

THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CASE SUMMARIES
January 6, 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. Demetrius Dixon*
Case No: Montgomery C.A. No. 29548; T.C. Case No. 2022 CR 00480
Panel: Tucker, Welbaum, Lewis
Author: Ronald C. Lewis
Summary: The trial court did not err in overruling appellant's motion to suppress evidence obtained during a traffic stop where the police officer's decision to initiate the traffic stop was based on his estimation of speed and observance of a turn signal violation. Judgment affirmed.

Case Name: *State of Ohio v. Paul Chirco*
Case No: Montgomery C.A. Nos. 29399; 29400; T.C. Case Nos. 2021 CR 02927; 2021 CR 03506
Panel: Tucker, Welbaum, Lewis
Author: Ronald C. Lewis
Summary: In the context of a bench trial, appellant failed to establish plain error in the trial judge's decision to allow a witness to testify regarding appellant's state of mind, where defense counsel failed to object to the question asked, the judge did not mention this testimony when explaining the guilty finding, and logical inferences from the other evidence of record established beyond a reasonable doubt all of the necessary elements of the retaliation offense. Judgments affirmed.

Case Name: *State of Ohio v. Dajahnn P. Alexander*
Case No: Montgomery C.A. No. 29465; T.C. Case No. 2021 CR 00643
Panel: Tucker, Welbaum, Lewis
Author: Ronald C. Lewis
Summary: The trial court did not abuse its discretion in overruling appellant's motion to withdraw his guilty plea where the evidence pointed toward a change of heart rather than a legitimate and reasonable basis to withdraw the guilty plea. Judgment affirmed.

Case Name: *State of Ohio v. Willie Wilson*
Case No: Montgomery C.A. No. 29349; T.C. Case No. 2021 CR 02391
Panel: Tucker, Welbaum, Lewis
Author: Jeffrey M. Welbaum
Summary: Appellant was not denied a fair trial when the trial court failed to excuse a juror for cause. Appellant failed to object at trial and waived the error, other than consideration of plain error or whether substantial defects affected appellant's rights. No plain error existed, because the juror did not exhibit bias against appellant. There also was no prejudice significant enough to affect the trial's outcome, because the evidence against appellant was overwhelming. In addition, the trial court did not err in admitting text messages between appellant and the victim, which were properly authenticated by the victim and by appellant himself. Further, the court did not err in admitting "other bad acts" evidence under Evid.R. 404(B) and did not exacerbate the alleged error in its limiting instruction to the jury. The evidence in question was relevant to appellant's credibility and to his access to the weapon used to injure the victim. Appellant's convictions were based on sufficient evidence and were not against the manifest weight of the evidence; the evidence supporting the verdict was overwhelming. Finally, no cumulative error existed. However, the trial court did make a clerical mistake in the judgment entry, which the State has conceded, but it is not a basis for reversal. Judgment affirmed; remanded for the filing of a nunc pro tunc entry correcting the clerical mistake in the judgment entry.

Case Name: *In the Matter of the Dissolution of the Marriage of: Rochiel V. Mongkollugsana (Nka Foulk) v. Jackrit Mongkollugsana*
Case No: Champaign C.A. No. 2022-CA-15; T.C. Case No. 1993 DR 33
Panel: Tucker, Welbaum, Lewis
Author: Michael L. Tucker
Summary: The parties' separation agreement, which was incorporated into a final judgment and decree of dissolution, did not contain a provision specifically authorizing the trial court to modify the amount or terms of appellant's spousal support obligation. As such, the trial court correctly concluded, under R.C. 3105.18(E), that it was without jurisdiction to modify or terminate appellant's spousal support obligation. Judgment affirmed.

Case Name: *State of Ohio v. James A. Dwyer*
Case No: Greene C.A. No. 2022-CA-30; T.C. Case No. 2020 CR 0831
Panel: Tucker, Welbaum, Lewis
Author: Michael L. Tucker
Summary: In appellant's first appeal, the case was remanded to the trial court for a new sentencing hearing regarding one firearm specification. The trial court addressed the remanded issue at a new sentencing

hearing, prompting the current appeal, in which appellant raises a sentencing issue not raised in the first appeal and unrelated to the remanded firearm specification issue. As such, appellant's assignment of error is beyond the scope of the remand and, since the assignment of error could have been raised in the first appeal, its consideration is barred by res judicata. Judgment affirmed.

DECISION AND FINAL JUDGMENT ENTRY RENDERED DECEMBER 28, 2022

Case Name: *Christopher S. Miller v. State ex rel. Rob Streck*
Case No. Montgomery App. No. 29663
Panel: Tucker, Welbaum, Epley
Author: Per Curiam
Summary: Petitioner, a parolee from Louisiana, failed to allege any set of facts which would render his pre-signed waiver of extradition involuntary. R.C. 2963.24 provides a non-exclusive procedure for waiving extradition. Petitioner's waiver, which was signed as a condition of parole, is presumptively valid and appears on its face to be in order. Motion to dismiss sustained. Writ of habeas corpus denied.