

## CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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May 17, 2018

**105352** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v DOUGLAS C. SHINE, JR.

Affirmed.

PER CURIAM.

**KEY WORDS:** *Aggravated murder; murder; joinder; witness lists; evidentiary rulings; expert testimony; Evid.R. 804(B)(6), confrontation clause, motions for mistrial.*

*The trial court did not err in joining indictments of related shootings for trial. The trial court did not err in denying motion for mistrial after juror contact.*

*Trial court did not err in denying motion for mistrial after witness described a threat.*

*Trial court did not err when it admitted the out-of-court statement of deceased and permitted wife to read a text to police.*

*Defendant was not deprived his right to effective assistance of counsel.*

*Defendant's mother was not erroneously removed from courtroom;.*

*Trial court did not err in admitting crime scene and autopsy photos.*

*Trial court did not err in admitting expert firearm and ballistic evidence.*

*Trial court did not err in admitting mobile forensic evidence.*

*Trial court did not err when it admitted the hearsay testimony of a dispute over a gun.*

*Trial court did not err in permitting meaning of term in gang parlance.*

*Trial court did not err when it gave a flight instruction.*

*Verdicts were not against the manifest weight of the evidence and did not lack sufficient evidence.*

*State did not violate defendant's rights by failing to adequately disclose its witnesses.*

*There was no cumulative error.*

*There was no prejudicial prosecutorial misconduct.*

*The finding that the murders were made with prior calculation and design was not against the manifest weight of the evidence and was supported by sufficient evidence.*

**105620** LAKEWOOD MUNI. C CRIMINAL MUNI. & CITY  
CITY OF LAKEWOOD v JOSEPH RADOSTITZ

Vacated in part and remanded.

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

**KEY WORDS:** *Community control sanctions; condition; no-contact order; reasonably related; goals.*

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(Case 105620 continued)

**The condition of community control that prohibits an offender from having contact with his young children bears no relationship to the assault on his estranged wife or the offender's future criminality where the assault occurred outside the presence of the children, there is no evidence the father posed any threat to his children, and the wife fully supported the offender's involvement in the children's lives. The trial court therefore abused its discretion in ordering that the offender have no contact with his children for five years as a condition of his community control sanctions.**

**105717** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v CHERITA FOREMAN

Affirmed in part, reversed in part, and remanded.

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

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

***The trial court erred by granting appellee's motion for intervention in lieu of conviction on Counts 1 and 3 because the eligibility requirement set forth in R.C. 2951.041(B)(7) was not satisfied. The trial court did not err by granting appellee's motion on the remaining counts in the indictment that are eligible offenses.***

**105851** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
ESTATE OF OSCAR HUNTER v OHIO DEPARTMENT OF JOB AND FAMILY SERVICES

Affirmed.

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

**KEY WORDS: *Medicaid; benefits; state hearing; notice.***

***Trial court did not err by affirming administrative decision denying Medicaid benefits because party who failed to pursue administrative appeal in first application for benefits could not raise the issue in a subsequent application for benefits.***

**105926** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v DEMARCUS EATON

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**105927** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v DEMARCUS EATON

Affirmed.

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

**KEY WORDS:** *Crim.R. 13/joinder of offenses/indictment; ineffective assistance of counsel.*

*The multiple indictments were properly tried together. Evidence showed that the offenses shared a common purpose, motive or scheme and involved the same victim. Moreover, trial was continued so that the cases could be tried together and appellant was aware both cases would be tried together.*

*Appellant failed to show that his trial counsel's representation fell below the objective standard of reasonableness.*

**105959** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v ANDRE D. MCCULLOUGH, JR.

Affirmed.

Anita Laster Mays, J., and Patricia Ann Blackmon, J., concur; Mary J. Boyle, P.J., concurs in judgment only.

**KEY WORDS:** *Motion to dismiss, Cleveland Municipal Court, Cuyahoga County Common Pleas Court, Crim.R. 48(B), harmless error.*

*The trial court did not err by granting the appellee's motion to dismiss because the appellee had a reasonable belief that his plea agreement and sentence from municipal court barred any subsequent felony charges in common pleas court. The trial court did not fully comply with Crim.R. 48(B) and state on the record its findings of fact and reasons for dismissing the indictment, but the error was harmless because the reasoning is evident in the hearing transcript.*

**106025** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
GEORGETOWN OF THE HIGHLANDS CONDO. OWNERS ASSN. v STELLA NSONG, ET AL.

Affirmed.

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

**KEY WORDS:** *Civ.R. 56(C)/summary judgment; dispositive motion; R.C. 5311.18(C)/discharge of condominium liens; Evid.R. 702/expert*

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witness/attorney fees; relief from judgment.

Where appellee filed its motion for summary judgment and appellant did not oppose the motion disputing the alleged amount owed or file any dispositive motion to demonstrate that there was no genuine issue of material fact as to appellant's counterclaims, the trial court did not err or abuse its discretion in granting appellee's motion.

Appellant failed to establish that her property was trespassed against by an unauthorized intentional act; neither was appellee negligent in the manner in which it responded to the emergency situation going on in appellant's unit.

Appellant's argument disputing the amount owed to appellee failed where appellant did not oppose appellee's summary judgment motion.

Appellant's invasion of privacy claim fails where appellant failed to show that appellee made any type of public disclosure about appellant that would have put appellant in a false light.

Based on the terms of the association's declaration and bylaws, appellee was permitted to enter appellant's unit where an emergency existed. Appellant's breach of contract claim fails.

The expert witness established that the attorney's hourly rate charged was reasonable and appellant failed to present any evidence that the fees charged were unreasonable.

The trial court did not err in denying appellant's motion for relief from judgment. It was established that appellant was indebted to the United States and appellant failed to present evidence demonstrating otherwise.

<b>106028</b>	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v THIOTIS GREENE			

Vacated and remanded.

Frank D. Celebrezze, Jr., J.; Eileen T. Gallagher, P.J., concurs in judgment only with separate opinion; Kathleen Ann Keough, J., concurs in part and concurs in judgment only in part with separate opinion.

**KEY WORDS:** *Community control sanctions; violation; probable cause; revocation; due process; plain error; Crim.R. 52; substantial evidence; R.C. 2929.15.*

*The trial court did not commit plain error by consolidating the preliminary probable cause hearing and the revocation hearing into a single hearing, and appellant was not prejudice by the trial court's failure to hold two separate hearings. The trial court's determination that appellant violated the terms of his community*

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**control sanctions is not supported by substantial and competent evidence in the record. Accordingly, the trial court abused its discretion in revoking appellant's community control sanctions and imposing a prison sentence.**

**106101** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v BISHOP J. HICKS

Affirmed.

Frank D. Celebrezze, Jr., J., Patricia Ann Blackmon, P.J., and Anita Laster Mays, J., concur.

**KEY WORDS: Guilty plea; motion to withdraw; ineffective assistance of counsel; Crim.R. 32.1; hybrid representation.**

***The trial court did not abuse its discretion in failing to hold a hearing on appellant's pro se request to withdraw his guilty plea. Appellant was not denied his constitutional right to the effective assistance of counsel.***

**106103** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v KAREEM WALTON

Affirmed.

Frank D. Celebrezze, Jr., J., and Kathleen Ann Keough, J., concur; Sean C. Gallagher, P.J., concurs in judgment only.

**KEY WORDS: Anders; nonfrivolous issue; guilty plea; consecutive sentences; R.C. 2929.14(C)(4); plea agreement; breach; R.C. 2929.12; due process; juvenile adjudication.**

***An independent review of the record reveals that there are no nonfrivolous issues to argue in this case involving appellant's guilty plea or the trial court's imposition of consecutive sentences. The prosecutor's statements during the sentencing hearing did not constitute a breach of the parties' plea agreement. The trial court did not err or violate appellant's due process rights by considering appellant's juvenile record during the sentencing hearing.***

**106118** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v MICHELLE KRONENBERG

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Affirmed.

Larry A. Jones, Sr., Eileen T. Gallagher, P.J., and Sean C. Gallagher, J., concur.

**KEY WORDS:** *R.C. 2903.211/ menacing by stalking; Crim.R. 7(B)/indictment; sufficiency; consecutive sentences.*

*The trial court did not err by considering appellant's prior history. Evidence showed that appellant harassed the victims for over 15 years causing the victims mental distress and creating fear in the victims and was sufficient enough to establish that appellant engaged in a pattern of conduct toward the victims.*

**106173** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
ANTHONY FOSTER v ERAL M. FOSTER, ET AL.

Affirmed.

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

**KEY WORDS:** *Summary judgment; Civ.R. 56; fraud; final appealable order; R.C. 2505.02; Civ.R. 54; statute of limitations; R.C. 2305.09; discovery rule; constructive knowledge; cognizable event; laches.*

*Appellant failed to demonstrate a genuine issue of material fact as to when the statute of limitations for his fraud claims began to run. Accordingly, the trial court properly granted appellees' motion for summary judgment.*