

**THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CASE SUMMARIES
May 25, 2018**

These case summaries are issued for the convenience of the public, the bench, and the bar. They are a brief statement of the court's holdings and are not to be considered headnotes or syllabi. Copies of opinions are available from the particular county's clerk of courts. The full text of each opinion will be available on the Ohio Supreme Court's Website at <http://www.supremecourt.ohio.gov/rod/docs/?source=2>

Case Name: *State of Ohio v. Richard Benton*
Case No.: Montgomery App. No. 27592; T.C. No. 17-CR-312/2
Panel: Donovan, Hall, Tucker
Author: Mary E. Donovan
Summary: Counsel for Benton's potential assignments of error, namely that his conviction for obstructing official business, a felony of the fifth degree, is against the manifest weight of the evidence, and that the trial court erred in sentencing Benton to a twelve month term, are wholly frivolous. Judgment affirmed.

Case Name: *Philip C. Adams v. Ohio Department of Job & Family Services, et al.*
Case No.: Montgomery App. No. 27674; T.C. No. 17-CV-165
Panel: Welbaum, Donovan, Froelich
Author: Mary E. Donovan
Summary: Appellant appeals a trial court decision which denied his challenge to a determination by the Ohio Unemployment Compensation Review Commission that he was voluntarily unemployed at the time of his application for benefits. Based upon the record, we conclude that the Review Commission's decision was lawful, reasonable, and not against the weight of the evidence. Judgment affirmed.

Case Name: *State of Ohio v. Kevin J. Barker*
Case No.: Montgomery App. No. 27472; T.C. No. 12-CR-477
Panel: Donovan, Froelich, Hall
Author: Mary E. Donovan
Summary: In this appeal under *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), there are no potential assignments of error having arguable merit. Any challenge to Appellant's sentence is barred by res judicata. Any issue regarding counsel's alleged ineffective assistance during the appellant's trial is barred by res judicata. The record establishes that appellant did not receive ineffective assistance of counsel at his resentencing hearing. Judgment affirmed.

Case Name: *In Re: M.M.*
Case No.: Montgomery App. Nos. 27722, 27724; T.C. Nos. JC-2015-6384, 2016-3599
Panel: Welbaum, Donovan, Tucker
Author: Mary E. Donovan
Summary: Juvenile Court did not err when it overruled Father's objections and adopted the decision of the magistrate adjudicating M.M. as a dependent child and granting temporary custody to the maternal aunt. The record establishes that pursuant to R.C. 3109.04(F)(1), it was in M.M.'s best interests to be placed in the temporary custody of the maternal aunt. Lastly, the juvenile court did not err when it granted Father visitation with M.M. contingent upon the recommendation of her therapist. Judgment affirmed.

Case Name: *State of Ohio v. Kelly W. Eytcheson*
Case No.: Montgomery App. No. 27650; T.C. No. 17-TRD-3894
Panel: Welbaum, Donovan, Hall
Author: Mary E. Donovan
Summary: Appellant was not entitled to a trial by jury for failure to reinstate a license and for a seatbelt violation. The trial court did not err in overruling Appellant's motion to dismiss, since the right to operate a motor vehicle upon the highways is not unrestricted but is subject to reasonable regulation. Officer Colon did not violate R.C. 4513.263(D) in initiating Appellant's traffic stop, since the stop was based upon an improper turn and not the seatbelt violation. Officer Colon was not required to advise Appellant of his *Miranda* rights in the course of the stop. The trial court had discretion to limit the duration and scope of Appellant's closing argument. The trial court did not abuse its discretion in excluding a "statement" or "document" from evidence; Appellant did not make a proffer of the document, but R.C. 2319.02 requires Appellant to submit an *affidavit*, and Appellant testified that his injury that arguably prevents him from wearing a seat belt occurred in 2012. The State was not required to prove that Appellant acted knowingly or willfully; strict liability attaches to Appellant's offenses. The corpus delicti rule does not apply to Appellant's offenses. The trial court did not lack subject matter or personal jurisdiction. The trial court, as the fact-finder in a bench trial, was authorized to question a witness and did not assume the role of the prosecutor. Judgment affirmed.

Case Name: *State of Ohio v. Brian Hartings*
Case No.: Montgomery App. No. 27471; T.C. No. 16-CR-2701
Panel: Welbaum, Donovan, Tucker
Author: Mary E. Donovan
Summary: The State adduced sufficient evidence at trial to support the appellant's conviction for rape (by force or threat of force), in violation

of R.C. 2907.02(A)(2), a felony of the first degree. The appellant's rape conviction was not against the manifest weight of the evidence. The ten-year sentence imposed upon the appellant was within the permissible statutory range and therefore not contrary to law. Judgment affirmed.

Case Name: *Stacy Woodbury v. Jarrod Woodbury*
Case No: Greene App. No. 2017-CA-57; T.C. No. 14-DR-310
Panel: Welbaum, Froelich, Hall
Author: Jeffrey E. Froelich
Summary: The trial court did not abuse its discretion in naming mother the legal and custodial parent, rather than adopting shared parenting, where mother had been the primary caregiver, the parties had had a tumultuous relationship, and based on other facts in the record. The trial court also did not abuse its discretion in initially awarding father less than the standard order of visitation, where the children were very young, father had not had unsupervised time with the newborn child, and some witnesses had testified that father had trouble in caring for the child. The location chosen by the trial court to exchange the children for visits and its choice of effective date for the child support order were reasonable; moreover, father waived arguments related to these issues when he failed to object to the magistrate's findings. Father's assignment purporting to appeal from an interim order is moot, since this is an appeal from the final judgment and decree of divorce, which replaced any interim order. Judgment affirmed.

Case Name: *Rhonda Smith Bass v. Michael C. Bass*
Case No: Montgomery App. No. 27832; T.C. No. 10-DR-793
Panel: Donovan, Hall, Tucker
Author: Michael T. Hall
Summary: The trial court did not err in declining to hold the appellee in civil contempt for failure to pay the appellant his full share of marital equity from real estate and vehicles, as required by the parties' divorce decree. The trial court was entitled to credit the appellee's testimony that she made full payment of the appellant's share of the equity to a bankruptcy trustee at the direction of the trustee and the bankruptcy court. Absent a finding of contempt, the trial court did not err in failing to award the appellant attorney fees. Judgment affirmed.

Case Name: *Nancy J. Buckingham v. Jay A. Buckingham*
Case No: Greene App. No. 2017-CA-41; T.C. No. 16-CV-0343
Panel: Welbaum, Hall, Tucker
Author: Michael T. Hall
Summary: The Greene County Common Pleas Court, General Division, did not err in dismissing, under Civ.R. 12(B)(1), appellant's complaint

against the appellee, her ex-husband, alleging fraud and spoliation of evidence claims predicated on purported concealment of assets during the parties' divorce in the Domestic Relations Division several years earlier. The Greene County Common Pleas Court, Domestic Relations Division, had exclusive statutory jurisdiction over the subject matter of her complaint. Even assuming, arguendo, that the general division and the domestic relations division shared concurrent jurisdiction, the trial court properly found that the jurisdictional-priority rule favored the domestic relations division. Judgment affirmed.

Case Name: *Jay Buckingham v. Nancy Buckingham*
Case No: Greene App. No. 2017-CA-31; T.C. No. 13-DR-153
Panel: Welbaum, Hall, Tucker
Author: Jeffrey M. Welbaum
Summary: The trial court did not abuse its discretion in finding Appellant in contempt for failing to comply with requirements for paying a property settlement, nor was the court's decision against the manifest weight of the evidence. The court also did not abuse its discretion in rejecting the use of Appellant's health savings account to pay the property settlement, in failing to find Appellee in contempt, or in awarding most of the attorney fees and litigation expenses requested by Appellee. The court did err in awarding \$1,250 for one expert, because the record did not include adequate documentation of the expert's fees. The judgment of the trial court is reversed with respect to the trial court's award of expert fees for David Suich in the amount of \$1,250. In all other respects, the trial court's judgment is affirmed. (Hall, J., concurring.)

Case Name: *State of Ohio v. Kenneth L. Sewell*
Case No: Montgomery App. No. 27562; T.C. No. 15-CR-3390
Panel: Welbaum, Donovan, Tucker
Author: Jeffrey M. Welbaum
Summary: The trial court did not err in denying Appellant's motion for acquittal. Appellant had notice of the robbery charge against him pursuant to the indictment, and the State did not commit to a specific theory of the case during opening statement with respect to whether the underlying theft offense for robbery was of a backpack or of a lighter, or both. Furthermore, during its case, the State presented sufficient evidence to prove that Appellant had intent to deprive the victim of a lighter and caused physical harm to the victim as he was committing the theft or fleeing immediately after the theft. The State also did not change its theory of the case during trial.

In addition, Appellant's conviction for robbery was not against the manifest weight of the evidence. The trial judge was the fact-finder

and found the victim credible. In contrast, the trial judge did not find Appellant credible. We defer to the trier of fact on credibility issues, and there was no manifest miscarriage of justice.

Finally, trial counsel did not provide ineffective assistance of counsel. Assuming for purposes of argument that trial counsel should have filed a motion for a bill of particulars, there is no reasonable probability that the result of the trial would have been different. Appellant did not deny striking the victim; his defense was that the lighter that was allegedly taken belonged to him. However, the trial court did not find Appellant credible. Trial counsel also did not provide ineffective assistance by discontinuing his cross-examination of the victim with respect to ownership of the lighter. While the victim had a hearing problem and some difficulty in communicating, he clearly indicated the facts as to his ownership of the lighter during both direct and cross-examination. Moreover, in view of the trial court's credibility decisions, there is no reasonable probability that the result of the trial would have been otherwise if counsel had persisted. Affirmed.