

**THE COURT OF APPEALS OF OHIO  
SECOND APPELLATE DISTRICT  
CASE SUMMARIES  
JUNE 25, 2010**

These case summaries are issued for the convenience of the public, the bench and the bar. They are a brief statement of the holding of the court in the matter noted. They are not to be considered headnotes or syllabi. Readers may obtain copies of an opinion from the particular county's clerk of courts. The full text of each opinion is also available at the Ohio Supreme Court Website at [www.sc.ohio.gov](http://www.sc.ohio.gov)

Case Name: *Wellington Square, LLC v. Auditor of Clark County, Ohio, et al.*  
Case No: Clark App. No. 2009-CA-87  
Panel: Fain, Grady, Froelich  
Author: Mike Fain  
Summary: The trial court did not abuse its discretion in rejecting two sales of real property as the best evidence of value. Although the sales were voluntary, they were not arm's-length transactions, because they did not take place in an open market. The party who sold the property in one sale and repurchased it in the other, is also a subsidiary of a charitable trust, and was not acting in its own self-interest. Furthermore, the trial court did not err in using the auditor's initial valuation of the property. There was no "affirmative" negation of the validity of the auditor's valuation, and no party challenged the assessed value, either before the board of revision or on appeal to the common pleas court. Affirmed.

Case Name: *State of Ohio v. Korey Baker*  
Case No: Greene App. No. 09-CA-53  
Panel: Fain, Froelich, Donofrio  
Author: Mike Fain  
Summary: Trial court did not err in overruling motion for a new trial, on res judicata grounds. Motion was essentially the same as a motion filed two months earlier, which trial court overruled upon the ground that it was not timely filed. Affirmed.

Case Name: *In Re: A.K., C.K., Z.K.*  
Case No: Champaign App. No. 09-CA-32  
Panel: Brogan, Fain, Froelich  
Author: Mike Fain  
Summary: The trial court did not abuse its discretion in designating the mother of three minor children to be the sole residential parent and legal guardian. The decision was supported by evidence in the record and was not arbitrary, capricious, or unreasonable. Affirmed.

Case Name: *State of Ohio v. Daryl Cochran*  
Case No: Clark County App. No. 09-CA-49  
Panel: Fain, Froelich, Donofrio  
Author: Mike Fain  
Summary: Trial court did not abuse its discretion in overruling pre-sentence motion to withdraw a plea, without a hearing. Sentence ultimately imposed included a provision for post-release control, as required by statute for two of the three offenses to which defendant was pleading guilty. The defendant argues that the addition of post-release control is outside the scope of the sentence agreed to in his plea agreement with the State, which did not refer to post-release control, so that he did not receive the benefit of the plea agreement to which he thought he was agreeing. But the record shows that the trial court told the defendant, prior to accepting his plea, that a five-year period of post-release control was mandated by statute, and further shows that the trial court elicited from the defendant that he understood that. Upon this record, the defendant has not demonstrated that the sentence imposed confounded any expectation on his part that no period of post-release control would be imposed. Affirmed.

Case Name: *State of Ohio v. Mason Little*  
Case No: Clark County App. No. 09-CA-122  
Panel: Fain, Froelich, Donofrio  
Author: Mike Fain  
Summary: Trial court did not err in suppressing evidence. Record supports trial court's conclusion that police officers detained defendant, who was in a stationary, parked car, when they pulled up behind him and activated overhead flashing lights of their cruiser. Record also supports trial court's conclusion that police officers lacked a reasonable, articulable suspicion, at the time of the stop, that criminal activity was afoot, and that defendant was involved in the activity or was a material witness to it. Affirmed.

Case Name: *State of Ohio v. Cory O. Black*  
Case No: Montgomery App. No. 23524  
Panel: Fain, Froelich, Donofrio  
Author: Mike Fain  
Summary: The trial court did not err in overruling the defendant's motions to suppress eyewitness identification and evidence obtained through a search of the defendant's automobile and apartment. The evidence supports the trial court's finding that the pretrial eyewitness identification is reliable. The totality of the circumstances also indicates that the defendant voluntarily consented to the searches. Affirmed.

Case Name: *State of Ohio v. Jerome W. Johnson*  
Case No.: Greene App. No. 2009-CA-38  
Panel: Fain, Grady, Froelich  
Author: Mike Fain  
Summary: Rape conviction is supported by the evidence and is not against the manifest weight of the evidence. When Rape is perpetrated against a sleeping victim, even minimal force is sufficient to constitute the offense. Victim testified that when she awoke to discover defendant on top of her, and penetrating her, she told him to stop, he wouldn't, and she had to struggle, briefly, before she was able to push him off of her.

Record does not support claim of ineffective assistance of trial counsel. Counsel moved for a judgment of acquittal, under Crim. R. 29, which is the appropriate vehicle, in a criminal case, for testing the sufficiency of the evidence.

*Oregon v. Ice* (2009), 555 U.S. ---, 129 S.Ct. 711, 172 L.Ed.2d 517, applies to statutory schemes for the imposition of consecutive sentences, and has no application to this case, in which a single sentence was imposed. Affirmed.

Case Name: *State of Ohio v. Zuri Taylor*  
Case No.: Montgomery App. No. 23507  
Panel: Donovan, Brogan, Grady  
Author: Thomas J. Grady  
Summary: Defendant lacked standing to object to a warrantless seizure of a tissue Defendant threw to the ground and the crack cocaine police found inside, which presented probable cause for his arrest, permitting a search of Defendant's person incident to his arrest that yielded additional drugs which police also seized; trial court did not err when it overruled Defendant's motion to suppress that evidence. Affirmed.

Case Name: *State of Ohio v. Cindy L. Morgan*  
Case No.: Champaign App. No. 09CA21  
Panel: Donovan, Brogan, Grady  
Author: Thomas J. Grady  
Summary: Trial court erred when, after it had not imposed payment of court costs as part of the sentence it orally pronounced, the court imposed a court cost requirement in the Crim.R. 32(C) judgment of conviction and sentence the court journalized. Reversed, in part, and remanded.

Case Name: *State of Ohio v. Wayland E. Whitehead*  
Case No.: Clark App. No. 09CA0055  
Panel: Donovan, Brogan, Grady  
Author: Thomas J. Grady  
Summary: *Anders* Brief; Affirmed.

Case Name: *State of Ohio v. Ryan B. Dozier*  
Case No.: Montgomery App. No. 23841  
Panel: Brogan, Fain, Froelich  
Author: Jeffrey E. Froelich  
Summary: The placement of a non-jailable traffic offender in a police cruiser as a matter of routine practice or for the convenience of the officer does not justify a pat-down of the offender. Judgment Affirmed.

Case Name: *State of Ohio v. Roger Lanier*  
Case No.: Clark App. No. 2009 CA 84  
Panel: Fain, Froelich, Donofrio  
Author: Jeffrey E. Froelich  
Summary: Trial court did not abuse its discretion in overruling, without a hearing, defendant's motion for leave to file a motion for a new trial based on newly discovered evidence where defendant's affidavits, on their face, failed to demonstrate that he was unavoidably prevented from discovering the new evidence within the 120-day period set forth in Crim.R. 33(B). Judgment affirmed.

Case Name: *Craig A. McGlinch v. Greenville City School District*  
Case No.: Darke App. No. 2009 CA 13  
Panel: Brogan, Fain, Froelich  
Author: Jeffrey E. Froelich  
Summary: Civil Service Commission modified Board of Education's decision terminating a custodian and imposed, instead, a six-month suspension. In Board's appeal to the trial court, the trial court erred in taking evidence on amount of back pay to which custodian might have been entitled, when no such evidence was presented in the administrative proceedings. A trial court cannot take additional evidence in an administrative appeal pursuant to R.C. Chapter 2506 unless one of the factors enumerated in R.C. 2506.03(A) applies, and none did. Trial court properly awarded back pay for the delay necessitated by Board's request for a stay of the Commission's order while it appealed. Judgment affirmed in part, reversed in part, and remanded for recalculation of back pay.

Case Name: *Tami Ashbridge v. Craig M. Berry*  
Case No: Greene App. No. 2009-CA-83  
Panel: Donovan, Brogan, Grady  
Author: James A. Brogan  
Summary: Appellant contends that the domestic-relations court abused its discretion by modifying a non-shared parenting decree so as to grant custody of the parties' minor child to Appellee. The modification finds sufficient support in the evidence. Appellant contends also that the court abused its discretion by limiting the role of the guardian ad litem. Appellant failed to preserve this error for appeal, and no plain error is apparent. Judgment affirmed.

Case Name: *State of Ohio v. Joseph Huber*  
Case No: Clark App. No. 07-CA-122  
Panel: Brogan, Fain, Froelich  
Author: James A. Brogan  
Summary: The evidence is insufficient to support the finding that Appellant possessed between five and fifty times the bulk amount of fentanyl. Appellate counsel rendered ineffective assistance by failing to raise this issue on appeal. Prior appellate-judgment vacated. Conviction reversed, cause remanded.

Case Name: *Lakisha Lenoir, et al. v. Terrance T. Paschal*  
Case No: Montgomery App. No. 23732  
Panel: Brogan, Fain, Froelich  
Author: James A. Brogan  
Summary: The trial court abused its discretion in reducing the appellee's child-support obligation without completing a child-support worksheet. Judgment reversed and cause remanded.

Case Name: *State of Ohio v. James M. VanNoy, Jr.*  
Case No: Champaign App. No. 09-CA-23  
Panel: Donovan, Brogan, Grady  
Author: James A. Brogan  
Summary: Appellant was convicted on three counts of trafficking cocaine in the vicinity of a juvenile. Evidence of other drug offense was improperly admitted but was harmless error. Prosecutor's and witness's apparent misstatement of the statutory definition of "in the vicinity of a juvenile" did not constitute plain error. The jury's finding that each offense was committed in the vicinity of a juvenile is not against the manifest weight of the evidence. Appellant was not denied the effective assistance of trial counsel. Judgment affirmed.

