

**THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CASE SUMMARIES
June 1, 2018**

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Case Name: *State of Ohio v. Shane Moore*
Case No: Clark App. No. 2016-CA-45; T.C. No. 16-CR-128
Panel: Welbaum, Donovan, Froelich
Author: Jeffrey E. Froelich
Summary: Trial court did not commit error, plain or otherwise, in failing to merge one count of robbery with the abduction count, both of which stemmed from the robbery of a gas station; defendant's act of pursuing a fleeing employee and bringing him back to the store's register constituted an abduction separate from the robbery. Trial counsel did not act deficiently in failing to request merger of the robbery and abduction counts. The trial court's imposition of consecutive sentences was not clearly and convincingly unsupported by the record. Judgment affirmed.

Case Name: *State of Ohio v. Jordan Beverly*
Case No: Clark App. No. 2015-CA-71; T.C. No. 11-CR-258
Panel: Donovan, Hall, Tucker
Author: Michael T. Hall
Summary: The trial court erred at resentencing by modifying the appellant's sentence to resentence him consecutively on those counts for which he already had completed his previously imposed concurrent prison terms. Judgment reversed and remanded for resentencing. (Donovan, J., concurring.)

Case Name: *In the Matter of: O.M.*
Case No: Champaign App. No. 2017-CA-30; T.C. No. 17-JG-12
Panel: Welbaum, Donovan, Hall
Author: Michael T. Hall
Summary: The trial court did not err by naming Appellee the minor child's residential parent in the parties' shared-parenting plan. The court did not apply a primary-caregiver presumption in favor of Appellee. Nor did the court ignore the recommendation of the child's guardian ad litem that Appellant be named the residential parent, or ignore

the evidence that the child was the victim of domestic violence while with Appellee. Judgment affirmed.

Case Name: *City of Centerville v. Daniel M. Leonard*
Case No: Montgomery App. No. 27669; T.C. No. 16-CRB-2881
Panel: Donovan, Hall, Tucker
Author: Michael T. Hall
Summary: Appellant's conviction for criminal trespass is supported by sufficient evidence. And the conviction is not against the manifest weight of the evidence. Judgment affirmed.

Case Name: *Janice L. Weadock v. Jamal Taha, M.D., et al.*
Case No: Miami App. No. 2017-CA-29; T.C. No. 16-CV-219
Panel: Donovan, Hall, Tucker
Author: Michael L. Tucker
Summary: This appeal arises from the trial court's decision disqualifying Plaintiff-appellant's attorney from continuing to represent her in the pending litigation. The trial court, given the attorney's participation in a meeting – the details of which are contested – central to Plaintiff-appellant's spoliation cause of action, did not abuse its discretion when concluding that the attorney was a necessary witness under Prof.Cond.R. 3.7(a) and that the attorney's continued representation was otherwise inappropriate. Judgment affirmed.

Case Name: *Mabel L. Johnson v. Larry W. Miller, Jr.*
Case No: Miami App. No. 2017-CA-18; T.C. No. 17-DV-192
Panel: Donovan, Froelich, Tucker
Author: Michael L. Tucker
Summary: The trial court did not abuse its discretion by its issuance of a Civil Stalking Protection Order (CSPO) against Appellant. Further, the CSPO's restrictions, with one exception, are reasonable, and, thus, not an abuse of discretion. The exception, constituting an abuse of discretion, is the CSPO provision that Appellant, even in Appellee's absence, may not visit the homes of Appellee's relatives. Judgment affirmed, in part, reversed, in part, and remanded.

Case Name: *Sideline, Inc. v. Rudolph J. Moschetti*
Case No.: Montgomery App. No. 27868; T.C. No. 15-CV-5623
Panel: Donovan, Hall, Tucker
Author: Mary E. Donovan
Summary: In the absence of a transcript or acceptable substitute, we presume the regularity of the proceedings and validity of the trial court's rulings without reaching the merits of Appellant's assignments of error. Judgment affirmed.

Case Name: *State of Ohio v. Bryan J. Goney*
Case No.: Greene App. No. 2017-CA-43; T.C. No. 17-CR-124
Panel: Welbaum, Donovan, Froelich
Author: Mary E. Donovan
Summary: The trial court erred when it imposed a definite prison term for the appellant's repeat violent offender specifications pursuant to R.C. 2929.14(B)(2)(b)(iii). Appellant's convictions for robbery and kidnapping were not allied offenses, and therefore are not subject to merger. Appellant did not receive ineffective assistance because his counsel was unaware of the nature of a witness's alleged arrest warrant from another jurisdiction. Further, his failure to discover a cell phone found by jurors during deliberations inside a brown purse marked as State's Exhibit 55 does not constitute ineffective assistance. Appellant's argument that his counsel was ineffective for failing to inform him of the alleged plea deal offered by the State after the trial began pertains to matters outside the record, and is therefore more suited as a basis for a post-conviction relief petition. Trial court did not err when it overruled appellant's motion for a mistrial because appellant's argument was speculative, and there is no reasonable probability that, had the evidence been disclosed to the defense before trial, the result of the proceeding would have been different. Appellant's convictions for robbery, kidnapping, and abduction were supported by sufficient evidence, and the jury's guilty verdicts were not against the manifest weight of the evidence. Appellant's sentences for the RVO specifications are reversed and vacated. In all other respects, the judgment of the trial court is affirmed, and this matter is remanded for proceedings consistent with this opinion.

Case Name: *Richard Rogers v. Timothy J. Olt*
Case No.: Miami App. No. 2017-CA-21; T.C. No. 16-CV-318
Panel: Welbaum, Donovan, Hall
Author: Mary E. Donovan
Summary: Trial court did not rely on inadmissible hearsay evidence when it granted appellee's motion for summary judgment. The record establishes that the trial court relied on appellant's own sworn deposition testimony when it granted summary judgment to appellee. The trial court did not err when it granted appellee's motion for summary judgment with respect to appellant's claims for 1) abuse of process; 2) malicious prosecution; 3) intentional infliction of emotional distress; 4) frivolous conduct; and 5) to declare appellee a vexatious litigator. Judgment affirmed.