

## CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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May 16, 2019

**106706** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v CHRISTOPHER WILLINGHAM

**107033** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v CHRISTOPHER WILLINGHAM

Affirmed.

Mary Eileen Kilbane, A.J., Mary J. Boyle, J., and Raymond C. Headen, J., concur.

**KEY WORDS:** *Motion to dismiss for preindictment delay.*

*In reviewing a trial court's decision on a motion to dismiss for preindictment delay, this court applies a de novo standard of review to the legal issues, but we afford great deference to the findings of fact made by the trial judge.*

*The statute of limitations for a criminal offense is the defendant's primary protection against overly stale criminal charges. However, the Due Process Clause of the Fifth Amendment provides additional protection in cases where the preindictment delay was unjustifiable and caused actual prejudice.*

*The Ohio Supreme Court established a burden-shifting framework for analyzing a due process claim based on preindictment delay. Under this framework, the defendant bears the initial burden of presenting evidence of actual prejudice. Once a defendant presents evidence of actual prejudice, the burden shifts to the state to produce evidence of a justifiable reason for the delay. Therefore, if the defendant fails to establish actual prejudice, the court is not required to consider the reasons for the delay.*

*A court must consider the evidence as it exists when the indictment is filed and the prejudice the defendant will suffer at trial due to the delay. A claim of actual prejudice should be scrutinized "vis-à-vis the particular evidence that was lost or unavailable as a result of the delay" and "the relevance of the lost evidence and its purported effect on the defense."*

*After independently considering the evidence as it existed when this indictment was filed, we find that Willingham has been prejudiced by the 17-year delay.*

*It is clear from the record that Willingham could have been identified as early as 2004, if the rape kit had been tested. Whether through negligence or error in judgment, the police ceased to actively investigate the case, which is not a justifiable reason for delay.*

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**106745** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v JAMAL M. BEY

Affirmed and remanded.

Kathleen Ann Keough, J., Mary Eileen Kilbane, A.J., and Eileen T. Gallagher, J., concur.

**KEY WORDS:** *Other acts evidence; Evid.R. 404(B); R.C. 2945.59; absence of mistake or accident; prior allegations; identity; felony-murder; sufficiency of the evidence; manifest weight.*

*The state's use of other acts evidence to prove accident or mistake was improper because the defendant did not admit to any criminal conduct and then attempt to justify that the resulting injury or death was accidental or caused by mistake. However, the use of other acts evidence was properly considered for purposes of identity. Defendant's conviction for felony-murder was supported by sufficient evidence and was not against the manifest weight of the evidence where the jury heard testimony and considered evidence that would allow it to find beyond a reasonable doubt that the defendant caused the victim serious physical harm that proximately caused her death by his overt actions or failure to act.*

**107214** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
SUSAN LLOYD v CLEVELAND CLINIC FOUNDATION, ET AL.

Affirmed.

Mary Eileen Kilbane, A.J., Mary J. Boyle, J., and Raymond C. Headen, J., concur.

**KEY WORDS:** *Motion for summary judgment; intentional infliction of emotional distress; defamation; disability discrimination; motion to compel; motion for sanctions; motion to amend complaint.*

*Judgment affirmed. The trial court's grant of defendants' motion for summary judgment was proper when there was no evidence in the record that defendants published plaintiff's medical record; acted with extreme or outrageous conduct; or discriminated against plaintiff. The trial court's denial of plaintiff's motion for sanctions, motion to compel, and motion to amend her complaint were not an abuse of discretion.*

**107319** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
CODY A. MILLER, ET AL. v DAVID MILLER

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Affirmed.

Michelle J. Sheehan, J., Mary J. Boyle, P.J., and Raymond C. Headen, J., concur.

**KEY WORDS:** *Intervention; Civ.R. 24(A); timeliness; abuse of discretion; final judgment; necessary party; Civ.R. 19(A); Uniform Transfer to Minors Act (“UTMA”); R.C. 5814.01 et seq.; shareholder derivative action.*

*The trial court did not abuse its discretion when it denied the proposed intervenor’s motions to intervene and vacate. The intervenor’s motion was untimely: it was filed nearly one year after final judgment, the intervenor availed herself of an alternative remedy, she knew or should have known of the proposed settlement agreement prior to final judgment, her interest as a lienholder was not impaired, and the prejudice to the existing parties is substantial. For the same reasons, the intervenor’s claim that the parties violated the shareholder derivative action rule also fails. The intervenor is not a necessary party. The UTMA does not apply and therefore the probate court does not have exclusive jurisdiction.*

**107376** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
JOHELLE DAVIS v SNACK SHACK (OPEN PANTRY)

Affirmed.

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

**KEY WORDS:** *Business invitee; negligence; summary judgment; actual notice; duty; constructive notice; hazard; affidavit; genuine issue of material fact; slip; fall; authentic; medical records; burden.*

*The trial court did not err by entering summary judgment in favor of defendant. The plaintiff presented no evidence to create an issue of fact regarding whether defendant’s employees had actual or constructive notice of the alleged hazard.*

**107449** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v JAMES SHIRLEY

Affirmed and remanded.

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

**KEY WORDS:** *Sufficiency of evidence; manifest weight of the evidence; consecutive sentences; weapon while under disability; possessing a defaced firearm; tampering with evidence.*

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(Case 107449 continued)

**Defendant's convictions for having a weapon while under disability, possessing a defaced firearm, and tampering with evidence were supported by sufficient evidence and not against the manifest weight of the evidence where the witness who saw the shooting testified she was certain about her identification of defendant as the shooter, the police recovered a gun right where an officer had seen the defendant hide it, and the gun was obviously defaced; trial court made the requisite findings to impose consecutive sentences.**

**107782** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v DELANO HALE

Affirmed.

Patricia Ann Blackmon, J., Mary J. Boyle, P.J., and Sean C. Gallagher, J., concur.

**KEY WORDS: *Crim.R. 33; new trial; postconviction; R.C. 2953.21.***

***Trial court properly denied motion for leave to file a motion for a new mitigation trial, and properly denied petition for postconviction relief that were based upon *Hurst v. Florida*, 577 U.S. \_\_\_\_, 136 S.Ct. 616, 193 L.Ed.2d. 504 (2016).***

**107840** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
ERIC TAYLOR, ET AL. v HONDA MOTORCARS, INC.

Affirmed.

Eileen A. Gallagher, J.; Eileen T. Gallagher, P.J., concurs; Larry A. Jones, Sr., J., concurs in judgment only.

**KEY WORDS: *Summary judgment; Civ.R. 56(C); breach of contract; affidavits; intended third-party beneficiary; emotional distress damages.***

***Trial court did not err in granting summary judgment on plaintiffs' breach of contract claim. Affidavits submitted by plaintiffs in opposition to summary judgment were insufficient to create a genuine issue of material fact as to whether wife and minor child were intended third-party beneficiaries of husband's lease agreement with auto dealer. Lease agreement did not meet any of the recognized exceptions that would allow plaintiffs to recover for emotional distress arising from a breach of contract.***