

## CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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January 18, 2018

**105378** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
CITY OF CLEVELAND v LABORERS INTERNATIONAL UNION LOCAL 1099

Affirmed.

Tim McCormack, J., Eileen A. Gallagher, A.J., and Mary J. Boyle, J., concur.

**KEY WORDS:** *Arbitration; R.C. Chapter 2711; modification; jurisdiction; trial court's authority; execution of judgment; Civ.R. 52; findings of fact; some evidence.*

*Where the arbitrator's award of "reasonable and demonstrable lost back pay" was confirmed by the trial court and affirmed on appeal, the arbitrator lacked jurisdiction to revisit the award. The trial court's award thereafter of a sum certain was not a modification of the arbitrator's award but rather a proper exercise of the court's inherent authority to interpret and enforce judgments. The trial court's damage award was supported by some evidence. We therefore must presume regularity and affirm the trial court's award.*

**105379** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v CEDRIC N. JEFFRIES

Affirmed in part; reversed in part and remanded.

Kathleen Ann Keough, P.J., Anita Laster Mays, J., and Larry A. Jones, Sr., J., concur.

**KEY WORDS:** *Prior nonconsensual sexual activity; rape shield statute; other acts evidence; grooming; kidnapping; jury instruction; released in a safe place unharmed; ineffective assistance of counsel; court costs; indigent; insufficient evidence; manifest weight of the evidence; witness testimony stricken; relevant.*

*Ohio's rape shield statute prohibits admission of evidence of both prior consensual and nonconsensual sexual activity of the victim; testimony regarding prior sexual activity the defendant had with the child victim was not improper other acts evidence but was properly admitted to show the defendant's plan and scheme to groom the victim for sexual activity; trial court did not err in not instructing the jury that it should find whether the victim was "released in a safe place unharmed" before finding the defendant guilty of kidnapping in violation of R.C. 2905.01(C)(3)(a) because the defendant did not argue that as an affirmative defense and offered no evidence that the victim was released unharmed; counsel was ineffective for not moving to waive court costs where the trial court had found the defendant indigent and appointed counsel; defendant's convictions for rape and kidnapping were supported by sufficient evidence and not against the manifest weight of the evidence where the victim's*

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(Case 105379 continued)

**testimony showed she was physically restrained while the defendant raped and kidnapped her; the evidence also showed that the defendant restrained the victim through the psychological pressure inherent in his position as a father figure to the victim; trial court did not err in striking a witness's nonresponsive testimony that was not relevant to the victim's credibility.**

**105433** JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
IN RE: D.C.

Affirmed in part, reversed in part, and modified.

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

**KEY WORDS: Juvenile; rape; anal opening; penetration; buttock; ineffective assistance of counsel; allied offenses; sufficiency of the evidence; manifest weight of the evidence.**

**Testimony that juvenile took victim's hand and "drove it" it into the victim's "bottom," without clarification as to what the victim meant by the word "bottom," is insufficient to establish penetration of the anal opening necessary for a charge of rape.**

**105444** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v CLINTON M. YOUNG, III

Affirmed.

Melody J. Stewart, J., Mary J. Boyle, P.J., and Anita Laster Mays, J., concur.

**KEY WORDS: Terry stop; reasonable suspicion; request for identification; warrant; search incident to arrest.**

**Trial court does not err by allowing evidence seized pursuant to arrest after police discovered active warrant. Police request for identification is not inappropriate during a Terry stop.**

**105505** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v DONTEZ D. JOHNSON

Affirmed

Mary Eileen Kilbane, P.J., Sean C. Gallagher, J., and Patricia Ann Blackmon, J., concur.

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(Case 105505 continued)

**KEY WORDS:** Manifest weight; sufficiency of the evidence; Evid.R. 404(B); other acts evidence; R.C. 2929.14; controlled buy; circumstantial evidence

Defendant-appellant's convictions for trafficking, drug possession, and possession of criminal tools was supported by the weight and sufficiency of the evidence. The circumstantial evidence presented by the state was sufficient to prove beyond a reasonable doubt that defendant-appellant had possessed and sold the drugs recovered from the informants. Defendant-appellant did not put forth any showing to overcome the presumption that the jury followed the court's curative instruction regarding other acts evidence, nor did defendant-appellant articulate that this error resulted in such prejudice to warrant a mistrial. The trial court made the required findings under R.C. 2929.14(C) to support its imposition of consecutive sentences and incorporated these findings in its sentencing journal entry as required by *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659.

<b>105510</b>	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v LONNIE L. BRIDGES			

Affirmed.

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

**KEY WORDS:** *Gambling, R.C. 3772.99, Dice Sliding, Other Acts Evidence. Sufficient evidence was presented to convict appellant of gambling in violation of R.C. 3772.99 by means of dice sliding. Appellant and his companions engaged in a deliberate effort to covertly remove the element of chance from the game of craps to their own wagering benefit and to the detriment of both the casino and the other gamblers at the table. Other acts evidence consisting of an attempt by appellant to slide dice at another casino was admissible to establish appellant's familiarity with the rules of craps and an absence of mistake in appellant's conduct.*

<b>105521</b>	CLEVELAND MUNI.	C	CRIMINAL MUNI. & CITY
CITY OF CLEVELAND v ALLAN LUCAS			

Dismissed.

Sean C. Gallagher, J., Mary J. Boyle, P.J., and Larry A. Jones, Sr., J., concur.

**KEY WORDS:** *Final, appealable order; appellate jurisdiction.*

*The imposition of a single fine and community control sanction when there are multiple counts does not create a final appealable order.*

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**105532** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v ANTHONY BOYCE

Reversed and remanded.

Sean C. Gallagher, J., Mary J. Boyle, P.J., and Larry A. Jones, Sr., J., concur.

**KEY WORDS:** *Remand; mandate; sexual offender classification; sexual predator; res judicata; former R.C. 2950.09(B)(2); factors; hearing; evidence.*

*Prior mandate from the appellate court in the case did not limit the record for the trial court's determination of appellee's sexual offender classification upon the earlier remand, and the trial court erred by failing to conduct a complete hearing and by failing to consider all available evidence in rendering its determination. The trial court's classification of appellee as a sexually oriented offender was reversed, and the case was remanded for the trial court to conduct a proper sexual offender classification hearing in accordance with former R.C. 2950.09 and State v. Eppinger, 91 Ohio St.3d 158, 743 N.E.2d 881 (2001).*

**105560** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v MARVIN F. JOHNSON, SR.

Affirmed in part; reversed in part; and remanded.

Anita Laster Mays, J., Mary Eileen Kilbane, P.J., and Tim McCormack, J., concur.

**KEY WORDS:** *Motion to suppress; search warrant affidavit; probable cause; Franks v. Delaware, 438 U.S. 154, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978); Illinois v. Gates, 462 U.S. 213, 294, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983); R.C. 2929.51(A); sentence modification invalid.*

*The trial court did not err in denying defendant's motion to suppress under Franks and Gates where defendant failed to support his motion by more than general denials and allegations and the controlled buy leading to issuance of the search warrant was conducted within 48 hours of the search warrant execution. The trial court lacked authority to modify defendant's sentence.*

**105583** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v GARY JONES, JR.

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Affirmed.

Melody J. Stewart, J., Mary Eileen Kilbane, P.J., and Tim McCormack, J., concur.

**KEY WORDS:** *Manifest weight; unlawful sexual conduct with a minor.*

**Jury verdict finding defendant guilty of unlawful sexual conduct with a minor was supported by competent credible evidence that defendant knew the victim was only 14 years of age and continued to engage in sexual conduct with her.**

**105603** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
BARRY RIDDICK v OWEN R. TAYLOR, ET AL.

Affirmed.

Larry A. Jones, Sr., J., Eileen A. Gallagher, A.J., and Mary Eileen Kilbane, J., concur.

**KEY WORDS:** *R.C. 2305.09/statute of limitations; Civ.R. (C)/summary judgment; Civ.R. 36/ admissions; discovery violations; sanctions.*

**The trial court did not err in dismissing appellant's fraud and intentional infliction of emotional distress claims as they were time-barred by the statute of limitations. The record shows that appellant had constructive knowledge of the facts of his diagnosis before the time he alleges he received actual knowledge.**

**Appellant failed to timely respond to the request for admissions; by operation of Civ.R. 36, those admissions were deemed admitted. The trial court's grant of appellee's summary judgment motion based on those unanswered admissions was not an abuse of discretion.**

**There was no error on the trial court's part where the trial court ordered appellee to respond to appellant's discovery request and appellee provided evidence that it had responded to appellant's interrogatories. There were no discovery violations.**

**There was no breach of contract where appellant failed to sign the required authorization to disclose information form thus preventing appellee from completing the services appellant hired appellee to perform.**

**105608** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
STATE OF OHIO, EX REL WILLIAM L. ALLEN v VILLAGE OF WALTON HILLS

Reversed and remanded.

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

**KEY WORDS:** *Taxpayer action; summary judgment; statute of limitations; R.C. 733.56; R.C. 733.59; R.C. 733.60; mayor’s court.*

**The trial court erred when it granted respondents-appellees’ motion for summary judgment on the basis that the action was barred by the one-year statute of limitations in R.C. 733.60. Because the alleged misapplication of funds in this case was not the consequence of an illegal contract, R.C. 733.60 does not apply.**

**105712** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v MICHAEL RESHAN AUSTIN

Reversed and remanded.

Melody J. Stewart, J., Mary Eileen Kilbane, P.J., and Tim McCormack, J., concur.

**KEY WORDS:** *Guilty plea; mandatory prison time; sentence.*

**Court’s error in characterizing the sentence for an offense as requiring a mandatory prison sentence was not harmless because the court’s statement that the mandatory aspect of the sentence put it “in a box” indicated the possibility that it might not have ordered a prison term but for mistakenly believing that it must order a prison term.**

**105716** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v KYLE M. WEAVER

Affirmed.

Melody J. Stewart, J., Tim McCormack, P.J., and Patricia Ann Blackmon, J., concur.

**KEY WORDS:** *R.C. 2951.041; intervention in lieu of conviction; eligible offense.*

**Trial court does not err by granting ILC for offenses where the indictment also contains offenses that are ineligible for, but do not expressly preclude, ILC.**

**105729** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v LLOYD JOHNSON

Affirmed.

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

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**KEY WORDS:** *Crim.R. 33(A)(6); motion for a new trial; leave; unavoidable delay.*

***Court did not abuse its discretion by denying leave to file a motion for a new trial because the motion for leave was made more than 120 days after the verdict was rendered and contained nothing to justify the delay in bringing the motion.***

**105746** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v JOSHUA CLARKE

Affirmed.

Sean C. Gallagher, P.J., Patricia Ann Blackmon, J., and Frank D. Celebrezze, Jr., J., concur.

**KEY WORDS:** *R.C. 2929.19; impact; family; relevant; sentence; discretion; R.C. 2929.11; R.C. 2929.12; clear and convincing; support; contrary to law.*

***Trial court had discretion under R.C. 2929.19 to allow victim's mother to present information relevant to the imposition of sentence in the case and was presumed to have considered only relevant, material, and competent evidence in determining the sentence. Sentence was affirmed where the sentencing transcript and the judgment entry of conviction reflected that the court considered the factors set forth in R.C. 2929.11 and 2929.12, and it could not be determined by clear and convincing evidence that the record does not support the sentence or that the sentence is otherwise contrary to law.***

**105764** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
STATE OF OHIO v B. J.

Reversed and remanded.

Mary Eileen Kilbane, J., Eileen A. Gallagher, A.J., and Kathleen Ann Keough, P.J., concur.

**KEY WORDS:** *Motion for expungement; R.C. 2953.32(B); hearing. Judgment reversed and remanded.*

***Trial court erred when it denied defendant's motion for expungement without first holding a hearing as required by R.C. 2953.32(B).***

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**105855** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v MARVIN F. JOHNSON, SR.

Affirmed.

Mary Eileen Kilbane, P.J., Tim McCormack, J., and Anita Laster Mays, J., concur.

**KEY WORDS:** *Petition for postconviction relief; res judicata.*

**Judgment affirmed. Trial court's denial of defendant's postconviction relief was proper as defendant's arguments are barred by the doctrine of res judicata.**

**105866** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v LONNIE B. THOMPSON

Affirmed.

Eileen A. Gallagher, A.J., Eileen T. Gallagher, J., and Mary J. Boyle, J., concur.

**KEY WORDS:** *Multiple appeals; remand; merger; de novo resentencing; res judicata. Trial court was not required to conduct a de novo resentencing on remand to address potential merger of two counts and imposition of fine, costs and restitution which had been ordered by journal entry but not imposed in open court. Res judicata barred assignments of error that had already been addressed in prior appeals or not raised in prior appeals.*