

**THE COURT OF APPEALS OF
OHIO SECOND APPELLATE
DISTRICT CASE SUMMARIES**
June 5, 2020

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Case Name: *State of Ohio v. Marc Andrew Shields, Jr.*
Case No: Montgomery App. No. 28573; T.C. Case No. 2019-CR-2731
Panel: Tucker, Donovan, Froelich
Author: Jeffrey E. Froelich
Summary: The trial court did not err in sentencing appellant to prison, rather than community control, for aggravated robbery, to be served consecutively to a three-year sentence on the accompanying firearm specification. Pursuant to R.C. 2929.13(F)(8), the trial court was required to impose a prison sentence for appellant's aggravated robbery conviction, and it lacked the authority to impose community control. Judgment affirmed.

Case Name: *State of Ohio v. Diamond L. McNeil*
Case No: Clark App. No. 2019-CA-51; T.C. Case No. 2018-CR-745
Panel: Tucker, Donovan, Froelich
Author: Jeffrey E. Froelich
Summary: In sentencing appellant for attempted felonious assault, the trial court did not err in considering a surveillance video depicting the incident, the victim's medical records, a social media video, and photographs of the victim. Judgment affirmed.

Case Name: *William S. Johnson v. Clark County Auditor, et al.*
Case No: Clark App. No. 2019-CA-63; T.C. Case No. 2018-CV-89
Panel: Donovan, Froelich, Hall
Author: Jeffrey E. Froelich
Summary: Landowner appeals from grant of summary judgment to the board of county commissioners, county treasurer, county engineer, and county auditor on his challenges to ditch maintenance assessments for 2016 and 2017.

County appellees' motion for summary judgment was timely filed. The trial court did not abuse its discretion in denying the landowner's motion for a continuance so he could conduct additional discovery. The trial court erred in considering certain statements in the county engineer's affidavit and the engineer's exhibit, which contradicted statements in his answer to the landowner's complaint. The trial court did not err in failing to consider the unauthenticated exhibits attached to landowner's memorandum in opposition to the summary judgment motion.

The trial court erred in granting summary judgment on two of the landowner's claims regarding the 2016 assessment; genuine issues of material fact existed as to the balance of the ditch maintenance fund (claim one) and county appellees offered no evidence regarding the county's application of maintenance expenses to the ditch maintenance fund (portion of claim four). The trial court properly granted summary judgment on landowner's claims regarding a six-year review (claim two), whether his assessment was excessive (claim three), the engineer's failure to obtain bids for maintenance work (portion of claim four), and landowner's claim for compensatory damages (claim five).

County appellees were entitled to summary judgment on all of landowner's claims regarding the 2017 assessment, because landowner failed to establish that he provided a written protest and notice of intention to sue, as required by R.C. 2723.03.

Judgment affirmed in part, reversed in part, and remanded for further proceedings. (Hall, J., concurring in part and dissenting in part.)

Case Name:	<i>State of Ohio v. Brandon Beedy</i>
Case No:	Clark App. No. 2019-CA-71; T.C. Case No. 2019-CR-253A
Panel:	Froelich, Hall, Welbaum
Author:	Michael T. Hall
Summary:	Appellant's sentence to eight years in prison for one count of attempted involuntary manslaughter, as recommended by the State, is not contrary to law. Appellant's only contention is that comments by the judge at sentencing indicated judicial bias. The case involved the death of appellant's 21-month-old child, who was left in a crib so long the child died of dehydration. The record supports that appellant and the child's mother were under the influence of drugs at the time. At sentencing counsel claimed appellant was "battling a pretty bad drug addiction *** for years" and requested community control. After referring to the various drugs found in appellant's system and appellant's failure to follow through with drug treatment prior to

sentencing, the court stated “It always amazes me that defendants will come into the courtroom and tell the Court that they have a drug problem, that they need another chance, and yet we are all told that if we get involved with dangerous drugs like this, we will end up either in prison or dead.” In context, the comment does not demonstrate impermissible judicial bias and does not render the sentence contrary to law. Judgment affirmed.

Case Name: *State of Ohio v. Brandon Davis*
Case No: Clark App. No. 2019-CA-67; T.C. Case No. 2017-CR-542
Panel: Froelich, Hall, Welbaum
Author: Jeffrey M. Welbaum
Summary: A jury found appellant guilty of aggravated burglary, burglary, and related firearm specifications; the trial court merged the offenses and sentenced appellant for aggravated burglary and a firearm specification. Appellant’s conviction for aggravated burglary with an attendant firearm specification was not supported by sufficient evidence and was against the manifest weight of the evidence. There was, however, sufficient evidence for the jury to find appellant guilty of burglary with an attendant firearm specification, and that verdict was not against the manifest weight of the evidence. Judgment vacated as to the aggravated burglary charge and remanded for conviction and sentence on the burglary charge.

Case Name: *In re N.D.*
Case No: Montgomery App. No. 28687; T.C. Case No. 2017-1063
Panel: Tucker, Donovan, Froelich
Author: Michael L. Tucker
Summary: The juvenile court’s determination that it was in a child’s best interest to award permanent custody to a public children services agency was supported by clear and convincing evidence. Judgment affirmed.

Case Name: *In the Matter of L.R.O. and In the Matter of C.A.O.*
Case No: Darke App. Nos. 2019-CA-19 and 2019-CA-20; T.C. Case Nos. 18-5-11 and 18-5-12
Panel: Tucker, Donovan, Welbaum
Author: Michael L. Tucker
Summary: In this adoption action, appellants (maternal grandparents) appeal the probate court’s determination that biological mother’s consent to the adoption of her two children was necessary. The probate court’s determination that Mother had justifiable cause for de minimis contact with the children was supported by clear and convincing

evidence. But, based upon *In re Adoption of A.C.B.*, Ohio Slip Opinion No. 2020-Ohio-629, ___ N.E.3d ___, which was decided after the probate court's decision, the probate court erred in concluding Mother had met the R.C. 3107.07(A) support requirement. Thus, the case must be remanded for a determination of whether Mother was justified in failing to support the children. Judgment reversed and remanded.