

Appellate Court Decisions - Week of 9/29/14

First Appellate District of Ohio

State v. Jacquillard, 2014-Ohio-4394

Sentencing

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-140001_10032014.pdf

Summary from the First District:

“The imposition of consecutive sentences was proper where the trial court made the mandatory findings and those findings were supported by the record, but remand was necessary for the trial court to incorporate its findings in the sentencing entry by nunc pro tunc order. *See State v. Bonnell*, Slip Opinion No. 2014-Ohio-3177.”

Second Appellate District of Ohio

State v. Holzappel, 2014-Ohio-4251

OVI: Motion to Suppress

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/2/2014/2014-ohio-4251.pdf>

The trial court erred in denying Appellant’s motion to suppress the results of his HGN test where the officer did not testify about what is required by the NHTSA manual, or whether he followed the manual when administering the HGN test. The state also elicited few details about how the field sobriety test was performed. The state failed to introduce the manual into evidence either.

State v. Terrell, 2014-Ohio-4344

Protection Order Violation: Service

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/2/2014/2014-ohio-4344.pdf>

Appellant’s conviction for violating a protection order was against the manifest weight of the evidence where the state failed to prove beyond a reasonable doubt that he was served with a copy of the final protection

order. The state proved he was served with the ex parte order, but Appellant was not present at the final hearing and the state presented no evidence he was served with the final order.

Third Appellate District of Ohio

Nothing new.

Fourth Appellate District of Ohio

Nothing new.

Fifth Appellate District of Ohio

State v. Daniel, 2014-Ohio-4274

Murder: Sufficiency: Manifest Weight

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/5/2014/2014-ohio-4274.pdf>

Appellant's conviction for aggravated murder was based on insufficient evidence that he acted with prior calculation and design. He and the victim did not know each other. The victim was a bystander who tried to intervene in an argument Appellant was having with his girlfriend. There was no prior animosity between Appellant and the victim. There was no evidence Appellant gave thought or preparation to choosing the murder weapon or the site. The evidence presented at trial demonstrated that Appellant's act was spontaneous. Appellant's conviction is now entered as murder.

Sixth Appellate District of Ohio

Nothing new.

Seventh Appellate District of Ohio

State v. Johnson, 2014-Ohio-4253

Sentencing: Allied Offenses

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/7/2014/2014-ohio-4253.pdf>

The trial court erred in failing to merge Appellant's resisting arrest and assault charges where Appellant's "immediate motive involved the commission of one offense – resisting arrest – but in the course of committing that crime she committed another – assault – and therefore [possessed] a single animus."

Eighth Appellate District of Ohio

State v. Strong, 2014-Ohio-4206

Batson

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2014/2014-ohio-4206.pdf>

The trial court's decision to overrule Appellant's objection to the state's peremptory challenge to one of two African-American jurors was clearly erroneous. The state moved to exercise a peremptory challenge of the juror without posing any questions of him. The proffered reason for doing so was the juror had "an extremely wide-eyed look, like he has a thousand-yard stare, and I have concerns that he will be able to pay attention." The trial court failed to appropriately evaluate the context of the proffered reasoning. Where the record touched upon the juror in question, it refuted the state's contention.

Lakewood v. Armstrong, 2014-Ohio-4219

Driving Under Suspension

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2014/2014-ohio-4219.pdf>

Appellant's conviction for driving under suspension was based on insufficient evidence where he was granted driving privileges in one municipal court, and he produced the order granting those privileges in the municipal court where he was charged with driving under suspension. The trial court also exceeded its authority when it sua sponte found the order granting driving privileges to be invalid, then convicted Appellant.

Ninth Appellate District of Ohio

State v. Velez, 2014-Ohio-4328

Ineffective Assistance

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/9/2014/2014-ohio-4328.pdf>

Trial counsel was ineffective where he failed to assert Appellant's speedy trial rights. Appellant was prejudiced where he signed a waiver of time of unlimited duration, but counsel failed to file a formal written objection to the form waiver that Appellant signed. Furthermore, there was a lengthy delay prior to trial, and Appellant repeatedly asked to have his trial.

Tenth Appellate District of Ohio

Nothing new.

Eleventh Appellate District of Ohio

State v. Brunty, 2014-Ohio-4307

Search: Blood Sample: Motion to Suppress

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/11/2014/2014-ohio-4307.pdf>

The trial court did not err in granting Appellant's motion to suppress the results of his blood test where he did not voluntarily consent to having his blood drawn. Because the Trooper had no suspicion Appellant was under the influence of drugs or alcohol, the implied consent statute did not apply. The blood draw was involuntary because after Appellant refused to voluntarily provide a sample, the Trooper told him his blood sample would be obtained by force, if necessary.

Twelfth Appellate District of Ohio

Nothing new.

Supreme Court of Ohio

City of Cincinnati v. Ilg, 2014-Ohio-4258

Discovery: OVI: Intoxilyzer 8000

Full Decision: www.sconet.state.oh.us/rod/docs/pdf/o/2014/2014-ohio-4258.pdf

“The approval of a breath-analyzer machine by the director of the Ohio Department of Health as a device to test breath-alcohol concentration does not preclude an accused from challenging the accuracy, competence, admissibility, relevance, authenticity, or credibility of specific test results or whether the specific machine used to test the accused operated properly at the time of the test.”

Sixth Circuit Court of Appeals

Nothing new.

Supreme Court of the United States

Nothing new.