

## CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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May 24, 2018

**105252** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v DEWAYNE MCDANIEL

Affirmed.

Larry A. Jones, Sr., J.; Sean C. Gallagher, J., concurs in judgment only with separate opinion; Mary J. Boyle, P.J., concurs with the majority opinion and concurs with the separate concurring in judgment only opinion.

**KEY WORDS:** *R.C. 2929.11 and 2929.12/sentencing.*

**Appellant 1) was found to have been on active postrelease control at the time of the current offense, 2) failed to meet all the requirements of his postrelease control, and 3) had an extensive criminal record. The record supports the trial court's findings for purposes of sentencing. Appellant's sentence was not inconsistent or disproportionate to his codefendants.**

**105342** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v RICHARD MARCUS LENARD

**105343** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v RICHARD LENARD

Affirmed.

Sean C. Gallagher, P.J., and Frank D. Celebrezze, Jr., J., concur; Patricia Ann Blackmon, J., dissents in part with separate opinion.

**KEY WORDS:** *Court costs; R.C. 2947.23(C); merger; allied offenses; Evid.R. 701; harmless error.*

**Any error in admitting evidence under Evid.R. 701 is harmless given the state's reliance on other evidence to demonstrate the witness's reluctance to testify against her boyfriend, and there is no error with respect to the failure to merge two offenses committed with separate conduct.**

**105570** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v SHEILA A. MCFARLAND

Affirmed and remanded.

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

**KEY WORDS:** *conspiracy; aggravated murder; murder; felonious*

(Case 105570 continued)

**assault; right to a fair trial; right to confront witnesses; trial court bias; sufficiency of the evidence; manifest weight of the evidence; merger at sentencing; vindictive sentence; accomplice testimony instruction; ineffective assistance of counsel.**

**Appellant was not denied a fair trial and the right to confront a witness when the trial court sustained an objection to a statement made by defense counsel during cross-examination of the witness. Counsel made a statement rather than pose a question to the witness, and the statement was not supported by anything in the record. Appellant has failed to demonstrate that the trial court's admonishment to defense counsel had any effect on the jury or impaired defense counsel.**

**The state presented sufficient evidence that appellant conspired with the codefendants to cause physical harm to the victim.**

**Appellant's convictions were not against the manifest weight of the evidence.**

**The kidnapping and aggravated murder counts should have merged for the purpose of sentencing. However, the trial court properly did not merge the conspiracy count with the aggravated murder, murder, and felonious assault counts.**

**Appellant failed to demonstrate that her sentence was punishment for the exercise of her constitutional right to a trial, or for her behavior at sentencing.**

**The trial court properly did not give the accomplice testimony instruction to the jury when one witness was not an accomplice to the crimes. There was no plain error in failing to give the instruction as to another witness, who was an accomplice, because the trial court instructed the jury about assessing the credibility of all witnesses, the jury knew the terms of the accomplice's plea deal, and defense counsel subjected the accomplice to extensive cross-examination.**

**105578** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
NEW YORK COMMUNITY BANK v ALEX PROSTER

Affirmed.

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

**KEY WORDS: Foreclosure; confirmation of judicial sale; R.C. 2329.27(B); R.C. 5301.233.**

***Where mortgagor did not appeal from foreclosure, his assigned errors pertaining to foreclosure were barred. Court did not err in confirming sale despite mortgagor's claim, post-foreclosure claim that he could obtain a short sale, and raised claims for damages and reimbursement of rent and other fees.***

## CASE DECISION LIST

**105710** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
SMS FINANCIAL 30, LLC v FREDERICK D. HARRIS, M.D., INC., ET AL.

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:** *Statute of limitations, R.C. 2305.06, line of credit, negotiable instrument, R.C. 1701.87, notice of dissolution, personal guaranty.*

*The line of credit was not a negotiable instrument because the amount advanced was not fixed or determined with certainty, but was contingent on whether the borrower drew on the line of credit. Therefore, the line of credit is viewed as a written contract and R.C. 2305.06 governs the relevant statute-of-limitations period. Based on the facts and admissions, the action was not time barred. The weight of the evidence proved that the corporation sent its creditor notice of dissolution under R.C. 1701.87 to bar collection from that creditor. However, the dissolution of the corporation did not dissolve the personal guaranty under the contract.*

**105787** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v RAYNARD MCDONALL

Affirmed and remanded.

Mary J. Boyle, J., Melody J. Stewart, P.J., and Frank D. Celebrezze, Jr., J., concur.

**KEY WORDS:** *Rape; R.C. 2907.02(A)(2); kidnapping; R.C. 2905.01(A)(4); CODIS hit; preindictment delay; due process; ineffective assistance of counsel; prior inconsistent statement; manifest weight of the evidence; allied offenses of similar import; consecutive sentences; R.C. 2929.14(C)(4); R.C. 2929.11; R.C. 2929.12.*

*The defendant's rape and kidnapping convictions were affirmed on appeal. The defendant did not establish that he was actually prejudiced by the nearly 20-year delay. The defendant did not establish that his counsel was ineffective for failing to file pretrial motions, failing to object, and failing to cross-examine witnesses properly. The defendant's rape and kidnapping convictions were not against the manifest weight of the evidence. The trial court did not err when it denied defendant's motion to merge his rape and kidnapping convictions because the rape and kidnapping were committed separately with a separate animus. The trial court made the required findings under R.C. 2929.14(C)(4) and the record supported those findings. The trial court also properly considered R.C. 2929.11 and 2929.12 when sentencing the defendant.*

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**105810** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v DEAFRED C. HARDMAN

Affirmed.

Melody J. Stewart, J., Mary Eileen Kilbane, P.J., and Larry A. Jones, Sr., J., concur.

**KEY WORDS:** *Unlawful sexual conduct with a minor; compelling prostitution; evidence.*

*A rational trier of fact could find that defendant was reckless in believing a 15-year-old's assertion that she was actually 20 years old based on her appearance and demeanor at trial.*

*Evidence that defendant placed advertisement for victim's services as an escort, coached her on how to pose for pictures displayed in the ad, and later collected money that she was paid by persons using her escort services, were sufficient to establish that he facilitated her in engaging in sexual activity for hire.*

**105847** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v RICHARD R. AMEY

Vacated and remanded.

Anita Laster Mays, J., and Mary Eileen Kilbane, P.J., concur; Sean C. Gallagher, J., dissents with separate opinion.

**KEY WORDS:** *Voluntary manslaughter, sufficient evidence, manifest weight of the evidence.*

*The evidence was not sufficient to convict the appellant of voluntary manslaughter because the appellant did not knowingly cause the death of the victim. The appellant's conviction was against the manifest weight of the evidence, and there was enough evidence to demonstrate that the appellant acted in self-defense.*

**105883** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
STATE OF OHIO v S. E. J.

Reversed and remanded.

Anita Laster Mays, J., and Mary Eileen Kilbane, P.J., concur; Sean C. Gallagher, J., concurs in judgment only with separate opinion.

**KEY WORDS:** *R.C. 2953.32, abuse of discretion, records sealed.*

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(Case 105883 continued)

**In denying appellant's application under R.C. 2953.32 to seal her record of conviction, the trial court abused its discretion by failing to consider the fact that appellant had established that she was rehabilitated. The trial court also abused its discretion when it failed to weigh the interests of the appellant in having the records pertaining to her conviction sealed against the legitimate needs, if any, of the government to maintain those records.**

**105951** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v STEFON R. ROBINSON

Affirmed.

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

**KEY WORDS: Murder, felonious assault, affirmative defense, self-defense, jury instructions O.J.I. CR 521.19, ineffective assistance of counsel, manifest weight.**

***Trial court's self-defense jury instructions were proper and were not prejudicial. Trial counsel's failure to object to jury instructions was not prejudicial. Appellant's convictions were not against the manifest weight of the evidence***

**106016** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
JOHN KASSAY v NIEDERST MANAGEMENT, LTD., ET AL.

Affirmed.

Mary J. Boyle, J., Melody J. Stewart, P.J., and Frank D. Celebrezze, Jr., J., concur.

**KEY WORDS: Judgment notwithstanding the verdict, noneconomic damages, punitive damages, jury instructions, motion for a new trial, improper remarks, plain error, remittitur.**

***The trial court properly denied the appellant's motion for judgment notwithstanding the verdict because there was sufficient evidence to support the jury's award for noneconomic and punitive damages. The trial court properly denied the appellant's motion for a new trial because the appellee's trial counsel's closing remarks did not cause the jury to act on passion or prejudice. The trial court properly denied the appellant's motion for remittitur because the jury's awards for noneconomic and punitive damages were not excessive.***

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**106024** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
SEAN PALES v ROBERT J. FEDOR

Affirmed in part, reversed in part and remanded.

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

**KEY WORDS:** *Scope of discovery; Civ.R. 26(B)(1); discovery requests; motion to compel; R.C. 2317.02(A)(1); attorney-client privilege; Prof.Cond.R. 1.6, 1.9; duty of confidentiality; attorney-client communications; client identity; specialized law practice; IOLTA records; discovery requests linking clients to particular attorney-client communications.*

*Appellants did not establish claim that, based solely on the specialized nature of their practice, the substance and subject of attorney-client representation would be known, such that all of their clients' identities were protected from disclosure by the attorney-client privilege. Trial court did not err in granting motion to compel responses to discovery requests seeking the identification of law firm's bank accounts and the identification of certain clients based on the attorney-client privilege because the requests did not seek information protected from disclosure by the attorney-client privilege. Bank statements for law firm's IOLTA account were not protected from disclosure by the attorney-client privilege. Trial court erred in ordering responses to discovery requests where, because so much information had already been disclosed in the requests themselves, identification of clients or production of documents in response to the requests would link clients to the content of particular attorney-client communications.*

**106027** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v RAFIQ M. JONES

Affirmed.

Larry A. Jones, Sr., J., Mary Eileen Kilbane, P.J., and Melody J. Stewart, J., concur.

**KEY WORDS:** *Crim.R. 11(C)(2)/guilty plea; Crim.R. 32.1/withdrawal of guilty plea/hearing; named victim in indictment.*

*A discussion on the merger of offenses is a sentencing issue and the trial court's advisement of the possibility of a maximum sentence at the plea hearing was not misleading resulting in error.*

*The trial court did not commit prejudicial error regarding conducting a hearing prior to sentencing. Appellant was allowed, prior to sentencing, to state his reasons for withdrawing his guilty plea, and appellant failed to establish a reasonable and legitimate basis for withdrawal.*

*The indictment held sufficient language to inform appellant of the*

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(Case 106027 continued)

**charges against him. Listing the victim's name was not an essential element of the crime and was therefore not required to be included in the indictment.**

**106041** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
DAVID HOWELL v PARK EAST CARE & REHABILITATION

Reversed and remanded.

Patricia Ann Blackmon, J., and Melody J. Stewart, J., concur; Eileen T. Gallagher, P.J., concurs in judgment only with attached opinion.

**KEY WORDS: Contract interpretation; plain meaning; ambiguous terms; preliminary injunction; noncompete clause; motion to dismiss; final appealable order.**

***Court did not err by granting preliminary injunction and finding contract language ambiguous. However, court's scope of noncompete clause was too broad. Case remanded to trial court to narrow noncompete clause and issue preliminary injunction accordingly.***

**106079** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v PRECIOUS M. JOHNSON

Affirmed.

Eileen A. Gallagher, A.J., Mary Eileen Kilbane, J., and Patricia A. Blackmon, J., concur.

**KEY WORDS: Consecutive sentences, R.C. 2929.14.**

***Appellant's sole assignment of error, that the trial court failed to make the findings required under R.C. 2929.14(C)(4) prior to imposing consecutive sentences, was without merit because the trial court made the required findings on the record and incorporated them into appellant's sentencing entries.***

**106098** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v LUIS CRUZ

Affirmed.

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

**KEY WORDS: Guilty plea; substantial compliance; potential penalty; misleading advice; counsel; ineffective assistance of**

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(Case 106098 continued)

**counsel; mandatory fine; inability to pay; indigency; court costs.**

**Defendant's guilty plea was made knowingly, intelligently, and voluntarily even though trial counsel gave misleading advice about the potential for judicial release where the defendant understood the potential penalties he could receive and that there was no guarantee of judicial release.**

**Counsel's failure to file affidavit of indigency did not amount to the ineffective assistance of counsel where the record showed that the defendant owned valuable assets and was capable of paying the fine in the future.**

**Although the trial court erred by imposing court costs in the journal entry without advising the defendant of the costs in open court and the record, there is no need to remand the case to the trial court because the defendant can file a motion to waive costs at any time.**

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| <b>106209</b>                      | COMMON PLEAS COURT | A | CRIMINAL C.P. |
| STATE OF OHIO v CLARENCE K. HARIAN |                    |   |               |

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| <b>106210</b>                      | COMMON PLEAS COURT | A | CRIMINAL C.P. |
| STATE OF OHIO v CLARENCE K. HARIAN |                    |   |               |

Affirmed.

Frank D. Celebrezze, Jr., J., Melody J. Stewart, P.J., and Mary J. Boyle, J., concur.

***KEY WORDS: Guilty plea; R.C. 2945.37; competency hearing; harmless error; Crim.R. 11; nonconstitutional right; substantial compliance; notice of prior conviction specification.***

***Because the record failed to reveal sufficient indicia of incompetency, the trial court's failure to hold a competency hearing as required by R.C. 2945.37(B) was harmless error. Appellant's guilty pleas were knowingly, intelligently, and voluntarily entered.***

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| <b>106240</b>                      | COMMON PLEAS COURT | A | CRIMINAL C.P. |
| STATE OF OHIO v CHARLES F. ANTHONY |                    |   |               |

Affirmed.

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

***KEY WORDS: Appellate mandate, remand for resentencing, res judicata, allied offenses, R.C. 2929.11 and 2929.12.***

***On a limited remand for resentencing on the issue of merger of allied offenses, the trial court is limited only to addressing that issue; res judicata bars assignments of error challenging issues***



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(Case 106240 continued)

**that could or should have been raised in the direct appeal but does not bar issues arising from the resentencing.**

**106472** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
ASSOCIATION OF CLEVELAND FIREFIGHTERS, LOCAL 93 v CITY OF CLEVELAND, ET AL.

Affirmed.

Mary J. Boyle, J., Melody J. Stewart, P.J., and Frank D. Celebrezze, Jr., J., concur.

**KEY WORDS:** *Civ.R. 24; intervention as a matter of right; abuse of discretion; untimely.*

***The trial court did not abuse its discretion when it denied the appellants' second motion to intervene as untimely because the appellants had voluntarily withdrawn their first motion to intervene after it had been pending for just two months. Further, the appellants' interests were adequately represented by the plaintiffs in the case.***

**106920** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
STATE OF OHIO v J.M.

Reversed and remanded.

Tim McCormack, P.J., Frank D. Celebrezze, Jr., J., and Larry A. Jones, Sr., J., concur.

**KEY WORDS:** *Conceded error; seal records following dismissal; R.C. 2953.52(B); hearing.*

***The trial court erred when it summarily denied appellant's application to seal court records pursuant to R.C. 2953.52(B) without holding a hearing.***