

## Appellate Court Decisions - Week of 11/17/14

### First Appellate District of Ohio

#### **State v. Bremenkamp, 2014-Ohio-5097**

**OVI: Supression**

**Full Decision:** [http://www.hamilton-co.org/appealscourt/docs/decisions/C-130819\\_11192014.pdf](http://www.hamilton-co.org/appealscourt/docs/decisions/C-130819_11192014.pdf)

#### **Summary from the First District:**

“The trial court erred when it granted the defendant’s motion to suppress: the evidence that the defendant had committed multiple traffic violations, had bloodshot eyes, had a moderate-to-heavy odor of alcohol emanating from her, exhibited four of six clues on the horizontal-gaze-nystagmus test, and admitted to having drunk ‘enough to get me arrested’ was sufficient to cause a prudent person to believe that defendant was driving under the influence of alcohol.”

#### **State v. Smith, 2014-Ohio-5095**

**Sentencing: Robbery: Evidence**

**Full Decision:** [http://www.hamilton-co.org/appealscourt/docs/decisions/C-130441\\_11192014.pdf](http://www.hamilton-co.org/appealscourt/docs/decisions/C-130441_11192014.pdf)

#### **Summary from the First District:**

“The imposition of consecutive sentences was proper where the trial court made the mandatory findings, but remand was necessary for the trial court to incorporate its findings in the sentencing entry by nunc pro tunc order.

“The state presented sufficient evidence to support the defendant’s conviction for aggravated robbery where the defendant was present at the robbery and, although the defendant did not physically take anything from the victims, the defendant was stopped within 20 minutes of the crime and had one of the victim’s cellular phones in his possession.”

## ***State v. Muchmore, 2014-Ohio-5096***

**Traffic: Complaint: Amendment**

**Full Decision:** [http://www.hamilton-co.org/appealscourt/docs/decisions/C-140056\\_11192014.pdf](http://www.hamilton-co.org/appealscourt/docs/decisions/C-140056_11192014.pdf)

### **Summary from the First District:**

“The trial court did not err in allowing the state to amend the traffic charge against the defendant from failure to stop after an accident in violation of R.C. 4549.02, which deals with accidents occurring on public roads, to failure to stop after an accident in violation of R.C. 4549.03, which deals with accidents involving damage to property on or adjacent to public roads: the defendant was on notice of the true nature of the offense, he was not deprived of an opportunity to prepare his defense, and the amendment merely clarified information on the traffic ticket.

“The evidence was sufficient to convict the defendant of failure to stop after an accident in violation of R.C. 4549.03: the 24-hour time period to notify police about the property damaged by the accident was not triggered because the defendant did not stop and make a reasonable search for the owner of the property immediately following the accident.

“A fire hydrant is personal property for purposes of the offense of failure to stop after an accident in violation of R.C. 4549.03.”

## ***State v. Reynolds, 2014-Ohio-5159***

**Sex Offenses**

**Full Decision:** [http://www.hamilton-co.org/appealscourt/docs/decisions/C-140096\\_11212014.pdf](http://www.hamilton-co.org/appealscourt/docs/decisions/C-140096_11212014.pdf)

### **Summary from the First District:**

“The trial court did not err in overruling the defendant’s motion to remove his sexual-predator classification arising from a conviction for second-degree assault with a sexual motivation in the state of Washington: although a comparison of the elements did not establish that the Washington statute was substantially similar to felonious assault with a sexual motivation under R.C. 2903.11, the underlying facts of the defendant’s conviction, which included the defendant having bitten off a portion of the victim’s ear when she refused sexual intercourse, demonstrated that the Washington conviction was a sexually-oriented offense under former R.C. 2950.01.

“The trial court did not err in overruling the defendant’s motion to remove a sexual-predator classification where the defendant claimed that Ohio’s reporting requirements were more onerous than those imposed under Washington law: although

the Washington statute provided for more infrequent reporting and allowed for an offender to petition for removal of the classification after 15 years, the defendant did not establish by clear and convincing evidence that the requirements were not substantially similar.

“The trial court did not err in overruling the defendant’s motion to remove a sexual-predator classification where, even though the defendant had submitted a court clinic report indicating that he was at a low risk to reoffend, the facts of the Washington conviction and the defendant’s assertion that he suffered from a mental illness supported the trial court’s conclusion that the defendant had failed to prove by clear and convincing evidence that he was not likely to commit a future sex offense.”

### **State v. Daniels, 2014-Ohio-5160**

#### **Final Appealable Order**

**Full Decision:** [http://www.hamilton-co.org/appealscourt/docs/decisions/C-140242\\_11212014.pdf](http://www.hamilton-co.org/appealscourt/docs/decisions/C-140242_11212014.pdf)

#### **Summary from the First District:**

“Where the trial court entered an order sentencing the defendant for theft and retained jurisdiction at sentencing to render a supplemental order of restitution, the trial court’s subsequent entry ordering restitution, which did not contain the fact of conviction or the entirety of the defendant’s sentence, did not comply with the requirements of *State v. Lester*, 130 Ohio St.3d 303, 2011-Ohio-5204, 958 N.E.2d 142, and *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330, 893 N.E.2d 163, and therefore, did not constitute a final appealable order.”

**Takeaway from this case: When you’re appealing from a supplemental order of restitution, make sure the entry you attach to your appeal includes the conviction and the whole sentence, including the subsequent restitution order.**

#### **Second Appellate District of Ohio**

### **State v. Mitchell, 2014-Ohio-5070**

#### **Indictment**

#### **Full Decision:**

<http://www.supremecourt.ohio.gov/rod/docs/pdf/2/2014/2014-ohio-5070.pdf>

**The trial court erred in allowing the prosecution to amend Appellant’s indictment for drug possession from a fifth-degree felony to a fourth-degree**

felony (from less than 1 gram to 1 to 5 grams). It is irrelevant that Appellant received a sentence within the range for a fifth-degree felony.

The trial court also erred in failing to merge Appellant's three convictions for having weapons while under disability because all three firearms found during the search of his residence were located in the same place. Appellant had simultaneous, undifferentiated possession of all three weapons.

The trial court erred in finding Appellant guilty of and sentencing him for possessing criminal tools rather than drug paraphernalia for his scale and the safe in which he kept the scale.

### Third Appellate District of Ohio

*Nothing new.*

### Fourth Appellate District of Ohio

*Nothing new.*

### Fifth Appellate District of Ohio

**State v. Keserich, 2014-Ohio-5120**

OVI: Search

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/5/2014/2014-ohio-5120.pdf>

The trial court erred in denying Appellant's motion to suppress because the officer lacked reasonable suspicion based upon articulable facts justify the administration of the field sobriety tests. Appellant was driving at 2:00 a.m. on a Sunday morning; his eyes were bloodshot and watery; he had an odor of alcohol on his person; and he admitted to consuming two drinks. However, the officer observed no moving violations – only an equipment violation, which the Fifth District found very compelling.

### Sixth Appellate District of Ohio

*Nothing new.*

### Seventh Appellate District of Ohio

*Nothing new.*

## **Eighth Appellate District of Ohio**

***State v. Moore, 2014-Ohio-5135*** (This is a really important decision that deserves to be addressed by the Supreme Court or the legislature.)

**Sentencing: Consecutive Sentences**

**Full Decision**

### **Summary from the Eighth District:**

“Court of appeals clearly and convincingly finds that the record failed to support the court’s determination under R.C. 2929.14(C)(4) that the defendant deserved consecutive sentences, particularly when the total sentence was three times longer than sentence received by a codefendant who pleaded guilty, but was the mastermind of the crime and by all accounts the primary bad actor. Sentence modified under R.C. 2953.08(G)(2) to order that defendant to serve multiple prison terms concurrently.”

***In re: D.H., 2014-Ohio-5140***

**Juvenile: Juv.R. 18(D): R.C. 2152.14(A)**

**Full Decision:**

<http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2014/2014-ohio-5140.pdf>

### **Summary from the Eighth District:**

“Juvenile was denied his constitutional right to assistance of counsel by trial court’s expedited scheduling of hearing on state’s motion to invoke the adult portion of juvenile’s serious youthful offender sentence. State failed to comply with Juv.R. 18(D) by serving motion on the same day that hearing was held.”

## **Ninth Appellate District of Ohio**

*Nothing new.*

## **Tenth Appellate District of Ohio**

***State v. R.D., 2014-Ohio-5100***

**Juvenile Bindover**

**Full Decision:**

<http://www.supremecourt.ohio.gov/rod/docs/pdf/10/2014/2014-ohio-5100.pdf>

The juvenile court failed to comply with R.C. 2152.12 when it transferred some of Appellant's cases without first conducting an amenability hearing or obtaining a valid waiver of the right to such a hearing in those cases. Therefore, the adult court proceeded in those cases without subject-matter jurisdiction, rendering the judgments of convictions void.

## **Eleventh Appellate District of Ohio**

*Nothing new.*

## **Twelfth Appellate District of Ohio**

### **State v. Painter, 2014-Ohio-5011**

#### **Allied Offenses**

**Full Decision:** <http://www.sconet.state.oh.us/rod/docs/pdf/12/2014/2014-ohio-5011.pdf>

#### **Summary from Judge Rodenberg:**

“Appellant was convicted of multiple drug-related offenses, some of which were single transactions to one undercover agent, while some were separate transactions at different times during the day and to different agents. The trial court should have merged several of the offenses where appellant acted with the same animus and conduct. The charges specific to single transactions to the same agent should have merged, while the separate transactions to different agents were not allied offenses.”

### **State v. Norman, 2014-Ohio-5084**

#### **Search**

#### **Full Decision:**

<http://www.supremecourt.ohio.gov/rod/docs/pdf/12/2014/2014-ohio-5084.pdf>

#### **Summary from Judge Rodenberg:**

Appellant, who was convicted of various drug-related offenses, appealed from the denial of his motion to suppress evidence obtained during a warrantless search of the basement he was residing in. The home appellant resided in was owned by an individual who was on probation and who had consented to warrantless searches of his residence as a term of his probation.

The trial court erred by denying appellant's motion to suppress on the basis that the homeowner-probationer had consented to the search. Where a cotenant who is not on probation shares a residence with a probationer, the warrantless probation search of the residence must be limited to the common areas the probationer is known to occupy or have joint control over. Because the homeowner, who never went in the basement and lacked the ability to unlock the two locks securing the basement door, did not have joint access or control over the basement, the homeowner could not consent or appear to have the authority to consent to a search of the area.

The trial court erred by denying appellant's motion to suppress on the basis that the homeowner-probationer had consented to the search. Where a cotenant who is not on probation shares a residence with a probationer, the warrantless probation search of the residence must be limited to the common areas the probationer is known to occupy or have joint control over. Because the homeowner, who never went in the basement and lacked the ability to unlock the two locks securing the basement door, did not have joint access or control over the basement, the homeowner could not consent or appear to have the authority to consent to a search of the area.

## **Supreme Court of Ohio**

***State v. Morris, 2014-Ohio-5052***

**Standard of Review: Harmless Error**

**Full Decision: <http://www.sconet.state.oh.us/rod/docs/pdf/o/2014/2014-ohio-5052.pdf>**

**“In determining whether to grant a new trial as a result of the erroneous admission of evidence under Evid.R. 404(B), an appellate court must consider both the impact of the offending evidence on the verdict and the strength of the remaining evidence after the tainted evidence is removed from the record.”**

## **Sixth Circuit Court of Appeals**

*Nothing new.*

## **Supreme Court of the United States**

*Nothing new.*