

**February 29, 2024**

<b>112080</b>	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v TORRENCE A. GILLIS			

Affirmed.

Lisa B. Forbes, P.J., Michael John Ryan, J., and Sean C. Gallagher, J., concur.

**KEY WORDS:** *Voluntary manslaughter; mens rea; knowingly; self-defense; sufficiency; manifest weight; motion to dismiss; suppressed evidence; Regan Tokes.*

*The state provided sufficient evidence that appellant acted knowingly when he shot and killed the victim. Appellant admitted that he shot the victim but claimed he did so in self-defense. This court has found that when a defendant admits to shooting the victim but claims to have done so in self-defense, the defendant concedes that his or her actions were done knowingly.*

*Further, the factfinder did not clearly lose its way in finding that appellant did not shoot the victim in self-defense because evidence in the record demonstrates that appellant was the initial aggressor because he told eyewitnesses that if the victim hit him he was going to kill him before walking over to the victim, putting his arms behind his back, and saying, "Go ahead, hit me again. Think I'm playing, hit me again." When the victim swung, appellant pulled out his gun and shot the victim.*

*The trial court did not err when it denied appellant's motion to dismiss based on his assertion that the state suppressed evidence. Appellant did not establish that the state willfully or inadvertently suppressed evidence because the appellant's motion acknowledged that the state never had the evidence appellant wanted.*

*Finally, appellant's indefinite sentence is not contrary to law because the Ohio Supreme Court found that the Regan Tokes Law is constitutional on its face.*

<b>112386</b>	COMMON PLEAS COURT	E	Civil C.P.-Not Juv, Dom Or Prob
U.S. BANK TRUST NATIONAL ASSOCIATION v MARY JOAN KEANE, ET AL.			

Affirmed.

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

**KEY WORDS:** *Foreclosure; summary judgment; Civ.R. 56(C); deposition; cross-examination of affiant; Civ.R. 56(F); service of subpoena; Civ.R. 45.*

## CASE DECISION LIST

(Case 112386 continued)

**Judgment affirmed. The trial court did not err in granting summary judgment to U.S. Bank when an opposition to summary judgment was never filed despite the trial court allowing for two extensions of time. Further, the party opposing summary judgment arguments that U.S. Bank was “hiding” a subpoenaed witness were improper where the out-of-state, nonparty witness was not properly served with the subpoena.**

**112560** DOMESTIC RELATIONS F Civil C.P.-Juv, Dom, Probate  
DAVID L. WAGNER v VICTORIA WAGNER

Affirmed.

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

**KEY WORDS: Domestic relations; child support; App.R. 3; and App.R. 4.**

**The trial court did not err in finding appellant’s motion to modify child support moot when the court’s previous order disposed of the issue and appellant chose not to have this court review the previous interlocutory order but rather only the judgment entry finding appellant’s motion moot.**

**112633** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v NASIR WALKER

Affirmed and remanded.

Eileen T. Gallagher, P.J., Mary J. Boyle, J., and Frank Daniel Celebrezze, III, J., concur.

**KEY WORDS: Bindover; discretionary; transfer; probable cause; abuse of discretion; amenability; factors; rehabilitation; subject-matter jurisdiction; ineffective assistance of counsel strategy.**

**The juvenile court did not abuse its discretion by transferring the defendant’s case to the adult court pursuant to R.C. 2152.12(B). Defense counsel did not render ineffective assistance of counsel during the amenability proceedings by failing to present more persuasive arguments.**

## CASE DECISION LIST

**112725** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v ALLISON FADEL

Affirmed.

Lisa B. Forbes, J., Mary Eileen Kilbane, P.J., and Emanuella D. Groves, J., concur.

**KEY WORDS:** *Felonious assault; complicity; self-defense; sufficiency of the evidence; manifest weight of the evidence; jury instruction; inferior offense; plain error; ineffective assistance of counsel.*

*Appellant's conviction for felonious assault was supported by sufficient evidence and was not against the manifest weight of the evidence. The state demonstrated that appellant was complicit with her sister in committing felonious and that the jury did not lose its way in convicting her because there was evidence that appellant aided, assisted, encouraged, or supported her sister in committing the felonious assault.*

*Appellant met her burden in claiming that she acted in self-defense when she claimed that the victim hit her first, she was scared, injured, and smaller than the victim. The state met its burden in proving that she did not act in self-defense because evidence demonstrated that appellant was the initial aggressor and was not in fear of eminent bodily harm because a video of the fight showed appellant standing over the victim and hitting her while the victim laid there.*

*Appellant did not receive ineffective assistance of counsel because while counsel did not request a jury instruction for the inferior offense of aggravated assault, we find that his decision to do so was a means of trial strategy because his theory of the case was self-defense.*

*Finally, the court did not plainly err in failing to instruct the jury on aggravated assault. As stated, the theory of the defense case was self-defense.*

**Judgment affirmed.**

**112748** JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate  
IN RE: A.S.

Affirmed.

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

**KEY WORDS:** *Delinquency; sufficiency of the evidence; discharge of a firearm on or near prohibited premises; improperly handling firearms in a motor vehicle; other acts evidence; Evid.R. 404(B);*

## CASE DECISION LIST

(Case 112748 continued)

**Evid.R. 403; abuse of discretion.**

**Sufficient evidence was presented to support an adjudication of delinquency for discharge of a firearm on or near prohibited premises. The trial court did not abuse its discretion in admitting a rap video into evidence because the danger of unfair prejudice did not outweigh its probative value, and the court stated that it would consider the evidence only for the proper purpose of identifying the suspect.**

**112767** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v JUAN RENTAS

Affirmed.

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

**KEY WORDS: Manifest weight of the evidence; manifest miscarriage of justice; inconsistent testimony, corroborating evidence.**

**Defendant was convicted after trial of kidnapping, rape, and felonious assault with sexual motivation and sexual predator specifications following a prolonged physical and sexual assault of the victim who sustained severe injuries. Defendant argues that the rape and specification convictions were against the manifest weight of the evidence due to inconsistencies and contradictions in the victim's testimony. Defendant argued that because of the severity of the victim's physical injuries, the jury did not properly consider the import of those inconsistencies and contradictions. Inconsistencies or contradictions in a witness's testimony do not entitle a defendant to a reversal of a trial. Because the jury heard the inconsistencies and any explanations and had the ability to weigh the credibility of the victim's testimony and where other evidence, including DNA evidence, corroborated her testimony, the convictions were not against the manifest weight of the evidence.**

**112776** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v KEVIN CRUZ

Reversed and remanded.

Michelle J. Sheehan, P.J., and Eileen T. Gallagher, J., concur; Mary Eileen Kilbane, J., dissents (with separate opinion).

**KEY WORDS: Motion to quash subpoena, motion for protective order, final appealable order, abuse of discretion, testimony of attorney engaged in proceeding.**

(Case 112776 continued)

**Defendant filed motion to disqualify prosecutor and to dismiss his criminal case alleging that the assistant prosecutor assigned to the case intentionally withheld evidence and caused prejudice. Defendant did not subpoena the assistant prosecutor but orally requested her testimony at the time of the hearing on his motions. The state filed a motion to quash and for a protective order to prevent defendant from calling the assistant prosecutor to testify at hearing.**

**A trial court's denial of a motion to quash or motion for protective order is generally a final, appealable order, and the court reviews the denial of such motion for an abuse of discretion. A court abuses its discretion when it applies the wrong legal standard or misapplies the correct legal standard. Attorneys engaged in the prosecution of a case are prohibited from acting as both a witness and advocate in the same proceeding. However, if there are exceptional circumstances and no other means of presenting relevant and material evidence, a prosecuting attorney may offer testimony in a criminal case in which they are engaged.**

**The record could not support a finding the assistant prosecutor's testimony was the only evidence available to defendant because there were other witnesses to testify about the collection, storage, and transmission of the evidence defendant alleged was withheld as well as records of what was provided in discovery. Because the trial court did not find that the assistant prosecuting attorney's testimony was the only testimony available, it abused its discretion by denying the motion to quash and for protective order.**

**112810** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v LAMONT CLARK

Affirmed.

Anita Laster Mays, J., Eileen A. Gallagher, P.J., and Lisa B. Forbes, J., concur.

***KEY WORDS: Crim.R. 32.1; Crim.R. 11; manifest injustice; postsentence motion to withdraw guilty plea.***

***The trial court did not err in denying the appellant's motion to withdraw his guilty plea because he did not demonstrate a manifest injustice or that a fundamental flaw occurred during the plea proceedings.***

**112842** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v JEREMIAH PEAK

## CASE DECISION LIST

Affirmed.

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

**KEY WORDS:** *Reverse bindover; aggravated robbery; category-two offense; firearm; motion to withdraw guilty plea; manifest injustice.*

*Trial court properly denied request for reverse bindover where juvenile defendant pleaded guilty to an offense that was subject to mandatory bindover to adult court.*

*Trial court acted within its discretion in denying juvenile defendant's post-sentence motion to withdraw his guilty plea where there was evidence that the prosecutor or the court erroneously promised the juvenile defendant that he would be eligible for reverse bindover.*

<b>112850</b>	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v MAURICE LIGHTNER			

Affirmed.

Kathleen Ann Keough, A.J., Eileen T. Gallagher, J., and Mary J. Boyle, J., concur.

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

*Appellant's consecutive sentences were not contrary to law because although the trial court did not use the express statutory language in finding that consecutive sentences were not disproportionate to the danger the appellant posed to the public - the second part of the proportionality finding - considering the trial court's statements at sentencing in their entirety, the record reflected that the court considered both the seriousness of appellant's conduct and the danger he poses to the public and determined that the comparison supported the imposition of consecutive sentences.*

<b>112896</b>	COMMON PLEAS COURT	E	Civil C.P.-Not Juv, Dom Or Prob
LOUISE SMITH, ET AL. v RONALD WHITE, ET AL.			

Vacated and remanded.

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

**KEY WORDS:** *Methods of service; special process server; personal service; personal jurisdiction; default hearing.*

*Default judgment vacated. It was not clear whether plaintiffs obtained personal service on the defendant via a special process server.*

## CASE DECISION LIST

**112970** JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate

IN RE: D.J.

Affirmed.

Eileen T. Gallagher, J., Kathleen Ann Keough, A.J., and Mary J. Boyle, J., concur.

**KEY WORDS:** *Adjudication; delinquency; disposition; sufficiency; manifest weight; evidence; self-defense; burden.*

*Juvenile's adjudication of delinquency for grand theft and tampering with evidence is supported by sufficient evidence and is not against the manifest weight of the evidence. The state satisfied its burden of persuasion by demonstrating that the juvenile did not commit the offenses in self-defense.*

**113026** JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate

IN RE: H.R.

Affirmed and remanded.

Michael John Ryan, J., Mary Eileen Kilbane, P.J., and Emanuella D. Groves, J., concur.

**KEY WORDS:** *Mandatory bindover; probable cause; identification; evidence that raises more than a mere suspicion of guilt.*

*Judgment affirmed and remanded. The juvenile court's role in bindover proceedings is that of a gatekeeper because it is charged with evaluating whether sufficient credible evidence exists to warrant transfer to adult court. The state's burden in a bindover proceeding is to produce evidence that raises more than a mere suspicion of guilt. A juvenile court's probable cause determination in a bindover proceeding involves questions of both fact and law. An appellate court will defer to the juvenile court's determinations regarding witness credibility but will review de novo the legal conclusion whether the state presented sufficient evidence to demonstrate probable cause to believe that the juvenile committed the acts charged.*

*The juvenile court's determination that the state's evidence did not raise more than a mere suspicion of guilt is affirmed. The state failed to present sufficient credible evidence - probable cause - on the issue of identification to warrant transfer of the case from juvenile court to adult court. The investigating detective did not identify the juvenile from the video evidence; the second person on the video (also unidentified) appeared to be looking for something on or about the victim's person; the entire incident occurred in under 30 seconds at night; the masked perpetrator attacked the victim from behind and immediately tackled him to the ground; and there was no evidence that the juvenile had threatened the victim, or even knew where he lived.*

## CASE DECISION LIST

**113171** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v MONICA GEIGER

**113174** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v MONICA GEIGER

Vacated, reversed, and remanded.

Kathleen Ann Keough, A.J., Eileen A. Gallagher, J., and Mary J. Boyle, J., concur.

**KEY WORDS:** *Conceded error; Loc.App.R. 16(B); Crim.R. 11; plea; erroneous; journal entry; consecutive sentences; plain error.*

**Defendant never pleaded guilty to offenses. Accordingly, the trial court entered an erroneous journal entry indicating that the defendant pleaded guilty and the court found her guilty. The trial court committed plain error by imposing consecutive sentences on those offenses and ordering those sentences consecutive to another case.**