

**THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CASE SUMMARIES
May 4, 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. Needom Bendolph*
Case No: Montgomery App. No. 27534; T.C. No. 16-CR-4043
Panel: Donovan, Froelich, Hall
Author: Jeffrey E. Froelich
Summary: Both parties were surprised at trial by the testimony of an expert witness called by the defense, which revealed serology findings (the presence of semen on the victim) that had not previously been disclosed to either party. On this record and under the circumstances presented, defense counsel was not ineffective in calling the expert witness. Moreover, defendant's due process rights were not violated, because the defendant had not set forth a defense that conflicted with the expert's testimony and because the trial court instructed the jury to disregard the undisclosed evidence. Judgment affirmed.

Case Name: *In Re: Forfeiture Of Property Of: Nykiha Astin, et al.*
Case No: Montgomery App. No. 27657; T.C. No. 16-CV-2308
Panel: Welbaum, Froelich, Hall
Author: Jeffrey M. Welbaum
Summary: The trial court erred in dismissing Appellant's civil forfeiture action for failing to state a claim upon which relief can be granted. In dismissing the action, the trial court retroactively applied a recent amendment to the civil forfeiture statute, R.C. 2981.05. The amendment at issue prevents the State from pursuing civil forfeiture actions against persons who received, retained, or possessed proceeds derived from a criminal offense in amounts less than \$15,000. The retroactive application of this provision was improper because the General Assembly did not expressly indicate that amended R.C. 2981.05 should apply retroactively. Reversed and remanded for further proceedings. (Froelich, J., dissenting.)

Case Name: *State of Ohio v. Brian Rozell*
Case No: Clark App. No. 2017-CA-65; T.C. No. 15-CR-0103
Panel: Welbaum, Donovan, Hall
Author: Jeffrey M. Welbaum

Summary: The trial court did not err in overruling Appellant's presentence motion to withdraw guilty plea. The trial court also did not err in allowing Appellant's former defense counsel to testify at the hearing on the motion to withdraw guilty plea. Contrary to Appellant's claim otherwise, Appellant waived the attorney-client privilege when he testified at the hearing and published information regarding the communications he had with his former counsel. In addition, Appellant's ineffective assistance of counsel claim fails because Appellant failed to establish that his defense counsel performed deficiently. Affirmed.

Case Name: *State of Ohio v. Wendell Buis*
Case No: Montgomery App. No. 27778; T.C. No. 17-CR-812
Panel: Welbaum, Froelich, Hall
Author: Michael T. Hall
Summary: The trial court erred in finding that pre-indictment delay of a little more than two years resulted in actual prejudice to the defendant and warranted dismissing the indictment against him. The defendant made purely speculative arguments that missing evidence would have assisted him in attacking the credibility and weight of the prosecution's case against him. Judgment reversed and remanded. (Froelich, J., concurring.)

Case Name: *Ashley Bland, et al., v. Toyota Motor Sales, U.S.A., Inc.*
Case No: Montgomery App. No. 27837; T.C. No. 17-CV-4160
Panel: Welbaum, Froelich, Hall
Author: Michael T. Hall
Summary: The trial court did not err in dismissing the appellants' complaint under Civ.R. 12(B)(6). The trial court correctly found that the complaint failed to state a claim for breach of contract. Judgment affirmed.

Case Name: *Raymond Fredette v. Rion, Rion and Rion*
Case No: Montgomery App. No. 27616; T.C. No. 16-CV-2314
Panel: Froelich, Hall, Tucker
Author: Michael T. Hall
Summary: The plaintiff-appellant has appealed pro se from a final order entering summary judgment against him on the appellee's counterclaim. His assignments of error, however, relate exclusively to an earlier final order that contained Civ.R. 54(B) certification and entered judgment against him on his complaint. Because the appellant did not appeal from the final order entering judgment against him on his complaint, we cannot reach the merits of his arguments. While prior interlocutory orders will merge into a subsequent final judgment, that rule does not apply when the prior order is final at an earlier time. The trial court's entry of summary

judgment against the appellant on his complaint was not an interlocutory order. It was a final order by virtue of the Civ.R. 54(B) certification it contained. Judgment affirmed.

Case Name: *James E. Evans v. Jeff Wyler Chrysler Jeep Dodge Ram of Springfield*
Case No.: Clark App. No. 2017-CA-77; T.C. No. 16-CV-615
Panel: Donovan, Froelich, Hall
Author: Mary E. Donovan
Summary: The trial court erred in taking judicial notice of weather conditions, on the date of Appellant's slip and fall on ice, from an internet website that was introduced for the first time in Appellee's reply to Appellant's memorandum in opposition to Appellee's motion for summary judgment. Furthermore, the website evidence was not competent summary judgment evidence. Nevertheless, the trial court did not err in granting summary judgment in favor of Appellee. There was no genuine issue of material fact regarding the nature of the accumulation of ice upon which Appellant slipped and fell; since the accumulation/formation was naturally occurring, Appellee had no duty to remove the ice. Judgment affirmed.

Case Name: *State of Ohio v. Todd D. Harrison*
Case No.: Montgomery App. No. 27591; T.C. No. 03-CR-4725
Panel: Donovan, Froelich, Tucker
Author: Mary E. Donovan
Summary: Harrison was found not guilty of felonious assault and having weapons while under disability, and the trial court did not abuse its discretion in denying his pro se R.C. 2953.52 application to seal his record of acquittal for felonious assault after a hearing. Any error by the trial court in allowing the State to orally object to Harrison's application at the hearing as opposed to in writing is harmless. Judgment affirmed.