

THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CASE SUMMARIES
September 20, 2024

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. Mark Patterson*
Case No: Greene C.A. No. 2024-CA-28; T.C. Case No. 2020 CR 0209
Panel: Epley, Tucker, Huffman
Author: Michael L. Tucker
Summary: Any error by the trial court in recasting appellant's complaint for declaratory judgment as an untimely post-conviction-relief petition and dismissing it on that basis was harmless as a matter of law. The complaint was subject to dismissal on the grounds that a trial court cannot enter declaratory judgment for a defendant in a criminal case. Judgment affirmed.

Case Name: *State of Ohio v. Cornelius Davon Brogan*
Case No: Montgomery C.A. No. 30052; T.C. Case No. 2022 CR 03404
Panel: Epley, Tucker, Huffman
Author: Michael L. Tucker
Summary: The jury's conclusion that the State had proven beyond a reasonable doubt that appellant did not act in self-defense was not against the manifest weight of the evidence. The trial court did not commit plain error when it failed to give a jury instruction on voluntary manslaughter as an inferior-degree offense of murder. Also, trial counsel was not ineffective in failing to request a voluntary manslaughter instruction or to call a chokehold expert. Judgment affirmed.

Case Name: *State of Ohio v. Miceal Walters*
Case No: Clark C.A. No. 2024-CA-16; T.C. Case No. 22-CR-0691
Panel: Epley, Tucker, Huffman
Author: Mary K. Huffman
Summary: The trial court reasonably concluded that appellant's guilty plea to one count of menacing by stalking in exchange for the dismissal of three other felonies and a guarantee of community control was knowing, intelligent, and voluntary, and the court did not abuse its

discretion in overruling appellant's post-sentence motion to withdraw his guilty plea. The trial court also reasonably concluded that experienced defense counsel's representation that he had repeatedly and affirmatively advised appellant that he could appeal a speedy trial issue if he pled guilty was not credible, and ineffective assistance of counsel is not demonstrated. Appellant's arguments about his speedy trial rights are not properly before us. Judgment affirmed.

Case Name: *State of Ohio v. David Champeau*
Case No: Montgomery C.A. No. 30083; T.C. Case No. 2023 CR 03728
Panel: Epley, Tucker, Huffman
Author: Christopher B. Epley
Summary: The trial court complied with its obligation under Crim.R. 32(A)(1) and R.C. 2929.19(A) to provide appellant an opportunity to speak on his own behalf prior to sentencing by asking appellant if he had anything he wanted to say. Any error occasioned by defense counsel's responding to that question on appellant's behalf was invited error. Judgment affirmed.

Case Name: *State of Ohio v. Dorian L. Jones*
Case No: Montgomery C.A. Nos. 30065; 30068;
T.C. Case Nos. 2023CRB4227; 2023CRB4238
Panel: Epley, Tucker, Huffman
Author: Christopher B. Epley
Summary: Appeal from appellant's conviction for assault and criminal damaging is moot where appellant has completely served his jail sentence and he has shown no collateral disability or loss of rights from his conviction. Appeal in Case No. 2023CRB4227 dismissed. The trial court's application of R.C. 2929.14(C)(4) when imposing consecutive sentences for five misdemeanor counts of assault, while improper, was harmless error. Judgment in Case No. 2023CRB4238 affirmed.

Case Name: *Kate O. Vidovich, Administrator v. Little Joe LLC dba Little Joes Restaurant, et al.*
Case No: Clark C.A. No. 2024-CA-6; T.C. Case No. 22CV0308
Panel: Welbaum, Tucker, Lewis
Author: Jeffrey M. Welbaum
Summary: The trial court did not err in granting summary judgment to appellee, who owned a convenience store where a third party shot and killed appellant's decedent. Business owners have a duty to warn or protect business invitees from criminal acts of third parties when they know or should know of a substantial risk of harm to invitees on the owner's premises, but the third party's acts must be foreseeable for a duty to arise. To assess this, courts use a totality of the circumstances test in which they consider the location and character

of the business and past crimes of a similar nature. Under this test, the totality of the circumstances must be somewhat overwhelming before an owner will be held to be on notice of and therefore under a duty to protect against the criminal acts of others. Here, applying this test and construing the facts in appellant's favor, appellee did not have a duty to protect the decedent from the gunman's criminal actions. Judgment affirmed.

Case Name: *State of Ohio v. Chaz Gillilan*
Case No: Montgomery C.A. No. 29901; T.C. Case No. 2019 CR 01470/3
Panel: Welbaum, Tucker, Lewis
Author: Jeffrey M. Welbaum
Summary: Appellant's convictions for felony murder, felonious assault, and aggravated robbery were not against the manifest weight of the evidence. The trial court did not err by failing to instruct the jury on voluntary manslaughter as an inferior-degree offense to felony murder, and appellant's trial counsel did not provide ineffective assistance by failing to request a voluntary manslaughter instruction. Although the State correctly argues on cross-appeal that the trial court erred by giving a self-defense jury instruction on appellant's aggravated burglary and aggravated robbery charges, the error had no effect on appellant's convictions because the jury found him guilty of those offenses. Judgment affirmed.