

**THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CASE SUMMARIES
January 17, 2020**

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. Antwyn Boyd*
Case No: Montgomery App. No. 28490; T.C. Case No. 2018-CR-2850
Panel: Donovan, Hall, Welbaum
Author: Mary E. Donovan
Summary: A detective did not conduct a search implicating the Fourth Amendment when he looked into appellant's vehicle located in a store's parking lot. The detective, while looking into the vehicle, observed what he immediately recognized as probable cocaine. This plain view discovery allowed the detective to conduct a warrantless seizure of the probable contraband which, upon testing, was confirmed to be cocaine. Additionally, the trial court reasonably concluded that the tow was necessary in order to avoid either theft or vandalism since the subject vehicle, which was parked in private business lot, could readily be placed in safekeeping in a police-controlled lot. The trial court properly overruled appellant's motion to suppress. Judgment affirmed.

Case Name: *John H. Stuck, Executor of the Estate of David M. Stuck v. Miami Valley Hospital, et al.*
Case No: Montgomery App. No. 28233; T.C. Case No. 2017-CV-139
Panel: Welbaum, Froelich, Myers (Visiting Judge by Assignment)
Author: Jeffrey E. Froelich
Summary: The trial court did not err in granting partial summary judgment as to appellant's cause of action seeking a declaratory judgment that medical providers were negligent per se or that strict liability or res ipsa loquitur applied to their actions. Although a pressure ulcer that decedent developed may have qualified as a "hospital acquired condition" or "never event" under federal law governing Medicaid and Medicare reimbursement, such federal law did not establish a standard of care for private medical negligence actions and did not alter the elements necessary to prove such a claim. Appellees' assignments of error on cross-appeal challenging the trial court's Civ.R. 54(B) certification of its partial summary judgment decision

are overruled, and their motions to strike are granted in part and denied in part. Judgment affirmed.

Case Name: *Leo Neal Jr. v. Thomas Lilly, et al.*
Case No: Montgomery App. Nos. 28082 & 28400; T.C. Case No. 2017-CV-3306
Panel: Donovan, Hall, Tucker
Author: Michael T. Hall
Summary: The trial court did not err in awarding damages to appellee for temporary injury to real property caused by appellant. The trial court also did not err by overruling appellant's motion for a new damages trial. Judgments affirmed.

Case Name: *In re: C.M.B., C.G., M.L.B., and C.J.G.*
Case No: Montgomery App. No. 28523; T.C. Case Nos. 2016-6164, 2016-6166, 2016-6168, & 2016-6169
Panel: Donovan, Hall, Welbaum
Author: Michael T. Hall
Summary: The trial court did not err in finding by clear and convincing evidence that awarding permanent custody of Mother's children to Montgomery County Children Services was in the children's best interest. The trial court did not abuse its discretion in denying a third continuance of the dispositional hearing to allow a home study to be completed for a Florida relative. Judgment affirmed.

Case Name: *State of Ohio v. John T. Mukes*
Case No: Montgomery App. No. 28350; T.C. Case No. 2017-CR-1538
Panel: Donovan, Hall, Welbaum
Author: Jeffrey M. Welbaum
Summary: Appellant's conviction for felony murder was supported by sufficient evidence and was not against the manifest weight of the evidence. Judgment affirmed.