

## CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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August 26, 2021

**109130** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v CHARLES MILLER

Affirmed.

Eileen A. Gallagher, J., Kathleen Ann Keough, P.J., and Emanuella D. Groves, J., concur.

**KEY WORDS:** *R.C. 2945.71; speedy trial act; mistrial; recusal; manifest weight of the evidence; sufficiency of the evidence; lesser included offense.*

*Appellant could not show that the trial court erred in denying appellant's motion to dismiss based on Ohio's Speedy Trial Act and the constitutional right to a speedy trial. The trial court did not abuse its discretion in finding that the emotional outburst did not warrant declaring a mistrial. Appellant also failed to show that counsel was ineffective below in not moving for a mistrial based on questions asked by the prosecuting attorney. This court has no jurisdiction over recusal. The court finds that appellant's convictions are supported by sufficient evidence and are not against the manifest weight of the evidence. Finally, the trial court did not abuse its discretion in denying appellant's request for a lesser included offense instruction for reckless homicide.*

**109867** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v JAMES STEWART

**109868** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v LEEANDREW EALOM

Reversed and remanded.

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

**KEY WORDS:** *Fourth Amendment; seizure; search; warrantless; traffic stop; concealed carry violation; plain view; immediately apparent; inadvertent.*

*Trial court erred in granting motion to suppress evidence where traffic stop was constitutionally valid and police observed contraband in plain view.*

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**109894** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
CITY OF WESTLAKE v CITY OF CLEVELAND

Affirmed.

Eileen A. Gallagher, P.J., Eileen T. Gallagher, J., and Emanuella D. Groves, J., concur.

**KEY WORDS:** *Declaratory judgment; R.C. 2721.04; law-of-the-case.*

*The trial court did not err in determining that the previous decision of this court foreclosed any notice of cancellation period longer than the term of the contract.*

**109991** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
LEGACY VILLAGE INVESTORS LLC v SETH BROMBERG, ET AL.

**110197** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
LEGACY VILLAGE INVESTORS LLC v SETH BROMBERG, ET AL.

Affirmed.

Michelle J. Sheehan, J., Eileen A. Gallagher, P.J., and Eileen T. Gallagher, J., concur.

**KEY WORDS:** *Summary judgment; guaranty agreement; interpretation of contract; waiver; sufficiency of evidence.*

*The trial court properly granted summary judgment in an action to enforce a guaranty of a lease. A guaranty is a contract, and its terms will not go beyond the terms of the contract where those terms are clear and unambiguous. The guaranty provided that it would remain in effect notwithstanding amendments to the lease. By amending the lease with the tenant, the landlord did not waive its rights under the guaranty where the guaranty provided enforcement of the lease could be made from the tenant without affecting the guaranty. The uncontested facts presented in the motion for summary judgment were sufficient for the grant of summary judgment.*

**110025** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
MICHAEL A. OKO v CLEVELAND DIVISION OF POLICE

Affirmed.

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

**KEY WORDS:** *C.C.O. 435.09(e); C.C.O. 405.02(d); strike motion; abuse of discretion; supplemental complaint; Civ.R. 15(E);*

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**summary judgment; de novo standard of review; genuine issue of material fact; R.C. 4513.61(C)(1); pro se; bias; failure to file affidavit of prejudice.**

**Appellant failed to demonstrate that the trial court erred in granting summary judgment on his claims, striking his motion for declaratory judgment, denying without hearing his motion for immediate possession, or denying his leave to file a supplemental pleading. Further, because he failed to raise any issue of bias in the lower court, this issue cannot be considered on appeal. Finally, appellant failed to demonstrate that he was treated improperly because he was acting pro se.**

**110113** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
HUNTINGTON NATIONAL BANK v ANDREW SLODOV, ET AL.

Affirmed.

Michelle J. Sheehan, J., Eileen A. Gallagher, P.J., and Lisa B. Forbes, J., concur.

**KEY WORDS: Foreclosure; mailing of the notice of acceleration; postage; business records.**

***The bank employee testifying about the business records regarding the mailing of the acceleration notice need not have firsthand knowledge of the mailing. The trial court's determination that the envelope containing the acceleration notice was mailed with first-class postage was not against the manifest weight of the evidence.***

**110116** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
LINNIE EDWARDS v CHRISTOPHER M. KELLEY

Reversed and remanded.

Sean C. Gallagher, J., and Emanuella D. Groves, J., concur; Mary J. Boyle, A.J., dissents with separate opinion.

**KEY WORDS: Legal malpractice; Civ.R. 12(C); pleadings; written instrument; Civ.R. 10(C).**

***The trial court erred in considering evidence outside the pleadings that did not constitute a "written instrument" under Civ.R. 10(C), in the process of granting judgment in favor of the defendant upon the pleadings.***

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**110123** JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
IN RE A.T.

Affirmed.

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

**KEY WORDS:** *Delinquency; aggravated burglary; R.C. 2911.11; trespass; assault; R.C. 2903.13; physical harm; R.C. 2901.01; criminal damaging; sufficiency; manifest weight; authentication; photographs; Evid.R. 901; duplicate; original; Evid.R. 1001; Evid.R. 1002; best evidence rule; harmless error.*

*The juvenile court's judgment adjudicating appellant delinquent of aggravated burglary, assault, and criminal damaging is affirmed. Appellant's adjudications of delinquency were supported by sufficient evidence and are not against the manifest weight of the evidence. The juvenile court did not err or abuse its discretion in admitting the photographs of the victim and her neck into evidence. The photographs constituted "originals" under Evid.R. 1001(3), and the photographs were properly authenticated by the victim.*

**110298** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v RAYMOND WASHINGTON

Vacated and remanded.

Mary Eileen Kilbane, J., Kathleen Ann Keough, P.J., and Michelle J. Sheehan, J., concur.

**KEY WORDS:** *Conceded error; guilty plea; Crim.R. 11; strict compliance; constitutional rights; knowing, intelligent, and voluntary.*

*Appellant's convictions and sentence are vacated because the trial court failed to strictly comply with the constitutional requirements of Crim.R. 11 by failing to inform the appellant that he would be waiving his privilege against self-incrimination by pleading guilty.*

**110408** JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
IN RE I.J.G., JR., ET AL.

Affirmed.

Eileen T. Gallagher, J., Sean C. Gallagher, P.J., and Frank D. Celebrezze, Jr., J., concur.

**KEY WORDS:** *Permanent custody; mental health; suitable housing; parenting; best interest; remedy; reasonable time; case plan; abuse*

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**of discretion; termination; parental rights; clear and convincing evidence.**

**The juvenile court did not err by awarding permanent custody of the mother's child to Cuyahoga County Division of Children and Family Services because the juvenile court properly engaged in the two-prong analysis prescribed by R.C. 2151.414 and clear and convincing evidence supported the court's decision granting permanent custody of the child to the agency.**