

**THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CASE SUMMARIES
March 16, 2018**

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Case Name: *State of Ohio v. David G. Mattox*
Case No: Montgomery App. No. 27518; T.C. No. 15-CR-2108
Panel: Welbaum, Donovan, Tucker
Author: Michael L. Tucker
Summary: Defendant-appellant, following a bench trial, a jury having been waived, was convicted on seven counts of rape of a person less than 13 years of age, two counts of kidnapping, two counts of gross sexual imposition of a person under 13 years of age, and nine counts of illegal use of a minor in nudity-oriented materials or performances. The trial court properly overruled Defendant-appellant's motion to suppress because the first two interviews were non-custodial obviating the need for *Miranda* warnings, and, as to the last interview, Defendant-appellant validly waived his *Miranda* rights in advance of the interview. The trial court properly overruled Defendant-appellant's Crim.R. 29 motion for acquittal, and the trial court's verdict is supported by the weight of the evidence. Judgment affirmed.

Case Name: *In Re: January 27, 2017 Order Releasing Grand Jury Materials*
Case No: Montgomery App. No. 27435
Panel: Welbaum, Froelich, Tucker
Author: Michael L. Tucker
Summary: The trial court erred by ordering the release of grand jury testimony. Judgment reversed.

Case Name: *In the Matter of: H.M., E.M., B.M., Jr., L.M., and W.M.*
Case No.: Greene App. No. 2017-CA-42; T.C. No. N46373
Panel: Welbaum, Donovan, Froelich
Author: Mary E. Donovan
Summary: Because the record establishes that the children had been in the custody of GCCS for over twelve consecutive months when GCCS filed its motion for permanent custody, we find that the juvenile court did not err in finding that R.C. 2151.414(B)(1)(d) was satisfied. The record further establishes that there is clear and convincing evidence

which supports the juvenile court's decision finding that the statutory elements for termination under R.C. 2151.414(B) have been satisfied. Thus, the juvenile court did not err when it awarded permanent custody of the children to GCCS. Judgment affirmed.

Case Name: *U.S. Bank National Association v. Hadassah L. Conrad, et al.*
Case No: Montgomery App. Nos. 27716, 27717; T.C. No. 17-CV-1237
Panel: Welbaum, Froelich, Hall
Author: Jeffrey E. Froelich
Summary: After the trial court entered a judgment and decree of foreclosure, but prior to the sheriff's sale, neighbor filed a motion to stay the sheriff's sale and a notice of a claim of interest in the foreclosed property. Trial court did not err in denying the motion to stay and in ultimately confirming the sale of the foreclosed property. Neighbor's notice and motion did not explain his interest in the property or provide any documentation to substantiate his claim. Even if construed as a motion to intervene, pursuant to Civ.R. 24, the trial court did not err in denying neighbor's motion. Neighbor's motion was filed post-judgment, he did not seek to vacate the judgment, and he failed to accompany his motion to intervene with a pleading setting forth his claim and/or defense, as required by Civ.R. 24(C). Judgment affirmed.

Case Name: *State of Ohio v. Timothy Ferguson*
Case No.: Montgomery App. No. 27325; T.C. No. 15-CR-3245
Panel: Welbaum, Donovan, Froelich
Author: Jeffrey E. Froelich
Summary: Although there was evidence presented at trial and information contained in the presentence investigation which could support an inference that defendant had a form of mental illness at some point, there was no evidence to suggest that any such illness called into question his competence to stand trial or his sanity at the time of the offense. Defendant was not denied the effective assistance of counsel, and the trial court did not abuse its discretion or commit plain error in failing to order mental health testing on its own initiative. Under the facts of this case, counts of rape and kidnapping were properly merged as allied offenses of similar import. Judgment affirmed. (Welbaum, P. J., concurring.)

Case Name: *State of Ohio v. George C. Norman, Jr.*
Case No: Clark App. Nos. 2017-CA-40, 2017-CA-41; T.C. Nos. 14-CR-312, 16-CR-556
Panel: Donovan, Froelich, Hall
Author: Jeffrey E. Froelich
Summary: At a combined hearing and pursuant to the parties' plea agreement, defendant entered admissions to community control violations and

pled guilty in a new case of having weapons while under disability. The trial court did not err in accepting defendant's admissions to the community control violations after informing him that he faced two years in prison, even though defendant had previously been told at the time he was originally placed on community control that he faced 30 months in prison. The trial court erred, however, in subsequently imposing 30 months in prison for the violations. Counsel did not render ineffective assistance in failing to object at the plea/admissions hearing. The trial court did not err in sentencing defendant to a maximum term of 36 months in prison for having weapons while under disability, and the imposition of consecutive sentences was not clearly and convincingly unsupported by the record. Judgment affirmed with respect to the having weapons while under disability case. Judgment concerning the community control violations is reversed in part, and the matter is remanded for the trial court to impose a sentence not to exceed two years in prison. (Hall, J., concurring in part and dissenting in part.)

Case Name: *In The Matter Of: R.R.S.*
Case No: Greene App. Nos. 2016-CA-25, 2017-CA-45; T.C. No. C46814
Panel: Donovan, Froelich, Hall
Author: Michael T. Hall
Summary: The trial court did not err in denying the appellant-relatives' motion for legal custody of a minor child and returning the child to the legal custody of the biological mother. The trial court properly applied the law and acted within its discretion in assessing witness credibility. The evidence supports a finding that the appellants failed to establish appellee-mother's unsuitability to parent the child. That finding is dispositive of the appellant-relatives' attempt to obtain legal custody. Judgment affirmed.

Case Name: *State of Ohio v. Angela F. Juarez*
Case No: Montgomery App. No. 27654; T.C. No. 16-CR-3939/2
Panel: Welbaum, Donovan, Tucker
Author: Jeffrey M. Welbaum
Summary: Appellant's conviction for complicity to burglary was supported by sufficient evidence and was not against the manifest weight of the evidence. In addition, Appellant's trial counsel did not provide ineffective assistance by failing to object to the trial court's jury instruction on aiding and abetting, as the instruction was a correct statement of law on which there was no basis to object. Affirmed.