

## CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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January 31, 2019

**106667** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v COREY BROWN

Affirmed.

Frank D. Celebrezze, Jr., J., Mary J. Boyle, P.J., and Stephen A. Yarbrough, J.,\* concur.

\*(Sitting by assignment: Retired Judge Stephen A. Yarbrough of the Sixth District Court of Appeals.)

**KEY WORDS:** *Right to testify; firearm specification; R.C. 2941.145(A); R.C. 2941.141(A); manifest weight.*

***Although the trial court was not required to advise appellant of his right to testify, the trial court did in fact advise appellant of this right, and appellant waived this right. Appellant's convictions on the one-year and three-year firearm specifications were not against the manifest weight of the evidence.***

**106688** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
CITY OF CLEVELAND v STATE OF OHIO

Vacated.

Frank D. Celebrezze, Jr., J., Mary Eileen Kilbane, A.J., and Larry A. Jones, Sr., J., concur.

**KEY WORDS:** *Final appealable order; R.C. 2505.02; one-subject rule; Article II, Section 15(D) of the Ohio Constitution; severance.*

***The trial court erred when it severed provisions of S.B. 331 that were not challenged by appellees' one-subject rule challenge. The trial court's judgment entry severing the unchallenged provisions is vacated.***

**106810** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
STATE OF OHIO v VICTOR HARTNESS

Reversed.

Mary Eileen Kilbane, A.J., Sean C. Gallagher, J., concurs in judgment only (see separate concurring in judgment only opinion); and Patricia Ann Blackmon, J., concurs (see separate concurring opinion).

**KEY WORDS:** *Megan's Law; civil manifest weight of the evidence; plea agreement.*

***In 1996, the General Assembly enacted Ohio's version of the federal "Megan's Law" legislation, which created a comprehensive***

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registration and classification system for sex offenders. Under Megan's Law, a sentencing court was required to determine whether a sex offender fell into one of three classifications (1) sexually oriented offender, (2) habitual sex offender, or (3) sexual predator.

This court reviews these determinations under a civil manifest-weight-of-the-evidence standard. This is because a sex offender classification under Megan's Law is considered civil in nature.

A plea agreement is generally contractual in nature and subject to contract-law standards. Plea agreements should be construed strictly against the government. "When a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled." *State v. Parham*, 8th Dist. Cuyahoga No. 105983, 2018-Ohio-1631, quoting *Santobello v. New York*, 404 U.S. 257, 92 S.Ct. 495, 30 L.Ed.2d 427 (1971).

<b>106841</b>	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v MICHAEL E. FRIERSON			

Reversed and remanded.

Eileen A. Gallagher, P.J., Mary Eileen Kilbane, A.J., and Frank D. Celebrezze, Jr., J., concur.

**KEY WORDS:** *Sexually violent predator specifications; plain error; Ex Post Facto Clause; Confrontation Clause; allied offenses.*

*The application of the sexually violent offender definition found in R.C. 2971.01, as amended in 2005, to appellant violated the Ex Post Facto Clause of the United States Constitution. At the time of appellant's offenses, appellant was not eligible for sexually violent predator specifications under the language of R.C. 2971.01 as interpreted by the Ohio Supreme Court in State v. Smith, 104 Ohio St. 3d 106, 2004-Ohio-6238, 818 N.E.2d 283. The application of the 2005 amended version of R.C. 2971.01 to appellant violated the Ex Post Facto Clause because it enhanced the sentencing penalties available for his previously committed offenses. The Confrontation Clause was not violated when the trial court admitted the skype testimony of a noncitizen witness who was unavailable due to deportation. The trial court erred in failing to merge appellant's kidnapping and rape offenses as allied offenses where the asportation of the victim was slight.*

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<b>106842</b>	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v JEROME JAMES BELL			

Affirmed and remanded.

Anita Laster Mays, J., Sean C. Gallagher, P.J., and Frank D. Celebrezze, Jr., concur.

**KEY WORDS:** *Suppression of evidence; Crim.R. 29; judgment of acquittal; sufficiency and manifest weight of the evidence; authentication of evidence; Evid.R. 901; refresh recollection; withdrawal of counsel; reopen case; Evid.R. 803; excited utterance; R.C. 2945.10; order of trial proceedings; plain error; Evid.R. 404(B); other acts evidence; merged counts; R.C. 2941.25.*

*Appellant's convictions were supported by sufficient evidence to establish the elements of the crimes and were not against the manifest weight of the evidence. Merged counts are not convictions under R.C. 2941.25 and need not be reviewed for sufficiency because any error would be harmless.*

*Appellant's motion to suppress his confession was properly denied. Appellant was Mirandized and there is no evidence that appellant was under the influence of drugs or alcohol.*

*The authentication of prison letters and telephone calls under Evid.R. 901 was sufficient. The videotape of a witness's original statement to police should not have been used to refresh the witness's recollection under Evid.R. 612 but was harmless error in light of the presumption that the trial court considered only admissible evidence during the bench trial.*

*The trial court did not abuse its discretion by denying the withdrawal of cocounsel. No conflict of interest existed and a disagreement with cocounsel's strategy did not jeopardize appellant's right to effective assistance of counsel.*

*Deviation from the order of proceedings under R.C. 2945.10 is within the sound discretion of the trial court.*

*The demeanor of the distraught witness and the statement "my son" at the scene shortly after the shooting qualified as an excited utterance under Evid.R. 803(2).*

*The testimony that police had not determined whether shots fired into the residence of appellant's girlfriend several days after the shooting was connected with appellant did not constitute other acts evidence under Evid.R. 404(B) and did not rise to the level of plain error.*

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<b>106943</b>	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v MILTON HALL			

Affirmed.

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

**KEY WORDS:** *Ineffective assistance of counsel; guilty plea; prejudice; bill of particulars; defective indictment; prison term; statutory range; cruel and unusual punishment.*

*By pleading guilty, a defendant waives his or her claim for ineffective assistance of counsel where the defendant does not claim the guilty plea was not knowing, voluntary and intelligent. Moreover, by pleading guilty, a defendant waives the right to challenge an indictment as defective. A defendant does not show prejudice where counsel failed to demand a bill of particulars when the record reflects that the state filed a bill of particulars as part of initial discovery responses. A defendant's claim that his or her prison sentence constitutes cruel and unusual punishment fails where the defendant does not challenge an individual sentence as being outside of the terms of a valid statute and only complains about the aggregate prison sentence.*

<b>107006</b>	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v ANTONIO POWELL			

Affirmed.

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

**KEY WORDS:** *Guilty plea; presentence motion to withdraw; pro se; abuse of discretion.*

*The trial court did not abuse its discretion in denying Powell's pro se presentence motion to withdraw where the record demonstrates Powell was represented by competent counsel, he provided no evidentiary support for claims asserted in the motion, and he failed to rebut the presumption that his plea was knowing and voluntary.*

<b>107030</b>	COMMON PLEAS COURT	E	CIVIL C.P.-NOT JUV,DOM OR PRO
MADORA JONES, ADMIN. OF THE ESTATE OF REDON JONES v THE CLEVELAND CLINIC FOUNDATION, ET AL.			

Reversed and remanded.

Frank D. Celebrezze, Jr., J., Eileen A. Gallagher, P.J., and Mary Eileen Kilbane, A.J., concur.

**KEY WORDS:** *Mistrial; motion for a new trial; Civ.R. 59; Evid.R. 606(B); deadlocked jury; Howard charge; Civ.R. 30(B)(5);*

*The trial court's denial of appellant's motion for a mistrial was an abuse of discretion. The trial court also abused its discretion in limiting a Civ.R. 30(B)(5) witness's deposition testimony. Because the trial court failed to rule upon the merits of appellant's motion to compel and motion for sanctions, the matter is remanded to the trial court with instructions to rule on these motions.*

<b>107032</b>	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v CHRISTOPHER L. NAVE			

Affirmed.

Sean C. Gallagher, J., Mary Eileen Kilbane, A.J., and Eileen T. Gallagher, J., concur.

**KEY WORDS:** *R.C. 2929.14(C)(4); consecutive sentences; R.C. 2953.08.*

*The sentences are affirmed because the trial court did not err in failing to provide reasons in support of the R.C. 2929.14(C)(4) findings that were incorporated into the final sentencing entry in the relevant case. In addition, the lack of a criminal history does not preclude the imposition of consecutive sentences when the alternative findings under R.C. 2929.14(C)(4)(a)-(b) are made and supported by the record.*

<b>107049</b>	COMMON PLEAS COURT	E	CIVIL C.P.-NOT JUV,DOM OR PRO
NEHEMIAH T. MOORE v WILLIAM T. SCHILL, ET AL.			

Affirmed in part; reversed in part and remanded.

Kathleen Ann Keough, J., Eileen T. Gallagher, P.J., and Patricia Ann Blackmon, J., concur.

**KEY WORDS:** *Punitive damages; reduction; R.C. 2315.21(D)(1); individual; negative net worth; summary judgment.*

*The trial court abused its discretion in reducing the punitive damages award because no evidence was presented that the defendant had a negative net worth at the time the tort was committed. The trial court did not err in denying defendant's motion for summary judgment because genuine issues of material fact existed on whether the defendant was liable to the plaintiff on claims for fraud, conversion, and unjust enrichment.*

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<b>107084</b>	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v RUESHAWN GILCREASE			

Affirmed and remanded.

Kathleen Ann Keough, J., Mary Eileen Kilbane, A.J., and Anita Laster Mays, J., concur.

**KEY WORDS:** *Allied offenses; kidnapping; aggravated robbery; sufficiency of evidence; manifest weight of evidence.*

*Trial court did not err in not merging defendant's kidnapping conviction with his conviction for aggravated robbery because the offenses were committed separately and with separate animus where the kidnapping continued after the robbery was completed; defendant's convictions were supported by sufficient evidence and were not against the manifest weight of the evidence.*

<b>107266</b>	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v LAURA BULLINGTON			

<b>107267</b>	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v LAURA BULLINGTON			

Affirmed.

Anita Laster Mays, J., and Frank D. Celebrezze, Jr., J., concur; Sean C. Gallagher, P.J., concurs with separate opinion.

**KEY WORDS:** *Motion to terminate driver's license suspension; contrary to law; abuse of discretion.*

*The trial court's denial of the appellant's motion to terminate her driver's license suspension is not contrary to law because the trial court has the discretion vested by the legislature through the statute to terminate the suspension. The trial court did not abuse its discretion when it denied appellant's motion without explanation because the statute does not require the trial court to state its reasons on the record.*

<b>107328</b>	JUVENILE COURT DIVISION	F	CIVIL C.P.-JUV, DOM, PROBATE
IN RE: E.O.T.			

Affirmed in part, reversed in part and remanded.

Eileen A. Gallagher, J., Mary J. Boyle, P.J., and Michelle J. Sheehan, J., concur.

**KEY WORDS:** *Application to determine custody; abuse of*

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**discretion; order of presentation of evidence; limits on cross-examination; prejudice; R.C. 3109.04; parenting time; proposed parenting plan and agreement.**

Father was not prejudiced by juvenile court's refusal to allow father to call guardian ad litem as a witness during his case in chief or limitation of cross-examination where father was given ample opportunity to question the guardian ad litem after he presented his recommendation to the court and father did not identify any evidence he was precluded from eliciting from the guardian ad litem. Juvenile court did not abuse its discretion in designating mother primary residential parent and legal custodian of child or in adopting the parenting time schedule set forth in mother's proposed parenting plan. However, juvenile court did abuse its discretion in incorporating by reference, into its journal entry, mother's proposed parenting plan and agreement, given that many of the substantive terms of the parenting plan are premised upon, and expressly reference, an agreement between the parties that does not exist.

<b>107530</b>	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v ALBERT SPANN			

Affirmed.

Kathleen Ann Keough, J., Mary Eileen Kilbane, A.J., and Anita Laster Mays, J., concur.

**KEY WORDS:** *Sex offender registry, dismiss.*

***Trial court did not err in denying defendant's motion to dismiss sex offender registration requirements because no order existed in the case requiring registration.***

<b>107538</b>	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v WILBURT HOUSTON			

Reversed and remanded.

Eileen T. Gallagher, P.J., Patricia Ann Blackmon, J., and Kathleen Ann Keough, J., concur.

**KEY WORDS:** *Void sentence; aggravated murder; parole eligibility; sentence modification.*

***Trial court erred in overruling motion to vacate sentence where sentence was contrary to law and void because the court failed to impose sentence required by the relevant sentencing statute.***

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<b>107554</b>	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v LARRY D. DAILEY, JR.			

Vacated and remanded.

Frank D. Celebrezze, Jr., J., Anita Laster Mays, P.J., and Eileen A. Gallagher, J., concur.

**KEY WORDS:** *Conceded error; guilty plea; Crim.R. 11; mandatory prison sentence; rape; attempted felonious assault; R.C. 2929.13.*

*The trial court did not advise appellant that the rape offense carried a mandatory prison term. Accordingly, the trial court failed to substantially comply with Crim.R. 11 in advising appellant of the maximum penalty he faced on the rape count. There is no evidence in the record indicating that appellant subjectively understood that he was facing a mandatory prison sentence for the rape offense.*

<b>107721</b>	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v BILL W. DOBSON			

Dismissed.

Mary J. Boyle, P.J., Sean C. Gallagher, J., and Michelle J. Sheehan, J., concur.

**KEY WORDS:** *Anders brief; appointed counsel; independent review.*

*After independent review pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), this court found no errors in the trial court that were prejudicial to appellant. Appointed counsel's motion to withdraw is granted.*