

## Appellate Court Decisions - Week of 8/25/14

### First Appellate District of Ohio

#### **State v. Simmons, 2014-Ohio-3695**

#### **Murder**

**Full Decision:** [http://www.hamilton-co.org/appealscourt/docs/decisions/C-130126\\_08272014.pdf](http://www.hamilton-co.org/appealscourt/docs/decisions/C-130126_08272014.pdf)

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

“The trial court did not abuse its discretion by overruling the defendant’s motions for a mistrial with prejudice based on discovery violations, and the defendant was not denied a fair trial by those violations, where the state’s delayed disclosure of some evidence helpful to the defense was a not a willful violation of Crim.R. 16, and the evidence was disclosed in sufficient time for its effective use at trial.

“The defendant failed to demonstrate that he was entitled to a mistrial with prejudice or to a new trial based on the witnesses’ reference to his prior incarceration, where the jury was presumed to follow the court’s curative instruction with respect to the testimony of one witness, and the other witness’s reference was fleeting and vague.

“The defendant failed to demonstrate that he was entitled to a new trial based on the prosecutor’s improper reference to the defendant as an ‘offender’ in closing argument, where the remarks did not rise to the level of plain error when considered in the context of the entire trial.

“The trial court’s failure to record sidebar conferences, as required by Crim.R. 22, was harmless error, where the trial court summarized the unrecorded conferences and the defendant, who did not object to the court’s procedure, did not contradict those summaries with an App.R. 9(C) statement.

“The defendant failed to demonstrate that he was denied the effective assistance of trial counsel due to counsel’s failure to object to a telephone company representative’s testimony that a cell phone generally pings off the closest cell tower or to counsel’s failure to call a defense expert, where the record demonstrates that trial counsel acted strategically, and the defendant could not demonstrate prejudice in light of the other evidence in the case.

“The defendant’s convictions for murder and having weapons under a disability were supported by sufficient evidence and were not against the manifest weight of the evidence: the defendant’s codefendant, who was at the scene of the shooting, testified that the defendant had participated in a planned ambush of the

victim to avenge the mother of the defendant's children and identified the defendant as the shooter, and that testimony was corroborated by cell phone records, including incriminating text messages between the codefendants and the mother of the defendant's children, and by the testimony of the mother of the defendant's children that the defendant's apology to her was an admission of his guilt.

“ The trial court erred by imposing consecutive terms of incarceration for murder and having weapons under a disability, where the trial court failed to engage in the required analysis set forth in R.C. 2929.14(C)(4) and to make the necessary statutory findings at the sentencing hearing and to incorporate them into its judgment entry.”

### **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**

**Toledo v. Powell, 2014-Ohio-3627**

**Ineffective Assistance: Search: Motion to Suppress**

**Full Decision:**

**<http://www.supremecourt.ohio.gov/rod/docs/pdf/6/2014/2014-ohio-3627.pdf>**

**Trial counsel was ineffective for failing to file a motion to suppress where the police officers had reasonable suspicion to believe Appellant had committed a traffic offense, but a protective search was not justified by the fact that Appellant moved toward the glove compartment after the stop.**

## Seventh Appellate District of Ohio

**State v. Latronica, 2014-Ohio-3685**

R.C. 2951.02(B)(5)PSI

Full Decision: <http://www.sconet.state.oh.us/rod/docs/pdf/7/2014/2014-ohio-3685.pdf>

Where in sentencing Appellant the trial court stated without qualification that it considered the PSI, and Appellant claimed there was a factual inaccuracy in the PSI (whether he was out on bond when he committed the offense), it was not harmless error for the trial court to fail to comply with R.C. 2951.02(B)(5) by neither making a finding as to the alleged inaccuracy of the PSI, nor stating that no determination regarding the inaccuracy was necessary because the inaccuracy would not be considered in determining the appropriate sentence.

## Eighth Appellate District of Ohio

**State v. Dobson, 2014-Ohio-3710**

Rape: Insufficient Evidence

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2014/2014-ohio-3710.pdf>

There was not sufficient evidence to convict Appellant of rape where, although he beat the alleged victim earlier in the evening, there was no evidence of force or a threat of force when the alleged rape occurred. Several hours passed between the beating and the sexual intercourse. Appellant and the alleged victim were in a relationship.

## 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

***In re D.M., 2014-Ohio-3628***

Juvenile Bindover: Evidence

Full Decision: <http://www.sconet.state.oh.us/rod/docs/pdf/o/2014/2014-ohio-3628.pdf>

**Juvenile Rule 24 applies in bindover hearings.**

**“[A] prosecuting attorney is under a duty imposed by the Due Process Clauses of the Ohio Constitution and the United States Constitution and by Juv.R.24(A)(6) to disclose to a juvenile respondent all evidence in the state’s possession that is favorable to the juvenile and material either to guilt, innocence or punishment.”**

**“[I]t is an abuse of discretion for a juvenile court to dismiss a case for a prosecuting attorney’s failure to comply with a discovery order without first performing an in camera inspection of the withheld evidence to determine whether the evidence is discoverable under Juv.R. 24.”**

## Sixth Circuit Court of Appeals

*Nothing new.*

## Supreme Court of the United States

*Nothing new.*