

## CASE DECISION LIST

Court of Appeals, Eighth Appellate District

Page: 1 of 4

March 4, 2021

**109142** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v JALEN J. WALKER

Vacated and remanded.

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

**KEY WORDS:** *Sierah's Law; violent offender database; R.C. 2903.41; R.C. 2903.42; notice; attempted murder; rebuttable presumption; preponderance of the evidence; principal offender; Retroactivity Clause; waiver.*

*The trial court failed to inform appellant, before sentencing, about the presumption of enrollment in the violent offender database, the right to file a motion to rebut the presumption of enrollment, the procedure and criteria for rebutting the presumption of enrollment, the effect of a rebuttal and post-rebuttal hearing procedures, and the possible outcome. Accordingly, the trial court failed to comply with R.C. 2903.42(A)(1)(a). The trial court's judgment ordering appellant to enroll in the violent offender database is vacated, and the matter is remanded to the trial court to provide the requisite advisements to appellant and to hold a new hearing on the issue of enrollment.*

**109200** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v JEREMIAH MORTON

Affirmed.

Larry A. Jones, Sr., P.J., Mary Eileen Kilbane, J., and Lisa B. Forbes, J., concur.

**KEY WORDS:** *Ineffective assistance of counsel; cumulative error.*

*Trial counsel's representation of appellant did not fall below a reasonable standard of performance.*

*None of appellant's arguments were found to be well taken, therefore, the argument of cumulative error is inapplicable.*

**109349** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
MICHAEL W. MCCALL v GREAT LAKES CONSTRUCTION

Affirmed.

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

## CASE DECISION LIST

(Case 109349 continued)

**KEY WORDS:** Visiting judge; case transferred; must object; trial; demonstrate prejudice; issue waived.

An appellant must point to some evidence in the record demonstrating that he objected to having his case transferred and tried in front of a visiting judge, otherwise he fails to preserve any possible error and waives the issue for review. Appellant must also demonstrate prejudice from the transfer as well. Trial court's decision of directed verdict is affirmed.

**109358** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v JAMES KINCAID

Reversed and remanded.

Sean C. Gallagher, P.J., Kathleen Ann Keough, J., and Lisa B. Forbes, J., concur.

**KEY WORDS:** R.C. 2921.331(E); R.C. 4510.021; R.C. 4510.54; driver's license suspension; class two; lifetime; limited driving privileges; suspend; three years; financial responsibility.

*The trial court erred by granting the defendant's motion for limited driving privileges pursuant to R.C. 4510.021(A) without considering whether it was authorized to suspend the defendant's class two suspension after three years pursuant to R.C. 2921.331(E) for the purpose of granting the defendant limited driving privileges under R.C. 4510.021(A). The appellate court declined to consider the issue and remanded the matter to the trial court. Further, the trial court failed to fully comply with R.C. 4510.021 in granting limited driving privileges when the defendant did not provide proof of financial responsibility in compliance with R.C. 4510.021(E), and the trial court did not specify the purposes, times, and places of the privileges in compliance with R.C. 4510.021(A).*

**109371** CLEVELAND MUNI. C CRIMINAL MUNI. & CITY  
CITY OF CLEVELAND v LAVELL TAYLOR

Affirmed.

Frank D. Celebrezze, Jr., J., and Eileen A. Gallagher, J., concur; Sean C. Gallagher, P.J., concurs in judgment only.

**KEY WORDS:** Endangering children; criminal damaging; jurisdiction; R.C. 2151.23; Confrontation Clause; testimonial statement; hearsay; Evid.R. 803; excited utterance; sufficiency; Crim.R. 29; R.C. 2919.22; recklessness; substantial risk; R.C. 2901.01; R.C. 2909.06; manifest weight; restitution; R.C. 2929.18; plain error; Crim.R. 52.

## CASE DECISION LIST

(Case 109371 continued)

**Appellant's endangering children conviction was not void for lack of jurisdiction. The trial court did not err or abuse its discretion in admitting nontestimonial statements at trial under the excited utterance hearsay exception, and appellant was not denied his constitutional right to confrontation. Appellant's convictions were supported by sufficient evidence and are not against the manifest weight of the evidence. The trial court did not commit plain error in ordering appellant to pay restitution for his criminal damaging conviction.**

**109405** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
ORLANDO HUDSON v GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY

Affirmed.

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

**KEY WORDS: Mandamus; clear and convincing evidence; summary judgment; Civ.R. 56; de novo review; R.C. 149.43; public record; attorney-client privilege; waiver; disclosure.**

**Appellee did not waive attorney-client privilege by disclosing the investigative report to its employees. The records sought by appellant in his public-records request were excepted from disclosure under Ohio's Public Records Act, and the trial court properly granted summary judgment in favor of appellee.**

**109467** CLEVELAND MUNI. C CRIMINAL MUNI. & CITY  
CITY OF CLEVELAND v PATRICK D. BEACH

Vacated.

Anita Laster Mays, P.J., Eileen A. Gallagher, J., and Lisa B. Forbes, J., concur.

**KEY WORDS: Speedy trial rights; R.C. 2945.71; capias.**

**The trial court violated the appellant's speedy trial rights because the appellant was not brought to trial within 90 days of his arrest in accordance with R.C. 2945.71. Additionally, the issuance of the capias does not reset the number of days for appellant's speedy trial rights because the appellant did not delay a trial, but a hearing.**

## CASE DECISION LIST

**109507** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v RONALD WILBURN

Affirmed.

Kathleen Ann Keough, J., Sean C. Gallagher, P.J., and Michelle J. Sheehan, J., concur.

**KEY WORDS:** *Reagan Tokes Law; constitutional challenges; ripe for review; separation-of-powers doctrine; procedural due process.*

*Appellant's constitutional challenges to the Reagan Tokes Law were ripe for review because the record was sufficiently developed to allow the appellate court to fairly adjudicate the parties' respective claims, the operation of the statute was inevitable, and the harm to appellant if judicial relief were denied was real and immense; Reagan Tokes Law does not violate the separation-of-powers doctrine because the judicial branch imposes the indefinite sentence, and the executive branch determines if an inmate's violations warrant its imposition; Reagan Tokes Law does not violate procedural due process because it provides for notice of a hearing at which an inmate is allowed an opportunity to be heard.*

**109603** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v TRAVIS L. HESS

Affirmed.

Kathleen Ann Keough, J., Anita Laster Mays, P.J., and Eileen T. Gallagher, J., concur.

**KEY WORDS:** *Coronavirus; pandemic; cruel and unusual punishment; maximum sentence.*

*Defendant's challenge that denying him release from prison due to the coronavirus pandemic constituted cruel and unusual punishment was overruled because he failed to raise this issue with the trial court and relied on information outside of the record. Defendant's maximum sentence was not contrary to law and he failed to demonstrate that it was clearly and convincingly not supported by the record.*