

IN THE SUPREME COURT OF OHIO

CASE NO. _____

10-0045

STATE OF OHIO,

)

Plaintiff-Appellee

)

-vs-

)

DOUGLAS JACKSON,

)

Defendant-Appellant

)

On Appeal from the
Lake County Court of
Appeals, Eleventh
Appellate District

Court of Appeals
Case No. 2008-L-147

**MEMORANDUM IN SUPPORT OF JURISDICTION
OF APPELLANT DOUGLAS JACKSON**

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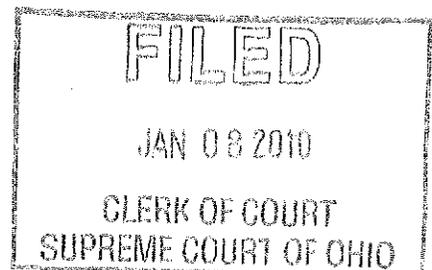


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Proposition of Law No. II: Citizens have the right to be free from unlawful restraint of their freedom and when the government seeks to infringe on that right, refusing to comply with an officer’s instructions is not obstructing official business. To deny a Rule 29 Motion for Acquittal under such circumstances violates an accused’s rights under the United States Constitution and the Constitution of the State of Ohio.7

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**EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC
AND GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL
CONSTITUTIONAL QUESTION**

There are two issues of grave importance in this case. The first is whether a trial court abuses its discretion when it refuses to give charges that would help the jury better understand the law that they are to apply to the evidence they have heard when those charges accurately state the law and are based on relevant evidence. The second is whether a citizen has the right to refuse to speak to law enforcement officers and indeed continue to walk away from law enforcement officers when he is not under arrest. Mr. Jackson requests this Court to visit these issues as they are of public interest and involve substantial constitutional questions involving a citizen's right to be free from unreasonable seizure and an accused's right to a fair trial.

The framers of our Constitution had just fought a revolutionary war to throw off the yoke of an oppressive English government who believed its subjects could be seized by authorities and questioned without regard to their basic human rights. These basic human rights were foremost in their minds when the legislature passed the Bill of Rights guaranteeing United States citizens all those rights that had been denied them as subjects of the British Crown. The right at issue in this case is the right of every citizen to be free of unreasonable search and seizure. The United States Supreme Court has repeatedly reaffirmed this right and restricted when the government may interfere with this right. This Court has regularly held that the government, with few exceptions, must possess probable cause that a crime has been committed and probable cause to believe the accused committed the crime before it can interfere with the right to be free. Mr. Jackson urges this Court to use his story as an opportunity to restate to law enforcement that an individual still has the right to refuse to speak to the government.

Once an accused is lawfully arrested, there is no right more fundamental to our system of justice than an accused's right to a jury trial. Few countries in the world grant the accused the right to have their case heard by a jury of their peers, not by a judge or a combination of the two, but by regular citizens unschooled in the finer points of jurisprudence. However, the right is only effective if the jury is fully informed of the facts of the case and educated about the law it is to apply in reaching its decision. When a judge arbitrarily interferes with that right by refusing to provide the jury with all the law it is to utilize in making its decision, it prejudices not only the accused in the case at bar, but every accused who will come before a court. This is particularly true when a trial judge refuses to give requested jury instructions that, although they accurately state the law and are applicable to the facts, may be favorable to the accused.

STATEMENT OF THE CASE AND FACTS

On July 8, 2008, the defendant-appellant, Douglas Jackson, was arrested and charged with Obstructing Official Business and Resisting Arrest, both second-degree misdemeanors.

On the night of his arrest, law enforcement responded to a call of a noise complaint at Mr. Jackson's neighbor's apartment. The neighbor said Mr. Jackson was repeatedly playing his music loud and then turning it down. The officer was familiar with Mr. Jackson and knew who he was. The officer said he could have written the citation without Mr. Jackson being present. About this time, Mr. Jackson left his home and headed to the store on his bicycle. The officer said he called for Mr. Jackson to stop and speak to him or be arrested. Mr. Jackson said he did not hear the officer and continued toward the store. The officer, however, testified that Mr. Jackson turned,

looked at him and said, “No.” At this point, the officer called for backup and tased Mr. Jackson. Mr. Jackson fell to the ground where he was tased again by the officer.

The officer charged Mr. Jackson with Obstructing Official Business for refusing to stop and speak to him about the noise violation and Resisting Arrest for not complying with the officer’s instructions to put his hands behind his back.

On August 22, 2008, a jury found Mr. Jackson guilty of Obstructing Official Business, a second-degree misdemeanor in violation of R.C. 2921.31(A), but acquitted him of Resisting Arrest. The trial court then sentenced Mr. Jackson to ninety days in jail, eighty of which were suspended, and placed him on probation for twelve months. Mr. Jackson’s sentence was stayed pending his appeal.

Mr. Jackson challenged his conviction based upon the trial court’s error in overruling his Crim.R. 29 Motion for Acquittal and in denying his proposed jury instructions.

The Eleventh District Court of Appeals affirmed the trial court’s rulings on both issues. In affirming Mr. Jackson’s conviction, it found there was sufficient evidence to sustain the conviction and that the jury instructions given by the trial court were constitutionally sufficient, holding that the instruction given informed the jury of all the necessary elements of self-defense. *State v. Jackson*, Lake App. No. 2008-L-147, 2009-Ohio-6226.

ARGUMENTS IN SUPPORT OF PROPOSITION OF LAW

Proposition of Law No. I: A jury instruction that is an accurate statement of the law and relevant to the evidence presented at trial should be given by the trial court when requested by the accused. The failure to do so violates a defendant-appellant’s constitutional rights to due process and a fair trial as guaranteed by the Fifth and Fourteenth Amendments

to the United States Constitution and Sections 10 and 16, Article I of the Ohio Constitution.

This Court has held that after arguments are completed a trial court must fully and completely give the jury all instructions which are relevant and necessary for the jury to weigh the evidence and discharge its duty as the fact finder. *State v. Comen* (1990), 50 Ohio St.3d 206, 210. Generally, a trial court commits prejudicial error in a criminal case by failing to give a proposed instruction when (1) the instruction is relevant to the facts of the case, (2) the instruction gives a correct statement of the relevant law, and (3) the instruction is not covered in the general charge to the jury. *City of Mentor v. Hamercheck* (1996), 112 Ohio App.3d 291, 296.

In contrast, a trial court does not err in failing to instruct the jury where the evidence is insufficient to support the instruction. *State v. Burchett*, Preble App. Nos. CA2003-09-017, CA2003-09-018, 2004-Ohio-4983, ¶26; citing *State v. Palmer* (1997), 80 Ohio St.3d 543. Jury instructions should only be given if they are applicable to the facts in a case. *Burchett* at ¶26; citing *Avon Lake v. Anderson* (1983), 10 Ohio App.3d 297, 462 N.E.2d 188. Here, the evidence clearly supported further instruction in order for the jury to justly determine whether the extent of the hampering or impeding and the lawfulness of the officer's actions would constitute a legitimate conviction for Obstructing Official Business.

In the case at bar, Mr. Jackson asserts that the evidence at trial, which showed only that he rode away on his bicycle and did not respond to the officer's commands to stop, did not *substantially hamper or impede* the officer in the performance of his official duties. Based on the above, he requested the jury be instructed that in order to support a conviction, the jury had to find that Mr. Jackson's actions substantially

hampered or impeded the officer. The trial court refused, despite the fact that the request was an accurate statement of the law.

Many courts have required the State to show that the defendant's act *substantially* or *severely* hampered or impeded the officer's performance of his duty. In *State v. Agnew*, Hamilton App. No. C-010542, 2002-Ohio-3294, the First District Court of Appeals held that:

To prove the elements of obstructing official business, the state had to prove the following at trial: (1) [the defendant] engaged in an unprivileged act; (2) the act was done with purpose or intent to hamper or impede the performance of a public official; and (3) the act *substantially hampered or impeded* the official in the performance of the official duties.

Agnew at ¶9. (Emphasis added)

The *Agnew* court ultimately found that the defendant's failure to provide the police officer with his social security number did not substantially hamper the police officer's performance of his official duties. *Id.* at ¶11.

Additionally, in *State v. Hill* (February 6, 1992), Ashland App. No. CA-993, the Fifth District Court of Appeals employed a similar requirement in holding that the defendant's "refusal to give his social security number *severely impeded* the officer in completing the speeding citation, because without the information the officer was unable to determine what the offense was." *Hill* at *2. (Emphasis added)

The officer in the case at bar had all the necessary information to issue the citation; therefore, Mr. Jackson could not have substantially hampered or impeded the officer's performance of his official duty.

Based on the facts of this case, the lower court should have given an instruction on substantial/severe impeding or hampering in conformity with the above precedent.

Mr. Jackson also asked the court to instruct the jury that: “The Defendant has the right conferred by law to be free from unreasonable searches and seizures. If you find the officer lacked probable cause to arrest the Defendant, then you must find that the Defendant did not act without privilege to do so and you must find the Defendant not guilty of obstruction of official business.” Mr. Jackson asserts this too was an accurate statement of law.

At the minimum, Ohio law requires a “reasonable, articulable suspicion of criminal activity” for an officer to conduct a lawful seizure. *Terry v. Ohio* (1968), 392 U.S. 1 at 21. Defense counsel proposed that this lower standard be included as part of the jury instructions if the probable cause instruction quoted above was not agreeable. If the officer is required to be in the performance of a lawful act in order for a person to be convicted of Obstructing Official Business, then the *lawfulness* of the officer’s conduct is an element that the jury must be given the opportunity to consider. At trial, the State admitted that this was an issue for the trier of fact to determine, and defense counsel simply asked the jury be equipped with the appropriate instructions of law. The request accurately stated the law and was necessary under the facts of this case.

In addition, defense counsel requested the trial court instruct the jury that: “Noise violation is a minor misdemeanor. A person may not be arrested for the commission of a minor misdemeanor.” Defense counsel requested this instruction on the basis that it would inform the jury that the officer did not have the authority to arrest or seize Mr. Jackson. The officer “has to have some grounds to restrict [Mr. Jackson’s] liberty interest in making him free from unlawful – unreasonable searches and seizures.” *Id.*

R.C. 2935.26 specifically prohibits police officers from making arrests for minor misdemeanors, even if those acts are committed in the officer's presence. There are some exceptions to this rule; however, based on the specific facts of the case at bar, those exceptions do not apply to Mr. Jackson.

The trial court erred in failing to properly instruct the jury regarding the above issues when the instructions were relevant to the facts of the case, they gave a correct statement of the relevant law, and they were not covered in the general charge to the jury. *Hamercheck* at 96.

Proposition of Law No. II: Citizens have the right to be free from unlawful restraint of their freedom and when the government seeks to infringe on that right, refusing to comply with an officer's instructions is not obstructing official business. To deny a Rule 29 Motion for Acquittal under such circumstances violates an accused's rights under the United States Constitution and the Constitution of the State of Ohio.

The Fourth Amendment of the United States Constitution as well as Article One, Section Fourteen, of the Ohio Constitution, guarantee 'the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.' " *State v. Wojtaszek*, 11th Dist. No.2002-L-016, 2003-Ohio-2105 at 15, citing *Delaware v. Prouse* (1979), 440 U.S. 648, paragraph two of the syllabus.

It is with the preservation of this right in mind that courts evaluate encounters between law enforcement and citizens. There are three generally recognized types of interactions between citizens and law enforcement officers: consensual encounters,

Terry stops, and an arrest. *State v. Cook*, Montgomery App. No. 20427, 2004-Ohio-4793, at ¶8-9. Consensual encounters are instances in which the police merely approach a person in a public place, engage the person in conversation, request information, and the person is free not to answer and walk away. *Cook* at ¶9; citing *United States v. Mendenhall* (1980), 446 U.S. 544. A *Terry* stop is an investigatory detention that is more intrusive than a consensual encounter, but less intrusive than a formal custodial arrest. *Cook* at ¶10; citing *Terry v. Ohio* (1968), 392 U.S. 1. The investigatory detention is limited in duration and purpose and can only last as long as it takes a police officer to confirm or to dispel his suspicions. *Id.* A person is seized under a *Terry* stop when, in view of all the circumstances surrounding the incident, by means of physical force or show of authority, a reasonable person would have believed that he was not free to leave or is compelled to answer questions. *Cook* at ¶10; citing *Mendenhall*, *supra*.

The officer's seizure of Mr. Jackson falls into the third type of encounter, which involves a seizure that is equivalent to a full custodial arrest. "A seizure is equivalent to an arrest when (1) there is an intent to arrest; (2) the seizure is made under real or pretended authority; (3) it is accompanied by an actual or constructive seizure or detention; and (4) it is so understood by the person arrested." *Cook* at ¶12; citing *State v. Barker* (1978), 53 Ohio St.2d 135. As this type of encounter is equivalent to an arrest, this seizure requires the initial presence of probable cause in order for the arrest to be lawful. *Cook* at ¶12.

Mr. Jackson asserts that the officer did not have probable cause to seize and arrest him. Pursuant to R.C. 2935.26(A), the officer was not authorized to arrest him for the noise violation. Similarly, the officer had not observed any criminal conduct on the part of Mr. Jackson. Without probable cause of an additional crime, the officer was not

authorized to seize and arrest Mr. Jackson. If the officer was not authorized to seize Mr. Jackson, then the officer cannot be in the performance of an authorized act, and Mr. Jackson cannot be considered to have been preventing, obstructing, or delaying the officer in the performance of an authorized act.

If, however, the Court finds the tasing of Mr. Jackson was not a seizure, but rather part of an investigatory stop, Mr. Jackson's actions would still not sustain a conviction for Obstructing Official Business. In *State v. Gillenwater* (April 2, 1998), 4th Dist. No. 97 CA 0935, the Fourth District held that, "We do not believe that mere flight from a request for a *Terry* stop constitutes a violation of the obstructing official business statute." *Id.* at 4. Further this Court found in *Akron v. Rowland*, 67 Ohio St.3d 374, at 382, 1993-Ohio-222, that attempting to avoid the police when you are not in custody is not an illegal act. Based on these precedents, Mr. Jackson's act of merely walking away while not in custody does not amount to Obstructing Official Business.

Finally, if the Court decides that the investigatory stop and arrest were constitutional, it should nonetheless grant Mr. Jackson's Rule 29 Motion for Acquittal because it is clear that Mr. Jackson did nothing to "*hamper or impede* a public official in the performance of the public official's lawful duties." R.C. 2921.31(A) (Emphasis added).

Mr. Jackson's simple act of not responding to the officer's attempt to command him to stop in no way hampered or impeded the officer's performance of his duty to issue the citation. Mr. Jackson only prevented, obstructed, or delayed the officer's desire to interrogate him. However, it was not entirely necessary that the officer speak to Mr. Jackson on that day, given that the officer was familiar with Mr. Jackson and had a witness present to corroborate his identity. Although Mr. Jackson did not necessarily

facilitate the officer's duty to issue him the citation, it is clear that Mr. Jackson did not hamper or impede the officer's duty either. Thus, the fact that Mr. Jackson would not have been present while the officer issued the citation to him in no way hampered or impeded the issuance of the citation.

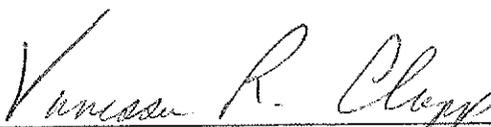
As argued in Proposition of Law I, many courts have required the State to show that the defendant's act *substantially* or *severely* hampered or impeded the officer's performance of his duty. See *State v. Agnew*, Hamilton App. No. C-010542, 2002-Ohio-3294 (the defendant's refusal to give the arresting officer his social security number did not severely impede the officer's duty because the officer already had sufficient information to complete the necessary forms); *State v. Hill*, Ashland App. No. CA-993 (defendant's refusal to provide officer with his social security number severely impeded the officer in completing the citation, because without this information the officer was unable to determine the nature of the offense); *State v. Gordon* (1983), 9 Ohio App.3d 184 (appellant's act of misdirecting the police officers in pursuit of a felon constituted a substantial impediment to performance by the police) *State v. Wellman*, Hamilton App. No. C-060484, 2007-Ohio-2953 (there must be some substantial stoppage of the officer's progress before one can say he was hampered or impeded).

In the case at bar, the officer had sufficient information to complete the noise violation citation and issue it to Mr. Jackson. Based on the ample information that was available to the officer at the time he arrived at Mr. Jackson's residence, Mr. Jackson's failure to comply with the officer's commands clearly did not prevent, obstruct or delay the officer in the performance of his duty. Moreover, Mr. Jackson certainly cannot be said to have *substantially* or *severely* hampered or impeded the officer in the performance of his duty.

CONCLUSION

For the foregoing reasons, this case involves matters of public and great general interest and substantial constitutional questions. The appellant requests that this Court grant jurisdiction to this case so that the important issues presented can be reviewed on the merits.

Respectfully submitted,



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CERTIFICATE OF SERVICE

A copy of the foregoing Memorandum in Support of Jurisdiction of Appellant Douglas Jackson is on this 7th day of January, 2010, mailed by regular U.S. mail, postage prepaid, to Edward Powers, Painesville City Prosecutor, 270 E. Main St., #360, Painesville, Ohio 44077.



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APPENDIX

State v. Jackson, Lake App. No. 2008-L-147, 2009-Ohio-6226
Judgment Entry of the Eleventh District Court of Appeals

THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
LAKE COUNTY, OHIO

STATE OF OHIO, : OPINION

Plaintiff-Appellee, :

- vs -

DOUGLAS JACKSON, :

Defendant-Appellant. :

CASE NO. 2008-L-147
FILED
COURT OF APPEALS
NOV 27 2009
JUDITH G. KELLY
CLERK OF COURT
LAKE COUNTY, OHIO

Criminal Appeal from the Painesville Municipal Court, Case No. 08 CRB 01666.

Judgment: Affirmed.

Edward C. Powers, Painesville City Prosecutor, 270 East Main Street, #360, Painesville, OH 44077 (For Plaintiff-Appellee).

R. Paul LaPlante, Lake County Public Defender, and *Vanessa R. Clapp*, Assistant Public Defender, 125 East Erie Street, Painesville, OH 44077 (For Defendant-Appellant).

CYNTHIA WESTCOTT RICE, J.

{¶1} Appellant, Douglas Jackson, appeals his conviction following a jury trial in the Painesville Municipal Court of obstructing official business. At issue is whether the jury's verdict was supported by sufficient evidence and whether the trial court erred in instructing the jury. For the reasons that follow, we affirm.

{¶2} On July 8, 2008, Officer Michael Slocum of the Painesville City Police Department responded to 504 Elm Street on an "ongoing noise" complaint. The

complainant, Terrence Beller, reported to dispatch that appellant was repeatedly putting his music on full blast and then turning it off.

{¶3} As Officer Slocum was walking up the driveway to Mr. Beller's house, he saw appellant, who is a fifty-year-old male, ride his bicycle down the driveway and toward the street. The officer recognized appellant from a previous encounter with him. He knew appellant had been staying in the other half of the duplex in which Mr. Beller resides. Mr. Beller came outside and told Officer Slocum that appellant was the person who had been playing his music at excessive levels. He said appellant had just left his apartment and was on his bicycle. The officer decided to stop appellant to further investigate the noise complaint before he left the area.

{¶4} Officer Slocum walked down the driveway toward the street to see if appellant was still in the area. When the officer reached the sidewalk in front of Mr. Beller's house, he saw appellant riding his bicycle toward him on the sidewalk about two houses down from Mr. Beller's house. The officer, who was in uniform, said, "Douglas, come here. I need to talk to you." He also waved for him to come over. Appellant then stopped riding toward Officer Slocum; said, "no;" and started to move his bicycle in the opposite direction away from the officer. At that point Officer Slocum said, "stop or you'll be under arrest." In response, appellant said, "nope." Appellant then got on his bicycle and started riding across the street and away from the officer. Officer Slocum yelled, "stop, you're under arrest," and appellant replied, "no."

{¶5} At that point Officer Slocum called for other units as backup. Appellant got off his bicycle on the other side of the street, and Officer Slocum ran toward him. As the officer got close to appellant, he turned around, saw the officer, got on his bicycle again, and rode it down the street away from the officer.

{¶6} When Officer Slocum was 10 to 15 feet away from appellant, the officer yelled to him, "stop, you're under arrest or you'll be tased." Appellant ignored the officer and continued to ride his bicycle away from him. Officer Slocum deployed his taser and shot it at appellant, who then fell off his bicycle. The officer, who is certified in the use of the taser, testified that upon impact, the taser locks the muscles of the subject so he is immobile for five seconds. According to department guidelines, tasers are to be used to reduce the risk of injury to the suspect or the officer. The officer testified he used the taser because appellant's actions were preventing him from investigating the noise complaint, and it was obvious he would not be able to catch appellant who was on his bicycle while the officer was on foot.

{¶7} Officer Slocum told appellant to put his hands out and showed him how to do it. However, appellant did not follow the officer's instructions so he tased appellant again. The officer then told him to lay flat and put his hands out. This time appellant complied and another officer, who had arrived as backup, handcuffed him. The officers then stood appellant up and Officer Slocum asked him why he ran since he only wanted to ask him about a noise complaint, and appellant responded, "it's all about the music." Officer Slocum advised appellant he was under arrest.

{¶8} Mr. Beller testified that when he came home the evening of July 8, 2008, before he entered his apartment, appellant turned his music up full blast. After playing it at this level for five minutes, he turned it off. He then cranked it back up all the way for several minutes, and then turned it off again. This continued throughout the evening until Mr. Beller called the police. Shortly after he made his report, Mr. Beller heard appellant's door slam, and he saw appellant get on his bicycle and ride down the driveway. At that time Mr. Beller went outside and saw Officer Slocum walking up the

driveway. After Mr. Beller told the officer that appellant was the person causing the noise, the officer went after him.

{¶9} Appellant testified he has been diagnosed as schizophrenic. He takes medication to stop the voices and music he hears in his head. He said that evening he was playing video games when he decided to go to the store on his bicycle. He said that when he got to the corner, he thought he was having a seizure because he could not move and fell off his bicycle. He said he heard an officer say, "put your arms behind your back," but he was unable to do so due to the effects of the taser and he was handcuffed. He said that after he was handcuffed, the officer tased him again. He said that before he was stopped, he was just listening to the music in his head and for this reason he did not hear the officer talking to him.

{¶10} Appellant testified that everything Officer Slocum testified to was a "lie." He said he never rode his bicycle toward the officer. He said the officer never ordered him to stop and he never responded to him. He also denied crossing the street on his bicycle. He testified, "I know he was having fun tasing me."

{¶11} Appellant was charged in a two-count complaint in the Painesville Municipal Court with obstructing official business, in violation of R.C. 2921.31(A), and resisting arrest, in violation of R.C. 2921.33(A), both misdemeanors of the second degree. Appellant entered his plea of not guilty and the case was tried before a jury. Following the presentation of the evidence, the jury returned a verdict of guilty of obstructing official business and not guilty of resisting arrest. The court sentenced appellant to 90 days in jail, 80 of which were suspended, and placed him on probation for one year. The court stayed appellant's sentence pending appeal.

{¶12} Appellant appeals his conviction, asserting two assignments of error. For his first assigned error, appellant contends:

{¶13} “The trial court erred to the prejudice of the defendant-appellant when it denied his motion for acquittal made pursuant to Crim.R. 29(A).”

{¶14} A Crim.R. 29 motion tests the sufficiency of the state’s evidence. *State v. Coughlin*, 11th Dist. No. 2006-A-0026, 2007-Ohio-897, at ¶13. When examining a claim that there was insufficient evidence to sustain a conviction, the “inquiry is, after viewing the evidence in a light most favorable to the prosecution, whether any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt.” *State v. Jenks* (1991), 61 Ohio St.3d 259, 273. Whether evidence is sufficient to sustain a verdict is a question of law that we review de novo. *State v. Williams* (Dec. 6, 2001), 8th Dist. No. 78932, 2001 Ohio App. LEXIS 5418, *10.

{¶15} R.C. 2921.31(A), obstructing official business, provides: “No person, without privilege to do so and with purpose to prevent, obstruct, or delay the performance by a public official of any authorized act within the public official’s official capacity, shall do any act that hampers or impedes a public official in the performance of the public official’s lawful duties.”

{¶16} Appellant challenges the sufficiency of the evidence concerning each of the elements of this offense. First, he argues Officer Slocum was not performing an “authorized act” because the officer did not have authority to stop or probable cause to arrest him.

{¶17} However, we note that when Officer Slocum initially attempted to stop appellant, he did so pursuant to his authority to make an investigatory stop under *Terry v. Ohio* (1968), 392 U.S. 1. An investigatory stop allows a police officer to stop an

individual for a short period of time if the officer has a reasonable suspicion that criminal activity has occurred or is about to occur. *State v. Lett*, 11th Dist. No. 2008-T-0116, 2009-Ohio-2796, at ¶14; *State v. McDonald* (Aug. 27, 1993), 11th Dist. No. 91-T-4640, 1993 Ohio App. LEXIS 4152, *10. “To justify the stop, the officer must be able to point to specific and articulable facts that would warrant a person of reasonable caution in the belief that the action taken was appropriate.” *Id.*, citing *State v. Klein* (1991), 73 Ohio App.3d 486, 488. The stop and inquiry must be reasonably related in scope to the justification for their initiation. *United States v. Brignoni-Ponce* (1975), 422 U.S. 873, 881, citing *Terry*, *supra*, at 29. “Typically, this means that the officer may ask the detainee a moderate number of questions to determine his identity and to try to obtain information confirming or dispelling the officer’s suspicions.” *Berkemer v. McCarty* (1984), 468 U.S. 420, 439.

{¶18} Officer Slocum was dispatched to the scene on an ongoing noise complaint under the city’s ordinance. Mr. Beller had reported to dispatch that appellant had repeatedly played his music at excessive levels that evening. Upon his arrival, Mr. Beller told Officer Slocum that appellant was the person playing the music and said he had just left on his bicycle. Officer Slocum attempted to stop and talk to appellant to complete his investigation concerning Mr. Beller’s complaint. In these circumstances, when the officer asked appellant to come over to him, he had a reasonable suspicion appellant was engaged or about to be engaged in criminal activity by subjecting Mr. Beller to ongoing excessive noise, in violation of the city’s ordinance.

{¶19} In *State v. Dillon*, 10th Dist. No. 04AP-1211, 2005-Ohio-4124, discretionary appeal not allowed at 2006-Ohio-179, 2006 Ohio LEXIS 178, a police officer saw the defendant jaywalking. The officer approached him to issue a citation

and the defendant ran in the opposite direction. The officer drove his cruiser in pursuit and finally arrested the defendant when he fell. The Tenth District held that under *Terry*, the officer had a reasonable suspicion to stop the defendant for jaywalking. *Id.* at ¶28. Likewise, in the instant case, Officer Slocum had a reasonable suspicion that appellant engaged in a noise violation, justifying his stop of appellant under *Terry*. Appellant's argument that Officer Slocum was not authorized to arrest him for a noise violation pursuant to R.C. 2935.26(A), which prohibits arrest for a minor misdemeanor, is therefore inapposite.

{¶20} Next, appellant argues his refusal to talk to Officer Slocum did not give the officer authority to arrest him. However, appellant ignores his affirmative acts, which gave the officer probable cause to arrest him for obstructing official business.

{¶21} While Ohio courts have concluded that the mere refusal to answer questions does not constitute an "act" necessary to support a conviction of obstructing official business, it is well-established that where an individual also takes affirmative actions to hamper or impede the police, such conduct may support a conviction of obstructing official business. *State v. Justice* (Nov. 16, 1999), 4th Dist. No. 99CA631, 1999 Ohio App. LEXIS 5779, *13.

{¶22} In *State v. Davis* (2000), 140 Ohio App.3d 751, two police officers saw the defendant cross an intersection against the light. They decided to cite him. They pulled the cruiser over and one of the officers told him to stop but he did not. The other officer began to follow him on foot and yelled at him to stop, but he kept walking. The other officer also ordered him to stop. The defendant turned to face the officer, and then turned around and continued walking, quickening his pace. The officers continued

telling him to stop and, eventually, he did stop. In concluding the evidence was sufficient to convict him of obstructing official business, the First District held:

{¶23} **** [U]nder the circumstances of this case, the arrest was lawful. The officers had the right to detain Davis to issue a citation for the alleged pedestrian violation, even though they were prohibited under state law from arresting him for the minor misdemeanor. *** But the evidence shows that Davis became aware that the officers were trying to detain him and continued to walk away from them. His refusal to stop gave the officers probable cause to believe that he was impeding the performance of their duty in violation of R.C. 2921.31. At that point, the officers had probable cause to arrest him.” Id. at 752-753.

{¶24} Appellant’s attempt to distinguish *Davis* on the ground that Davis was unknown to the officers is unavailing because there was no evidence in that case that Davis was unknown to the officers and the First District did not base its holding on such fact. In any event, the fact that Officer Slocum recognized appellant from one prior encounter hardly distinguishes this case from *Davis*. Officer Slocum had the right to detain appellant to issue a citation whether he recognized him or not.

{¶25} In *State v. Lohaus*, 1st Dist. No. C-020444, 2003-Ohio-777, the First District held “that Lohaus’s actions in fleeing across several lawns after being told to stop--and in forcing the investigating officer to physically restrain him--fell squarely within [R.C. 2921.31’s] proscriptions.” Id. at ¶12.

{¶26} In *State v. Dice*, 3rd Dist. No. 9-04-41, 2005-Ohio-2505, police wanted to stop Dice in connection with an ongoing investigation. After a witness pointed him out to police, Dice started to walk away and the police told him to stop. When Dice saw the officers coming after him, he started to run away and officers pursued him for several

minutes. The Third District held that by ignoring the officers' orders and running away from them, Dice acted with the specific intent to prevent, obstruct, or delay the officers from an ongoing investigation, which is part of their official duties. This fulfilled the statutory element of purposefulness. *Id.* at ¶22. The Third District further held that because the police wanted Dice in connection with their investigation, this was official police business, and Dice's running from the police "did hinder the officers' performance of their lawful duty ***." *Id.* at ¶23.

{¶27} In *State v. Brickner-Latham*, 3d Dist. No. 13-05-26, 2006-Ohio-609, discretionary appeal not allowed at 2006-Ohio-2998, 2006 Ohio LEXIS 1905, the officer saw the defendant crossing the street and being loud. The officer decided to tell him to desist from his disorderly conduct and, when he approached the defendant in his cruiser, he told him to stop multiple times, but the defendant kept ignoring him and walking away from him. The officer then grabbed the defendant and arrested him. In upholding the sufficiency of the evidence for the defendant's conviction of obstructing official business, the Third District held:

{¶28} "**** *Brickner-Latham's* walking away from Officer O'Connor was an affirmative act that hindered or impeded Officer O'Connor in the performance of his official duties. Further, *Brickner-Latham's* persistence in disregarding Officer O'Connor's requests to stop was sufficient evidence for a rational trier of fact to conclude that *Brickner-Latham* acted with the specific intent to prevent, obstruct, or delay Officer O'Connor's lawful duties." *Id.* at ¶28.

{¶29} In *State v. Harris*, 10th Dist. No. 05AP-27, 2005-Ohio-4553, the Tenth District held that "fleeing from a police officer who is lawfully attempting to detain the suspect under the authority of *Terry*, is an affirmative act that hinders or impedes the

officer in the performance of the officer's duties as a public official and is a violation of R.C. 2921.31, obstructing official business." Id. at ¶16.

¶30 Appellant's reliance on *State v. Gillenwater* (Mar. 27, 1998), 4th Dist. No. 97 CA 0935, 1998 Ohio App. LEXIS 1426, is misplaced since the Fourth District expressly overruled *Gillenwater* in *State v. Certain*, 180 Ohio App.3d 457, 2009-Ohio-148. The Fourth District in *Certain* held: "We overrule *Gillenwater* to the extent that it conflicts with this opinion and hold that flight may *** constitute a violation of R.C. 2921.31." Id. at 466.

¶31 Based on the foregoing authority, Officer Slocum had the right to stop appellant to investigate the noise-violation complaint under *Terry*; to detain him to issue a citation for that offense, *Davis*, supra; and to arrest him for his affirmative acts hindering or impeding the officer in the performance of his lawful duties. We therefore hold the evidence was sufficient to prove that Officer Slocum was engaged in the performance of his lawful duties. Appellant takes great pains to address the method used by the officer to stop him. While this raises serious concerns, since this issue does not impact the appeal, this is not the appropriate forum for us to address it.

¶32 Second, appellant argues his Crim.R. 29 motion should have been granted because the state failed to prove he was not privileged to hamper Officer Slocum in the performance of his duties. Privilege is defined as "a right, power, *** or immunity held by a person or class. *** That which releases one from the performance of a duty or exempts one from a liability which he would otherwise be required to perform ***." Black's Law Dictionary (4 Ed.Rev.1968) 1359-1360. Appellant fails to support his argument on appeal with any pertinent authority that he had a privilege allowing him to hamper or impede Officer Slocum in the performance of his duties. His

argument therefore lacks merit. App.R. 16(A)(7). His sole argument is that he did not commit any act that hampered Officer Slocum in the performance of his duties. However, because we hold that Officer Slocum had the right to stop appellant under *Terry* and that appellant's subsequent refusal to stop and flight authorized his arrest, the evidence was sufficient to demonstrate appellant had no privilege to hamper Officer Slocum in the performance of his duties.

{¶33} Third, appellant argues the state failed to present sufficient evidence that he acted "with purpose to obstruct, prevent, or delay" the officer in the performance of his duties. In support he argues that, due to his mental condition, he did not hear the officer asking him to stop or, if he did hear him, he was "not necessarily" required to stop. However, as the trier of fact, the jury was entitled to discredit appellant's testimony and to believe Officer Slocum's testimony that appellant said "no" in response to his orders to stop and therefore heard the officer's commands. Based on appellant's repeated refusal to stop and his efforts to flee from the officer, the evidence was sufficient to prove that appellant acted with the intent to obstruct Officer Slocum's investigation of the noise-violation complaint. *Brickner-Latham, supra; Dice, supra.*

{¶34} Fourth, appellant argues his refusal to stop was insufficient to prove he hampered or impeded Officer Slocum's performance of his duties because, he argues, the officer had enough information from Mr. Beller about appellant's noise violation. As a result, he argues it was not necessary for the officer to stop him to investigate further. However, having determined that Officer Slocum had the authority to stop him under *Terry*, it is irrelevant that the officer had already obtained some information from the complainant. In fact, in order for his stop to be justified under *Terry*, Officer Slocum had to point to specific and articulable facts supporting his suspicion, which were provided

by Mr. Beller. Further, the case law outlined above establishes that flight from police while they are attempting to stop a suspect under *Terry* is an affirmative act that hinders or impedes the officers' performance of their lawful duties. *Dice, supra; Harris, supra.*

{¶35} Appellant also argues the state was required to prove his acts "substantially" hampered Officer Slocum. Although appellant cites several cases in which courts held the defendants' actions had "substantially" or "severely" hampered the police, we note the elements of the offense do not require that the defendant's acts "substantially hamper or impede" the officer. In any event, while the record does not reveal the exact amount of time that elapsed between Officer Slocum's initial order to appellant to stop and his arrest, based on appellant's multiple refusals to stop and his flight, which forced the officer to run after him, the evidence was sufficient to prove appellant substantially hampered the officer in the performance of his duties.

{¶36} Appellant's first assignment of error is not well taken.

{¶37} For his second assignment of error, appellant alleges:

{¶38} "The trial court erred when it refused to submit the defendant-appellant's proposed jury instructions in violation of the defendant-appellant's rights to due process and fair trial as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and Sections 10 and 16, Article I of the Ohio Constitution."

{¶39} Appellant argues the trial court erred in refusing to submit two of his requested instructions to the jury. This court has held a trial court commits prejudicial error in a criminal case by failing to give a proposed instruction "when: (1) the instruction is relevant to the facts of the case; (2) the instruction gives a correct statement of the relevant law; and (3) the instruction is not covered in the general charge to the jury." *Mentor v. Hamercheck* (1996), 112 Ohio App.3d 291, 296. When considering whether a

trial court should have provided a requested jury instruction, an appellate court views the instructions as a whole. *Buehler v. Falor*, 9th Dist. No. 20673, 2002-Ohio-307, 2002 Ohio App. LEXIS 261, *2. An appellate court respects the judgment of the trial court absent an abuse of discretion. *Id.*

{¶40} First, appellant argues the trial court should have included the word “substantially” in the jury charge to explain the state was required to prove appellant “substantially hampered or impeded” the officer in the performance of his duties. We observe the court instructed the jury concerning all the essential elements of obstructing official business according to the Ohio Jury Instructions, which do not include the word “substantially” to modify the hampering element of the offense. The court also instructed the jury that they could not find appellant guilty unless they found his conduct involved a “voluntary” act. Further, we note appellant has failed to cite any authority holding a trial court is required to include the word “substantially” in its charge. As a result, the trial court did not abuse its discretion in not including the word “substantially” to qualify the hampering element.

{¶41} Next, appellant argues the trial court erred in not instructing the jury on “probable cause to arrest” and that a person may not be arrested for a minor misdemeanor. We observe that these issues are purely questions of law, which could only have been decided by the trial court. Appellant never asked the trial court to rule on these issues either by way of a motion to suppress or motion in limine. Further, in *State v. Mills*, 9th Dist. Nos. 02CA0037-M and 02CA0038-M, 2002-Ohio-7323, the defendant asked the court to instruct the jury that obstructing official business can only be committed when there is probable cause to arrest the defendant. The Ninth District held the trial court did not abuse its discretion in not giving the jury this instruction

because “probable cause to arrest is not an element of obstructing official business.” *Id.* at ¶42.

{¶42} We therefore hold the trial court did not abuse its discretion in not instructing the jury on these issues.

{¶43} Appellant’s second assignment of error is not well taken.

{¶44} For the reasons stated in the Opinion of this court, the assignments of error are without merit. It is the judgment and order of this court that the judgment of the Painesville Municipal Court is affirmed.

MARY JANE TRAPP, P.J.,

TIMOTHY P. CANNON, J.,

concur.

STATE OF OHIO)
)SS.
COUNTY OF LAKE)

IN THE COURT OF APPEALS
ELEVENTH DISTRICT

STATE OF OHIO,

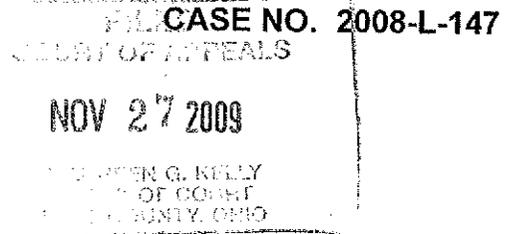
Plaintiff-Appellee,

- vs -

DOUGLAS JACKSON,

Defendant-Appellant.

JUDGMENT ENTRY



For the reasons stated in the Opinion of this court, the assignments of error are without merit. It is the judgment and the order of this court that the judgment of the Painesville Municipal Court is affirmed.

Costs to be taxed against appellant.


JUDGE CYNTHIA WESTCOTT RICE

FOR THE COURT