

SUPREME COURT OF OHIO

State v. Tolliver

140 Ohio St. 3d 420 (Ohio 2014) · No. 2013-0351 · Decided September 2, 2014

SUMMARY

The Supreme Court of Ohio held that R.C. 2901.21(B), which supplies recklessness when an offense statute specifies no culpable mental state, does not apply to Ohio's robbery statute because the statute incorporates the culpable mental states of the predicate theft offense. The court therefore held that the state was not required to prove a separate culpable mental state for the force element of robbery under R.C. 2911.02(A)(3), and reversed the court of appeals.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	French, J.; O'Connor, C.J.; Kennedy, J.; Lanzinger, J.; O'Donnell, J.; O'Neill, J.; Pfeifer, J.
JURISDICTION	Ohio
DECIDED	September 2, 2014
DOCKET	2013-0351
DISPOSITION	reversed
PROCEDURAL POSTURE	The State of Ohio appealed from the Montgomery County Court of Appeals' reversal of Tolliver's robbery conviction.
STANDARD OF REVIEW	The Supreme Court reviewed the legal issue concerning the required mens rea under Ohio's robbery and culpability statutes; the underlying jury-instruction issue was reviewed for plain error.
PRECEDENTIAL VALUE	published and precedential
PARTIES	State of Ohio v. Kevin Tolliver

TOPICS

- statutory interpretation
- mens rea
- criminal procedure
- plain meaning rule

PRACTICE AREAS

- criminal law
- criminal procedure
- statutory interpretation

QUESTIONS PRESENTED

1. Whether R.C. 2901.21(B)'s default recklessness rule applies when the statute defining the offense specifies a culpable mental state for some elements but not others.
2. Whether the State must prove that a defendant acted recklessly with respect to the force or threat-of-force element of robbery under R.C. 2911.02(A)(3).

HOLDINGS

1. R.C. 2901.21(B) applies only when the section defining an offense does not specify any degree of culpability. If the section specifies a culpable mental state for any element in any division or subdivision, R.C. 2901.21(B) does not apply, and the State must prove culpability only as specified in the statute.
2. The State is not required to prove that the defendant acted recklessly with respect to using or threatening the immediate use of force under R.C. 2911.02(A)(3).

KEY QUOTATIONS

“If the section already requires proof of a culpable mental state for any element of the offense in any division or subdivision, R.C. 2901.21(B) does not apply, and the state need prove culpability only as specified in the section.” (¶ 23)

“Because R.C. 2911.02 defines every robbery to include the culpable mental states of the predicate theft offense, R.C. 2901.21(B), which applies only when a mental state is not specified in a section defining an offense, does not apply, and the state need not prove a culpable mental state with respect to the force element in R.C. 2911.02(A)(3).” (¶ 23)

FACTUAL BACKGROUND

Tolliver stole merchandise from a Dollar General store and attempted to escape. When a store employee attempted to stop him, he pushed her or extended his arms into her chest and raised his fist as if to punch her. He admitted shoplifting and raising his fist but denied pushing the employee.

PROCEDURAL HISTORY

A Montgomery County grand jury indicted Tolliver for robbery under R.C. 2911.02(A)(3). After a jury found him guilty, the court of appeals reversed, holding that the trial court committed plain error by failing to instruct the jury that the State had to prove recklessness as to the force element. The Supreme Court of Ohio accepted the State's appeal and reversed the court of appeals.

DISPOSITION

reversed

CASES CITED

- State v. Johnson, 128 Ohio St. 3d 107, 2010-Ohio-6301, 942 N.E.2d 347
- Columbus-Suburban Coach Lines, Inc. v. Pub. Util. Comm., 20 Ohio St. 2d 125, 127, 254 N.E.2d 8 (1969)

- State v. Maxwell, 95 Ohio St. 3d 254, 2002-Ohio-2121, 767 N.E.2d 242
- State v. Wharf, 86 Ohio St. 3d 375, 715 N.E.2d 172 (1999)
- Morissette v. United States, 342 U.S. 246, 252, 254 n.14, 263 (1952)
- State v. Huffman, 131 Ohio St. 27, 1 N.E.2d 313 (1936)
- Birney v. State, 8 Ohio 230, 238 (1837)

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