

**THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CASE SUMMARIES
February 10, 2012**

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

- Case Name: *State of Ohio v. Ronnie L. Wiley*
Case No: Darke App. No. 2011-CA-8
Panel: Fain, Froelich, Hall
Author: Michael T. Hall
Summary: The convictions on three drug-related offenses are supported by sufficient evidence and are not against the manifest weight of the evidence. The state established an adequate chain of custody for exhibits. A detective described the evidence at the defendant's residence, identified some of the items in photographs, testified to the evidence-collection procedure followed by other officers, and described his retrieval of the exhibits from the property room. Finally, the trial court did not err by not giving an instruction, sua sponte, limiting the jury's consideration of the testimony about the conduct of defendant's acquaintances who the defendant admitted had been producing methamphetamine. Appellant never requested the instruction. Judgment affirmed.
- Case Name: *James A. Tyler, III v. Monro Brake Tire Service*
Case No: Montgomery App. No. 24591
Panel: Grady, Fain, Donovan
Author: Mike Fain
Summary: Plaintiff-customer appeals from judgment for defendant-Monro Brake Tire Service on customer's claim in small claims court for defective repairs to his automobile and excessive charges. In absence of transcript of testimony or a statement of evidence in accordance with App. R. 9, court of appeals presumes regularity of proceedings. Limited record available for review does not establish customer's contention that judgment is not supported by the evidence, or is against the manifest weight of the evidence. Affirmed.
- Case Name: *George Bennett v. Jill M. Bennett*
Case No.: Clark App. No. 11 CA 52
Panel: Grady, Froelich, Hall
Author: Thomas J. Grady
Summary: Domestic relations court's journalized "Entry" overruling objections to a magistrate's decision and adopting the decree of divorce contained in the decision is not a judgment, order, or decree as that defined by Civ.R. 54(A), which per R.C. 2505.03 this court is authorized to review. Appeal dismissed and case remanded. (Hall, J. dissenting.)

Case Name: *State of Ohio v. De'Argo Griffin*
Case No.: Montgomery App. No. 24001
Panel: Grady, Fain, Froelich
Author: Thomas J. Grady
Summary: Indictment alleging that Defendant engaged in a pattern of corrupt activity was not insufficient for failure to specify each corrupt activity; trial court did not abuse its discretion by denying Defendant's eleventh-hour motion for a continuance to allow new counsel to represent him; no judicial bias is demonstrated by leading but neutral questions the court asked an expert witness; trial court did not abuse its discretion in denying Defendant's motion to be tried separately from a co-defendant; prosecutorial misconduct is not demonstrated; and, the State offered race-neutral explanation for peremptory challenges of two minority jurors. Convictions affirmed. (Froelich, J., concurring separately).

Case Name: *Teresa Galluzzo v. Michael Galluzzo*
Case No.: Champaign App. No. 2011-CA-11
Panel: Grady, Donovan, Hall
Author: Thomas J. Grady
Summary: Appellant could not show a violation of his right to due process where he failed to comply with App.R. 16 and did not identify in the record where the error was portrayed; the emancipation of Appellant's children rendered moot the errors assigned relating to his motion to modify a prior order allocating parental rights and responsibilities; Appellant's request for a default judgment pursuant to Civ.R. 55 is precluded by Civ.R. 75(F); Appellant failed to demonstrate that a calculation of child support was incorrect or unreasonable. Affirmed.

Case Name: *State of Ohio v. Tyler R. McLemore*
Case No.: Montgomery App. No. 24804
Panel: Grady, Donovan, Hall
Author: Thomas J. Grady
Summary: Trial court did not err in finding a search of Defendant's home following his arrest was not a "protective sweep" for which no prior warrant was required, when officers had no reasonable basis to suspect that other persons who might pose a threat to officers or who were in need of aid remained inside; trial court erred when it suppressed evidence of Defendant's statement in response to questions concerning the location of a shotgun the officers had observed was missing from a gun cabinet, on a finding that their knowledge of that matter was derivative of their illegal protective sweep, when officers had a source of knowledge concerning the gun independent of the protective sweep that created an exception to the derivative evidence rule; trial court erred in suppressing evidence seized in a subsequent consensual search of the home, because Defendant's voluntary consent to the search waived his right to invoke Crim.R. 12(C)(3) to ask the court to suppress evidence officers seized. Reversed and Remanded.

Case Name: *State of Ohio v. Jonathan Seals*
Case No.: Clark App. No. 2010CA117
Panel: Grady, Froelich, Hall
Author: Thomas J. Grady
Summary: Anders brief; affirmed on a finding of no non-frivolous error.

Case Name: *State of Ohio v. Christina Kingery*
Case No.: Montgomery App. No. 24063
Panel: Fain, Froelich, Hall
Author: Jeffrey E. Froelich
Summary: Defendant's conviction for menacing was supported by sufficient evidence and was not against the manifest weight of the evidence. Defendant's conviction for ethnic intimidation was not supported by sufficient evidence; although she used racial slurs, there was insufficient evidence that the menacing occurred by reason of the victim's race. Judgment affirmed in part and vacated in part. (Hall, J., concurring in part and dissenting in part).