

THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CASE SUMMARIES
August 21, 2020

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Case Name: *State of Ohio v. Virgil Royale Lee Breneman*
Case No: Champaign App. No. 2019-CA-23; T.C. Case No. 2019-CR-141
Panel: Tucker, Froelich, Hall
Author: Jeffrey E. Froelich
Summary: The jury did not lose its way in finding appellant guilty of theft of drugs and aggravated possession of drugs; his conviction was not against the manifest weight of the evidence.

The trial court did not abuse its discretion in failing to grant appellant a new trial due to alleged prejudicial statements by the prosecutor during opening statements. The invited error doctrine bars appellant from complaining about the prosecutor's mention of his three prior felony drug abuse convictions when those statements were consistent with the parties' pretrial stipulation as to his criminal history. Moreover, any prejudice was diminished by the trial court's jury instructions and the fact that the jury properly heard that appellant had previously been sentenced to prison and was on post-release control and further, based on a revised stipulation that appellant had a felony drug abuse conviction.

The trial court did not abuse its discretion in allowing a juror to remain on the panel when the record did not substantiate that the juror was sleeping and missed "large or critical portions" of the trial. Judgment affirmed.

Case Name: *State of Ohio v. Michael Harrison*
Case No: Montgomery App. Nos. 28526 & 28528; T.C. Case No. 2019-CR-288 & 2019-CR-657
Panel: Donovan, Froelich, Welbaum
Author: Jeffrey E. Froelich

Summary: The trial court did not improperly interject itself in plea negotiations such that appellant's pleas were not knowing, intelligent, and voluntary. Judgments affirmed.

Case Name: *In the Matter of J.N.*

Case No: Clark App. No. 2019-CA-82; T.C. Case No. 20170486

Panel: Tucker, Froelich, Hall

Author: Jeffrey E. Froelich

Summary: The trial court did not err in granting permanent custody of minor child to children services agency and terminating Father's parental rights. Competent, credible evidence clearly and convincingly supported the trial court's determination that the child had been in agency custody for more than 12 months of the prior 22 consecutive months and that child's best interest would be served by granting permanent custody to the agency. Undisputed evidence showed that Father voluntarily had gone without seeing the child for more than seven months, refusing to attend supervised visitation as a form of "protest" due to his dispute with the assigned social worker. Father's refusal to sign releases for the agency to obtain his medical and other records also left the record devoid of credible evidence to confirm Father's alleged compliance with the established case plan objectives. Judgment affirmed.

Case Name: *State of Ohio v. Nathaniel Johnson*

Case No: Greene App. No. 2019-CA-64; T.C. Case No. 2018-CR-251

Panel: Donovan, Froelich, Hall

Author: Michael T. Hall

Summary: The trial court did not err in overruling appellant's motion to suppress evidence obtained pursuant to search warrants for two residential properties. Affidavits in support of the search warrants established probable cause to believe unlawfully possessed fireworks would be found in the locations to be searched. The "command" section of the search warrants was not fatally defective insofar as it referred to a non-existent section of the warrants. The trial court did not commit plain error in failing to suppress evidence obtained pursuant to the warrants on the basis that the "command" section was overbroad. Judgment affirmed.

Case Name: *State of Ohio v. James Joshua Ferguson*

Case No: Montgomery App. No. 28644; T.C. Case No. 2019-CR-2097

Panel: Tucker, Froelich, Hall

Author: Michael T. Hall

Summary: The trial court did not err by overruling appellant's motion to suppress evidence. The encounter between appellant and the police officer was consensual, and appellant voluntarily admitted that he was carrying a concealed handgun for which he did not have a permit.

This gave the officer probable cause to search him, which led to the discovery of drugs. Appellant's sentence under the Reagan Tokes Law was not unlawful; the Law is not unconstitutional either because it violates the separation-of-powers doctrine or because it violates due process. Judgment affirmed. (Froelich, J., concurring.)

Case Name: *State of Ohio v. Jamaica Curtis*
Case No: Montgomery App. No. 28512; T.C. Case No. 2017-CR-3784
Panel: Donovan, Froelich, Welbaum
Author: Jeffrey M. Welbaum
Summary: Appellant's conviction for nonsupport under R.C. 2919.21(B) was not against the manifest weight of the evidence. The evidence indicated that appellant did not support her children as required by court order, and appellant also failed to prove her affirmative defense under R.C. 2919.21(D). In addition, trial counsel did not render ineffective assistance of counsel by failing to make a Crim.R. 29 motion for acquittal, which is based on insufficiency of the evidence. Such a motion would not have changed the outcome of the trial because the conviction was not against the manifest weight of the evidence, which subsumes the issue of sufficiency. Judgment affirmed.

Case Name: *In re D.K.*
Case No: Montgomery App. No. 28728; T.C. Case No. 2019-2172
Panel: Tucker, Donovan, Welbaum
Author: Michael L. Tucker
Summary: The trial court did not err by overruling appellant's motion to suppress. Irrespective of whether police officers should have delivered a *Miranda* warning before asking appellant, who was in their custody, where they could find his cellular telephone, the officers would inevitably have discovered the telephone during the subsequent, routine inventory and collection of appellant's personal property. In addition, the trial court did not err by declining to merge the two counts for which appellant entered an admission of guilt. Appellant committed two violations of R.C. 2907.323(A)(1) by capturing two separate video recordings, regardless of the fact that the two recordings related to a continuous sequence of events involving one victim. Judgment affirmed.

Case Name: *State of Ohio v. Chad Barnes*
Case No: Montgomery App. No. 28613; T.C. Case No. 2019-CR-1865
Panel: Tucker, Froelich, Hall
Author: Michael L. Tucker
Summary: Appellant was convicted of two counts of aggravated robbery involving separate victims, and because separate victims were involved, the counts were not allied offenses of similar import. The trial court did not improperly consider facts presented at the

sentencing hearing in concluding that the offenses did not merge. The trial court complied with Crim.R. 11, and the record reflects that appellant's plea was knowing and voluntary. The trial court made the required findings for consecutive sentences, and it cannot be found by clear and convincing evidence that the record did not support these findings. Finally, the appellant did not assert that the Reagan Tokes Law is unconstitutional in the trial court. The issue is thus waived, and neither the provisions of the Reagan Tokes Law nor the record compels the conclusion that the Reagan Tokes Law violates the separation of powers doctrine or is otherwise unconstitutional. Judgment affirmed.

Case Name: *In re: A.T. & S.T.*
Case No: Greene App. No. 2020-CA-10; T.C. Case No. S48552
Panel: Tucker, Donovan, Welbaum
Author: Mary E. Donovan
Summary: Father appeals from a judgment of the juvenile court, which overruled his objections to a magistrate's decision. Although the juvenile court signed the magistrate's decision, the document did not adopt the magistrate's decision as an order of the court, enter the court's order resolving the case, or discuss the case. The magistrate's decision was also deficient because it failed to conspicuously indicate that a party must timely object as required by Juv.R. 40(3)(a)(iii). The trial court's subsequent judgment overruling Father's objections also did not adopt the magistrate's decision or enter an order resolving the case. Thus, there is no final appealable order, and this appeal is dismissed for lack of jurisdiction.

Case Name: *In re: N.J.*
Case No: Montgomery App. No. 28786; T.C. Case No. 2014-7337
Panel: Tucker, Donovan, Welbaum
Author: Mary E. Donovan
Summary: In permanent custody proceedings, the juvenile court's findings that the dependent child could not be returned to her parents within a reasonable time and that granting custody of the child to MCCS was in the child's best interest were supported by clear and convincing evidence. Mother was not able to adequately care for the child, and Mother had failed to remedy the conditions that caused the child to be removed from her home. Judgment affirmed.