

## **Appellate Court Decisions - Week of 5/5/14**

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

#### **State v. Hatter, 2014-Ohio-1910**

##### **Appellate Review: Procedure: Rules**

**Full Decision:** [http://www.hamilton-co.org/appealscourt/docs/decisions/C-130326\\_05072014.pdf](http://www.hamilton-co.org/appealscourt/docs/decisions/C-130326_05072014.pdf)

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

“The trial court correctly recast the defendant’s motion in limine as a motion to suppress evidence where the trial court’s granting of the motion restricted the state in the presentation of its evidence and rendered the state’s proof so weak in its entirety that any reasonable probability of effective prosecution was destroyed, and the state had a right to appeal the trial court’s decision under R.C. 2945.67 and Crim.R. 12(K).

“The trial court erred in granting the defendant’s motion to prohibit the state from presenting testimony from three witnesses based solely on summaries of the witnesses’ statements to police that the defendant had attached to his motion.”

#### **State v. Smith, 2014-Ohio-1955**

##### **Homicide: Evidence: Motion to Suppress: Inufficient Evidence**

**Full Decision:** [http://www.hamilton-co.org/appealscourt/docs/decisions/C-130239\\_05092014.pdf](http://www.hamilton-co.org/appealscourt/docs/decisions/C-130239_05092014.pdf)

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

“The trial court did not err in denying the defendant’s motion to suppress a statement that he had given to police the day after his son’s death: although the defendant made reference to counsel, he did not unambiguously invoke his right to consult with an attorney, and there was no showing of overreaching or coercion on the part of the investigating officers.

“The trial court did not err in admitting evidence that the defendant had abused his young son in the past because he believed he was not the child’s father: the prior acts were admissible under Evid.R. 404 to demonstrate motive and to demonstrate that the defendant had acted knowingly in causing the victim serious physical harm.

“The trial court did not err in admitting autopsy photographs depicting the child victim with his skin removed: the state alleged that the defendant had caused the child’s death by inflicting internal injuries, and the photographs were relevant to demonstrate the nature of those injuries.

“The defendant’s conviction for murder was based on sufficient evidence and was not against the manifest weight of the evidence, where the state demonstrated that the victim had died as a result of trauma to his abdomen and where the defendant had admitted that he had punched the victim in the stomach.”

### **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**

#### **State v. Morgan, 2014-Ohio-1900**

**Search: Motion to Suppress**

**Full Decision:**

**<http://www.supremecourt.ohio.gov/rod/docs/pdf/5/2014/2014-ohio-1900.pdf>**

**The trial court erred in denying Appellant’s motion to suppress where police lawfully performed a “knock and talk” at Appellant’s residence based on anonymous tips alleging a marijuana grow operation and methamphetamine lab, but did not observe any illegal activity prior to other officers unlawfully entering the curtilage of Appellant’s property and viewing marijuana plants on an elevated raised deck that was not visible from the front of Appellant’s home.**

### **Sixth Appellate District of Ohio**

*Nothing new.*

### **Seventh Appellate District of Ohio**

*Nothing new.*

## Eighth Appellate District of Ohio

### ***State v. Walker, 2014-Ohio-1827***

(See also *State v. Shabazz, 2014-Ohio-1828* – Co-defendant, similar reasoning, but Eighth District also vacated his complicity to murder, felonious assaults related to a firearm, and weapon under disability convictions.)

Aggravated Murder: Insufficient Evidence

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2014/2014-ohio-1827.pdf>

There was insufficient evidence of prior calculation and design to support defendant's aggravated murder conviction where there was no evidence Appellant knew the shooting victim and the surveillance video of the fight in the night club where the murder occurred showed that the fight spilled over into Appellant's area – proving he did not choose the murder site. Finally, the series of events leading to the murder were essentially spontaneous. Appellant's other convictions, including murder, stood.

### ***State v. Klembus, 2014-Ohio-1830***

OVI: R.C. 4511.19(G)(1)(d): R.C. 2941.1413: Constitutionality: Equal Protection

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2014/2014-ohio-1830.pdf>

Appellant was charged with two OVI counts under R.C. 4511.19(A)(1)(a) and (A)(1)(h). Both counts contained clauses under R.C. 4511.19(G)(1)(d) and specifications R.C. 2941.1413(A) for Appellant having been convicted of five or more equivalent offenses in the past 20 years. Appellant filed a motion to dismiss the specifications, arguing they violated the Equal Protection Clauses of the United States and Ohio Constitutions. The trial court denied the motion. The Eighth District disagreed, reversing the denial of Appellant's motion to dismiss. It held that the specification does in fact violate the Equal Protection Clause because "there is no requirement that the specification be applied with uniformity, and there is no logical rationale for the increased penalty imposed on some repeat OVI offenders and not others without requiring proof of some additional element to justify the enhancement, especially since the class is composed of offenders with similar histories of OVI convictions."

## **Ninth Appellate District of Ohio**

**State v. Cunningham, 2014-Ohio-1924**

Search: Motion to Suppress

Full Decision: <http://www.sconet.state.oh.us/rod/docs/pdf/9/2014/2014-ohio-1924.pdf>

The trial court erred in denying Appellant's motion to suppress where police received a tip that an African-American man in jeans and a neon-green shirt was selling heroin in a park, two officers approached Appellant – who matched that description – and Appellant backed away from one, but was prevented from leaving the other behind him in a police cruiser. Appellant refused a pat down, the officers arrested him for obstructing official business, then searched him, finding a gum wrapper containing heroin. The Ninth District said the mere fact that Appellant matched the tipster's description did not provide reasonable, articulable suspicion to temporarily seize him.

## **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.*