

THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CASE SUMMARIES
January 20, 2023

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. Brandy Rachelle Petticrew*
Case No: Clark C.A. No. 2022-CA-29; T.C. Case No. 21-CR-0543
Panel: Tucker, Epley, Lewis
Author: Ronald C. Lewis
Summary: Appellant waived the ability to challenge the trial court's ruling on her motion to dismiss for a statutory speedy trial violation by entering a guilty plea. Additionally, the trial court did not err in imposing restitution. Judgment affirmed.

Case Name: *State of Ohio v. Aaron P. Hartley*
Case No: Montgomery C.A. No. 29510; T.C. Case No. 20CRB00148
Panel: Welbaum, Tucker, Lewis
Author: Jeffrey M. Welbaum
Summary: Appellant's claims of prosecutorial misconduct lack merit because appellant failed to establish that the alleged inappropriate conduct by the State prejudiced him at trial. Appellant's claim that his trial counsel provided ineffective assistance during voir dire by failing to effectively challenge certain jurors lacks merit because whether and how to challenge a juror is a matter of trial strategy, which cannot form the basis of an ineffective assistance claim. Appellant's trial counsel was also not ineffective for failing to object to inappropriate comments made by the State during voir dire regarding the reasonable doubt standard of proof; the comments at issue did not result in any prejudice to appellant given that the trial court subsequently provided jury instructions that properly explained reasonable doubt. Appellant's claim that the trial court abused its discretion by denying two of his challenges for cause during voir dire lacks merit; the record indicates that the challenged jurors indicated that they could remain fair and impartial during trial. Appellant also failed to establish that his conviction for assault was against the manifest weight of the evidence. Judgment affirmed.

Case Name: *State of Ohio v. Laron Cunningham*
Case No: Montgomery C.A. No. 29122; T.C. Case No. 2018-CR-4739
Panel: Tucker, Epley, Lewis
Author: Michael L. Tucker
Summary: The trial court erred in instructing the jury that self-defense was an affirmative defense on which appellant bore the burden of proof. Under *State v. Brooks*, Ohio Slip Opinion No. 2022-Ohio-2478, ___ N.E.3d ___, the State bore the burden to disprove appellant's self-defense claim. The trial court's error in allocating the burden of proof was harmless beyond a reasonable doubt, however, because the evidence at trial did not support a self-defense instruction. Judgment affirmed.

Case Name: *State of Ohio v. Fred Prichard*
Case No: Montgomery C.A. No. 29509; T.C. Case No. 2021 CR 02171
Panel: Tucker, Epley, Lewis
Author: Michael L. Tucker
Summary: The trial court did not err in imposing a mandatory fine based on appellant's failure to demonstrate a future inability to pay over time. The record does not portray ineffective assistance of counsel in connection with submitting appellant's affidavit of indigence. The affidavit was timely because it was filed before the trial court's final judgment entry imposing sentence. Judgment affirmed.

Case Name: *State of Ohio v. Marcellas L. Boulware*
Case No: Clark C.A. No. 2022-CA-38; T.C. Case No. 21CR0636
Panel: Tucker, Epley, Lewis
Author: Christopher B. Epley
Summary: The length of appellant's sentence was proper, but the trial court did not comply with the notification requirements of R.C. 2929.19(B)(2)(c). Judgment affirmed in part, reversed in part, and remanded.

Case Name: *Gail Budz et al. v. [Estate of] Robert Somerfield et al.*
Case No: Montgomery C.A. No. 29550; T.C. Case No. 2021 CV 03126
Panel: Tucker, Epley, Lewis
Author: Christopher B. Epley
Summary: The trial court did not err in granting summary judgment to plaintiffs-appellees on their claim under R.C. 2117.12 (action on rejected claim in probate court) and denying defendants-appellants' motion for summary judgment. Plaintiffs-appellees were not required to address affirmative defenses in their summary judgment motion. Defendants-appellants did not raise their affirmative defenses in their own summary judgment motion, and they did not file a memorandum in opposition to plaintiffs-appellee's motion for summary judgment. Defendants-appellants' failure to raise their affirmative defenses in

the trial court waived those defenses, and they could not be raised for the first time on appeal when seeking reversal of the judgment. Judgment affirmed.

