

Appellate Court Decisions - Week of 4/3/17

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

First Appellate District of Ohio

Nothing to report.

Second Appellate District of Ohio

State v. Riddle, 2017-Ohio-1199

Ineffective Assistance

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/2/2017/2017-Ohio-1199.pdf>

Appellant's trial counsel was ineffective for advising Appellant to plead guilty to aggravated robbery where the facts read into the record at the plea hearing demonstrated Appellant used a fake gun and did not demonstrate he used the fake gun as a bludgeon. Appellant's plea, therefore, was not knowing, intelligent, and voluntary.

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

Nothing to report.

Seventh Appellate District of Ohio

State v. Simmons, 2017-Ohio-647

Sentencing: Driver's License Suspension

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/7/2017/2017-Ohio-647.pdf>

Summary from the Seventh District:

“Defendant-Appellant Michael Simmons appeals the decision of Jefferson County Common Pleas Court denying his motion for correction of an illegal sentence. Appellant argues the trial court’s decision is incorrect. He was convicted of drug trafficking, which at the time of his sentence and conviction required a mandatory driver’s license suspension. The trial court, however, did not suspend his license. Recently, the Ohio Supreme Court has held, ‘when a trial court fails to include a mandatory driver’s license suspension as part of an offender’s sentence, that part of the sentence is void.’ *State v. Harris*, 132 Ohio St.3d 318, 2012-Ohio- 1908, 972 N.E.2d 509, ¶ 18. ‘[R]esentencing of the offender is limited to the imposition of the mandatory driver’s license suspension.’ *Id.*

“Therefore, on the basis of *Harris*, the trial court’s decision is reversed and the matter is remanded for resentencing. Upon remand the trial court is instructed to apply the current version of R.C. 2925.03. Under the current version of the statute, Appellant is subject to a discretionary driver’s license suspension, not a mandatory driver’s license suspension. Resentencing is limited only to the driver’s license suspension issue.”

Eighth Appellate District of Ohio

Nothing to report.

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

State v. Proffitt, 2017-Ohio-1236

Ineffective Assistance

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/12/2017/2017-Ohio-1236.pdf>

Appellant’s trial counsel was ineffective for failing to object to the admission of the prosecuting witness’s previous statements to police because they were inadmissible hearsay and the state failed to satisfy the affirmative foundational requirements of Evid.R. 803(5) to make the statements admissible. The ineffectiveness were prejudicial to Appellant because the statements were the basis for his conviction.

Supreme Court of Ohio

Nothing to report.

Sixth Circuit Court of Appeals

In re Ohio Execution Protocol, No. 17-3076

Capital Punishment

Full Decision: <http://www.opn.ca6.uscourts.gov/opinions.pdf/17a0079p-06.pdf>

Summary:

“Ohio’s current execution protocol allows for execution by lethal injection using a three-drug combination of (1) midazolam; (2) either vecuronium bromide, pancuronium bromide, or rocuronium bromide, which are paralytics; and (3) potassium chloride, which stops the heart. R. 667-1 (Ohio DRC Execution Protocol, 01- COM-11 at 2) (Page ID #19813). The purpose of the first drug is to ensure that the person being executed is insensate to the pain that the second two drugs cause. It is undisputed that if the first drug does not ‘render the prisoner unconscious,’ then ‘there is a substantial, constitutionally unacceptable risk of suffocation . . . and pain’ from the second two drugs. *Baze v. Rees*, 553 U.S. 35, 53 (2008) (plurality op.). The ultimate question in this case is whether use of midazolam as the first drug in this three-drug protocol ‘entails a substantial risk of severe pain’ as compared to “a known and available alternative.’ *Glossip v. Gross*, 135 S. Ct. 2726, 2731 (2015). The question before us at this preliminary stage, however, is much narrower. We ask only whether the district court abused its discretion by granting a preliminary injunction to allow for further litigation regarding midazolam’s efficacy before Ohio executes Ronald Phillips, Raymond Tibbetts, and Gary Otte. For the reasons discussed below, we AFFIRM the judgment of the district court granting the preliminary injunction.”

Supreme Court of the United States

Nothing to report.