

**THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CASE SUMMARIES
April 6, 2018**

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Case Name: *State of Ohio v. Lance A. Wilcoxin*
Case No: Clark App. No. 2017-CA-58; T.C. No. 17-CR-158
Panel: Welbaum, Hall, Tucker
Author: Michael T. Hall
Summary: The trial court did not err in finding a photospread not "unduly suggestive" based on the appellant being the only person pictured with a "not accentuated" "barely visible" "teardrop" facial tattoo. Judgment affirmed.

Case Name: *State of Ohio v. Arrie Yeldell*
Case No: Montgomery App. No. 27680; T.C. No. 16-CR-2579
Panel: Welbaum, Hall, Tucker
Author: Michael T. Hall
Summary: The trial court did not err in allowing the State to amend the appellant's indictment. With the agreement of defense counsel, the amendment merely changed the date of the appellant's prior conviction for a sexually-oriented offense. Contrary to the appellant's argument, the amendment did not expand the date range for his current failure-to-notify offense to include dates after the grand jury returned its indictment. Judgment affirmed.

Case Name: *State of Ohio v. James M. Lane*
Case No: Montgomery App. No. 27347; T.C. No. 16-CR-874
Panel: Welbaum, Donovan, Tucker
Author: Jeffrey M. Welbaum
Summary: After conducting a review of the record as prescribed by *Anders*, we find no issues with arguable merit for appeal. The sentencing issues raised by Appellant in his supplemental, pro se brief lack arguable merit because Appellant's sentence is not clearly and convincingly contrary to law, and we do not find by clear and convincing evidence that the record does not support Appellant's sentence. In addition, Appellant waived his right to challenge his conviction on speedy-trial grounds by entering a guilty plea. Affirmed.

Case Name: *State of Ohio v. Michael A. Dean*
Case No: Champaign App. No. 2017-CA-19; T.C. No. 17-CR-19
Panel: Welbaum, Donovan, Tucker
Author: Jeffrey M. Welbaum
Summary: Appellant's trial counsel did not provide ineffective assistance in failing to raise the issue of Appellant's competency to stand trial, as there is no indication in the record that Appellant did not understand the court proceedings or that Appellant could not assist in his defense. In addition, the trial court did not improperly admit evidence of other acts in violation of Evid.R. 404(B), as the evidence in question was not used to prove Appellant's character or to show action in conformity therewith, and the evidence was not unfairly prejudicial. Furthermore, Appellant's convictions for assault, resisting arrest, and felonious assault are not allied offenses that merge at sentencing, as the offenses were committed by separate conduct that caused separate, identifiable harm. Lastly, Appellant's legal fees and expenses were not improperly taxed as court costs, and before imposing a financial sanction, the trial court properly considered Appellant's present and future ability to pay the sanction as required by R.C. 2929.19(B)(5). Affirmed. (Donovan, J., concurring in part and dissenting in part.)

Case Name: *Sanwr Ibrahim v. City of Dayton, et al.*
Case No: Montgomery App. No. 27699; T.C. No. 16-CV-4178
Panel: Welbaum, Hall, Tucker
Author: Michael L. Tucker
Summary: The trial court correctly granted summary judgment to Defendants-appellees, a municipality and a police officer employed by the municipality, regarding an automobile accident between the police officer and Plaintiff-appellant. The trial court, based upon the Civ.R. 56 record, correctly concluded that Plaintiff-appellant did not meet her burden to establish that there is a genuine issue of material fact on the questions of whether the police officer was responding to an emergency call, as this term is statutorily defined, or whether the police officer's operation of the police cruiser was willful, wanton, or reckless. The trial court, accordingly, properly decided that the municipality and the police officer are entitled to immunity regarding the automobile accident. Judgment affirmed.

Case Name: *City of Dayton v. Robert King*
Case No.: Montgomery App. No. 27777; T.C. No. 17-CRM-5891
Panel: Donovan, Froelich, Tucker
Author: Mary E. Donovan
Summary: Since Robert King's tenant, Thaddeus Earl, was required by law to keep the leased premises safe and sanitary, and dispose of waste in a sanitary manner, and since Earl, in executing the lease, further

assumed the responsibility of complying with the housing code, the trial court erred in convicting King for the violation of R.C.G.O. 93.46(E), failure to maintain exterior premises. Judgment reversed and vacated.

Case Name: *State of Ohio v. Thornton McKenzie III*
Case No: Montgomery App. No. 27640; T.C. No. 17-CR-137
Panel: Donovan, Froelich, Tucker
Author: Jeffrey E. Froelich
Summary: Defendant's convictions for aggravated burglary, abduction, and assault were not against the manifest weight of the evidence. Judgment affirmed.