

**THE COURT OF APPEALS OF OHIO**  
**SECOND APPELLATE DISTRICT**  
**CASE SUMMARIES**  
**November 24, 2021**

These case summaries are issued for the convenience of the public, the bench, and the bar. They are a brief statement of the court's holdings and are not to be considered headnotes or syllabi. Copies of opinions are available from the particular county's clerk of courts. The full text of each opinion will be available on the Ohio Supreme Court's website at <http://www.supremecourt.ohio.gov/rod/docs/?source=2>.

Case Name: *State of Ohio v. Roger Dean Gillispie*  
Case No: Montgomery App. Nos. 29075 & 29096;  
T.C. Case No. 1990-CR-2667  
Panel: Tucker, Hall, Epley  
Author: Michael L. Tucker  
Summary: The trial court erred in ordering full disclosure and production of grand-jury testimony from four witnesses for use in appellee's pending federal lawsuit brought under 42 U.S.C. 1983. Appellee demonstrated his entitlement to limited portions of one grand-jury transcript by establishing a particularized need that outweighed the need to maintain grand-jury secrecy. Disclosure and production of specified portions of the transcript shall be limited to the parties and respective counsel solely for use in appellee's federal lawsuit. Judgment affirmed in part and reversed in part. Stay lifted.

Case Name: *State of Ohio v. Daniel Sizemore*  
Case No: Montgomery App. No. 28817; T.C. Case No. 2020-CRB-1147  
Panel: Tucker, Hall, Welbaum  
Author: Michael L. Tucker  
Summary: Appellate counsel filed an *Anders* brief concluding that there are no meritorious issues to present on appeal. Neither appellant nor his counsel raised any potential assignments of error having arguable merit for our review. After conducting an independent review of the proceedings, we agree that there are no issues with arguable merit for appeal. Judgment affirmed.

Case Name: *James McCloskey, Deceased v. Linda McCloskey, et al.*  
Case No: Montgomery App. No. 29055; T.C. Case No. 2011-LS-00027  
Panel: Tucker, Hall, Epley  
Author: Michael L. Tucker  
Summary: This appeal involves the interpretation of an agreed-upon divorce decree provision between appellant/cross-appellee husband (now

deceased) and appellee/cross-appellant wife. The husband's estate, for which the parties' daughter serves as executor, has been added as a party to the litigation. The trial court did not err by finding that the contested provision, which defined the assets subject to inclusion into an irrevocable trust for the benefit of the parties' disabled son, was ambiguous. The trial court also did not err by concluding it was the parties' intent that, upon a party's death, the trust would be funded with one-half of the deceased party's total assets, not just the party's probate assets. The trial court also did not err by concluding that neither party, by entering into the agreement, intended to restrict his or her ability, upon the son's death, to convey as desired any residuary trust assets contributed by that party. But, in order to more efficiently implement the parties' intent, the trial court's judgment is modified to order the appellee/cross-appellant to use an already established trust to comply with the agreement, and the husband's estate is ordered to create a new trust to comply with the agreement. Finally, the trial court did not abuse its discretion by not ordering attorney fees to appellee/cross-appellant. Judgment affirmed as modified.

Case Name: *State of Ohio v. Raymond E. Frazier*  
Case No: Clark App. No. 2021-CA-46; T.C. Case No. 2008-CR-804  
Panel: Donovan, Welbaum, Epley  
Author: Christopher B. Epley  
Summary: The trial court did not err in denying appellant's motion to "vacate and set aside his convictions and sentence." Appellant's allied-offense argument was barred by res judicata. Even if the issue were not barred, the trial court properly did not merge the felonious assault and having weapons while under disability offenses. Judgment affirmed.