

THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CASE SUMMARIES
February 3, 2023

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Case Name: *State of Ohio v. Chaz Gillilan*
Case No: Montgomery C.A. No. 29182; T.C. Case No. 2019 CR 01470/3
Panel: Welbaum, Tucker, Lewis
Author: Michael L. Tucker
Summary: Following a jury trial during which appellant asserted that he had acted in self-defense, appellant was convicted of murder, felonious assault, and several other offenses. Following this court's precedent before *State v. Brooks*, Ohio Slip Opinion No. 2022-Ohio-2478, ___ N.E.3d ___, the trial court incorrectly instructed the jury regarding the allocation of the self-defense burden of proof. And, contrary to the State's argument, the incorrect instruction was not harmless error. Judgment reversed and remanded.

Case Name: *State of Ohio v. Rick Smith*
Case No: Montgomery C.A. No. 29326; T.C. Case Nos. 2021 CR 01194; 2021 CR 02263
Panel: Welbaum, Tucker, Epley
Author: Michael L. Tucker
Summary: The trial court's two judgment entries imposing consecutive eight-month prison terms upon the revocation of appellant's community control were valid final orders under Crim.R. 32(C). The trial court did not improperly elicit appellant's admission to a community-control violation by making a false promise to place him in a residential treatment program. The trial court did not err in failing to construe appellant's remarks at sentencing as an attempt to withdraw his admission to violating community control. Appellant's completion of his prison term rendered moot his challenge to the trial court's imposition of consecutive eight-month prison terms. Judgments affirmed.

Case Name: *In re: A.B. & A.B.*
Case No: Montgomery C.A. No. 29598; T.C. Case Nos. G-2018-006197-0F,0L; G-2018-006198,0H,0M
Panel: Welbaum, Tucker, Epley
Author: Christopher B. Epley
Summary: The trial court did not abuse its discretion when it awarded permanent custody of two minor children to Children Services. The children had been in the agency's temporary custody for 12 or more months of a consecutive 22-month period, and awarding the agency permanent custody was in the best interest of the children. Judgment affirmed.

Case Name: *Sharon L. White v. Family Dollar, et al.*
Case No: Montgomery C.A. No. 29549; T.C. Case No. 2022 CV 2514
Panel: Tucker, Epley, Lewis
Author: Ronald C. Lewis
Summary: The trial court did not err in granting the motion to dismiss of the alleged chief executive officer (CEO) of a store chain due to appellant's failure to state a claim upon which relief could be granted against the CEO. However, the trial court erred in granting the store's motion to dismiss; appellant pled sufficient factual allegations to withstand a motion to dismiss on her defamation claim against the store under the doctrine of respondeat superior. Judgment affirmed in part, reversed in part, and remanded.

Case Name: *State of Ohio v. Antonion K. Ward*
Case No: Montgomery C.A. No. 29493; T.C. Case No. 2021 CR 01106
Panel: Welbaum, Epley, Lewis
Author: Jeffrey M. Welbaum
Summary: The trial court did not err by failing to suppress un-Mirandized statements that appellant made to investigating officers during two separate interviews; the interviews in question were not custodial interrogations that required *Miranda* warnings. Appellant's aggravated vehicular homicide convictions were not against the manifest weight of the evidence, as the evidence presented at trial overwhelmingly established that appellant recklessly caused the deaths of three individuals while operating a motor vehicle. Appellant's multiple ineffective assistance of counsel claims lack merit because appellant failed to establish deficient performance and prejudice. Appellant's claim that the State engaged in prosecutorial misconduct during closing argument also lacks merit, as appellant failed to establish that any of the State's comments were improper. Judgment affirmed.