

## CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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**November 30, 2023**

**112092** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v TAMARA MCLOYD

Affirmed.

Anita Laster Mays, A.J., and Mary J. Boyle, J., concur; Frank Daniel Celebrezze, III, J., concurs (with separate opinion).

**KEY WORDS:** *Plain error; joinder of cases; sufficiency of the evidence; manifest weight of the evidence; ineffective assistance of counsel; Reagan Tokes Law.*

*The appellant did not demonstrate plain error regarding the trial court's comments about the grand jury's decision to indict her. The trial court did not abuse its discretion because the joinder of the cases for trial was not impermissibly prejudicial. Appellant's convictions were supported by sufficient evidence and not against the manifest weight of the evidence. The trial court did not abuse its discretion by allowing the 911 call into evidence. Trial counsel for the appellant was not ineffective because the appellant withdrew the motion to suppress. The Reagan Tokes law is not unconstitutional.*

**112329** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v ANTHONY HICKS-STEVENSON

Affirmed.

Sean C. Gallagher, J., Frank Daniel Celebrezze, III, P.J., and Michael John Ryan, J., concur.

**KEY WORDS:** *Aggravated robbery; having weapons while under disability; speedy trial; plain error; continuance; pandemic; reasonableness; voir dire; jury; grand jury; burden of proof; sufficiency; identity; circumstantial evidence; reasonable inferences; video evidence; manifest weight; hearsay; co-conspirator statements; Evid.R. 801(D)(2)(e); independent proof; Confrontation Clause; indefinite sentence; Reagan Tokes Law.*

*Affirmed appellant's convictions and sentence for aggravated robbery and having weapons while under disability. The trial court did not commit plain error during voir dire in differentiating the grand jury process. Appellant failed to establish any violation of his statutory or constitutional speedy-trial rights or to demonstrate plain error in regard thereto. Appellant's convictions were supported by sufficient evidence and were not against the manifest weight of the evidence. Ample circumstantial evidence was presented, which included compelling video evidence, from which reasonable inferences could be drawn as to appellant's identity and his commission of the crimes. The trial court did not abuse its*

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(Case 112329 continued)

**discretion in the admission of co-conspirator statements under Evid.R. 801(D)(2)(e). No sentencing error occurred by the imposition of an indefinite sentence under S.B. 201, and appellant's constitutional challenges to the Reagan Tokes Law were rejected.**

**112367** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v KESHAWN FOSTER

Affirmed.

Mary Eileen Kilbane, P.J., Lisa B. Forbes, J., and Sean C. Gallagher, J., concur.

**KEY WORDS: R.C. 2152.12; discretionary transfer; amenability; attempted murder; felonious assault; grand theft; abuse of discretion.**

***The trial court did not abuse its discretion by concluding that the factors in favor of transfer to the general division outweighed those against transfer.***

**112397** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v JASON JOHNSON

Vacated.

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

**KEY WORDS: Guilty plea; Crim.R. 11(C)(2)(c); constitutional right; burden of proof; guilt; beyond a reasonable doubt; State v. Veney; State v. Woods; State v. Dangler.**

***This case presents relevant facts identical to those in State v. Veney, 120 Ohio St.3d 176, 2008-Ohio-5200, 897 N.E.2d 621, and State v. Woods, 192 Ohio App.3d 494, 2011-Ohio-727, 949 N.E.2d 574 (8th Dist.). Based on these cases, we find that the trial court's failure to advise Johnson of his constitutional right to require the state to prove his guilt beyond a reasonable doubt at a trial renders his plea invalid. Because the trial court judge failed to explain one of the constitutional rights set forth in Crim.R. 11(C)(2)(c), no showing of prejudice is required.***

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**112429** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v ARSHAUN CARTER

Vacated and remanded.

Kathleen Ann Keough, P.J., and Lisa B. Forbes, J., concur; Eileen T. Gallagher, J., dissents (with separate opinion).

**KEY WORDS:** *Juvenile; discretionary transfer; adult court; amenability determination.*

*Where the trial court's decision that the juvenile was not amenable to treatment and rehabilitation in the juvenile system was based on findings that were not supported by the evidence in the record and were contrary to the evidence, the juvenile court's amenability determination and discretionary transfer of the case to adult court was not supported by the preponderance of the evidence and constituted an abuse of discretion.*

**112430** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v MAR'RAY HOPKINS

**112704** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v MAR'RAY HOPKINS

Affirmed.

Kathleen Ann Keough, J., Anita Laster Mays, A.J., and Mary J. Boyle, J., concur.

**KEY WORDS:** *Crim.R. 32.1; presentence motion to withdraw guilty plea; change of heart.*

*Trial court did not abuse its discretion in denying appellant's Crim.R. 32.1 presentence motion to withdraw his guilty plea because the record clearly demonstrated that appellant did not set forth a legitimate and reasonable basis to withdraw his plea, but merely had a change of heart. The record shows that the trial court conducted a hearing on appellant's motion in which it considered the relevant factors and gave appellant's motion full and fair consideration.*

**112432** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v RYAN CLEMMONS, SR.

Affirmed.

Eileen A. Gallagher, P.J., Michelle J. Sheehan, J., and Michael John Ryan, J., concur.

**KEY WORDS:** *Consecutive sentences; R.C. 2929.14(C)(4);*

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(Case 112432 continued)

**seriousness of offender's conduct; proportionality; aggravated vehicular homicide; failure to comply; drug possession; drug trafficking; attempted tampering with evidence.**

**Affirmed the imposition of consecutive sentences where the record supported the trial court's finding that consecutive service of sentences - leading to an aggregate 12- to 16-year sentence - was not disproportionate to the seriousness of the defendant's conduct. The defendant, who had a long history of driving recklessly and drug trafficking, led police in a pursuit through metropolitan areas that reached speeds of 90 miles per hour. The pursuit ended when the defendant crashed his car, killing his passenger. While on bond for that offense, the defendant was cited multiple times for driving under a suspended license. On one occasion he also had methamphetamine on his person. On another he was caught driving 88 m.p.h., nearly 20 m.p.h. over the speed limit. Judgment affirmed.**

<b>112483</b>	COMMON PLEAS COURT	E	Civil C.P.-Not Juv,Dom Or Prob
JOHN MEROS, ET AL. v SUNBELT RENTALS, INC., ET AL.			

<b>112709</b>	COMMON PLEAS COURT	E	Civil C.P.-Not Juv,Dom Or Prob
JOHN MEROS v SUNBELT RENTALS, INC.			

Affirmed.

Sean C. Gallagher, J., Frank Daniel Celebrezze, III, P.J., and Michael John Ryan, J., concur.

**KEY WORDS: *Negligent undertaking doctrine; duty; Civ.R. 56; special relations.***

***Affirmed. The existence of a duty hinges on the relationship between the parties, and absent a special relationship, there is no duty to protect third parties from physical harm caused by others. In addition, plaintiffs have not demonstrated that the negligent undertaking doctrine creates a duty owed to protect a third party from the criminal conduct of another.***

<b>112530</b>	CLEVELAND MUNI.	C	Criminal Muni. & City
CITY OF CLEVELAND v LE'MYKA TRAYLOR			

Affirmed.

Mary J. Boyle, J., Anita Laster Mays, A.J., and Kathleen Ann Keough, J., concur.

**KEY WORDS: *Other acts evidence; Evid.R. 404(B); reasonable notice; intent to use other acts evidence; bill of particulars; ineffective assistance of counsel; abuse of discretion; prejudice.***

## CASE DECISION LIST

(Case 112530 continued)

**Judgment affirmed. The court did not abuse its discretion by admitting testimony that Traylor “is the person who’s kicked my door down, attacked me” even though the City did not afford him any notice of using “other acts” evidence. Traylor’s previous acts of physical violence were relevant to proving Lee’s subjective belief that Traylor would cause her physical harm when he sent her the Cash App messages. Defense counsel was not ineffective because Traylor is unable to demonstrate that the lack of a bill of particulars, the failure to raise the reasonable notice issue under Evid.R. 404(B), and the failure to object to the other acts evidence prejudiced Traylor’s ability to receive a fair trial.**

<b>112567</b>	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v EMMANUEL SMITH			

<b>112568</b>	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v EMMANUEL SMITH			

<b>112569</b>	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v EMMANUEL SMITH			

<b>112570</b>	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v EMMANUEL SMITH			

Dismissed.

Anita Laster Mays, A.J., and Michelle J. Sheehan, J., concur; Sean C. Gallagher, J., dissents (with separate opinion).

**KEY WORDS: Anders brief.**

***Appellant’s counsel motion for leave to withdraw as counsel pursuant to Anders, stating that he has been unable to identify any meritorious issues for appellate review, is granted.***

<b>112596</b>	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v TYRON PARKS			

Affirmed.

Mary J. Boyle, J., Anita Laster Mays, A.J., and Kathleen Ann Keough, J., concur.

**KEY WORDS: Child endangering; domestic violence; parental discipline; R.C. 2929.21(B)(3); R.C. 2929.21(B)(4); substantial risk; serious physical harm; mental health or development; sufficiency of the evidence; and manifest weight.**

***Judgment affirmed. Parks’s convictions are supported by sufficient evidence and are not against the manifest weight of the evidence.***

## CASE DECISION LIST

(Case 112596 continued)

The trial court could have reasonably concluded that Parks's discipline of J.H. was unreasonable and excessive and that he created a substantial risk of serious physical harm to J.H. by disregarding the unjustifiable risk associated with striking a seven-year old boy repeatedly with a belt and causing extensive bruising and impairing J.H.'s mental health and development. We also find that Parks's parental discipline was unreasonable and improper in light of the totality of the circumstances.

**112601** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
STATE OF OHIO v MIGUEL ANTONIO JIMENEZ

Reversed and remanded.

Kathleen Ann Keough, J., Anita Laster Mays, A.J., and Mary J. Boyle, J., concur.

**KEY WORDS:** *Motion for default judgment; civil forfeiture claim; sua sponte dismissal of complaint.*

*Where state's complaint was pled in full compliance with R.C. 2981.05(D)(1)(a) through (c), which sets forth the requirements for a civil forfeiture action by the state regarding proceeds derived from criminal activity, and defendant did not answer, respond, or otherwise appear in response to the complaint, the trial court erred in denying the state's motion for default judgment because by failing to respond to the state's complaint or otherwise defend against it, defendant admitted the allegations of the complaint. Defendant's admissions were equivalent to proof of the allegations, and the state was not required to present evidence to prove the allegations. The trial court also erred in sua sponte dismissing the complaint where the complaint was not frivolous and did not demonstrate that the state could not succeed on the facts stated in the complaint, and the trial court did not give the parties an opportunity to respond to the trial court's intention to dismiss.*

**112616** JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate  
Q.A-E. v S.G.

Affirmed.

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

**KEY WORDS:** *Proper service; best interest of the child.*

*Appellant has not demonstrated that the trial court failed to ensure proper service of hearing was completed. Appellant has not demonstrated that the trial court abused its discretion in awarding custody of minor child to Father, because the trial court determined that it was in the best interest of the child.*

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**112617** JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate  
IN RE: F.C., III

Affirmed.

Sean C. Gallagher, J., and Frank Daniel Celebrezze, III, P.J., concur; Michael John Ryan, J., concurs in judgment only (with separate opinion).

**KEY WORDS:** *Legal custody; continuance; discretion; good cause; guardian ad litem; report; recommendation; cross-examination; plain error; statement of understanding; R.C. 2151.353(A)(3); best interest; relevant factors; R.C. 2151.414(D)(1); visitation; wishes; child; mother; relative; preponderance.*

*Affirmed the juvenile court's decision to award legal custody of the child to a relative and to deny legal custody to the child's mother. The juvenile court considered all relevant best-interest factors, and its decision was supported by the preponderance of the evidence. The juvenile court did not commit plain error in considering the report and recommendation of the guardian ad litem. The juvenile court did not abuse its discretion in denying a motion for continuance of trial.*

**112636** COMMON PLEAS COURT E Civil C.P.-Not Juv, Dom Or Prob  
U.S. BANK NATIONAL ASSOCIATION AS TRUST v HANNIE MICHAELS, ET AL.

Affirmed.

Sean C. Gallagher, J., Kathleen Ann Keough, P.J., and Mary J. Boyle, J., concur.

**KEY WORDS:** *Foreclosure; summary judgment; Civ.R. 53(D)(3)(b)(i); objections; untimely; arguments; waived; mortgage; validity; signatures; R.C. 1303.36(A); address; executed; rerecorded; legal description.*

*Affirmed the decision of the trial court that granted the motion for summary judgment of the plaintiff-appellee and entered an in rem judgment and decree of foreclosure against the defendants-appellants. Appellants' written objections to a magistrate's decision were untimely pursuant to Civ.R. 53(D)(3)(b)(i). The validity of appellants' signatures was admitted pursuant to R.C. 1303.36(A); the mortgage as originally recorded was executed by appellants and adequately described the property with its street address; and there was no authority for invalidating the document merely because it was rerecorded with a corrected legal description attached.*

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**112698** JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate  
IN RE L.S.

Affirmed.

Michael John Ryan, J., Kathleen Ann Keough, P.J., and Lisa B. Forbes, J., concur.

**KEY WORDS:** *Former foster parents; party status; legal custody; immediate visitation; adoption; permanent custody.*

**Judgment affirmed.** *The record demonstrates that the former foster parents were granted limited intervention for the purpose of participating in the hearing on their motion for immediate placement and to resume adoption process; the record does not support the former foster parents' contention that they were granted full-party status.*

*At the time the former foster parents filed their motion for legal custody, the juvenile court had already granted permanent custody of the child to the agency. R.C. 2151.353(F)(2) permits post-disposition motions to be filed by any party, among others. Even assuming arguendo that the former foster parents were granted full-party status, the earliest that could have occurred was April 7, 2023, when the trial court issued its decision. Thus, at the time the former foster parents filed their motion for legal custody in February 2023, they were not parties to the case and their motion was not properly before the court under R.C. 2151.353(F)(2).*

**112734** COMMON PLEAS COURT E Civil C.P.-Not Juv, Dom Or Prob  
STATE OF OHIO v ASA ASADI-OUSLEY

Affirmed.

Kathleen Ann Keough, J., Anita Laster Mays, A.J., and Mary J. Boyle, J., concur.

**KEY WORDS:** *Postconviction petition; R.C. 2953.23; untimely; successive; speedy trial; information; R.C. 2941.021; res judicata; ineffective assistance of counsel; affidavits; unavoidably prevented; summary denial.*

**The trial court did not abuse its discretion in summarily denying appellant's untimely and successive postconviction petition because the doctrine of res judicata barred his claims or the appellant failed to satisfy the requirements of R.C. 2953.21. Appellant's speedy trial rights were not violated because merely being notified of potential charges does not amount to an "information" under R.C. 2941.021. Additionally, appellant failed to demonstrate how he was unavoidably prevented from obtaining affidavits, but more importantly, the information contained therein did not demonstrate that his counsel was ineffective or that a reasonable factfinder would not have found him guilty of the offense.**