

Appellate Court Decisions - Week of 5/12/14

First Appellate District of Ohio

Cincinnati v. Neff, 2014-Ohio-2026

OVI: Evidence: Subpoena Duces Tecum: Final Appealable Order

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-130411_05142014.pdf

Summary from the First District:

“The trial court’s denial of a motion to quash the subpoena duces tecum issued to the Ohio Department of Health in an OVI prosecution was a final appealable order: although discovery orders in general are deemed to be interlocutory, the issuance of a subpoena is a provisional remedy under R.C. 2505.02 (A)(3), and the denial of a motion to quash is final and appealable under R.C. 2505.02(B)(4).

“The trial court erred in denying the motion to quash without conducting an evidentiary hearing: such a hearing is required for the proponent of the subpoena to establish that (1) the subpoenaed material is evidentiary and relevant; (2) the material is not otherwise procurable; (3) the proponent cannot prepare for trial without production of the material; and (4) the subpoena is made in good faith and not intended as a general ‘fishing expedition.’”

State v. Pate, 2014-Ohio-2029

OVI: Motion to Suppress

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-130490_05142014.pdf

Summary from the First District:

“The trial court did not err in granting the defendant’s motion to suppress: absent findings of fact made on the record or a request by the state for such findings, the appellate court’s review is limited to whether there is sufficient evidence in the record to support the trial court’s legal conclusions that led to the granting of the motion.”

State v. McKay, 2014-Ohio-2027

Traffic: Laser Device: Judicial Notice

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-130657_05142014.pdf

Summary from the First District:

“In a prosecution for speeding, the trial court erred in taking judicial notice of the scientific accuracy and reliability of the Ultralyte laser device based upon expert testimony in a prior case about the scientific accuracy and reliability of an LTI 20-20 laser device, where the trooper who had measured the defendant’s speed with the Ultralyte device could not identify the manufacturer of the device and could not testify that the Ultralyte laser device was the same device as the LTI 20-20.

“Because the trial court erred in taking judicial notice of the accuracy and reliability of the Ultralyte laser device, the trooper’s testimony regarding the readings from the device was inadmissible, and because the trooper’s visual estimation of the defendant’s speed was insufficient as a matter of law under R.C. 4511.091(C)(1) to demonstrate that the defendant had been speeding, no rational trier of fact could have found that the state had proved each element of the speeding offense beyond a reasonable doubt; therefore, the defendant’s conviction for speeding must be reversed and the defendant must be discharged from further prosecution.”

In Re: T.J.B., 2014-Ohio-2028

Juvenile: Jurisdiction

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-130725_05142014.pdf

Summary from the First District:

“The juvenile court properly dismissed for lack of subject-matter jurisdiction the birth mother’s petition, which sought to revoke the permanent surrender of her three-day-old son to a private child-placing agency for the sole purpose of obtaining the adoption of the child, because R.C. 2151.23(A)(9) only references the jurisdiction of the juvenile court in conjunction with ‘requests for approval of permanent custody agreements, that are filed pursuant to section 5103.15 of the Revised Code’ and R.C. 5103.15(B)(2) does not require juvenile court approval to effect the permanent surrender of a child under six months of age to a private child-placing agency when the surrender is made solely for the purpose of obtaining the adoption of the child.”

State v. Tippett, 2014-Ohio-2084

Sentencing: Restitution

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-130718_05162014.pdf

Summary from the First District:

“Where the defendant caused damage to a stolen car he had been driving, and the vehicle’s owner was compensated for the damage by her insurance company, the trial court erred in ordering the defendant to pay restitution to the insurance company because the insurance company was not a ‘victim’ of the defendant’s crimes under R.C. 2929.18(A)(1). (*State v. Martin*, 1st Dist. Hamilton No. C-110204, 2013-Ohio-2441, followed.)”

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

Nothing new.

Sixth Appellate District of Ohio

State v. Cornett, 2014-Ohio-1988

Sentencing: Failure to Appear

Full Decision: <http://www.supremecourt.ohio.gov/rod/docs/pdf/6/2014/2014-ohio-1988.pdf>

The trial court erred in convicting Appellant of felony attempted failure to appear where his underlying conviction was a first-degree misdemeanor theft offense. It should have convicted him of a second-degree misdemeanor offense under R.C. 2923.02(E)(1).

Seventh Appellate District of Ohio

Nothing new.

Eighth Appellate District of Ohio

Nothing new.

Ninth Appellate District of Ohio

Nothing new.

Tenth Appellate District of Ohio

State v. Westover, 2014-Ohio-1959

Search: Motion to Suppress

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/10/2014/2014-ohio-1959.pdf>

The trial court erred in denying Appellant's motion to suppress where Appellant and a group of people were standing around a legally parked car, the officer decided doing so was suspicious, parked behind the group, got out, took all of their IDs to run a warrant check, found an open warrant for Appellant, then found heroin while searching him incident to arrest. The Tenth District held that when the officer took Appellant's identification to her police cruiser to run the warrants check, she had unconstitutionally seized him under the Fourth Amendment.

Eleventh Appellate District of Ohio

Nothing new.

Twelfth Appellate District of Ohio

Nothing new.

Supreme Court of Ohio

State v. Kirkland, 2014-Ohio-1966

Aggravated Murder: Death Penalty

Full Decision: <http://www.sconet.state.oh.us/rod/docs/pdf/o/2014/2014-ohio-1966.pdf>

The Supreme Court affirmed Appellant's death penalty sentence, despite finding that he was prejudiced by prosecutorial misconduct in the course of the penalty-phase closing arguments. The analysis of the prosecutorial misconduct begins on page 15. There are also two dissents on that issue.

State v. Stevens, 2014-Ohio-1932

R.C. 2923.31(I)(2)(c):Engaging In A Pattern of Corrupt Activity

Full Decision: <http://www.sconet.state.oh.us/rod/docs/pdf/o/2014/2014-ohio-1932.pdf>

The minimum monetary threshold found in Ohio's RICO statute – R.C. 2923.31(I)(2)(c) – “must be applied to each individual within the enterprise and not to the enterprise as a whole. In essence, unless a person is involved in transactions on behalf of the enterprise in an amount equal to or greater than the statutory threshold, that person is not susceptible to being prosecuted under the Ohio RICO statutes. The person can still be prosecuted for the underlying drug charges, as the defendants were in this case, but the defendant's first-degree felony convictions under Ohio's RICO statutes must be overturned.”

Sixth Circuit Court of Appeals

Nothing new.

Supreme Court of the United States

Nothing new.