

## CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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April 12, 2018

**105199** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v MAURICE L. BRADFORD

Judgment vacated and appellant discharged.

Anita Laster Mays, P.J., and Larry A. Jones, Sr., J., concur; Frank D. Celebrezze, Jr., J., concurs in judgment only with separate opinion.

**KEY WORDS:** *Sufficiency of evidence, manifest weight, Evid.R. 201, judicial notice maps, cell phone mapping.*

*Appellant's convictions for shooting a firearm over a public road with gun specifications and having a weapon while under disability are against the sufficiency and manifest weight of the evidence where the evidence did not support a finding that appellant was a driver or occupant of a car owned by appellant's family member that was also accessible to other household family members adjudicated to be gang members in the consolidated case before the trial court. The trial court determined in the consolidated trial court cases that there was no evidence that appellant was involved in gang activity, a conclusion supported by the state's witnesses.*

*Evid.R. 201 allows judicial notice of geographic distance. Cell tower evidence is inferential and does not prove whether an individual was in possession of a cell phone. No witnesses observed appellant at the scene, and the sole witness testified to seeing a single hand fire a small handgun from a rear passenger window at 9:00 p.m. in July, from a distance greater than the length of two football fields, in the face of heavy gunfire by men hanging out of car windows, and so many bullets whizzing by his head that the bark was falling off of the tree in front of him.*

**105424** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v TORRANCE JOHNSON

Affirmed.

Eileen T. Gallagher, P.J.; Sean C. Gallagher, J., concurs with separate opinion; Melody J. Stewart, J., concurs with majority and with separate concurring opinion.

**KEY WORDS:** *Improperly discharging firearm into a habitation; improperly discharging a firearm on or near a prohibited premises; felonious assault; guilty plea; elements of an offense; subjective understanding; Alford plea; allied offenses; different victims.*

*Guilty pleas were entered knowingly, intelligently, and voluntarily where record indicated that defendant understood nature of the charges to which he pleaded guilty. Trial court was not required to conduct an Alford inquiry because the defendant never protested*

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**his innocence.**

**Defendant's convictions were not allied offenses that should merge because they each involved a separate victim.**

**105440** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v ANDRE L. BRIDGES

Affirmed in part, reversed in part, and remanded.

Anita Laster Mays, J., and Melody J. Stewart, P.J., concur; Mary J. Boyle, J., concurs in judgment only.

**KEY WORDS: Manifest weight of evidence, allied offenses, ineffective assistance of counsel.**

***The appellant's conviction for rape was not against the manifest weight of the evidence because the victim's testimony was consistent and credible. However, the trial court did err in failing to merge the rape and kidnapping counts because they were allied offenses in accordance with R.C. 2941.45. The appellant was not denied effective assistance of counsel. The decision to not testify at trial was a tactical decision, and the record does not demonstrate that the appellant was coerced to not testify.***

**105612** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v ZACHARY JOHNSON

Affirmed.

Mary Eileen Kilbane, P.J., Tim McCormack, J., and Eileen T. Gallagher, J., concur.

**KEY WORDS: Confrontation clause; Daubert hearing; hearsay; prosecutorial misconduct, sufficiency of the evidence; manifest weight of the evidence; ineffective assistance of counsel; cell phone evidence; expert; layperson; murder; credibility.**

***Judgment affirmed. A Daubert hearing was not necessary because the expert did not testify about "how cellular networks operate" or "the process by which a cell phone connects to a given tower," but testified about testimony regarding a comparison of cell phone data records to locations where crimes occurred. This type of testimony does not require "specialized knowledge, skill, experience, training, or education" regarding cellular networks. The confrontation clause was not violated when the testimony in question was not testimonial. There was sufficient evidence to sustain the convictions, and the convictions were not against the manifest weight of the evidence when an eyewitness placed the defendant as one of the shooters and the circumstantial evidence resulted in the defendant as a suspect. The jury weighed credibility***

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**and found defendant guilty. The prosecutor did not vouch for credibility in closing, and defense counsel was not ineffective.**

**105732** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v DAVID MCGUIRE

Affirmed.

Tim McCormack, P.J., Larry A. Jones, Sr., J., and Kathleen Ann Keough, J., concur.

**KEY WORDS: *Brady v. Maryland; exculpatory evidence; impeachment evidence; aggravated murder; body camera evidence; potentially useful evidence; bad faith.***

***McGuire's right to a fair trial was not violated. Brady v. Maryland did not obligate the state to turn over evidence that a responding officer was under investigation for an unrelated incident. Lost body camera evidence also did not create a Brady violation because it was not materially exculpatory evidence, only potentially useful evidence, and McGuire was unable to show bad faith on the part of the police in failing to preserve the evidence.***

**105760** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v CHAD MEDLEY

Affirmed.

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

**KEY WORDS: *Sufficiency; manifest weight; R.C. 229.22(A)/child endangerment.***

***Sufficient evidence was presented; appellant was found to have created a substantial risk to the safety of the child, and appellant's conviction was not against the manifest weight of the evidence.***

**105771** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v MARK A. NEWTON

Affirmed.

Eileen A. Gallagher, A.J., Tim McCormack, J., concur; Frank D. Celebrezze, Jr., J., concurs in judgment only.

**KEY WORDS: *Motion to dismiss; destruction of evidence; due process; bad faith; rape; gross sexual imposition; kidnapping;***

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**sexual battery.**

**Trial court did not abuse its discretion in granting defendant's motion to dismiss charges against him where, during trial, it was revealed that the investigating detective destroyed potentially useful evidence in bad faith. Bad faith was established by the fact that the detective was in sole possession of the missing or destroyed evidence after its creation, attempted to conceal its destruction or loss from the defense, the prosecuting attorney and another detective prior to trial, lied to the trial judge when confronted about the matter in court and made inappropriate statements during the investigation. Dismissal was appropriate because the destruction of evidence central to the case permanently deprived the defendant of due process.**

**105785** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v GREGORY THOMPSON

Affirmed.

Frank D. Celebrezze, Jr., J., Eileen A. Gallagher, A.J., and Melody J. Stewart, J., concur.

**KEY WORDS: *Contrary to law; R.C. 2953.08; R.C. 2929.11; R.C. 2929.12; R.C. 2929.13; R.C. 2929.14; offense of violence; attempted domestic violence.***

***The trial court's sentence is within the permissible statutory range under R.C. 2929.14(A)(5) and the trial court considered the purposes and principles of felony sentencing set forth in R.C. 2929.11 and the seriousness and recidivism factors set forth in R.C. 2929.12. Accordingly, the trial court's sentence is not contrary to law.***

**105791** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v RAHKEBA PRATT

Reversed and remanded.

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

**KEY WORDS: *Child endangering; worst form of the offense; sexual abuse; misdemeanor; sentence; hybrid; community control; jail term.***

***Combination of jail term and community control sanctions was not authorized by statute where defendant was ordered to serve maximum jail term followed by community control.***

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**105860** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
ALTENHEIM v KASHA JANUSZEWSKI

Dismissed.

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

**KEY WORDS:** *Final appealable order; Civ.R. 54(B); R.C. 2505.02; summary judgment; counterclaims.*

*Trial court order entering summary judgment for defendant on plaintiff's claims for relief, which did not dispose of defendant's counterclaims for relief, is not a final, appealable order.*

**105909** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v LORENZO HARRISON

Affirmed.

Melody J. Stewart, J., Eileen A. Gallagher, A.J., and Frank D. Celebrezze, Jr., J., concur.

**KEY WORDS:** *Postconviction; R.C. 2953.21; unavoidably prevented; res judicata.*

*Court did not err by dismissing petition for postconviction relief as untimely because the petitioner's evidentiary materials demonstrated that he had long been aware of the basis for the claims made in the petition, thus belying his assertion that he had been unavoidably prevented from filing the petition at an earlier date.*

*Claims made and addressed in federal habeas proceedings are res judicata for same claims made in state court petition for postconviction relief.*

**105937** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v JOHN KAFANTARIS

Affirmed.

Tim McCormack, P.J., Patricia Ann Blackmon, J., and Kathleen Ann Keough, J., concur.

**KEY WORDS:** *Preindictment delay; actual prejudice; motion to dismiss; sufficiency of the evidence; rape; unavailable evidence; credibility; unjustifiable reason for delay.*

*The trial court did not err in granting defendant-appellee's motion to dismiss for preindictment delay. Unavailable evidence, including*

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**the missing case file and unavailable phone records that could have negatively impacted the alleged victim's credibility, constituted actual prejudice, and the state was unable to justify the delay.**

**105963** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
FRANCES MENTCH v CUYAHOGA COUNTY PUBLIC LIBRARY BOARD

Affirmed.

Frank D. Celebrezze, Jr., J., Eileen A. Gallagher, A.J., and Tim McCormack, J., concur.

**KEY WORDS: Summary judgment; Civ.R. 56; discovery; abuse of discretion; res judicata; collateral estoppel; writ of mandamus; injunctive relief; statutory damages; R.C. 121.22; R.C. 149.43; R.C. 149.351; R.C. 2731.04.**

**The trial court did not abuse its discretion in regulating discovery. The trial court properly granted CCPL's motion for summary judgment. The trial court properly declined to grant injunctive relief to appellant. Appellant was not entitled to statutory damages under R.C. 149.43 or 149.351.**

**105965** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v KEVIN L. PAYNE

Affirmed.

Sean C. Gallagher, J., Eileen A. Gallagher, A.J., and Tim McCormack, J., concur.

**KEY WORDS: Felonious assault; having weapons while under disability; motion for a mistrial; abuse of discretion; criminal histories; Crim.R. 29; insufficient evidence; manifest weight; independent counts; consistency.**

**The trial court did not abuse its discretion in denying appellant's motion for a mistrial where the testimony concerning appellant's prior criminal histories was brief and did not reference any specific crimes and there was ample evidence at trial to convict appellant. The trial court did not err in denying appellant's Crim.R. 29 motion for acquittal when the victim's testimony alone, if believed, was sufficient for the jury to find all the elements of the convicted offenses proven beyond a reasonable doubt. The verdict was not against the manifest weight of the evidence. Reversal was not warranted when consistency in verdicts between several independent counts of the indictment is not required.**

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**106017** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v CHRISTOPHER HILL

Affirmed.

Sean C. Gallagher, J., Eileen A. Gallagher, A.J., and Tim McCormack, J., concur.

**KEY WORDS:** *Involuntary manslaughter; proximate cause; foreseeable; App.R. 16(A)(7).*

**The conviction for involuntary manslaughter, based on an unindicted predicate offense, is not against the weight of the evidence and is supported by sufficient evidence.**

**106092** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
WILLIAM A. BREWER v NICOLE M. BREWER, ET AL.

Reversed and remanded.

Sean C. Gallagher, J., Eileen A. Gallagher, A.J., and Patricia Ann Blackmon, J., concur.

**KEY WORDS:** *Agreed judgment entry; show cause; motion to enforce; Jud.Cond.R. 2.5; Jud.Cond.R. 2.6; diligently; hearing; abuse of discretion; adequate record; meaningful review.*

**Reversed trial court's denial of a motion to show cause and for attorney fees or alternatively to enforce agreed judgment and attorney fees. Trial court abused its discretion by failing to hold an evidentiary hearing when it had retained jurisdiction to enforce the agreed judgment entry, both parties requested an oral hearing, and the record was not adequate for a meaningful appellate review. The matter was remanded for an evidentiary hearing.**

**106099** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
MID AMERICA MORTGAGE, INC. v JOHN SCOTT, IV, ET AL.

Affirmed.

Sean C. Gallagher, J., Eileen A. Gallagher, A.J., and Tim McCormack, J., concur.

**KEY WORDS:** *Co-mortgagor; nonborrowing spouse; default judgment; Civ.R. 56; summary judgment; foreclosure; redemption; security interest; satisfaction.*

**The nonborrowing co-mortgagor cannot challenge the mortgagee's right to enforce the note or proceed to a foreclosure sale because the debtor defaulted on both claims. In those situations, the debtor**

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**has the legal and contractual right to permit the mortgagee to enforce the note and cause the sale of the property in satisfaction of his debt.**

**106135** CLEVELAND MUNI. C CRIMINAL MUNI. & CITY  
CITY OF CLEVELAND v ILLEEN FANO

Dismissed.

Eileen A. Gallagher, A.J., Mary J. Boyle, J., and Kathleen A. Keough, J., concur.

**KEY WORDS:** *Final appealable order; housing court.*

**Case dismissed due to a lack of a final appealable order where appellant plead guilty to 322 misdemeanors of the first degree but the trial court imposed a blanket sentence without addressing any individual counts at sentencing. The defect could not be remedied with a nunc pro tunc order.**

**106139** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v PATRICK A. MINEFEE

Affirmed.

Kathleen Ann Keough, J., Tim McCormack, P.J., and Frank D. Celebrezze, Jr., J., concur.

**KEY WORDS:** *postconviction; attempted felony murder; cognizable; attempted murder*

**Trial court properly denied appellant's petition for postconviction relief because attempted murder pursuant to R.C. 2903.02(A) is a cognizable offense. Appellant's reliance on case law holding that attempted felony murder under R.C. 2903.02(B) is not a cognizable offense is inapplicable to appellant's case.**

**106147** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
SAMI SOSNOSWSKY v JOHN P. KOSCIANSKI, ET AL.

Affirmed.

Larry A. Jones, Sr., J., and Patricia Ann Blackmon, J., concur; Melody J. Stewart, P.J., dissents with separate opinion.

**KEY WORDS:** *R.C. 2101.24/probate court jurisdiction; Civ.R. 12(B)(1)/dismissal/subject matter jurisdiction.*



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**The trial court did not err in determining that the probate division had jurisdiction over appellant's claims.**

**106189** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
RAYMOND KELLEY v CHRISTOPHER L. SULLIVAN, ET AL.

Affirmed.

Eileen T. Gallagher, P.J., Melody J. Stewart, J., and Patricia Ann Blackmon, J., concur.

**KEY WORDS: Punitive damages; actual malice; default judgment; evidence; Consumer Sales Practices Act.**

***Trial court did not abuse its discretion in denying the request for punitive damages on claim under Consumer Sales Practices Act in default judgment where plaintiff failed to present evidence of actual malice.***

**106192** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
CITY OF MAPLE HEIGHTS v STATE EMPLOYMENT RELATIONS BOARD

Affirmed.

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

**KEY WORDS: R.C. 4117.11; unfair labor practice; O.A.C. 4117-7-01; R.C. 4117.06; collective bargaining unit; bargaining unit certification.**

***Appellant committed an unfair labor practice in violation of R.C. 4117.11(A)(1) and (A)(5) by refusing to collectively bargain with the bargaining unit representative.***

***Appellant's assertions that it had no duty to collectively bargain with the bargaining unit representative because the unit comprised of only a single-employee and was therefore not an appropriate bargaining unit were arguments within the exclusive jurisdiction of defendant-appellee SERB.***

***Appellant waived its ability to challenge the appropriateness of the bargaining unit as appellant failed to object, at the lower level, to the unit within the statutory time frame.***

***This court is unable to review appellant's challenge to the bargaining unit certification.***

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**106299** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
ANDREW J. NATALE v FRANTZ WARD, LLP, ET AL.

Affirmed

Kathleen Ann Keough, J., Mary J. Boyle, P.J., and Patricia Ann Blackmon, J., concur.

**KEY WORDS:** *Intentional infliction of emotional distress; arbitration agreement; disability retirement benefits.*

*Trial court properly stayed proceedings and referred the matter for arbitration where plaintiff was a party to a partnership agreement that set forth the eligibility requirements for disability retirement benefits, and plaintiff's claim for intentional infliction of emotional distress arose from his claim of entitlement to those benefits under the agreement.*

**106352** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v ELVIN FINGER

Affirmed.

Sean C. Gallagher, J., Eileen A. Gallagher, A.J., and Patricia Ann Blackmon, J., concur.

**KEY WORDS:** *Accelerated appeal; App.R. 11; time-served credit; continuing jurisdiction; R.C. 2929.19(B).*

*Appellant has not demonstrated a factual basis to conclude that the trial court erred by rejecting his claim to correct the time-served calculation.*

**106367** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
STATE OF OHIO v S.E.

Reversed and remanded.

Sean C. Gallagher, J., Eileen A. Gallagher, A.J., and Anita Laster Mays, J., concur.

**KEY WORDS:** *Expungement; seal; records; R.C. 2953.32; formal hearing; mandatory; eligible; restitution; remand.*

*Trial court's decision granting application for sealing of the record of conviction pursuant to R.C. 2953.32 was reversed, and the case was remanded to the trial court for an expungement hearing. Appellee conceded the court erred in failing to conduct a formal hearing, which is a mandatory requirement under the statute. Issue pertaining to whether defendant had paid restitution in full and*

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**whether she is an eligible offender for sealing was deemed moot since the record had not been fully developed.**