

## CASE DECISION LIST

October 5, 2023

**109421** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v MICHAEL J. JENKINS

**109434** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v OSCAR DICKERSON

Remanded.

Emanuella D. Groves, J., and Sean C. Gallagher, P.J., concur; Mary Eileen Kilbane, J., concurs in part and dissents in part (with separate opinion).

**KEY WORDS:** *Preindictment delay; actual prejudice; justifiable delay; law of the case; ineffective assistance of counsel.*

*Trial court erred in finding that defendant failed to establish actual and substantial prejudice based on the period of preindictment delay. Defendant established that he suffered actual prejudice in the form of a deceased witness who was present for a portion of the incident and would have provided testimony that minimized or eliminated the impact of the state's witness. Nevertheless, even though the trial court erred in finding no prejudice, the trial court was correct, given its finding, in deciding not to address the issue of the state's reason for the delay. The case is thus affirmed in part and reversed in part and remanded for the trial court to determine whether the state provided sufficient reason to justify the period of preindictment delay.*

**111431** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
STATE OF OHIO v RONALD NEWBERRY

Affirmed.

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

**KEY WORDS:** *Aggravated murder; aggravated burglary; kidnapping; having weapons while under disability; sufficiency of the evidence; manifest weight of the evidence; juror bias; ineffective assistance of counsel; cell-phone records; authentication; reliability; Daubert; defense counsel conflict of interest; identification testimony; burden of proof; mistrial; intrusion into attorney-client communications; hearsay; Confrontation Clause; cumulative errors; plain error.*

*The defendant's convictions - for aggravated murder, aggravated burglary and kidnapping, among other things - were supported by sufficient evidence and were not against the manifest weight of the evidence. While the state's case was circumstantial, there was sufficient evidence for the jury to find that the defendant committed or was complicit in the kidnapping and murder of a man and his*

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**14-year-old daughter.**

Cell-phone records were properly authenticated by a law-enforcement agent who testified in detail about how the telecommunications provider recorded information about interactions between cell phones and cell towers in the ordinary course of business. The records were obtained through a search warrant and the provider included a statement that the records were being provided pursuant to the warrant. The agent's testimony about the general location of cell phones, as recorded in these records, was appropriate lay testimony.

While it was an unconscionable violation of the defendant's rights for the police to record confidential attorney-client communications following a police interview and for the state to retain those communications until trial, under the circumstances of the case there was no basis to suppress the entire police interview or dismiss the indictment in the middle of trial.

It was not plain error for the trial court to sit a juror who reported that his estranged daughter had been friends with one of the victim's daughters and trial counsel was not ineffective for choosing not to inquire further or challenge the juror for cause.

Trial counsel fully disclosed the nature of a previous representation of a state witness and stated that there was no conflict of interest. The defendant consented to the continued representation before the start of trial. On appeal, the defendant failed to show an actual conflict of interest, that his waiver was less than knowing or voluntary or that trial counsel's representation was adversely affected by the prior representation of the witness.

The defendant's other appellate arguments were also rejected.  
Judgment affirmed

<b>112069</b>	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v JYVARIS WOODEN			

Affirmed.

Eileen A. Gallagher, J., Frank Daniel Celebrezze, III, P.J., and Emanuella D. Groves, J., concur.

**KEY WORDS:** *Allied offenses; merger; res judicata; resentencing; limited remand.*

*The defendant's assignment of error - related to the imposition of compound sentences on offenses that the defendant said were allied offenses - is barred by res judicata. The defendant did not raise the alleged error in the previous direct appeal from the convictions and sentences. While this court previously vacated the sentences based on a Sierah's Law notification error, the underlying convictions were left standing. The defendant could not thereafter challenge the trial court's merger decision at the*

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**resentencing hearing or on an appeal from the sentences imposed at the resentencing hearing. Judgment affirmed.**

**112148** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v ADRIAN WILLIAMS

Affirmed.

Mary Eileen Kilbane, P.J., Michael John Ryan, J., and Sean C. Gallagher, J., concur.

**KEY WORDS:** *Rape; kidnapping; cold case; merger; allied offenses of similar import; R.C. 2941.25; prosecutorial misconduct; closing argument; prejudice; Crim.R. 16(K).*

*The trial court did not err by declining to merge kidnapping and rape offenses where the kidnapping took place over a prolonged period of time and increased the risk of harm to the victim. Statements made during closing argument did not prejudice appellant. The trial court did not err or abuse its discretion by admitting testimony from the victim or her treating physician.*

**112163** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v DELANO HALE

Affirmed in part, reversed in part, and remanded.

Eileen T. Gallagher, J., and Kathleen Ann Keough, P.J., concur; Sean C. Gallagher, J., dissents (with separate opinion).

**KEY WORDS:** *New trial; newly discovered evidence; merits; unavoidably prevented; Brady violation; suppressed; jury selection; abuse of discretion; hearing; futile; exhibit.*

*The trial court abused its discretion by denying the defendant leave to file a motion for new trial where the newly discovered evidence demonstrates, on its face, that the defendant was unavoidably prevented from discovering the evidence within the time period prescribed by Crim.R. 33(B).*

**112167** CLEVELAND MUNI. C Criminal Muni. & City  
CITY OF CLEVELAND v JAMES BATES

Affirmed.

Michael John Ryan, J., and Lisa B. Forbes, P.J., concur; Sean C. Gallagher, J., concurs (with

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separate opinion).

**KEY WORDS:** *Cleveland Codified Ordinances 203.03, 369.15, 3101.10; housing code violations; selective intervention program; App.R. 16; no-contest plea; Crim.R. 8; Crim.R. 11; Crim.R. 12.*

*This court has previously stated that a housing or building code continuing violation may be charged in a single charging document; nevertheless, the appellant waived his right to challenge any defect in his indictment because he did not raise the issue with the trial court. The “pendency of the proceedings” mentioned in Crim.R. 12 does not extend to appellate proceedings.*

*Counsel was not ineffective for failing to file a motion that did not have any reasonable probability of success. The trial court complied with Crim.R. 11.*

*Appellant failed to cite any authority to support his argument that the trial court abused its discretion in denying him entry into the court’s selective intervention program.*

**112257** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
ROY M. CARROLL v CUYAHOGA COMMUNITY COLLEGE, ET AL.

Affirmed in part, reversed in part, and remanded.

Emanuella D. Groves, J., Kathleen Ann Keough, P.J., and Michael John Ryan, J., concur.

**KEY WORDS:** *Civ.R. 12(B)(6); motion to dismiss; political subdivision immunity.*

*The trial court erred to the extent that it denied appellant’s motion to dismiss regarding intentional torts. It is well settled that a political subdivision is not liable for the intentional torts of its employees.*

*However, the trial court correctly denied the motion as to the remaining counts. Appellee set out sufficient facts to overcome immunity.*

**112263** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v VICKIE L. THORP

Affirmed in part, reversed in part, and remanded.

Eileen T. Gallagher, J., Anita Laster Mays, A.J., and Michael John Ryan, J., concur.

**KEY WORDS:** *Theft; restitution; plea; term; economic harm; Marsy’s Law; degree; felony; invited error; protected class.*

*Defendant’s acceptance of guilt to an offense that is not cognizable*

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under the Ohio Revised Code is treated as invited error when the plea was knowingly, intelligently, and voluntarily made. The provisions of Marsy's Law supersede the defendant's rights under R.C. 2929.19(B)(5). The trial court erred by imposing restitution in an amount that exceeded the amount agreed to at the time of the plea.

**112320** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v JOHN BRADLEY, JR.

Affirmed.

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

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

*Appellant's sole assignment of error contesting the constitutionality of the Reagan Tokes Law is overruled pursuant to State v. Hacker, Slip Opinion No. 2023-Ohio-253.*

**112437** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v HOLLIS BOSTICK

Affirmed.

Michael John Ryan, J., and Sean C. Gallagher, J., concur; Mary Eileen Kilbane, P.J., dissents (see separate opinion).

**KEY WORDS:** *Motion for leave for new trial; motion for new trial; no hearing; newly discovered evidence; trial court's sound discretion.*

*The judgment of the trial court denying the defendant's motion for a new trial without a hearing, after granting him leave to file same, was not an abuse of discretion. The newly discovered evidence does not support the defendant's contention that he was not the shooter; overwhelming evidence refutes the defendant's contention. Further, the newly discovered evidence does not disclose a strong probability that a different result would have been reached had the jury known about it. The record also does not support the defendant's contention that his conviction was obtained with perjured testimony.*

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**112490** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
SAL'S HEATING AND COOLING, INC. v HARBOUR VIEW ASSOCIATES, LTD

Affirmed.

Eileen T. Gallagher, J., Anita Laster Mays, A.J., and Michael John Ryan, J., concur.

**KEY WORDS:** *Contract; contractual interest; statutory interest; invoice; consideration.*

*The trial court properly found that contractual interest and attorney-fee provisions in an invoice submitted after the contract work was complete constituted a unilateral modification of the parties' service contract and were unenforceable.*

**112503** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
IRIS HICKS v THE CLEVELAND MUSEUM OF ART

Affirmed.

Eileen A. Gallagher, J., Kathleen Ann Keough, P.J., and Michelle J. Sheehan, J., concur.

**KEY WORDS:** *Trip and fall; negligence; summary judgment; business invitee; open-and-obvious doctrine.*

*Trial court did not err in granting summary judgment on negligence claim based on plaintiff's stepping off a walkway and falling into a planter box at the Cleveland Museum of Art. Because the only reasonable conclusion that could be drawn from the facts was that the hazard presented by the edge of the planter box was open and obvious, the museum owed no duty to the plaintiff to warn her of the hazard.*

**112822** JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate  
IN RE: L.S.

Affirmed.

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

**KEY WORDS:** *Parental rights; permanent custody; R.C. 2151.414(B)(1); child could not or should not be placed with either parent within a reasonable time; R.C. 2151.414(E) factors; best interest of the child; R.C. 2151.414(D)(1).*

*The record contains clear and convincing evidence to support the juvenile court's finding that one of the conditions set forth in R.C.*

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**2151.414(B)(1)(a) through (e) applied and that it was in the best interest of the child to grant permanent custody to the agency.**

<b>113015</b>	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v LORENZO KING			

Reversed and remanded.

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

**KEY WORDS:** *Conceded error; jail-time credit; nunc pro tunc.*

***The trial court did not have jurisdiction to attempt to correct appellant's sentence after appellant filed a notice of appeal. A nunc pro tunc order is not the proper method by which to correct an improper sentence. Generally, misdemeanor sentences may not run consecutive to felony sentences. The trial court erred in failing to award appellant credit for time served.***