

## CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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July 20, 2023

**111440** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v KODII GIBSON

Affirmed.

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

**KEY WORDS:** *Motion to suppress; confession; Miranda; Batson challenge; sufficient evidence; manifest weight; admissibility of testimony; jury instructions; R.C. 2929.03; constitutionality; consecutive sentence; ineffective assistance of counsel; cell phone records; aggravated murder.*

*Judgment is affirmed. The defendant's confession to the police was admissible, and there is sufficient evidence to sustain defendant's convictions and his convictions are not against the manifest weight of the evidence. The state's preemptory challenge to remove a juror did not violate Batson. Furthermore, defendant's sentence was proper and R.C. 2929.03 is constitutional. The trial court did not abuse its discretion by denying defendant's request to remove another juror; denying the joint motion for mistrial due defendant's interlocutory appeal or denying the motions for continuance; allowing video and photo evidence and limiting defendant's ex-girlfriend's testimony; including jury instructions on natural consequences of causation, including consciousness of guilt for concealing a crime; and excluding jury instruction on unanimity. Lastly, defense counsel was not ineffective because the testimony regarding the cell phone records is admissible lay testimony.*

**111600** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v KATRON GRAYS

Affirmed in part, reversed in part, and remanded.

Decision En Banc:

Anita Laster Mays, A.J.; Frank Daniel Celebrezze, III, Lisa B. Forbes, Eileen A. Gallagher, Eileen T. Gallagher, Sean C. Gallagher, Kathleen Ann Keough, Mary Eileen Kilbane, and Michael John Ryan, JJ., concur.

Mary J. Boyle, J., dissents (with separate attached opinion). Emanuella D. Groves and Michelle J. Sheehan, JJ., concur with Judge Mary J. Boyle's dissenting opinion.

Decision of the Merit Panel:

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

**KEY WORDS:** *Crim.R. 11; mandatory; indefinite sentence; felony; knowingly; plea; advisement; maximum penalty; good-time credit;*

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(Case 111600 continued)

**earned credit; statute; irreconcilable; special provision; general provision; manifest intent; Reagan Tokes Law; constitutional; due process; separation of power; right to a jury trial; ineffective assistance of counsel; prejudice; notice; sentencing.**

**A trial court does not commit reversible error during a Crim.R. 11 colloquy by advising a criminal defendant, who is subject to an indefinite prison term under the Reagan Tokes Law, that he or she may earn a reduction on his or her minimum prison term for exceptional conduct or an adjustment to incarceration when the defendant is required to serve a mandatory prison term pursuant to R.C. 2929.13(F). The trial court did not make an incorrect statement of law by advising the defendant that he was eligible to earn a reduction in his minimum prison term if he demonstrates exceptional conduct while incarcerated or an adjustment to incarceration. Trial counsel was not ineffective for failing to object to the court's imposition of an indefinite sentence pursuant to the sentencing structure enacted by the Reagan Tokes Law, which has been deemed constitutional. The trial court failed to fully comply with the notification requirements of R.C. 2929.19(B)(2)(c) at the time of sentencing.**

<b>111944</b>	COMMON PLEAS COURT	E	Civil C.P.-Not Juv,Dom Or Prob
MAURIE NUNN v DONNELL MITCHELL, ET AL.			

Affirmed.

Mary J. Boyle, J., Lisa B. Forbes, P.J., and Eileen T. Gallagher, J., concur.

**KEY WORDS: *Pro se litigant; App.R. 12; App.R. 16; failure to present cognizable argument; failure to support argument with legal authority; failure to object; waiver.***

***Judgment is affirmed. Pro se civil litigants are bound by the same rules and procedures as those litigants who retain counsel. In the instant case, appellant fails to present a cognizable argument throughout the majority of his brief. Appellant fails to comply with the Rules of Appellate Procedure, which allows this court to disregard the majority of his arguments. With regard to the assigned errors where there was some semblance of compliance with the appellate rules, appellant either failed to demonstrate the error, support those errors with proper legal authority, or preserve the error for review on appeal.***

<b>112043</b>	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v MIGUEL DEJESUS			

## CASE DECISION LIST

**112193** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v MIGUEL DEJESUS

Affirmed and remanded.

Anita Laster Mays, A.J., Kathleen Ann Keough, J., and Lisa B. Forbes, J., concur.

**KEY WORDS:** *Crim.R. 32.1; postsentence motion to withdraw guilty pleas; manifest injustice; abuse of discretion; evidentiary hearing; Reagan Tokes Law; nunc pro tunc.*

*The trial court did not abuse its discretion in denying defendant's Crim.R. 32.1 postsentence motion to withdraw his guilty pleas without a hearing. Application of the Reagan Tokes Law to defendant's sentence is affirmed pursuant to this court's en banc decision in State v. Delvallie, 2022-Ohio-470, 185 N.E. 3d 536 (8th Dist.). Case remanded for limited purpose of issuing a nunc pro tunc entry correcting the sentencing entry.*

**112164** JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate  
IN RE: B.B.S.

Affirmed.

Sean C. Gallagher, J., Kathleen Ann Keough, P.J., and Emanuella D. Groves, J., concur.

**KEY WORDS:** *Permanent custody; statutory elements; R.C. 2151.353(A)(4); R.C. 2151.414(E); R.C. 2151.414(D)(1); best interest; manifest weight; siblings; mental health; parenting.*

*Affirmed the juvenile court's decision granting permanent custody of appellant's child to the children services agency. Appellant had her parental rights terminated involuntarily with respect to siblings of the child, there were ongoing concerns with appellant's mental health issues and parenting practices, and the record supported the juvenile court's best-interest determination. The juvenile court properly found that the essential statutory elements for an award of permanent custody were established, and its decision was not against the manifest weight of the evidence.*

**112181** COMMON PLEAS COURT E Civil C.P.-Not Juv, Dom Or Prob  
OLIVE OIL, LLC v THE CLEVELAND ELECTRIC ILLUMINATING COMPANY

Vacated and remanded.

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

## CASE DECISION LIST

(Case 112181 continued)

**KEY WORDS:** Trespass; special mandate; abuse of discretion; dismissal without prejudice.

**The trial court abused its discretion in dismissing the case in contravention of this court's special mandate in the previous appeal.**

**112218** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
TERAI C. HINES, ET AL. v CITY OF CLEVELAND, ET AL.

Reversed.

Sean C. Gallagher, J., Anita Laster Mays, A.J., and Frank Daniel Celebrezze, III, J., concur.

**KEY WORDS:** *Political subdivision immunity; R.C. 2744.02(B)(1); motor vehicle accident; summary judgment.*

**Reversed. The trial court erred in denying the city's motion for summary judgment. The plaintiffs did not demonstrate that the city employee negligently operated the garbage truck when conducting a wide right turn onto a cross street at the same time that the plaintiffs' vehicle attempted to pass the garbage truck on the right, and as a result, the city was entitled to immunity as a matter of law.**

**112242** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v DAVID KOPNISKE

Reversed and remanded.

Michael John Ryan, J., Anita Laster Mays, A.J., and Lisa B. Forbes, J., concur.

**KEY WORDS:** *Motion to quash subpoena; final; appealable order; abuse of discretion; Crim.R. 17(C); evidentiary hearing.*

**Denials of motions to quash subpoenas served on nonparties are final, appealable orders.**

**Pursuant to *United States v. Nixon*, 418 U.S. 683, 94 S.Ct. 3090, 41 L.Ed.2d 1039 (1974), the proponent of the subpoena must show (1) that the subpoenaed documents are evidentiary and relevant; (2) that they are not otherwise reasonably procurable in advance of trial by due diligence; (3) that the proponent cannot properly prepare for trial without production and inspection of the documents and that the failure to obtain the documents may tend to unreasonably delay the trial, and (4) that the subpoena is made in good faith and is not intended as a general fishing expedition. A trial court is required to hold an evidentiary hearing to determine whether the party filing a subpoena duces tecum has demonstrated that the information sought in the subpoena meets the Nixon test.**

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(Case 112242 continued)

**The certified record before us does not demonstrate that the trial court held a hearing and accordingly its judgment denying the nonparty's motion to quash the subpoena is reversed and the case is remanded.**

**112350** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
FIFTH THIRD BANK, NATIONAL ASSOCIATION v CHRIS HRIVNAK, ET AL.

Affirmed.

Michael John Ryan, J., Anita Laster Mays, A.J., and Lisa B. Forbes, J., concur.

**KEY WORDS: Civ.R. 56; motion for summary judgment; Civ.R. 53(D); objections to magistrate's decision; plain error; foreclosure.**

***The trial court did not err in granting summary judgment in favor of the bank, which foreclosed on appellant's property. Appellant waived all but plain error by failing to file objections to the magistrate's decision and has not claimed plain error on appeal.***