

## **Appellate Court Decisions - Week of 2/3/14**

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

#### **State v. Ingles, 2014-Ohio-363**

**Postconviction: Postrelease Control**

**Full Decision:** [http://www.hamilton-co.org/appealscourt/docs/decisions/C-130311\\_02052014.pdf](http://www.hamilton-co.org/appealscourt/docs/decisions/C-130311_02052014.pdf)

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

“Defendant’s postconviction petition was subject to dismissal for lack of jurisdiction: the postconviction statutes did not confer jurisdiction to review the petition, because it did not satisfy R.C. 2953.21(A)(2)’s time restrictions or R.C. 2953.23’s jurisdictional requirements; and the claimed deficiencies in the judgments of conviction and claimed sentence-enhancement errors would not have rendered defendant’s convictions void.

“The common pleas court erred in failing to correct defendant’s sentences to properly impose postrelease control: the sentences were void to the extent that he had not been notified concerning postrelease control; and the sentences were subject to review and correction, when defendant’s postconviction petition brought the matter to the court’s attention.”

#### **State v. Morales, 2014-Ohio-362**

**Procedure/Rules: Evidence: Discovery: Competency**

**Full Decision:** [http://www.hamilton-co.org/appealscourt/docs/decisions/C-120670\\_02052014.pdf](http://www.hamilton-co.org/appealscourt/docs/decisions/C-120670_02052014.pdf)

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

“The time requirements of Crim.R. 45(D) do not apply to a motion in limine that seeks an anticipatory ruling by the trial court on the admission of evidence.

“The trial court’s granting of the state’s motion in limine was not a final ruling on the admission of the evidence at trial and, therefore, the granting of the motion in limine cannot be challenged on appeal where the defendant did not seek to introduce or proffer the evidence at trial.

“The trial court’s exclusion of evidence in a domestic violence prosecution concerning the citizenship status of the victim, which precluded cross-examination on immigration benefits that the victim may have been eligible for under the U-Visa program as a result of her accusation, was not an abuse of discretion or a violation of

the defendant's confrontation rights: the defendant failed to proffer the proper foundation to demonstrate that the evidence was probative impeachment evidence and, moreover, that the probative value of the evidence would not be substantially outweighed by the dangers of unfair prejudice and of confusing the issues.

"The defendant failed to demonstrate plain error with respect to the trial court's determination that a nine-year-old child was competent to testify after a pretestimony voir dire of the child: the record demonstrates the child's ability to receive just impressions of the facts and his ability to relate those facts truly, even though he nodded in response to some questions concerning his ability to appreciate his responsibility to be truthful, because the nodding was in response to questions seeking a 'yes' or 'no' answer and nothing in the record contradicts the trial court's determination that the nods were intended as affirmative responses.

"The trial court's exclusion of the defendant's undisclosed 'rebuttal' witnesses as a discovery violation, without first considering the appropriate factors, including the effectiveness of a lesser sanction, was an abuse of discretion; but the error, which did not have the effect of denying the defendant the right to present a defense, was harmless because it merely prevented impeachment on a collateral matter, which the defendant accomplished by other means."

## **Second Appellate District of Ohio**

### **State v. Widener, 2014-Ohio-333**

**Expungement: Importuning**

**Full Decision:** <http://www.sconet.state.oh.us/rod/docs/pdf/2/2014/2014-ohio-333.pdf>

**Pursuant to R.C. 2953.36(F), it was error to seal the record of conviction of Appellant's first-degree misdemeanor conviction for contributing to the delinquency of a child.**

## **Third Appellate District of Ohio**

*Nothing new.*

## **Fourth Appellate District of Ohio**

*Nothing new.*

## **Fifth Appellate District of Ohio**

*Nothing new.*

## Sixth Appellate District of Ohio

*Nothing new.*

## Seventh Appellate District of Ohio

*Nothing new.*

## Eighth Appellate District of Ohio

### **State v. Tatum, 2014-Ohio-386**

Right to Counsel

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2014/2014-ohio-386.pdf>

In a robbery trial centered on a possible drug deal, the trial court abused its discretion when it prevented defense counsel from properly arguing his theory of the case – that a robbery never happened.

### **State v. Scott, 2014-Ohio-392**

Search: Motion to Suppress

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2014/2014-ohio-392.pdf>

Appellant was first arrested in connection with a warrant for another person who falsely used his name as an alias. He was released from custody after police determined they had the wrong person. Soon after being released, Appellant filed a complaint for identity theft against the person who used his name. However, his name was never removed from the original warrant as an alias. A month after the first arrest, Appellant was again arrested in connection with the incorrect warrant. Appellant informed the police about the mistake, but they did not investigate the validity of his claim. The officers proceeded to search Appellant and found drugs on his person. Based on those facts, the Eighth District held that the trial court erred in denying Appellant's motion to suppress the drugs.

## Ninth Appellate District of Ohio

### **State v. Harper, 2014-Ohio-347**

Motion to Suppress: Search

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/9/2014/2014-ohio-347.pdf>

Where the State Trooper failed to testify regarding the speed at which Appellant's vehicle was traveling, and where the dash cam video did not reflect the Trooper's testimony regarding Appellant's moving violations, the trial court erred in denying Appellant's motion to suppress the search of her vehicle. Furthermore, where the Trooper omitted an item from the inventory search form, and failed to volunteer that he received a tip shortly before the stop to be on the lookout for a small black four-door car traveling northbound, and that "Isha Harper, 31, might be passing through Medina County and involved in drug-related activity," that inventory search was not conducted properly and was a "disingenuous and pretext for a warrantless search."

### **State v. Broadt, 2014-Ohio-370**

Intervention in Lieu of Conviction: R.C. 2951.041(F)

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/9/2014/2014-ohio-370.pdf>

The trial court erred in terminating Appellant's involvement in the Intervention in Lieu of Conviction program at a status call meeting and without notice that it would be terminating her involvement.

## 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**

*Nothing new.*

**Sixth Circuit Court of Appeals**

*Nothing new.*

**Supreme Court of the United States**

*Nothing new.*