

**THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CASE SUMMARIES
JUNE 18, 2010**

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Case Name: *State of Ohio v. Jeffrey Lyle January*
Case No: Clark App. Nos. 09-CA-52 and 09-CA-53
Panel: Donovan, Brogan, Grady
Author: James A. Brogan
Summary: The appellant's convictions for receiving stolen property are supported by legally sufficient evidence and are not against the manifest weight of the evidence. Judgment affirmed.

Case Name: *State of Ohio v. Seth M. Robins*
Case No.: Montgomery App. No. 23437
Panel: Donovan, Brogan, Grady
Author: Mary E. Donovan
Summary: The trial court's determination that S.B. 10 does not violate the separation-of-powers doctrine is error. Appellant's remaining arguments lack merit. Judgment reversed.

Case Name: *State of Ohio v. Anthony B. Jackson*
Case No.: Montgomery App. Nos. 23457, 23458
Panel: Donovan, Brogan, Grady
Author: Mary E. Donovan
Summary: The trial court did not abuse its discretion in revoking Appellant's community control. Judgment affirmed.

Case Name: *State of Ohio v. Joe Hill III*
Case No.: Montgomery App. No. 23171
Panel: Donovan, Brogan, Fain
Author: Mary E. Donovan
Summary: The judgment of the trial court that S.B. 10 does not violate the separation-of-powers doctrine is reversed.

Case Name: *Terry L. Thompson v. Stealth Investigations, Inc.*
Case No.: Clark App. No. 2009 CA 86
Panel: Donovan, Brogan, Grady
Author: Mary E. Donovan
Summary: The trial court properly granted Appellee's motion to dismiss Appellant's complaint for failure to state a claim upon which relief can be granted. Judgment affirmed.

Case Name: *State of Ohio v. William King, Jr.*
Case No.: Montgomery App. No. 23325
Panel: Donovan, Brogan, Grady
Author: Mary E. Donovan
Summary: Appellant's guilty plea for rape of a child under thirteen was made in a knowing and voluntary fashion. Trial court substantially complied with the requirements of Crim. R. 11(C) before accepting appellant's plea. No evidence existed in the record which established that appellant was unable to understand the nature of the charge against him, as well as the nature the plea proceedings. Judgment affirmed. (Grady, J., concurring).

Case Name: *State of Ohio v. Anthony L. Roark*
Case No.: Montgomery App. No.23559
Panel: Donovan, Brogan, Grady
Author: Thomas J. Grady
Summary: Defendant's conviction for felonious assault on a police officer is supported by legally sufficient evidence and is not against the manifest weight of the evidence; whether officers had reasonable suspicion that Defendant was engaged in criminal activity when they ordered him to "stop and come here" is rendered moot by the fact that Defendant instead fled and, after he had pointed a gun at an officer, was seized by officers when Defendant fell to the ground. Affirmed.

Case Name: *In re: B.T.*
Case No.: Clark App. No. 2009 CA 123
Panel: Fain, Froelich, Donofrio
Author: Jeffrey E. Froelich
Summary: Trial court did not comply with legal requirement that juvenile who is not accompanied in court by a parent or guardian *must* consult with an attorney before waiving his right to an attorney. Judgment reversed and remanded.

Case Name: *State of Ohio v. Tiffni Burns*
Case No.: Montgomery App. No. 22674
Panel: Brogan, Grady, Froelich
Author: Jeffrey E. Froelich
Summary: Defendant's convictions for attempted obstruction of official business and resisting arrest are supported by sufficient evidence. Trial court did not abuse its discretion in dismissing Defendant's untimely motion to suppress. Trial counsel was not constitutionally ineffective. Judgment affirmed.

Case Name: *State of Ohio v. Thomas E. Everette, Jr.*
Case No.: Montgomery App. No. 23585
Panel: Fain, Froelich, Donofrio
Author: Jeffrey E. Froelich
Summary: Trial court did not err in dismissing defendant's petition for post-conviction relief as untimely. The 180-day time period for filing defendant's petition began to run when the videotaped transcript of proceedings was filed, not when written transcripts of the video recordings were filed seven weeks later. Judgment affirmed.

Case Name: *State of Ohio v. James M. VanNoy*
Case No.: Clark App. No. 2009 CA 46
Panel: Fain, Froelich, Donofrio
Author: Jeffrey E. Froelich
Summary: Trial court erred in failing to grant defendant's motion to suppress evidence where the warrantless arrest occurred several months after the existence of probable cause to support the arrest and the State failed to establish that obtaining a warrant prior to defendant's arrest was impracticable. Judgment reversed and case remanded for further proceedings.

Case Name: *State of Ohio v. Jonathan D. Seals*
Case No.: Clark App. No. 2009 CA 4
Panel: Brogan, Fain, Froelich
Author: Jeffrey E. Froelich
Summary: Defendant's conviction for aggravated murder was based on sufficient evidence and was not against the manifest weight of the evidence. The jury did not "lose its way" in failing to convict defendant of the lesser offenses of voluntary manslaughter and aggravated assault. Defendant's sentence of life in prison with the possibility of parole after 30 years was not an abuse of discretion. Trial court erred in imposing, through its judgment entry, a mandatory five-year term of post-release control. Judgment of conviction affirmed. Sentence is vacated, and the matter is remanded for a new sentencing hearing so that the trial court may inform defendant of the requisite post-release control.

Case Name: *Linda J. Hocker v. Guy M. Hocker*
Case No.: Montgomery App. No. 23568
Panel: Fain, Froelich, Willamowski
Author: Jeffrey E. Froelich
Summary: Trial court did not abuse its discretion in concluding that the language in a final judgment and decree of divorce was ambiguous with respect to the terms of the QDRO and in modifying the language to effectuate an equitable division of assets. Judgment affirmed.

Case Name: *Wyticha Haynes v. Dayton Metropolitan Housing Authority and Gregory Johnson, in his personal capacity and in his official capacity As Executive Director of Dayton Metropolitan Housing Authority*
Case No: Montgomery App. No. 23590
Panel: Donovan, Brogan, Fain
Author: Mike Fain
Summary: Trial court erred in dismissing complaint of tenant of federally funded public housing under the authority of Civ. R. 12(B)(6). Applicable federal law, 42 U.S.C. §1437p, does not expressly preempt state law – in this case, R.C. 163.55 and 163.56 – from providing more relocation assistance than is required by federal law. The undeveloped factual record does not support a conclusion, as a matter of law, that the state law’s extension of relocation assistance to tenants affected by the demolition of a housing project would so burden the purposes of the federal act that preemption should be implied.

On the undeveloped factual record, trial court erred in finding plaintiff’s claims moot. She contends that the housing in which she has been placed is not comparable to the housing demolished.

On the undeveloped factual record, trial court erred in finding that plaintiff’s complaint is barred by her failure to exhaust administrative remedies. Record fails to establish that she was advised of administrative appeals available to her, or, for that matter, that she failed to pursue them. Reversed and Remanded.

Case Name: *State of Ohio v. Joshua L. Kissinger*
Case No: Montgomery App. No. 23636
Panel: Brogan, Fain, Froelich
Author: Mike Fain
Summary: Trial court did not err in overruling motion to suppress result of breathalyzer test. In-car horizontal gaze nystagmus test, not administered in accordance with National Highway Traffic Safety Administration standards, was not used to establish probable cause for arrest, but merely to corroborate officer’s reasonable, articulable suspicion justifying additional detention for the purpose of

administering field sobriety tests, including proper horizontal gaze nystagmus test. Furthermore, trial court seems to have given the in-car horizontal gaze nystagmus test little, if any, weight in finding that officer had reasonable, articulable suspicion justifying administration of field sobriety tests, since trial court did not include the in-car horizontal gaze nystagmus test in its discussion, either orally at the conclusion of the suppression hearing, or in its subsequent written decision.

Trial court did not err in overruling objection to police officer's testimony concerning his written report. The report did not satisfy the requirement for refreshed recollection, under Evid. R. 612, since the witness testified that even after reading his report, he had no independent recollection of the field sobriety tests or their results. Neither did the report satisfy the formal foundational requirement for recorded recollection, under Evid. R. 803(5), since the witness never actually vouched for the accuracy of his report. But the Ohio Rules of Evidence do not apply, in full force, to hearings on the admissibility of evidence, the officer testified that anything unusual would have been noted in his report, and a police officer's official report has sufficient inherent reliability, in the absence of anything in the record suggesting the contrary, to justify a trial court, in the exercise of its discretion, to consider testimony by a police officer concerning his official report at a hearing on the admissibility of evidence.

Police officer's testimony that he had defendant under observation, generally, but not continuously, during 20-minute period preceding the breathalyzer test, and that officer ascertained that defendant had nothing on his person or in his mouth that could affect the validity of the test, satisfied the requirement of the rule.

Affirmed.

Case Name:	<i>State of Ohio v. Brian K. Johnson</i>
Case No:	Greene App. Nos 09 CA 16, 10-CA-07
Panel:	Brogan, Fain, Froelich
Author:	James A. Brogan
Summary:	The appellant's guilty plea waived his objection to an alleged defect in his indictment. The trial court did not err in failing to inform the appellant about the need for jury unanimity before accepting his guilty plea. The trial court was not required to make certain factual findings before imposing a maximum sentence. The trial court did not err in denying the appellant's petition for post-conviction relief without an evidentiary hearing. Judgment affirmed.

Case Name: *Brownmor Company LLC, dba Roy Hageman & Son Trucking v. Rodney Trimbach, dba Trimbach Custom Homes*
Case No: Montgomery App. No. 23673
Panel: Donovan, Brogan, Grady
Author: James A. Brogan
Summary: Without a transcript or other record of the proceedings below, the appellant cannot demonstrate that the trial court erred in entering judgment in favor of the appellee. Judgment affirmed.