Appellate Court Decisions - Week of 6/17/19

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

First Appellate District of Ohio

***State v. Underwood*, C-180396, 397, & 398**

Motion to Dismiss

Full Decision: (No web cite as of yet).

Trial court did not err in dismissing all charges for "want of prosecution" where the state's forensic lab technician failed to appear at two consecutive hearings on defendant's motion to suppress.

Second Appellate District of Ohio

***State v. Holland*, 2019-Ohio-2351**

Suppression

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2019/2019-Ohio-2351.pdf

Trial court erred in denying motion to suppress search; police officers had permission to search residence because of consent from the owner, but that consent did not extend to a search of a backpack found in the bedroom where defendant was an overnight guest.

Third Appellate District of Ohio

Nothing to report.

Fourth Appellate District of Ohio

Nothing to report.

Fifth Appellate District of Ohio

Nothing to report.

Sixth Appellate District of Ohio

***In re J.S.*, 2019-Ohio-2365**

Delinquency

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2019/2019-Ohio-2365.pdf

As juvenile court failed to comply with Juv.R. 29(D) by not explaining to juvenile that he was waiving his right to challenge witnesses and evidence, to remain silent, and to introduce evidence, juvenile's admission was not knowingly, intelligently, and voluntarily given.

***State v. Pauley*, 2019-Ohio-2368**

Jury instructions

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2019/2019-Ohio-2368.pdf

Jury instructions were defective regarding the necessary element of prior offenses; the instructions did not fully list the elements of the offenses contained in R.C. 2919.25(D)(3), and "the trial court incorrectly implied that appellant's two 2016 assault convictions were substantially similar to crimes of domestic violence against a household member without further instruction on what the jury must find."

Seventh Appellate District of Ohio

Nothing to report.

Eighth Appellate District of Ohio

***Highland Heights v. C.C.*, 2019-Ohio-2333**

Right to counsel

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2019/2019-Ohio-2333.pdf

Trial court erred in allowing defendant to proceed pro se, as he did not knowingly, intelligently, and voluntarily waive his right to counsel; but

because "the court's failure to obtain a valid waiver of counsel in a petty offense case prevents the trial court from imposing a sentence . . . it does not vacate the entire conviction. Only defendant's suspended prison sentence was vacated, but conviction remained.

***State v. Austin*, 2019-Ohio-2340**

Petition for postconviction relief

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2019/2019-Ohio-2340.pdf

Trial court erred in dismissing defendant's postconviction petition as untimely when it was filed within 365 days of when the trial transcripts were filed in the direct appeal; judgment reversed and case remanded.

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

Nothing to report.

Sixth Circuit Court of Appeals

***Smith v. Warden, Toledo Correctional Institution*, No. 17-3220**

Ineffective assistance of appellate counsel; *Brady* violation

Full Decision:
http://www.opn.ca6.uscourts.gov/opinions.pdf/19a0308n-06.pdf

Petitioner was denied the effective assistance of appellate counsel where counsel failed to raise a meritorious claim of a *Brady* violation. Case remanded to the District Court.

Supreme Court of the United States

***Flowers v. Mississippi*, 588 U.S. ____ (2019)**

Prosecutorial misconduct; Batson

Full Decision:

https://www.supremecourt.gov/opinions/18pdf/17-9572_k536.pdf

Summary from the SCOTUS website: "The trial court at Flowers' sixth murder trial committed clear error in concluding that state's peremptory strike of a particular black prospective juror was not motivated in substantial part by discriminatory intent."

Syllabus:

"Petitioner Curtis Flowers has been tried six separate times for the murder of four employees of a Mississippi furniture store. Flowers is black; three of the four victims were white. At the first two trials, the State used its peremptory strikes on all of the qualified black prospective jurors. In each case, the jury convicted Flowers and sentenced him to death, but the convictions were later reversed by the Mississippi Supreme Court based on prosecutorial misconduct. At the third trial, the State used all of its 15 peremptory strikes against black prospective jurors, and the jury convicted Flowers and sentenced him to death. The Mississippi Supreme Court reversed again, this time concluding that the State exercised its peremptory strikes on the basis of race in violation of *Batson v. Kentucky*, 476 U. S. 79. Flowers' fourth and fifth trials ended in mistrials. At the fourth, the State exercised 11 peremptory strikes—all against black prospective jurors. No available racial information exists about the prospective jurors in the fifth trial. At the sixth trial, the State exercised six peremptory strikes—five against black prospective jurors, allowing one black juror to be seated. Flowers again raised a *Batson* claim, but the trial court concluded that the State had offered race-neutral reasons for each of the five peremptory strikes. The jury convicted Flowers and sentenced him to death. The Mississippi Supreme Court affirmed. After this Court vacated that judgment and remanded in light of *Foster v. Chatman*, 578 U. S. ____, the Mississippi Supreme Court again upheld Flowers' conviction in a

divided 5-to-4 decision. Justice King dissented on the *Batson* issue and was joined by two other Justices.

"*Held: All of the relevant facts and circumstances taken together establish that the trial court at Flowers' sixth trial committed clear error in concluding that the State's peremptory strike of black prospective juror Carolyn Wright was not motivated in substantial part by discriminatory intent. Pp. 7–31.*

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

***Gundy v. United States*, 588 U.S. ____ (2019)**

SORNA

Full Decision:
https://www.supremecourt.gov/opinions/18pdf/17-6086_2b8e.pdf

Summary from the SCOTUS website: "The Second Circuits judgment that 34 U.S.C. §20913(d) – which requires the Attorney General to apply the Sex Offender Registration and Notification Act's registration requirements as soon as feasible to offenders convicted before the statute's enactment – is not an unconstitutional delegation of legislative authority is affirmed."

Syllabus:

"Congress has sought, for the past quarter century, to combat sex crimes and crimes against children through sex-offender registration schemes. The Sex Offender Registration and Notification Act (SORNA) makes more "uniform and effective" the prior "patchwork" of registration systems. *Reynolds* v. *United States*, 565 U. S. 432, 435. To that end, it requires a broader range of sex offenders to register and backs up those requirements with criminal penalties. Section 20913 elaborates the "[i]nitial registration" requirements for sex offenders. 34 U. S. C. §§20913(b), (d). Subsection (b) sets out the general rule: An offender must register "before completing a sentence of imprisonment with respect to the offense giving rise to the registration requirement." §20913(b). Subsection (d) addresses the "[i]nitial registration of sex offenders unable to comply with subsection (b)." The provision states that, for individuals convicted of a sex offense before SORNA's enactment ("pre-Act offenders"), the Attorney General "shall have the authority" to "specify the applicability" of SORNA's registration requirements and "to prescribe rules for [their] registration." §20913(d). Under that delegated authority, the Attorney General issued a rule specifying that SORNA's registration requirements apply in full to pre-

Act offenders. Petitioner Herman Gundy, a pre-Act offender, was convicted of failing to register. Both the District Court and the Second Circuit rejected his claim that Congress unconstitutionally delegated legislative power when it authorized the Attorney General to "specify the applicability" of SORNA's registration requirements to pre-Act offenders.

"*Held:* The judgment is affirmed.

KAGAN, J., announced the judgment of the Court and delivered an opinion in which GINSBURG, BREYER, and SOTOMAYOR, JJ., joined. ALITO, J., filed an opinion concurring in the judgment. GORSUCH, J., filed a dissenting opinion, in which ROBERTS, C.J., and THOMAS, J., joined. KAVANAUGH, J., took no part in the consideration or decision of the case.