

Appellate Court Decisions - Week of 3/26/18

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

First Appellate District of Ohio

State v. Wallace, 2018-Ohio-1129

**Postconviction: Jurisdiction: Allied Offenses: Ineffective Assistance:
Postrelease Control**

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2018/2018-Ohio-1129.pdf>

Summary from the First District:

“Defendant’s postconviction allied-offenses and ineffective-counsel claims were subject to dismissal for lack of jurisdiction: the claims were reviewable under R.C. 2953.21 et seq., governing the proceedings on a petition for postconviction relief, because they sought relief based on alleged constitutional violations during the proceedings leading to defendant’s convictions, R.C. 2953.21(A)(1); but the postconviction statutes did not confer jurisdiction to entertain those claims, because they did not satisfy R.C. 2953.21(A)(2)’s time restrictions or R.C. 2953.23’s jurisdictional requirements for entertaining a late postconviction claim; and the claims, even if demonstrated, would not have rendered the convictions void.

“The common pleas court erred in failing to correct that part of defendant’s aggravated-robbery sentence that was void because it was not imposed in conformity with the statutory mandates concerning postrelease control: the postrelease-control notification provided at sentencing, that defendant was subject to postrelease-control supervision for ‘up to five years,’ did not adequately inform him that postrelease control was for a mandatory five-year period; and the language included in the judgment of conviction stating that he was ‘subject to the post release [sic] control supervision * * * of R.C. 2967.28’ was inadequate to inform him of the duration or mandatory nature of his postrelease control.”

State v. Jones, 2018-Ohio-1130

**Aggravated Robbery: Having Weapons While Under Disability: Evidence:
Witnesses: Prosecutorial Misconduct: Ineffective Assistance**

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2018/2018-Ohio-1130.pdf>

Summary from the First District:

“Where a witness was cooperative until days before trial, the state was not required to follow the procedures set forth in R.C. 2939.26 before the trial court could find that the state had used reasonable efforts to secure the witness’s appearance and declare the witness unavailable.

“The trial court did not abuse its discretion when it found that the state had used reasonable efforts to secure a witness’s appearance before declaring that witness unavailable where officers had tried to contact the witness through different phone numbers, social media, and her mother, and the witness no longer lived at her last known address.

“Although using analogies to attempt to explain reasonable doubt is discouraged, the prosecutor’s comparison of reasonable doubt to putting together a jigsaw puzzle did not prejudice defendant where the trial court properly instructed the jury on reasonable doubt.

“Defendant was not prejudiced by trial counsel’s failure to offer to stipulate to his prior conviction, which constituted an element of the charge of having a weapon while under a disability, where the failure to offer to stipulate did not change the outcome of the trial.

“Testimony of a police officer about speaking to third parties did not violate the prohibition in *State v. Ricks*, 136 Ohio St.3d 256, 2013-Ohio-3712, 995 N.E.2d 1181, where the officer never testified to what the third parties actually told him.

“The evidence presented by the state, including that defendant had pointed a firearm at the cashier and demanded money, implying that he would shoot the cashier if the cashier failed to comply with his demand, was sufficient to show that the firearm was operable.

“For purposes of defendant’s aggravated-robbery conviction, the cashier of the store defendant robbed was the “owner” of the money in the cash register and the store’s inventory.”

Second Appellate District of Ohio

Nothing to report.

Third Appellate District of Ohio

Nothing to report.

Fourth Appellate District of Ohio

Nothing to report.

Fifth Appellate District of Ohio

State v. Mardcum, 2018-Ohio-1135

Sufficiency: Venue

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2018/2018-Ohio-1135.pdf>

The state failed to present sufficient evidence of venue where, although the city of Reynoldsburg was mentioned, Reynoldsburg lies in three counties, and the state never presented evidence of in which county the offense occurred.

State v. Kopchak, 2018-Ohio-1136

Discovery

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2018/2018-Ohio-1136.pdf>

The trial court erred in compelling the defense to disclose a letter from a consulting expert, when the defense did not intend to call the expert as a witness. It was also error to allow the state to call the defense expert as its own witness. Nevertheless, the error was deemed harmless because of the overwhelming evidence of his guilt.

State v. Harding, 2018-Ohio-1148

Complaint: Amendment: Crim.R. 7(D)

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2018/2018-Ohio-1148.pdf>

The trial court erred in allowing the state to amend Appellant's disorderly conduct charges to failure to disclose personal information after the trial court dismissed the disorderly conduct charges on Appellant's Crim.R. 29 motion. The amendment changed the name/identity of the crimes charged.

Sixth Appellate District of Ohio

Nothing to report.

Seventh Appellate District of Ohio

Nothing to report.

Eighth Appellate District of Ohio

N. Olmstead v. Rock, 2018-Ohio-1084

Sentencing: Community Control

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2018/2018-Ohio-1084.pdf>

“[I]n this matter, the record does not demonstrate a nexus between the offenses and drug or alcohol use, because there is no mention of drug or alcohol involvement in the commission of the offenses. This term of community control has no reasonable relationship to the rehabilitation of the offender or future criminality, and there is nothing in the record to indicate that it serves the statutory ends of probation. Therefore, the court abused its discretion in including this as a term of its community control sanctions.”

State v. Martin, 2018-Ohio-1098

Aggravated Assault

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2018/2018-Ohio-1098.pdf>

Summary from the Eighth District:

“Defendant's conviction for aggravated assault is reversed because the trial court's finding of guilty was premised on the mistaken belief that aggravated assault is a lesser-included offense of felonious assault. Aggravated assault is an inferior offense of felonious assault when the mitigating factor of serious provocation exists. The trial court found defendant not guilty of felonious assault, precluding a finding of guilty of aggravated assault.”

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

Nothing to report.

Supreme Court of Ohio

Nothing to report.

Sixth Circuit Court of Appeals

This is not directly applicable to Ohio, but maybe there's an idea in here you can use for an Ohio case:

United States v. Amerson, No. 17-1703

Sentencing: Same Course of Conduct: Firearms

Full Decision:

<http://www.opn.ca6.uscourts.gov/opinions.pdf/18a006op-06.pdf>

Summary from the Sixth Circuit Opinion:

“When are two crimes “part of the same course of conduct?” For a defendant like Karl Amerson, who illegally possessed firearms on two different occasions, the answer under section 1B1.3(a)(2) of the United States Sentencing Guidelines (USSG) could mean almost twice as many years in prison.

“Amerson pleaded guilty to one count of being a felon in possession of a firearm after police officers discovered a rifle and a pistol in his home. In exchange for his plea, the government agreed not to prosecute him for his previous possession of a different handgun, three and a half months before. But that agreement did not bar the government from arguing at sentencing that Amerson’s uncharged handgun possession was “part of the same course of conduct” as his rifle-and-pistol conviction and was thus

relevant conduct for purposes of calculating Amerson's sentence. The district court agreed with the government. The result? A near doubling of Amerson's sentencing range.

"Amerson contends that this relevant-conduct determination was erroneous because the government showed no connection between the gun possession that resulted in his conviction and his prior gun possession. We agree. For two, non-contemporaneous illegal firearm possessions to be considered part of the same course of conduct, they must, among other factors, be connected by strong evidence of similarity. Because the government failed to prove enough similarity between Amerson's illegal firearm possessions, we reverse the district court's relevant-conduct finding.

"Amerson also appeals the district court's determination that he attempted to obstruct justice, warranting a higher offense level under USSG § 3C1.1. Because the evidence showed that Amerson took a substantial step toward his goal of having someone else claim ownership of his rifle, we affirm the obstruction-of-justice enhancement."

Supreme Court of the United States

Nothing to report.