

## CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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October 18, 2018

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

Affirmed.

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

**KEY WORDS:** *Sufficiency; manifest weight; voluntary manslaughter; mitigating circumstances; burden of proof; inconsistent verdicts.*

*The conviction on the involuntary manslaughter count is affirmed because the defendant solely challenges the evidence pertaining to the mitigating circumstances that are not an element the state must prove and any inconsistency in the verdicts is not grounds for a new trial.*

**105990** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
SANDRA J. KAFLERLE, EXECUTOR v MKT HOLDINGS, LLC

**106620** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
SANDRA J. KAFLERLE, EXECUTOR v MKT HOLDINGS, LLC

Reversed and remanded.

Eileen T. Gallagher, J., and Melody J. Stewart, J., concur; Tim McCormack, P.J., dissents (with separate opinion).

**KEY WORDS:** *Default judgment; Civ.R. 55(A); appearance; hearing; individual; unauthorized practice of law; presume regularity; liquidated damages; unliquidated damages; negligence.*

*Trial court abused its discretion in granting default judgment without a hearing where defendant demonstrated intention and purpose to defend lawsuit and damages awarded were not supported by sufficient evidence.*

**106183** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v CLARENCE BOGAN

Affirmed.

Eileen T. Gallagher, J.; Kathleen Ann Keough, J., concurs in judgment only (with separate opinion); Eileen A. Gallagher, A.J., dissents (with separate opinion).

**KEY WORDS:** *Mistrial; manifest necessity; juror bias; misconduct; jury deliberations; discharge; objection; verdict form; consent; implied consent; totality of circumstances; dismiss; abuse of discretion; double jeopardy.*

*Because the trial court's declaration of a mistrial was made with defendant's implicit consent, this is not the rare or exceptional case where the protections of the Double Jeopardy Clause require the dismissal of his indictment with prejudice. The trial court did not err in denying defendant's motion to dismiss on double jeopardy grounds.*

**106373** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v ERIK J. VICARIO

Affirmed.

Anita Laster Mays, J., concurs; Eileen T. Gallagher, P.J., concurs in judgment only; Mary J. Boyle, J., concurs in judgment only.

**KEY WORDS:** *Manifest weight of the evidence, motion for mistrial, prosecutorial misconduct, ineffective assistance of counsel.*

*The convictions of the appellant were not against the manifest weight of the evidence because we are required to give due deference to the factfinder's conclusions because the demeanor of witnesses, the manner of their responses, and many other factors observable by the factfinder simply are not available to an appellate court on review. The trial court did not abuse its discretion when it denied the appellant's motion for a mistrial because the appellant has not demonstrated how the testimony of the witness was prejudicial or improper. The state is not guilty of prosecutorial misconduct because the appellant has not demonstrated that he was deprived of a fair trial because of the state's statements. Trial counsel was not ineffective because the appellant did not demonstrate why trial counsel should have requested a continuance to locate a missing witness that was not a witness for the appellant.*

**106392** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v ALLANTE T. BUSH

Affirmed.

Melody J. Stewart, P.J., Anita Laster Mays, J., and Kathleen Ann Keough, J., concur.

**KEY WORDS:** *Involuntary plea; trial court participation in plea bargain; attorney-client relationship; ineffective assistance of counsel; consecutive sentences.*

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(Case 106392 continued)

**Guilty plea is not involuntary where the trial court makes reasonable inquiry into defendant's claimed dissatisfaction with representation, and where the court makes fleeting statement that it considers the offered plea to be "a good deal." Neither counsel's advisement that the defendant plead guilty, nor defendant's assertion that counsel was verbally abusive during a private conversation constitute ineffective assistance of counsel. Consecutive sentences are appropriate where the court makes required findings that are supported by the record.**

**106400** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v A. M.

Affirmed in part; reversed in part.

Eileen A. Gallagher, A.J., and Anita Laster Mays, J., concur; Mary Eileen Kilbane, J., dissents (with separate opinion).

**KEY WORDS: Rape, gross sexual imposition, kidnapping, motion for mistrial, motion to sever charges.**

***Trial court did not err in denying appellant's motion for mistrial where a witness made an isolated reference to hearsay indicating that the appellant may have previously been in prison. Trial court did not err by failing to sever sexual assault charges involving three separate victims as the evidence at trial was simple and direct. Appellant's counsel provided ineffective assistance of counsel by failing to move for merger of various rape and kidnapping counts that constituted allied offenses of similar import***

**106458** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v RAVAUGHN CUMMINGS

Affirmed.

Anita Laster Mays, J., Melody J. Stewart, P.J., and Patricia Ann Blackmon, J., concur.

**KEY WORDS: Photo array, sufficient evidence, manifest weight of the evidence.**

***The trial court did not err when it failed to suppress a photo array because it was not unduly prejudicial. The state presented sufficient evidence to convict the appellant of aggravated robbery with firearm specifications, and the conviction was not against the manifest weight of the evidence.***

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**106581** DOMESTIC RELATIONS F CIVIL C.P.-JUV, DOM, PROBATE  
M. D. v M. D.

**106758** DOMESTIC RELATIONS F CIVIL C.P.-JUV, DOM, PROBATE  
M. D. v M. D.

Reversed and remanded.

Mary J. Boyle, J., Mary Eileen Kilbane, P.J., and Tim McCormack, J., concur.

**KEY WORDS:** *R.C. 3113.31; domestic violence civil protection order; Civ.R. 65.1; fair hearing; due process; relevant acts of domestic violence; threat of force; reasonable fear; fear of imminent serious physical harm; menacing by stalking; pattern of conduct.*

*The trial court's judgment vacating the domestic violence CPO was reversed and remanded for a new "full" hearing. The magistrate erred when it denied Petitioner the full amount of allotted time to present her case and when it limited Petitioner's evidence to acts of domestic violence that occurred within one year of filing the petition. Past acts of domestic violence are relevant to prove that Petitioner's fear of Respondent is reasonable. The parties' history is also relevant to establishing the elements of menacing by stalking because the victim's belief that the respondent will cause her physical harm is often intertwined with their past interactions. Further, the trial court erred when it found that the magistrate denied Respondent the right to present a defense when Respondent signed an agreed judgment entry indicating that the parties would only have 90 minutes to present their case, and he chose to cross-examine Petitioner during that time rather than testify himself.*

**106583** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
BLISSWOOD VILLAGE HOME OWNERS ASSOCIATION v  
GENESIS REAL ESTATE HOLDING GROUP, L.L.C., ET AL.

Affirmed.

Eileen T. Gallagher, P.J., Mary J. Boyle, J., and Anita Laster Mays, J., concur.

**KEY WORDS:** *Foreclosure; lien; assessment; common expenses; subject matter jurisdiction; administrative; R.C. 5311.18; R.C. 5311.081; void; App.R. 12(A)(1)(b); regularity; transcript; App.R. 9(B); App.R. 12; App.R. 16.*

*Foreclosure actions are within the subject matter jurisdiction of a court of common pleas. The trial court had jurisdiction to decide the foreclosure action on its merits. This court need not address the merits of the underlying foreclosure judgment because such an argument is not set forth as an assignment of error in conformity*

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(Case 106583 continued)

**with App.R. 12(A) and 16(A). Appellant failed to comply with the requirements of App.R. 9(B)(5). Without a complete transcript of the trial proceedings, we must presume regularity below.**

**106631** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v WILLIE J. COLEMAN

Affirmed and remanded.

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

**KEY WORDS: Ineffective assistance of counsel; extortion; intimidation; retaliation; using sham process; attempted aggravated theft; tampering with records.**

**Defendant was not denied effective assistance of trial counsel where counsel failed to object to evidence pertaining to related civil proceedings in which defendant used sham legal process in an attempt to extort money from defendants, intimidate them, and commit a theft offense, as some of the challenged evidence pertained directly to the sham proceedings, and remainder of evidence was relevant to defense trial strategy of attempting to demonstrate that defendant lacked criminal intent and used the process to assert a breach of contract claim.**

**106664** COMMON PLEAS COURT F CIVIL C.P.-JUV, DOM, PROBATE  
MARILYN DEL ZOPPO v LUIGI DEL ZOPPO

Dismissed.

Eileen T. Gallagher, J., Tim McCormack, P.J., and Larry A. Jones, Sr., J., concur.

**KEY WORDS: Final appealable order; objections; magistrate's decision; Civ.R. 53(D)(4)(d).**

**Appeal dismissed for lack of a final appealable order due to trial court's failure to rule on all timely objections to magistrate's decision.**