

THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CASE SUMMARIES
July 21, 2023

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Case Name: *State of Ohio v. Patrick Miller*
Case No: Clark C.A. No. 2022-CA-58; T.C. Case No. 22-CR-0346
Panel: Welbaum, Epley, Lewis
Author: Jeffrey M. Welbaum
Summary: The State's delayed disclosure of evidence did not amount to a *Brady* violation and did not otherwise violate appellant's constitutional right to due process. The trial court's decision to order a one-day trial continuance in response to the State's discovery violation was reasonable and not an abuse of discretion. The State did not comment on appellant's decision not to testify at trial and thus did not violate appellant's constitutional right to remain silent. The State also did not engage in prosecutorial misconduct during its rebuttal closing argument. Although the State made improper comments about appellant's need to hire a good defense counsel and how appellant's defense counsel was doing his job well by confusing the issues, those improper comments did not prejudicially affect appellant's substantial rights and thus do not warrant a reversal of appellant's convictions. In addition, the trial court's jury instruction on appellant's affirmative defense to kidnapping was not incomplete or faulty; therefore, appellant was not denied a fair trial based on that jury instruction. Because multiple errors were not committed at trial, appellant's claim that he was denied a fair trial under the cumulative error doctrine lacks merit as well. Judgment affirmed.

Case Name: *State of Ohio v. Jezzmond D. Saul*
Case No: Miami C.A. No. 2022-CA-34; T.C. Case No. 21CR486
Panel: Tucker, Lewis, Huffman
Author: Michael L. Tucker
Summary: Appellant was a front seat passenger in a vehicle stopped to investigate whether the driver had a suspended license. Drugs were discovered on the driver's person, which resulted in a search of the vehicle and the discovery of drugs underneath the front passenger seat. Thereafter, appellant made statements to the investigating officers. The vehicle stop was based upon a reasonable, articulable

suspicion that the driver had a suspended license. Appellant, as a passenger, had no legitimate expectation of privacy in the vehicle's contents, and thus he had no basis to contest the search of the vehicle. However, appellant was not advised of his *Miranda* rights before he responded to custodial questioning. Thus, as conceded by the State, the trial court erred by not suppressing appellant's statements. Judgment reversed and remanded.

Case Name: *State of Ohio v. Keyson Sanders*
Case No: Montgomery C.A. Nos. 29688; 29689;
T.C. Case Nos. 2022 CR 01706; 2022 CR 02720
Panel: Tucker, Lewis, Huffman
Author: Mary K. Huffman
Summary: The trial court conducted appellant's plea colloquy in accordance with Civ.R. 11(C). Appellant indicated at the plea hearing his understanding of the terms of the plea agreement. Appellant's argument on appeal that his guilty pleas were not knowingly, intelligently, and voluntarily entered is without merit. Judgments affirmed.

Case Name: *State of Ohio v. Brent Michael Grooms*
Case No: Champaign C.A. No. 2022-CA-32;
T.C. Case Nos. 2021 CR 170 C-13; 2022 CR 238 C-12
Panel: Welbaum, Tucker, Huffman
Author: Mary K. Huffman
Summary: *Anders* appeal. Based on our review of the record, we agree with appellate counsel that it would be wholly frivolous to argue that the trial court erred in accepting appellant's guilty pleas in two cases and in imposing sentence. However, the trial court cited incorrect statutory provisions in the portion of the judgment entry imposing post-release control; the matter will be remanded to the trial court for the issuance of nunc pro tunc entry correcting the clerical error. In all other respects, judgments affirmed.

Case Name: *State of Ohio v. Paul E. Faulkner*
Case No: Champaign C.A. No. 2023-CA-2; T.C. Case No. 22CRB00798
Panel: Tucker, Epley, Huffman
Author: Mary K. Huffman
Summary: The trial court did not err in denying appellant's Civ.R. 29 motion because the State presented sufficient evidence of obstruction of official business. Appellant admitted that he had violated his probation and that, when he saw an officer outside his apartment who asked him to stop, he did not stop, hurriedly entered his apartment, and closed and locked the door. Although the trial court erred in admitting evidence offered without proper notice under Evid.R. 403(B), the error was harmless. Judgment affirmed.

ORDER ON APPLICATION FOR RECONSIDERATION RENDERED MARCH 17, 2023

Case Name: *State of Ohio v. Brandon William Leigh*
Case No. Montgomery C.A. No. 28821
Panel: Welbaum, Epley, Lewis
Author: Per Curiam
Summary: Appellant's application for reconsideration was untimely and he did not present any extraordinary circumstances to justify the delay. Even considering the application, it lacked merit. There was no obvious error in our failure to apply the doctrine of implied bias when reviewing appellant's argument that his trial counsel was ineffective in failing to dismiss a particular prospective juror; that doctrine is encompassed within R.C. 2945.25 and Crim.R. 24(C), which set forth bases for challenging a juror for cause in a criminal case, and there was no obvious error in our application of Ohio precedent. There was also no obvious error in our conclusion that appellant's convictions were based on sufficient evidence, in our review of appellant's claim regarding an unavailable witness, and in our analysis regarding the character evidence presented at trial. We will not reconsider our ruling where appellant simply disagrees with our analysis. Finally, an application for reconsideration is not the proper vehicle for raising a new argument. To the extent that appellant sought "reconsideration" due to deficiencies by appellate counsel, pursuant to *State v. Murnahan*, 63 Ohio St.3d 60, 584 N.E.2d 1204 (1992), the proper procedure for raising ineffective assistance of appellate counsel was the filing of an application for reopening pursuant to App.R. 26(B). Application for reconsideration denied.