

## **Appellate Court Decisions - Week of 12/16/13**

### **First Appellate District of Ohio**

#### **State v. Bailey, 2013-Ohio-5512**

##### **Sentencing**

**Full Decision:** [http://www.hamilton-co.org/appealscourt/docs/decisions/C-130245\\_12182013.pdf](http://www.hamilton-co.org/appealscourt/docs/decisions/C-130245_12182013.pdf)

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

“The trial court’s imposition of three consecutive 12-month prison terms was not contrary to law where the sentences were within the range of permissible prison terms for fifth-degree felonies, the trial court made the appropriate statutory findings and the court properly weighed the defendant’s remorse with his criminal history and lack of previous success on community control.

Although the trial court imposed costs as part of the defendant’s judgment, the court was not required to notify the defendant that he may be required to perform community control in lieu of paying the costs because the trial court had imposed prison terms for defendant’s convictions: in March 2013, 2012 Sub.H.B. No. 247 amended R.C. 2947.23(A)(1) so that a trial court is only required to notify a defendant that community service might be ordered for failure to pay court costs when the court imposes a community control sanction or other nonresidential sanction.”

#### **State v. Campbell, 2013-Ohio-5612**

##### **Constitutional Law: Weapons**

**Full Decision:** [http://www.hamilton-co.org/appealscourt/docs/decisions/C-120871\\_12202013.pdf](http://www.hamilton-co.org/appealscourt/docs/decisions/C-120871_12202013.pdf)

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

“The defendant failed to show that R.C. 2923.12, which prohibits carrying a concealed weapon, is unconstitutional on its face beyond a reasonable doubt and does not infringe on the fundamental right to bear arms.

The defendant failed to meet his burden to show that R.C. 2923.12 was unconstitutional as applied to him where he presented no evidence to show that he was indigent and could not afford to apply for a concealed-carry license under R.C. 2923.125(B)(1).”

**State v. Moore, 2013-Ohio-5613**

**Sex Offenses: Procedure: Rules**

**Full Decision:** [http://www.hamilton-co.org/appealscourt/docs/decisions/C-130170\\_12202013.pdf](http://www.hamilton-co.org/appealscourt/docs/decisions/C-130170_12202013.pdf)

**Summary from the First District:**

“The trial court erred in granting a motion that the defendant had styled a ‘motion to suppress’ in a prosecution for soliciting and loitering to engage in solicitation because the motion was in essence a motion to dismiss the charges based on an asserted lack of evidence, and pursuant to Crim.R. 12(C), which provides that a motion to dismiss can raise only matters that are capable of determination without a trial of the general issues, such a motion may be made only at trial at the close of the state’s case-in-chief.”

**Second Appellate District of Ohio**

**State v. Flanagan, 2013-Ohio-5456**

**Public Indecency: Sufficiency of the Evidence**

**Full Decision:** <http://www.sconet.state.oh.us/rod/docs/pdf/2/2013/2013-ohio-5456.pdf>

The state failed to present legally sufficient evidence to convict the defendant of public indecency in violation of R.C. 2907.09(A)(3). Although police did apparently catch him in the midst of a sexual act with a woman, the act was not likely to be viewed by anyone – and even if it was, he was not reckless in that regard – because he took the woman to a secluded, empty industrial area at dusk to do the act.

**State v. Hawkins, 2013-Ohio-5458**

**Search: Motion to Suppress: Drugs**

**Full Decision:** <http://www.sconet.state.oh.us/rod/docs/pdf/2/2013/2013-ohio-5458.pdf>

The trial court erred in denying the defendant’s motion to suppress the pipe and marijuana in his pocket where the pat-down of the defendant was not supported by reasonable suspicion that he was armed or dangerous, and he did not voluntarily consent to the pat-down. The defendant was in a high-drug-activity area, left the sidewalk the police officers were on to cut across the grass to an apartment complex, appeared nervous, and was shaking when the officers confronted him. The officer also testified that he smelled raw marijuana during the pat-down.

## **Fifth Appellate District of Ohio**

***State v. Snyder, 2013-Ohio-5570***

### **Corrupting Another With Drugs: Pregnant Woman**

**Full Decision:** <http://www.supremecourt.ohio.gov/rod/docs/pdf/5/2013/2013-ohio-5570.pdf>

A pregnant woman's fetus cannot be "another" for the purposes of convicting the woman of Attempted Corrupting Another with Drugs, R.C. 2923.02(A) and R.C. 2925.02(A)(3).

## **Sixth Appellate District of Ohio**

***State v. Jimenez, 2013-Ohio-5469***

### **OVI: Motion to Suppress**

**Full Decision:** <http://www.sconet.state.oh.us/rod/docs/pdf/6/2013/2013-ohio-5469.pdf>

The trial court did not err in granting the defendant's motion to suppress the results of his BAC Datamaster alcohol breath test where the Datamaster machine failed several calibration tests a couple of weeks after the defendant's test. Furthermore, a suppression hearing is the "proper forum to rebut the presumption of the validity of a chemical alcohol breath test \*\*\*."

## **Seventh Appellate District of Ohio**

***State v. Bennett, 2013-Ohio-5524***

### **Child Endangering: Sufficiency of the Evidence**

**Full Decision:** <http://www.supremecourt.ohio.gov/rod/docs/pdf/7/2013/2013-ohio-5524.pdf>

The defendant's conviction for child endangering in violation of R.C. 2919.22(A) was not supported by sufficient evidence. The defendant had her friend discipline her 8-year-old autistic son by spanking him (which resulted in bruises) and having him do military-style exercises (which resulted in a rug burn and scratches on the boy's body).

## **Supreme Court of Ohio**

***State v. Griffin, Slip Opinion No. 2013-Ohio-5481***

**Criminal Procedure: Final Orders: Defective Judgment Entry: Resentencing Entry: Waiver of Three-Judge Panel: R.C. 2945.06: Res Judicata**

**Full Decision:** <http://www.sconet.state.oh.us/rod/docs/pdf/o/2013/2013-ohio-5481.pdf>

This is a very fact-specific case that doesn't have wide applicability, but if you're interested in reading a history of the death penalty in Ohio, or are curious about death-penalty procedure, this case is worth a read.

## **Sixth Circuit Court of Appeals**

***Nothing new.***

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

***Nothing new.***