

## CASE DECISION LIST

May 2, 2019

**106948** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v RAYMONT JACKSON

**106976** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v RAYMONT JACKSON

Affirmed.

Anita Laster Mays, J., concurs; Frank D. Celebrezze, Jr., J., concurs in judgment only; Eileen T. Gallagher, P.J., concurs in judgment only with separate opinion.

**KEY WORDS:** *Consecutive sentences; R.C. 2929.11; R.C. 2929.12; R.C. 2929.14; competency.*

*The trial court did not err when it sentenced the appellant to serve his sentences consecutively. The trial court made the necessary findings in accordance with R.C. 2929.11, 2929.12, and 2929.14. The appellant is assumed to be competent unless the issue of his competency was raised before he pleaded guilty. The trial court did not err by not making a determination of incompetency where the appellant did not raise the issue and the record fails to reveal sufficient indicia of incompetency.*

**107096** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v MARK A. PRICE

Affirmed in part, reversed in part, and remanded; conflict certified.

Mary J. Boyle, P.J., Anita Laster Mays, J., and Frank D. Celebrezze, Jr., J., concur.

**KEY WORDS:** *Burrage instruction, sufficiency, manifest weight, R.C. 2925.02(A)(3), corrupting another with drugs, furnish, serious physical harm, proximate cause, R.C. 2921.12, tampering with evidence, merger, consecutive sentences, exculpatory evidence.*

*The trial court did not abuse its discretion in failing to give Price's requested Burrage instruction because it included a proper causation instruction to the jury. Price's convictions for corrupting another with drugs and tampering with evidence were supported by sufficient evidence and were not against the manifest weight of the evidence. The trial court erred in failing to merge Price's convictions for corrupting another with drugs, which constitute allied offenses of similar import because the convictions were supported by a single course of conduct, resulted in the same harm, and were not committed with separate animuses or motivations. Price's assignment of error challenging his consecutive sentences is moot. The trial court did not abuse its discretion in excluding the victim's medical records, and there was no Crim.R. 16 violation.*

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**107109** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
JOHN C. BERDYSZ, ET AL. v BOYAS EXCAVATING, INC., ET AL.

Affirmed and remanded.

Anita Laster Mays, J., Mary Eileen Kilbane, A.J., and Kathleen Ann Keough, J., concur.

**KEY WORDS:** *Motion for judgment on the pleadings; final appealable order; res judicata; R.C. 2744.09(A); political subdivision immunity.*

*The trial court did not err in denying appellant's motion for judgment on the pleadings because the political subdivision immunity set forth in R.C. Chapter 2744 does not apply to contract claims against a political subdivision. R.C. 2744.09(A) expressly provides: "This chapter does not apply to, and shall not be construed to apply to \* \* \* [c]ivil actions that seek to recover damages from a political subdivision or any of its employees for contractual liability." Res judicata does not apply in this case because appellant cannot appeal an issue that was not raised to the trial court.*

**107125** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v RASHAN J. HUNT

Affirmed.

Anita Laster Mays, J., concurs; Mary J. Boyle, P.J., and Frank D. Celebrezze, Jr., J., concur in judgment only.

**KEY WORDS:** *Sentencing; purposes and principles of felony sentencing; seriousness and recidivism factors; R.C. 2929.11; R.C. 2929.12; R.C. 2929.14(C)(4), consecutive sentences; R.C. 2941.149, R.C. 2929.14(B)(2), maximum sentence, repeat violent offender specification.*

*Defendant's sentence was affirmed where trial court made findings under R.C. 2929.11, 2929.12, and 2929.14(B) and the findings were supported by the record. The imposition of the maximum sentence on the voluntary manslaughter count allowed the court to impose an additional sentence under the repeat violent offender specification for the count.*

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**107196** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v DANIEL WINGFIELD

Affirmed.

Michelle J. Sheehan, J., Eileen T. Gallagher, P.J., and Patricia Ann Blackmon, J., concur.

**KEY WORDS:** *Aggravated murder; identification; video surveillance; prior calculation and design; complicity; aiding and abetting; circumstantial evidence; sufficient evidence; manifest weight; police testimony; investigation; hearsay; statement; Confrontation Clause.*

*The police detective's testimony identifying the defendant in video surveillance was not inadmissible hearsay where the detective's testimony did not include an out-of-court statement offered for the truth of the matter; rather, the detective's testimony related to his investigation into the shooting and was cumulative to the defendant's own statement placing himself at the scene of the crime. Because the testimony was not hearsay, the Confrontation Clause is not implicated. Construing the evidence in a light most favorable to the prosecution, the state provided sufficient evidence to support the convictions. The detective's identification of the defendant in the video surveillance and the defendant's own admission that placed him in the vehicle from which the gunfire erupted was sufficient evidence of identification. The circumstantial evidence shows that the defendant formulated a plan to kill the victim and the defendant actively participated in the murder. Defendant's convictions are not against the manifest weight of the evidence. The credibility of the detective's testimony concerning the identification of the defendant in the video surveillance is primarily for the trial judge as the factfinder, the factfinder reviewed the same video and made its own credibility determination of the detective's testimony, and there is no evidence the trial judge merely believed the detective without making his own determinations. Moreover, the defendant's own admission placed him in the car from which gunfire erupted at the scene. This is not the exceptional case warranting reversal.*

**107203** JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
IN RE: D.J.

Reversed and remanded.

Frank D. Celebrezze, Jr., J., Mary J. Boyle, P.J., and Anita Laster Mays, J., concur.

**KEY WORDS:** *Temporary custody; extension of temporary custody; R.C. 2151.415(D)(4); final appealable order; R.C. 2505.02; special proceeding; substantial right; objections; Civ.R. 53; best interest; abuse of discretion.*

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(Case 107203 continued)

**The trial court abused its discretion in ordering an extension of the temporary custody order. At the time the trial court extended the temporary custody order, the two-year time limit under R.C. 2151.415(D)(4) for extending temporary custody had expired.**

**107251** DOMESTIC RELATIONS F CIVIL C.P.-JUV, DOM, PROBATE  
TAMAR A. HARTMAN v DALE M. HARTMAN

Reversed and remanded.

Eileen T. Gallagher, P.J., Anita Laster Mays, J., and Frank D. Celebrezze, Jr., J., concur.

**KEY WORDS: Divorce; parenting plan; modification; continuing jurisdiction; motion; service; due process; best interest; notice; opportunity to be heard; visitation; custody; parental rights.**

**In the absence of a formal motion to modify, and without an indication in the record that a hearing occurred, the trial court modified visitation without affording Father his due process rights of notice and the opportunity to be heard.**

**107278** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v DARNELL L. NESBIT

Affirmed.

Frank D. Celebrezze, Jr., J., Mary Eileen Kilbane, A.J., and Michelle J. Sheehan, J., concur.

**KEY WORDS: Motion to suppress; traffic violation; Crim.R. 29(A); motion for judgment of acquittal; sufficiency; manifest weight; joinder; Crim.R. 13; Crim.R. 8(A); plain error; Evid.R. 404(B); court costs.**

**The trial court did not err when it denied appellant's motion to suppress. Appellant's convictions were supported by sufficient evidence and were not against the manifest weight of the evidence. The trial court did not commit plain error when it granted the state's motion to join. The state introduced the evidence of the individual crimes to prove each individual crime at trial. Appellant can move the trial court at any time to request a waiver of court costs.**

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**107290** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v DEVONTA HILL

Affirmed.

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

**KEY WORDS:** *Motion to withdraw guilty plea; pro se; hybrid representation.*

*Appellant was represented by retained counsel at all stages of the proceedings. Therefore, the trial court could not entertain, much less hold a hearing on, appellant's pro se oral motion to withdraw his guilty plea.*

**107317** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
DAWN HALL v FIRST MERIT BANK

Affirmed.

Anita Laster Mays, J., Patricia Ann Blackmon, P.J., and Raymond C. Headen, J., concur.

**KEY WORDS:** *Summary judgment; open and obvious.*

*The trial court did not err in granting the appellees' motion for summary judgment because the appellant did not demonstrate that the appellees had a duty to protect her from an open and obvious weather condition.*

**107394** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v RAMON GRAY

Affirmed.

Raymond C. Headen, J., Mary Eileen Kilbane, A.J., and Larry A. Jones, Sr., J., concur.

**KEY WORDS:** *Abuse of discretion; Crim.R. 33(B); motion for leave to file a new trial; newly discovered evidence; unavoidably prevented from discovering evidence; clear and convincing proof; alibi is not newly discovered evidence; self-serving affidavits.*

*There was no abuse of discretion when the trial court denied defendant's motion for leave to file a new trial. Defendant failed to establish, by clear and convincing evidence, that he was unavoidably prevented from discovering the new evidence within the timeframe prescribed by Crim.R. 33(B).*

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**107406** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
WENDY PENNIMAN, ET AL. v UNIVERSITY HOSPITALS HEALTH SYSTEM, INC. , ET AL.

Affirmed.

Larry A. Jones, Sr., J., and Eileen T. Gallagher, P.J., concur; Sean C. Gallagher, J., dissents with separate opinion.

**KEY WORDS:** *Failure to state a claim; Civ.R. 12(B)(6)/motion to dismiss; embryo status.*

*It has not been determined under Ohio law that an embryo is a person. Accordingly, the trial court did not err in granting appellees' motion to dismiss on the grounds that appellants failed to state a claim upon which they could seek relief.*

**107438** PROBATE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
IN RE: THE GUARDIANSHIP OF RONALD FOSTER

Affirmed and remanded.

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

**KEY WORDS:** *Affirmed and remanded; R.C. 2111.02; guardianship; waiver; plain error.*

*The ward waived all but plain error by not timely objecting to the magistrate's decision, and even if he had not, the ward consented to the appointment of the guardian during the evidentiary hearing conducted to resolve the matter.*

**107465** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v LAWRENCE CULVER

Affirmed.

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

**KEY WORDS:** *Manifest weight of the evidence.*

*Analyzing a claim under the manifest weight standard requires us to review the entire record, weigh all of the evidence and all of the reasonable inferences, consider the credibility of the witnesses, and determine whether, in resolving conflicts in evidence, the factfinder clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed.*

*We are required to give due deference to the factfinder's*

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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.

After reviewing the record, we cannot say that Culver's convictions are against the manifest weight of the evidence. The jury heard the witnesses' testimony and was able to take into account any inconsistencies and assess the credibility of the witnesses. Thus, we cannot say that this is the exceptional case where the evidence weighs heavily against the convictions, nor that the jury clearly lost its way and created a manifest miscarriage of justice.

**107511** JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
IN RE: M.J.

Reversed and remanded.

Eileen T. Gallagher, P.J., Patricia Ann Blackmon, J., and Michelle J. Sheehan, J., concur.

**KEY WORDS:** *Juvenile; adjudication; delinquency; vacate; motion; subject-matter jurisdiction; exercise; void; voidable; nullity; authority; admission; bindover; mandatory; transfer; child; double jeopardy.*

*The juvenile court had subject-matter jurisdiction to accept the juvenile's admission to a complaint and enter an order of adjudication and disposition. Accordingly, the juvenile court lacked the authority to vacate its voidable judgment.*

**107522** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV, DOM OR PRO  
AMAZING TICKETS, INC., ET AL. v CITY OF CLEVELAND, ET AL.

Affirmed.

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

**KEY WORDS:** *Declaratory judgment; summary judgment; ordinance; de novo; constitutional; presumption; as applied; admission tax; resale; ticket brokers.*

*Declaratory judgment and rulings on cross-motions for summary judgment in favor of appellees were affirmed. Appellant challenged application and enforcement of the city of Cleveland's admission-tax ordinance against ticket brokers who are in the business of reselling tickets in the secondary market to sporting and entertainment events. Upon de novo review, it was determined that appellant did not meet its burden of establishing beyond a reasonable doubt that the city of Cleveland's admission-tax law, CCO Chapter 195, is unconstitutional on its face, or establishing by*

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**clear and convincing evidence that CCO Chapter 195 is unconstitutional when applied to an existing set of facts.**

**107566** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v MALCOLM S. SULLIVAN

Affirmed.

Patricia Ann Blackmon, J., Eileen T. Gallagher, P.J., and Mary J. Boyle, J., concur.

**KEY WORDS: *Felony sentencing; consecutive sentences.***

***Felony sentence affirmed because it is not contrary to law and is supported by the record.***

**107619** JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
IN RE: T.C.

**107620** JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
IN RE: T.C.

Reversed and remanded.

Eileen T. Gallagher, P.J., Mary J. Boyle, J., and Patricia Ann Blackmon, J., concur.

**KEY WORDS: *Motion for reconsideration; postconviction; reconsideration of final judgments; res judicata.***

***Trial court's order reconsidering a final judgment was a nullity.***

**107647** JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
IN RE: X.W., ET AL.

Affirmed.

Anita Laster Mays, J., Sean C. Gallagher, P.J., and Kathleen Ann Keough, J., concur.

**KEY WORDS: *R.C. 2151.414(D), R.C. 2151.515, R.C. 2151.353, best interest of the child, clear and convincing evidence.***

***The trial court's award of permanent custody to the agency was supported by clear and convincing evidence. The children could not be placed with their parents within a reasonable time, the parents demonstrated a lack of commitment and failed to remedy the grounds for removal, the children were in agency custody for more than two years and no other relative or interested person has***



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**been identified or moved for legal custody.**

**107709** JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
IN RE: R.B.

Affirmed.

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

**KEY WORDS:** *Legal custody; manifest weight; guardian ad litem; Sup.R. 48; plain error; Crim.R. 52; R.C. 2151.353; best interest; preponderance of the evidence; abuse of discretion.*

*The trial court did not abuse its discretion in granting legal custody of the child to the maternal grandparents and denying appellant's request for an extension of temporary custody. The trial court's judgment is supported by a preponderance of the evidence and is not against the manifest weight of the evidence. The trial court did not commit plain error in considering or relying upon the guardian ad litem's report or recommendation.*

**107849** JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
IN RE: J.P.

Affirmed.

Michelle J. Sheehan, J., and Kathleen Ann Keough, J., concur; Frank D. Celebrezze, Jr., P.J., concurs in judgment only.

**KEY WORDS:** *Permanent custody; clear and convincing evidence; R.C. 2151.414(B)(1)(d); 12 of 22 consecutive months; R.C. 2151.414(D); best interest of the child; child's wishes; substance abuse; housing instability.*

*The trial court's decision to grant permanent custody to the agency was supported by clear and convincing evidence. The record shows that the child had been in the agency's custody for more than 12 of 22 consecutive months, thus satisfying the factors under R.C. 2151.414(B). Additionally, the record demonstrates that several of the best-interest factors under R.C. 2151.414(D) are present, including: the child's lengthy custodial history, a bonding and nurturing relationship with the child's foster family, and the child's need for a legally secure placement due to the mother's failure to satisfy her case plan for substance abuse and her failure to provide housing stability for the child. Although the child's wishes are considered, they are only one statutory factor the court must consider in determining the best interest of the child.*