

## CASE DECISION LIST

Court of Appeals, Eighth Appellate District

Page: 1 of 9

**December 21, 2023**

**111932** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
ST VINCENT CHARITY v MICHAEL PALUSCSAK

Affirmed.

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

**KEY WORDS:** *Summary judgment; standing; FDCPA; OCSPA; motion to compel.*

**The trial court did not err by granting the appellees' motions for summary judgment because the appellant lacked standing to bring his counterclaims under the FDCPA and OCSPA. The trial court did not err by denying the appellant's motion to compel discovery.**

**112115** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v ANTONIO K. SMITH

Affirmed in part, vacated in part, and remanded.

Eileen T. Gallagher, J., Kathleen Ann Keough, P.J., and Lisa B. Forbes, J., concur.

**KEY WORDS:** *Sufficient; manifest weight; credibility; gross sexual imposition; age; impairment; force; purpose; sexual gratification; animus; harm; allied offense; merger.*

**The defendant's convictions are supported by sufficient evidence and are not against the manifest weight of the evidence. The trial court erred by failing to merge allied offenses of similar import.**

**112299** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v OMNISUN AZALI

Affirmed.

PER CURIAM

**KEY WORDS:** *Witness Competency; Manifest Weight; Brady Violations; Expert Witnesses.*

**Trial court did not err by finding that child-witness was competent to testify. Conviction for murder was not against the manifest weight of the evidence. No Brady violation was committed here given that, inter alia, evidence was never in the state's possession. Plain error does not warrant reversal with regard to rebuttal expert's testimony.**

## CASE DECISION LIST

**112306** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v KONSHAWNTE TRIPPLETT

Affirmed in part, reversed in part, and remanded.

Michael John Ryan, J.; Lisa B. Forbes, P.J., concurs in judgment only; Sean C. Gallagher, J., dissents (with separate opinion).

**KEY WORDS:** *Felonious assault, R.C. 2903.11(A)(1), (A)(2); domestic violence R.C. 2919.25(A); sufficiency of the evidence; manifest weight of the evidence; allied offenses; ineffective assistance of trial counsel.*

*Appellant's convictions were supported by sufficient evidence and not against the manifest weight of the evidence. The state provided sufficient evidence that the bottle appellant used to hit the victim was a deadly weapon and the appellant caused the victim serious physical harm when the victim needed stitches and had a scar from the attack.*

*The trial court erred when it failed to merge appellant's convictions for felonious assault (serious physical harm) and felonious assault (deadly weapon) when the evidence showed that the serious physical harm caused to the victim by appellant was the same harm appellant caused with a deadly weapon.*

**112312** PARMA MUNI. C Criminal Muni. & City  
S/O, CITY OF BROADVIEW HEIGHTS v ROSS W. THOMAS

Affirmed.

Michelle J. Sheehan, J., Anita Laster Mays, A.J., and Lisa B. Forbes, J., concur.

**KEY WORDS:** *Prosecutorial misconduct; closing argument; standard of review.*

*Defendant was convicted of theft by deception, a misdemeanor of the first degree, for taking a coin from a vendor's table at a coin show and leaving a fraction of the cost of the coin. The prosecutor called witnesses that described defendant's actions. In closing argument, the prosecutor asked the jury to compare the testimony between the witnesses, vouched for one of the witnesses, and generally contrasted the city's witnesses' testimony against defendant's testimony, suggesting defendant's testimony and explanations were incredible.*

*Allegations of prosecutorial misconduct in closing argument are reviewed to determine if the remarks were improper and, if so, whether they prejudicially affected substantial rights of the defendant. A trial should only be reversed if the effect of the misconduct permeates the entire atmosphere of the trial. The*

## CASE DECISION LIST

(Case 112312 continued)

**touchstone of analysis is the fairness of the trial, not the culpability of the prosecutor.**

**The trial court specifically stated closing arguments were not to be considered evidence. The prosecutor's argument contrasted the prosecutor's witnesses' testimony against the defendant's testimony and suggested that the defendant's testimony and explanations were incredible. After review of the closing argument in its entirety within the context of the trial, the court could not say the closing argument was of such impropriety that it permeated the entire atmosphere of the trial necessitating a finding that the trial itself was unfair.**

**112393** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
STATE OF OHIO v RICHARD E. CARLEY

Affirmed.

Lisa B. Forbes, J., Frank Daniel Celebrezze, III, P.J., and Michael John Ryan, J., concur.

**KEY WORDS: R.C. 2953.72; DNA testing; ineligible offender; guilty plea.**

***Trial court did not err when it denied appellant's request for DNA testing pursuant to R.C. 2953.72 because pleading guilty in the case he seeks relief under designates him an ineligible offender pursuant to subsection (C)(2) of that statute. Judgement affirmed.***

**112444** BOARD OF TAX APPEALS H Admin Appeal  
MP 11868 CLIFTON, LLC v CUYAHOGA COUNTY BOARD OF REVISION, ET AL.

Affirmed.

Michelle J. Sheehan, P.J., Mary Eileen Kilbane, J., and Emanuella D. Groves, J., concur.

**KEY WORDS: Board of Tax Appeals, Board of Revision; value, recent sale; sale price; burden of proof.**

***As the party challenging the BOR's decision before the BTA, appellant had the burden to prove by competent and probative evidence its right to a decrease in value from \$1,020,200 to \$550,000. Our review indicates the BTA's determination that appellant failed to meet its burden of providing probative evidence for the value it sought is neither unlawful nor unreasonable. We therefore affirm BTA's decision retaining the value of the property as assessed by the County Fiscal Officer.***

## CASE DECISION LIST

**112461** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v SONYA MITCHELL

Affirmed.

Sean C. Gallagher, J., Eileen A. Gallagher, P.J., and Mary J. Boyle, J., concur.

**KEY WORDS:** *Assault; misdemeanor; restitution; R.C. 2929.28(A)(1); economic loss; direct and proximate result; victim; preponderance; scar; foreseeable consequence; tattoo; amount; competent, credible evidence; reasonable; estimate; victim's testimony; abuse of discretion.*

*Affirmed the trial court's order of restitution, which the victim was seeking for the cost of a tattoo to remedy a scar resulting from the appellant's crime. The trial court did not abuse its discretion in ordering restitution for an economic loss or detriment suffered by the victim as a direct and proximate result of the commission of the assault offense. The restitution order was supported by competent, credible evidence, which included testimony from the victim for electing the tattoo over a skin-graft procedure and an estimate for the tattoo.*

**112470** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v CHRISTIAN GIGUERE

Affirmed.

Mary J. Boyle, J., Mary Eileen Kilbane, P.J., and Michael John Ryan, J., concur.

**KEY WORDS:** *Sufficiency of the evidence; one-year firearm specification; R.C. 2941.141(A); constructive possession; ineffective assistance of counsel; jury instruction.*

*Judgment affirmed. The state offered sufficient evidence to obtain a one-year firearm specification conviction under R.C. 2941.141(A). Moreover, the defendant's trial counsel did not render ineffective assistance of counsel by failing to object to the firearm specification jury instruction, which mirrored Ohio Jury Instruction 541.141 and was not misleading when read in conjunction with the unchallenged jury instruction on constructive possession.*

**112551** COMMON PLEAS COURT E Civil C.P.-Not Juv, Dom Or Prob  
KENT STATE UNIVERISTY, C/O STATE OF OHIO COLLECTIONS ENFORCEMENT v  
ERICA E. MANLEY

Reversed and remanded.

Kathleen Ann Keough, P.J., Mary Eileen Kilbane, J., and Lisa B. Forbes, J., concur.

**KEY WORDS:** *Law of the case; service; Civ.R. 19; failure to join an indispensable or necessary party; unjust-enrichment claim; motion for summary judgment; R.C. 131.02.*

*Appellant’s contention that the trial court lacked personal jurisdiction over her because she was never served was barred by the law-of-the-case doctrine because the appellate court had previously determined that appellant was properly served; trial court did not err in denying appellant’s motion to dismiss for failure to join an indispensable party because appellant failed to demonstrate that the party was either indispensable or a necessary party; trial court erred in denying appellant’s motion to dismiss appellee’s unjust-enrichment claims because the relationship between appellant and appellee was contractual in nature, and a plaintiff cannot recover under a theory of unjust enrichment when an express contract covers the same subject; the trial court erred in granting appellee’s motion for summary judgment where there were genuine issues of material fact regarding whether appellee timely disbursed appellant’s student loan credit refund to her and whether it timely certified its claim to the Ohio Attorney General’s Officer under R.C. 131.02(A).*

<b>112608</b>	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v ANDRE LEWIS			

Dismissed.

Michael John Ryan, J., Frank Daniel Celebrezze, III, P.J., and Lisa B. Forbes, J., concur.

**KEY WORDS:** *Assault; misdemeanor; time served; right to appeal; collateral consequences or disabilities.*

*Appellant, who did not serve any jail time before trial and, upon conviction, was sentenced to time served with all court costs and fines waived, did not show that his misdemeanor assault conviction carried with it any collateral consequences or disabilities. Therefore, his appeal is moot.*

<b>112612</b>	DOMESTIC RELATIONS	F	Civil C.P.-Juv, Dom, Probate
KILLEEN A. ROBERTS v MITCHELL D. OPALICH			

Affirmed.

Kathleen Ann Keough, J., Anita Laster Mays, A.J., and Michael John Ryan, J., concur.

**KEY WORDS:** *Void; voidable; marriage license; jurisdiction; good*

(Case 112612 continued)

**faith and substantial compliance; passive; mortgage; premarital asset; judgment entry; magistrate’s decision.**

**Trial court did not err in determining that it had jurisdiction to determine Wife’s complaint for divorce because the parties’ marriage, which took place in Florida, was voidable rather than void where the parties acted in good faith and substantial compliance with Florida law; Husband’s labors regarding a premarital asset were not passive because his efforts during the marriage allowed the property to be maintained and the mortgage paid down; therefore the trial court properly considered the reduction in the mortgage to be marital property; trial court did not abuse its discretion in adopting Wife’s proposed final judgment entry even though it did not mirror the language in the magistrate’s recommended decision.**

<b>112669</b>	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v ALEX JOEL FRANCO			

Affirmed in part, modified in part, and remanded.

Kathleen Ann Keough, J., Anita Laster Mays, A.J., and Michael John Ryan, J., concur.

**KEY WORDS: Sufficiency of the evidence; gross sexual imposition; R.C. 2907.05(A)(1); force; force beyond the act itself; Crim.R. 7(D); indictment; modified; R.C. 2945.79(D); sexual imposition; R.C. 2907.06; endangering children; R.C. 2919.22(A); substantial risk to health or safety; abduction; kidnapping; invited error; sexual activity.**

**State’s failure to amend indictment pursuant to Crim.R. 7(D) to conform to the evidence required the state to prove the allegations as charged in the indictment. Insufficient evidence was presented to support defendant’s conviction for gross sexual imposition where the evidence did not establish that the defendant used force beyond the act itself. Evidence was sufficient for this court to modify the offense to sexual imposition pursuant to R.C. 2907.06. Evidence was sufficient to support defendant’s conviction for endangering children under R.C. 2919.22(A) because his actions caused the minor-aged children to be left alone in a car with the engine running. No due process violation occurred when the trial court found defendant guilty of lesser included offense of abduction with a sexual motivation because arguably counsel invited the error, and the totality of the verdict demonstrates that the state did not prove beyond a reasonable doubt that the defendant’s purpose was to engage in sexual activity to be found guilty of kidnapping.**

## CASE DECISION LIST

**112696** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v DANIEL GLENN

Reversed and remanded.

Frank Daniel Celebrezze, III, P.J., Michelle J. Sheehan, J., and Eileen T. Gallagher, J., concur.

**KEY WORDS:** *Return of seized property; property in law enforcement custody; return of property after dismissal of indictment; R.C. 2981.11(A)(1); law enforcement agency's authority to retain property; R.C. 2981.03(A)(4).*

*Judgment reversed and remanded. The trial court acted contrary to law in failing to hold a hearing on defendant-appellee's motion for release of property that was in law enforcement custody "not later than twenty-one days" of the motion being filed, pursuant to R.C. 2981.03(A)(4). The defendant-appellee's motion did not show, by a preponderance of the evidence, that he was entitled to the property that was in the custody of law enforcement.*

**112735** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v WILLIE BANKS

Vacated and remanded.

Michelle J. Sheehan, J., and Eileen T. Gallagher, J., concur; Frank Daniel Celebrezze, III, P.J., dissents (with separate opinion).

**KEY WORDS:** *Consecutive sentences; R.C. 2929.14(C); findings.*

*Defendant was convicted of four felony offenses; aggravated assault, abduction, theft, and menacing by stalking, and a misdemeanor offense of cruelty against companion animals. The trial court imposed a prison sentence on each of the felony offenses and ordered the prison sentences to be served consecutively.*

*Pursuant to R.C. 2929.14(C), the trial court found that consecutive sentences were necessary to protect the public from future crime and to punish the offender and that defendant's history of criminal conduct demonstrated that consecutive sentences were necessary to protect the public from future crime. Although the trial found that consecutive sentences were not disproportionate to the seriousness of defendant's conduct, it did not find that consecutive sentences were not disproportionate to the danger the defendant posed to the public.*

*Because the trial court failed to make the findings mandated by R.C. 2929.14(C), the sentence was vacated and the case remanded for the limited purpose of considering whether consecutive sentences were appropriate under R.C. 2929.14(C)(2) and if so, to make the appropriate findings and incorporate those findings into the sentencing entry.*

## CASE DECISION LIST

**112751** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
STATE OF OHIO v STEVEN RACKLEY

Affirmed.

Frank Daniel Celebrezze, III, P.J., Michelle J. Sheehan, J., and Eileen T. Gallagher, J., concur.

**KEY WORDS:** *Postconviction motions; failure to file direct appeal; res judicata; disclosure of grand jury minutes; abuse of discretion; secret; particularized need.*

*Because appellant did not file a direct appeal, his arguments relating to the plea proceedings and ineffective assistance of counsel are barred by res judicata. Further, the trial court did not abuse its discretion in denying appellant's motion for grand jury minutes when he did not present a particularized need for disclosure.*

**112789** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
STATE OF OHIO v MAIKIA S. JEFFRIES

Affirmed.

Emanuella D. Groves, J., Michelle J. Sheehan, P.J., and Mary Eileen Kilbane, J., concur.

**KEY WORDS:** *Postconviction; res judicata.*

*Appellant's postconviction claim to void judgment and that his sentence is contrary to law should have been raised on direct appeal and are now barred by res judicata.*

**112832** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
STATE OF OHIO v ARTO D. GREEN, II

Affirmed.

Kathleen Ann Keough, P.J., Mary Eileen Kilbane, J., and Lisa B. Forbes, J., concur.

**KEY WORDS:** *R.C. 2953.21; postconviction; untimely; delayed appeal; toll.*

*Trial court did not abuse its discretion in denying as untimely appellant's petition for postconviction relief. A delayed appeal does not toll the time for seeking postconviction relief.*



## CASE DECISION LIST

Court of Appeals, Eighth Appellate District

Page: 9 of 9

**112863** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
JONATHAN SMITH, EXEC. OF EST. OF MARTHA STARCHER v  
MENTOR RIDGE HEALTH AND REHABILITATION, ET AL.

Affirmed.

Eileen T. Gallagher, J., Frank Daniel Celebrezze, III, P.J., and Michelle J. Sheehan, J., concur.

**KEY WORDS:** *Medical claim; home; nursing home; residential facility; statute of limitations; relations back of amendments; nullity.*

*Injuries caused by two aides who dropped nursing-home resident while assisting her from her wheelchair to the toilet constituted medical claims subject to one-year statute of limitations.*

*Amended complaint to substitute deceased plaintiff with personal representative was barred by statute of limitations because the original complaint was a nullity since filed in the name of the decedent and the amended complaint, which filed after the statute of limitations had expired, could not relate back to the original filing.*

**112954** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v ELLINGTON FANN

Affirmed.

Lisa B. Forbes, J., Frank Daniel Celebrezze, III, P.J., and Michael John Ryan, J., concur.

**KEY WORDS:** *Voidable sentence; res judicata; Harper; Henderson.*

*Trial court did not err when it denied appellant's motion to terminate license suspension more than a year after the court imposed the suspension. Any issue with the court's imposition of sentence was voidable and was not raised in a direct appeal of that sentence. Judgment affirmed.*