

**THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CASE SUMMARIES
August 3, 2018**

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>.

DECISION AND FINAL JUDGMENT ENTRY RENDERED MARCH 29, 2018:

Case Name: *State of Ohio, Ex Rel. Timothy (NMN) Hannah v. Mary Katherine Huffman, Judge of the Court of Common Pleas Montgomery, County, Ohio*

Case No: Montgomery App. No. 27821

Panel: Welbaum, Donovan, Hall

Author: Per Curiam

Summary: Relator had an adequate remedy at law precluding mandamus relief to challenge Respondent Common Pleas Court Judge's subject matter jurisdiction over Relator's criminal case. Relator could have appealed the trial court's decision overruling his motion for arrest of judgment that alleged the court lacked jurisdiction because there was no criminal complaint and because the Criminal Rules must be followed in sequential order. Mandamus case dismissed.

DECISION AND FINAL JUDGMENT ENTRY RENDERED APRIL 9, 2018:

Case Name: *Veronica Omoyosi, et al. v. Montgomery County Department of Job and Family Services*

Case No: Montgomery App. No. 27816; T.C. No. 16-CV-4894

Panel: Donovan, Froelich, Tucker

Author: Per Curiam

Summary: Notice of appeal filed more than 30 days after final judgment in an unsuccessful administrative appeal was untimely, as the motion for reconsideration filed after judgment did not toll the time to appeal to this court under App.R. 4(B). The Supreme Court's Rules of Practice do not apply to this appeal from the common pleas court to this court of appeals. Appeal dismissed.

DECISION AND ENTRY RENDERED JULY 20, 2018:

Case Name: *Gary Onady, M.D. v. Wright State Physicians, Inc.*
Case No: Montgomery App. No. 27954; T.C. No. 12-CV-7251
Panel: Welbaum, Donovan, Froelich
Author: Per Curiam
Summary: Trial court's decision denying defendant's motion for summary judgment was not final and appealable with respect to claims that remained for trial, regardless of the inclusion of language certifying there was no just reason for delay under Civ.R. 54(B). An order must still be final as defined in R.C. 2505.02 before Civ.R. 54(B) language can be effective. This court will not read into the statute a new category of final appealable orders that concern "purely legal issues." Appeal dismissed; cross-appeal (on claims that were fully resolved) will proceed.

OPINIONS RENDERED AUGUST 3, 2018:

Case Name: *State of Ohio v. Ricky C. Brammer*
Case No: Greene App. No. 2017-CA-56; T.C. No. 17-CR-390
Panel: Welbaum, Donovan, Froelich
Author: Mary E. Donovan
Summary: The nine-year sentence imposed upon the appellant was within the permissible statutory range and therefore not contrary to law. The record establishes that the trial court properly considered and applied R.C. 2929.11, which governs the overriding purposes of felony sentencing, and R.C. 2929.12 which sets forth the seriousness and recidivism factors for the court to consider in imposing sentence. The trial court did not abuse its discretion when it ordered appellant to pay a mandatory fine of \$20,000.00. Judgment affirmed.

Case Name: *State of Ohio v. Johniecsa S. Harris-Smith*
Case No: Montgomery App. No. 27822; T.C. No. 17-CRB-5058
Panel: Welbaum, Donovan, Froelich
Author: Mary E. Donovan
Summary: Sufficient evidence supported Appellant's conviction for falsification. The evidence established that Appellant knowingly made a false statement with the purpose to mislead a public official in performing the public official's official function; Appellant falsely certified that her two intact dogs were spayed and neutered to the deputy auditor in the course of obtaining dangerous dog certificates. Judgment affirmed.

Case Name: *State of Ohio v. Jermar W. White*
Case No: Montgomery App. No. 27749; T.C. No. 16-CR-1517/1
Panel: Froelich, Hall, Tucker
Author: Jeffrey E. Froelich
Summary: Defendant's convictions for unlawful sexual conduct with a minor (10 or more years older than the victim), two counts of trafficking in persons, and two counts of compelling prostitution in furtherance of human trafficking were based on sufficient evidence and were not against the manifest weight of the evidence. The State concedes, and we agree, that defendant's conviction for pandering obscenity involving a minor was based on insufficient evidence because the photographs were not obscene. The trial court did not err in denying defendant's motion to suppress statements made at the police station following *Miranda* warnings. Defendant waived his *Miranda* rights, and his statements were made voluntarily. Defendant forfeited his void-for-vagueness constitutional challenge to R.C. 2905.32(A)(2)(a), the trafficking in persons statute. Even if we were to consider his argument regarding the "less than sixteen years of age" language, we would not find it to be vague. The record fails to demonstrate ineffective assistance of counsel or that the prosecutors engaged in misconduct by offering the testimony of defendant's co-defendant. Judgment reversed as to the charge of pandering obscenity involving a minor. In all other respects, judgment affirmed.

Case Name: *State of Ohio v. Shannon M. Wiles*
Case No: Clark App. No. 2017-CA-69; T.C. No. 17-CR-214
Panel: Donovan, Froelich, Hall
Author: Michael T. Hall
Summary: The trial court did not err by imposing a six-month jail term as part of Appellant's community-control sentence. The trial court's questions about the facts underlying Appellant's past criminal cases, which were ultimately dismissed, and Appellant's denials did not demonstrate the trial court was improperly punishing her for those crimes. Judgment affirmed. (Donovan, J., concurring.)

Case Name: *State of Ohio v. Calvin J. Black*
Case No: Greene App. No. 2017-CA-29; T.C. No. 16-CR-466
Panel: Donovan, Froelich, Hall
Author: Michael T. Hall
Summary: The trial court did not err by overruling Appellant's motion to suppress the handgun found in his vehicle and his statements related to the presence of the handgun. A computer check revealed the appellant had an Ohio carrying concealed weapon permit, and he had an Oklahoma nationwide-radius felony arrest warrant. Once handcuffed and in custody, the police officer's questions to Appellant about whether Appellant had anything dangerous in the vehicle did

not violate *Miranda*. Appellant was statutorily required to inform the officer he had a handgun in the vehicle. Also, under the public-safety exception to *Miranda*, in the circumstances of this case, the officer's questions were objectively reasonable and related to the immediate potential danger from a firearm. The officer was not required to give Appellant *Miranda* warnings before asking him about a dangerous item in the vehicle. Judgment affirmed. (Donovan, J., dissenting.)

Case Name: *State of Ohio v. Anthony J. Brown*
Case No: Montgomery App. No. 27738; T.C. No. 17-CR-1677
Panel: Welbaum, Donovan, Froelich
Author: Jeffrey M. Welbaum
Summary: Appellant's felonious assault conviction was supported by sufficient evidence and was not against the manifest weight of the evidence, as the evidence established that Appellant knowingly caused the victim to suffer serious physical harm. In addition, under the circumstances of this case, the trial court's failure to sua sponte instruct the jury on aggravated assault as an alternative to felonious assault does not amount to plain error since the record indicates that Appellant proceeded solely on the theory of self-defense at trial. Judgment affirmed.

Case Name: *Diana Lynn Wilhelm, et al. v. Brenda Lee Kennedy Coverstone, et al.*
Case No: Miami App. No. 2017-CA-25; T.C. No. 15-CV-109
Panel: Welbaum, Donovan, Froelich
Author: Jeffrey M. Welbaum
Summary: The trial court did not err in concluding that Appellees each owned a one-eighth interest as tenants in common with Appellant, a limited liability company. The trial court correctly rejected an alleged contract that the company's sole owner claimed to have entered into for the care of her elderly mother. Specifically, the court found that the owner's testimony about the alleged contract was not credible. The trial court's conclusion was supported by the evidence. In addition, the court did not err in concluding that the mother, who held a life interest in the disputed property, did not consume the remainder interests in the property. Judgment affirmed.

Case Name: *Tax Ease Ohio, LLC v. Jesse R. Lucas, et al.*
Case No: Montgomery App. No. 27836; T.C. No. 16-CV-103
Panel: Welbaum, Froelich, Hall
Author: Jeffrey M. Welbaum
Summary: Appellant's alleged inability to pay real estate taxes is not a defense to a forfeiture proceeding brought under R.C. 5721.40. Judgment affirmed.

Case Name: *John M. Przybyla v. Michelle C. Przybyla*
Case No: Montgomery App. No. 27852; T.C. No. 06-DR-665
Panel: Welbaum, Froelich, Tucker
Author: Jeffrey M. Welbaum
Summary: The trial court had jurisdiction over Appellee's motion to modify spousal support, and did not abuse its discretion in modifying support due to a substantial change in circumstances. The trial court also did not commit plain error in refusing to add Appellee's current spouse as a party. In addition, the court did not abuse its discretion in finding that Appellant failed to provide sufficient evidence with respect to the income of Appellee's current spouse. Furthermore, the court did not abuse its discretion in computing Appellee's alleged support arrearage, in dismissing Appellant's motion to show cause, and in finding that Appellee's income did not include distributions from redemption of his stock. Finally, concerning Appellee's cross-appeal, the trial court's error, if any, in excluding the deposition of Appellee's doctor was harmless, as it did not affect the result. Judgment affirmed.

Case Name: *State of Ohio v. Jerry V. Ramey, Jr.*
Case No: Montgomery App. No. 27636; T.C. No. 16-CR-955
Panel: Donovan, Hall, Tucker
Author: Michael L. Tucker
Summary: The trial court, following a jury trial, merged certain counts resulting in the Defendant-appellant being convicted and sentenced for murder (proximate cause of felonious assault) and aggravated burglary (physical harm). Since Defendant-appellant's commission of felonious assault – with the felonious assault being necessary to the murder conviction – is the aggravating element that made the burglary an aggravated, as opposed to simple, burglary, the offenses of murder (proximate cause of felonious assault) and aggravated burglary are allied offenses of similar import subject to merger. The trial court, accordingly, erred by not merging the two offenses. The record does not support a conclusion that during deliberations the jury had incorrect jury instructions. The trial court's decision to give a "castle doctrine" instruction that the victim did not have a duty to retreat from his home was an accurate statement of law, and, given the circumstances of the case, the instruction was not an abuse of discretion. Defendant-appellant, given the facts of the case, was not entitled to a voluntary manslaughter instruction. Defendant-appellant, therefore, was not prejudiced by any error regarding the trial court's voluntary manslaughter instruction. Finally, the jury's rejection of Defendant-appellant's self-defense claim was not against the manifest weight of the evidence, and the State produced sufficient evidence that Defendant-appellant trespassed into the victim's home. Judgment reversed in part, affirmed in part, and

remanded for re-sentencing. (Hall, J., concurring in part and dissenting in part.)

Case Name: *La Shanda E. Baker v. Portiea Baker*
Case No: Montgomery App. No. 27850; T.C. No. 07-DR-370
Panel: Froelich, Hall, Tucker
Author: Michael L. Tucker
Summary: The trial court had subject matter jurisdiction to decide Defendant-appellee's motion seeking reallocation of parental rights and responsibilities regarding the parties' two minor children. Further, the trial court did not abuse its discretion by designating Defendant-appellee as the residential and legal custodian of the children. Judgment affirmed.