

## CASE DECISION LIST

Court of Appeals, Eighth Appellate District

Page: 1 of 6

June 29, 2023

**111178** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v ANTON D. CROMWELL

Affirmed.

Mary Eileen Kilbane, J., Kathleen Ann Keough, P.J., and Emanuella D. Groves, J., concur.

**KEY WORDS:** *Kidnapping; rape; felonious assault; manifest weight of the evidence; merger; allied offenses of similar import; R.C. 2941.25; Reagan Tokes Law; S.B. 201.*

**Appellant's convictions were not against the manifest weight of the evidence by virtue of investigatory steps not taken or inconsistencies in the victim's account of the assault. It was not plain error for the trial court to not merge appellant's felonious assault, rape, and kidnapping convictions. The trial court's sentence pursuant to Reagan Tokes was not unconstitutional.**

**111598** DOMESTIC RELATIONS F Civil C.P.-Juv, Dom, Probate  
MARY T. HUSNI v JONATHAN L. HUSNI

Affirmed.

Lisa B. Forbes, J., Anita Laster Mays, A.J., and Emanuella D. Groves, J., concur.

**KEY WORDS:** *Motion to terminate spousal support; cohabitation; shared expenses; financing; day-to-day incidental expenses; competent credible evidence.*

**The trial court did not err in denying appellant's motion to terminate spousal support because its finding that appellee was not cohabiting with her boyfriend was supported by competent credible evidence in the record. Judgment affirmed.**

**111967** CLEVELAND HTS. MUNI. C Criminal Muni. & City  
CITY OF CLEVELAND HEIGHTS v SAID MAHALLI

Affirmed.

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

**KEY WORDS:** *R.C. 2919.27; violation of a protection order; sufficiency of the evidence; recklessness; R.C. 2901.22.*

**Judgment affirmed. The city of Cleveland Heights presented**

## CASE DECISION LIST

(Case 111967 continued)

sufficient evidence for the court to conclude that Defendant Mahalli recklessly violated a protection order. Mahalli argued that the evidence was insufficient because (1) he was engaged in eviction proceedings, which the protection order expressly precluded; (2) the interaction did not occur at the residence of the protected persons and; (3) the city of Cleveland Heights did not demonstrate that Mahalli was reckless as to knowing that a protected person would be present at the subject property or reckless in failing to retreat after finding himself in the presence of a protected person. Mahalli's arguments are all overruled since they are unsupported by the record.

**111982** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
BUCKEYE HOYA, LLC v BROWN GIBBONS LANG & COMPANY LLC, ET AL.

Affirmed.

Kathleen Ann Keough, P.J., Eileen T. Gallagher, J., and Sean C. Gallagher, J., concur.

**KEY WORDS:** *Breach of contract; summary judgment; sua sponte; affirmative defense; illegality; agency; payment.*

*The trial court erred in sua sponte raising and relying on the affirmative defense of illegality to justify granting summary judgment in favor of the defendants on plaintiff's claim of breach of contract. Nevertheless, summary judgment in favor of the defendants was proper because no genuine issue of material fact exists that the plaintiff's agent accepted and received payment as provided under the contract with defendants.*

**112001** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v FRANK GIGLIO

Affirmed.

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

**KEY WORDS:** *Felonious assault; discharge of a firearm; improper handling; firearm specifications; drive-by shooting specification; sufficient evidence; manifest weight; self-defense; jury instructions; prosecutorial misconduct; closing argument; plain error; merger; allied offenses; multiple victims; harm; separate and identifiable; continuance; counsel; discretion; consecutive sentence; firearm specifications; mandatory; findings.*

*Affirmed convictions for felonious assault, discharge of firearm on or near prohibited premises, improper handling of a firearm in a motor vehicle, and criminal damaging. Appellant's convictions were supported by sufficient evidence and were not against the*

## CASE DECISION LIST

(Case 112001 continued)

manifest weight of the evidence. Also, no prejudicial error occurred in instructing the jury on self-defense; prosecutorial misconduct was not established; plain error was not shown for convictions not subject to merger; there was no abuse of discretion in denying a day-of-trial request for a continuance to retain counsel of choice; and consecutive-sentence findings were not required for firearm specifications.

<b>112002</b>	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v ALPHONSO HICKMAN			

Affirmed.

Eileen A. Gallagher, J., Frank Daniel Celebrezze, III, P.J., and Lisa B. Forbes, J., concur.

**KEY WORDS:** *R.C. 2929.11; R.C. 2929.12; consecutive sentences; R.C. 2929.14(C)(4); plain error; pandering sexually oriented matter involving a juvenile; R.C. 2907.322(A)(1); illegal use of a minor in nudity-oriented material or performance; R.C. 2907.323(A)(1); R.C. 2907.323(A)(3); voyeurism; R.C. 2907.08(C).*

*We affirmed the trial court's imposition of consecutive sentences resulting in an aggregate 8-year prison sentence. In May 2021, the defendant pleaded guilty to voyeurism for attempting to record his 14-year-old stepdaughter in the shower with a cell phone. Less than six months later, while the defendant was on community control for that offense, the defendant attempted to record her in the shower with a cell phone again. Investigators also determined that the defendant had emailed nearly 30 videos to himself that showed the victim in a state of nudity. The victim had made the videos of herself. The defendant pleaded guilty to pandering sexually oriented matter involving a juvenile, illegal use of a minor in nudity-oriented material or performance and voyeurism.*

*The trial court sentenced the defendant to four years in prison for pandering, consecutive to four years in prison for illegal use of a minor in nudity-oriented material or performance. The trial court also sentenced the defendant to one year in prison in the previous voyeurism case for violating community control. We affirmed the sentences because the record reflected that the trial court adequately considered the R.C. 2929.11 and 2929.12 factors before imposing sentence. We affirmed the imposition of consecutive sentences because, after a thorough review of the record, we were not left with the firm conviction or belief that the trial court's consecutive-sentence findings were not supported. While the defendant was cooperating with sex-offender treatment, he tried to explain that his actions merely reflected his care and concern for O.T. and that he tried to record O.T. in the shower because he thought she was trying to "set him up." The offenses were very serious and had a substantial negative effect on the minor victim, the defendant's stepdaughter. The defendant has a substantial criminal history that included felonies, misdemeanors and violations of community control going back to 1999.*

## CASE DECISION LIST

**112013** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
CLINT YOBY, ET AL. v CITY OF CLEVELAND, ET AL.

Reversed and remanded.

Mary J. Boyle, J., Anita Laster Mays, A.J., and Michelle J. Sheehan, J., concur.

**KEY WORDS:** *Class action; arbitration; agreement; compel; stay pending arbitration; R.C. 2711.02; R.C. 2711.03; genuine issue; material fact; trial.*

*Judgment is reversed and remanded. A review of the record reveals that there is a genuine issue of material fact regarding whether the parties ever agreed to arbitrate and whether the arbitration clause exists. Under R.C. 2711.03(B), the trial court was required to proceed to trial on that issue. Therefore, we find that the trial court erred by denying the City's motion to compel arbitration without first proceeding to trial on the issue of the making of the arbitration agreement.*

**112073** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v HENRY HALL

Affirmed in part, reversed in part, and remanded.

Sean C. Gallagher, J., Michelle J. Sheehan, P.J., and Emanuella D. Groves, J., concur.

**KEY WORDS:** *Felonious assault; qualifying felony; second degree; Reagan Tokes Law; S.B. 201; constitutionality; indefinite sentence; contrary to law; prison term; inferior court; precedent; R.C. 2929.14; R.C. 2929.14(A)(2)(a); R.C. 2929.144(B).*

*Trial court erred by failing to follow this court's precedent on the constitutionality of the Reagan Tokes Law and to impose an indefinite sentence on four qualifying felonies of the second degree in accordance with R.C. 2929.14(A)(2)(a) and 2929.144(B). The sentence imposed on the base charge for those four counts was contrary to law and reversed. The case was remanded for the limited purpose of imposing an indefinite sentence on the four qualifying felony offenses.*

**112085** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
STATE OF OHIO, EX REL LORA ELIAS D.D.S., INC. v  
NORTHEAST OHIO REGIONAL SEWER DISTRICT

## CASE DECISION LIST

Affirmed.

Michelle J. Sheehan, J., Anita Laster Mays, A.J., and Mary J. Boyle, J., concur.

**KEY WORDS:** *Inverse condemnation; writ of mandamus to compel appropriation proceedings; res judicata.*

**Mandamus is the appropriate action to compel public authorities to commence appropriation cases when an involuntary taking of private property is alleged. Appellant property owner could have brought a claim for mandamus as part of the initial lawsuit and the failure to do so meant that the subsequent claim for mandamus was barred by res judicata.**

<b>112166</b>	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v DONALD GUNDERMAN			

Affirmed.

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

**KEY WORDS:** *Reagan Tokes Law; constitutional; indefinite sentence.*

**The trial court's imposition of an indefinite sentence pursuant to the Reagan Tokes Law was not a violation of defendant-appellant's constitutional rights.**

<b>112273</b>	CLEVELAND MUNI.	G	Civil Muni. & City
JOHNNY AUTOMATIC TRANSMISSION v GREATHOUSE TRANSPORTATION			

Affirmed.

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

**KEY WORDS:** *Accelerated appeal; small claims; default judgment; Civ.R. 54; Civ.R. 55; damages different in kind; damages different in amount; de novo review; breach of contract.*

**In this accelerated appeal, we considered a small claims court's default judgment granted in the plaintiff's favor. The defendant did not appear for trial and the court required the plaintiff to present proof of its damages. The court then issued default judgment in the plaintiff's favor in an amount less than what the plaintiff requested. On appeal, the plaintiff claimed that the court was not permitted to require it to present evidence supporting its damages claim; instead, the argument went, the court was required to award exactly what the plaintiff asked for in the complaint.**

**We affirmed the default judgment because (1) the judgment did not**

## **CASE DECISION LIST**

(Case 112273 continued)

**violate Civ.R. 54(C) where the relief granted did not differ in kind from or exceed what was requested in the complaint and (2) the municipal court had the discretion to hold a hearing to determine the amount of damages, especially considering that the plaintiff requested unliquidated damages.**