

## CASE DECISION LIST

December 26, 2019

**107820** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
JACQUELINE SIMPSON, ET AL. v CITY OF CLEVELAND, ET AL.

**108447** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
JACQUELINE SIMPSON, ET AL. v CITY OF CLEVELAND OH. BD. OF ZONING APPEALS, ET AL.

Affirmed.

Anita Laster Mays, J., Mary J. Boyle, P.J., and Sean C. Gallagher, J., concur.

**KEY WORDS:** *Abuse of discretion, Duncan factors, manifest weight of the evidence, R.C. 2506.04.*

*The trial court did not abuse its discretion in its decision to affirm the Board of Zoning Appeal's granting a variance. The trial court conducted a meaningful review of the seven factors listed in Duncan v. Middlefield, 23 Ohio St.3d 83, 491 N.E.2d 692 (1984), to determine that appellee demonstrated that he encountered practical difficulties. The court of appeals is not permitted to review whether the trial court's judgment was against the manifest weight of the evidence. It is only permitted by R.C. 2506.04 to review the judgment of the common pleas court only on questions of law, which does not include the same extensive power to weigh the preponderance of substantial, reliable, and probative evidence, as is granted to the common pleas court.*

**107929** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v QUANTRAIL JOHNSON

Affirmed.

Raymond C. Headen, J., and Larry A. Jones, Sr., P.J., concur; Michelle J. Sheehan, J., concurs in judgment only.

**KEY WORDS:** *Felonious assault; having weapons while under disability; manifest weight of the evidence; credibility; prosecutorial misconduct; access to the proceedings; speedy trial; R.C. 2945.71; R.C. 2945.72; ineffective assistance of counsel; cumulative error.*

*Minor inconsistencies in trial testimony that did not implicate material issues in the case do not render defendant's convictions against the manifest weight of the evidence. The prosecutor's opening statement did not prejudice the defendant and did not constitute prosecutorial misconduct. The defendant was not unconstitutionally denied access to the proceedings, his speedy trial rights were not violated, and he did not receive ineffective assistance of counsel.*

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**107940** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v CARLOS GARCIA-TORO

Affirmed.

Raymond C. Headen, J., Sean C. Gallagher, P.J., and Michelle J. Sheehan, J., concur.

**KEY WORDS:** *Right to counsel; conflict of interest; waiver; notice of alibi; plain error; social media evidence; authentication; Evid.R. 901(A); other acts evidence; Evid.R. 404(B); hearsay testimony; autopsy photos; abuse of discretion; ineffective assistance of counsel; consecutive sentences; R.C. 2929.14; sufficiency of the evidence; manifest weight of the evidence; cumulative error.*

*The defendant was not deprived of his right to conflict-free counsel. The alleged issue did not constitute an actual conflict of interest, but even if it had, the defendant validly waived the issue. It was not plain error for the prosecutor to adduce testimony about the timing of the defendant's notice of alibi. The Facebook evidence was properly authenticated and the issue of who used the Facebook account was an issue best resolved by the trier of fact. Witness testimony regarding the circumstances of a conversation rather than the contents of the conversation did not constitute inadmissible hearsay. Trial counsel was not deficient for failing to object to testimony and evidence that was properly admitted. The court's consecutive sentence findings were supported by the record. Sufficient evidence supported the convictions and they were not against the manifest weight of the evidence. The cumulative error doctrine is inapplicable where none of the alleged errors has merit.*

**108030** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v CEDRIC MONDIE

Affirmed.

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

**KEY WORDS:** *Manifest weight of the evidence, sufficient evidence, Crim.R. 29, R.C. 2929.14(C).*

*The appellant's convictions are not against the manifest weight of the evidence, and the evidence was sufficient to convict the appellant. The trial court did not err by denying the appellant's motion for acquittal pursuant to Crim.R. 29. The trial court did not err in imposing a maximum consecutive sentence and made the required findings under R.C. 2929.14(C).*

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**108088** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v RONALD CURRY

Affirmed.

Eileen T. Gallagher, P.J., Frank D. Celebrezze, Jr., J., and Larry A. Jones, Sr., J., concur.

**KEY WORDS:** *Petition; postconviction; ineffective assistance of counsel; strategy; prejudice; deficient; affidavit; credibility; abuse of discretion; sworn; affect; outcome; trial; burden.*

**Defendant's postconviction petition failed to set forth sufficient operative facts to establish substantive grounds for relief.**

**108143** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v TREVOR RYAN

Affirmed.

Larry A. Jones, Sr., J., Eileen T. Gallagher, P.J., and Anita Laster Mays, J., concur.

**KEY WORDS:** *Felonious assault; kidnapping; witness testimony; manifest weight.*

**Appellant failed to show that the victim's testimony regarding the assault and kidnapping was not credible. Appellant's convictions were not against the manifest weight of the evidence.**

**108191** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
U.S. BANK NATIONAL ASSOCIATION v PATRICK J. O'MALLEY, ET AL.

Affirmed.

Raymond C. Headen, J., Mary J. Boyle, P.J., and Kathleen Ann Keough, J., concur.

**KEY WORDS:** *Statute of limitations; foreclosure; personal judgment on the note; motion for summary judgment; R.C. 1303.16(A); standing; holder of the note; assignment of the mortgage; allonge; physically attached; personal knowledge; authenticate the default; and successor relationship.*

**Although plaintiff-appellant bank's personal judgment on a note was barred by R.C. 1303.16(A)'s six-year statute of limitation, its in rem foreclosure action on the mortgage - that is subject to a longer statute of limitations - was not barred. Plaintiff-appellant bank established standing to prosecute the foreclosure action because it was the holder of the note and it was assigned the mortgage. Motion for summary judgment was properly granted by the trial court where no genuine issue of material fact existed regarding the**

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allonges and whether they were attached to the original note when the foreclosure action was filed. The affidavit attached to the plaintiff-appellant's motion for summary judgment was based upon the affiant's personal knowledge and authenticated the default. Plaintiff-appellant bank introduced sufficient evidence to establish its successor interest in the note and mortgage.

**108207** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v LORENZO HESTER, JR.

Affirmed.

Eileen T. Gallagher, J.; Michelle J. Sheehan, J., concurs in judgment only; Mary Eileen Kilbane, A.J., concurs in judgment only with separate attached opinion.

**KEY WORDS:** *Sufficiency; manifest weight; felonious assault; deadly weapon.*

*Defendant's felonious assault and discharging a weapon on or near a prohibited premises convictions were supported by sufficient evidence and were not against the manifest weight of the evidence where one witness observed the defendant shoot at the victims, another witness observed the defendant in possession of a gun, and two witnesses heard the gunshots while the victim screamed that the defendant was shooting at her.*

**108209** COMMON PLEAS COURT B CRIMINAL C.P. (DEATH PENALTY)  
STATE OF OHIO v MELVIN BONNELL

Affirmed.

Larry A. Jones, Sr., J., Eileen T. Gallagher, P.J., and Frank D. Celebrezze, Jr., J., concur.

**KEY WORDS:** *Crim.R. 33/motion for new trial; R.C. 2953.75(B)/report of state of the evidence; newly discovered evidence; findings of fact and conclusions of law; res judicata; abuse of discretion.*

*The extensive record in this case shows that appellant, since his 1995 petition for postconviction relief, was made aware that the evidence he sought to have tested was no longer available; appellant also failed to show that he was unavoidably detained from finding a witness that later provided a statement that was not a recantation and determined to be immaterial — both issues were previously litigated, and are therefore barred by the doctrine of res judicata. The trial court did not abuse its discretion in denying appellant's motion for leave to file a motion for a new trial.*

*Appellant failed to show that the trial court did not review the record and the documentation submitted in support of appellant's motion. The trial court did not err in adopting the findings of fact and conclusions of law proposed by the state.*

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**108225** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v DEANGELO M. MCCLARIN

Affirmed.

Eileen T. Gallagher, P.J., Frank D. Celebrezze, Jr., J., and Larry A. Jones, Sr., J., concur.

**KEY WORDS:** *Purposes and principles of felony sentencing; findings; seriousness factors; exculpatory evidence; ineffective assistance of counsel.*

*Sentence affirmed where record supported trial court's statements that it considered the purposes and principles of felony sentencing and the seriousness and mitigating factors set forth in R.C. 2929.11 and 2929.12.*

*Trial counsel was not ineffective for failing to discuss potentially exculpatory evidence at the sentencing hearing where the trial court was aware of the evidence since it discovered the evidence during an in camera review of confidential records and ordered the records turned over to the defendant.*

**108269** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
NORTHERN FROZEN FOODS, INC. v ROSS C. FARRO, ET AL.

**108466** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
NORTHERN FROZEN FOODS, INC. v JOHN R. CLIMACO, ET AL.

Reversed and remanded.

Raymond C. Headen, J., Anita Laster Mays, P.J., and Eileen A. Gallagher, J., concur.

**KEY WORDS:** *Breach of contract; summary judgment; genuine issue of material fact; statute of limitations; R.C. 1302.98; R.C. 2305.08; Uniform Commercial Code; partial payment rule; equitable estoppel.*

*Although the partial-payment rule in R.C. 2305.08 does not apply to the statute of limitations in R.C. 1302.98, summary judgment based on the statute of limitations was improper where there is a genuine issue of material fact as to plaintiff's equitable estoppel argument that they were prevented from filing an action within the four-year statute of limitations.*

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**108325** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
RICHARD J. PAZDERNIK v ANGELA WELLS

Affirmed.

Larry A. Jones, Sr., J., Patricia Ann Blackmon, P.J., and Anita Laster Mays, J., concur.

**KEY WORDS:** *Civ.R. 12(B)(6)/motion to dismiss for failure to state a claim; R.C. 2305.10/statute of limitations; discovery rule; personal injury.*

*Appellant's use of the discovery rule for appellant's failure to file his complaint within the statute of limitations is misplaced. Appellant was aware or should have been aware of his possible injuries prior to the expiration of the statute of limitations. Appellant's situation does not fit into the narrow circumstances that would allow filing a complaint outside of the statute of limitations. The trial court did not err where it granted appellee's motion to dismiss.*

**108385** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v TYRONE LOYED

Affirmed in part, reversed in part, and remanded for resentencing.

Eileen T. Gallagher, J., Mary Eileen Kilbane, A.J., and Michelle J. Sheehan, J., concur.

**KEY WORDS:** *Sentence; trial court; aggravated murder; void; prison term; parole; imprisonment; contrary to law; indefinite; definite; statutory language; res judicata; jury verdict forms; final order; direct appeal.*

*The trial court exceeded its authority in sentencing by imposing a sentence that does not comport with the statutory language set forth in former R.C. 2929.03(A); the sentence is void. Issues related to jury verdict forms must be raised in the direct appeal, and any attempt to raise those issues in a subsequent appeal is barred by res judicata.*

**108666** JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
IN RE L.S.

Affirmed.

Anita Laster Mays, J., Sean C. Gallagher, P.J., and Larry A. Jones, Sr., J., concur.

**KEY WORDS:** *Guardian ad litem, clear and convincing evidence, best interest of the child.*

*The appellant has not demonstrated that he suffered any prejudice*

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**as a result of the trial court's mention of the guardian ad litem's recommendation. The trial court listed numerous other factors for why the appellant's parental rights were terminated in the best interest of the child. The trial court's award of permanent custody to CCDCFS was supported by clear and convincing evidence.**