

SUPREME COURT OF OHIO

State v. Mohamed

2017-Ohio-7468 (Ohio 2017) · No. 2016-0672 · Decided September 7, 2017

SUMMARY

The Supreme Court of Ohio held that “harm” under the safe-place-unharmd provision of Ohio’s kidnapping statute includes both physical and psychological harm. The court further held that defense counsel was not ineffective for failing to request a corresponding jury instruction because the omission was a reasonable trial strategy, and that the trial court did not commit plain error by failing to provide the unrequested instruction. The court reversed the appellate judgment and remanded for consideration of the consecutive-sentences assignment of error.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Ohio                                                                                                                                                                                                                                                                                                                                                                                                                     |
| WRITING FOR THE COURT | DeWine, J.; O'Connor, C.J.; Kennedy, J.; French, J.; O'Donnell, J.; Fischer, J.; O'Neill, J.                                                                                                                                                                                                                                                                                                                                              |
| JURISDICTION          | Ohio                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| DECIDED               | September 7, 2017                                                                                                                                                                                                                                                                                                                                                                                                                         |
| DOCKET                | 2016-0672                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| DISPOSITION           | reversed_and_remanded                                                                                                                                                                                                                                                                                                                                                                                                                     |
| PROCEDURAL POSTURE    | The State of Ohio appealed by discretionary appeal from the Eighth District Court of Appeals' judgment reversing one of Mohamed's kidnapping convictions and remanding for a new trial based on ineffective assistance of counsel and plain error arising from the failure to give a safe-place-unharmd jury instruction.                                                                                                                 |
| STANDARD OF REVIEW    | Ineffective-assistance claims require proof that counsel's performance fell below an objective standard of reasonable representation and that the deficiency prejudiced the defendant. Plain error requires an error or deviation from a legal rule that is plain and obvious and affected the outcome; it is recognized only with the utmost caution, under exceptional circumstances, and to prevent a manifest miscarriage of justice. |
| PRECEDENTIAL VALUE    | Published Ohio Supreme Court opinion; precedential                                                                                                                                                                                                                                                                                                                                                                                        |
| PARTIES               | The State of Ohio v. Shuaib Haji Mohamed                                                                                                                                                                                                                                                                                                                                                                                                  |

## TOPICS

statutory interpretation

ineffective assistance

jury instructions

criminal procedure

appellate procedure

## PRACTICE AREAS

criminal law

criminal procedure

appellate law

## QUESTIONS PRESENTED

1. Whether the term "harm" in the safe-place-unharmed provision of Ohio Revised Code 2905.01(C)(1) includes psychological harm as well as physical harm.
2. Whether trial counsel was ineffective for failing to request a jury instruction on the safe-place-unharmed provision.
3. Whether the trial court committed plain error by failing to provide the unrequested safe-place-unharmed instruction.

## HOLDINGS

1. The term "harm" includes both physical and psychological harm for purposes of determining whether a kidnapping victim was released in a safe place unharmed.
2. Counsel was not ineffective for failing to request a safe-place-unharmed jury instruction.
3. The trial court did not commit plain error by failing to provide the safe-place-unharmed instruction sua sponte.

## KEY QUOTATIONS

*"Under its plain meaning, the statute includes both physical and psychological harm."* (2017-Ohio-7468, ¶ 14)

*"Mohamed failed to overcome the presumption that the failure to request the instruction was a matter of trial strategy."* (2017-Ohio-7468, ¶ 30)

## FACTUAL BACKGROUND

Mohamed, a taxicab driver, drove J.K. after she had been drinking and had become separated from her friend and car. During the ride, Mohamed allegedly touched J.K., attempted to force oral sex, and grabbed her breasts before taking her to her ex-boyfriend's house, where she exited and reported that Mohamed had tried to rape her. The jury credited J.K.'s testimony and convicted Mohamed of multiple felonies, including two kidnapping counts.

## PROCEDURAL HISTORY

A jury convicted Mohamed of gross sexual imposition, attempted gross sexual imposition, two counts of kidnapping, and attempted rape. The Eighth District reversed one kidnapping conviction and remanded for a new trial, concluding that psychological harm did not count under the safe-place-unharmed provision and that counsel was ineffective and the trial court committed plain error. The Supreme Court of Ohio accepted the

State's discretionary appeal, reversed the court of appeals, reinstated the trial court's judgment, and remanded for consideration of the consecutive-sentences assignment of error that the court of appeals had deemed moot.

## DISPOSITION

reversed\_and\_remanded

## REMAND INSTRUCTIONS

Reverse the judgment of the Eighth District Court of Appeals and remand to that court for consideration of the assignment of error relating to consecutive sentences that it had deemed moot.

## CASES CITED

- State v. Wright, 2013-Ohio-1424, 990 N.E.2d 615, ¶ 21 (7th Dist.)
- State v. Henderson, 10th Dist. Franklin No. 85AP-830, 1986 WL 4366 (Apr. 8, 1986)
- State v. Bradley, 42 Ohio St. 3d 136, 538 N.E.2d 373 (1989)
- Strickland v. Washington, 466 U.S. 668, 687-689, 694 (1984)
- State v. Clayton, 62 Ohio St. 2d 45, 47-49, 402 N.E.2d 1189 (1980)
- State v. Carter, 72 Ohio St. 3d 545, 558, 651 N.E.2d 965 (1995)
- State v. Keith, 79 Ohio St. 3d 514, 536, 684 N.E.2d 47 (1997)
- State v. Barnes, 94 Ohio St. 3d 21, 27, 759 N.E.2d 1240 (2002)
- State v. Long, 53 Ohio St. 2d 91, 372 N.E.2d 804 (1978)
- State v. Claytor, 61 Ohio St. 3d 234, 240, 574 N.E.2d 472 (1991)
- State ex rel. White v. Kilbane Koch, 96 Ohio St. 3d 395, 2002-Ohio-4848, 775 N.E.2d 508, ¶ 18
- State ex rel. Baldzicki v. Cuyahoga Cty. Bd. of Elections, 90 Ohio St. 3d 238, 242, 736 N.E.2d 893 (2000)
- Egan v. Natl. Distillers & Chem. Corp., 25 Ohio St. 3d 176, 495 N.E.2d 904 (1986)
- State v. Rogers, 143 Ohio St. 3d 385, 2015-Ohio-2459, 38 N.E.3d 860, ¶¶ 22-23
- United States v. Dominguez Benitez, 542 U.S. 74, 83 (2004)
- Strickland v. Washington, 466 U.S. 668, 694 (1984)
- State v. Mohamed, 2016-Ohio-1116 (8th Dist.)

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