

## CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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September 8, 2022

**110906** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v ANTONIO CARSTAPHEN

Affirmed.

Frank Daniel Celebrezze, III, J., and Anita Laster Mays, P.J., concur; Mary Eileen Kilbane, J., concurs in judgment only.

**KEY WORDS:** *Confrontation Clause; nontestimonial; ongoing emergency; out-of-court statements; officer testimony; body-camera footage; App.R. 16; hearsay; excited utterance; Evid.R. 803(2); abuse of discretion; Crim.R. 29; sufficiency of the evidence; manifest weight of the evidence; consecutive sentences; R.C. 2929.14(C)(4); findings; sentencing entry; R.C. 2953.08(G)(2); Reagan Tokes Law; unconstitutional.*

*The trial court did not err or abuse its discretion in admitting the victim's out-of-court statements at trial because they were not hearsay and did not violate appellant's Confrontation Clause rights. Appellant's convictions were supported by sufficient evidence and were not against the manifest weight of the evidence. Finally, the trial court did not err in imposing consecutive sentences or imposing an indefinite prison sentence pursuant to the Reagan Tokes Law.*

**110921** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
JOSEPH ROWE, ET AL. v HOIST & CRANE SERVICE GROUP, INC.

Affirmed.

Emanuella D. Groves, J., Sean C. Gallagher, A.J., and Mary Eileen Kilbane, J., concur.

**KEY WORDS:** *Wrongful termination in violation of public policy; judgment on the pleadings; summary judgment; R.C. 4101.11.*

*Trial court properly granted judgment on the pleadings to employer on wrongful termination in violation of public policy claim due to workplace safety, where Appellants failed to cite to an Ohio public policy that governed the employer's conduct, failing to establish the clarity element of the claim.*

*Trial court properly granted summary judgment to employer on wrongful termination in violation of public policy claim due to workers' compensation where Appellant failed to establish a nexus between his injury and his termination.*

## CASE DECISION LIST

**110961** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
MAX, INC., DBA B&B MUSIC v EJAZ A. MUGHAL, ET AL.

Affirmed.

Lisa B. Forbes, J., Eileen A. Gallagher, P.J., and Emanuella D. Groves, J., concur.

**KEY WORDS:** *Civ.R. 60(A); clerical error; Civ.R. 60(B); mistake; inadvertence; direct appeal; default judgment; damages.*

*The trial court did not abuse its discretion when it denied appellant's motions pursuant to Civ.R. 60(A) and (B). Appellant's motion did not request the court to correct a clerical error, therefore, the trial court did not err in denying that relief. Additionally, appellant's arguments under its Civ.R. 60(B) motion could have been raised in a direct appeal. Civ.R. 60(B) motions cannot be used as a substitute for a direct appeal, therefore, the trial court did not err in denying appellant's motion. Judgment affirmed.*

**110973** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v KIARAN YOUNG

Affirmed and remanded.

Frank Daniel Celebrezze, III, P.J., Emanuella D. Groves, J., and Cornelius J. O'Sullivan, Jr., J., concur.

**KEY WORDS:** *Crim.R. 29; sufficiency of the evidence; manifest weight of the evidence; App.R. 16(A); in-court identification; reliable, independent basis; totality of the circumstances; admission of evidence; Facebook records; authenticity; plain error; failure to object; Evid.R. 901(A); sufficient evidence of authenticity; hearsay; Evid.R. 801; admission by party opponent; Confrontation Clause; ineffective assistance of counsel; irrelevant testimony; abuse of discretion; third-party intimidation of witness; admissible; credibility; Evid.R. 803(5); past recollection recorded; motion to withdraw as counsel; motion to dismiss counsel; pending ethical grievance; jail-time credit; time served on unrelated offense; R.C. 2953.08(G)(2); R.C. 2967.191.*

*Appellant's convictions were supported by sufficient evidence and not against the manifest weight of the evidence. Further, the court did not abuse its discretion in the admission of evidence, did not err in denying appellant's motion to dismiss counsel and his trial counsel's motion to withdraw, and appellant did not receive ineffective assistance of counsel. In addition, the state's assignment of error in its cross-appeal is sustained. This matter is remanded for recalculation of appellant's jail-time credit without inclusion of time served on unrelated offenses.*

## CASE DECISION LIST

**111137** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
RICHARD FERGUSON v UNIVERSITY HOSPITALS HEALTH SYSTEM, INC.

Affirmed.

Eileen A. Gallagher, J., Sean C. Gallagher, A.J., and Emanuella D. Groves, J., concur.

**KEY WORDS:** *Summary judgment; Civ.R. 56; meaningful appellate review; statement of reasons; Ohio Civil Rights Act; R.C. Chapter 4112; disability discrimination; employment discrimination; retaliation; failure-to-accommodate discrimination; 12-hour shifts.*

*The trial court did not commit reversible error by failing to set forth detailed reasoning in its journal entry granting summary judgment to the defendant.*

*A hospital was entitled to summary judgment on its employee's disability-discrimination, failure-to-accommodate and retaliation claims where the hospital's reasonable staffing judgment required nurses to work twelve-hour shifts, the employee's doctor restricted the employee from working more than eight hours at a time and the employee and his doctor proposed no alternative accommodation other than working all eight-hour shifts. The employee's requested accommodation would have required the hospital to create a new shift for him, would have required other nurses to pick up the employee's patients for four hours at the end of each of his shifts and would have negatively affected patient care by increasing the number of patient handoffs between nurses; it was therefore not a reasonable accommodation.*

**111246** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v JAVIER LLAPUR

Reversed and remanded.

Anita Laster Mays, P.J., Frank Daniel Celebrezze, III, J., and Eileen T. Gallagher, J., concur.

**KEY WORDS:** *Reagan Tokes Law.*

*The trial court erred when it ruled that the imposition of a sentence in accordance with the Reagan Tokes Law was unconstitutional. Our en banc decision in State v. Delvallie, 2022-Ohio-470, 185 N.E.3d 536 (8th Dist.), has held that Reagan Tokes is constitutional.*

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**111456** JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate  
IN THE MATTER OF: C.B.

Affirmed and remanded.

Anita Laster Mays, P.J., Mary Eileen Kilbane, J., and Emanuella D. Groves, J., concur.

**KEY WORDS:** *R.C. 2151.04; dependency; R.C. 2151.353(A)(4); permanent custody; R.C. 2151.414(E); factors; R.C. 2151.414(D)(1); best interest of the child; ineffective assistance of counsel; Juv.R. 23; Juv. Loc.R. 35(C); continuance.*

*The trial court's grant of permanent custody was supported by clear and convincing evidence and the trial court did not abuse its discretion in finding that permanent custody was in the best interest of the child. The trial court's denial of appellant's request for a continuance of the trial was not an abuse of discretion. Appellant's appearance at hearings, contacts with the agency, and visitation with the child was inconsistent. Appellant did not cooperate with counsel despite prior warnings and also suffered from unresolved mental health and substance abuse issues. Appellant was represented at the hearing by counsel and a guardian ad litem. Appellant did not demonstrate that counsel's performance was so deficient that appellant was prejudiced and denied a fair trial.*