

## Appellate Court Decisions - Week of 11/3/14

### First Appellate District of Ohio

#### **State v. Cook, 2014-Ohio-4900**

#### **Death Penalty: Postconviction**

**Full Decision:** [http://www.hamilton-co.org/appealscourt/docs/decisions/C-140118\\_11052014.pdf](http://www.hamilton-co.org/appealscourt/docs/decisions/C-140118_11052014.pdf)

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

“R.C. 2953.23 did not confer jurisdiction to entertain petitioner’s late and successive postconviction claims challenging his aggravated-murder, aggravated-robbery, and kidnapping convictions and his death sentence: petitioner failed to demonstrate that, but for alleged deficiencies in the grand-jury-foreperson selection process, prosecutorial misconduct, or trial counsel’s ineffectiveness, no reasonable factfinder would have found him guilty or eligible for the death sentence; his claim of actual innocence based on evidence outside the trial record did not demonstrate a constitutional violation in the proceedings leading to his convictions; and the doctrine of ‘cumulative error’ did not provide a basis for reversal without proof of multiple constitutional violations.

“The common pleas court properly declined to declare unconstitutional R.C. 2953.23(A)(1)(b)’s ‘clear and convincing evidence’ standard for jurisdiction to review a late or successive postconviction petition: requiring this showing did not violate rights guaranteed by the Supremacy Clause of the United States Constitution, the doctrine of separation of powers embodied in the federal and state constitutions, or the ‘due course of law’ or ‘open courts’ provisions contained in Article I, Section 16, of the Ohio Constitution (following *State v. Bies*, 1st Dist. Hamilton No. C-020306, 2003-Ohio-442, ¶ 14-15).”

### Second Appellate District of Ohio

#### **State v. Browning, 2014-Ohio-4857**

#### **Sentencing**

**Full Decision:** <http://www.supremecourt.ohio.gov/rod/docs/pdf/2/2014/2014-ohio-4857.pdf>

**The trial court erred in holding that Appellant was ineligible for intervention in lieu of conviction because she was already on misdemeanor**

probation when she pleaded guilty to possession of drug paraphernalia and was sentenced to community control and a license suspension. See *State v. Taylor*, 2d Dist. Clark No. 2013-CA-59, 2014-Ohio-2821.

### ***Ohio v. Brookshire*, 2014-Ohio-4858**

#### Juvenile Bindover

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/2/2014/2014-ohio-4858.pdf>

The adult trial court did not err in sentencing Appellant, a bound-over juvenile, for aggravated robbery with a firearm specification, because bindover was mandatory for that charge. It did err, however, in contravention to the plain language of R.C. 2151.121, by failing to send the five remaining charges (aggravated robbery and kidnapping offenses without firearm specifications) back to the juvenile court for sentencing. (I think I have this right, but the court's opinion is a bit confusing.)

#### Third Appellate District of Ohio

### ***State v. Moore*, 2014-Ohio-4879**

#### Speedy Trial

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/3/2014/2014-ohio-4879.pdf>

The trial court erred in denying Appellant's motion to dismiss because his speedy trial rights were violated. Appellant substantially complied with R.C. 2941.401 to request a final disposition of his pending misdemeanor cases while incarcerated. Although Appellant initially served the request on the wrong prosecutor, the correct prosecutor's response to the motion shows it did receive it. Therefore, the speedy trial time began to run at the time the prosecutor responded, not the time Appellant filed the request. In addition, the prosecution was not prejudiced by Appellant's failure to prove that the warden of the correctional institution was served with his notice and request for final disposition.

**State v. Little, 2014-Ohio-4871**

Search: OVI

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/3/2014/2014-ohio-4871.pdf>

The trial court erred in Appellant's OVI case in denying his motion to suppress the results of his blood test that was taken by a hospital for diagnostic purposes. Appellant's medical records/test results were taken by police without a warrant. "R.C. 2317.02(B)(2)(a) and R.C. 2317.022 do not authorize a warrantless search and seizure of the patient's medical records where no recognized warrant exception exists."

**State v. Clark, 2014-Ohio-4873**

Search: OVI

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/3/2014/2014-ohio-4873.pdf>

The trial court erred in Appellant's OVI case in denying his motion to suppress the results of his blood test that was taken by a hospital for diagnostic purposes. Appellant's medical records/test results were taken by police without a warrant. "R.C. 2317.02(B)(2)(a) and R.C. 2317.022 do not authorize a warrantless search and seizure of the patient's medical records where no recognized warrant exception exists."

**Fourth Appellate District of Ohio**

*Nothing new.*

**Fifth Appellate District of Ohio**

*Nothing new.*

## Sixth Appellate District of Ohio

***State v. Parris, 2014-Ohio-4863***

Non-Prosecution Agreement

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/6/2014/2014-ohio-4863.pdf>

The trial court did not err in granting Appellant's motion to dismiss because he had a non-prosecution agreement with the prosecution. Appellant provided sufficient information (albeit imperfect) to the prosecution, which the prosecution used in another case, for the prosecution to have received the benefit of the bargain.

## Seventh Appellate District of Ohio

*Nothing new.*

## Eighth Appellate District of Ohio

***State v. Lawrence, 2014-Ohio-4797***

Sentencing: Firearm Specifications

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2014/2014-ohio-4797.pdf>

The trial court was required pursuant to R.C. 2929.14(B)(1)(g) to impose two consecutive three-year sentences on Appellant's firearm specifications to his convictions for aggravated robbery and felonious assault. The trial court erred in failing to impose those sentences consecutively.

***State v. Mack, 2014-Ohio-4817***

Dismissal: Pre-Indictment Delay

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2014/2014-ohio-4817.pdf>

The trial court did not err in granting Appellee's motion to dismiss the indictment against him for preindictment delay. In June 2013, Appellee was charged with a rape that allegedly occurred in June 1993. Appellee was 16, the alleged victim as 27. Appellee's identity was never in question. The case

was delayed because of the alleged victim's unwillingness to cooperate. Appellee demonstrated prejudice where two of three investigating detectives were no longer available, the 911 call was unavailable, and he was a juvenile at the time of the alleged offense. Furthermore, the lack of cooperation by the alleged victim as the reason for the delay was not a reason to outweigh the prejudice to Appellee.

### Ninth Appellate District of Ohio

*Nothing new.*

### 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. Hoffman, 2014-Ohio-4795**

Arrests: Warrants

Full Decision: <http://www.sconet.state.oh.us/rod/docs/pdf/o/2014/2014-ohio-4795.pdf>

**“A neutral and detached magistrate or other person authorized under Crim.R. 4(A)(1) must make a probable-cause determination before an arrest warrant can be issued.”**

**“A complaint or affidavit, offered as a basis for the issuance of an arrest warrant, does not support a finding of probable cause when it merely concludes that the person whose arrest is sought has committed a particular crime.”**

**“When the police conduct a search in objectively reasonable, good-faith reliance upon binding appellate precedent, the exclusionary rule does not apply.”**

**State v. Nolan, 2014-Ohio-4800**

Attempted Felony Murder

Full Decision: <http://www.sconet.state.oh.us/rod/docs/pdf/o/2014/2014-ohio-4800.pdf>

**“Attempted felony murder is not a cognizable crime in Ohio.”**

**Sixth Circuit Court of Appeals**

*Nothing new.*

**Supreme Court of the United States**

*Nothing new.*