

THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CASE SUMMARIES
April 28, 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. Christopher A. DeVaughns*
Case No: Montgomery C.A. No. 29654; T.C. Case No. 2006 CR 00843
Panel: Tucker, Lewis, Huffman
Author: Ronald C. Lewis
Summary: Appellant's claims of deficiencies in his resentencing hearing were barred by res judicata. Further, appellant was not entitled to appointed counsel to raise these barred claims. Judgment affirmed.

Case Name: *State of Ohio v. Carlos Martin*
Case No: Montgomery C.A. No. 29579; T.C. Case No. 2022 CR 00434
Panel: Welbaum, Epley, Lewis
Author: Jeffrey M. Welbaum
Summary: *Anders* appeal. Appellate counsel found no non-frivolous issues to raise on appeal, and our examination of the record reveals no non-frivolous issues having arguable merit. Judgment affirmed.

Case Name: *Piqua Store and Lock, LLC v. Miami County Bd. of Zoning Appeals*
Case No: Miami C.A. No. 2022-CA-30; T.C. Case No. 22 CV 126
Panel: Tucker, Lewis, Huffman
Author: Michael L. Tucker
Summary: The trial court did not abuse its discretion in finding the BZA's denial of appellant's application for a conditional-use permit to be supported by a preponderance of the substantial, reliable, and probative evidence. The trial court did not err in failing to take additional evidence where the BZA did not refuse to permit cross-examination during an administrative hearing. Judgment affirmed.

Case Name: *Malea Miller v. Autozone Stores, LLC, et al.*
Case No: Clark C.A. No. 2022-CA-83; T.C. Case No. 21-CV-304
Panel: Tucker, Lewis, Huffman
Author: Michael L. Tucker
Summary: Appellant, a business invitee, fell and sustained injuries as she was walking from a vehicle toward the front door of appellee's business.

Appellant identified a parking stop located immediately in front of the vehicle she had exited as the cause of the fall. The trial court granted summary judgment to appellee under the open and obvious doctrine. On this record, the parking stop, as a matter of law, was open and obvious, and there was no factual basis to support a conclusion that an attendant circumstance contributed to the fall. Judgment affirmed.

Case Name: *State of Ohio v. Jason Nevada Deckard*
Case No: Montgomery C.A. No. 29611; T.C. Case No. 2021 CR 04088
Panel: Tucker, Lewis, Huffman
Author: Michael L. Tucker
Summary: The trial court erred in overruling appellant's motion to suppress drug evidence found in his possession. University police officers lacked reasonable, articulable suspicion of criminal activity to justify stopping appellant as he was walking across a university-owned parking lot carrying a guitar. Judgment reversed and remanded.

Case Name: *Wells Fargo Bank, N.A. v. John Doe(s), Name(s) Unknown, The Unknown Heirs, Devisees, Legatees, Beneficiaries of Velma Lennon And Their Unknown Spouses And Creditors; and the Unknown Spouse of Velma Lennon, et al.*
Case No: Montgomery C.A. No. 29686; T.C. Case No. 2022 CV 01014
Panel: Tucker, Lewis, Huffman
Author: Mary K. Huffman
Summary: The trial court did not err in sustaining appellee-bank's motion for summary judgment on its complaint for foreclosure. The bank filed its complaint for foreclosure following the death of the decedent-borrower, after which payments on the note ceased, and it did not seek personal judgment on the note but sought foreclosure of the mortgage to enforce its security interest. Appellant, an heir to the decedent-borrower, was a necessary party to this action following the decedent-borrower's death and did not oppose the bank's motion for summary judgment. Judgment affirmed.

Case Name: *State of Ohio v. Norman Thornton*
Case No: Montgomery C.A. No. 29653; T.C. Case No. 2022 CR 01798
Panel: Tucker, Lewis Huffman
Author: Mary K. Huffman
Summary: The trial court erred in finding that there was no reasonable articulable suspicion to justify a *Terry* stop and in granting defendant-appellee's motion to suppress. Considering the totality of the circumstances, the officers initially had reasonable suspicion to justify a *Terry* stop. Additionally, appellee failed to submit to a show of authority by the police and was not seized until after he had fled on foot and had been observed holding and then discarding a firearm; by that time, the officers had additional reasonable

articulable suspicion to justify a *Terry* stop. Finally, appellee abandoned the firearm in his possession when he threw it to the ground while being pursued by police, thereby relinquishing any reasonable expectation of privacy in it. Judgment reversed.