

Appellate Court Decisions - Week of 10/20/14

Of Interest: The Florida Supreme Court held last week that real-time cell-site data is protected under the Fourth Amendment. Here's a link to a story on the case:

<http://www.washingtonpost.com/news/volokh-conspiracy/wp/2014/10/16/florida-supreme-court-holds-real-time-cell-site-data-protected-under-fourth-amendment/>

First Appellate District of Ohio

State v. Heard, 2014-Ohio-4643

Sex Offenses: Evidence: Hearsay

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-130789_10222014.pdf

Summary from the First District:

“The trial court erred when it considered a witness’s prior inconsistent statements as substantive evidence of the defendant’s violation of the sex-offender-verification law, because the statements made to a police officer were hearsay and could only be considered for purposes of impeachment of the witness.

“The trial court erred when it admitted into evidence the sex-offender-verification form, because the form, which recited the police officer’s observations, was hearsay, and the hearsay exception for public records and reports expressly excludes records of police officers’ observations in criminal cases. Further, the statements within the record were inadmissible double hearsay.

“Absent the statements and the sex-offender-verification form that were improperly admitted by the trial court, the state did not present sufficient evidence that the defendant had violated the sex-offender-verification law.”

Second Appellate District of Ohio

Nothing new.

Third Appellate District of Ohio

Nothing new.

Fourth Appellate District of Ohio

Nothing new.

Fifth Appellate District of Ohio

State v. Shepherd, 2014-Ohio-4611

Search: OVI: Motion to Suppress

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/5/2014/2014-ohio-4611.pdf>

The trial court erred in denying Appellant's motion to suppress the search of his vehicle where an anonymous tipster's phone call that a suspicious blue van was parked briefly in a driveway, without more, was insufficient to demonstrate a reasonable and articulable suspicion Appellant was engaged in unlawful behavior.

Sixth Appellate District of Ohio

Nothing new.

Seventh Appellate District of Ohio

Nothing new.

Eighth Appellate District of Ohio

Nothing new.

Ninth Appellate District of Ohio

State v. Littell, 2014-Ohio-4654

Search: Motion to Suppress

Full Decision: <http://www.sconet.state.oh.us/rod/docs/pdf/9/2014/2014-ohio-4654.pdf>

The trial court erred in denying Appellant's motion to suppress the marijuana plants found in his backyard and the guns found in his home. Police observed the plants from a helicopter above Appellant's home. They did not obtain a warrant to enter the backyard, and there was no evidence of exigent circumstances or any other exception to the Fourth Amendment to justify their entering the backyard. Without a warrant, the police should not have entered the backyard. Furthermore, because they could not enter the backyard, their search of the home also should have been suppressed, because they would not have smelled marijuana coming out of the

ventilation system had they not been the backyard. Had they obtained a warrant, everything would have been in plain sight the search would not have been suppressed.

Tenth Appellate District of Ohio

Nothing new.

Eleventh Appellate District of Ohio

Nothing new.

Twelfth Appellate District of Ohio

Nothing new.

Supreme Court of Ohio

State v. Gilbert, 2014-Ohio-4562

Finality of Judgment

Full Decision: <http://www.sconet.state.oh.us/rod/docs/pdf/o/2014/2014-ohio-4562.pdf>

“Once a defendant has been sentenced by a trial court, that court does not have jurisdiction to entertain a motion by the state to vacate the defendant’s guilty plea and sentence based upon the defendant’s alleged violation of a plea agreement.”

State v. Aguirre, 2014-Ohio-4603

Expungement: Restitution

Full Decision: <http://www.sconet.state.oh.us/rod/docs/pdf/o/2014/2014-ohio-4603.pdf>

“An offender does not attain a final discharge, and is thus ineligible to have his or her felony conviction records sealed under R.C. 2953.32(A)(1), until she has paid all court-ordered restitution.”

Sixth Circuit Court of Appeals

Nothing new.

Supreme Court of the United States

Nothing new.