

Appellate Court Decisions - Week of 7/7/14

First Appellate District of Ohio

Nothing new.

Second Appellate District of Ohio

Nothing new.

Third Appellate District of Ohio

Nothing new.

Fourth Appellate District of Ohio

State v. Frazier, 2014-Ohio-3025

Sentencing: Aggravated Arson: Merger

Full Decision: <http://www.sconet.state.oh.us/rod/docs/pdf/4/2014/2014-ohio-3025.pdf>

The trial court erred in failing to merge Appellant's convictions for aggravated arson under both R.C. 2909.02(A)(1) and (A)(2) where they were both committed with the same animus – setting fire to the camper with his parents inside.

Fifth Appellate District of Ohio

State v. Fisher, 2014-Ohio-3029

Search: Suppression

Full Decision: <http://www.sconet.state.oh.us/rod/docs/pdf/5/2014/2014-ohio-3029.pdf>

The trial court erred in denying Appellant's motion to suppress where: 1. An arrest warrant for a third party in Appellant's apartment did not justify entry – a search warrant would be necessary; 2. A domestic violence allegation (not ongoing) did not support entry into the apartment, and there were no exigent circumstances to justify entry either.

Sixth Appellate District of Ohio

Nothing new.

Seventh Appellate District of Ohio

State v. Smith, 2014-Ohio-2933

OVI: Suppression

Full Decision: <http://www.sconet.state.oh.us/rod/docs/pdf/7/2014/2014-ohio-2933.pdf>

The trial court erred in denying Appellant's motion to suppress his field sobriety tests in his OVI case where the NHTSA testing manual was not submitted as evidence, used, or mentioned by the state at the suppression hearing, despite defense counsel's mention of the NHTSA manual in questioning the officer regarding clues on the walk-and-turn test. The officer also admitted that he did not perform an assessment of Appellant's medical conditions prior to conducting the HGN or one-leg-stand tests.

Eighth Appellate District of Ohio

Nothing new.

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

Nothing new.

Supreme Court of Ohio

***State ex rel. Sylvester v. Neal*, 2014-Ohio-2926**

Bail

Full Decision: <http://www.sconet.state.oh.us/rod/docs/pdf/o/2014/2014-ohio-2926.pdf>

Criminal Rule 46(A) is unconstitutional insofar as it allows a court to require a bond secured by a 10 percent cash deposit under Criminal Rule 46(A)(2). Bail may be set under Criminal Rule 46(A)(2), so long as a surety bond is accepted as an alternative.

Sixth Circuit Court of Appeals

***McCarley v. Kelley*, No. 12-3825**

Habeas Corpus: Confrontation Clause

Full Decision: <http://www.ca6.uscourts.gov/opinions.pdf/14a0145p-06.pdf>

A case to keep an eye on, from the Sixth Circuit:

“Petitioner, Willard McCarley, an Ohio state prisoner proceeding in forma pauperis, appeals the district court’s denial of his petition for a writ of habeas corpus under 28 U.S.C. § 2254. McCarley argued in his petition that the Ohio Court of Appeals unreasonably applied clearly established Sixth Amendment law by allowing a child psychologist to read into evidence the testimonial hearsay statements of a three-and-a-half year-old declarant, where the declarant was not subject to any prior cross-examination. The district court held that the Ohio state courts unreasonably applied the rule of *Crawford v. Washington*, 541 U.S. 36 (2004), but denied McCarley’s petition on the ground that the Sixth Amendment violation was harmless error under *Brecht v. Abrahamson*, 507 U.S. 619 (1993), because it could not have substantially influenced the jury’s verdict. This Court subsequently granted McCarley a certificate of appealability on his Sixth Amendment claim. We now REVERSE the district court’s conclusion that the Sixth Amendment error was harmless and REMAND to the district court with instructions to grant McCarley a conditional writ of habeas corpus.”

Supreme Court of the United States

Nothing new.