

Appellate Court Decisions - Week of 6/6/16

First Appellate District of Ohio

State v. White, 2016-Ohio-3329

**Homicide: Evidence: Juries: Jury Instructions: Complicity:
Constitutional Law: Sixth Amendment: Counsel: Prosecutor**

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-150250_06102016.pdf

Summary from the First District:

“The trial court did not abuse its discretion when it refused the defendant’s request to remove a juror who expressed a concern over safety, where the record demonstrates that the court’s consideration of the defendant’s constitutional right to an impartial jury dominated over the court’s consideration of expediency.

“The defendant’s conviction for purposely causing the death of a 14-year-old boy during a kidnapping was supported by sufficient evidence and was not against the manifest weight of the evidence where overwhelming evidence, including the defendant’s admission to another inmate, GPS and cell-phone-location records, eyewitness testimony, and the defendant’s evasive conduct after the crime demonstrated that he had committed the offense as a principal offender or as an accomplice.

“Any deficiency arising out of defense counsel’s failure to move to suppress an out-of-court identification of the defendant by an eyewitness was not prejudicial due to the strength of the other evidence, and therefore, the defendant failed to meet his burden to show ineffective assistance of counsel.

“Counsel’s performance was not deficient for failing to object on Sixth Amendment grounds to the admissibility of testimony from a jailhouse informant relaying the post-indictment incriminating statements of the defendant, where there was no evidence that the state deliberately elicited the information from the defendant through the informant.

“The trial court did not abuse its discretion when instructing the jury where the defendant’s requested but refused instructions were not correct statements of the law, and where the complicity instruction given at the state’s request was a correct statement of the law and a finding of complicity was supported by the evidence.

“The defendant failed to demonstrate that the remarks of the prosecutor during closing argument were improper and resulted in plain error. “

State v. Robinson, 2016-Ohio-3330

Counsel: Waiver: Constitutional Law: Sixth Amendment: Drugs: Jury Verdict Form: Degree of Offense

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-150346_06102016.pdf

Summary from the First District:

“The trial court made a sufficient inquiry into defendant’s claim that he was dissatisfied with his appointed counsel because counsel had failed to communicate with him prior to trial where the court inquired numerous times into defendant’s desire to represent himself and whether that desire stemmed from the adequacy of his appointed counsel.

“The record shows that defendant knowingly, intelligently and voluntarily waived his right to counsel where the trial court held a competency hearing and determined that defendant was competent to waive counsel; the court engaged defendant in a lengthy and thorough discussion of the nature of the charges, the statutory offenses included within them, the range of possible punishments, and the mitigating circumstances; defendant had some college education, was aware of the facts of the case, was familiar with the court system and comprehended that he was bound by Ohio law; the trial court explained the difficulty of self-representation and that defendant did not have the skill and competence of a lawyer; and defendant signed a written waiver of counsel on the second day of trial.

“The trial court erred in convicting defendant of trafficking in heroin as a third-degree felony where the jury verdict form stated that the trafficking offense had occurred within the vicinity of a school and a juvenile, elevating the offense to a fourth-degree felony, but the verdict form did not set forth the degree of the offense or the amount of heroin that would have elevated the offense to a third-degree felony.”

Second Appellate District of Ohio

Nothing new.

Third Appellate District of Ohio

Nothing new.

Fourth Appellate District of Ohio

Nothing new.

Fifth Appellate District of Ohio

State v. Collins, 2016-Ohio-3301

Jail-Time Credit

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/5/2016/2016-Ohio-3301.pdf>

The trial court erred in denying Appellant's motion for jail-time credit. This is a fact-specific case that is better just read in whole. It's a short decision.

Sixth Appellate District of Ohio

Nothing new.

Seventh Appellate District of Ohio

State v. Patrick, 2016-Ohio-3283

Plea Withdrawal

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/7/2016/2016-Ohio-3283.pdf>

The trial court erred in denying Appellant's pre-sentence motion to withdraw his guilty plea. The Seventh District analyzed the factors laid out in *State v. Fish*, 104 Ohio App.3d 236, 661 N.E.2d 788 (1st Dist. 1995). It found that the first factor – whether granting the motion would prejudice the State – weighed in favor of granting the motion. Yet, it also found that when the trial court denied the motion, it placed undue weight on that factor compared to the other factor. It found that the factor of whether Appellant had competent counsel weighed in Appellant's favor because counsel told Appellant it was not possible for him to have another day to consider the plea.

Appellant was given a Crim.R. 11 hearing, so that factor weighed against Appellant. The factor of whether he understood the nature of the charges and possible penalties weighed in Appellant's favor. There was a full hearing held on his motion, so that factor weighed against Appellant. The trial court gave full and fair consideration to the motion, so that factor weighed against Appellant. Appellant's motion was timely filed, so that factor weighed in his favor. Appellant's reasoning for his motion – that he was innocent, that he did not understand the effect of a life sentence with

regard to his future release from prison, and that he did not have enough time to make an informed decision – amounted to more than a simple change of heart. The factor of whether he had a meritorious defense was neutral or against Appellant’s motion.

Considering all those factors, the Seventh District concluded that the factors weighed in Appellant’s favor and the trial court abused its discretion by giving undue weight and the possible prejudice to the State.

Eighth Appellate District of Ohio

State v. Houston, 2016-Ohio-3319

Resentencing: Vindictiveness

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2016/2016-Ohio-3319.pdf>

Summary from the Eighth District: “When resentencing appellant after the results of his first sentencing hearing were not properly journalized, the trial court relied on a comprehensive sentencing plan to justify an increase in appellant’s prison sentence from three years to five because the aggregate sentence decreased by one year. This increase in sentence without proper justification constitutes a vindictive sentence and implicates the use of an impermissible sentencing package.”

State v. Vaughn, 2016-Ohio-3320

Sentencing

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2016/2016-Ohio-3320.pdf>

Summary from the Eighth District: “The trial court erred by ordering a sentence in the sentencing entry that was not the same as the one ordered at the sentencing hearing. Moreover, pursuant to R.C. 2929.14(A), the trial court had to run at least two of the most serious firearm specifications in the aggravated robbery counts consecutively.”

Ninth Appellate District of Ohio

Nothing new.

Tenth Appellate District of Ohio

Nothing new.

Eleventh Appellate District of Ohio

Nothing new.

Twelfth Appellate District of Ohio

State v. Pangburn, 2016-Ohio-3286

Receiving Stolen Property: Sufficiency

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/12/2016/2016-Ohio-3286.pdf>

Appellant's conviction for receiving stolen property was based on insufficient evidence because the State presented no evidence from which it could be inferred that Appellant knew the credit card he found had been stolen, rather than lost. Appellant found a credit card in a parking lot (it had been stolen by someone else, and Appellant was unaware of that fact) and used it to purchase a prepaid credit card.

Supreme Court of Ohio

In re A.G., 2016-Ohio-3306

Juvenile Delinquency

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/o/2016/2016-Ohio-3306.pdf>

Syllabus of the Court: "The merger analysis set forth in *State v. Ruff*, 143 Ohio St.3d 114, 2015-Ohio-995, 34 N.E.3d 892, applies to juvenile delinquency proceedings to protect a child's right against double jeopardy."

Sixth Circuit Court of Appeals

Nothing new.

Supreme Court of the United States

Williams v. Pennsylvania, Slip Opinion No. 15-5040

Due Process: Judge Recusal

Full Decision: http://www.supremecourt.gov/opinions/15pdf/15-5040_6537.pdf

Syllabus:

Petitioner Williams was convicted of the 1984 murder of Amos Norwood and sentenced to death. During the trial, the then-district attorney of Philadelphia, Ronald Castille, approved the trial prosecutor's request to seek the death penalty against Williams. Over the next 26 years, Williams's conviction and sentence were upheld on direct appeal, state postconviction review, and federal habeas review. In 2012, Williams filed a successive petition pursuant to Pennsylvania's Post Conviction Relief Act (PCRA), arguing that the prosecutor had obtained false testimony from his codefendant and suppressed material, exculpatory evidence in violation of *Brady v. Maryland*, 373 U. S. 83. Finding that the trial prosecutor had committed *Brady* violations, the PCRA court stayed Williams's execution and ordered a new sentencing hearing. The Commonwealth asked the Pennsylvania Supreme Court, whose chief justice was former District Attorney Castille, to vacate the stay. Williams filed a response, along with a motion asking Chief Justice Castille to recuse himself or, if he declined to do so, to refer the motion to the full court for decision. Without explanation, the chief justice denied Williams's motion for recusal and the request for its referral. He then joined the State Supreme Court opinion vacating the PCRA court's grant of penaltyphase relief and reinstating Williams's death sentence. Two weeks later, Chief Justice Castille retired from the bench.

Held:

1. Chief Justice Castille's denial of the recusal motion and his subsequent judicial participation violated the Due Process Clause of the Fourteenth Amendment. Pp. 5–12.

(a) The Court's due process precedents do not set forth a specific test governing recusal when a judge had prior involvement in a case as a prosecutor; but the principles on which these precedents rest dictate the rule that must control in the circumstances here: Under the Due Process Clause there is an impermissible risk of actual bias when a judge earlier had significant, personal involvement as a prosecutor in a critical decision regarding the defendant's case. The Court applies an objective standard that requires recusal when the likelihood of bias on the part of the judge "is too high to be constitutionally tolerable." *Caperton v. A. T. Massey Coal Co.*, 556 U. S. 868, 872. A constitutionally intolerable probability of bias exists when the same person serves as both accuser and adjudicator in a case. See *In re Murchison*, 349 U. S. 133, 136–137. No attorney is more integral to the accusatory process than a prosecutor who participates in a major adversary decision. As a result, a serious question arises as to whether a judge who has served as an advocate for the State in the very case the court is now asked to adjudicate would be influenced by an improper, if inadvertent, motive to validate and preserve the result obtained through the adversary process. In these circumstances, neither the involvement of multiple actors in the case nor the passage of time relieves

the former prosecutor of the duty to withdraw in order to ensure the neutrality of the judicial process in determining the consequences his or her own earlier, critical decision may have set in motion. Pp. 5–8.

(b) Because Chief Justice Castille’s authorization to seek the death penalty against Williams amounts to significant, personal involvement in a critical trial decision, his failure to recuse from Williams’s case presented an unconstitutional risk of bias. The decision to pursue the death penalty is a critical choice in the adversary process, and Chief Justice Castille had a significant role in this decision. Without his express authorization, the Commonwealth would not have been able to pursue a death sentence against Williams. Given the importance of this decision and the profound consequences it carries, a responsible prosecutor would deem it to be a most significant exercise of his or her official discretion. The fact that many jurisdictions, including Pennsylvania, have statutes and professional codes of conduct that already require recusal under the circumstances of this case suggests that today’s decision will not occasion a significant change in recusal practice. Pp. 9–12.

2. An unconstitutional failure to recuse constitutes structural error that is “not amenable” to harmless-error review, regardless of whether the judge’s vote was dispositive, *Puckett v. United States*, 556 U. S. 129, 141. Because an appellate panel’s deliberations are generally confidential, it is neither possible nor productive to inquire whether the jurist in question might have influenced the views of his or her colleagues during the decisionmaking process. Indeed, one purpose of judicial confidentiality is to ensure that jurists can reexamine old ideas and suggest new ones, while both seeking to persuade and being open to persuasion by their colleagues. It does not matter whether the disqualified judge’s vote was necessary to the disposition of the case. The fact that the interested judge’s vote was not dispositive may mean only that the judge was successful in persuading most members of the court to accept his or her position—an outcome that does not lessen the unfairness to the affected party. A multimember court must not have its guarantee of neutrality undermined, for the appearance of bias demeans the reputation and integrity not just of one jurist, but of the larger institution of which he or she is a part. Because Chief Justice Castille’s participation in Williams’s case was an error that affected the State Supreme Court’s whole adjudicatory framework below, Williams must be granted an opportunity to present his claims to a court unburdened by any “possible temptation . . . not to hold the balance nice, clear and true between the State and the accused,” *Tumey v. Ohio*, 273 U. S. 510, 532. Pp. 12–14. ___ Pa. ___, 105 A. 3d 1234, vacated and remanded.

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