

**THE COURT OF APPEALS OF
OHIO SECOND APPELLATE
DISTRICT CASE SUMMARIES**
April 10, 2020

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Case Name: *Douglas A. Shaneyfelt v. Robert J. Byram, et al.*
Case No: Darke App. No. 2019-CA-9; T.C. Case No. 2018-CV-141
Panel: Donovan, Hall, Welbaum
Author: Michael T. Hall
Summary: Appellee's pick-up truck collided with appellant's tractor-trailer, which was backing into a driveway at night. Following a jury verdict in favor of appellant in this personal-injury action, the trial court erred in granting appellee a new trial based on appellant's use of demonstrative evidence that the court permitted the defense to use at trial. The demonstrative evidence consisted of computer-simulated partially-illuminated images depicting how the defense expert represented that appellant's tractor-trailer would have appeared to appellee from 600 feet, 400 feet, and 250 feet away before the collision. Although the trial court acted within its discretion in concluding after the trial that it should not have allowed appellant to use the demonstrative evidence, the images were not sufficiently prejudicial to warrant granting a new trial, because the jury determined by interrogatory that appellant was not negligent, and the demonstrative images related to the issue of whether appellee was comparatively negligent for not seeing the tractor-trailer in time to stop. Consequently, exclusion of the demonstrative evidence would not have changed the result. Judgment reversed; remanded for reinstatement of the jury verdict.

Case Name: *State of Ohio v. Jamarr R. Stone*
Case No: Clark App. No. 2019-CA-54; T.C. Case No. 2004-CR-185
Panel: Froelich, Hall, Welbaum
Author: Michael T. Hall
Summary: The trial court did not err by overruling appellant's post-conviction motion to withdraw his guilty plea. Defense counsel did not render ineffective assistance merely because he had previously worked for

the prosecutor's office. Res judicata barred appellant from arguing as grounds for withdrawal that he was incorrectly informed that he was subject to post-release control for a murder conviction. The judgment of conviction is not void; the prison term imposed on appellant for murder was statutory, and a reference to an incorrect statute was merely a clerical error. Because the transcript of the sentencing hearing showed that the trial court did not impose a term of post-release control, that portion of the subsequent judgment entry of conviction imposing it is vacated. Judgment affirmed as modified.

Case Name: *State of Ohio v. Robert D. Hudson IV*
Case No: Greene App. No. 2019-CA-21; T.C. Case No. 2018-CR-795
Panel: Donovan, Hall, Welbaum
Author: Michael T. Hall
Summary: *Anders* appeal. Trial counsel did not render ineffective assistance by not moving for acquittal on four counts. The state offered sufficient evidence on all elements of these offenses to warrant submitting them to the jury. Trial counsel was not ineffective by not filing a motion to suppress based on the insufficiency of the search warrant; the record shows little basis on which to question the warrant's sufficiency. The trial court did not err by overruling appellant's post-trial motion for judgment of acquittal on a charge of endangering children based on illegal manufacture of drugs. There was sufficient evidence that appellant knew that methamphetamine was being manufactured in the residence. Pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), there are no arguably meritorious issues to present on appeal. Judgment affirmed.

Case Name: *State of Ohio v. Cassandra Watts*
Case No: Clark App. No. 2019-CA-56; T.C. Case No. 2018-CR-775
Panel: Donovan, Hall, Welbaum
Author: Jeffrey M. Welbaum
Summary: The trial court did not err in imposing judgment. We find no issues with arguable merit under the authority of *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967). Judgment affirmed.

Case Name: *State of Ohio v. Charles H. Gray*
Case No: Darke App. No. 2019-CA-7; T.C. Case No. 2018-CR-279
Panel: Tucker, Donovan, Welbaum
Author: Jeffrey M. Welbaum
Summary: Appellant was convicted of aggravated robbery with a firearm specification and misuse of credit cards after holding a homeless

man who had just visited an ATM at gunpoint and demanding cash. The trial court did not err in refusing to order separate trials for appellant and his co-defendant; both men were identically charged for a crime spree comprised of the same series of events. Appellant's convictions were not against the manifest weight of the evidence. Overwhelming credible evidence supported appellant's conviction. A mistrial was not warranted based on testimony elicited at trial from a woman who participated in the crime spree but was granted immunity. The defense did not object to the witness's statement that appellant was trying to sell drugs the day of the spree. The trial court quickly cured another statement the witness made about appellant saying he did not want to go back to prison. Furthermore, the prosecutor did not ask a question designed to induce this response. Judgment affirmed.

Case Name: *Julieta L. Perrin v. Cincinnati Insurance Company, et al.*
Case No: Montgomery App. No. 28502; T.C. Case No. 2017-CV-2090
Panel: Tucker, Donovan, Welbaum
Author: Michael L. Tucker
Summary: The trial court did not abuse its discretion by overruling two motions to compel filed by appellant or by limiting the scope of her depositions of personnel employed by appellee insurance company. Appellant sought to discover information in support of causes of action predicated partly on the allegation that a medical payments adjuster acted improperly by sharing information concerning appellant's claim for payment of medical expenses with a liability adjuster, but the alleged sharing of information was neither unlawful nor otherwise improper in this case. Furthermore, the trial court did not err by sustaining appellee's motion for summary judgment on appellant's causes of action for breach of contract and bad faith. The record supported the trial court's finding that appellant failed to prove appellee breached the express terms of her policy contract or that appellee acted in bad faith by refusing to perform without a reasonable justification for its refusal. Judgment affirmed.

Case Name: *State of Ohio v. Aaron T. Candy*
Case No: Miami App. No. 2019-CA-11; T.C. Case No. 2018-CR-16
Panel: Tucker, Donovan, Welbaum
Author: Michael L. Tucker
Summary: The trial court did not abuse its discretion by overruling appellant's motion to withdraw his guilty plea. Trial counsel did not provide ineffective assistance of counsel. Finally, the record supports the conclusion that appellant entered the guilty plea knowingly, intelligently, and voluntarily. Judgment affirmed.

Case Name: *State of Ohio v. Joshua Leet*
Case No: Montgomery App. Nos. 28340 and 28341; T.C. Case Nos. 2018-CR-1933/1 and 2018-CR-2306/2
Panel: Tucker, Donovan, Welbaum
Author: Michael L. Tucker
Summary: The State presented sufficient evidence to prove appellant's guilt on the single charge of aggravated possession of heroin for which he was indicted in Montgomery C.P. No. 2018-CR-1933/1, and the trial court did not disregard the weight of the evidence in finding appellant guilty as charged. Furthermore, the trial court did not err by overruling appellant's motion to suppress in Montgomery C.P. No. 2018-CR-2306/2. Police officers encountered appellant in a high crime area as he was emerging from a house known to be associated with illicit drug activity. The officers found a stolen car parked in the driveway next to the house, and appellant walked out of the house in the company of the suspected car thief. As part of their investigation into the theft, the officers were permitted to detain appellant, in addition to the suspect, under the "automatic companion rule," and appellant's refusal to comply with the officers' instructions permitted them to pursue and make an arrest. The search of appellant's person incident to that arrest was thus lawful, and the trial court accordingly did not err by declining to suppress the evidence obtained as a consequence of the search. Judgments affirmed.