

Appellate Court Decisions - Week of 3/28/16

First Appellate District of Ohio

State v. Curtis, 2016-Ohio-1318

Sentencing: allied offenses

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2016/2016-Ohio-1318.pdf>

Trial court erred in failing to merge murder and aggravated robbery under R.C. 2911.01(A)(3) as allied offenses, R.C. 2941.25 since aggravated robbery under R.C. 2911.01(A)(3) required proof of serious physical harm, and the only serious physical harm inflicted by defendant on the victim was a single gunshot that was almost immediately fatal.

State v. Jones, 2016-Ohio-1320

Insufficient evidence

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2016/2016-Ohio-1320.pdf>

Conviction of drug offense for possession of prescription drugs not supported by sufficient evidence where at trial, defendant provided proof of valid prescriptions for the drugs.

Second Appellate District of Ohio

State v. Maxey, 2016-Ohio-1264

Sentencing: consecutive jail time and community control

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/2/2016/2016-Ohio-1264.pdf>

Imposition of community control with 180 days of local jail time for 2 counts of first degree misdemeanor theft following plea is not error, as it is authorized by R.C. 2929.25 and was within the statutory range.

Third Appellate District of Ohio

State v. Hawkey, 2016-Ohio-1292

Sentencing: 5-year time period for misdemeanors

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/3/2016/2016-Ohio-1292.pdf>

New trial ordered for defendant convicted of aggravated murder, as admission of hearsay testimony as excited utterance was prejudicial error, as statements came almost 9 years after the murder, see Evid.R. 803(2); also, trial court erred in permitting expert testimony not related to treatment and testimony of “child torture” as abuse, see Evid.R. 602 and *Daubert*.

Fourth Appellate District of Ohio

Nothing new.

Fifth Appellate District of Ohio

State v. Levengood, 2016-Ohio-1340

Suppression

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/5/2016/2016-Ohio-1340.pdf>

Although police had authority to enter defendant’s apartment under the medical-emergency exception to the warrant requirement, protective sweep of the apartment, including bedroom where heroin was found, was not justified by the circumstances.

Sixth Appellate District of Ohio

State v. Lincoln, 2016-Ohio-1274

Sentencing: costs

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/6/2016/2016-Ohio-1274.pdf>

Imposition of cost of prosecution and supervision after prison term completed, without considering defendants ability to pay, are proper because authorized by R.C. 2947.23(A)(1) and 2929.18(A)(5)(a)(i); however, imposition of costs of confinement and assigned counsel fees was plain error because trial court did not find by clear and convincing evidence that defendant had the ability to pay (BUT SEE BELOW IN *STATE V. THOMAS*).

Seventh Appellate District of Ohio

***State v. McCarthy*, 2016-Ohio-1249**

Sentencing: 5-year time period for misdemeanors

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/7/2016/2016-Ohio-1249.pdf>

Any sentence resulting from a conviction of a misdemeanor offense that is not completed within 5 years from the date of sentencing must be vacated; therefore, ordering defendant to serve the 347-day balance of a 2010 jail sentence he had not served due to jail overcrowding was error since the 5-year period for executing the misdemeanor had expired.

Eighth Appellate District of Ohio

Nothing new.

Ninth Appellate District of Ohio

***State v. Tucker*, 2016-Ohio-1353**

Insufficient evidence

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/9/2016/2016-Ohio-1353.pdf>

Conviction of having weapons under a disability not supported by sufficient evidence where the state failed to establish a connection between defendant the firearms seized from an apartment when defendant was not present, and the state did not present any evidence establishing who rented the apartment or how many people lived there.

Tenth Appellate District of Ohio

State v. Fort, 2016-Ohio-1242

Ineffective Assistance and Motion to Suppress

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/10/2016/2016-Ohio-1242.pdf>

In conviction for assault on a police officer, counsel was not ineffective for failure to file a motion to suppress evidence relating to defendant's fight with police after purported unlawful entry of police into apartment. The exclusionary rule would not operate to exclude evidence of defendant's assault on the police officer because the attack was independent, distinct, and intervening voluntary criminal conduct; in the absence of excessive force or if the police officer intentionally provokes the illegal conduct of the defendant, a defendant is not privileged to use force in order to repel an arrest by a police officer, even an illegal one.

Eleventh Appellate District of Ohio

State v. Bozek, 2016-Ohio-1305

Plea: Attempted felony murder

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/11/2016/2016-Ohio-1305.pdf>

As attempted felony murder is not a cognizable crime, trial court lacked authority to sentence defendant on that count; entire plea is void and vacated.

State v. Parrado, 2016-Ohio-1313

Sentencing on felonies of the 5th degree

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/11/2016/2016-Ohio-1313.pdf>

Imposition of 11-month prison sentence was not error where presumption favoring community control under R.C. 2929.13(B)(1)(a) does not apply where plea and convictions involved 12 fifth-degree felonies with multiple victims.

State v. Thomas, 2016-Ohio-1357

Costs

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/11/2016/2016-Ohio-1357.pdf>

Imposition of court costs was error where trial court assessed costs after defense counsel requested suspension of such costs, and court failed to make the required analysis concerning defendant's future ability to pay.

State v. Brown, 2016-Ohio-1358

Insufficient evidence and cumulative error

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/11/2016/2016-Ohio-1358.pdf>

Abuse of a corpse conviction not supported by sufficient evidence; murder conviction was error where trial court erred in allowing the state to present unreliable and irrelevant, technical evidence, including a transcript of defendant's interview with police which contained errors, and multiple other errors supported a finding of cumulative error.

Twelfth Appellate District of Ohio

Nothing new.

Supreme Court of Ohio

Nothing new.

Sixth Circuit Court of Appeals

United States v. Mahbub, No. 14-1499

Batson challenge.

Full Decision: <http://www.ca6.uscourts.gov/opinions.pdf/16a0073p-06.pdf>

District Court erred in denying defendant's *Batson* challenge, as court's reliance on defendant's failure to identify herself as a member of a cognizable racial group in denying *Batson* challenge was a mistake of law. Remand ordered.

Supreme Court of the United States

Luis v. United States, No.14-419.

Sixth Amendment Right to Counsel

Full Decision: http://www.supremecourt.gov/opinions/15pdf/14-419_nmip.pdf

Freezing of assets untainted by the crime of which defendant is accused which prevents defendant from paying her lawyer violates her Sixth Amendment Right to Assistance of Counsel.