someone of that crime simply for having an inoperable pistol tucked into his waistband."

Sixth Circuit Court of Appeals

***McCarley v. Kelly*, No. 12-3825**

Confrontation Clause

Full Decision: http://www.ca6.uscourts.gov/opinions.pdf/15a0225p-06.pdf

In appellant's murder trial, he trial court allowed a child psychologist to read into evidence the hearsay statements of a three-and-a-half year-old declarant, and the declarant was not subject to any prior cross examination. Those statements were testimonial evidence, they violated the Confrontation Clause, and the error was not harmless. The Sixth Circuit reversed the district court's denial of appellant's § 2254 petition and remanded with instructions to grant a conditional writ of habeas corpus.

The statements ultimately favored appellant on three of the *Van Arsdall* factors –the importance of the testimony, whether it was cumulative, and the overall strength of the prosecution's case. Two of the factor's favored the stated – the presence of corroborating evidence and the extent of cross-examination otherwise permitted. Because the child psychologist's testimony was so important to the state's case, the error was not harmless.

Basically, the victim's three-and-a-half-year-old son witnessed the murder. The police could not get any information out of him, so they called in a child psychologist. The child psychologist was only called in to help with the investigation, so the child psychologist was an agent of the state. Therefore, the child psychologist's questioning of the child made the child's statements testimonial. Without the statements, there is serious doubt as to whether a jury would have found appellant guilty.

Supreme Court of the United States

Nothing new.