

THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CASE SUMMARIES
September 15, 2023

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Case Name: *State of Ohio v. Steven Sheppard*
Case No: Clark C.A. No. 2022-CA-69; T.C. Case No. 22-CR-0312
Panel: Tucker, Epley, Huffman
Author: Christopher B. Epley
Summary: Appellant's guilty plea to operating a vehicle under the influence of alcohol was knowing, intelligent, and voluntary. The trial court substantially complied with its obligations under Crim.R. 11(C)(2)(b). The State concedes that the trial court erred in failing to properly impose post-release control and in failing to impose the required mandatory prison term. Judgment affirmed in part, reversed in part, and remanded.

Case Name: *State of Ohio v. Ronald Harris II*
Case No: Clark C.A. No. 2022-CA-73; T.C. Case No. 22-CR-0030
Panel: Tucker, Epley, Huffman
Author: Christopher B. Epley
Summary: The trial court did not abuse its discretion in denying defense counsel's motion to withdraw, which was filed the day before trial. The trial court did not commit plain error when it commenced appellant's jury trial without appellant physically present; appellant invited the Crim.R. 43(A) error when he deliberately refused to leave his cell to attend jury selection, and he was present for the State's opening statement and the remainder of the trial. Judgment affirmed.

Case Name: *State of Ohio v. Christopher Stewart*
Case No: Clark C.A. No. 2022-CA-44; T.C. Case No. 21-CR-0804
Panel: Tucker, Epley, Lewis
Author: Ronald C. Lewis
Summary: Although appellant agreed to forfeit property pursuant to a plea agreement, the trial court did not order the forfeiture of appellant's property. Appellant's sentence was not contrary to law; the sentence fell within the range provided by statute, and the trial court stated in

its judgment entry that it had considered the principles and purposes of sentencing set forth in R.C. 2929.11 and balanced the seriousness and recidivism factors under R.C. 2929.12. The trial court erred in failing to calculate and notify appellant of his jail-time credit. Judgment affirmed in part, reversed in part, and remanded for resentencing.

Case Name: *State of Ohio v. Jeremy Murphy*
Case No: Montgomery C.A. No. 29559; T.C. Case No. 2020 CR 03798
Panel: Welbaum, Tucker, Epley
Author: Jeffrey M. Welbaum
Summary: The trial court did not err by failing to suppress a witness's pretrial identification of appellant where the totality of the circumstances established that the witness's identification was reliable despite the use of an unduly suggestive identification process. In addition, appellant's convictions for felony murder with a firearm specification, tampering with evidence, and having weapons while under disability were supported by sufficient evidence and were not against the manifest weight of the evidence. Judgment affirmed. (Tucker, J., concurring.)

Case Name: *State of Ohio v. Charles F. Pulley*
Case No: Montgomery C.A. No. 29501; T.C. Case No. 2021 CR 00303
Panel: Welbaum, Tucker, Epley
Author: Jeffrey M. Welbaum
Summary: The trial court did not err in refusing to provide funds for a false confession expert. The trial court also did not err in overruling appellant's motion to suppress; appellant knowingly, intelligently, and voluntarily spoke with police, and there was no evidence of coercion. The trial court thoroughly explained the dangers associated with appellant's waiver of assistance of counsel and held many status hearings to discuss appellant's situation. Moreover, appellant abandoned his request for self-representation by asking standby counsel to assume representation after opening statements were made. The trial court did not commit error in refusing to admit text messages between appellant and the victim's mother; appellant knew of these texts when they occurred but failed to mention them until the State had nearly finished its case. Further, trial counsel did not act ineffectively by failing to subpoena the victim's mother or others to authenticate the text messages. Appellant's argument that the trial court erred in its jury instructions defining "acting recklessly" lacks merit; although the court used an outdated instruction reflecting the law before amendment, the prior law actually imposed a higher burden on the prosecution, and therefore the instruction did not prejudice appellant. The trial court also did not err in refusing to merge two offenses as allied offenses of similar import. The offenses

were not allied, as they were committed during separate events and the harm caused was separate and identifiable. Appellant's convictions were supported by sufficient evidence and were not against the manifest weight of the evidence. Finally, because no error occurred, there is no basis for finding cumulative error. Judgment affirmed.

Case Name: *In the Matter of S.D.S.*
Case No: Miami C.A. No. 2023-CA-13; T.C. Case No. 22320015
Panel: Tucker, Epley, Huffman
Author: Michael L. Tucker
Summary: Appellant, a juvenile, was adjudicated a delinquent child for committing acts which, were he an adult, would have constituted the crimes of felonious assault and aggravated menacing. The State presented sufficient evidence to support the adjudication, and the adjudication was not against the manifest weight of the evidence. The trial court did not abuse its discretion by overruling appellant's motion for a new trial or to allow reopening of appellant's case for the presentation of additional evidence. Judgment affirmed.

Case Name: *State of Ohio v. Lance A. Irvin*
Case No: Montgomery Appeal No. 28495; T.C. Case No. 17-CR-3623
Panel: Tucker, Epley, Lewis
Author: Michael L. Tucker
Summary: The trial court's misallocation of the burden of proof on appellant's self-defense claim was not harmless error. Appellant was entitled to a self-defense instruction, and the trial court's failure correctly to instruct the jury regarding the burden of proof affected a substantial right. Judgment reversed on the murder and felonious assault charges to which the self-defense instruction was relevant, and we remand for a new trial on those offenses. Judgment affirmed as to tampering with evidence.

Case Name: *Live Joyfully, LLC v. PNC Bank, N.A.*
Case No: Montgomery C.A. No. 29755; T.C. Case No. 2022 CV 4744
Panel: Tucker, Epley, Huffman
Author: Mary K. Huffman
Summary: The trial court erred in dismissing plaintiff-appellant's complaint sua sponte without providing prior notice of its intention to dismiss and an opportunity to respond. Judgment reversed and remanded.

DECISION AND ENTRY RENDERED SEPTEMBER 13, 2023

Case Name: *State v. Albert David Holbert*
Case No. Montgomery C.A. No. 29704
Panel: Welbaum, Tucker, Lewis
Author: Per Curiam
Summary: This court will no longer accept motions to withdraw or briefs filed pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967). Counsel's *Anders* brief is rejected on this basis and is stricken from the record. New counsel will be appointed to cause the completion of the record and to prepare a merit brief in accordance with the standards of representation set forth in this decision.