



# Office of the Ohio Public Defender

## Ohio Supreme Court Update 2016 and Early 2017

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## ***State v. Marcum, 2016-Ohio-1002 – Sentencing***

“An appellate court may vacate or modify a felony sentence only if it determines by clear and convincing evidence that the record does not support the trial court’s findings under relevant statutes or that the sentence is otherwise contrary to law.”

## ***State v. Rahab*, 2017-Ohio-1401 – Trial Tax**

The trial court told Mr. Rahab that “the Court does not look highly on cases where people don’t take responsibility and accept that they did something wrong if they’re found guilty,” and, “Meaning [the sentence] would be more. I’m not going to fool you. You understand?” Nonetheless, the Ohio Supreme Court held—albeit only in a plurality opinion—that Mr. Rahab was not penalized for going to trial instead of pleading. As a result, for a future trial-tax claim to be successful, there will likely have to be an explicit reference by the judge to an enhanced sentence *specifically because* the defendant chose to go to trial.

## ***State v. Leak, 2016-Ohio-154* – Fourth Amendment**

Mr. Leak was the subject of a DV arrest warrant, and was sitting in the passenger seat of a lawfully parked car. The arresting officer had the car impounded and the inventory search produced contraband, leading to additional charges. The Ohio Supreme Court determined—again in a plurality opinion—that the seizure and subsequent search of the car were unlawful, because there was no legitimate community caretaking function associated with the impounding of the vehicle, and the officer admitted at the suppression hearing that he was looking for evidence.

## ***State v. Banks-Harvey*, OSC Case No. 2016-0930 – pending Fourth Amendment case**

Ms. Banks-Harvey was pulled over for speeding, and had an active arrest warrant. While she was in the officer's cruiser, he went back to her car for her purse, even though the car wasn't being impounded and he already had her state ID. The trial and appellate courts ruled that this was a lawful search. But the dissent found that the search violated *Arizona v. Gant*. The Ohio Supreme Court agreed to hear Ms. Banks-Harvey's appeal. At argument in March, the court seemed to have a hard time agreeing with the State's position.

## ***State v. Martin*, 2016-Ohio-7196 – Child Pornography**

Mr. Martin surreptitiously recorded an 11-year-old girl in a bathroom. Rather than being charged for voyeurism, he was prosecuted for creating child pornography. The court held that while materials in the *possession* of an individual are child pornography only if there is a “lewd exhibition” or “graphic focus on the genitals” in the images, when one *creates* images, mere nudity is sufficient for the images to be deemed pornographic. No other state takes a similar approach, but the United States Supreme Court recently declined to hear our petition for certiorari.

## ***State v. Hand*, 2016-Ohio-5504 – Prior Juvenile Adjudications**

RC 2901.08 allows prior adjudications to be used as prior convictions for elevating the degree of offense or triggering mandatory prison time. But because there is no jury right involved with juvenile adjudications, the Ohio Supreme Court concluded that using adjudications as prior convictions violates *Blakely/Apprendi*. Thus, Mr. Hand's mandatory sentence had to be converted to non-mandatory time.

## ***State v. Hand, cont'd.***

There are several possible extensions of *State v. Hand*. Some caselaw has already developed around WUD cases, e.g., *State v. Carnes*, 2016-Ohio-8019 and *State v. Hudson*, 2016-Ohio-645, (both State-favorable decisions). We are hopeful that the WUD issue will be taken up by the Ohio Supreme Court. And *Hand* should clearly apply to enhanced charging levels for OVI cases. Lastly, if a juvenile adjudication results in the classification of a client as a sex offender, and the client fails to report, can a felony prosecution result?

## ***State v. Moore, 2016-Ohio-8288 – Juvenile LWOP***

Here, the Ohio Supreme Court extended *Graham v. Florida* to juvenile offenders, tried as adults, who committed multiple non-homicide offenses. Thus, Brandon Moore's functional life-without-parole sentence was found to violate the Eighth Amendment. The State's certiorari petition is currently pending, and will be conferenced this fall.

## ***State v. Aalim*, 2016-Ohio-8278 – Juvenile Transfer**

“Mandatory transfer of juveniles to general division of common pleas court violates juveniles’ right to due process under Article I, Section 16 of Ohio Constitution.” The State’s reconsideration motion is currently pending, and, unfortunately, there seems to be a high probability that this opinion will be vacated.

## ***State v. Creech*, 2016-Ohio-8440 – Fact of Prior Conviction**

“A trial court abuses its discretion when it refuses defendant’s offer to stipulate to fact of prior conviction or indictment and instead admits into evidence full record of prior judgment or indictment when sole purpose of evidence is to prove element of defendant’s prior conviction or indictment.”

## Speed Round

- 1) *State ex rel. Caster v. Columbus*, 2016-Ohio-8394 – Public Records – Once a trial is completed, the investigatory work product exception to 149.43 can no longer be invoked by the police. (*Steckman* overruled.)
- 2) *State v. Thompson*, 2016-Ohio-2769 – Jail Time Credit Appeals – An order denying JTC is a final appealable order.

## Speed Round, cont'd.

3) *State v. Pittman*, 2016-Ohio-8314 – Non-Support – It is unlawful to prosecute someone for arrearage-only non-support when the person does not have a current obligation of support because the child has been emancipated.

4) *State v. Sargent*, 2016-Ohio-2696 – Sentencing – If consecutive sentences are the result of a joint recommendation, no trial-court findings are necessary.

## In memoriam – *State v. Gonzales*, 2016-Ohio-8319

For a brief moment, the State had to prove the purity of cocaine in either a trafficking or a possession prosecution. With the new members of the court hearing the State's reconsideration motion, that ruling was vacated, and the defense-favorable appellate court ruling was reversed. A reconsideration of the reconsideration is, technically, still pending, but the chances of that motion succeeding seem extremely remote.



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