Appellate Court Decisions - Week of 3/23/20

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

First Appellate District of Ohio

***State v. Chase*, C-190013**

Sufficiency; failure to provide notice of change of address

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

In bench trial, the state failed to present sufficient evidence that appellant had changed his address; "the state's evidence demonstrated only that Chase was not present at his registered address on three occasions when a deputy made daytime visits to the address and that Chase failed to respond to notices left at that address by the deputy." Even viewing the evidence in the light most favorable to the prosecution, this was insufficient. Reversed and appellant discharged.

***State v. G.C.*, C-190243**

Record sealing

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

In state's appeal, trial court did not err in sealing appellant's record of convictions for attempted obstruction of justice and attempted tampering with evidence, both felonies of the fourth degree. Appellee had demonstrated he was properly rehabilitated, and the "trial court properly considered the required factors and conducted the balancing test under R.C. 2953.52. . ." Therefore, the appellate court conclude[d] the trial court did not abuse its discretion in deciding that [appellee's] interests outweighed the state's needs."

Second Appellate District of Ohio

Nothing to report.

Third Appellate District of Ohio

Nothing to report.

Fourth Appellate District of Ohio

***State v. Lask*, 2020-Ohio-1037**

Suppression (lots of holdings in this one).

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/4/2020/2020-Ohio-1037.pdf

Trial court erred in finding that it lacked jurisdiction to consider issue of out-of-state traffic stop because ruling on the admissibility of evidence for purposes of an Ohio criminal trial is within an Ohio court's authority (Crim.R. 12(C)(3) - "motions to suppress evidence 'on the ground that it was illegally obtained * * * shall be filed in the trial court only"). Traffic stop in Kansas was not based on a reasonable suspicion that appellant had committed a traffic offense. However, second stop in Ohio was not based on illegal Kansas stop, but instead based on probable cause of a traffic violation that detective observed. Search of vehicle was also based on probable cause due to odor of marijuana. However, subsequent execution of an Ohio search warrant of appellant's home where such warrant was based on information from both the illegal Kansas stop and the legal Ohio stop, case is remanded back to the trial court to determine "what impact the use of some illegally obtained information from that stop had on the search warrant and evidence seized pursuant to such warrant."

Fifth Appellate District of Ohio

***State v. Trotter*, 2020-Ohio-1002**

Allied offenses

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2020/2020-Ohio-1002.pdf

Trial court erred in failing to merge the allied assault offenses and the allied vandalism offenses.

Sixth Appellate District of Ohio

***State v. Haynes*, 2020-Ohio-1049**

Sufficient evidence; corrupting another with drugs

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2020/2020-Ohio-1049.pdf

The evidence was insufficient to support conviction for corrupting another with drugs where the state failed to present evidence that appellant administered or furnished heroin to two persons who subsequently overdosed or induced or caused them to use heroin.

Seventh Appellate District of Ohiopaypal

Nothing to report.

Eighth Appellate District of Ohio

***In re E.S.*, 2020-Ohio-1029**

Delinquency

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2020/2020-Ohio-1029.pdf

In state's appeal, trial court did not err in dismissing indictment as a serious youthful offender ("SYO"); "when a SYO dispositional sentence is not sought in the original complaint in juvenile court, a written notice of intent is required to trigger the juvenile's speedy trial right [and a subsequent indictment with SYO specifications is not proper notice under R.C. 2152.13(A)(4)]. To hold otherwise would strip R.C. 2152.13(C)(1) of its meaning and purpose."

***Cleveland v. Robinson*., 2020-Ohio-1030**

Contempt

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2020/2020-Ohio-1030.pdf

Trial court erred finding appellant in contempt without holding an "adversary hearing"; court mistakenly treated violations of a no contact order with victim as direct contempt when, in fact, it was indirect contempt because it did not happen in front of the trial judge. Appellant should have been afforded the procedural protections set forth in R.C. 2705.03. Reversed and remanded.

Ninth Appellate District of Ohio

***State v. Ramey*, 2020-Ohio-1058**

Jail-time credit

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/9/2020/2020-Ohio-1058.pdf

Trial court erred when it failed to calculate appellant's jail-time credit and include that calculation in the sentencing entry; although appellant waived his right to appeal as a condition of his plea agreement, he did not waive his right to appeal this issue because jail-time credit was part of the plea agreement and without it, appellant did not receive the full benefit of his bargain under the sentencing agreement.

Tenth Appellate District of Ohio

***State v. Payne*, 2020-Ohio-1009**

Sentence

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/10/2020/2020-Ohio-1009.pdf

Following 2002 convictions, trial court erred in construing appellant's motion to correct a void sentence as a postconviction petition; and because a number of errors exist in the judgment entry, the trial court's judgment is reversed and remanded with instructions to issue a corrected judgment entry.

Eleventh Appellate District of Ohio

Nothing to report.

Twelfth Appellate District of Ohio

Nothing to report.

Supreme Court of Ohio

***State v. Boaston*, 2020-Ohio-1061**

Expert opinion testimony; harmless error standard

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2020/2020-Ohio-

1061.pdf

OSC holds that "*It is error to admit expert opinion testimony when the expert's opinion was not set forth in a written report prepared in compliance with Crim.R. 16(K)—The trial court's admission of testimony that went beyond the scope of the expert's written report was harmless error as the remaining evidence overwhelmingly established appellant's guilt beyond any reasonable doubt.*"

Case is important for a couple of reasons. First, it follows the First District's reasoning in *State v. Hall*, 1st Dist. Hamilton Nos. C-170699 and C-170700, 2019-Ohio-2985, that not only is it mandatory that an expert written report be provided for the admission of expert testimony, see Crim.R. 16(K), but the report should contain all the opinions that the party offering the witness intends to elicit, with such testimony not going beyond the scope of the report. Unfortunately, the OSC found that in this case, the error was harmless because the remaining evidence was overwhelming. In doing so (the second reason this case is important), the Court reaffirmed the harmless-error analysis established in *State v. Morris*, 141 Ohio St.3d 399, 2014-Ohio-5052, 24 N.E.3d 1153 and the three-part test reiterated in *State v. Harris*, 142 Ohio St.3d 211, 2015-Ohio-166, 28 N.E.3d 1256:

> **First, it must be determined whether the defendant was prejudiced by the error, i.e., whether the error had an impact on the verdict. [*Morris*] at ¶ 25 and 27. Second, it must be determined whether the error was not harmless beyond a reasonable doubt. *Id.* at ¶ 28. Lastly, once the prejudicial evidence is excised, the remaining evidence is weighed to determine whether it establishes the defendant's guilt beyond a reasonable doubt. *Id.* at ¶ 29, 33.**

For trial attorneys, part of the opinion concerned the fact that the defense had received the written, although incomplete, report a year before trial and had interviewed the expert 19 days before trial; the defense did not request a continuance; and the defense had a rigorous cross-examination. This would suggest that if this occurs, a record should be made that the lack of expert report or incomplete expert report will prevent defense counsel from being effective by not allowing for an effective cross ie: no ability to consult with your own expert; unfamiliar with expert's field of expertise, so inability to adequately prepare a proper cross; etc.

***State v. Bryant*, 2020-Ohio-1041**

Fleeing the scene of an accident

Full Decision:

https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2020/2020-Ohio-1041.pdf

Conviction for fleeing the scene of an accident reversed and vacated; OSC holds that "*When a driver subject to R.C. 4549.02(A)(1) gives his name and address and the registered number of the vehicle to the required recipients under R.C. 4549.02(A)(1)(a) and (b), the driver does not violate R.C. 4549.02(A)(1) by not providing that information to a police officer if the driver leaves the scene without knowing that the police have been alerted of the accident—The "registered number" of a motor vehicle, as used in R.C. 4549.02(A)(1), is the license-plate number associated with the vehicle.*"

Sixth Circuit Court of Appeals

***United State v. Coop*, No. 19-5495**

Sufficient evidence; aiding and abetting

Full Decision:
http://www.opn.ca6.uscourts.gov/opinions.pdf/20a0170n-06.pdf

Evidence was insufficient to support conviction on aiding and abetting the brandishing of a firearm during a robbery where the government presented no evidence appellant knew his co-defendant was armed.

***United State v. Craig*, No. 19-3278**

Inadmissible evidence

Full Decision:
http://www.opn.ca6.uscourts.gov/opinions.pdf/20a0095p-06.pdf

Conviction for possession of a firearm during a shootout must be vacated and case remanded for a new trial where the government, under the guise of impeachment, had no legal basis to publish to the jury a video that was neither admitted nor authenticated, and where the trial court failed to give even a limiting instruction. These errors were made worse when the government was permitted during closing to use the video not to attack appellant's credibility, but instead as evidence that he had possessed the gun the day before the shootout.

Supreme Court of the United States

***Kahler v. Kansas*, 589 U.S. ___ (2020)**

Sixth Amendment: Appeals

Full Decision:
https://www.supremecourt.gov/opinions/20pdf/18-6135_j4ek.pdf

Summary from the SCOTUS website: "The presumption of prejudice for Sixth Amendment purposes recognized in *Roe v. Flores-Ortega*, 528 U. S. 470, applies regardless of whether a defendant has signed an appeal waiver."

Syllabus:

"In *Clark* v. *Arizona*, 548 U. S. 735, this Court catalogued the diverse strains of the insanity defense that States have adopted to absolve mentally ill defendants of criminal culpability. Two—the cognitive and moral incapacity tests—appear as alternative pathways to acquittal in the landmark English ruling *M'Naghten's Case*, 10 Cl. & Fin. 200, 8 Eng. Rep. 718. The moral incapacity test asks whether a defendant's illness left him unable to distinguish right from wrong with respect to his criminal conduct. Respondent Kansas has adopted the cognitive incapacity test, which examines whether a defendant was able to understand what he was doing when he committed a crime. Specifically, under Kansas law a defendant may raise mental illness to show that he "lacked the culpable mental state required as an element of the offense charged," Kan. Stat. Ann §21–5209. Kansas does not recognize any additional way that mental illness can produce an acquittal, although a defendant may use evidence of mental illness to argue for a lessened punishment at sentencing. See §§21–6815(c)(1)(C), 21–6625(a). In particular, Kansas does not recognize a moral-incapacity defense. Kansas charged petitioner James Kahler with capital murder after he shot and killed four family members. Prior to trial, he argued that Kansas's insanity defense violates due process because it permits the State to convict a defendant whose mental illness prevented him from distinguishing right from wrong. The court disagreed and the jury returned a conviction. During the penalty phase, Kahler was free to raise any argument he wished that mental illness should mitigate his sentence, but the jury still imposed the death penalty. The Kansas Supreme Court rejected Kahler's due process argument on appeal.

***Held*: Due process does not require Kansas to adopt an insanity test that turns on a defendant's ability to recognize that his crime was morally wrong. Pp. 6–24**

(a) A state rule about criminal liability violates due process only if it "offends some principle of justice so rooted in the traditions and conscience our people as to be ranked as fundamental." *Leland* v. *Oregon*, 343 U. S. 790, 798 (internal quotation marks omitted). History is the primary guide for this analysis. The due process standard sets a high bar, and a rule

of criminal responsibility is unlikely to be sufficiently entrenched to bind all States to a single approach. As the Court explained in *Powell* v. *Texas*, 392 U. S. 514, the scope of criminal responsibility is animated by complex and ever-changing ideas that are best left to the States to evaluate and reevaluate over time. This principle applies with particular force in the context of the insanity defense, which also involves evolving understandings of mental illness. This Court has thus twice declined to constitutionalize a particular version of the insanity defense, see *Leland*, 343 U. S. 790; *Clark*, 548 U. S. 735, holding instead that a State's "insanity rule[ ] is substantially open to state choice," *id.*, at 752. Pp. 6–9.

(b) Against this backdrop, Kahler argues that Kansas has abolished the insanity defense—and, in particular, that it has impermissibly jettisoned the moral-incapacity approach. As a starting point, Kahler is correct that for hundreds of years jurists and judges have recognized that insanity can relieve criminal responsibility. But Kansas recognizes the same: Under Kansas law, mental illness is a defense to culpability if it prevented a defendant from forming the requisite criminal intent; a defendant is permitted to offer whatever evidence of mental health he deems relevant at sentencing; and a judge has discretion to replace a defendant's prison term with commitment to a mental health facility.

So Kahler can prevail only by showing that due process requires States to adopt a specific test of insanity—namely, the moral-incapacity test. He cannot do so. Taken as a whole, the early common law cases and commentaries reveal no settled consensus favoring Kahler's preferred right-from-wrong rule. Even after *M'Naghten* gained popularity in the 19th century, States continued to experiment with new approaches. *Clark* therefore declared: "History shows no deference to *M'Naghten* that could elevate its formula to the level of fundamental principle." 548 U. S., at 749–752. The tapestry of approaches States have adopted shows that no single version of the insanity defense has become so ingrained in American law as to rank as "fundamental." *Id.*, at 749.

This result is not surprising. *Ibid.* The insanity defense sits at the juncture of medical views of mental illness and moral and legal theories of criminal culpability—two areas of conflict and change. Small wonder that no particular test of insanity has developed into a constitutional baseline. And it is not for the courts to insist on any single criterion moving forward. Defining the precise relationship between criminal culpability and mental illness requires balancing complex considerations, among them the workings of the brain, the purposes of criminal law, and the ideas of free will and responsibility. This balance should remain open to revision as new medical knowledge emerges and societal norms evolve. Thus—as the Court recognized previously in *Leland*, *Powell*, and *Clark*—the defense is a project for state governance, not constitutional law. Pp. 10–24.

SOTOMAYOR, J., delivered the opinion of the Court, in which ROBERTS, C. J., and GINSBURG, BREYER, KAGAN, and KAVANAUGH, JJ., joined.

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