

THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CASE SUMMARIES
January 19, 2024

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Case Name: *Patricia Wilkinson Admn of Estate of Aisha Nelson et al v. City of Dayton Ohio et al.*

Case No: Montgomery C.A. No. 29841; T.C. Case No. 2022 CV 05433

Panel: Welbaum, Tucker, Huffman

Author: Michael L. Tucker

Summary: Appellant, as an estate administrator, filed wrongful death, survivorship, and related causes of action against two police officers who, in response to a domestic violence dispatch, did not arrest or otherwise take charge of the abuser; a short time after the officers left the home, the abuser fatally shot the domestic violence complainant and her daughter. The trial court did not err in dismissing appellant's complaint under Civ.R. 12(B)(6). Appellant's petition for discovery was properly dismissed because the information sought was not available under either R.C. 2317.48 or Civ.R. 34(D). Appellant's common law wrongful death and survivorship claims were properly dismissed because, under the facts set forth in the amended complaint, the appellee-officers did not have a special relationship with the decedents or any statutory mandate to arrest or otherwise take charge of the person who murdered them; as such, as a matter of law, appellant could not establish the duty element of the wrongful death and survivorship claims. The amended complaint also asserted a cause of action under R.C. 2307.60, which allows a crime victim to pursue a cause of action against the perpetrator for the damages caused by the crime, alleging that the police officers were guilty of criminal conduct - dereliction of duty - under R.C. 2921.44(E). The trial court correctly dismissed this claim because R.C. 2921.44(E) requires the duty to act, and appellant did not articulate an express duty imposed upon the officers to arrest or otherwise take charge of the individual who murdered the decedents. Appellant's argument that the officers had a duty under R.C. 2921.44(A) is waived because she did not raise it in the trial court. Finally, the trial court did not abuse its discretion by overruling

appellant's motion for leave to file a second amended complaint, because that complaint did not add any causes of action that were not included in the first amended complaint. Judgment affirmed.

Case Name: *State of Ohio v. John Adams*
Case No: Montgomery C.A. No. 29855; T.C. Case No. 2022 CR 02092
Panel: Epley, Welbaum, Huffman
Author: Mary K. Huffman
Summary: The trial court did not err in overruling appellant's motion to suppress. The law enforcement officers had reasonable, articulable suspicion that appellant was under the influence and, as he got out of his vehicle, an officer observed drugs in plain view inside the vehicle. At that point, the officers had probable cause to search the vehicle. Judgment affirmed.

Case Name: *State of Ohio v. Bianca V. Stone*
Case No: Greene C.A. No. 2023-CA-23; T.C. Case No. 2022-CR-0565
Panel: Epley, Tucker, Lewis
Author: Christopher B. Epley
Summary: Appellant's conviction for attempted trespass in a habitation when a person is present or likely to be present was based on sufficient evidence; the evidence established that appellant acted knowingly and used stealth and force. The trial court did not abuse its discretion in precluding defense counsel from asking certain proffered questions of a responding sheriff's deputy; the questions were not relevant, asked for hearsay, and were not based on a proper foundation. The trial court did not err in failing to provide a jury instruction on criminal trespass as a lesser included offense. Judgment affirmed.

Case Name: *James Timmons, et al. v. James Hull, et al.*
Case No: Clark C.A. No. 2023-CA-23; T.C. Case No. 19-CV-0297
Panel: Welbaum, Lewis, Huffman
Author: Ronald C. Lewis
Summary: The trial court erred in granting appellees' motion for summary judgment where there remained a genuine issue of material fact as to whether appellants had made full payment for cattle purchased pursuant to an oral contract. Judgment reversed and remanded.

Case Name: *Billie Skeens v. Darla Gambill*
Case No: Miami C.A. No. 2023-CA-24; T.C. Case No. 2023 CVIT 00461
Panel: Epley, Tucker, Lewis
Author: Ronald C. Lewis
Summary: Appellant's notice of appeal was timely despite being filed over 90 days after the date of the final judgment, because the clerk of court failed to serve appellant's attorney with a copy of the judgment.

Appellant was not permitted to file objections to the trial court's judgment pursuant to Civ.R. 53, because the trial was conducted by an acting judge rather than a magistrate. The trial court's judgment was not against the manifest weight of the evidence. Judgment affirmed.

Case Name: *State of Ohio v. Albert David Holbert*
Case No: Montgomery C.A. No. 29704; T.C. Case No. 2022 CR 01799/1
Panel: Welbaum, Tucker, Lewis
Author: Jeffrey M. Welbaum
Summary: Conceded error. The trial court did not properly advise appellant pursuant to the Reagan Tokes Act and did not properly advise him about post-release control after finding him guilty of felonious assault. The State concedes the error. The judgment entry also erroneously states that appellant pled guilty instead of no contest. Judgment reversed in part and remanded for resentencing and correction of the judgment entry as to the nature of the plea. In all other respects, judgment affirmed.

ORDER RENDERED JANUARY 9, 2024

Case Name: *State of Ohio v. Robert Wilcox*
Case No. Clark C.A. No. 2013-CA-94; T.C. Case No. 13CR457A
Panel: Epley, Tucker, Lewis
Author: Per Curiam
Summary: A motion for delayed appeal may not be used as a means to pursue successive appeals; an appellant who has pursued a direct appeal is not entitled to a second appeal by way of a delayed appeal. Insofar as the substance of appellant's motion might more accurately be characterized as an application for reopening, the application is untimely, and appellant did not show good cause for the untimeliness. Motion for delayed appeal overruled; application for reopening denied.