Appellate Court Decisions –Week of 6/13/22

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

First Appellate District of Ohio

***State v. Williams*, C-210384**

Juvenile; jurisdiction

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

After juvenile court found probable cause existed for two counts of murder and one count of assault, all with firearm specifications, appellant was bound over to adult court. Subsequently, appellant was indicted for those offenses, with an additional charge of tampering with evidence, to which he pled guilty, along with a reduced charge of involuntary manslaughter. However, the adult court lacked jurisdiction to convict appellant of that tampering offense, as he was never charged with that offense in juvenile court, so that court never made a probable-cause finding as to that offense. Conviction for tampering was vacated, along with three-year consecutive sentence. *See State v. Smith*, Slip Opinion No. 2022-Ohio-274.

Second Appellate District of Ohio

***State v. Fleming*, 2022-Ohio-1876**

Insufficient evidence; trafficking

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2022/2022-Ohio-1876.pdf

State presented insufficient evidence that appellant engaged in drug trafficking. Small amount of drugs found on appellant during April 15, 2020 traffic stop did not suggest he "was engaged in drug trafficking. There was no evidence that the police officers found money, drug packaging materials (such as baggies), scales, or any other items indicative of drug trafficking on [appellant's] person or in the Equinox." The additional evidence offered by the state were March 2020 Facebook Messenger texts that established appellant was engaged in drug trafficking of small amounts of drugs; but even the detective investigating the case acknowledged "it was highly unlikely that the March 2020 messages related to the small amount of drugs in [appellant's] possession on April 15, 2020, and the messages themselves reflected completed transactions with Barclay and Leigh. None of the Facebook Messenger communications concerned or even

suggested a future sale of drugs on April 15. Furthermore, the Facebook Messenger texts did not indicate that [appellant] engaged in specific conduct while engaged in drug trafficking (a modus operandi) such that [appellant's] behavior on April 15 could be linked to his prior drug trafficking."

Third Appellate District of Ohio

Nothing to report.

Fourth Appellate District of Ohio

***State v. Evans*, 2022-Ohio-1882**

Sentencing; PRC

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/4/2022/2022-Ohio-1882.pdf

Trial court erred in advising appellant he was subject to three years of community control, where he should have been notified he was to "up to three years, but not less than one year." Case remanded for resentencing.

***State v. Bentley*, 2022-Ohio-1914**

Sentencing

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/4/2022/2022-Ohio-1914.pdf

"[A]lthough the trial court informed appellant that he would be subject to the indefinite sentence, the court did not provide appellant the remainder of the required R.C. 2929.19(B)(2)(c) notifications." Case remanded for resentencing.

***State v. Sloan*, 2022-Ohio-1930**

Ineffective assistance of counsel

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/4/2022/2022-Ohio-1930.pdf

After trial court denied appellant's motion to suppress, trial counsel provided ineffective assistance of counsel by allowing appellant to plead guilty as opposed to no contest after appellant had indicated his desire to appeal the denial of his suppression motion. As appellant entered his guilty plea with the belief he could still pursue his appeal, the plea was not knowingly or intelligently made.

Fifth Appellate District of Ohio

Nothing to report.

Sixth Appellate District of Ohio

Nothing to report.

Seventh Appellate District of Ohio

Nothing to report.

Eighth Appellate District of Ohio

***State v. Jones*, 2022-Ohio-1936**

Hearsay/Confrontation Clause

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2022/2022-Ohio-1936.pdf

Trial court erred by admitting statements of alleged victim made in 911 call and on bodycam footage that appellant was the perpetrator who had burned her, where victim did not testify, but statements were admitted through the testimony of the police. Statements were made over an hour after incident where there was no longer "ongoing emergency." Therefore, they were testimonial and violated the Confrontation Clause. *See Davis v. Washington*, 547 U.S. 813, 830, 126 S.Ct. 2266, 165 L.Ed.2d 224 (2006), which identified the four factors used to determine if statement were testimonial: "'(1) that the interrogation sought to determine what had happened, not what was happening, (2) that there was no ongoing emergency, (3) that the interrogation was not needed to resolve an emergency, and (4) that the interrogation was 'formal[.]' *State v. Arnold*, 126 Ohio St.3d 290, 2010-Ohio-2742, 933 N.E.2d 775, ¶ 15, citing *Davis*."

***In re Contempt of Christman*, 2022-Ohio-1937**

Contempt

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2022/2022-Ohio-1937.pdf

Trial court did not err in finding appellant in direct contempt for failing to wear a mask during a bond hearing, as that action was in the presence of the trial judge. However, the trial court did err in finding appellant in direct contempt for failing to wear a mask in the presence of the judge's bailiff where the judge

was not present. As "the judge therefore had no personal knowledge of the incident, the trial court was required to utilize the procedure set forth in R.C. 2705.03 if [appellant] were to be found in contempt of court for this violation of the court's administrative order."

***State v. Johnson*, 2022-Ohio-1948**

Sentencing

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2022/2022-Ohio-1948.pdf

Trial court committed plain error when it sentenced appellant to a prison term and community control for the same count. *State v. Anderson*, 143 Ohio St.3d 173, 2015-Ohio-2089, 35 N.E.3d 512.

Ninth Appellate District of Ohio

Nothing to report.

Tenth Appellate District of Ohio

***State v. Briggs*, 2022-Ohio-1950**

Consecutive sentences

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/10/2022/2022-Ohio-1950.pdf

"[T]rial court committed plain error by finding that his offenses constituted an ongoing course of conduct and by imposing consecutive sentences without making the findings required by R.C. 2929.19(C)(4)."

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

Nothing to report.

Supreme Court of the United States

***Denezpi v. United States*, 596 U.S. ____ (2022)**

Double Jeopardy

Full Decision:
https://www.supremecourt.gov/opinions/21pdf/20-7622_ljgm.pdf

Held: The Double Jeopardy Clause does not bar successive prosecutions of distinct offenses arising from a single act, even if a single sovereign prosecutes them. Pp. 4–13.

(a) The Double Jeopardy Clause of the Fifth Amendment provides: "No person shall . . . be subject for the same offence to be twice put in jeopardy of life or limb." By its terms, the Clause does not prohibit twice placing a person in jeopardy " 'for the same conduct or actions,' " Gamble v. United States, 587 U. S. ____, ____, but focuses on whether successive prosecutions are for the same "offence." In 1791, "offence" meant the violation of a law. See ibid. Because the sovereign source of a law is an inherent and distinctive feature of the law itself, an offense defined by one sovereign is necessarily a different offense from that of another sovereign. See id., at ____. The two offenses can there-fore be separately prosecuted without offending the Double Jeopardy Clause—even if they have identical elements and could not be separately prosecuted if enacted by a single sovereign. See id., at ____, n. 1, ____. This dual-sovereignty principle applies where "two entities derive their power to punish from wholly independent sources." Puerto Rico v. Sánchez Valle, 579 U. S. 59, 68.

Denezpi's single act transgressed two laws: the Ute Mountain Ute Code's assault and battery ordinance and the United States Code's proscription of aggravated sexual abuse in Indian country. The Ute Mountain Ute Tribe exercised its "unique" sovereign authority in adopting the tribal ordinance. See United States v. Wheeler, 435 U. S. 313, 323. Likewise, Congress exercised the United States' sovereign power in enacting the federal criminal statute. See United States v. Lanza, 260 U. S. 377, 382. The two laws—defined by separate sovereigns—proscribe separate offenses, so Denezpi's second prosecution did not place him in jeopardy again "for the same offence." Pp. 4–6.

(b) Denezpi argues that the dual-sovereignty doctrine applies only when offenses are enacted and enforced by separate sovereigns. He insists that his second prosecution violated double jeopardy, then, be-cause prosecutors in

CFR courts exercise federal authority, which means that he was prosecuted twice by the United States. The Court need not decide whether prosecutors in CFR courts exercise tribal or federal authority because the Double Jeopardy Clause does not prohibit successive prosecutions by the same sovereign; rather, it prohibits successive prosecutions "for the same offence." Thus, even if Denezpi is right that the Federal Government prosecuted his tribal offense, the Clause did not bar the Federal Government from prosecuting him under the Major Crimes Act too. The Double Jeopardy Clause does not ask who puts a person in jeopardy. It zeroes in on what the person is put in jeopardy for: the "offence." The Court has seen no evidence that "offence" was originally understood to encompass both the violation of the law and the identity of the prosecutor.

Denezpi stitches together loose language from the Court's precedent to support his position that the identity of the prosecuting sovereign matters under the dual-sovereignty doctrine. No precedent cited by Denezpi involves or even mentions the unusual situation of a single sovereign successively prosecuting its own law and that of a different sovereign. In any event, imprecise statements cannot overcome the holdings of the Court's cases, not to mention the text of the Clause. Those authorities make clear that enactment is what counts in determining whether the dual-sovereignty doctrine applies. Denezpi's reliance on Bartkus v. Illinois, 359 U. S. 121, is misplaced. At most, Bartkus acknowledged that successive federal prosecutions for the same conduct would raise a double jeopardy question, but Bartkus did not begin to analyze, much less answer, that question.

Denezpi's remaining arguments are unavailing. Denezpi first points to the Government's exclusion of Major Crimes Act felonies from the federal regulatory offenses enforceable in CFR court in order to avoid double jeopardy concerns. He asserts that this "limitation borders on a concession that the Double Jeopardy Clause bars [his] second prosecution." Brief for Petitioner 29. Not so. Federal regulatory crimes are defined by the Federal Government, so successive prosecutions for a federal regulatory crime and a federal statutory crime present a different double jeopardy question from the one here.

Next, Denezpi argues that permitting successive prosecutions like his "does not further the purposes underlying the dual-sovereignty doctrine," namely, advancing sovereigns' independent interests. Id., at 28–29. Purposes aside, the doctrine "follows from" the Clause's text, which controls. Gamble, 587 U. S., at ____–____. In any event, the Tribe's sovereign interest is furthered when its assault and battery ordinance—duly enacted by its governing body as an expression of the Tribe's condemnation of that crime—is enforced, regardless of who enforces it.

Finally, Denezpi asserts that the Court's conclusion might lead sovereigns to assume more broadly the authority to enforce other sovereigns' criminal laws in order to get two bites at the apple. If a constitutional barrier to such cross-enforcement exists, it does not derive from the Double Jeopardy Clause. Pp. 6–13.

979 F. 3d 777, affirmed.

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

***Kemp v. United States*, 596 U.S. ____ (2022)**

Federal Rule of Civil Procedure 60(b)

Full Decision:
https://www.supremecourt.gov/opinions/21pdf/21-5726_5iel.pdf

Held: The term "mistake" in Rule 60(b)(1) includes a judge's errors of law. Because Kemp's motion alleged such a legal error, it was cognizable under Rule 60(b)(1) and untimely under Rule 60(c)'s 1-year limitations period. Pp. 3–10.

(a) As a matter of text, structure, and history, a "mistake" under Rule 60(b)(1) includes a judge's errors of law. When the Rule was adopted in 1938 and revised in 1946, the word "mistake" applied to any "misconception," "misunderstanding," or "fault in opinion or judgment." Webster's New International Dictionary 1383. Likewise, in its legal usage, "mistake" included errors "of law or fact." Black's Law Dictionary 1195. Thus, regardless whether "mistake" in Rule 60(b)(1) carries its ordinary meaning or legal meaning, it includes a judge's mistakes of law. Rule 60(b)(1)'s drafters could have used language to connote a narrower understanding of "mistake," yet they chose not to qualify that term. Similarly, the Rule's drafters could have excluded mistakes by judges from the Rule's reach. In fact, the Rule used to read that way. When adopted in 1938, Rule 60(b) initially referred to "his"—i.e., a party's—"mistake," so judicial errors were not covered. The 1946 revision to the Rule deleted the word "his," thereby removing any limitation on whose mistakes could qualify. Pp. 4–6.

(b) Neither the Government nor Kemp offers a reason to depart from this reading of Rule 60(b)(1). Pp. 6–10.

(1) The Government contends that the term "mistake" encompasses only so-called "obvious" legal errors. This contention—also held by several Courts of Appeals—is unconvincing. None of the dictionaries from the time the Rule was adopted and revised suggests this "obviousness" gloss. Nor does the text or history of Rule 60(b)(1) limit its reach only to flagrant cases that would have historically been corrected by courts sitting in equity. Finally, requiring courts to decide not only whether there was a mistake but also whether that mistake was sufficiently "obvious" raises questions of administrability. P. 6.

(2) Kemp's arguments for limiting Rule 60(b)(1) to non-judicial,

non-legal errors are also unconvincing. He claims that Rule 60(b)(1)'s other grounds for relief—"inadvertence," "surprise," and "excusable neglect"—involve exclusively non-legal, non-judicial errors, and thus "mistake" should be similarly limited. But courts have found that excusable neglect may involve legal error, see, e.g., Lenaghan v. Pepsico, Inc., 961 F. 2d 1250, 1254–1255, and they have a similar history of granting relief based on "judicial inadvertence," Larson v. Heritage Square Assocs., 952 F. 2d 1533, 1536. Kemp argues that Rule 60's structure favors interpreting the term "mistake" narrowly to include only non-legal errors, and the Court's contrary interpretation would create confusing overlap between Rule 60(b)(1) and relief available under other parts of Rule 60 not subject to Rule 60(c)'s 1-year limitations period. But the overlap Kemp suggests would exist even if "mistake" reached only factual errors. Courts of Appeals have well-established tests for distinguishing between these Rules. And should such overlap ever create an irreconcilable conflict, courts may then resort to ordinary interpretive rules to determine which Rule to apply. As for Kemp's worry that the Court's interpretation would allow parties to evade other time limits by, for example, repackaging a tardy motion under Rule 59(e), the risk Kemp identifies would exist even under his own interpretation. And, in any event, the alleged specter of litigation gamesmanship and strategic delay is overstated because a Rule 60(b)(1) motion, like all Rule 60(b) motions, must be made "within a reasonable time." Finally, Kemp protests that this Court's reading is inconsistent with the history of Rule 60(b). But his argument is based on the mistaken notions that Rule 60(b)(1)'s list of grounds for reopening was understood to be a "term of art" when adopted, and that Rule60(b)(6) alone was intended to afford relief for judicial legal errors that had previously been remedied by bills of review. Pp. 6–10.

857 Fed. Appx. 573, affirmed.

THOMAS, J., delivered the opinion of the Court, in which ROBERTS, C. J., and BREYER, ALITO, SOTOMAYOR, KAGAN, KAVANAUGH, and BARRETT, JJ., joined. SOTOMAYOR, J., filed a concurring opinion. GORSUCH, J., filed a dissenting opinion.