

December 16, 2021

**109633** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v JUANITO MARSHALL

Affirmed.

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

**KEY WORDS:** *Manifest weight of the evidence; rape; Evid.R. 404(B); other acts evidence; propensity; prejudice; admissibility; jury instruction; ineffective assistance of counsel; plain error.*

*Testimony of victim is sufficient, if believed, to support conviction of rape. However, where multiple witnesses corroborate different aspects of witnesses' testimony, appellate court cannot find that convictions were against the manifest weight of the evidence.*

*Further, trial court erred in admitting the testimony of appellant's ex-girlfriend as to his sexual activity where the evidence did not go to modus operandi or plan. Other acts evidence is inadmissible unless it is a) relevant to the nonpropensity purpose for which it is being introduced; b) admitted to prove/ supporting an issue that is actually in dispute in the case at hand; and c) there is evidence that i) the act occurred and ii) the defendant committed the act. Whether the probative value of the other acts evidence outweighs the prejudicial effect of the evidence only becomes an issue if the evidence survives this initial threshold of admissibility.*

*However, the admission of the evidence was harmless beyond a reasonable doubt, where the remaining evidence was strong and there was no reason to believe that the evidence was so bizarre or abhorrent that it caused the jury to convict based on their judgment of the defendant's character rather than weighing the evidence. When other acts are properly admitted, trial courts should introduce a limiting instruction to explain to the jury the permitted use of the evidence. However, a trial court is not required to give the instruction, because there may be strategic reasons that appellant has not requested an instruction. Counsel's failure to request limiting instruction is not ineffective assistance of counsel when trial strategy was to question the credibility of the victim and requesting a limiting instruction would have unnecessarily focused the jury on the other acts evidence possibly to appellant's detriment.*

**109699** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v MICHAEL BUEHNER

Affirmed in part, reversed in part, and remanded.

Eileen T. Gallagher, J., Eileen A. Gallagher, P.J., and Mary Eileen Kilbane, J., concur.

**KEY WORDS:** *New trial; exculpatory; material; suppressed; due process; undermine; reasonable probability; discovery; remand; perjury; testimony.*

*The trial court did not err by expanding the scope of the hearing on remand. In addition, there is no evidence that the state knowingly presented false testimony. However, because the state failed to disclose material, exculpatory evidence in advance of Buehner's trial, due process requires a new trial.*

**110095** CLEVELAND MUNI. C CRIMINAL MUNI. & CITY  
CITY OF CLEVELAND v DOMINIC V. SABETTA

Dismissed.

Emanuella D. Groves, J., Frank D. Celebrezze, Jr., P.J., and Eileen T. Gallagher, J., concur.

**KEY WORDS:** *Community control sanctions; restriction on parental visitation; denial of motion to modify condition; scope of appeal; res judicate.*

*Appellant timely filed a notice of appeal from an October 14, 2020 judgment denying his motion to modify the condition of community control that restricted visitation with his minor daughter to a specific location. However, the thrust of appellant's sole assignment of error is that the trial court violated his right to due process by imposing a condition of community control that restricted his visitation with his minor daughter.*

*Because the sole assignment of error pertains to a purported due process violation that predates the October 14, 2020 order denying appellant's motion to modify the specific community control condition, the issue is outside the scope of the instant appeal. Further, because appellant's core argument, in the present appeal, pertains to a purported due process violation flowing from the December 2019 imposition of the condition in his sentence, it is now untimely and barred by the doctrine of res judicata. It is well established that res judicata bars the consideration of issues that could have been raised on direct appeal.*

**110132** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
STATE OF OHIO v A.G.

Reversed and remanded.

Anita Laster Mays, J., Mary J. Boyle, A.J., and Lisa B. Forbes, J., concur.

**KEY WORDS:** *R.C. 2953.31; eligible offender; offense of violence.*

## CASE DECISION LIST

(Case 110132 continued)

**The trial court erred in determining that the appellee was an eligible offender under R.C. 2953.31(a)(1), where the appellee was statutorily barred from being designated as an eligible offender. The appellee had been convicted of an offense of violence that bars the appellee from sealing their record of convictions.**

**110173** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
SUSAN ADDLEMAN v PATRICK O'MALLEY

Affirmed.

Anita Laster Mays, J., Sean C. Gallagher, P.J., and Michelle J. Sheehan, J., concur.

**KEY WORDS: Civ.R. 56; summary judgment; res judicata; issue preclusion; collateral estoppel; pro se party; failure to state cognizable tort claims.**

**The trial court's finding that the appellant's claims are barred by the doctrine of res judicata, issue preclusion, and collateral estoppel are in error. However, the pro se appellant failed to set forth cognizable tort claims under Ohio law. Thus, albeit on other grounds, the trial court properly granted summary judgment and dismissed the complaint.**

**110296** PARMA MUNI. C CRIMINAL MUNI. & CITY  
CITY OF PARMA v ROMIR JEYMONTE HARDIMON

Vacated and remanded.

Michelle J. Sheehan, J., Mary J. Boyle, A.J., and Eileen T. Gallagher, J., concur.

**KEY WORDS: Magistrate decision; Crim.R. 19(D); presentence motion to withdraw plea; Crim.R. 32.1.**

**Appellant was convicted of misdemeanor assault and criminal damaging after appearing pro se before a magistrate. The magistrate's order accepting appellant's plea and recommending sentence did not conform to Crim.R. 19(D). Before the trial court adopted the magistrate's order, appellant filed a presentence motion to vacate his plea pursuant to Crim.R. 32.1. The trial court did not hold a hearing on that motion and thereafter adopted the magistrate's decision. The convictions for misdemeanor assault and criminal damaging are vacated, and the case remanded to allow appellant leave to file objections to the magistrate's decision accepting his plea and recommending sentence and for the trial court to conduct a hearing on the presentence motion to vacate his plea.**

## CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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**110391** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v JOHN THOMPSON

Reversed and remanded.

Anita Laster Mays, J., Sean C. Gallagher, P.J., and Lisa B. Forbes, J., concur.

**KEY WORDS:** *Motion for leave to file a motion for a new trial.*

***The trial court erred when it denied the appellant's motion for leave to file a motion for a new trial without an evidentiary hearing because the appellant demonstrated that he was unavoidably prevented from discovering the potential violation during trial and the 120 days following.***