

Appellate Court Decisions - Week of 6/2/14

First Appellate District of Ohio

Nothing new.

Second Appellate District of Ohio

State v. Gorby, 2014-Ohio-2445

Motion to Suppress: Search

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/2/2014/2014-ohio-2445.pdf>

The trial court erred in denying Appellant's motion to suppress where "the State failed to prove that the officer conducting the pat-down search for weapons had probable cause to believe that 'lumpy cellphone bag' she felt underneath [Appellant's] waistband was contraband."

Third Appellate District of Ohio

Nothing new.

Fourth Appellate District of Ohio

Nothing new.

Fifth Appellate District of Ohio

State v. Harris, 2014-Ohio-2415

Forfeiture

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/5/2014/2014-ohio-2415.pdf>

The trial court erred in ordering Appellant to forfeit his handgun where it did not comply with R.C. 2981.04. The indictment charging the offenses contained no specification covering property subject to forfeiture under R.C. 2981.01. The statutes under which he was charged and ultimately pled guilty do not specifically authorize firearm forfeiture – improperly handling firearms in a motor vehicle, driving while under the influence of

alcohol or drugs, failure to stay within marked lanes, speeding, carrying a concealed weapon, and having physical control of a vehicle while under the influence.

In Re: K.H., 2014-Ohio-2488

Delinquency: Complicity to Drug Trafficking: Sufficiency

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/5/2014/2014-ohio-2488.pdf>

Appellant's conviction for complicity to drug trafficking was not supported by sufficient evidence where the evidence at trial showed he merely intended to purchase drugs later from boy selling them, not that he intended to sell or offer to sell the drugs he purchased.

Sixth Appellate District of Ohio

State v. Johnson, 2014-Ohio-2435

Service

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/6/2014/2014-ohio-2435.pdf>

The trial court erred in denying Appellant's Crim.R. 29 motion in his trial on 18 counts of violating a protection order where it failed to prove he had been served with the protection order. Notably, this protection order was issued under R.C. 2919.27(A)(1), while the Ohio Supreme Court case on this issue, *State v. Smith*, 136 Ohio St.3d 1, was based on R.C. 2919.27(A)(2).

Seventh Appellate District of Ohio

Nothing new.

Eighth Appellate District of Ohio

Olmstead Falls v. Clifford, 2014-Ohio-2379

Sentencing

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2014/2014-ohio-2397.pdf>

The trial court erred in refusing to give Appellant credit for time served on his misdemeanor offense where Appellant had a pending felony case when he was sentenced to 180 days on his misdemeanor offense, then he was sentenced to one year on the felony case while serving jail time on the misdemeanor offense, and he was transferred to prison to serve the one-year sentence. The trial court could not order the misdemeanor offense be served consecutively to a future sentence, only one sentenced at the same time.

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

State v. Waltz, 2014-Ohio-2474

Community Control: Revocation: Nunc Pro Tunc

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/12/2014/2014-ohio-2474.pdf>

The trial court erred in revoking Appellant's community control because it had expired. When the trial court sentenced Appellant to community, while it clearly intended to sentence him to five years of community control, the record also clearly shows the imposed sentence as one year of community control. The court's attempt to later fix its sentence with a nunc pro entry failed because such entries can only be used to fix clerical errors, not mere errors of reflecting the court's intent.

Supreme Court of Ohio

Nothing new.

Sixth Circuit Court of Appeals

Nothing new.

Supreme Court of the United States

Nothing new.