

## Appellate Court Decisions - Week of 9/21/15

### First Appellate District of Ohio

#### **State v. Osume, 2015-Ohio-3850**

##### **Sentencing: Allocution**

##### **Full Decision:**

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2015/2015-Ohio-3850.pdf>

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

“The trial court erred in sentencing the defendant for violating the conditions of his community control when the court failed to address the defendant personally and ask whether he wished to exercise his right of allocution as required by R.C. 2929.19(A)(1) and Crim.R. 32(A)(1). [*But see* DISSENT: The right of allocution does not apply when a defendant is sentenced for a community-control violation.]”

#### **State v. Hinkston, 2015-Ohio-3851**

##### **Jurisdiction: Venue: Evidence: Hearsay: Confrontation: Prosecutor Misconduct: Ineffective Assistance**

##### **Full Decision:**

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2015/2015-Ohio-3851.pdf>

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

“Absent direct evidence, venue can be established by the evidence as a whole or by circumstantial evidence.

“There was sufficient evidence from which the jury could have found beyond a reasonable doubt that venue for defendant’s drug offenses was proper in Hamilton County where the evidence showed that the investigating officers testified that they worked in ‘District 3,’ the notification-of-rights form defendant signed was labeled ‘Cincinnati Police Department Notification of Rights,’ and the drugs were analyzed by the Hamilton County Crime Laboratory.

“The trial court did not err when it admitted text messages from a cell phone found during a search of defendant: there was sufficient evidence presented to authenticate the messages and to connect the messages to the defendant, the cell phone records were properly admitted as business records, the content of most of the messages

was not hearsay, and, to the extent that some of the messages were hearsay, they were not prejudicial to the defendant.

“Where text messages on a cell phone found during a search of defendant were not testimonial defendant’s Confrontation-Clause rights were not implicated by their admission.

“Although it was offered by defendant, defendant’s taped police statement was properly excluded as hearsay, because it was not a report of the interviewing officer’s observations.

“There was no prosecutorial misconduct where the prosecutor’s remark that the cell phone found in defendant’s possession placed him at the scene of the shooting was based on evidence that the phone had pinged on cell towers at the time of and near the place of the shooting.

“Defendant did not show that his counsel was ineffective in failing to object to the admission of text messages as hearsay and in failing to object to the prosecutor’s closing argument where the text messages were admissible nonhearsay statements and the decision not to object to the prosecutor’s closing argument was likely a strategic one.”

### ***State v. Kaczmarek, 2015-Ohio-3852***

#### **OVI: Motion to Suppress**

#### **Full Decision:**

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2015/2015-Ohio-3852.pdf>

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

“The trial court did not err in denying the defendant’s motion to suppress the results of the field-sobriety tests: the National Highway Traffic Safety Administration manual does not require an officer to consider a person’s weight in order to administer the walk-and-turn test, and a person being within 50 pounds of an appropriate weight is not a prerequisite for an officer to administer the standardized one-leg-stand test.

“The trial court did not err in determining that the officer had probable cause to arrest the defendant for driving while impaired: the officer’s observations of the defendant, including a moderate odor of alcohol, unusual responses to preliminary questions, and the results and clues detected on the walk-and-turn and one-leg-stand tests, were enough to establish probable cause for the officer to arrest the defendant.”

### ***In re: D.M., 2015-Ohio-3853***

#### **Custody**

**Full Decision:**

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2015/2015-Ohio-3853.pdf>

**Summary from the First District:**

“Mother had standing to appeal the juvenile court’s award of legal custody of her daughter to father where mother had been a party to the proceedings in the trial court, she was aggrieved by the court’s decision, and her appeal advanced her parental rights.

“The trial court did not abuse its discretion when it determined, over mother’s objection, that awarding legal custody to father was in the child’s best interests.”

**State v. Collier, 2015-Ohio-3891**

**Obstructing Official Business: Prosecutorial Misconduct: Ineffective Assistance**

**Full Decision:**

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2015/2015-Ohio-3891.pdf>

**Summary from the First District:**

“Evidence showing the defendant’s deliberate lies to police during a homicide investigation that misdirected the investigation was sufficient to allow the jury to conclude that there was a ‘substantial stoppage’ of the investigating detective’s progress, and therefore, the evidence was sufficient to support the defendant’s conviction for obstructing official business under R.C. 2921.31.

“The state presented evidence showing that the defendant repeatedly lied to the police even though the detective told the defendant that he knew that the defendant had lied and had explained to the defendant the effect of his lies on the investigation, and thus, there was evidence from which the jury could have reasonably inferred that the defendant acted with purpose to hinder or impede the investigation.

“While statements by the prosecutor referring to the defendant’s refusal to take a polygraph test and his assertion of his right to counsel were patently improper, the defendant failed to object to those comments, and any error did not rise to the level of plain error.

“Even though counsel failed to object to prosecutorial misconduct, the defendant failed to meet his burden to show ineffective assistance of counsel, because he failed to show that but for counsel’s performance, the result of the proceeding would have been otherwise.”

## **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. Adams, 2015-Ohio-3786**

**Motion to Suppress: Traffic Stop**

**Full Decision:**

<http://www.supremecourt.ohio.gov/rod/docs/pdf/5/2015/2015-Ohio-3786.pdf>

**The trial court did not err in granting appellee's motion to suppress his traffic stop where there was no reasonable, articulable suspicion appellee committed a traffic violation. The reason the trooper gave for the stop was that when appellee overtook a semi-truck in the right lane of an interstate, appellee was traveling 65-70 miles per hour and was only two car lengths ahead of the semi.**

## **Sixth Appellate District of Ohio**

*Nothing new.*

## **Seventh Appellate District of Ohio**

*Nothing new.*

## **Eighth Appellate District of Ohio**

**State v. Miller, 2015-Ohio-3880**

**Theft of a Disabled Person: Asperger's Syndrome**

**Full Decision:**

<http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2015/2015-Ohio-3880.pdf>

**Appellant's conviction of theft of a disabled person, a felony of the fifth degree, was in error where the victim was not a disabled adult as defined by R.C. 2913.01(DD). The victim suffered from Asperger's Syndrome. He was highly functioning and a college graduate who worked part-time at McDonald's.**

**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**

*Nothing new.*

**Sixth Circuit Court of Appeals**

*Nothing new.*

**Supreme Court of the United States**

*Nothing new.*