Appellate Court Decisions - Week of 3/22/21

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. Russell*, 2021-Ohio-871**

Allied offenses

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2021/2021-Ohio-871.pdf

In reopened appeal, appellate counsel was ineffective for failing to raise the issue that the trial court erred in not merging appellant's convictions for aggravated robbery and felony murder; victim "died in the course of a single, continuous sequence of events that culminated in the commission of aggravated robbery and felony murder, with the offenses occurring essentially at the same time."

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

Nothing to report.

Eighth Appellate District of Ohio

***State v. Whitehead*, 2021-Ohio-847**

Allied offenses

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2021/2021-Ohio-847.pdf

Trial court erred in failing to merge the kidnapping counts with other offenses when such merger was part of the plea agreement; case was also remanded for resentencing for trial court to properly comply with the Reagan Tokes Act.

***State v. Burton*, 2021-Ohio-851**

Postconviction petition; *Brady*

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2021/2021-Ohio-851.pdf

Trial court's denial of appellant's postconviction petition without a hearing constituted an abuse of discretion; tow receipt not provided to appellant was "new evidence, [that] if true, may be exculpatory and material pursuant to *Brady*."

***State v. Sutton et al.*, 2021-Ohio-854**

Motion for new trial; *Brady*

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2021/2021-Ohio-854.pdf

Trial court's denial of appellants' motions for a new trial based on newly discovered evidence was error. Appellants' new trial motions were based on newly discovered eyewitness testimony that was not disclosed by the state and was therefore a *Brady* violation; after de novo review, appellate court remanded cases for a new trial.

Ninth Appellate District of Ohio

***State v. Starnes*, 2021-Ohio-885**

Sentence; PRC

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/9/2021/2021-Ohio-885.pdf

Trial court erred in amending appellant's sentences to include post-release control after he had completed those sentences. *See State v. Holdcroft*, 137 Ohio St.3d 526, 2013-Ohio-5014, 1 N.E.3d 382.

Tenth Appellate District of Ohio

Nothing to report.

Eleventh Appellate District of Ohio

Nothing to report.

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

***Torres v. Madrid*, 592 U.S. ____ (2021)**

Seizure

Full Decision:
http://www.supremecourt.gov/opinions/20pdf/19-292_21p3.pdf

The Fourth Amendment prohibits unreasonable "seizures" to safeguard "[t]he right of the people to be secure in their persons." Under our cases, an officer seizes a person when he uses force to apprehend her. The question in this case is whether a seizure occurs when an officer shoots someone who temporarily eludes capture after the shooting. The answer is yes: The application of physical force to the body of a person with intent to restrain

is a seizure, even if the force does not succeed in subduing the person.

***Held*: The application of physical force to the body of a person with intent to restrain is a seizure even if the person does not submit and is not subdued. Pp. 3–18.**

(a) The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." This Court's precedents have interpreted the term "seizure" by consulting the common law of arrest, the "quintessential" seizure of the person. *Payton* v. *New York*, 445 U. S. 573, 585; *California* v. *Hodari D.*, 499 U. S. 621, 624. In *Hodari D.*, this Court explained that the common law considered the application of physical force to the body of a person with the intent to restrain to be an arrest—not an attempted arrest—even if the person does not yield. *Id.*, at 624–625. A review of the pertinent English and American decisions confirms that the slightest touching was a constructive detention that would complete the arrest. See, *e.g.*, *Genner* v. *Sparks*, 6 Mod. 173, 87 Eng. Rep. 928.

The analysis does not change because the officers used force from a distance to restrain Torres. The required "corporal seising or touching the defendant's body," 3 W. Blackstone, Commentaries on the Laws of England 288 (1768), can be as readily accomplished by a bullet as by the end of a finger. The focus of the Fourth Amendment is "the privacy and security of individuals," not the particular form of governmental intrusion. *Camara* v. *Municipal Court of City and County of San Francisco*, 387 U. S. 523, 528.

The application of force, standing alone, does not satisfy the rule recognized in this decision. A seizure requires the use of force with intent to restrain, as opposed to force applied by accident or for some other purpose. *County of Sacramento* v. *Lewis*, 523 U. S. 833, 844. The appropriate inquiry is whether the challenged conduct objectively manifests an intent to restrain. *Michigan* v. *Chesternut*, 486 U. S. 567, 574. This test does not depend on either the subjective motivation of the officer or the subjective perception of the suspect. Finally, a seizure by force lasts only as long as the application of force unless the suspect submits. *Hodari D.*, 499 U. S., at 625. Pp. 3–11.

(b) In place of the rule that the application of force completes an arrest, the officers would assess all seizures under one test: intentional acquisition of control. This alternative approach finds support in neither the history of the Fourth Amendment nor this Court's precedents. Pp. 11–16.

(1) The officers attempt to recast the common law doctrine recognized in *Hodari D.* as a rule applicable only to civil arrests. But the common law did not define the arrest of a debtor any differently from the arrest of a felon. Treatises and courts discussing criminal arrests articulated a rule

indistinguishable from the one applied to civil arrests at common law. Pp. 11–14.

(2) The officers' contrary test would limit seizures of a person to "an intentional acquisition of physical control." *Brower* v. *County of Inyo*, 489 U. S. 593, 596. While that test properly describes seizures by control, seizures by force enjoy a separate common law pedigree that gives rise to a separate rule. A seizure by acquisition of control involves either voluntary submission to a show of authority or the termination of freedom of movement. But as common law courts recognized, any such requirement of control would be difficult to apply to seizures by force. The officers' test will often yield uncertainty about whether an officer succeeded in gaining control over a suspect. For centuries, the rule recognized in this opinion has avoided such line-drawing problems. Pp. 14–16.

(c) The officers seized Torres by shooting her with the intent to restrain her movement. This Court does not address the reasonableness of the seizure, the damages caused by the seizure, or the officers' entitlement to qualified immunity. Pp. 17–18.

769 Fed. Appx. 654, vacated and remanded.

ROBERTS, C. J., delivered the opinion of the Court, in which BREYER, SOTOMAYOR, KAGAN, and KAVANAUGH, JJ., joined. GORSUCH, J., filed a dissenting opinion, in which THOMAS and ALITO, JJ., joined. BARRETT, J., took no part in the consideration or decision of the case.