

## CASE DECISION LIST

September 5, 2019

**107195** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v ERIC S. NEWTON, JR.

Affirmed.

Raymond C. Headen, J., Anita Laster Mays, P.J., and Michelle J. Sheehan, J., concur.

**KEY WORDS:** *Motion to suppress; Terry stop; warrant affidavit; Franks challenge; ineffective assistance of counsel; sufficiency of the evidence; engaging in a pattern of corrupt activity; manifest weight of the evidence; restitution; vindictive sentence.*

*The trial court's denial of the motion to suppress was proper where the stop was a valid investigative stop based on a reasonable articulable suspicion of criminal activity, and a warrant affidavit was supported by probable cause. Newton's convictions were supported by sufficient evidence and were not against the manifest weight of the evidence. The trial court's imposition of restitution was proper. Newton's sentence was not contrary to law.*

**107547** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v TERRENCE LANIER, JR.

**107548** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v JUSTIN ROBINSON

**107604** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v TERRANCE LANIER, JR.

Affirmed, cross-appeal dismissed, and remanded.

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

**KEY WORDS:** *Crim.R. 33/motion for new trial; Crim.R. 29/motion for judgment of acquittal; sufficiency; manifest weight; abuse of discretion.*

*Although the trial court granted appellants' motion for a new trial based on appellants' argument that the conviction was against the manifest weight of the evidence, the record shows clearly that the trial court reasoned that there was insufficient evidence to support appellants' convictions.*

*The denial of appellants' motion for acquittal under Crim.R. 29 is not a final, appealable order, and therefore, is not properly before this court.*

## CASE DECISION LIST

**107747** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v BRIAN CLIPPS

Affirmed in part, vacated in part, and remanded.

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

**KEY WORDS:** *Preindictment delay; actual prejudice; joinder; Crim.R. 8; manifest weight; prosecutorial misconduct; sexually violent predator specification; R.C. 2971.01; Ex Post Facto Clause; plain error.*

*The trial court did not err in denying appellant's motion to dismiss based on preindictment delay or in granting the state's motion for joinder. Appellant's convictions are not against the manifest weight of the evidence. Appellant was not denied his right to a fair trial based on prosecutorial misconduct. The 2005 amendment to R.C. 2971.01(H)(1), as applied to appellant, violated the Ex Post Facto Clause of the United States Constitution because it enhanced the potential sentencing penalty for the offense committed before the amendment. Appellant's conviction on the sexually violent predator specification and the sentence on this count is vacated, and the matter is remanded to the trial court for limited resentencing.*

**107844** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v SHAUN E. DOWDY

Vacated in part and remanded in part.

Eileen A. Gallagher, J., Mary Eileen Kilbane, A.J., Frank D. Celebrezze, Jr., J., concur.

**KEY WORDS:** *R.C. 2929.03; R.C. 2929.191; aggravated murder; void sentence; parole eligibility; correct judgment of conviction; postrelease control.*

*Where the trial court imposes a sentence for aggravated murder that does not comport with the statutory language in R.C. 2929.03, the trial court exceeds its authority in sentencing.*

*A sentence is not void where, pursuant to R.C. 2929.191 and Supreme Court precedent, the trial court corrects a judgment entry to reflect that it imposed postrelease control.*

**107921** JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
IN RE D.G.B., ET AL.

## CASE DECISION LIST

Affirmed and remanded.

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

**KEY WORDS:** *Legal custody; best interest of the children; Juv.R. 23 and Loc.R. 35(C) of the Court of Common Pleas of Cuyahoga County, Juvenile Division; motion to continue hearing.*

*After being granted a continuance for a full hearing, Mother's second request for a continuance was denied. Mother alleged a medical emergency, however, Mother failed to provide documentation of the emergency room visit, and she later admitted that she had not been in the emergency room. The trial court did not abuse its discretion where it denied Mother's second request for a continuance.*

*The trial court enumerated numerous factors concerning Mother that were in direct contradiction to the best interest of the children. It was not an abuse of discretion where the trial court granted legal custody of the children to their respective fathers.*

**107964** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v LEONARD HAIR, II

Affirmed in part, vacated in part, and remanded.

Raymond C. Headen, J., Patricia Ann Blackmon, P.J., and Frank D. Celebrezze, Jr., J., concur.

**KEY WORDS:** *Invalid plea; consecutive sentences; sufficient weight; R.C. 2929.12(C); R.C. 2929.12(E).*

*Defendant-appellant's guilty plea on Count 19 was not knowingly, intelligently, and voluntarily provided where the trial court, defense counsel, and prosecutor provided conflicting statements whether any specifications attached to the count for sentencing purposes. Defendant-appellant's guilty pleas on the remaining counts were valid. On those remaining counts, there was no clear or convincing evidence demonstrating the record did not support the court's imposition of consecutive sentences. Additionally, the trial court's sentence, on the remaining counts, was not contrary to law because the court considered the principles of sentencing under R.C. 2929.12.*

**108014** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
M. J. W. v T. S.

Affirmed in part, reversed in part, and remanded.

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

**KEY WORDS:** *Civil stalking protection order, R.C. 2903.211.*

## CASE DECISION LIST

(Case 108014 continued)

The trial court erred in granting the CSPO covering the petitioner's son because there was no evidence that the son resided or currently was residing with the petitioner. The trial court also erred in granting the CSPO covering the petitioner's husband because the evidence failed to establish that the respondent engaged in a "pattern of conduct" against the petitioner's husband. The trial court's grant of the CSPO covering the petitioner, however, was not an abuse of discretion because there was competent, credible evidence supporting the trial court's finding that the respondent engaged in a "pattern of conduct" against the petitioner and knowingly caused the petitioner to believe that the respondent would cause her mental distress.

**108098** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
STATE OF OHIO v WILLIAM DILLEY

Affirmed.

Frank D. Celebrezze, Jr., J., Sean C. Gallagher, P.J., and Patricia Ann Blackmon, J., concur.

**KEY WORDS:** *Petition for postconviction relief; R.C. 2953.23; newly discovered evidence; res judicata.*

*The trial court did not err or abuse its discretion in denying appellant's untimely and successive petition for postconviction relief. Appellant's claims either were or should have been raised in his direct appeal or first petition for postconviction relief. Accordingly, appellant's claims are barred by res judicata.*

**108404** JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
IN RE S.H.

Affirmed.

Michelle J. Sheehan, J., Anita Laster Mays, P.J., and Frank D. Celebrezze, Jr., J., concur.

**KEY WORDS:** *Permanent custody; best interest of the child.*

*The juvenile court's findings under R.C. 2151.414(B)(1) and its analysis for the best interest of the child are supported by clear and convincing evidence. The granting of permanent custody is affirmed.*