

THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CASE SUMMARIES
October 23, 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. Holly L. Klofta*
Case No: Montgomery App. No. 28690; T.C. Case No. 2018-CR-3269
Panel: Donovan, Hall, Welbaum
Author: Mary E. Donovan
Summary: Appellant recklessly violated a duty of care to prevent serious harm when she disciplined a young child by means of a stun gun. Her conviction for endangering children was supported by sufficient evidence and was not against the manifest weight of the evidence. Judgment affirmed.

Case Name: *State of Ohio v. Warren D. Pack*
Case No: Montgomery App. No. 28458; T.C. Case No. 2017-CR-4050/1
Panel: Tucker, Donovan, Froelich
Author: Jeffrey E. Froelich
Summary: The trial court did not err in denying appellant's motion to suppress; the officers reasonably detained appellant to investigate why his U-Haul was parked behind a business and possible drug activity. The detention was not prolonged to conduct a canine sniff. In addition, the trial court did not err in failing to award jail time credit for the period of time that appellant was serving a prison sentence in another case. Judgment affirmed.

Case Name: *State of Ohio v. Nathan. A. Swartz*
Case No: Miami App. No. 2019-CA-17; T.C. Case No. 2019-CR-209
Panel: Froelich, Hall, Welbaum
Author: Jeffrey E. Froelich
Summary: Appellant appeals his convictions after entering no-contest pleas to one count of rape and two counts of sexual battery. The trial court did not err by finding appellant competent to stand trial based on an uncontested mental competency evaluation. The court also did not err by merging only one sexual battery offense with appellant's rape conviction; although the second sexual battery offense involved the same victim, the sexual acts charged occurred on different dates,

involved separate instances with separate animus, and resulted in separate harm to the victim. Finally, appellant was not denied the effective assistance of counsel due to his trial attorney's failure to pursue a meritless merger argument or to request that court costs be waived. Judgment affirmed.

Case Name: *State of Ohio v. Justin C. Dillon*
Case No: Greene App. No. 2020-CA-4; T.C. Case No. 2019-CR-357
Panel: Donovan, Froelich, Hall
Author: Jeffrey E. Froelich
Summary: While in Greene County, appellant took possession of a car containing a briefcase with checkbooks, and he attempted to cash a forged check from the checkbook in Butler County the following day. The State presented sufficient evidence of venue in Greene County, pursuant to R.C. 2901.12(C), (G), and (H). The trial court did not err in denying appellant's motion to dismiss on speedy trial grounds. The trial court's imposition of consecutive 11-month sentences for theft and forgery was not contrary to law or clearly and convincingly unsupported by the record. Judgment affirmed.

Case Name: *Lisa Ann-Horvath Sullivan v. Brendan E. Sullivan*
Case No: Montgomery App. No. 28848; T.C. Case No. 2016-DR-1086
Panel: Donovan, Hall, Welbaum
Author: Michael T. Hall
Summary: The trial court did not err in finding appellant in civil contempt for failing to pay appellee, his former spouse, the required portion of his disposable military retirement pay. The trial court also did not err in finding appellant's own civil-contempt motion moot insofar as he sought a contempt finding based on appellee's depriving him of parenting time with their daughter. Any dispute over parenting time became moot when their daughter turned 18-years-old prior to the trial court's ruling. Judgment affirmed.

Case Name: *State of Ohio v. Micah A. Cox*
Case No: Greene App. No. 2020-CA-14; T.C. Case No. 2010-CR-365
Panel: Tucker, Froelich, Hall
Author: Michael T. Hall
Summary: *Anders* appeal. The record reveals no non-frivolous issues for review in this appeal from a limited resentencing solely to address a mandatory fine. Judgment affirmed.

Case Name: *Cascade Capital, LLC v. Robert Magyar*
Case No: Montgomery App. No. 28710; T.C. Case No. 2019-CVF-1406E
Panel: Tucker, Hall, Welbaum
Author: Jeffrey M. Welbaum
Summary: The trial court erred in granting summary judgment to appellee,

because appellee failed to attach documents to its summary judgment motion that complied with Civ.R. 56(C) and (E). Judgment reversed and remanded.

Case Name: *State of Ohio v. Simon Bustos*
Case No: Miami App. No. 2019-CA-19; T.C. Case No. 2019-CR-153
Panel: Donovan, Hall, Welbaum
Author: Jeffrey M. Welbaum
Summary: The trial court did not err by imposing consecutive sentences where the trial court's statutorily-required consecutive-sentence findings were not unsupported by the record. The trial court also did not err in applying the sentencing factor under R.C. 2929.12(B)(7), as the record does not fail to support the trial court's finding that appellant's aggravated drug trafficking offenses were committed as part of an organized criminal activity. Judgment affirmed. (Donovan, J., concurring in judgment only.)

Case Name: *State of Ohio v. John Anthony Shutway*
Case No: Champaign App. No. 2018-CA-39; T.C. Case No. 2018-CR-77
Panel: Froelich, Hall, Welbaum
Author: Jeffrey M. Welbaum
Summary: Appellant's claim that his guilty verdict was invalidated because the jury verdict forms omitted a finding as to venue lacks merit; venue is not required to be stated on verdict forms, and the verdict forms at issue sufficiently indicated that the jury found the appellant committed the offenses within the trial court's territorial jurisdiction. The trial court did not erroneously permitted the State to present the charges in question to a grand jury before a preliminary hearing was held on the charges in municipal court, as Crim.R. 5(B)(1) provides that the preliminary hearing shall not be held if the defendant is indicted. Appellant's claim that the State committed prosecutorial misconduct by withholding certain items of discovery lacks merit, because appellant failed to establish that he was prejudiced by the State's failure to timely provide the discovery at issue. Lastly, appellant's claim that his indictment was void because it was not signed by the grand-jury foreperson lacks merit because the record establishes that the foreperson's signature was affixed to the indictment as required by Crim.R. 6(C) and R.C. 2939.20. Judgment affirmed.

Case Name: *State of Ohio v. Duane Allen Short*
Case No: Montgomery App. No. 28696; T.C. Case No. 2004-CR-2635
Panel: Tucker, Froelich, Hall
Author: Michael L. Tucker
Summary: The trial court had jurisdiction to consider appellant's motion for a new mitigation trial. Ohio's death penalty scheme does not violate

the Sixth Amendment right to a jury trial because the jury – not the trial judge – is required to find the defendant guilty of the aggravating circumstance specification necessary for death penalty eligibility. Thus, appellant is not entitled to a new mitigation trial under the authority of *Hurst v. Florida*, 577 U.S. 92, 136 S.Ct. 616, 193 L.Ed.2d 504 (2016). Judgment affirmed.