

## CASE DECISION LIST

Court of Appeals, Eighth Appellate District

Page: 1 of 5

December 1, 2022

**111038** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v WILFREDO GARCIA-RODRIGUEZ

Affirmed.

Mary Eileen Kilbane, P.J., Lisa B. Forbes, J., and Mary J. Boyle, J., concur.

**KEY WORDS:** *Motion to suppress; Miranda rights; custodial interrogation; knowingly, intelligently, and voluntarily waived one's Miranda rights; interpreter; totality of the circumstances; sufficiency of the evidence; manifest weight of the evidence; right to remain silent; allied offenses; dissimilar in import; separate and identifiable harms; consecutive sentences; R.C. 2929.14(C)(4); and improper sentence.*

*Under the totality of the circumstances test, defendant-appellant knowingly, intelligently, and voluntarily waived his Miranda rights. The convictions were supported by sufficient evidence and were not against the manifest weight of the evidence. The trial court did not violate the defendant-appellant's right to remain silent when it reiterated the Fifth Amendment and stated the defendant-appellant had a choice to testify on his own behalf or remain silent. The trial court did not err when it found the aggravated burglary and felony-murder convictions did not merge at sentencing because the offenses were dissimilar in import and resulted in separate and identifiable harms. The trial court made the necessary findings pursuant to R.C. 2929.14(C)(4), and those findings were issued in a corresponding journal entry. The trial court imposed a proper sentence in conformity with R.C. 2929.02(B)(1).*

**111076** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
CITY OF CLEVELAND v CLEVELAND POLICE PATROLMEN'S ASSOCIATION

Affirmed.

Lisa B. Forbes, J., Mary Eileen Kilbane, P.J., and Mary J. Boyle, J., concur.

**KEY WORDS:** *Motion to vacate arbitration award; motion to confirm arbitration award; R.C. 2911.10(D); excessive force; objectively reasonable force; collective bargaining agreement; just cause to terminate police employment; public policy.*

*The arbitrator did not exceed his powers or imperfectly execute them by finding that the city of Cleveland failed to show that the deadly force a police officer used was "objectively unreasonable," thus failing to prove that the officer violated the police department's use of force policy. Furthermore, the arbitration award, which focused on use of force, did not violate public policy against dishonesty.*

## CASE DECISION LIST

**111106** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v OMAR FEKEIH

**111849** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v OMAR FEKEIH

Reversed, vacated and remanded.

Emanuella D. Groves, J., and Cornelius J. O'Sullivan, Jr., J, concur; Sean C. Gallagher, A.J., dissents (with separate opinion).

**KEY WORDS:** *Guilty plea; Crim.R. 11; failure to comply; R.C. 2921.331(B); R.C. 2921.331(D); maximum penalty; mandatory consecutive sentence.*

*In this matter, appellant pleaded guilty to a total of seven counts of failure to comply in violation of R.C. 2921.331(B). Under R.C. 2921.331(D), an offender who is sentenced to a prison term for violation of R.C. 2921.331(B) "shall serve the prison term consecutively to any other prison term or mandatory prison term imposed upon the offender."*

*However, the trial court incorrectly advised appellant that it had the option of imposing concurrent or consecutive sentences. As such, appellant was not properly advised of the maximum penalty involved. Consequently, appellant did not knowingly, voluntarily, and intelligently enter his guilty pleas.*

**111338** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
MAURIO POWELL, ET AL. v CITY OF CLEVELAND, ET AL.

Affirmed.

Kathleen Ann Keough, J., Frank Daniel Celebrezze, III, P.J., and Michelle J. Sheehan, J., concur.

**KEY WORDS:** *Summary judgment; political subdivision immunity; governmental function; roads; R.C. 2744.03(B)(3); roads in repair; obstruction; depression; dip; steel plate.*

*Trial court properly granted summary judgment in favor of the city based on political subdivision immunity. Plaintiffs failed to satisfy their reciprocal burden on demonstrating the existence of a genuine issue of material fact that the depression/dip or steel plate rendered the public roadway in a state of disrepair or constituted an obstruction.*

## CASE DECISION LIST

**111452** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
ANTOINE WILLIAMS v PNC BANK, N.A., ET AL.

Affirmed.

Eileen A. Gallagher, J., Frank Daniel Celebrezze, III, P.J., and Cornelius J. O'Sullivan, Jr., J., concur.

**KEY WORDS:** *Summary judgment; Civ.R. 56; appellate review; alternative argument; Ohio Civil Rights Act; R.C. 4112; discrimination; race; employment discrimination; termination; policy violations; pretext.*

*We reviewed a summary judgment granted in favor of the employer-defendants on a claim of race discrimination by a former employee. The trial court erred when it held that a plaintiff who was (1) African American, (2) qualified for his position as a Branch & Business Center Manager, (3) terminated from his job and (4) replaced by a Caucasian person had not established a prima facie case of race discrimination under the Ohio Civil Rights Act. The plaintiff urged us to remand the matter without considering the rest of the burden-shifting analysis relevant to his claim, but we concluded that the de novo standard of review allows us to consider the rest of the analysis. After doing so, we concluded that the defendants were entitled to summary judgment because they proffered a legitimate, non-discriminatory reason for the termination - namely, that an internal investigation concluded that the plaintiff had engaged in acts of dishonesty in violation of the employer's policies - and the plaintiff did not meet his burden to point to evidence showing a genuine issue for trial as to whether that stated reason was pretext. We, therefore, affirmed the summary judgment.*

**111519** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v SEDRICK HAWKINS

Affirmed.

Eileen A. Gallagher, J., Frank Daniel Celebrezze, III, P.J., and Cornelius J. O'Sullivan, Jr., J., concur.

**KEY WORDS:** *Plain error; R.C. 2941.25; allied offenses of similar import; murder; aggravated burglary; Reagan Tokes Law; indefinite sentencing provisions; right to trial by jury; separation of powers; due process.*

*Trial court did not commit plain error in failing to merge defendant's murder and aggravated burglary offenses for sentencing where defendant failed to show - based on the record - a reasonable probability that his convictions were for allied offenses of similar import committed with the same conduct and without a separate animus.*

## CASE DECISION LIST

(Case 111519 continued)

**Defendant's constitutional challenges to the Reagan Tokes Law are overruled pursuant to the en banc decision in State v. Delvallie, 2022-Ohio-470, 185 N.E.3d 536 (8th Dist.).**

**111590** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
STATE OF OHIO v E.H.

Affirmed.

Frank Daniel Celebrezze, III, P.J., Eileen A. Gallagher, J., and Cornelius J. O'Sullivan, Jr., J., concur.

**KEY WORDS:** *Motion to seal record; R.C. 2953.32; R.C. 2953.52; R.C. 2953.61; different final dispositions; OVI conviction; R.C. 4511.19; intervention in lieu of conviction; R.C. 2951.041; R.C. 2953.36; hearing.*

**Because appellant's case involved an OVI conviction along with a firearms charge, she was not eligible to apply for sealing of the case under R.C. 2953.61. The trial court did not err in denying her motion to seal records without a hearing.**

**111668** JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate  
IN RE: K.V., ET AL

Affirmed.

Mary J. Boyle, J., Anita Laster Mays, P.J., and Eileen T. Gallagher, J., concur.

**KEY WORDS:** *Continuance; abuse of discretion; permanent custody; best interests of child determination; CCDCFS; R.C. 2151.414; clear and convincing evidence.*

**Judgment affirmed. Mother failed to demonstrate that the juvenile court abused its discretion by denying her request for continuance on the day of trial when Mother's actions caused the delay. When proceeding on a motion for permanent custody, the juvenile court must satisfy the two-prong test set forth in R. C. 2151.414 before it can terminate parental rights and grant permanent custody to the agency. The juvenile court must find by clear and convincing evidence that (1) at least one of the conditions set forth in R. C. 2151.414 (B)(1)(a) through (e) applies, and (2) it is in the best interest of the child to grant permanent custody to the agency. The record in the instant case demonstrates that the children could not be placed with Mother within a reasonable period of time and Mother failed to complete her case plan, submit to drug screen requests, and secure appropriate housing. Mother also had criminal drug possession charges pending and an outstanding warrant for her arrest. Father was incarcerated pending criminal charges and faced up to ten years in prison. Father also agreed to**

## **CASE DECISION LIST**

(Case 111668 continued)

**permanent custody to CCDCFS. Accordingly, the court's decision to grant permanent custody is supported by clear and convincing evidence.**