

March 1, 2018

**104470** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v FLOYD L. MOTON

Affirmed.

Melody J. Stewart, J., and Kathleen Ann Keough, P.J., concur; Mary J. Boyle, J., dissents in part and concurs in judgment in part with separate opinion.

**KEY WORDS:** *Public trial; spectators; aggravated murder; evidence; hearsay.*

*Court did not violate defendant's right to a public trial and instead exercised control over the proceedings by ordering three spectators to leave the courtroom.*

*Sufficient evidence to support a finding of prior calculation and design to commit aggravated murder when defendant and victim knew each other, there were records of phone calls the defendant made to the victim just prior to the murder; the defendant drove around the area where the murder occurred as though waiting for the victim to arrive; fingerprints on victim's car doorhandle matched the defendant; and the victim was shot execution-style from inches away.*

**104976** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v ALFONSO E. HERNANDEZ

Affirmed.

Mary Eileen Kilbane, P.J., Melody J. Stewart, J., and Frank D. Celebrezze, Jr., J., Concur.

**KEY WORDS:** *Manifest weight of the evidence; Crim.R. 8; Crim.R. 14; joinder; Evid.R. 404(B); other acts evidence; immigration status; cross-examination; credibility.*

*Defendant-appellant's argument that his convictions were against the manifest weight of the evidence because the testimony of his minor victims lacked credibility was unpersuasive. The jury was in the best position to determine the credibility of each witness in light of inconsistent and contradictory testimony. It is well established that inconsistent or contradictory testimony alone does not render a conviction against the manifest weight of the evidence. Defendant-appellant was not denied a fair trial by the trial court's denial of his motion to sever the allegations of the two minor victims, the admittance of unindicted "other acts" evidence of sexual assault allegations made by the first victim, the investigating detective's passing reference to his immigration status, nor the trial court's refusal to allow defendant-appellant to attack the statements of his minor victims through the testimony of the investigating detective.*

## CASE DECISION LIST

**105116** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v EDDIE BROWNLEE

Affirmed in part, reversed in part, and remanded.

Melody J. Stewart, P.J., Patricia Ann Blackmon, J., and Larry A. Jones, Sr., J., concur.

**KEY WORDS:** *Aggravated murder; informant; mistrial; continuance; plea bargain; ineffective assistance of counsel; accomplice; presumption of guilt; allied offenses; vindictive sentence.*

*No plain error in failure to give jury instruction on accomplice testimony because the terms of the accomplice's plea deal were made known to the jury and the court otherwise instructed jury that it could weigh each witness's testimony based in part on witness's self-interest.*

*Counsel may have employed trial strategy and not sought jury instruction on accomplice testimony because parts of the accomplice's testimony were highly favorable to the defense, so the instruction might have undermined defense argument that accomplice was credible.*

*Court did not err by denying motion for mistrial based on failure to submit admitted exhibit to the jury for deliberations because defense counsel failed to ensure that the exhibit, a digital video file, had been put on disk and timely given to the jury before it began its deliberations.*

**105420** CLEVELAND MUNI. C CRIMINAL MUNI. & CITY  
CITY OF CLEVELAND v CALVIN MARTIN

Reversed and remanded.

Sean C. Gallagher, J., Kathleen Ann Keough, P.J., and Frank D. Celebrezze, Jr., J., concur.

**KEY WORDS:** *Motion to suppress; OVI; marked lanes violation; de minimis infraction; reasonable suspicion; intensity of alcoholic odor; Evans factors.*

*When all the applicable factors are considered in this case, the officer articulated a reasonable suspicion justifying the administration of field sobriety tests in consideration of the defendant's driving behavior, his bloodshot eyes, the odor of alcohol, and his admission to consuming alcoholic beverages before driving. The trial court erred in suppressing the evidence.*

## CASE DECISION LIST

**105462** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v MARVIN BAXTER LINDER

Affirmed in part; reversed in part and remanded.

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

**KEY WORDS:** *Ineffective assistance of counsel; disqualification of counsel.*

*The record shows that appellant's counsel advocated for appellant during plea negotiation and that appellant was satisfied with his counsel. Appellant's counsel was not ineffective in his representation of appellant; however, because of the breakdown in appellant's relationship with his counsel during the sentencing phase, the trial court should have disqualified appellant's counsel for the purpose of sentencing only.*

**105525** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
SIMON C. MONTGOMERY, ET AL. v DONALD S. VARGO

Affirmed.

Larry A. Jones, Sr., J., Kathleen Ann Keough, P.J., and Frank D. Celebrezze, Jr., J., concur.

**KEY WORDS:** *Civ.R. 56/summary judgment.*

*Appellant's claims in their second complaint were not newly discovered and the trial court therefore did not err in granting appellee summary judgment.*

**105637** CLEVELAND MUNI. G CIVIL MUNI. & CITY  
CITY OF CLEVELAND v AMAZING TICKETS, INC., ET AL.

Reversed and vacated.

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

**KEY WORDS:** *Administrative subpoena, special statutory proceeding.*

*An action to enforce an administrative subpoena is a special statutory proceeding to which the Rules of Civil Procedure generally do not apply. However, administrative subpoenas must comply with Civ.R. 45(A)(1)(c). Because the City of Cleveland's administrative subpoenas failed to conform to the requirements therein the municipal court erred in ordering appellant to comply with the subpoenas.*

## CASE DECISION LIST

**105687** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v KEISHA EVANS

Affirmed.

Melody J. Stewart, J., Eileen T. Gallagher, P.J., and Sean C. Gallagher, J., concur.

**KEY WORDS:** *Drug possession; motion to suppress; limitation of cross-examination; forfeiture.*

*Jury did not err by rejecting defendant's claim that she was innocently transporting a package, unaware that it held nearly 25 pounds of marijuana, and finding her guilty of drug possession because evidence showed that her house contained marijuana, digital scales, vacuum sealing equipment, and large quantities of cash hidden in clothing.*

**105799** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
ERNEST BOAEUF, ET AL. v MEMPHIS STATION, LLC

Affirmed.

Melody J. Stewart, J., Eileen A. Gallagher, A.J., and Anita Laster Mays, J., concur.

**KEY WORDS:** *Conversion; punitive damages; manifest weight of the evidence.*

*Court judgment on conversion claim not against the weight of the evidence where the seller of bar assets converted those assets by selling them to a third party because the seller had obtained a cognovit judgment based on buyer's defaulting on payment for the sale of the bar assets, yet proceeding to sell the bar assets to a third party despite knowing that the buyer of the bar assets had a replevin action pending.*

**105814** CLEVELAND MUNI. C CRIMINAL MUNI. & CITY  
CITY OF CLEVELAND v JOHN A. KREBS

Affirmed in part, reversed in part, and remanded.

Mary J. Boyle, J.; Eileen A. Gallagher, A.J., concurs; Eileen T. Gallagher, J., dissents with separate opinion.

**KEY WORDS:** *Written jury waiver; Crim. R. 23(A); R.C. 2945.05; failure to comply with lawful order of police; Cleveland Codified Ordinances 403.02(A); reckless; failure to yield to public safety vehicle; Cleveland Codified Ordinances 431.21; driving on the*

## CASE DECISION LIST

(Case 105814 continued)

**sidewalk, street, lawn, or curb; Cleveland Codified Ordinances 431.37; sufficient evidence; manifest weight of the evidence.**

**The trial court failed to obtain a valid jury waiver on the defendant's failure to comply charge, but because the defendant did not have a right to a jury on his two minor misdemeanor offenses, failure to yield to a public safety vehicle and driving on the sidewalk, the trial court could conduct a bench trial on those charges.**

**The city failed to present sufficient evidence of failure to comply and failure to yield to a public safety vehicle. Defendant's conviction for driving on a sidewalk, however, was not against the manifest weight of the evidence. Thus, defendant's convictions for failure to comply and failure to yield to a public safety vehicle were vacated and defendant's conviction for driving on a sidewalk was affirmed.**

**105882** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
SHAWN GRILL, ET AL. v ARTISTIC RENOVATIONS, ET AL.

Affirmed.

Frank D. Celebrezze, Jr., J., Anita Laster Mays, P.J., and Kathleen Ann Keough, J., concur.

**KEY WORDS: Summary judgment; res judicata; Civ.R. 56; compulsory counterclaim; Civ.R. 13; abuse of discretion.**

***The trial court properly granted appellees' motion for summary judgment. The claims that appellants asserted against appellees in their second complaint were compulsory counterclaims that appellants either asserted and then dismissed or failed to assert in the first lawsuit. Accordingly, the claims that appellants asserted in their second complaint were barred by the doctrine of res judicata. The trial court did not abuse its discretion in denying appellants' motion for an extension of time to respond to appellees' summary judgment motion.***

**105932** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v CHARLES C. COX, IV

Affirmed.

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

**KEY WORDS: Community control sanctions; violation; probable cause; revoke sanctions.**

***The trial court did not err when it revoked defendant's community control sanctions and imposed the suspended prison term because***

## CASE DECISION LIST

(Case 105932 continued)

**the record supported the trial court's finding that the defendant violated the terms of his community control sanctions when he failed to report to his probation officer.**

**105976** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v NORMAN L. ANGLEN

Affirmed in part, vacated in part.

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

**KEY WORDS: Guilty plea; sentencing; consistency; ineffective assistance of counsel; psychiatric evaluation.**

***Defendant failed to establish that his sentence was inconsistent with sentences given to similar offenders because he failed to raise the issue at the time of sentencing or offer evidence of what sentences the similar offenders had received.***

***Defense counsel had no duty to ask that the case be transferred to the court's mental health docket when a psychiatric evaluation found defendant competent.***

**105991** JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
IN RE: M.L.

Affirmed.

Patricia Ann Blackmon, J., Eileen T. Gallagher, P.J., and Larry A. Jones, Sr., J., concur.

**KEY WORDS: R.C. 2151.414; permanent custody; legal custody.**

***The award of permanent custody of the 18-month-old to the CCDCFS, rather than to maternal cousin was in the child's best interest where the record shows that appellant had a criminal record that included child endangering and domestic violence, other children were removed from her care, and maternal cousin recently obtained a part-time job, and lives in subsidized housing, and has an extremely limited work history.***

**106012** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v DWAYNE DAVIS

Affirmed.

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

## CASE DECISION LIST

(Case 106012 continued)

**KEY WORDS:** Civ.R. 56/summary judgment; motion to set aside judgment of conviction; R.C. 2953.21(A)(2)/postconviction relief petition/time limits; R.C. 2953.23(A)(1)/exception requirements for delayed postconviction relief petition.

Appellant failed to establish 1) the existence of any newly discovered evidence, 2) that his trial counsel was ineffective, and 3) that he would not have pled guilty but for his trial counsel's decision not to file a motion to suppress. Appellant's postconviction petition was untimely and appellant failed to meet the exception requirements.

The trial court's denial of appellant's motion for summary judgment was proper. Appellant's claims were barred by the doctrine of res judicata.

<b>106013</b>	COMMON PLEAS COURT	E	CIVIL C.P.-NOT JUV,DOM OR PRO
OHIO QUAY 55 LLC v CITY OF CLEVELAND			

Affirmed.

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

**KEY WORDS:** *Summary judgment; immunity; R.C. 2744.03(A)(5); discretion; judgment.*

*Trial court properly found the city was immune from liability under R.C. 2744.03(A)(5) on the plaintiff's negligence claim where the city's response to a water main break required the exercise of discretion and judgment, and the plaintiff's negligence claim made no allegations that the city's employees acted with malicious purpose, in bad faith, or in a wanton or reckless manner.*