

## **Appellate Court Decisions - Week of 3/20/17**

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

### **First Appellate District of Ohio**

#### **State v. Thompkins, 2017-Ohio-1061**

**Counsel: Aggravated Robbery: R.C. 2941.25**

**Full Decision:**

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2017/2017-Ohio-1061.pdf>

#### **Summary from the First District:**

“Defendant was not deprived of the effective assistance of counsel where counsel’s cross-examination of a state’s witness may have elicited additional evidence of defendant’s involvement in the offenses where the witness’s testimony on cross-examination was duplicative of his testimony on direct examination.

“Defendant’s convictions for aggravated robbery were not against the weight of the evidence and were supported by sufficient evidence where the evidence showed that defendant acted as a lookout while his codefendants entered a hotel, held a gun to the hotel clerk’s head, and stole the clerk’s personal cell phone and money from the hotel’s cash register.

“By failing to seek the merger of his convictions for aggravated robbery in the trial court, defendant forfeited for appellate review all but plain error on his claim that the offenses were allied offenses of similar import.

“The trial court did not commit plain error by failing to merge defendant’s two convictions for aggravated robbery where defendant and his codefendants robbed a hotel clerk of her personal cell phone and the hotel of cash from its register, because the offenses involved separate victims and were, therefore, offenses of dissimilar import within the meaning of R.C. 2941.25(B).”

#### **State v. Roberts, 2017-Ohio-1060**

**Appellate Review: Jurisdiction: Postconviction: Postrelease Control**

**Full Decision:**

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2017/2017-Ohio-1060.pdf>

#### **Summary from the First District:**

“Defendant’s judgment of conviction was not correctable under Crim.R. 36 on the grounds that his sentence was not imposed in conformity with the statutes governing repeat violent offenders, indefinite sentences, jail-time credit, and postrelease control, because those claims alleged errors of law, not fact.

“Defendant’s postconviction motion seeking relief on the grounds that his sentence was not imposed in conformity with the statutes governing repeat violent offenders, indefinite sentences, jail-time credit, and postrelease control was not reviewable by the common pleas court under R.C. 2953.21 et seq. as a postconviction petition, because it did not allege a constitutional violation; under Crim.R. 33 as a motion for a new trial or under Crim.R. 32.1 as a motion to withdraw guilty pleas, because he was convicted following a jury trial and did not seek a new trial; under R.C. Chapter 2731 as a petition for a writ of mandamus, under R.C. Chapter 2721 as a declaratory judgment action, or under R.C. Chapter 2725 as a petition for a writ of habeas corpus, because the motion did not satisfy those statutes’ procedural requirements; or under Civ.R. 60(B), upon the authority of Crim.R. 57(B), because his conviction was reviewable under the procedures provided for a direct appeal.

“Defendant’s judgment of conviction was not correctable under a court’s jurisdiction to correct a void judgment on the grounds that his sentence was not imposed in conformity with the statutes governing repeat violent offenders, indefinite sentences, or jail-time credit; but his sentence was subject to correction as void to the extent that it did not conform with the statutory mandates concerning postrelease control, because the mandatory five-year period imposed was not authorized for the special felony of murder.”

## **Second Appellate District of Ohio**

*Nothing to report.*

## **Third Appellate District of Ohio**

*Nothing to report.*

## **Fourth Appellate District of Ohio**

*Nothing to report.*

## **Fifth Appellate District of Ohio**

**State v. Myer, 2017-Ohio-1046**

**Search**

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/5/2017/2017-Ohio-1046.pdf>

The trial court did not err in granting Appellant's motion to suppress. Appellant's consent to search was not voluntary where the police officer led her to believe she would be charged with tampering with evidence if she did not consent to the search.

**State v. Myer, 2017-Ohio-1047**

*Miranda*

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/5/2017/2017-Ohio-1047.pdf>

The trial court did not err in granting Appellant's motion to suppress. "[T]he trial court was correct in granting Myer's motion to suppress the statements she made before and after she was *Mirandized*. The statements were close in time to the statements Myer made proper to being given *Miranda* warnings, were elicited by the same deputy and overlapped in content with his earlier, pre-*Miranda* statements. The interrogations occurred in the police statement while Myer was in custody on pending drug charges. As noted by Myer the second interrogation as treated as continuous with the initial interrogation is evidenced by the fact that the Sergeant Briggs told Myer 'I'm not gonna ask you anything different.... I am going to ask you about T.D. and A.M. and that's it, that's all I'm gonna ask you about. Because I don't want you incriminating yourself about the traffic stop.' Briggs continually asked her for more specific facts about her involvement in the deaths of A.M. and T.D. Indisputably, he had to have been aware that Myer's response were reasonably likely to elicit an incriminating response from the suspect."

**Sixth Appellate District of Ohio**

*Nothing to report.*

**Seventh Appellate District of Ohio**

*Nothing to report.*

**Eighth Appellate District of Ohio**

**State v. Flanagan, 2017-Ohio-955**

## Competency

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2017/2017-Ohio-955.pdf>

Summary from the Eighth District: “Defendant's conviction and sentence vacated where the record was insufficient to conclude that the trial court's failure to conduct the statutorily required competency hearing pursuant to R.C. 2945.37 was harmless error.”

## Ninth Appellate District of Ohio

*Nothing to report.*

## Tenth Appellate District of Ohio

*Nothing to report.*

## Eleventh Appellate District of Ohio

***State v. Armstead-Williams, 2017-Ohio-1004***

Juvenile: Mandatory Bindover: *Aalim*

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/11/2017/2017-Ohio-1004.pdf>

Summary From the Eleventh District: “[P]ursuant to *State v. Aalim*, Ohio’s mandatory-transfer statutes violate juveniles’ right to due process, while discretionary-transfer statutes do not; we thus reverse trial court’s judgment and remand to juvenile court for amenability hearing; since we hold mandatory-transfer statutes are unconstitutional on due-process grounds, appellant's equal protection argument is denied as moot.”

## 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**

*Nothing to report.*